

**HOME RULE CHARTER  
AND CODE OF THE  
TOWN OF CRESTED BUTTE, COLORADO**

**2009**

**Beginning with Supp. No. 12,  
Supplemented by Municipal Code Corporation**



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**OFFICIALS**  
of the  
**TOWN OF CRESTED BUTTE**

*Mayor*  
Ian Billick

*Mayor Pro Tem*  
Jason MacMillan

*Town Council*  
Mallika Magner  
Anna Fenerty  
Beth Goldstone  
Chris Haver  
Gabi Prochaska

*Town Manager*  
Dara MacDonald

Crested Butte, Colorado, Municipal Code  
HOME RULE CHARTER AND CODE OF THE TOWN OF CRESTED BUTTE, COLORADO

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*Town Clerk*  
Lynelle Stanford

*Town Attorney*  
Karl Hanlon

SUPPLEMENTATION

The Crested Butte, Colorado Municipal Code, originally published by Colorado Code Publishing Company, will be kept current by regular supplementation by Municipal Code Corporation, its successor in interest. Supplements to this Code provide periodic updating through the removal and replacement of pages. This inter-leaf supplementation system requires that each page which is to be removed and replaced is identified so that the updating may be accurately accomplished and historically maintained.

Instructions for supplementation are provided for each supplement, identified by Supplement number, date and inclusive ordinance numbers. The Instructions for posting the removal and replacement of pages must be followed and accomplished in sequence, with the most recent supplementation posted **last**.

When supplementation is completed and the removal and replacement of all pages are accomplished, the Instructions should be placed under the Supplementation tab, with the most recent Instruction sheet on top. Previous Instructions should not be removed, so that the user may refer to this tab section to verify whether the code book is fully updated with all supplements included.

The maintenance of a Municipal Code with all supplementation is an important activity which deserves close attention so that the value of the code is maintained as a fully comprehensive compilation of the legislative ordinances of the municipality.

AMENDMENTS

Amendments may be made to the Code by additions, revisions or deletions therefrom. Those changes may be made as follows:

**Additions:** Additions may be made by ordinance to the Code as follows:

The "Crested Butte Municipal Code" is amended by the addition thereto of a new Section 2-2-90, which is to read as follows:

(Set out full section number, title and contents)

or, if the location of the new section number or numbers is undetermined, the Code may be amended as follows:

The "Crested Butte Municipal Code" is amended by the addition of the following:

(Set out section title and contents)

**Rewards:** A revision of the Code may be accomplished as follows:

Section 2-2-90 of the "Crested Butte Municipal Code" is repealed in its entirety and readopted to read as follows:

(Set out section number, title and entire contents of the readopted code section)

or as follows:

Section 2-2-90 of the "Crested Butte Municipal Code" is amended to read as follows:

(Set out section number, title and entire contents of the amended code section)

**Repeal:** Sections, articles and chapters may be repealed as follows:

Section 2-2-90 of the "Crested Butte Municipal Code" is repealed in its entirety.

MUNICIPAL CODE CORPORATION

**HOME RULE CHARTER  
OF  
THE TOWN OF  
CRESTED BUTTE, COLORADO**

**1974**

**Beginning with Supp. No. 12,  
Supplemented by Municipal Code Corporation**



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**CHARTER TABLE OF CONTENTS**

**PREAMBLE**

WE, the people of Crested Butte, Colorado, under the authority of the Constitution of the State of Colorado, do ordain, establish and adopt this home rule charter for the Town of Crested Butte.

AS FINALLY APPROVED BY THE CRESTED BUTTE CHARTER COMMISSION.

**PREFATORY SYNOPSIS**

The Charter Commission of the Town of Crested Butte, Colorado, herewith submit to the voters of the Town the Home Rule Charter which we have framed in conformity with Article XX of the Colorado Constitution.

The Commission has worked diligently to achieve a simple and direct form of local government based on sound principles of public administration and tailored to the needs of the citizens of Crested Butte, Colorado.

Crested Butte, Colorado, Municipal Code  
HOME RULE CHARTER OF THE TOWN OF CRESTED BUTTE, COLORADO

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Under this Charter, a Council-Manager form of government is established. The Council is composed of seven members which includes the mayor. Members of the Council are elected for four year staggered terms and the mayor for a two year tenure. Both the mayor and the councilmen are elected at large. The mayor also presides at Council meetings and possesses full voting power of a Council member.

The Council is the policy-determining body of the municipal government with full legislative powers. The executive power is vested in the Town Manager who is appointed by and serves at the pleasure of the Council.

The first election under this Charter shall be held on January 21, 1975. Thereafter, biennial general municipal elections shall be held on the first Tuesday after the first Monday in November of odd numbered years. The Charter provides that all elections are to be non-partisan and establishes an election commission to insure that fair elections are conducted in accordance with the Colorado Municipal Election Law.

Other matters covered in the Charter include general Council procedures, initiative and referendum powers of the people, Town administration, legal and judicial appointments, municipal boards and commissions, Town finances, municipal borrowing procedures, public utilities, taxation, improvement districts, miscellaneous legal provisions and transition procedures.

The Charter vests the citizens of Crested Butte with every political power permitted to any home rule community under the Constitution of the State of Colorado. We believe this Charter will provide Crested Butte with efficient and responsive government for many years to come.

## **ARTICLE 1 GENERAL PROVISIONS**

### **Section 1.1. Name and Boundaries.**

The municipal corporation heretofore existing as a Town in the County of Gunnison, State of Colorado, and known as the Town of Crested Butte, shall remain and continue as a body politic and corporate under this Charter with the same name and boundaries until changed in a manner authorized by law.

### **Section 1.2. Rights and Liabilities.**

By the name of the Town of Crested Butte, the municipal corporation shall have perpetual succession; shall own, possess and hold all property, real and personal heretofore owned, possessed and held by said Town of Crested Butte, and shall assume and manage and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities and shall acquire all benefits, and shall assume and pay all bonds, obligations and indebtedness of said Town of Crested Butte; by the name of the Town of Crested Butte, may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure.

### **Section 1.3. Forms of Government.**

The municipal government provided by this Charter shall be known as the "Council-Manager Government". Pursuant to its provisions and subject only to limitations imposed by the State Constitution and by this Charter, all powers of the Town shall be vested in an elective Mayor and Council, hereafter referred to as the "Council", which shall enact local legislation, adopt budgets, determine policies and appoint the Town Manager who shall execute the laws and administer the Town government. All powers of the Town shall be exercised in the manner prescribed by this Charter, or if the manner be not so prescribed then in such manner as may be prescribed by ordinance.

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#### **Section 1.4. Powers.**

The Town shall have all the powers granted to municipal corporations and to Towns by the constitution and general laws of this state together with all the implied powers necessary to carry into execution all the powers granted. The Town may acquire property within and without its corporate limits for any purpose deemed by the Council to be in the Town's best interest, by purchase, gift, lease or condemnation, and may sell, lease, mortgage, hold, manage, and control such property as the Council may determine; and, except as prohibited by the Constitution of this state or restricted by this Charter, the Town shall and may exercise all municipal powers, functions, rights and privileges of every nature whatsoever. The enumeration of particular powers by this Charter shall not be deemed to be exclusive, and in addition to the powers enumerated herein or implied hereby, or appropriate to the exercise of such powers, it is intended that the Town shall have and may exercise all powers which under the state Constitution, it would be competent for this Charter specifically to enumerate.

## **ARTICLE 2 ELECTIONS**

#### **Section 2.1. Colorado Municipal Election Laws Adopted.**

Town elections shall be governed by the Colorado Municipal Election Laws as now existing or hereafter amended or modified except as otherwise provided by this Charter, or by ordinance hereafter enacted.

#### **Section 2.2. Municipal Elections.**

General municipal elections shall be held on the first Tuesday in November in odd-numbered years. Any special municipal election may be called by resolution or ordinance of the Council at least thirty (30) days in advance of such election. The resolution or ordinance calling a special municipal election shall set forth the purpose or purposes of such election. Polling places for all municipal elections shall be open at least from 7:00 A.M. to 7:00 P.M. on election day. (Rev. Ord 12, 2004, 11/2/04)

#### **Section 2.3. Election Precincts.**

The Town shall constitute one voting precinct, provided that the Council may for the convenience of voters, establish additional precincts thirty (30) days or more prior to any election, by ordinance. The precincts so established by ordinance shall remain for subsequent elections until otherwise provided by ordinance. The Council shall determine the maximum number of electors for each precinct, and each precinct shall be as substantially equal in the number of electors as practicable.

#### **Section 2.4. Election Commission.**

An Election Commission is hereby created, consisting of the Town Clerk and two (2) qualified and registered electors of the Town, who during their term of office shall not be Town officers or employees or candidates or nominees for elective Town office. The elector-members shall be appointed by the Council thirty (30) days prior to each regular Town election for a term of one (1) year, and shall serve without compensation. The Town Clerk shall be chairman. The Election Commission shall have charge of all activities and duties required by it by statute and this Charter relating to the conduct of elections in the Town. In any case where election procedure is in doubt, the Election Commission shall prescribe the procedure to be followed.

The Commission shall provide procedures to establish proof of residency qualification where residency is in question. Upon a showing of good cause, the Commission may require proof of residency by any person registered

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to vote or attempting to register to vote in the Town, in which case, said person shall not be qualified to vote in any municipal election until the commission is satisfied that reasonable proof of residency has been presented.

The Election Commission shall provide for ballots and sample ballots or voting machines, for determination of the winner in the event of a tie vote, for canvass of returns and for issuance of appropriate certificates.

## **Section 2.5. Recall.**

Any elected officer of the Town may be recalled at any time after six months in office by the electors entitled to vote for a successor of such incumbent through the procedure in the manner provided for in Article XXI of the Constitution. Consistent with the Constitution and this Charter, the Council may provide by ordinance for further recall procedures.

## **Section 2.6. Nonpartisan Elections.**

All elections shall be nonpartisan. No candidate for any municipal office shall run under a party label of any kind.

## **Section 2.7. Voluntary Campaign Spending Limits.**

- (a) Applicability. This Section 2.7 applies to all authorized elections within the town for Mayor and members of the Town Council.
- (b) Definitions. For purposes of this section, unless the context otherwise requires:
  - (1) *Candidate* means any person who seeks election to the office of Mayor or Town Council in a municipal election. A person is a candidate for election if he or she has publicly announced an intention to seek election to the office of Mayor or Town Council, has filed nominating petitions for such office, and is otherwise qualified to seek election to such public office.
  - (2) *Contribution* means a gift, loan, pledge or advance of money or a guarantee of a loan made to or for any candidate or political committee for the purpose of influencing the election or defeat of any candidate, or the recall of a Mayor or Town Council member. *Contribution* also includes a gift of money to or for any incumbent in public office from any other person, the purpose of which is to compensate him or her for their public service or to help defray expenses incident thereto but which are not covered by official compensation; the payment of any money by any person, other than from contributions by a political committee working on a candidate's behalf, for political services rendered to the candidate or political committee; any payment made to third parties at the request of or with the prior knowledge of a candidate, political committee, or agent of either; and any payment made after an election to meet any deficit or debt incurred during the course of the campaign. *Contribution* does not include services provided without compensation by individuals volunteering their time on behalf of a candidate or political committee.
  - (3) *Contribution in kind* means a gift or loan of any item of real or personal property, other than money, including without limitation the provision of advertising services made to or for any candidate or political committee for the purpose of influencing the nomination, retention, election or defeat of any candidate. Personal services are a contribution in kind by the person paying compensation therefor; volunteer services are not included. In determining the value to be placed on contributions in kind, a reasonable estimate of fair market value shall be used.
  - (4) *Election* means a municipal election at which candidates for the office of Mayor or Town Council are to be voted upon, or the recall of the Mayor or a Town Council member is voted upon.

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- (5) *Political committee* means any two or more persons who are elected, appointed or chosen, or who have associated themselves for the purpose of accepting contributions or contributions in kind or making expenditures to support or oppose a candidate at any election.
  - (c) **Spending Limit.** Every candidate is requested to voluntarily comply with the following: No candidate or candidate's political committee will accept or spend a combined total of contributions and contributions in kind from any source whatsoever in excess of \$200.00, plus 3% per annum, commencing in 1998, during any election campaign for Mayor or Town Council.
  - (d) **Notification of Compliance.** Every candidate, at the time of filing his or her nomination petition pursuant to C.R.S. 31-10-302, as amended, shall notify the Town Clerk, on a form prepared by her or him, whether or not the candidate will comply with the voluntary spending limit.
  - (e) **Return of Excess Contributions and Contributions In Kind.**
    - (1) For purposes of this subsection, a candidate or political committee "receives" contributions on the date upon which the candidate or committee knew or reasonably should know that a contribution or contribution in kind has been received.
    - (2) If a candidate voluntarily complies with the above spending limit and receives contributions or contributions in kind which exceed the aggregate limit of \$200.00, plus 3% per annum, commencing in 1998, such candidate shall make a good faith attempt to return the excess amount to the contributor by personally returning the excess amount, or by placing it in the U.S. mail with a complete address and sufficient postage. The good faith attempt to return an excess contribution shall take place no later than seven days following the receipt of such excess contribution.
  - (f) **Filing Date.** For every candidate who voluntarily complies with the above spending limit, the report required by C.R.S. 1-45-108(1), as amended, to be filed eleven days before any election shall include information about the total amount of contributions and contributions in kind accepted or spent by the candidate.
  - (g) **Duties of Town Clerk.** After receipt of the final petition of nomination by a candidate, as required by C.R.S. 31-10-302, as amended, the Town Clerk shall cause the names of all candidates and whether or not they have chosen to voluntarily comply with the above spending limit to be published in the Town's newspaper of record within twenty days thereafter. The Town Clerk or her or his designee shall make the election reports filed with the Town Clerk available for public inspection and copying under staff supervision, commencing as soon as practicable but not later than the end of the next business day following the day during which a report is received. The amount of contributions and contributions in kind accepted or spent by each candidate and political committee shall be published in the Town's newspaper of record on the publishing date following receipt by the Town Clerk of the report which is filed eleven days before the election.
  - (h) **No Codified Penalty.** There shall be no codified penalty to enforce the provisions of this Section. The citizens of Crested Butte shall judge violations of this Voluntary Campaign Spending Limit Ordinance in the court of public opinion. (Added Ord. 17, 1997, 11/4/97)

## **Section 2.8. Run-Off Elections.**

In the event a run-off election is necessitated for the office of mayor, said election shall be conducted by the Town of Crested Butte and held on the third Tuesday in December following the municipal election. The run-off election shall be held in the same manner as the municipal election, except:

- (a) Certification of candidates and publication of election notice shall be on or before the tenth (10th) day before the run-off election.
- (b) The two (2) persons with the highest number of votes for mayor in the municipal election shall appear on the ballot for mayor.

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- (c) The names of candidates shall be arranged in the same order as they appeared in the municipal election.
  - (d) The run-off election shall be considered, along with the municipal election, as a single election, for the purposes of the applicability of the Voluntary Campaign Spending Limits set forth in section 2.7 of the charter.
  - (e) In the event a run-off election is necessitated for the office of mayor, the Town Council shall elect an interim mayor from among the seated members of the Town Council, to serve as mayor until such time as a new mayor is sworn in to office. (Added Ord. 13, 2001, 11/6/01; Rev. Ord. 11, 2004, 11/2/04)

## **ARTICLE 3 COUNCIL**

### **Section 3.1. The Council.**

The Town shall be governed by a council of seven (7), comprised of six (6) councilmen and a mayor. All councilmen and the mayor shall be nominated and elected at large from the entire Town.

### **Section 3.2. Terms of Office.**

- (a) The terms of office for councilmen shall be four (4) years as hereinafter provided: In the special municipal election to be held on January 21, 1975, the three candidates receiving the highest numbers of votes shall hold office until November, 1977 and the three candidates receiving the fourth, fifth and sixth highest number of votes shall hold office until November, 1975. In the biennial general municipal elections to be held in November, 1975 and thereafter, the three candidates receiving the highest number of votes shall be elected for four-year terms.
- (b) Newly elected members of the Council shall assume office at the first regular meeting of the Council following their election.

### **Section 3.3. Mayor.**

In the election to be held on November 4, 2003, and biennially thereafter, the mayor shall be elected at large from the entire town for a term of two (2) years. The candidate receiving a majority of the votes cast for office shall be elected mayor. In the event that no candidate shall have received a majority of votes cast for office, then a run-off election conducted by the Town of Crested Butte shall be held in accordance with Section 2.8.

The mayor shall preside at meetings of the Council and shall exercise such powers and perform such other duties as are or may be conferred and imposed upon him by this Charter or the ordinances of the Town. He shall have all of the powers, rights, privileges and obligations of a Council member, including, but not limited to, the right to vote on all matters. He shall be recognized as the head of the Town government for all ceremonial and legal purposes and he shall execute and authenticate legal instruments requiring his signature as such official. (Rev. Ord 13, 2001, 11/6/01)

### **Section 3.4. Powers of Council.**

The Council shall be the legislative and governing body of the Town and shall exercise, except as otherwise provided in this Charter, all powers conferred upon or possessed by the Town and shall adopt such laws, ordinances and resolutions as it shall deem proper.

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### **Section 3.5. Qualifications.**

Each councilman and the mayor when nominated and elected shall be an elector of the Town, a citizen of the United States and shall have resided in the Town for one (1) year immediately preceding such election. No councilman nor the mayor shall be a salaried employee of the Town during his term of office or perform personal services for the Town for which he is compensated other than as provided in Section 3.6. The Council shall be the judge of the election and qualifications of its own members.

### **Section 3.6. Compensation.**

The members of the Council shall receive such compensation, and the mayor such additional compensation, as the Council shall prescribe by ordinance; provided, however, that the compensation of any member during his term of office shall not be increased or decreased. The mayor and councilmen may, upon order of the Council, be paid their actual and necessary expenses incurred in the performance of their duties of office.

### **Section 3.7. Mayor Pro-Tem.**

The mayor pro-tem shall be elected by Council from its own membership at the organizational meeting following each general municipal election. The mayor pro-tem shall serve until the next organizational meeting, unless sooner removed by a majority vote of the entire Council. In the absence or disability of the Mayor, the mayor pro-tem shall perform all duties and have all powers of the mayor. In the event of a vacancy in the office of mayor pro-tem, the Council shall choose his successor.

### **Section 3.8. Vacancies.**

An elected officer shall continue to hold his office until his successor is duly qualified. An elective office shall become vacant whenever any officer is recalled, dies, becomes incapacitated, resigns, or ceases to be a resident of the Town or is convicted of a felony. Within thirty (30) days after a vacancy occurs, the remaining councilmen shall choose by majority vote a duly qualified person to fill such vacancy on an interim basis until the next municipal election. If the next election is a general election, the candidate receiving the fourth highest number of votes shall complete the term. If the next election is a special election, the candidate receiving the highest number of votes shall complete the term. If three (3) or more vacancies exist simultaneously the remaining councilmen shall, at the next regular meeting of the Council, call a special election to fill such vacancies, provided there will not be a general municipal election within ninety (90) days.

### **Section 3.9. Oath of Office.**

Before entering upon the duties of his office, every councilman, the mayor and other Town officers shall take, subscribe before, and file with the Town Clerk, an oath or affirmation that he will support the Constitution of the United States, the Constitution of the State of Colorado, this Charter and the ordinances of the Town and will faithfully perform the duties of the office.

## **ARTICLE 4 COUNCIL PROCEDURE**

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### **Section 4.1. Regular Meetings.**

The Council shall meet regularly at least twice each month at a day and hour to be fixed by the Council. The Council shall determine the rules of procedure governing meetings. The first regular meeting following each general municipal election shall be the organizational meeting of the Council.

### **Section 4.2. Special Meetings.**

Special meetings shall be called by the Town Clerk on the written request of the Town Manager, Mayor or any two members of the Council, after at least twenty-four (24) hours written notice to each member of the Council, served personally or left at his usual place of residence. A special meeting, however, may be held on shorter notice if all members of Council are present or have waived notice thereof in writing.

### **Section 4.3. Emergency Meetings.**

Emergency meetings may be held without twenty-four (24) hours notice when necessary for the immediate preservation of public property, health, peace or safety. An emergency meeting shall be held only if a diligent, good faith effort has been made to give actual notice to each member of the Council and at least five (5) members of the Council are present and have waived notice thereof, in writing. All actions at emergency meeting shall require the affirmative vote of five (5) members of the Council. (Rev. Ord. 18, 1997, 11/4/97)

### **Section 4.4. Business at Special and Emergency Meetings.**

No business shall be transacted at any special or emergency meeting of the Council unless it has been stated in the notice of such meeting.

### **Section 4.5. Quorum Adjournment of Meeting.**

Four (4) members of the Council shall be a quorum for the transaction of business at all regular and special Council meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members the Town Clerk may adjourn any meeting for not longer than one (1) week. Five (5) members of the Council shall be a quorum for the transaction of business at all emergency meetings.

### **Section 4.6. Meetings to be Public.**

All regular, special and emergency meetings of the Council shall be open to the public, which shall have a reasonable opportunity to be heard under such rules and regulations as the Council may prescribe.

### **Section 4.7. Council Acts.**

The Council shall take official action only at a public meeting by ordinance, resolution or motion. All legislative enactments shall be in the form of ordinances; all other actions, except as herein provided, may be in the form of resolutions or motions. A true copy of every resolution adopted shall be numbered and recorded in the official records of the Town.

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## **Section 4.8. Voting.**

The passage of every ordinance, resolution and motion shall be determined by a roll-call "yes" or "no" vote, the result of which shall be entered upon the minutes of the Council proceedings. Except as otherwise provided herein, every ordinance, resolution or motion shall require the affirmative vote of four (4) members of the Council for final passage. No member of the Council shall vote on any question in which he has a substantial personal or financial interest, other than the common public interest, or on any question concerning his own conduct, in which case the member shall disclose his interest to the Council. In the event that two or more members of the Council are disqualified from voting due to substantial personal or financial interest, an ordinance, resolution or motion shall require the affirmative vote of three (3) members of the Council for final passage. On all other questions each member who is present shall vote when his name is called. Any member refusing to vote except when not so required by this paragraph shall be guilty of misconduct in office. The Council hereby finds that in reading Sections 2-2-5 and 2-2-8 of the Town Code together, a Council Member who is present but is otherwise disqualified from voting is present for purposes of establishing a quorum and for purposes of determining the number of Council Members necessary for passage of any initiative. (Ord. 17, 1984)

## **Section 4.9. Action by Ordinance Required.**

In addition to such acts of the Council as are required by other provisions of this Charter to be by ordinance, every act making an appropriation, creating an indebtedness, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance; provided, however, that this section shall not apply to the budget adoption in Section 9.8. Ordinances making appropriations shall be confined to the subject of appropriation.

## **Section 4.10. Form of Ordinance.**

Every ordinance shall be introduced in written or printed form. The enacting clause of all ordinances shall be: BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO. Except as otherwise provided in this Article, all ordinances shall take effect five (5) days after final passage and publication pursuant to Section 4.11 unless the ordinance shall specify a later effective date.

## **Section 4.11. Procedure.**

Except for emergency ordinances, ordinances making general codification of existing ordinances, and ordinances adopting standard codes, the following procedure for enactment of ordinances shall be followed:

- (a) At any regular or special meeting of the Council, the proposed ordinance shall be introduced in writing by any member thereof and read in full or, if copies thereof are available to the Council and public, it may be read by title only.
- (b) After the first reading of the proposed ordinance, the Council shall, upon the affirmative vote of two (2) members of the Council, schedule a public hearing to be held not earlier than seven (7) days after the first reading, for the consideration of the proposed ordinance and cause notice of the public hearing to be published. The notice of hearing shall be published at least two (2) days prior to the public hearing and shall contain the date, time and location of the public hearing and a brief description of the subject-matter of the proposed ordinance.
- (c) At the public hearing, the proposed ordinance shall be read in full, or, if copies thereof are available to the Council and public, it may be read by title only. The proposed ordinance may be amended before final approval by vote of the Council.

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- (d) After adoption of an ordinance, copies of the ordinance shall be posted in three (3) public places within Town and a public notice shall be published containing a brief description of the ordinance, its effective date and a statement that copies are available for inspection at the Town Hall.

### **Section 4.12. Emergency Ordinances.**

- (a) Emergency ordinances for the preservation of public property, health, peace or safety shall be approved only by the vote of at least five (5) members of the Council. The facts showing such urgency and need shall be specifically stated in the measure itself. No ordinance making a grant of any special privilege, levying taxes, or fixing rates charged by any town-owned utility shall ever be passed as an emergency measure. Neither a first reading nor a prior public hearing as provided in Section 4.11 shall be required. An emergency ordinance shall take effect immediately upon final passage and shall be published in full as soon thereafter as possible and no later than ten (10) days after passage.
- (b) Upon the adoption of an emergency ordinance, the Council shall schedule a public hearing to be held within twenty (20) days for the purpose of ratifying the emergency ordinance and shall cause public notice of such hearing to be published in accordance with the procedure set forth in Section 4.11(b). At such public hearing, which shall be conducted in accordance with the procedure set forth in Section 4.11(c), the Council shall ratify the emergency ordinance, either in whole or in part and with or without amendments. Upon ratification, notice thereof shall be published in accordance with Section 4.11(d). Any emergency ordinance which is not ratified by the affirmative vote of five (5) members of the Council as herein provided, shall be deemed repealed as of the date of the hearing at which ratification was attempted. (Rev. Ord. 18, 1997, 11/4/97)

### **Section 4.13. Codification.**

The Council shall cause the ordinances of the Town to be codified within three (3) years and thereafter maintained in current form. Revisions to the codes may be accomplished by reference as provided in Section 4.14.

### **Section 4.14. Codes.**

Standard codes, promulgated by the Federal Government, the State of Colorado, or by any agency of either of them, or by any political subdivision within the State of Colorado, or by recognized trade or professional organizations, or amendments or revisions thereof, may be adopted by reference; provided, however, that the public notice of the adoption of any such code shall advise that copies are available for inspection at the Town Hall and provided, further, that any penalty clause in any code may be adopted only if set forth in full in the adopting ordinance.

### **Section 4.15. Disposition of Ordinances.**

A true copy of every ordinance shall be numbered and recorded in the official records of the Town and authenticated by the signature of the Mayor, or Mayor Pro-Tem, and the Town Clerk.

### **Section 4.16. Public Records.**

All records of the Town shall be open for inspection by any person at reasonable times, except as provided in Article 72 of Title 24, Colorado Revised Statutes, as amended, concerning personnel, police investigation, criminal justice and other records. The record custodians may take such reasonable actions as are necessary to prevent the unnecessary interference with the regular discharge of the duties of the custodians or their respective offices. (Rev. Ord. 18, 1997, 11/4/97)

## ARTICLE 5 INITIATIVE AND REFERENDUM

### Section 5.1. General Authority.

- (a) Initiative. The electors of the Town shall have power to propose any ordinance to the Council, in accordance with the provisions of this Article of the Charter. In the event the Council fails to adopt a proposed ordinance without any substantive change, the proposed ordinance shall be submitted to the electors at a Town election for their acceptance or rejection in accordance with the provisions of this Article.
- (b) Referendum. The electors of the Town shall have power to require reconsideration by the Council of any ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a Town election, in accordance with the provisions of this Article; provided, however, that such power shall not extend to ordinances pertaining to taxes, budget or salaries or to emergency ordinances which have been ratified by the affirmative vote of at least five (5) members of the Council. (Rev. Ord. 18, 1997, 11/4/97)

### Section 5.2. Commencement of Proceedings; Petitioners' Committee; Affidavit.

- (a) Any five (5) electors may commence initiative or referendum proceedings by filing with the Town Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered.
- (b) Promptly after the affidavit of the petitioners' committee is filed, the Clerk shall issue the appropriate petition blanks to the petitioners' committee.
- (c) All affidavits concerning referendum petitions must be filed within thirty (30) days after the effective date of the ordinance sought to be reconsidered. (Rev. Ord. 18, 1997, 11/4/97)

### Section 5.3. Petitions.

- (a) Number of Signatures. Initiative petitions must be signed by electors of the Town equal in number to at least fifteen (15) per cent of the total number of electors registered to vote at the last general municipal election. Referendum petitions must be signed by electors of the Town equal in number to at least ten (10) per cent of the total number of electors registered to vote at the last general municipal election.
- (b) Form and Content. All pages of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the street address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- (c) Affidavit of Circulator. Each page of a petition shall have attached to it when filed a sworn affidavit executed by the circulator thereof stating that he personally circulated the petition, the number of signatures thereon, that all signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- (d) Limitation on Frequency of Referendum Elections. No ordinance shall be subject to a referendum election more often than once a year.

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#### **Section 5.4. Procedure after Filing.**

- (a) Certificate of Clerk. Amendment. Within ten (10) days after the petition is filed, the Town Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within five (5) days after receiving the copy of his certificate and files a supplementary petition upon additional forms within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of sub-paragraphs (b) and (c) of Section 5.3, and within five (5) days after it is filed the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request council review under subsection (b) of this section within the time required, the Clerk shall promptly present his certificate to the Council, and the certificate shall then be a final determination as to the sufficiency of the petition.
- (b) Council Review. If a petition has been certified insufficient and the petitioners' committee does not file a notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within five (5) days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.
- (c) Court Review. New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

#### **Section 5.5. Referendum Petitions. Suspension of Effect of Ordinance.**

When a referendum petition is filed with the Town Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

1. There is a final determination of insufficiency of the petition; or
2. The petitioners' committee withdraws the petition; or
3. The ordinance is repealed by the Council or vote of the Town electors at a referendum election; or
4. Seven (7) days have elapsed after the Town electors have approved the ordinance at a referendum election.

#### **Section 5.6. Action on Petitions.**

- (a) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiated ordinance or reconsider the referred ordinance by voting its repeal in the manner provided in Article 4; provided, however, that the Council shall have power to change the detailed language of any proposed initiated ordinance so long as there is no substantive change.
- (b) Submission to Voters. The vote of the Town electors on a proposed or referred ordinance shall be held not less than thirty (30) days and not later than ninety (90) days from the date of the final Council vote thereon. If no regular Town election is to be held within the period prescribed in this sub-paragraph, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election,

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except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available to the public within a reasonable time before the election and also at the polls at the time of the election.

- (c) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the Town by filing with the Town Clerk a request for withdrawal signed by at least three (3) members of the petitioners' committee. Upon the filing of such request the petition shall have no further force or effect and all proceedings pertaining thereto shall be terminated.

### **Section 5.7. Submission by Council.**

The Council, on its own motion, shall have the power to submit at a general or special election any proposed ordinance or question to a vote of the people.

### **Section 5.8. Results of Election.**

- (a) Initiative. If a majority of the electors voting on a proposed initiated ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
- (b) Referendum. If a majority of the electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.
- (c) An ordinance adopted by the electorate may not be amended or repealed for a period of six (6) months after the date of the election at which it was adopted, and an ordinance repealed by the electorate may not be re-enacted for a period of six (6) months after the date of the election at which it was repealed; provided, however, that any ordinance may be adopted, amended or repealed at any time by appropriate referendum or initiatory procedure in accordance with the foregoing provisions of this Article, or if submitted to the electorate by the Council on its own motion.

## **ARTICLE 6 ADMINISTRATION**

### **Section 6.1. Manager.**

The Town Manager shall be the chief administrative officer of the Town. The Council, by a majority vote of its entire membership, shall appoint a Town Manager within a reasonable time whenever a vacancy exists in such position. Such appointment shall be at the pleasure of the Council without definite term and shall be at a salary to be fixed by Council. The manager shall be appointed without regard to any consideration other than his fitness, competency, training and experience as a manager. At the time of his appointment, he need not be a resident of the Town or state, but during tenure of office he shall reside within the Town except at the discretion of the Council. No member of the Council shall be appointed manager during the term for which he shall have been elected.

### **Section 6.2. Acting Manager.**

The Council may appoint an acting Town Manager during the period of vacancy in the office, or during the absence or disability of the Town Manager. Such acting Town Manager shall, while he is in such office, have all responsibilities, duties, functions and authority of the Town Manager.

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### **Section 6.3. Powers and Duties.**

The manager shall be responsible to the Council for the proper administration of all affairs of the Town placed in his charge, and to that end he shall have the power and duty and be required to: (a) enforce the laws and ordinances of the Town; (b) hire, suspend, transfer and remove Town employees on the basis of ability, training and experience of such employees in the work which they are to perform; (c) prepare a proposed budget annually and submit it to the Council and be responsible for the administration of the budget after its adoption by the Council; (d) within a reasonable time after the end of each fiscal year, prepare and submit to the Council a complete annual report of finance and administration activities of the Town for such fiscal year and upon request of the Council make written or verbal reports at any time concerning the affairs of the Town under his supervision; (e) keep the Council advised of the financial condition and future needs of the Town and make such recommendations to the Council for adoption as he may deem necessary or expedient; (f) exercise supervision and control over all executive and administrative departments, and recommend to the Council any proposal he thinks advisable to establish, consolidate or abolish departments; (g) be responsible for the enforcement of all terms and conditions imposed in favor of the Town in any contract or public utility franchise, and upon knowledge of any violation thereof, report the same to the Council for such action and proceedings as may be necessary to enforce the same; (h) attend Council meetings and participate in discussions with the Council in an advisory capacity; (i) establish a system of accounting and auditing for the Town which shall reflect, in accordance with generally accepted accounting principles, the financial condition and financial operation of the Town; (j) provide for engineering, architectural, maintenance and construction services required by the Town; (k) serve in an ex-officio capacity on all present and future boards, committees and commissions of the Town; and (l) perform such other duties as may be prescribed by this Charter, or by ordinance, or required of him by Council which are not inconsistent with this Charter.

### **Section 6.4. Removal of Manager.**

The Council at a regular or special meeting may, in its sole and unfettered discretion, upon the vote of the majority of the entire Council, remove the Town Manager from office. Upon such removal the Council may in its discretion provide termination pay.

### **Section 6.5. Relationship of Council to Town Manager.**

Neither the Council, its members, the mayor, nor any Council committee shall dictate the appointment of any person to office by the Town Manager, except as otherwise provided in this Charter, or in any way interfere with the Town Manager or other Town officer, or prevent the manager from exercising his judgment in the appointment or employment of officers and employees. Except for the purpose of inquiry, the Council, its members, the mayor, and any Council committee shall deal with Town employees solely through the Town Manager and neither the Council, its members, the mayor, nor any Council committee shall give orders to any of the subordinates of the Town Manager.

### **Section 6.6. Town Clerk.**

The manager, subject to the approval of the Council, shall appoint a Town Clerk, who shall be custodian of the Town seal and who shall keep a journal of Council proceedings and record in full all ordinances, motions and resolutions. The Town Clerk shall have power to administer oaths and take acknowledgements under seal of the Town and shall perform such other duties as required by this Charter, the Council, or the manager.

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## **Section 6.7. Director of Finance.**

There shall be a director of finance who shall be appointed by and serve at the pleasure of the Town Manager. The Town Manager may also appoint a deputy or deputies to serve under the supervision of the director of finance.

## **Section 6.8. Duties and Powers of Director of Finance.**

The director of finance shall also be the Town Treasurer. He shall keep and supervise all accounts; receive, and have custody of all monies of the Town, collect special Town taxes, sewer, water, sanitation, and other fees and charges; issue licenses and collect fees therefore; make and keep public records of the Town not specifically entrusted to any other department by this Charter or by ordinance; and perform such other duties pertaining to the department of finance as required by this Charter, the Council or the manager.

## **Section 6.9. Administrative Departments.**

The administrative functions of the Town shall be performed by the departments existing at the time this Charter is adopted and such other departments as may be hereafter established by ordinance. Upon recommendation of the Town Manager, the Council may, by ordinance, consolidate or merge any of the said departments, whether set forth in this Charter or created by ordinance.

## **Section 6.10. Bonding of Employees.**

All Town officials and employees dealing directly with municipal funds shall post bond in an amount and under such conditions as required by Council.

# **ARTICLE 7 LEGAL AND JUDICIARY**

## **Section 7.1. Town Attorney.**

The Council shall appoint a Town attorney to serve at the pleasure of Council. He shall be an attorney-at-law admitted to practice in Colorado. The Town Attorney shall be the legal representative of the Town and he shall advise the Council and Town officials in matters relating to their official powers and duties and perform such other duties as the Council may prescribe. The Council may provide the Town Attorney such assistants as Council may deem necessary, and may on its own motion or upon request of the Town Attorney in special cases employ special counsel to serve under the direction of the Town Attorney. The Council shall establish compensation for the Town Attorney, his assistants and special counsel.

## **Section 7.2. Judiciary.**

- (a) Municipal Judge. There shall be a municipal court vested with exclusive original jurisdiction of all causes arising under the ordinance of the Town and as may be conferred by law. The municipal court shall be presided over and its functions exercised by a judge appointed by the Council for a specified term of not less than two (2) years. The Council may re-appoint the municipal judge for a subsequent term or terms, except that the initial appointment may be for a term of office which expires on the date of the organizational meeting of the Council after the next general election. Any vacancy in the office of municipal judge shall be filled by appointment by the Council for the remainder of the unexpired term.

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- (b) Deputy Judges. The Council may appoint one or more deputy judges as it deems necessary to serve at the pleasure of the Council. The deputy municipal judge shall all have the powers of the municipal judge when called upon to act by the municipal judge or the Council. In the event that more than one municipal judge is appointed, the Council shall designate a presiding municipal judge, who shall serve in this capacity during the term for which he was appointed.
  - (c) Court of Record. The municipal judge and all deputy municipal judges shall be attorneys admitted to practice law in the State of Colorado. The clerk of the court shall keep a verbatim record of the proceedings and evidence at all trials held in the municipal court by either electronic recording device or stenographic means. This subparagraph 7.2(c) may be amended by ordinance by any Council to hold office under this Charter.
  - (d) Compensation. The municipal judge shall receive a fixed salary or compensation set by the Council, the amount of which shall not be dependent upon the outcome of the matters to be decided by the municipal judge. The deputy municipal judge may receive such compensation for services rendered as Council may determine.
  - (e) Removal. Any municipal judge may be removed during his term of office only for cause. A judge may be removed for cause if:
    - (1) He is found guilty of a felony or any other crime involving moral turpitude;
    - (2) He has a disability which interferes with the performance of his duties, and which is, or is likely to become, of a permanent character;
    - (3) He has willfully or persistently failed to perform his duties; or
    - (4) He is habitually intemperate.(Rev. Ord 10, 1997)

## ARTICLE 8 BOARDS AND COMMISSIONS

### **Section 8.1. Existing Boards and Commissions.**

- (a) Existing Boards. All existing boards and commissions shall continue as established by ordinance, except as otherwise provided by ordinance or this Charter.
- (b) Creation of Board of Zoning and Architectural Review. The Board of Adjustment and the Historic Preservation and Architectural Control Board of the Town of Crested Butte, Colorado shall, within sixty (60) days after the inauguration of the first Council to hold office under this Charter, be consolidated into one (1) Board, to be known as the Board of Zoning and Architectural Review, hereinafter referred to as the Board. The Board shall have all powers and responsibilities heretofore exercised by the Board of Adjustment and the Historic Preservation and Architectural Control Committee. The Board shall be comprised of one (1) chairman and six (6) regular members, to be appointed by the Council. The chairman and all members of the Board shall serve three (3) year staggered terms as fixed by the Council upon appointment. The Board members shall be residents of the Town for one (1) year, shall hold no other office of the Town and shall serve without compensation, unless the Council shall, by ordinance, fix reasonable compensation for service on the Board. No member of the Board shall be removed from office by the Council except for good cause shown after notice and hearing; provided, however, that the Chairman of the Board shall serve as Chairman at the pleasure of the Council.
- (c) Amendment of Section 8.1(b). Section 8.1(b) of this Charter may be amended or repealed in whole or in part, by ordinance approved by any Council to hold office under this Charter. (Rev. Ord 22, 2000)

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## **Section 8.2. Composition of Boards and Commissions.**

No member of the Council, the mayor, any Town employee, nor any appointed Town official shall serve on any permanent board or commission heretofore established or hereafter established during his or her tenure as councilman, mayor, Town employee or appointed Town official. Every member of any permanent board or commission appointed by the Council shall be a resident of the Town of Crested Butte. Terms of appointment to such boards and commissions shall not exceed four (4) years. There shall be no limitation on the number of terms a member may serve on any permanent board or commission.

## **Section 8.3. Vacancies.**

Whenever a vacancy occurs on any board or commission, the Council shall cause public notice of such vacancy to be made and encourage volunteers to seek appointment to such board or commission.

## **Section 8.4. Right to Establish.**

In addition to those boards and commissions heretofore created by ordinance, the Council shall have the power and authority to create boards and commissions, including advisory and appeal boards. All permanent boards and commissions, including advisory and appeal boards shall be created by ordinance, which shall set forth the powers and duties delegated to such boards and commissions. Initial appointments by the Council to any board or commission shall specify the term of office of each individual in order to achieve over-lapping tenure. All members, however, shall be subject to removal by the Council. The Council shall also make appointments to fill vacancies for the unexpired terms. The Chairman of each board and commission shall be chosen by the Council. Each board and commission shall operate in accordance with its own rules of procedure except as otherwise directed by the Council. All meetings of any board or commission shall be open to the public. Any board or commission created under this Article which is not required by statute or this Charter may be abolished by the Council.

# **ARTICLE 9 FINANCE**

## **Section 9.1. Fiscal Year.**

The fiscal year of the Town shall begin on the first day of January and end of the last day of December.

## **Section 9.2. Submission of Budget and Budget Message.**

The Town Manager, prior to the beginning of each fiscal year, shall submit to the Council the budget for said ensuing fiscal year and an accompanying message.

## **Section 9.3. Budget Message.**

The manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the Town for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues, together with the reasons for such changes, summarize the Town's debt position, and include such other material as the manager deems desirable or which the Council may require.

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## **Section 9.4. Budget Content.**

The budget shall provide a complete financial plan of all municipal funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the manager deems desirable or the Council may require. In organizing the budget, the manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the preceding fiscal year. It shall indicate in separate sections: (a) Anticipated revenues classified as cash surplus, miscellaneous revenues, and amount to be received from property tax; cash surplus being defined for purposes of this Article as the amount by which cash is expected to exceed current liabilities and encumbrances at the beginning of the ensuing fiscal year; (b) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the methods of financing such expenditures; (c) A reasonable provision for contingencies; (d) A capital depreciation fund; (e) Required expenditures for debt service, judgments, cash deficient recovery and statutory expenditures; (f) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure; (g) Anticipated net surplus or deficit for the ensuing fiscal year for each utility owned or operated by the Town and the proposed method of its disposition and subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget; (h) The total proposed expenditures and provision for contingencies shall not exceed the total of estimated revenue.

## **Section 9.5. Capital Program.**

- (a) Submission. The manager, with such assistance as the Council may direct, shall prepare and submit to the Council a long-range capital program, simultaneously with his recommended budget.
- (b) Contents. The capital program shall include:
  - (1) A clear general summary of its contents;
  - (2) A list of all capital improvements which are proposed to be undertaken during the following fiscal year, with appropriate supporting information as to the necessity for the improvement.
  - (3) Cost estimates, methods of financing and recommended schedules for each such improvement.
  - (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

This information may be revised or extended each year with regard to capital improvements still pending or in process of construction or acquisition.

## **Section 9.6. Budget Hearing.**

A public hearing on the proposed budget and proposed capital program shall be held by the Council on any date at least fifteen (15) days prior to the final day established by law for the certification of the ensuing year's tax levy to the county. Notice of the time and place of such hearing shall be published one time at least seven (7) days prior to the hearing.

## **Section 9.7. Budget Amendment.**

After the public hearing, the Council may adopt the budget with or without amendment. In amending the budget, it may add or increase programs or amounts and may delete or decrease any programs or amounts, except expenditures required by law or for debt service or for estimated cash deficit.

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## **Section 9.8. Budget Adoption.**

The Council shall adopt the budget by resolution on or before the final day established by law for the certification of the ensuing year's tax levy to the county. If it fails to adopt the budget by this date, the amounts appropriated for the current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it pro-rated accordingly, until such time as the Council adopts the budget for the ensuing fiscal year.

## **Section 9.9. Property Tax Levy.**

Adoption of the budget by the Council shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and shall constitute a levy of the property tax therein proposed. The Council shall cause the same to be certified to the county as required by law.

## **Section 9.10. Contingencies.**

The budget may include an item for contingencies. Except in those cases where there is no logical account to which an expenditure can be charged, expenditures shall not be charged directly to contingencies; but instead, the necessary part of the appropriation for contingencies shall be transferred to the logical account, and the expenditure charged to such account. No such transfer, appropriation or expenditure shall be made except by ordinance, and then only for expenditures which could not readily be foreseen at the time the budget was adopted.

## **Section 9.11. Public Records.**

Copies of the budget and the capital program as adopted shall be public records and shall be made available for inspection by the public.

## **Section 9.12. Amendments After Adoption.**

- (a) Supplemental Appropriations. If during the fiscal year the manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up to the amount of such excess.
- (b) Emergency Appropriations. To meet an emergency affecting public property, health, peace or safety, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinance in accordance with provisions of Section 4.12. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may by emergency ordinance authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes and renewals thereof shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.
- (c) Reduction of Appropriations. If at any time during the fiscal year it appears probable to the manager that the revenues available will be insufficient to meet the amount appropriated, he shall report to the Council without delay, indicating the estimated amount of deficit, any remedial action taken by him and his recommendation as to any other steps to be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce one or more appropriations.
- (d) Transfer of Appropriations. Any time during the fiscal year the manager may transfer part or all of any unencumbered appropriation balance among programs without a department, office or agency and, upon

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written request by the manager, the Council may by ordinance transfer part or all of any unencumbered appropriation balance from one department, office, agency, or object to another.

- (e) Limitations Effective Date. No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriation and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption.

### **Section 9.13. Administration of Budget.**

- (a) Work Programs and Allotments. The manager may require each department, office or agency to submit work programs for the ensuing fiscal year showing the requested allotment of its appropriation by periods within the year. The manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He may revise such allotments during the year if he deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriation made pursuant to Section 9.12.
- (b) Payments and Obligations Prohibited. No payments shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the manager first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the Town for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, or to prevent the making of any contract or lease providing for payments beyond the end of a fiscal year, provided that such act was made or approved by ordinance.
- (c) Monthly Budget Report. Each month, the manager shall submit to the Council a list of budget accounts, bank reconciliations, the status of each budget account, and such other budgetary information as may be required by Council in the form of a monthly budget report.

### **Section 9.14. Independent Audit.**

An independent audit shall be made of all Town accounts at least annually, and more frequently if deemed necessary by the Council. Such audit shall be made by certified or registered public accounts, experienced in municipal accounting, selected by the Council. Copies of such audit shall be made available for public inspection at the municipal building.

## **ARTICLE 10 BORROWING**

### **Section 10.1. General Provisions.**

The Town may borrow money and issue the following securities to evidence such indebtedness.

- (a) Short-term notes.
- (b) General obligations bonds.

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- (c) Revenue bonds.
  - (d) Special or local improvement bonds.
  - (e) Any other securities not in contravention of this Charter.

The terms and maximum interest rate of all securities shall be fixed by the ordinance authorizing the borrowing and providing for its payment and all securities shall be sold or exchanged as determined by the Council. If securities are publicly sold, Council action awarding their sale and thereby establishing the interest rates and price paid therefor may be by resolution.

No action or proceeding, at law or in equity, to review any election, act or proceeding, or to question the validity of, or enjoin the issuance or payment of any securities issued in accordance with their terms, or the levy or collection of any assessments, or for any other relief against any act or proceeding of the Town done or had under the limitations of this Article, shall be maintained against the Town, unless commenced within thirty (30) days after the election or performance of the act or the effective date of the resolution or ordinance complained of, or else be thereafter perpetually barred.

### **Section 10.2. Short-Term Notes.**

The Town is hereby authorized to borrow money, by Council action and without an election, in anticipating the collection of taxes or other revenues and to issue short-term notes to evidence the amount so borrowed. Any such short-term notes payable in whole or part from ad valorem taxes or to which the full faith and credit of the Town is pledged shall be issued after the annual levy of taxes and be payable in full within twelve (12) months from their date, except as otherwise specifically provided in this Charter. Short-term notes, as defined herein, may be issued by Council action without an election and shall not affect the Town's debt incurring power.

### **Section 10.3. General Obligation Securities.**

Except as otherwise provided in this Article, no securities payable in whole or part from the proceeds of ad valorem taxes or to which the full faith and credit of the Town is pledged, shall be issued until the question of their issuance shall, at a special or regular election, be submitted to a vote of the electors of the Town and approved by a majority of those voting on the question. The aggregate amount of such securities as are described in this Section shall not exceed ten per cent (10%) of the assessed valuation of the taxable property within the Town as shown by the latest assessment. Securities issued for the purposes of water and sanitary and storm sewer facilities may be issued by Council action without an election and shall not be included in the determination of such debt limitation.

### **Section 10.4. Revenue Securities.**

The Council may authorize the issuance of securities made payable solely from revenues derived from the operation of the project or capital improvement acquired with the securities' proceeds or from other projects or improvements, or from the proceeds of any sales tax, use tax or other excise tax, or from any source or sources except ad valorem taxes of the Town, so long as the full faith and credit of the Town is not pledged for the payment of such securities. Such revenue securities shall not be deemed to be subject to any debt limitation nor to affect the Town's debt incurring power, nor shall such securities be required to be authorized at an election.

### **Section 10.5. Refunding Securities.**

The Council may authorize without an election issuance of refunding securities for the purpose of refunding and providing for the payment of outstanding securities or other obligations of the Town as the same mature, or in advance of maturity by means of an escrow or otherwise. No refunding securities (other than for the purposes of water and sanitary and storm sewer facilities) issued for the purpose of refunding revenue securities shall be

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issued without an election if such refunding securities are made payable in whole or part from ad valorem taxes of the Town or if the full faith and credit of the Town is pledged for the payment thereof.

### **Section 10.6. No Additional Limitations.**

Except as explicitly provided in this Article, there shall be no limitations on the authority of the Council to incur indebtedness or to issue securities.

## **ARTICLE 11 PUBLIC UTILITIES AND FRANCHISES**

### **Section 11.1. General Powers.**

The Town shall have and exercise with regard to all utilities and franchises, all municipal powers, including without limitation, all powers now existing and which may be hereafter provided by the constitution and statute. The right of the Town to construct, purchase, or condemn any public utility, work or way, is expressly reserved. Except as otherwise provided by constitution, or this Charter, all powers concerning the granting, amending, revoking, or otherwise dealing in franchises shall be exercised by the Council.

### **Section 11.2. Water Rights.**

The Town shall have the power to buy, sell, exchange, lease, own and control water rights.

### **Section 11.3. Utility Rates and Service Areas.**

The Council shall by ordinance establish rates for services provided by municipality-owned utilities. If the Council desires to extend the municipal water utility transmission lines beyond Town boundaries, it shall do so by ordinance.

### **Section 11.4. Granting of Franchises.**

No franchise shall be granted except by ordinance.

### **Section 11.5. Franchise Records.**

The Council shall cause to be kept in the office of the Town Clerk an indexed franchise record in which shall be transcribed copies of all franchises heretofore and hereafter granted. The index shall give the name of the grantee and any assignees. The record, a complete history of all such franchises, shall include a comprehensive and convenient reference to all actions at law affecting the same, and copies of all annual reports and such other matters of information and public interest as the Council may from time to time require.

### **Section 11.6. Existing Franchises.**

All franchise ordinances of the Town in effect at the time that this Charter is adopted shall remain in full force and effect according to their provisions and terms until the expiration date provided in such ordinance or until modified by another franchise as provided in Section 11.4.

## **ARTICLE 12 TAXATION**

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### **Section 12.1. Authority to Levy Taxes.**

The Council may levy and collect taxes for any public purpose deemed by the Council to be in the Town's best interest, including, without limitation, general ad valorem property taxes and any other tax not prohibited by constitution or statute and it may levy and collect special assessments for local improvements as provided in this Charter; provided, however, that no income tax, sales tax or excise tax shall be levied after the adoption of this Charter until such tax shall have been approved by a majority of the electors voting at a regular or special election.

## **ARTICLE 13 IMPROVEMENT DISTRICTS**

### **Section 13.1. Power to Create Special or Local Improvement Districts.**

- (a) The Town shall have the power to create Special or Local Improvement Districts within designated districts in the Town, to contract for, construct or install special or local improvements of every character within the said designated districts, to assess the cost thereof, wholly or in part upon the property benefited in such district, and to issue special or local improvement bonds and securities therefor.
- (b) The Council shall, by ordinance, prescribe the type of improvements, the method and manner of creating such improvements, of letting contracts therefor, issuing and paying bonds and securities for construction or installation of such improvements, including the costs incidental thereto, for assessing the costs thereof and for all things in relation to the district and the authority herein created.
- (c) Except as otherwise provided by Charter or by ordinance, the Statutes of the State of Colorado shall govern the creation and organization of Special or Local Improvement Districts, the assessment of costs, the issuance of bonds therefor and all things in relation thereto.

### **Section 13.2. Creation of Special or Local Improvement Districts.**

Special or Local Improvement Districts created pursuant to this Article may be so created by:

- (a) Ordinance; or
- (b) On a petition by the owners of more than fifty per cent (50%) of the area of the proposed district, provided that such majority shall include not less than fifty percent (50%) of the land owners in the proposed district, subject in either event, to protest by the owners of the frontage area to be assessed.

Notice of public hearing and right to protest shall be given as provided by ordinance. All protests shall be considered but if the public welfare warrants, Council shall have final decision on any matter relating to the district, including its creation. Such improvements shall confer special benefits on the real property within the said districts and general benefits to the Town at large. The Council shall by ordinance prescribe the method and manner of making such improvements, of assessing the cost thereof, and issuing and paying bonds for costs and expenses of constructing or installing such improvements.

### **Section 13.3. Improvement District Bonds; Levy for General Benefit to Special Fund; Pledge of Credit.**

- (a) In consideration of general benefits conferred on the Town at large from the construction or installation of improvements in Special or Local Improvement Districts, the Council may contract by ordinance prior to the issuance of any bonds of any Special or Local Improvement District, that the payment of such bonds and securities, both as the principal, interest and costs appertaining thereto become due, is additionally secured by a Special Fund herein created, and pursuant thereto may levy annual taxes on all taxable property within

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the Town at a rate not exceeding two (2) mills in any one (1) year, to be disbursed as determined by the Council, for the purpose of paying for such improvements, pursuant to Section 13.5, for the payment of any assessment levied against the Town itself in connection with said bonds and securities issued for Special or Local Improvement Districts, for the purpose of advancing money to maintain current payments of interest and equal annual payments of the principal amount of said bonds and securities or for any prior redemption premium appertaining to such bonds and securities.

- (b) The proceeds of such taxes shall be placed in a Special Fund and shall be disbursed only for the purposes specified in this Section, provided, however, that in lieu of such tax levies, the Council may annually transfer to such Special Fund any available money of the Town, but in no event shall the amount transferred in any one year exceed the amount which would result from a tax levied in such year as herein limited.
  - (1) As long as any bonds and securities issued for Special or Local Improvement Districts hereafter organized, remain outstanding, the tax levy or equivalent transfer of money to the Special Fund created for the payment of said bonds and securities shall not be diminished in any succeeding year until all of said bonds and securities and the interest thereon shall be paid in full, unless other available funds are on hand therefor, or such bonds and securities and interest are paid by the Town as provided in Section 13.5 of this Article.
- (c) After the bonds and securities have been retired in full, any monies remaining in such Special Funds shall be transferred as provided in Section 13.4.
- (d) Bonds and securities of any Special or Local Improvement District payable from special assessments, which payment may be additionally secured as provided in this Section, shall not be subject to any debt limitation nor affect the Town's debt incurring power, now shall such bonds and securities be required to be authorized at any election; and such bonds and securities shall not be held to constitute a prohibited lending of credit or donation, not to contravene any constitutional, statutory or Charter limitation or restriction.

#### **Section 13.4. Surplus and Deficiency Fund Payment of Bonds and Securities by Town.**

- (a) Where all outstanding bonds and securities of a Special or Local Improvement District have been paid and money remains to the credit of the district or in a Special Fund created pursuant to Section 13.3 for the said bond issue, it may be transferred, in whole or in part, by ordinance, to a Surplus and Deficiency Fund, and whenever there is a deficiency in any Special or Local Improvement District Fund to meet the payment of outstanding bonds and interest due thereon, the deficiency shall be paid out of the said fund; or in the alternative, Council, may by ordinance transfer all or part of any unencumbered balance from a Special or Local Improvement District Fund or a Special Fund created pursuant to Section 13.3 for the said bond or securities issues to any other Town fund.
- (b) Whenever a Special or Local Improvement District has paid and cancelled three-fourths ( $\frac{3}{4}$ ) of its bonds and securities issued and for any reason the remaining assessments are not paid in the time to redeem the final bonds of the district, the Town shall pay the bonds and securities when due and reimburse itself by collecting the unpaid assessments due the district.

#### **Section 13.5. Limitation of Actions.**

No action or proceeding, at law or in equity, to review any acts or proceedings, or to question the validity of, or enjoin the performance of the issue or collection of any bonds, or the levy or collection of any assessments authorized by this Article, or for any other relief against any acts or proceedings of the Town done or had under this Article, shall be maintained against the Town, unless commenced within thirty (30) days after the performance of the act or the effective date of the resolution or ordinance complained of, or else be thereafter perpetually barred. No referendum shall be held on any ordinance pertaining to an improvement district unless the

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referendum petition is filed with the Town within thirty (30) days after publication of the notice of adoption of said ordinance.

## **ARTICLE 14 MISCELLANEOUS LEGAL PROVISIONS**

### **Section 14.1. Eminent Domain.**

The Town shall have the right to eminent domain to acquire property both within and without the boundaries of the Town for any purpose deemed by the Council to be in the Town's best interest.

### **Section 14.2. Reservation of Power.**

The power to supersede any law of this state now or hereafter in force, in so far as it applies to local or municipal affairs shall be reserved to the Town, acting by ordinance, subject only to restrictions of Article XX of the state constitution. It is the intention of this Charter to grant and confirm to the people of the Town of Crested Butte the full right of self-government on local and municipal matters and to that end, to grant and confirm unto the Town all governmental powers not restricted or prohibited by constitution or statute. The enumeration of certain powers shall not be construed to deny the Town any other right or power.

### **Section 14.3. Liability of Town.**

No action for recovery of compensation for personal injury, death, or property damage against the Town on account of its negligence shall be maintained unless written notice of the alleged time, place and cause of injury, death, or property damage is given to the Town Clerk by the person injured, his agent, or attorney, within one hundred and eighty (180) days of the occurrence causing the injury, death, or property damage. The notice given under the provisions of this section shall not be deemed invalid or insufficient solely by reason of any inaccuracy in stating the time, place, or cause of injury, if it is shown that there was no intent to mislead and that the Town in fact, was not mislead thereby. This provision shall not be construed as a waiver of any governmental immunity the Town may have. (Rev. Ord. 18, 1997, 11/4/97)

### **Section 14.4. Restriction on Sale of Property.**

The Council shall not sell, exchange or dispose of public utilities, or either public buildings or real property currently in use for public purposes except by ordinance.

### **Section 14.5. Co-operative Contracts.**

The Council may by resolution enter into contracts or agreements with other governmental units, special districts, or persons for the joint use of buildings, equipment, or facilities, or for furnishing or receiving commodities or services.

### **Section 14.6. Grants to Regional Service Authorities.**

In the interest of governmental services provided on a regional or area-wide basis and the benefits realized by the Town from services, the Council may by ordinance provide grants of municipal funds and services to regional service authorities existing at the time this Charter becomes effective or thereafter created.

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## **Section 14.7. Bequests, Gifts, and Donations.**

The Council, on behalf of the Town, may receive or refuse bequests, gifts, and donations of all kinds of property in fee simple or in trust for public, charitable, or other purposes, and do all things and acts necessary to carry out the purpose of such gifts, bequests, and donations with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust.

## **Section 14.8. Emergency Powers.**

In case of riot, insurrection, or other extraordinary emergency, the mayor, or in his absence, the manager, shall assume general control of the Town government and all branches and be responsible for the suppression of disorders and the restoration of normal conditions. At any time of threatened or actual civil insurrection, the mayor shall:

- (a) Proclaim the existence and termination of a threatened or actual civil insurrection.
- (b) Request the governor's assistance if he believes that the resources and ability of the community are inadequate to cope with the peril.
- (c) Convene the Council within two (2) days if it appears that the state of civil insurrection will continue for more than two (2) days.
- (d) Execute all his normal powers and all his special powers lawfully conferred upon him including, but not limited to, establishing written rules and regulations governing conduct and activities reasonably related to the protection of life and property and to the suppression of the civil insurrection.

## **Section 14.9. Severability of Charter Provisions.**

If any article, section sentence, clause, phrase, word or other provision of this Charter or the application thereof to any person or circumstance shall be found to be invalid, such invalidity shall not affect the validity of the remaining articles, sections, sentences, clauses, phrases, words or other provisions of this Charter, or the validity of this Charter as an entirety, it being the intent that this Charter shall stand notwithstanding the invalidity of any article, section, sentence, clause, phrase, word or other provision and to that end, this Charter is declared to be severable.

## **Section 14.10. Charter Amendments.**

This Charter may be amended at any time in the manner provided by the constitution. Nothing herein contained shall be construed as preventing the submission to the people of more than one Charter amendment at any one election. If provisions of two or more proposed amendments adopted or approved at the same election conflict, the amendment receiving the highest affirmative vote shall become effective.

## **Section 14.11. Interpretations.**

Except as otherwise specifically provided or indicated by the context hereof, all words used in this Charter indicating the present tense shall not be limited to the time of the adoption of this Charter but shall extend to and include the time of the happening of any event or requirement for which provision is made herein. The singular number shall include the plural, the plural shall include the singular and the masculine gender shall extend to and include the feminine gender and neuter, and the word "person" shall extend and be applied to bodies politic and corporate and to partnerships as well as to individuals.

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## **Section 14.12. Definitions.**

- (a) Appropriation. The authorized amount of moneys set aside for expenditures during a specified time for a specific purpose.
- (b) Constitution. The Constitution of the State of Colorado.
- (c) Council. The Town Council of the Town of Crested Butte, including the mayor, unless provided otherwise.
- (d) Elector. A person qualified to vote under the Constitution and Statutes of the State of Colorado.
- (e) Employee. A person employed by the Town of Crested Butte.
- (f) Franchise. An irrevocable privilege granted by the Town permitting a specified use of public property for a specified length of time.
- (g) General Municipal Election. A municipal election held every year at which candidates for elective offices of the Town are voted upon in accordance with this Charter.
- (h) Manager. The Town Manager of the Town of Crested Butte appointed pursuant to Section 6.1.
- (i) Officer. Any person elected to office or appointed by Council, including appointees to boards and commissions.
- (j) Permanent Board or Commission. A board or commission intended by Council to be a part of the permanent governmental structure of the Town of Crested Butte as established by ordinance.
- (k) Public Utility. Any person, firm or corporation operating heat, power, or light systems, communication systems, water, sewer or scheduled transportation systems, and serving or supplying the public under a franchise granted by the Town.
- (l) Statutes. The applicable laws of the State of Colorado as they now exist or as they may be amended, changed, repealed or otherwise modified by legislative procedure.
- (m) Town. Town of Crested Butte, Colorado, a municipal corporation.

## **ARTICLE 15 TRANSITION**

### **Section 15.1. Effective Date of Charter.**

This Charter shall become effective immediately upon voter approval except that those provisions of Article 9 relating to the preparation and submission of the budget and capital program shall become effective for the 1976 annual budget. Those provisions relating to the election of the Council shall become effective at the special municipal election, which shall be held on January 21, 1975, following voter approval of this Charter.

### **Section 15.2. Prior Town Legislation.**

All bylaws, ordinances, resolutions, rules and regulations of the Town which are not inconsistent with this Charter and which are in force and effect at the effective date of this Charter shall continue in full force and effect until repealed or amended. Those provisions of any effective bylaw, ordinance, resolution, rule or regulation which are inconsistent with this Charter are hereby repealed.

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### **Section 15.3. Present Elected Officials to Continue in Office.**

The present Town Council and mayor in office at the time of the adoption of this Charter shall continue at their present salaries, to serve and carry out the functions, powers and duties of their offices until the inauguration of the first Council hold office under this Charter.

The present Town Clerk and other Town employees in office at the time of the adoption of this Charter, shall continue at their present salaries to serve and carry out the functions, powers and duties of their offices until the inauguration of the first Council to hold office under this Charter.

### **Section 15.4. Continuation of Present Boards and Commissions.**

Except as otherwise provided herein, all boards and commissions in office at the time of adoption of this Charter shall continue to function with their present powers and duties as provided in the respective ordinance.

### **Section 15.5. Continuation of Appointed Officers and Employees.**

Except as otherwise provided herein, after the effective date of this Charter, all officers and all employees of the Town shall continue in that Town office or employment, which corresponds to the Town office or employment which they held prior to the effective date of this Charter, as though they had been appointed or employed in the manner provided in this Charter, and they shall in all respects be subject to the provisions of this Charter, except that any officer or employee who holds a position which this Charter provides be held at the pleasure of the appointing officer or body, shall hold such position only at such pleasure regardless of the term for which originally appointed.

### **Section 15.6. Saving Clause.**

This Charter shall not affect any suit pending in any court or any document heretofore executed in connection therewith. Nothing in this Charter shall invalidate any existing contracts between the Town of Crested Butte and any person or public agency.

#### **CERTIFICATE OF FINAL ADOPTION**

WE, the undersigned, members of the Crested Butte Charter Commission, duly elected by the people of Crested Butte, Colorado at a general election held on April 2, 1974, under authorization of Article XX, Constitution of the State of Colorado, to frame a Home Rule Charter for the Town of Crested Butte, do hereby certify that the foregoing is the proposed Charter as finally approved and adopted by the members of the Commission on the 29th day of July, 1974, for submission to the people of Crested Butte at the general election to be held on November 5, 1974.

Executed in triplicate at Crested Butte, Colorado, this 29th day of July, 1974.

/s/Wesley A. Light, Chairman

/s/Thomas R. H. Glass, Member

/s/William D. Odell, Vice Chairman

/s/William O. Hickok, Member

/s/Bruce Baumgartner, Member

/s/Ronald L. Hudelson, Member

/s/Thomas S. Cox, Member

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/s/Joseph G. Rous, Member

/s/William V. Crank, Member

/s/David Leinsdorf, Charter Commission Attorney

## CRESTED BUTTE MUNICIPAL CODE

2009

**Beginning with Supp. No. 12,  
Supplemented by Municipal Code Corporation**



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info@municode.com | 800.262.2633 | www.municode.com

P.O. Box 2235 Tallahassee, FL 32316

### PREFACE

The Town of Crested Butte, a Home Rule Town, has published its Municipal Code in a format which features the following:

The *MasterTable of Contents* is the table containing each chapter and article title, with reference to page location. Preceding each chapter is a chapter table of contents, also identifying each article by the subject name provided.

The *three-place section numbering system* places the chapter number first, followed by the article number and section number, separated by hyphens. This system allows for new sections to be inserted in the future. Each section may be cited by the chapter, article and section number which are in sequence within each chapter.

The *open chapter and page numbering system* creates reserved chapter and page numbers for expansion or revision of the code without undue complication when changes are made to the code by supplementation.

The *Code Comparison Table* and *Disposition of Ordinances Table* identify the sources for the contents of the code. The Code Comparison Table identifies prior code sections and their location in the new code. The ordinance disposition table provides ordinance numbers in chronological order and location by section number for the present code contents. Thus, if there is interest in determining whether a prior code section, an ordinance or a portion thereof is contained within the code, the Code Comparison Table and Disposition of Ordinances Table will

provide that information. The *Checklist of Up-to-Date Pages* lists all of the current pages through the most recent supplementation.

The *Index* provides references by common and legal terminology to the appropriate code sections. Cross references are provided with the Index when appropriate.

*Supplements* to the code provide regular updating of the code to maintain it as a current compilation of all the legislation which has general and continuing effect. Without regular supplementation, the code would soon lose its usefulness as a complete source of the general law of the municipality. Supplementation is accomplished by the periodic publication of additions and amendments to the code.



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**ORDINANCE NO. 4**

**Series 2009**

**AN ORDINANCE OF THE TOWN OF CRESTED BUTTE, COLORADO, ADOPTING BY REFERENCE AND ENACTING A NEW MUNICIPAL CODE FOR THE TOWN OF CRESTED BUTTE; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE ADOPTION OF SECONDARY CODES BY REFERENCE; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.**

Be It Ordained by the Town Council of the Town of Crested Butte, Colorado:

*Section 1.* The Code entitled the *Crested Butte Municipal Code* published by Colorado Code Publishing Company, consisting of Chapters 1 through 18, with Appendix, Tables and Index, is adopted.

*Section 2.* All ordinances of a general and permanent nature enacted on or before the adoption date of this Ordinance, which are inconsistent with the provisions of the Crested Butte Municipal Code, to the extent of such inconsistency, are hereby repealed. The repeal established in this Section 2 shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this Ordinance.

*Section 3.* The following codes were previously adopted by reference and incorporated in the Crested Butte Municipal Code. One (1) copy of each is on file in the Town Clerk's office:

- (1) The *Model Traffic Code for Colorado*, 2003 edition, published by the Colorado Department of Transportation, as adopted and amended in Section 8-1-10, et seq.;
- (2) The *International Mechanical Code*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-3-10, et seq.;
- (3) The *International Plumbing Code*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-4-10, et seq.;

- (4) The *National Electrical Code*, 2005 edition, published by the National Fire Protection Association, as adopted in Section 18-5-10;
- (5) The *International Fuel Gas Code*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-7-10, et seq.; and
- (6) The *International Energy Conservation Code*, 2003 edition, as adopted and amended in Section 18-9-40, et seq.

*Section 4.* The following codes are hereby adopted by reference and incorporated in the Crested Butte Municipal Code. One (1) copy of each is on file in the Town Clerk's office:

- (1) The *International Building Code*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-1-10, et seq.;
- (2) The *International Residential Code*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-2-10, et seq.; and
- (3) The *International Fire Code*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-6-10, et seq.

*Section 5.* The penalties provided by the Municipal Code of the Town of Crested Butte are hereby adopted as follows:

- (1) **Sec. 1-4-20. General penalty for violation. (Chapter 1, Article 4, General Penalty)**
  - (a) Any person who violates or fails to comply with any provision of this Code for which a different penalty is not specifically provided shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, except as hereinafter provided in Section 1-4-30 below.
  - (b) Each day such violation continues shall be considered a separate and additional offense.
  - (c) In addition, any person violating any provision of this Code shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation. In addition, such person shall pay all costs and expenses in the case, including attorney fees.
  - (d) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any such violation.
  - (e) The remedies provided in this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.
- (2) **Sec. 1-4-30. Application of penalties to juveniles. (Chapter 1, Article 4, General Penalty)**

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo contendere to, a violation of any provision of this Code, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation or count. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. Nothing in this Section shall be construed to prohibit incarceration in an appropriate facility, at the time of charging, of a juvenile violating any section of this Code.
- (3) **Sec. 2-5-90. Contempt power. (Chapter 2, Article 5, Municipal Court)**

- (a) When the Court finds any person to be in contempt, the Court may vindicate its dignity by imposing on the contemnor a fine not to exceed one thousand dollars (\$1,000.00) and imprisonment not to exceed a term of one (1) year.
- (b) In cases of indirect contempt, the alleged contemnor shall have all the rights, privileges, safeguards and protections of a defendant in a petty offense case, including but not limited to a formal written complaint, arraignment and trial by jury.

**(4) Sec. 4-2-320. Penalties. (Chapter 4, Article 2, Sales Tax)**

A penalty shall be levied for any tax deficiency.

- (1) Penalty for late payment. For transactions consummated after the effective date of the initial ordinance codified herein, the penalty for late payment shall be fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater. Additionally, one-half percent (0.5%) of the tax deficiency per month from the date when due, not exceeding eighteen percent (18%) in the aggregate, shall be assessed.
- (2) Penalty for fraud. If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred percent (100%) of the total tax deficiency.
- (3) Abatement of penalty. Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the taxpayer submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause therefor.

**(5) Sec. 4-3-150. Use tax neglect or refusal to make return or to pay. (Chapter 4, Article 3, Use Tax)**

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town Manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent, and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-3-170 below, plus one-half of one percent (0.5%) per month from the date when due.

**(6) Sec. 4-3-160. Penalty interest on unpaid use tax. (Chapter 4, Article 3, Use Tax)**

Any use tax due and unpaid shall be a debt to the Town and shall draw interest at the rate imposed under Section 4-3-170 below, in addition to the interest provided by Section 4-3-130 above, from the time when due until paid.

**(7) Sec. 4-4-100. Due dates, delinquencies, penalties, interest. (Chapter 4, Article 4, Land Transfer Excise Tax)**

- (a) The tax imposed under the authority of this Article is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid within thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of twelve percent (12%) of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. Interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall constitute part of the tax.

(b) No deed, instrument of conveyance or document of transfer shall be filed of record in the office of the County Clerk and Recorder or attempt made to so record the document until and unless said tax and all penalties and interest thereon have been paid in full.

(8) **Sec. 4-4-110. Lien. (Chapter 4, Article 4, Land Transfer Excise Tax)**

(a) The amount of the tax imposed under Section 4-4-10 above, together with penalty and interest due thereon, is hereby assessed against the property transferred and, if not paid when due, shall constitute a lien on the property for the amount thereof, which lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.

(b) If the tax is unpaid and delinquent, the Town Manager shall give written notification to the seller and purchaser, at the address shown on the deed or instrument or his or her last known address, of said delinquency. Said notification shall be mailed certified mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid in full within thirty (30) days of the effective date of notification, the Town Manager shall mark the same as delinquent on the Town's tax roll and shall certify such delinquency to the County Treasurer and the County Commissioners, who shall extend such delinquencies upon the real property tax rolls of the County and collect the same in the manner set forth for general property taxes. Upon certification of the delinquent taxes, the penalties and interest thereon shall also become due.

(c) The amount of the tax, penalty and interest imposed under the provisions of this Article shall be deemed a debt owed to the Town. Any person owing money to the Town under the provisions of this Article shall be liable in an action brought in the name of the Town for the recovery of the delinquent amount, plus the attorney's fees and other costs expended by the Town in such action.

(d) Any person who fails or refuses to pay any tax due hereunder may be punished by a fine not exceeding three hundred dollars (\$300.00) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.

(e) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(9) **Sec. 4-5-50. Penalty clause. (Chapter 4, Article 5, Telephone Utility Occupation Tax)**

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the semiannual statement of accounts provided in Section 4-5-30 above, said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided, however, that each day after said statement shall become delinquent during which the officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

(10) **Sec. 5-2-725. Liquidated damages. (Chapter 5, Article 2, Cable TV Franchise)**

(a) Because the failure of the Grantee to comply with certain provisions of this Agreement will result in injury to the Town, and because it will be difficult to estimate the extent of such injury in certain instances, the Town and the Grantee agree to liquidated damages for the following violations. These amounts represent both parties' best estimate of the damages resulting from the specified violation.

Crested Butte, Colorado, Municipal Code  
CRESTED BUTTE MUNICIPAL CODE

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- (1) For material departure from the FCC technical performance standards: two hundred fifty dollars (\$250.00) per day.
  - (2) For failure to provide continuous cable service within the franchise area: one hundred dollars (\$100.00) per day.
  - (3) For failure to provide any channel or capability for access use of the cable system: one hundred dollars (\$100.00) per day.
  - (4) For each material violation of the customer service standards, if any: one hundred dollars (\$100.00) per day.
  - (5) For failure to provide reports or notices as required by this Agreement: fifty dollars (\$50.00) per day.
  - (6) For all other material violations of this Agreement, for which actual damages may not be ascertainable: one hundred dollars (\$100.00) per day.
- (b) The Town will provide written notice of a violation, and the Grantee will have thirty (30) days to cure the violation (or more, if approved by the Town). Liquidated damages shall be assessed in the event that a cure has not timely occurred.
  - (c) The liquidated damages set forth above may be reduced at the discretion of the Town Council, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one (1) or more of the following factors:
    - (1) Whether the violation was unintentional;
    - (2) Whether substantial harm resulted;
    - (3) Whether there is a history of prior violations of the same or other requirements;
    - (4) Whether there is a history of overall compliance; and
    - (5) Whether the violation was voluntarily disclosed, admitted or cured.
  - (d) The collection of liquidated damages by the Town shall in no respect affect the Grantee's obligation to comply with all of the provisions of this Agreement and applicable law.

**(11) Sec. 7-5-90. Obligations of owner. (Chapter 7, Article 5, Animals)**

The owner of any dog shall:

- (1) Not allow any dog to obstruct or interfere with any person or motor vehicle on public property.
- (2) Keep and maintain such dog so that it does not, by noise or other activity, injure or interfere with the rights of other persons.
- (3) Commit no inhumane or cruel action against such dog.
- (4) Be liable and responsible for any damages caused by such dog at all times that it is off of the owner's premises.
- (5) Remove animal excrement.
  - a. No owner of any animal shall fail to prevent such animal from defecating upon any property other than the premises of the owner of such animal.

- b. It is a specific defense to a charge of violating this Subsection that the defecation occurred on private property with express permission of the owner or all tenants thereof.
- c. It is a specific defense to a charge of violating this Subsection that the owner immediately removed or cleaned up such deposit and disposed of it by depositing it in a toilet or a receptacle ordinarily used for garbage and covered by a lid or in an otherwise lawful and sanitary manner.
- d. The violation of this Paragraph is a strict liability offense punishable on the first conviction by a fine of twenty-five dollars (\$25.00), and a fine of fifty dollars (\$50.00) for the second conviction within two (2) years. For a third and subsequent offense within two (2) years, the general penalty provisions of Section 7-5-180 of this Article shall apply.

(12) **Sec. 7-5-180. Violations and penalties. (Chapter 7, Article 5, Animals)**

- (a) A person in violation of Section 7-5-60 or 7-5-70 of this Article shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00). If a third offense of Section 7-5-60 or 7-5-70 occurs within six (6) months from the date of the first offense, the owner shall be issued a summons to appear in Municipal Court and, if found guilty, the owner shall be ordered to remove such dog permanently from the Town. A person in violation of Section 7-5-20 of this Article shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00). In assessing such fines, the Municipal Judge shall not have the authority to reduce, suspend or otherwise allow a fine less than the minimum fines set forth herein.
- (b) A person in violation of any provision of this Article other than Section 7-5-20, 7-5-60 or 7-5-70 shall be fined not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00), by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article.
- (d) Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorney's fees, occasioned by reason of such violation.
- (e) The remedies provided by this Article are cumulative and not exclusive and are in addition to any other remedies provided by law.

(13) **Sec. 7-5-340. Interfering with officer. (Chapter 7, Article 5, Animals)**

Any person who obstructs, hinders or delays the Town Marshal or other officer in the discharge of any duty arising under this Article, who opens or breaks open, or who, in any manner, directly or indirectly aids or assists in opening or breaking open any pen or enclosure, with the intent of releasing any animal confined therein pursuant to the provisions of this Article, shall on conviction thereof be fined in the sum of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each offense.

(14) **Sec. 7-5-350. Second offense; penalty. (Chapter 7, Article 5, Animals)**

If any animal is found running at large contrary to the provisions of this Article, the Town Marshal may, instead of impounding such animal as herein provided, file a complaint with the Municipal Judge against the owner of said animal. Upon the hearing of said complaint, if it is proved that any such owner has theretofore and during the preceding twelve (12) months allowed his or her animal to run at large

in the Town contrary to this Article, or that theretofore and during the twelve (12) months preceding, any animal belonging to such owner had been impounded, then said owner shall be subject to a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) for each offense.

(15) **Sec. 7-5-590. Penalty assessment. (Chapter 7, Article 5, Animals)**

The violation of any provision of this Article by any person shall be unlawful and subject the offending person to fines in amounts not to exceed one hundred dollars (\$100.00) for the first offense; two hundred dollars (\$200.00) for the second offense; and three hundred dollars (\$300.00) for the third offense. Any additional offense after the third offense shall subject the offending person to the issuance of a summons and fines not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.

(16) **Sec. 8-1-60. Violation; penalty. (Chapter 8, Article 1, Model Traffic Code)**

- (a) Any person who violates any of the provisions stated or adopted in this Article shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, except that the violation of a traffic infraction, as set forth in the state statutes, shall constitute a civil matter and shall be penalized by the payment of a fine. The fine amount shall be established pursuant to the penalty schedule set forth at Section 42-4-1701, C.R.S. Each day that any violation of this Article continues to exist shall constitute a separate and additional offense.
- (b) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article.
- (c) Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (d) The remedies provided in this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.

(17) **Sec. 8-2-130. Parking in fire hydrant zones. (Chapter 8, Article 2, Parking Regulations)**

- (a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control device, as follows:
  - (1) In any fire hydrant zone; or
  - (2) In any manner so as to obstruct access to a fire hydrant.
- (b) Any person who violates any provision of this Section may be fined up to one thousand dollars (\$1,000.00) for each offense.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Section.
- (d) Any person violating any provision of this Section shall be liable to the Town for any expense, loss or damage, including reasonable attorney's fees, occasioned by reason of such violation.
- (e) The remedies provided by this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.

(18) **Sec. 8-3-60. Parking infractions and scofflaw list. (Chapter 8, Article 3, Towing and Impoundment Regulations)**

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- (a) Any person wishing to pay a fine for a parking infraction may pay the fine before or after the date specified in the parking ticket at the Town Clerk's office. Such payment discharges the obligation to pay the fine and results in dismissal of the case.
- ....
- (c) As frequently as practicable, the Town shall prepare and update the scofflaw list (which may also be known as the "pick-up list"), consisting of vehicles involved in such number of overdue parking tickets as the Town shall determine is sufficient to include on the pick-up list.
- (1) There is hereby imposed upon the owner of every vehicle on the scofflaw list a civil penalty in the amount of fifty dollars (\$50.00) to cover administrative costs. There is also hereby imposed upon the owner of every vehicle on the scofflaw list that is immobilized or impounded a civil penalty in the amount of fifty dollars (\$50.00) to cover the additional administrative costs.
- (2) The Town shall give notice by first class mail to the registered owner of each vehicle on the scofflaw list, stating that the vehicle is on the scofflaw list and:
- a. The date and the nature of each ticket overdue and the amount due on each;
  - b. That a scofflaw list fee in the amount specified in Paragraph (c)(1) above has been imposed to cover administrative costs;
  - c. The total amount currently due;
  - d. A specific deadline for response, no less than ten (10) days after the date of mailing;
  - e. That the owner shall, by said deadline, respond to the notice. Response shall be by paying the total amount due. However, for any ticket for which a courtesy notice has not previously been mailed and a default judgment entered, response may also be made by arranging a hearing with the Town Clerk for contesting the charges, fees and amounts due, in which case the owner shall post a cash bond for the total amount due or make other arrangements approved by the Municipal Judge;
  - f. That, if the vehicle owner fails to respond within the prescribed time period, the listed vehicle will be subject to immediate immobilization or impoundment. For any ticket for which a courtesy notice has not previously been mailed and a default judgment entered, the notice shall also state that, if the date for response specified in the scofflaw notice passes without payment of the fines and fees or posting of sufficient bond, a default judgment shall be deemed entered upon all tickets specified in the notice, and the owner will forfeit the right to a trial or hearing to contest the tickets. If a default judgment has previously been entered, the notice shall so state;
  - g. That an immobilization or impoundment fee in the amount specified in subsection (c)(1) above will be imposed upon every vehicle immobilized or impounded to cover administrative costs; and
  - h. That, if the vehicle is impounded, the owner will also be required to pay the costs of towing and storage.

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- (3) The notice required by Paragraph (c)(2) above is sufficient if mailed to the address provided by a government vehicle registration office. If the Town is unable, after exercising due diligence, to discover any mailing address, then notice is sufficient if it is published once in a newspaper of general circulation in the Town, posted on the vehicle, personally served on the vehicle owner or driver or provided by any other means that provides due process.
  - (4) If the date for response specified in Subparagraph (c)(2)d. of this Section passes without payment of the fines and fees or, if permitted, posting of sufficient bond, such vehicle may be immobilized or impounded and a default judgment, if not previously entered, shall be deemed entered upon all tickets specified in the notice.
  - (5) Upon contacting the driver of any vehicle on the scofflaw list for which no response has been made within the deadline stated in the notice while that vehicle is located upon any public property or private property open to the use of the public, a peace officer shall inform the driver thereof that violations are alleged against the vehicle to which no response has been made and request the driver forthwith to appear with the officer at the Town Clerk's office (or to the Marshal's Office after the office's normal business hours) to respond to the charges in the manner indicated by this Section. If such driver fails or refuses to comply with this request forthwith, if such driver cannot demonstrate that the driver has on the driver's person sufficient cash or other means of payment of a type approved by the Municipal Court, or if the vehicle located is unattended at the time the officer initially determines that it is subject to impoundment or immobilization, the peace officer shall cause such vehicle to be immobilized or impounded.
  - (6) If the owner or an agent of the owner pays the fines and fees, including the amount specified above, if any, and all towing and storage charges, if any, posts a bond to cover such fines, fees and charges, or arranges any combination of payment and bond to cover the total due, the Town shall remove such vehicle from the scofflaw list and release it from immobilization or impoundment. If any parking ticket not included on the scofflaw list for which the owner is liable becomes overdue before the owner or agent appears to pay or post bond, such subsequent tickets shall also be paid or bond shall be posted therefor before the vehicle is removed from the scofflaw list or released from immobilization or impoundment.
- ....
- (19) **Sec. 8-5-80. Violation, liability and penalty. (Chapter 8, Article 5, Vehicle Weight Limits)**
- (a) Any person who violates any provision of this Article shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation of this Article continues to exist shall constitute a separate and additional offense.
  - (b) Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
  - (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin or abate any violation of this Article.
  - (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.
  - (e) Any police officer of the Town having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same by

means of either portable or stationary scales, or shall require that such vehicle be driven to the nearest public scales in the event such scales are within five (5) miles.

(20) **Sec. 10-2-80. Duty of citizens to aid police officers. (Chapter 10, Article 2, Government and Public Officers)**

It is the duty of all persons in the Town, when called upon by any police officer or member of the Marshal's Department, to promptly aid and assist him or her in the discharge of his or her duties. A person who refuses to give aid and assistance shall be fined an amount not exceeding one hundred dollars (\$100.00).

(21) **Sec. 10-3-80. Tire chains. (Chapter 10, Article 3, Streets and Public Places)**

No person shall operate any motor vehicle upon any paved Town street with chains on the tires when said street is not covered with snow or ice. This prohibition shall not apply to State Highway 135 and the Gothic County Road, otherwise known as Sixth Street, and shall also not apply to Elk Avenue from Sixth Street to the west end of Town. Any person who violates this Section shall be guilty of a misdemeanor and shall be fined up to three hundred dollars (\$300.00) or imprisoned not to exceed ninety (90) days, or punished by both said fine and imprisonment.

(22) **Sec. 10-7-30. Illegal possession or consumption of alcoholic beverages by an underage person. (Chapter 10, Article 7, Alcoholic Beverages and Drugs)**

- (a) Any person under twenty-one (21) years of age shall who possesses or consumes alcoholic beverages anywhere in the Town commits illegal possession or consumption of alcoholic beverages by an underage person. Illegal possession or consumption of alcoholic beverages by an underage person is a strict liability offense.
- (b) It is an affirmative defense to the offense described in Subsection (a) above that the alcoholic beverage was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:
  - (1) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the alcoholic beverages were possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption; or
  - (2) When the existence of alcoholic beverages in a person's body was due solely to the ingestion of a confectionery which contained alcoholic beverages within the limits prescribed in the state statutes, or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion, or solely from the ingestion of a beverage which contained less than one-half of one percent (0.5%) of alcoholic beverages by weight.
- (c) The possession or consumption of alcoholic beverages shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.
- (d) Prima facie evidence of a violation of Subsection (a) above shall consist of:
  - (1) Evidence that the defendant was under twenty-one (21) years of age and possessed or consumed alcoholic beverages anywhere in this State; or

- (2) Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with alcoholic beverage intoxication or impairment while present anywhere in this State.
- (e) During any trial for a violation of Subsection (a) above, any bottle, can or other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages.
- (f) A parent or legal guardian of a person under twenty-one (21) years of age, or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of, alcoholic beverages to or by a person under the age of twenty-one (21) years under the conditions described in Subsection (b)(1) above. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to Article 46, 47 or 48 of Title 12, C.R.S., or any members, employees or occupants of any such establishment to give, provide, make available or sell alcoholic beverages to a person under twenty-one (21) years of age.
- (g) Illegal possession or consumption of any alcoholic beverage by an underage person is a petty offense punishable as follows:
  - (1) Upon conviction of a first offense, illegal possession or consumption of an alcoholic beverage by an underage person shall be punishable by a fine of not more than two hundred fifty dollars (\$250.00).
  - (2) Upon conviction of a second offense, illegal possession or consumption of alcoholic beverage by an underage person shall be punishable by a fine of not more than five hundred dollars (\$500.00).
  - (3) Upon conviction of a third or subsequent offense, which shall be a Class 2 misdemeanor, illegal possession or consumption of an alcoholic beverage by an underage person shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) and/or one (1) year of incarceration.

The requirements set forth in this Subsection are not intended to, and shall not, substitute for or otherwise abridge or modify the requirements and conditions set forth in Section 18-13-122(2)(b)(I)—(IV), C.R.S., the same Sections to continue in full force and effect and to apply to an underage person convicted of possessing or consuming ethyl alcohol as indicated therein.

- (23) **Sec. 10-7-60. Possession of drug paraphernalia. (Chapter 10, Article 7, Alcoholic Beverages and Drugs)**
  - (a) A person commits possession of drug paraphernalia if he or she possesses drug paraphernalia and intends to use the drug paraphernalia under circumstances in violation of state law.
  - (b) Any person who commits possession of drug paraphernalia commits a petty offense and shall be punished by a fine of not more than one hundred dollars (\$100.00).

(24) **Sec. 10-7-70. Possession of marijuana. (Chapter 10, Article 7, Alcoholic Beverages and Drugs)**

- (a) Any person who knowingly possesses, displays, consumes or uses not more than one (1) ounce of marijuana commits a petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).
- (b) The provisions of this Section shall not apply to any person who possesses or uses marijuana pursuant to the Dangerous Drugs Therapeutic Research Act.

(25) **Sec. 10-9-90. Enforcement; penalty. (Chapter 10, Article 9, Regulation of Noise)**

An enforcement officer shall have the right to inspect property concerning any noise complaint or, absent any complaint, on his or her own. Enforcement officers may issue a warning notice or summons and complaint to any person in violation of this Article. Any person who shall be the source of any noise in violation of this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars (\$1,000.00) for each violation and/or incarcerated for not more than one (1) year for each separate offense.

(26) **Sec. 10-10-40. Violation; penalty. (Chapter 10, Article 10, Alarm Systems)**

- (a) Any person in control of an alarm system who violates the provisions of Sections 10-10-20 and 10-10-30 above shall be guilty of a misdemeanor. Upon conviction thereof, such person shall be fined as follows, with the minimum fines deemed mandatory fines not subject to reduction by the Municipal Judge:
  - (1) Violation of Section 10-10-20 above shall result in a minimum fine of one hundred dollars (\$100.00).
  - (2) Violation of Section 10-10-30 above shall result in a minimum fine of fifty dollars (\$50.00) if the police are summoned by the false alarm notification.
  - (3) Violation of Section 10-10-30 above shall result in a minimum fine of two hundred fifty dollars (\$250.00) if the Fire Department is summoned by the false alarm notification.
- (b) Each false alarm notification in excess of five (5) within any twelve-month period shall be deemed a separate offense.

(27) **Sec. 10-11-60. Penalties; civil liability. (Chapter 10, Article 11, Discriminatory Practices)**

- (a) Any person who violates the provisions of this Article shall be deemed guilty of an offense and, upon conviction thereof, shall be punished in accordance with the provisions of Section 1-4-20 of this Code.
- (b) In addition, any person claiming to be aggrieved by an unlawful discriminatory act shall have a cause of action in any court of competent jurisdiction for compensatory damages, punitive damages, or both, and such other remedies as may be appropriate, including specifically the issuing of restraining orders and such temporary or permanent injunctions as are necessary to obtain complete compliance with this Article. In addition, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
- (c) Whenever it appears that the holder of a permit, license, franchise, benefit or advantage issued by the Town is in violation of this Article, notwithstanding any other action it may take or may have taken under the authority of the provisions of this Article, the Town may take such action regarding the temporary or permanent suspension of the violator's business license, permit, franchise, benefit or advantage as it considers appropriate based on the facts disclosed to it.

(28) **Sec. 11-1-20. Failure to comply. (Chapter 11, Article 1, Streets, Sidewalks and Snow Management)**

Upon the failure or refusal of an owner or other person in charge of or having the control and supervision of the premises to perform ordinary and normal maintenance and upkeep on any sidewalk, the Town Manager may correct or maintain the same, as the case may be, by day's work or contract. Where any owner or other person in charge of or having control and supervision of the premises adjoining any sidewalk fails to perform ordinary and normal maintenance and upkeep on such sidewalk, said person shall be guilty of a misdemeanor and subject to a maximum fine of one hundred dollars (\$100.00) for each offense.

(29) **Sec. 11-1-50. Failure to comply with snow removal requirements. (Chapter 11, Article 1, Streets, Sidewalks and Snow Management)**

In the event of the failure of any owner or other person in charge of or having the control and supervision of any premises to clear away snow and ice from any adjacent sidewalk as required in Section 11-1-40 above, the Town Manager may, at his or her election, cause such work to be performed by day's work or contract. Where any owner or other person in charge of or having control and supervision of any premises fails to clear away snow and ice from any sidewalk as required by Section 11-1-40, such person shall be guilty of a misdemeanor and subject to a maximum fine of one hundred dollars (\$100.00) for each offense. Nothing contained in Section 11-1-40 or this Section shall affect or otherwise alter the liability of any owner or other person in charge of or having the control and supervision of any premises adjacent to any sidewalk or the Town as it exists under state law, as amended. Notwithstanding the Town's undertaking to clear away snow and ice from any sidewalk, neither the Town's election to perform such work nor the Town's actual undertaking to perform such work shall limit the responsibility of the owner or other person in charge or having the control and supervision of the premises adjoining such sidewalks to clear away snow and ice from any sidewalk as required under Section 11-1-40.

(30) **Sec. 11-1-60. Snow management. (Chapter 11, Article 1, Streets, Sidewalks and Snow Management)**

- (a) Snow management guidelines. The Town Council shall adopt Town guidelines ("Snow Management Guideline") that address, without limitation, the hauling, dumping, transportation and storage of snow in advance of each upcoming snow season. A current copy of the Snow Management Guidelines shall be kept and maintained in the office of the Town Clerk. The Snow Management Guidelines are adopted herein by this reference and shall be enforced by the Town Manager under the terms set forth herein.
- (b) Hauling, dumping, transportation and storage. All hauling, dumping, transportation and storage of snow shall be undertaken as, when and where identified and described in the Snow Management Guidelines. No person shall dump, deposit or store snow on any Town-owned property, any public rights-of-way or on any street or alley, except as otherwise permitted by the Town in writing.
- (c) Prohibited activities. No snow from outside the Town's boundaries shall be dumped, transported, stored or otherwise deposited, for any period of time, within the Town, other than where passing through Town to destinations outside of Town, without the prior written permission of the Town. Snow permitted to be dumped and stored within the Town shall contain no foreign debris, trash or other materials. No petroleum products, foreign agents or hazardous substances and hazardous wastes (as defined by the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA], 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 and Resource Conservation and Recovery Act [RCRA], 42 U.S.C. § 6902, et seq.)

shall be used in the hauling, dumping and depositing of snow, other than as inherent in the function and operation of machinery used therefor.

- (d) Enforcement; penalties. No person shall haul, dump, transport or store snow without strictly complying with the requirements of this Section, inclusive of the Snow Management Guidelines. Any person who violates this Section shall be guilty of a misdemeanor and subject to a maximum fine of one thousand dollars (\$1,000.00) per offense or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day any such activity shall exist out of compliance with this Section shall be a separate offense hereunder. The Marshal's Department or the Town Manager may enforce the penalties provided hereunder, including, without limitation, by proper summons to appear in a court of competent jurisdiction. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or otherwise remove any violation of this Section. In the event that the Town elects to abate or remove such a violation, the Town's reasonable costs and expenses in conjunction with such abatement shall be properly chargeable to the offending person. No election by the Town to so abate a violation shall limit the responsibility or liability of the offending party or cause the Town to incur such responsibility or liability. Remedies provided in this Section are cumulative and concurrent and not intended to be exclusive, and the same are in addition to all other rights provided at law and in equity.

**(31) Sec. 11-2-60. Penalty. (Chapter 11, Article 2, Excavations)**

Any person who excavates, cuts or otherwise damages or destroys any sidewalk, curb, pavement, base course, landscaping or other improvement within the Town right-of-way which, by this Article requires the obtaining of a permit, without first obtaining said permit, shall be guilty of a misdemeanor and punished in accordance with the provisions of Section 1-4-20 of this Code. Each day any such work proceeds without the proper permit in effect shall be deemed a separate offense.

**(32) Sec. 11-3-130. Green Lake Trail regulations. (Chapter 11, Article 3, Public Parks)**

- (a) The following rules and regulations shall govern the public use of the Green Lake Trail:
- (1) The trail shall be used only for pedestrian, nonmotorized bicycling and cross-country skiing.
  - (2) No motorized vehicles, horses or pack animals shall be permitted on the trail.
  - (3) Where the trail crosses private property, all dogs must be restrained by a leash, rope or other similar device physically connecting the dog to the owner or other person.
  - (4) All users must stay on the posted trail and avoid trespassing upon the private land over which the trail crosses.
  - (5) No user of the trail shall litter or otherwise leave trash or other debris on or near the trail.
  - (6) No user shall damage trees, shrubbery or other natural features, or signs or other constructed improvements while using the trail.
  - (7) Bicyclists shall yield the right-of-way to pedestrians on the trail.
  - (8) All users shall obey temporary closure signs and directives.
- (b) Any person engaging in any activity not in compliance with the regulations set forth in this Section shall have committed a misdemeanor and shall be fined in accordance with the provisions of Section 1-4-20 of this Code. Nothing herein shall limit the Town from seeking any other remedies that may be provided by law, including restitution or payment of costs and reasonable attorney's fees for enforcement.

(33) **Sec. 11-4-40. Defacing cemetery property or lots. (Chapter 11, Article 4, Cemetery Regulations)**

Any person who in any manner defaces or damages any fence, monument, tombstone memorial, lot or other fixture or object situated in or belonging to any part of the property known as the Crested Butte Cemetery shall be guilty of a misdemeanor and, on conviction of a violation of this Section, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), together with all costs of prosecution, including reasonable attorney fees, occasioned by reason of such act, and/or by imprisonment not exceeding ninety (90) days. Any person convicted under this Section shall additionally be liable and responsible to the Town for any and all expense, cost, loss and damages occasioned by such violation.

(34) **Sec. 13-1-350. Violation, liability and penalty. (Chapter 13, Article 1, Water and Sewer Systems)**

Any person who violates any provision of this Article may be fined as provided in Section 1-4-20 of this Code. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article. Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation. The remedies provided by this Article are cumulative and not exclusive, and are in addition to any other remedies provided by law.

(35) **Sec. 13-2-40. Use of lawn sprinklers and other domestic irrigation. (Chapter 13, Article 2, Water and Sewer Regulations)**

- (a) No user of water from the Town water system shall use or allow the use of Town water for watering and/or domestic irrigation except as hereafter set forth:
  - (1) No person, customer or property owner whose use or property is located on the north or west side of a Town street or having a street address ending in an odd number shall use Town water for lawn watering or domestic irrigation on any numbered day of the month ending in zero or an even number.
  - (2) No person, customer or property owner whose use or property is located on the south or east side of a Town street or having a street address ending in zero or an even number shall use Town water for lawn watering or domestic irrigation on any numbered day of the month ending in an odd number.
  - (3) Notwithstanding Paragraphs (1) and (2) above, no person, customer or owner shall use Town water for lawn watering or domestic irrigation between the hours of 10:00 a.m. and 5:00 p.m. or 10:00 p.m. and 5:00 a.m. on any day.
  - (4) For the purpose of this Section, *domestic irrigation* shall mean any outside watering of gardens, soil or vegetation.
  - (5) Notwithstanding any provision of this Section, a person, customer or property owner installing a new lawn may obtain permission from the Town Manager for daily watering of said lawn until such time as the grasses are established, so long as such daily watering is limited to the hours set forth in Paragraph (3) above.
  - (6) Notwithstanding any other section of this Code to the contrary, any person who violates the provisions of this Section shall commit offenses and be subject to a penalty as follows:
    - a. Any first offense shall be a petty offense subject to a twenty-five-dollar penalty assessment fine.

- b. Any second offense shall be a petty offense subject to a fifty-dollar penalty assessment fine.
  - c. Any third or subsequent offense shall be a misdemeanor punishable by a mandatory minimum fine of one hundred dollars (\$100.00), up to and including three hundred dollars (\$300.00) for each offense.
- (7) Notwithstanding the above restrictions on the use of lawn sprinklers and other domestic irrigation, the Town Manager may direct the use of lawn sprinklers and other domestic irrigation on public property at such times and on such schedule as the Town Manager may determine is necessary for the preservation of public property.
- (b) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article. Any person violating any provisions of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorney's fees, occasioned by reason of such violation. The remedies provided by this Article are cumulative and not exclusive, and are in addition to other remedies provided by law.
- (36) **Sec. 13-2-110. Violation and penalty. (Chapter 13, Article 2, Water and Sewer Regulations)**
- (a) Offense. Any person who violates any of the provisions of this Chapter shall be fined in accordance with the provisions of Section 1-4-20 of this Code.
  - (b) Actions. The erection, construction, alteration, enlargement, conversion, moving or maintenance of any building; and the use of any land, building or structure; which activity or use is continued, operated or maintained contrary to any provision of this Chapter; shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Chapter.
  - (c) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
- (37) **Sec. 13-3-860. Legal action. (Chapter 13, Article 3, Watershed Protection District)**
- Upon determination of a violation of this Article, in addition to utilization of the enforcement and penalty powers of the Town, the Town may commence an action for appropriate legal or equitable relief in a court of competent jurisdiction, including the Municipal Court. In addition to the penalties provided herein, the Town shall be entitled to reasonable expert fees and attorneys' fees and costs of litigation.
- (38) **Sec. 16-2-60. Demolition of historic structures. (Chapter 16, Article 2, Historic Preservation and Architectural Control Historic District)**
- (a) Notwithstanding any other provision of this Article, no structure over fifty (50) years of age (for purposes of this Section only, an "historic structure") shall be demolished unless the Board finds that the following criteria are first met.
    - (1) The historic structure is dangerous or unsafe as determined by the Building Inspector.
    - (2) The record owner of the subject property submits a plan for the site designed to preserve other historic structures on the property that are not currently dangerous or unsafe.
    - (3) The Board may allow the demolition of a historic structure as part of an approved redevelopment plan for the subject property.

Nothing contained herein to the contrary shall limit or otherwise affect the requirement of any person in charge of or having control and supervision of the property where a structure is located to comply with Section 16-2-20 of this Article. For purposes of this Section, *demolish* or *demolition, mutatis mutandis*, shall mean the failure, both knowingly and unknowingly, by a person in charge of or having control and supervision of the property where a historic structure is located, to maintain and keep up, or otherwise destroy and/or dismantle either fully or partially, a historic structure, whether by active or passive conduct or a failure to act to preserve said historic structure.

- (b) The Building Official may, at any time, order any person in charge of or having control and supervision of the property where a historic structure is located, to maintain and keep up a historic structure where it appears in the Building Official's reasonable judgment that said historic structure may suffer demolition. No failure by the Building Official to order such maintenance and upkeep shall preclude the person in charge of or having control and supervision of the property where a historic structure is located from liability for the demolition of a historic structure.
- (c) No person in charge of or having control and supervision of the subject property where a historic structure is located, including, without limitation, the record owner thereof, shall demolish said structure without compliance with the requirements of this Section. Any person who violates this Section shall be punished in accordance with the provisions of Section 1-4-20 of this Code. Each day any such historic structure is out of compliance with this Section shall be a separate offense hereunder. The Town Marshal or the Town Manager may enforce the penalties provided hereunder, including, without limitation, by proper summons to appear in a court of competent jurisdiction and/or by notice to the offending person to cure said violation of this Section. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or otherwise remove or protect from any violation of this Section. In the event that the Town elects to abate, remove or protect such a violation, the Town's reasonable costs and expenses in conjunction with such actions by the Town shall be properly chargeable to the offending person. No election by the Town to so act shall limit the responsibility or liability of the offending party or cause the Town to incur such responsibility or liability.
- (d) Upon a conviction pursuant to Subsection (b) above in a court of competent jurisdiction, the Building Official shall be authorized to order up to a ten-year moratorium on the issuance of any permit and/or certificate of occupancy in connection with the subject property, except as otherwise described in Subsection (e) below. The Building Official shall consider the following factors in deciding whether to impose such a moratorium:
  - (1) The impact of the demolition upon the historical integrity and architectural character of the Town;
  - (2) The factual circumstances concerning the cause of the demolition, as may be identified after reasonable investigation by the Building Official; and
  - (3) Whether the demolition would have been approved by the Board had an application for the same been submitted.
- (e) During the pendency of prosecution described in Subsection (b) above, the Building Official may impose a temporary moratorium on the issuance of any permit and/or certificate of occupancy in connection with the subject property. In electing to impose such a temporary moratorium, the Building Official shall consider the same factors as described in Subsection (d) above. Such temporary moratorium shall remain in effect for the duration of the prosecution and any appeal therefrom.

- (f) Notice of the imposition and duration of any moratorium imposed pursuant to this Section shall be recorded in the official real property records of the office of the County Clerk and Recorder.
  - (g) Notwithstanding anything contained in this Section to the contrary, the existence of a moratorium on property as described under this Section shall not serve as a restriction on the Building Official's ability to issue a building permit for such property in connection with the rehabilitation or repair of any demolished historic structure that is the subject of the moratorium or any improvement, bracing or other construction activity intended or designed to protect, keep up, save and/or maintain any historic structure on the subject property, the Building Official being at all times permitted to issue a building permit for such activities where otherwise permitted under and in accordance with this Code.
  - (h) The Building Official may order the lifting of any moratorium as described under this Section where the subject demolished historic structure has been restored and rehabilitated to a condition that previously existed prior to its demolition. Upon the lifting of any such moratorium, notice of release of the moratorium lifted shall be recorded in the official real property records of the office of the County Clerk and Recorder.
  - (i) Remedies provided in this Section may be exercised cumulatively and concurrently and are not intended to be exclusive, and the same are in addition to all other rights provided at law and in equity.
- (39) **Sec. 16-9-70. Recordation of discretionary approvals. (Chapter 16, Article 9, Variances)**

Whenever the Board under the terms of this Code requires an applicant to agree to comply with certain conditions as to use or occupancy, or to restrict such use or occupancy in any manner, such conditions or representations shall be recorded by the Board and become part of the building permit. Further, the applicant shall execute a "Notice of Agreement for Land Use Conditions and Restrictive Covenants", in the form attached to this Code as Appendix F, which the Town shall record in the real property records of the County. A violation of any such restrictive covenant, condition or representation shall constitute an offense under Section 16-24-20 of this Chapter and subject the violator to the penalties and the Town's remedies as set forth therein. In addition, a certificate of occupancy may be withheld or revoked unless or until such conditions are met. The Board may require that such notice contain a time deadline for compliance with all conditions and covenants, which deadline shall not be more than three (3) years from the date of approval of the application by the Board. Such conditions or covenants shall be deemed to run with the land, and shall be binding on the applicant and his or her successors and assigns. These same procedures shall apply to any legislative action changing a zoning classification or approving a subdivision proposal which is based upon representations by an applicant or conditioned upon certain uses and/or performances by the applicant. In the event that such representations or conditions of rezoning or subdivision are not met, the subject property shall automatically revert to its prior zoning or unzoned classification and its prior subdivision of land and use. No construction or repair shall occur except in strict compliance with such conditions or covenants and until the documentation of the same is provided to the satisfaction of the Town. The Board or Town Council may also require such performance bond or financial performance guarantee as it deems appropriate to ensure that conditions or representations are met by the applicant.

- (40) **Sec. 16-16-60. Off-street parking policy. (Chapter 16, Article 16, Parking)**

The requirements of this Article relative to off-street parking are set forth in order to permanently mitigate the parking impacts caused by new development. Any such off-street parking required and made a condition of any building permit approval shall be provided permanently. The

failure, at any time in the future, to provide agreed-upon and required off-street parking shall be a violation of this Article and shall subject the owner to the penalty set forth in Section 16-24-20 of this Chapter and shall subject the building or use in question to revocation of its certificate of occupancy. The details of any such off-street parking arrangement shall be set forth with particularity in the "Notice of Agreement for Land Use Conditions and Restrictive Covenants" provided for in Section 16-9-70 of this Chapter. However, the Board may allow a change or modification in the means of satisfying the previously established off-street parking requirements so long as the number of required spaces are still provided and/or payment in lieu for these required spaces is approved and provided.

- (41) **Sec. 16-24-20. Violation and penalty. (Chapter 16, Article 24, Enforcement)**
- (a) Offense. Any person who violates any of the provisions of this Chapter shall be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.
  - (b) Actions. The erection, construction, alteration, enlargement, conversion, moving or maintenance of any building, and the use of any land, building or structure, which activity or use is continued, operated or maintained contrary to any provision of this Chapter, shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Article.
  - (c) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
- (42) **Sec. 17-15-20. Violation; penalty. (Chapter 17, Article 15, Enforcement and Penalty)**
- (a) Violation. It is unlawful for any person to violate any of the provisions of these subdivision regulations or to transfer, sell, lease or agree to sell or lease any lot, tract, parcel, site, separate interest (including a leasehold interest), condominium interest, time-share estate or any other interest within a subdivision or resubdivision within the Town which is subject to review and approval under these subdivision regulations unless and until the provisions of these subdivision regulations have been waived by the Building Official for a condominiumization or creation of townhouses, or such subdivision or resubdivision has been approved in writing by the Town and the final plat thereof recorded in the office of the County Clerk and Recorder, and any improvements described in the subdivision improvements agreement and in the final plan have been constructed and preliminarily accepted by the Town.
  - (b) Penalty. Any person who violates any of the provisions of these subdivision regulations, or who knowingly provides false information for the Town to use as the basis for its decision when considering the proposed subdivision, shall be fined an amount not to exceed one thousand dollars (\$1,000.00) per day for each offense, incarceration in the County jail for not more than one (1) year or both, and required to pay any expenses and costs incurred by the Town to successfully prosecute the violation, including reasonable attorneys' fees.
  - (c) Actions. The use of any land, building or structure, which activity or use is continued, operated or maintained contrary to any provision of these subdivision regulations, shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such remedies may include, without limitation, refusal to issue building permits, suspension of all building permits in the subdivision and refusal to issue certificates of occupancy in the subdivision.

- (d) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
- (e) Attorneys' fees. Any person who is found to be in violation of these subdivision regulations shall, in addition to any other penalties or remedies, pay the Town its reasonable attorneys' fees to ensure compliance with these subdivision regulations.

**(43) Sec. 18-1-70. Violations, liability and penalty. (Chapter 18, Article 1, Building Code)**

- (a) Any person who violates any provision of this Article or this Chapter shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation of this Article or this Chapter continues to exist shall constitute a separate and additional offense.
- (b) Any person violating any provisions of this Article or this Chapter shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin or abate any violation of this Article or this Chapter.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

**(44) Sec. 18-3-70. Violation, liability and penalties. (Chapter 18, Article 3, Mechanical Code)**

- (a) Any person who violates any provision of the IMC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of the IMC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the IMC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

**(45) Sec. 18-4-60. Violation, liability and penalties. (Chapter 18, Article 4, Plumbing Code)**

- (a) Any person who violates any provision of the IPC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of the IPC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the IPC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

**(46) Sec. 18-5-60. Violation, liability and penalties. (Chapter 18, Article 5, Electrical Code)**

- (a) Any person who violates any provision of the NEC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.

- (b) Any person who violates any provision of the NEC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the NEC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

(47) **Sec. 18-6-10. Definitions. (Chapter 18, Article 6, Fire Code)**

For purposes of this Article, *Code* shall mean the *International Fire Code*, 2003 Edition, including Appendix Chapters B, C, D, E, F and G, as published by the International Code Council, with the following revisions:

- (1) Section 101, General. 101.1, Title. Insert: (The Town of Crested Butte)
- (2) Section 102, Applicability. 102.6, Referenced Codes and Standards, and 102.7, Subjects not regulated by this Code. Add: "The most current NFPA edition shall be utilized."
- (3) Section 106, Inspections. Add: "106.4, Requests for inspections. Requests for inspections shall be submitted at least five (5) working days prior to the date of the requested inspections."
- (4) Section 108, Board of Appeals. 108.1. Add: "The Town Council shall be considered as the Board of Appeals."
- (5) Section 109, Violations. 109.3, Violation penalties. Insert: "... shall be guilty of a misdemeanor, punishable by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year, or both such fine and imprisonment."
- (6) Section 111, Stop Work Order. 111.4, Failure to Comply. Insert: "... shall be liable to a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00)."

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(48) **Sec. 18-6-70. Violation, liability and penalty. (Chapter 18, Article 6, Fire Code)**

- (a) Any person who violates any provision of this Article shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation of this Article continues to exist shall constitute a separate and additional offense.
- (b) Any person violating any provisions of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin or abate any violation of this Article.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

(49) **Sec. 18-7-70. Violation, liability and penalties. (Chapter 18, Article 7, Fuel Gas Code)**

- (a) Any person who violates any provision of the IFGC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.

- (b) Any person who violates any provision of the IFGC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the IFGC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

**(50) Sec. 18-8-90. Penalty and delinquencies. (Chapter 18, Article 8, Solid Fuel-Burning Devices)**

Any person violating any provision or section of this Article, including a failure to obtain the required permit, shall be guilty of a misdemeanor and, upon conviction thereof, may be punished in accordance with the provisions of Section 1-4-20 of this Code. Any person or entity who does not pay the license fee when required shall also be deemed in violation of this Article. Any unpaid permit fee shall accrue a delinquency charge of three percent (3%) per month, compounded monthly. Any such delinquency shall become a lien upon the real property on which the permitted solid fuel-burning device exists, which lien may be collected in the same manner as a tax lien. The Town shall be entitled to recover all of its collection costs, including attorneys' fees, as part of any action or proceeding to collect delinquent permit fees due pursuant to this Article.

**(51) Sec. 18-9-100. Renewable Energy Mitigation Program. (Chapter 18, Article 9, Energy Standards)**

All outdoor snowmelt systems, and outdoor pools, hot tubs and spas with a top surface area in excess of sixty-four (64) square feet, must comply with the following renewable energy mitigation program (REMP) requirements:

- (1) REMP; Applicability. For purposes hereof, an "outdoor snowmelt system" shall include any heating system installed in any walkway, driveway, roof or any other exterior surface. All energy utilized in operating outdoor snowmelt systems, and outdoor pools, hot tubs and spas with a top surface area in excess of sixty-four (64) square feet (as determined by the unit's manufacturer), shall be produced by a renewable energy system; or, in lieu thereof, the owner of the property with said outdoor snowmelt system and/or subject pool, hot tub or spa shall make payment to the Town in lieu of providing energy produced by a renewable energy system. The owner of the subject property shall have the right to choose between providing energy from a Town-approved renewable energy system or making payment in lieu thereof, or a combination of both, in order to offset energy used by outdoor snowmelt systems and subject pools, hot tubs and spas. For any subject hot tub or spa, only that surface area over said sixty-four (64) square feet shall be subject to the requirements of this Section. Any outdoor snowmelt system or subject pool, hot tub or spa that has been installed prior to June 25, 2007, shall be exempt from the requirements of this Section. Said exemption shall not apply, however, to any modification to any existing outdoor snowmelt system or outdoor pool increasing the square footage thereof, said modification requiring an outdoor energy usage permit as defined hereunder.
- (2) Outdoor energy usage permit. Prior to the installation of any (i) outdoor snowmelt system and/or (ii) outdoor pool, hot tub or spa with a top surface area in excess of sixty-four (64) square feet (as determined by the unit's manufacturer), the owner of the property affected by such installation shall obtain an outdoor energy usage permit. No outdoor snowmelt system or subject pool, hot tub or spa shall be installed without first obtaining an outdoor energy usage permit, as well as a plumbing and mechanical permit as applicable, from the Building Official. No outdoor energy usage permit shall be required for any outdoor snowmelt system or subject pool, hot tub or spa located on public property or any portable

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outdoor heat lamp. An owner may install up to ten (10) square feet of hydronic heat tape as part of any roof-installed snowmelt system, and such installation shall not require said owner to obtain an outdoor energy usage permit.

- a. An outdoor energy usage permit shall not be issued until the owner of the subject property has complied with the requirements of this Section. All outdoor snowmelt systems shall be in compliance with Section 18-9-90 above.
- b. An outdoor energy usage permit shall be obtained by said owner for each outdoor snowmelt system and subject pool, hot tub and spa, or any modification to any outdoor snowmelt system and outdoor pool increasing the square footage thereof. An outdoor energy usage permit shall include a processing fee that shall cover the cost and expense of the Building Official of reviewing and processing said outdoor energy usage permit application.
- c. The Building Official shall review and approve any complete and properly submitted application for an outdoor energy usage permit within thirty (30) days of its submission; except that, if the installation of any outdoor snowmelt system or subject pool, hot tub or spa is part of any new construction, addition, renovation or remodel that otherwise requires a building permit under this Code, the application for said outdoor energy usage permit shall be approved, if at all, along with the approval and issuance of said building permit, and the installation shall be considered part of the structure for purposes of Article 13 of this Chapter. In such circumstances, the issuance of an outdoor energy usage permit shall be subject to Board approval as provided in this Code. No outdoor energy usage permit shall be granted, however, until a Town-approved renewable energy system or other Town-approved system, as described in Subparagraph (3)b. of this Section, has been selected by the owner of the affected property and/or payment in lieu has been made, as applicable, as further described in Paragraph (3) of this Section. The owner shall provide the following supporting documentation along with the application for an outdoor energy usage permit:
  1. The legal description of the affected property;
  2. The signature of the owner of the property or other person with the written legal authority (e.g., power of attorney) of the owner;
  3. A site development plan drawn to scale for the building and/or sidewalk, driveway or patio, as applicable, that is the subject of the outdoor snowmelt system or subject pool, hot tub or spa installation;
  4. A complete set of drawings, plans and specifications, to scale, depicting any outdoor snowmelt system or subject pool, hot tub or spa installation, along with the type and efficiency of the same;
  5. If the owner of the affected property elects to incorporate a renewable energy system or other Town-approved system, a complete set of drawings, plans and specifications, to scale, of the renewable energy system or other Town-approved system and its proposed installation location, along with the type and efficiency of the same;

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6. The owner's election to either utilize a renewable energy system or other Town-approved system or make payment in lieu, or a combination of both, as set forth in Paragraph (3) of this Section; and
7. Any other information requested by the Building Official in order to review the application for compliance with this Section and Section 18-9-90 above.

Only subsections (1), (2), (5), (6) and (7) hereof shall apply to subject pools, hot tubs and spas. The items listed above are hereby incorporated into the application for the outdoor energy usage permit.

- d. Outdoor energy usage permit applications, unless otherwise included as part of a building permit for any new construction, addition, renovation or remodel as discussed above, shall be submitted only to the Building Official and not the Board for approval.
- e. All installations of outdoor snowmelt systems shall be in strict compliance with the application requirements for an outdoor energy usage permit. Any deviation from the application requirements shall require a new outdoor energy usage permit. All installations of outdoor snowmelt systems shall be completed within six (6) months of issuance of an outdoor energy usage permit; except that, where the installation of an outdoor snowmelt system is otherwise associated with a building permit for any new construction, addition, renovation or remodel as discussed above, such longer permitted time under this Code as it relates to said building permit shall apply.
- f. Should the Building Official discover the installation of any outdoor snowmelt system or subject pool, hot tub or spa in violation of this Section, the same shall attach a "stop work order" to said installation in a conspicuous place. Where the Building Official discovers any use of property in violation of this Section, the same shall attach a "desist order" to the property and attempt to deliver a copy of the same to the occupier of the property. Any stop work order or desist order shall be signed by the Building Official and indicate the subject area in which the violations exists. The removal of a stop work order or desist order by any person before the violation is corrected shall constitute a violation of this Section. The continuation of construction or use in violation of a stop work or desist order shall also constitute a violation of this Section.
- g. An outdoor energy usage permit shall not be issued in connection with any property until all due and owing fees for sewer, water, sanitation, street or other improvement assessments, real property taxes, real estate transfer taxes and/or other fees or taxes due to the Town in connection with said property have been paid in full and are current in all respects.

(3) Calculations; Renewable energy systems; Payment in lieu.

- a. Calculations. The amount of energy used by an outdoor snowmelt system or subject pool, hot tub or spa shall be calculated by the Town using a system adopted by the Town. Said system shall also calculate the payment in lieu of providing energy produced by a renewable energy system or other Town-approved system. The Town shall utilize the Town of Crested Butte Outdoor Energy Worksheet attached as Exhibit "A" to the ordinance codified herein, a

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copy of which is on file in the Town Clerk's office, to calculate the mitigation required for outdoor energy usage. Said Town of Crested Butte Outdoor Energy Worksheet shall also be utilized to calculate the renewable energy mitigation credit proposed to offset the proposed outdoor energy usage. The assumptions and calculations incorporated into the Town of Crested Butte Outdoor Energy Worksheet are incorporated in the Calculation Assumptions attached as Exhibit "B" to the ordinance codified herein, a copy of which is on file in the Town Clerk's office. Once said energy usage and payment in lieu are calculated by the Town, the owner of the property affected by the outdoor snowmelt system or subject pool, hot tub or spa shall select whether it will utilize either a Town-approved renewable energy system or other Town-approved system to offset energy usage by any outdoor snowmelt system or subject pool, hot tub or spa, or make payment in lieu thereof. The owner of the affected property may select use of a combination of both a Town-approved renewable energy system or other Town-approved system to offset energy usage by any outdoor snowmelt system or subject pool, hot tub or spa and payment in lieu thereof. Such combination shall, however, be approved in advance by the Building Official. No outdoor energy usage permit may be issued until the owner of the affected property has selected either a Town-approved renewable energy system or other Town-approved system to offset energy usage by any outdoor snowmelt system or subject pool, hot tub or spa or payment in lieu thereof, or a combination of both as approved by the Town.

- b. Renewable energy systems. All renewable energy systems and other systems must be approved in advance by the Building Official. Said renewable energy systems may be solar or geothermal in nature. Other energy usage mitigation systems may be proposed but must be approved in advance by the Building Official. Any renewable energy system utilized as mitigation for outdoor energy usage must conform to the requirements set forth in the Project Checklist attached as Exhibit "C" to the ordinance codified herein, a copy of which is on file in the Town Clerk's office, as applicable. Other systems must provide an engineering analysis that calculates the renewable energy mitigation credit for the proposed system and provides all necessary information as determined by the Building Official. Review of the system will be at the expense of the owner. No renewable energy system or other system shall be approved which does not cause the mitigation of energy usage to be made within the Town. All proposed renewable energy mitigation systems and any other systems shall be included as part of the application for an outdoor energy usage permit. If the proposed renewable energy system is solar in nature, the panels and/or collectors must be approved through the standard building permit process and must be approved by the Board. The type of renewable energy system or other system, the specifications and efficiency thereof, the location of the installation of said renewable energy system or other system and any other additional information requested by the Building Official must be submitted with the application for an outdoor energy usage permit.
- c. Payments in lieu. The Town may accept payment from the owner of an affected property as described in this Section in lieu of providing energy produced by a Town-approved renewable energy system, or partial payment in lieu from said owner of an affected property providing only partial energy produced by a

Town-approved renewable energy system, as delineated in this Section. Acceptable payments shall be made by cash or check only. The owner of the affected property shall make payment in lieu at the time of, and as a condition precedent to, issuance of an outdoor energy usage permit. Such payment requirements shall apply to any addition or modification to any outdoor snowmelt system or outdoor pool where the owner has selected payments in lieu as described in this Section. In the event that an owner of an outdoor snowmelt system, subject pool, hot tub or spa with an outdoor energy usage permit for such energy usage seeks to make modifications to such usage such that any payment in lieu previously made could otherwise be reduced, no refund shall be given by the Town.

- d. Appropriation of funds. All payments in lieu received pursuant to this Section shall be deposited into a separate account with the Town. Funds derived from payments in lieu made pursuant to this Section shall be utilized by the Town to, in no order of preference: (i) defray any costs and expenses associated with the operation, administration and enforcement of the REMP program described in this Section; (ii) reduce and offset energy consumption in public buildings; (iii) reduce energy consumption in residential affordable housing units; (iv) defray the cost and expense of engineering and education to promote energy consciousness, renewable energy installation and reducing energy use; and/or (iv) cover such other costs and expenses consistent with the goals of the REMP and the Energy Code, as determined by the Town Council.
- e. Updating and monitoring. The Building Official may monitor and, to the extent necessary, update and amend, as determined by the Building Official, the Town of Crested Butte Outdoor Energy Worksheet, the Calculation Assumptions and the Project Checklist in order to promote and advance the goals of the REMP.

- (4) Violations. Any person who violates any of the provisions of this Section may be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed to be a separate offense.

**(52) Sec. 18-9-110. Penalties. (Chapter 18, Article 9, Energy Standards)**

- (a) Offense. Any person who violates any of the provisions of this Chapter shall be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.
- (b) Actions. The erection, construction, alteration, enlargement, conversion, moving or maintenance of any building, and the use of any land, building or structure, which activity or use is continued, operated or maintained contrary to any provision of this Chapter, shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Article.

**(53) Sec. 18-12-40. Violation, liability and penalty. (Chapter 18, Article 12, Construction Site Regulations)**

- (a) The failure to comply with this Article shall constitute a nuisance. The owner of the property upon which such violation occurs shall be jointly and severally liable for the violation.

- (b) Offense. Any person who violates any of the provisions of this Article shall be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.
- (c) In addition, any person who violates any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (d) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of this Article.
- (e) The remedies provided by this Article are cumulative and not exclusive, and are in addition to any other remedies provided by law.

**(54) Sec. 18-13-40. Building permit. (Chapter 18, Article 13, Building Inspector and Building Permits)**

- (a) No building or structure shall be erected, constructed, structurally altered, moved, demolished or changed without first obtaining a building permit issued by the Building Inspector. Such building permit shall be issued when the applicant has complied with all requirements of this Chapter and any code adopted herein, including the requirement for the submission of construction documents and payment of such fees as are required to review such documents, and when the applicant has obtained all approvals required hereunder. The determination of value or valuation under any provisions of this Chapter shall be made by the Building Official based on the Valuation Schedule published in the most recent edition of the *Building Safety Journal* magazine by the International Code Council, multiplied by the regional modifier of 1.54, or other evidence of value, whichever is greater, as determined by the Building Official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued. The approval by the Board of a building permit application shall be valid for the period of time set forth in Section 24-68-104, C.R.S., as implemented by Section 16-19-30 of this Code, so long as said sections remain in effect.
- (b) No building permit shall be issued unless and until a performance deposit has been deposited with the Building Department.
  - (1) The amount of the performance deposit shall be the amount of the valuation of the structure for which a building permit is sought multiplied by fifty hundredths percent (.50%).
  - (2) The performance deposit will be released upon the issuance of a certificate of occupancy for the structure for which the building permit is sought, if the Building Department determines that all improvements have been completed in accordance with all approved plans, including landscaping and parking requirements.
  - (3) Two hundred fifty dollars (\$250.00) per violation may be retained by the Town where the applicant has failed to perform any building, construction, structural alteration, movement, demolition or change work to any building or other structure in strict compliance with the approved plans and specifications therefor. Such retained deposit amounts shall represent the estimated costs and expenses of the Building Inspector in processing and handling said failures. Following such failure to perform, the Building Inspector shall notify the applicant of such failure and thereafter may retain the same without further action on the part of the Town. Nothing contained herein shall prohibit the Town from exercising any other remedies provided at law or in equity, including, without limitation, an action for attorneys' fees, costs and expenses in connection with any such failure to comply.

- (c) No building permit shall be issued until written approval of the application is given by the Building Inspector and the Board when the latter is required under the terms of this Article.
- (d) No building permit shall be issued unless the proposed erection, construction, alteration or change of the building or use of the building or land is in full conformance with this Article.
- (e) Upon issuance of the building permit, the applicant shall perform all work thereunder in strict accordance and compliance with the application, plans and specifications, representations to the Board and Building Inspector, and any memoranda of agreement. The Building Inspector, members of the Board and other Town officials shall monitor and inspect the work being performed and, upon the discovery of any deviation from the plans, application or representations, shall report the deviation to the Building Inspector who shall order all work on the structure to cease until the Board considers, at its next regular meeting, if the deviation is substantial, in which case a new building permit shall be required.
- (f) After the issuance of a building permit, any substantial deviation from the plans, application or representations shall require a new building permit, which shall be applied for and considered in the same fashion as a new application.
- (g) Any application or other request under this Article shall be made by an owner of the property or his or her legal representative as evidenced by a written power of attorney. Any permits, approvals, conditions or other decisions under this Article shall benefit and/or bind such applicant, the owner, other co-owners of the property and their heirs or assigns.
- (h) Penalties; enforcement. No person shall build, construct, structurally alter, move, demolish or change any building or other structure for which a building permit is required without compliance with the requirements of the Section. Any person who violates this Section shall be guilty of a misdemeanor and subject to a maximum fine of one thousand dollars (\$1,000.00) per offense, or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day any such building or structure is out of compliance with this Section shall be a separate offense hereunder. The Marshal's Department, the Building Inspector or the Town Manager may enforce the penalties provided hereunder, including, without limitation, by proper summons to appear in a court of competent jurisdiction. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Section. Remedies provided in this Section are cumulative and concurrent and not intended to be exclusive, and the same are in addition to all other rights provided at law and in equity.

*Section 6.* Additions or amendments to the Code, when passed in the form as to indicate the intention of the Town to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

*Section 7.* For a period of six (6) months from the date of adoption of this Ordinance, any Town official entitled to or permitted under the Code to cite any person for an infraction or violation of any provision, term, condition or requirement contained in the Code, may so cite such person under either the previously numbered Code section or the newly numbered Code section, each such citation so numbered having equal effect and enforceability. Following the expiration of said six-month period, all citations shall be pursuant to the newly numbered Code section.

*Section 8.* Ordinances adopted after this Ordinance that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to those provisions of the Code.

*Section 9.* This Ordinance shall become effective five (5) days after publication thereof.

Crested Butte, Colorado, Municipal Code  
CRESTED BUTTE MUNICIPAL CODE

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*Section 10* If any section, sentence, clause, phrase, word or other provision of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this Ordinance, or the validity of this Ordinance as an entirety, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 4TH DAY OF MAY, 2009.

TOWN OF CRESTED BUTTE , COLORADO

ATTEST: (signature) Alan Bernholtz, Mayor (signature) Eileen Hughes, Town Clerk

(SEAL)

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS 1ST DAY OF JUNE, 2009.

TOWN OF CRESTED BUTTE, COLORADO

ATTEST: (signature) Alan Bernholtz, Mayor (signature) Eileen Hughes, Town Clerk

(SEAL)

## CHAPTER 1 General Provisions

### ARTICLE 1 Code

#### **Sec. 1-1-10. Adoption of Code.**

The published code known as the Crested Butte Municipal Code, published by Colorado Code Publishing Company, of which one (1) copy is now on file in the office of the Town Clerk and may be inspected during regular business hours, is enacted and adopted by reference as a primary code and incorporated herein as if set out at length. This primary code has been promulgated by the Town of Crested Butte, Colorado, as a codification of all the ordinances of the Town of Crested Butte of a general and permanent nature through Ordinance No. 4, Series of 2009, for the purpose of providing an up-to-date code of ordinances, properly organized and indexed, in published form for the use of the citizens and officers of the Town.

#### **Sec. 1-1-20. Title and scope.**

The Charter and ordinances embraced in this and the following chapters shall constitute a compilation, revision and codification of all the ordinances of the Town of Crested Butte, Colorado, of a general and permanent nature, and shall be cited and known as the *Crested Butte Municipal Code*. (Prior code 0-1; Ord. 4 §1, 2009)

#### **Sec. 1-1-30. Code supersedes prior ordinances.**

This Code shall supersede all other municipal codes consisting of compilations of general and permanent ordinances and parts of ordinances passed by the Town Council.

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## **Sec. 1-1-40. Adoption of secondary codes by reference.**

Secondary codes may be adopted by reference, as provided by state law.

## **Sec. 1-1-50. Repeal of ordinances not contained in Code.**

All existing ordinances and parts of ordinances of a general and permanent nature inconsistent with any ordinance included in the adoption of this Code are hereby repealed; to the extent of any inconsistency therein as of the effective date of the ordinance adopting this Code, except as hereinafter provided.

## **Sec. 1-1-60. Matters not affected by repeal.**

The repeal of ordinances and parts of ordinances of a permanent and general nature by Section 1-1-50 of this Code shall not affect any right which has accrued, any duty imposed, any offense committed or act done, any penalty or forfeiture incurred, any action or proceedings as commenced under or by virtue of the provisions repealed, the tenure of any person holding office or any contract, right or obligation established prior to the time said ordinances and parts of ordinances are repealed.

## **Sec. 1-1-70. Ordinances saved from repeal.**

The continuance in effect of temporary and/or special ordinances and parts of ordinances, although omitted from this Code, shall not be affected by such omission therefrom, and the adoption of this Code shall not repeal or amend any such ordinance or part of any such ordinance. Among the ordinances not repealed or amended by the adoption of this Code are ordinances:

- (1) Creating, opening, dedicating, naming, renaming, vacating or closing specific streets, alleys and other public ways.
- (2) Establishing the grades or lines of specific streets, sidewalks and other public ways.
- (3) Creating specific sewer and paving districts and other local improvement districts.
- (4) Authorizing the issuance of general obligation or specific local improvement district bonds.
- (5) Making special assessments for local improvement districts and authorizing refunds from specific local improvement district bond proceeds.
- (6) Annexing territory to or excluding territory from the Town.
- (7) Dedicating or accepting any specific plat or subdivision.
- (8) Calling or providing for a specific election.
- (9) Authorizing specific contracts for purchase of beneficial use of water by the Town.
- (10) Approving or authorizing specific contracts with the State, with other governmental bodies or with others.
- (11) Authorizing a specific lease, sale, purchase or conveyance of property.
- (12) Granting rights-of-way or other rights and privileges to specific railroad companies or other public carriers.
- (13) Granting a specific gas company or other public utility the right or privilege of constructing lines in the streets and alleys or of otherwise using the streets and alleys.

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- (14) Granting a franchise to a specific public utility company or establishing rights for or otherwise regulating a specific public utility company.
  - (15) Appropriating money.
  - (16) Levying a temporary tax or fixing a temporary tax rate.
  - (17) Relating to salaries.
  - (18) Amending the Official Zoning Map.
  - (19) Authorizing the acceptance, assignment or conveyance of easements.

#### **Sec. 1-1-80. Changes in previously adopted ordinances.**

In compiling and preparing the ordinances of the Town for adoption and revision as part of this Code, certain grammatical changes and other changes were made in one (1) or more of said ordinances. It is the intention of the Town Council that all such changes be adopted as part of this Code as if the ordinances so changed had been previously formally amended to read as such.

### **ARTICLE 2 Definitions and Usage**

#### **Sec. 1-2-10. Definitions.**

In the construction of this Code and of all ordinances of the Town of Crested Butte, the following words and phrases, whenever used in the ordinances of the Town of Crested Butte, and/or any codification of the same, shall be construed as defined in this Section, unless a different meaning is intended from the context or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

*Appropriation* means the authorized amount of moneys set aside for expenditures during a specified time for a specific purpose.

*Charter* means the Home Rule Charter of the Town of Crested Butte, adopted on November 5, 1974.

*Code* means the Crested Butte Municipal Code, as published and subsequently amended, unless the context requires otherwise.

*Constitution* means the Constitution of the State of Colorado.

*Council* means the Town Council of the Town of Crested Butte, including the Mayor, unless otherwise provided.

*County* means the County of Gunnison, Colorado.

*C.R.S.* means the Colorado Revised Statutes, including all amendments thereto.

*Day* means the period of time between any midnight and the midnight following.

*Daytime* means the period of time between sunrise and sunset.

*Elector* means a person qualified to vote under the Constitution and statutes of the State of Colorado.

*Employee* means a person employed by the Town of Crested Butte.

*Franchise* means an irrevocable privilege granted by the Town permitting a specified use of public property for a specified length of time.

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*General municipal election* means a municipal election held at which candidates for elective offices of the Town are voted upon in accordance with this Code and the Charter of the Town.

*Law* denotes applicable federal law, the Constitution and statutes of the State of Colorado, the ordinances of the Town and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

*May* is permissive.

*Misdemeanor* means and is to be construed to mean a violation and is not intended to mean crime or criminal conduct.

*Month* means a calendar month.

*Nighttime* means the period of time between sunset and sunrise.

*Oath* shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation or declaration may be substituted for an oath, and in such cases the words swear and sworn shall be equivalent to the words affirm and affirmed.

*Officer* means any person elected to office or appointed by the Town Council, including appointees to boards and commissions.

*Ordinance* means a law of the Town; provided that a temporary or special law, administrative action, order or directive may be in the form of a resolution.

*Owner*, applied to a building, motorized vehicle, animal or other real or personal property, includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety or any other person with a possessory interest in the whole or a part of such building, land, motor vehicle, animal or other real or personal property.

*Permanent board or commission* means a board or commission intended by the Town Council to be a part of the permanent governmental structure of the Town as established by ordinance or the Charter.

*Person* means a natural person, firm, partnership, corporation, association, joint venture, joint stock company, club, company, business, trust or other organization acting as a group or unit, or the manager, lessee, agent, servant, officer or employee of any of them.

*Personal property* includes money, goods, chattels, things in action and evidences of debt.

*Preceding* and *following* mean next before and next after, respectively.

*Property* includes real, tangible, intangible and personal property.

*Public utility* means any person, firm or corporation operating heat, power or light systems, communication systems, water, sewer or scheduled transportation systems, and serving or supplying the public under a franchise or other right granted by the Town.

*Public way* means any street, alley, boulevard, parkway, highway, sidewalk or other public thoroughfare.

*Real property* includes lands, tenements and hereditaments.

*Shall* and *must* are both mandatory.

*Sidewalk* means that portion of the street between the curbline and the adjacent property line intended for the use of pedestrians.

*State* means the State of Colorado.

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*Statutes* means the applicable laws of the State of Colorado as they exist or as they may be amended, changed, repealed or otherwise modified by legislative procedure.

*Street* means and includes any public way, highway, street, avenue, boulevard, parkway, lane, alley, court, place, square, curb or other public thoroughfare in the Town which has been or may hereafter be dedicated and open to public use, or such other public property so designated in any state law; and each of such words shall include all of them.

*Tenant* and *occupant*, applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.

*Town* means the Town of Crested Butte, Colorado, a municipal corporation, or the area within the territorial limits of the Town of Crested Butte, Colorado, and such territory outside of the Town over which the Town has jurisdiction or control by virtue of any constitutional or statutory provision.

*Town Council* means the Town Council of the Town of Crested Butte, including the Mayor, unless otherwise provided.

*Written* includes printed, typewritten, mimeographed, multigraphed or otherwise reproduced in permanent visible form.

*Year* means a calendar year, unless otherwise expressed.

### **Sec. 1-2-20. Computation of time.**

The time within which an act is to be done shall be computed by excluding the first and including the last day; but if the time for an act to be done falls on Saturday, Sunday or a legal holiday, the act shall be done upon the next regular business day following such Saturday, Sunday or legal holiday.

### **Sec. 1-2-30. Title of office.**

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the Town, or his or her designated representative.

### **Sec. 1-2-40. Usage of terms.**

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

### **Sec. 1-2-50. Grammatical interpretation.**

The following grammatical rules shall apply to this Code and to Town ordinances:

- (1) Any gender includes the other genders.
- (2) When not inconsistent with the context, words in the plural number include the singular number, and words in the singular number include the plural number.
- (3) Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable.
- (4) Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.

## ARTICLE 3 General

### **Sec. 1-3-10. Titles and headings not part of Code.**

The title of any section or subsection of this Code shall not be deemed to in any way restrict, qualify or to limit the effect of the provisions set forth and contained in such section or subsection. Such chapter and article titles, headings, numbers and titles of sections and other divisions are inserted in this Code, may be inserted in supplements to this Code for the convenience of persons using this Code, and are not part of this Code.

### **Sec. 1-3-20. Authorized acts.**

When this Code requires an act to be done which may as well be done by an agent, designee or representative as by the principal, such requirement shall be construed to include all such acts performed when done by an authorized agent, designee or representative.

### **Sec. 1-3-30. Prohibited acts.**

Whenever in this Code or any Town ordinance any act or omission is made unlawful, it includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

### **Sec. 1-3-40. Timeliness of acts.**

In all cases where any chapter, article or section requires any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt performance of such duty or compliance with such notice.

### **Sec. 1-3-50. Purpose of Code.**

The provisions of this Code, and all proceedings under them, are to be construed with a view to effect their objectives and to promote justice.

### **Sec. 1-3-60. Repeal of ordinances.**

The repeal of an ordinance by any provision of this Code shall not revive any provision or any ordinance theretofore repealed or superseded. (Prior code 0-6; Ord. 4 §1, 2009)

### **Sec. 1-3-70. Amendments to Code.**

Any additions or amendments to this Code shall be adopted as ordinances and when passed in such form as to indicate the intention to make the same a part thereof, all of the substantive, permanent and general parts of said ordinances and changes made thereby shall be incorporated into this Code so that the reference to it as *Crested Butte Municipal Code* shall be understood as including such additions and amendments.

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### **Sec. 1-3-80. Subject and title of amending ordinances.**

No provision of any ordinance of the Town shall be amended by reference to its title only or by interlineation, but all amendments shall be made by reenacting the section or subsection as amended. No ordinances except those appropriating money, or ordinances in general revision of ordinances, shall be passed or adopted containing more than one (1) subject, which shall be clearly set forth in its title.

### **Sec. 1-3-90. Supplementation of Code.**

- (a) The Town Council shall cause supplementation of this Code to be prepared and printed from time to time as it may see fit. All substantive, permanent and general parts of ordinances passed by the Town Council or adopted by initiative and referendum, and all amendments and changes in temporary and special ordinances or other measures included in this Code prior to the supplementation and since the previous supplementation, shall be included.
- (b) It shall be the duty of the Town Clerk, or someone authorized and directed by the Town Clerk, to keep up to date the one (1) certified copy of the book containing this Code required to be filed in the office of the Town Clerk for the use of the public.

(Ord. 4 §1, 2009)

### **Sec. 1-3-100. Examination of Code.**

The Town Clerk shall carefully examine at least one (1) copy of the Code adopted by this Ordinance to see that it is a true and correct copy of this Code. Similarly, after each supplement has been prepared, printed and inserted in this Code, the Town Clerk shall carefully examine at least one (1) copy of this Code as supplemented. The copy of this Code as originally adopted or amended shall constitute the permanent and general ordinances of the Town and shall be so accepted by the courts of law, administrative tribunals and all others concerned.

### **Sec. 1-3-110. Copy of Code on file.**

At least one (1) copy of this Code so certified and sealed most recently shall be kept in the office of the Town Clerk at all times, and such Code may be inspected by any interested person at any time during regular office hours, but may not be removed from the Town Clerk's office except upon proper order of a court of law.

### **Sec. 1-3-120. Sale of Code books.**

Copies of this Code book may be purchased from the Town Clerk upon the payment of a fee to be set by resolution of the Town Council.

### **Sec. 1-3-130. Severability.**

The provisions of this Code are declared to be severable, and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this Code shall continue in full force and effect, it being the legislative intent that this Code would have been adopted even if such unconstitutional matter had not been included therein. It is further declared that, if any provision or part of this Code, or the application thereof to any person or circumstances, is held invalid, the remainder of this Code and the application thereof to other persons shall not be affected thereby.

## **ARTICLE 4 General Penalty**

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### **Sec. 1-4-10. Violations.**

It is a violation of this Code for any person to do any act which is forbidden or declared to be unlawful or to fail to do or perform any act required in this Code.

### **Sec. 1-4-20. General penalty for violation.**

- (a) Any person who violates or fails to comply with any provision of this Code for which a different penalty is not specifically provided shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, except as hereinafter provided in Section 1-4-30 below.
- (b) Each day such violation continues shall be considered a separate and additional offense.
- (c) In addition, any person violating any provision of this Code shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation. In addition, such person shall pay all costs and expenses in the case, including attorney fees.
- (d) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any such violation.
- (e) The remedies provided in this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.

(Prior code 0-7; Ord. 18 §E, 1997; Ord. 4 §1, 2009)

### **Sec. 1-4-30. Application of penalties to juveniles.**

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo contendere to, a violation of any provision of this Code, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation or count. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. Nothing in this Section shall be construed to prohibit incarceration in an appropriate facility, at the time of charging, of a juvenile violating any section of this Code.

### **Sec. 1-4-40. Altering or tampering with Code; penalty.**

Any person who shall alter, change or amend this Code, except in the manner prescribed in this Chapter, or who shall alter or tamper with this Code in any manner so as to cause the ordinances of the Town to be misrepresented thereby, shall, upon conviction thereof, be punishable as provided by Section 1-4-20 above.

### **Sec. 1-4-50. Penalty for violations of ordinances adopted after adoption of Code.**

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in this Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-4-20 above unless another penalty is specifically provided for the violation.

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**Sec. 1-4-60. Nonwaiver for omission to specific law.**

The omission to specify or enumerate herein those provisions of the state statutes applicable to municipalities shall not be construed to be a waiver of the benefits of any or all such provisions.

**Sec. 1-4-70. Interpretation of unlawful acts.**

Whenever in this Code any actor omission is made unlawful, it is also unlawful to cause, allow, permit, aid, abet or suffer such unlawful act or omission. Concealing or in any manner aiding in the concealing of any unlawful act or omission is similarly unlawful.

## **ARTICLE 5 Inspections**

**Sec. 1-5-10. Entry.**

Whenever necessary to make an inspection to enforce any provision of this Code or any ordinance, or whenever there is probable cause to believe that there exists an ordinance violation in any building or upon any premises within the jurisdiction of the Town, any public inspector of the Town may, upon presentation of proper credentials and upon obtaining permission of the occupant or if unoccupied, the owner, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance. In the event the occupant or, if unoccupied, the owner, refuses entry to such building or premises, or the public inspector is unable to obtain permission of such occupant or owner to enter such building or premises, the public inspector is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

**Sec. 1-5-20. Authority to enter premises under emergency.**

Law enforcement officers certified with the State, members of the Fire Department, other fire departments operating under a mutual assistance agreement or automatic aid agreement with the Town, certified emergency medical technicians and paramedics during the course of employment with a governmental agency are hereby granted the authority to enter private residences within the Town without invitation from the occupant of the residence at any time such persons have reasonable grounds to believe a medical emergency is in progress within the subject premises and the occupant of such premises is incapable of consenting to the entry because of such medical emergency.

**Sec. 1-5-30. Announcement of purpose and authority to enter premises.**

Unauthorized entry pursuant to Section 1-5-20 shall be permissible only after the individuals seeking entry have announced both their purpose and authority in a loud and conspicuous voice and have waited a reasonable period of time for the occupant to respond before making entry.

## **ARTICLE 6 Seal**

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### **Sec. 1-6-10. Corporate seal.**

A seal, the impression of which contains in the center the words "Seal Incorporated July 2, 1880," and around the outer edge the words "Town of Crested Butte, Colorado," shall be and is hereby declared to be the Seal of the Town.

## **ARTICLE 7 Administration and Disposition of Unclaimed Property**

### **Sec. 1-7-10. Purpose.**

The purpose of this Article is to provide for the administration and disposition of unclaimed property which is in the possession of or under the control of the Town.

### **Sec. 1-7-20. Definitions.**

Unless otherwise required by context or use, words and terms in this Article shall be defined as follows:

*Director* means the Director of Finance.

*Owner* means a person or entity, including a corporation, partnership, association, governmental entity other than the Town, or a duly authorized legal representative or successor in interest of the same, which owns unclaimed property held by the Town.

*Unclaimed property* means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the Town, and which has not been claimed by its owner for a period of more than one (1) year after it became payable or distributable. *Unclaimed property* does not mean any abandoned vehicles, as defined in Section 7-1-10 of this Code.

### **Sec. 1-7-30. Procedure for disposition of property.**

- (a) Prior to disposition of any unclaimed property having an estimated value of fifty dollars (\$50.00) or more, the Director shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the Town. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that, if the owner fails to provide the Director with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- (b) Prior to the disposition of any unclaimed property having an estimated value of less than fifty dollars (\$50.00) or having no identity of the owner or last known address of the owner, the Director shall cause a notice to be published in a newspaper published in the Town. The notice shall include a description of the property, the owner of the property if known, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that, if the owner fails to provide the Director with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the Town, and any claim of the owner to such property shall be deemed forfeited.

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- (c) If the Director receives no written claim within the above sixty-day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
  - (d) If the Director receives a written claim within the sixty-day claim period, the Director shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Director may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.
  - (e) In the event that there is more than one (1) claimant for the same property, the Director may, in the Director's sole discretion, resolve said claims or may resolve such claims by depositing the disputed property with the registry of the Gunnison County District Court in an interpleader action.
  - (f) In the event that all claims filed are denied, the property shall become the sole property of the Town, and any claim of the owner of such property shall be deemed forfeited.
  - (g) Any legal action filed challenging a decision of the Director shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision, or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Director pursuant to the order of the Court having jurisdiction over such claim.
  - (h) The Director is hereby authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Article, including compliance requirements for other Town officers and employees in the identification and disposition of such property.

(Prior code 7-1-12; Ord. 12 §2, 1995; Ord. 4 §1, 2009)

#### **Sec. 1-7-40. Sale of unclaimed property.**

The Director, in his or her discretion, may offer any unclaimed property for public sale by auction or advertisement, may devote such property to municipal use or, if the Director determines that the probable costs of sale exceed the value of the property, may dispose of the property by any appropriate means or donate it to a public or charitable purpose.

#### **Sec. 1-7-50. Disposal of abandoned or confiscated property.**

The Town Marshal is hereby authorized to possess and dispose of any and all abandoned vehicles as defined in Section 7-1-10 of this Code, in any commercially reasonable manner, including sale by auction or advertisement, or by donating a vehicle of questionable commercial value to public or charitable purpose. To *abandon* means to leave a thing with the intention not to retain possession of or assert ownership over it. The intent need not coincide with the act of leaving. The procedure for such disposal shall conform with applicable state law, including any required notice, hearing or other due process requirements.

## **CHAPTER 2**

## **Administration**

### **ARTICLE 1 Elections**

#### **Sec. 2-1-10. Conduct of elections.**

All elections shall be held and conducted in accordance with the provisions of the Charter.

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### **Sec. 2-1-20. Write-in candidate affidavit.**

No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the Town Clerk by the person whose name is written in prior to twenty (20) days before the day of the election, indicating that such person desires the office and is qualified to assume the duties of that office if elected.

### **Sec. 2-1-30. Cancellation of election.**

- (a) If the only matter before the voters is the election of persons to office and if, at the close of business on the nineteenth day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent as set forth in Section 2-1-20 above, the Town Clerk shall certify such fact to the Town Council; and it shall hold a meeting and by resolution shall instruct the Town Clerk to cancel the election and shall declare the candidates elected.
- (b) Notice of such cancellation shall be published, if possible, and notice of such cancellation shall be posted at each polling place and in not less than one (1) other public place.

(Ord. 4 §1, 2009)

## **ARTICLE 2 Mayor and Town Council**

### **Sec. 2-2-10. Compensation.**

- (a) The Mayor shall receive the sum of twelve thousand six hundred dollars (\$12,600.00) (or one thousand fifty dollars (\$1,050.00) per calendar month) per year for his or her service to the Town.
- (b) Each Councilmember shall receive the sum of seven thousand eight hundred dollars (\$7,800.00) (or six hundred fifty dollars (\$650.00) per calendar month) per year for his or her service to the Town.
- (c) The compensation paid to any member of the Town Council, including the Mayor, shall not be increased or diminished for the term of office for which he or she has been elected or appointed. Any Mayor or Councilmember who has resigned or vacated an office prior to the end of his or her elective or appointed term shall not be eligible to election or reappointment to the same during such term if the rate of compensation has been increased.

(Prior code 2-2-1, 2-2-2; Ord. 13 §1, 1989 §1; Ord. 21 §1, 1992; Ord. 1 §1, 1999; Ord. 4 §1, 2009; Ord. 14 §1, 2012; Ord. No. 15 , § 1, 6-19-2017; Ord. No. 22 , § 1, 5-6-2019)

### **Sec. 2-2-20. Attendance at meetings.**

- (a) Attendance requirements. In order to faithfully perform the duties of their office, the Mayor and Council members shall regularly attend Town Council meetings. *Regular attendance*, for the purposes of this Section, shall mean:
  - (1) No more than two (2) consecutive absences at regular Council meetings; and
  - (2) Attendance at seventy-five percent (75%) or more of regular Council meetings during the previous one-year period.
- (b) Remote attendance.

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- (1) Remote, or virtual, attendance of regular, special and emergency Council meetings is acceptable, and members may fully participate and vote when attending remotely.
  - (2) Council members must attend at least seventy-five percent (75%) of annual regular Council meetings in person each year.
  - (c) Removal for failure to meet attendance requirements. Any Councilmember, including the Mayor, may be removed from office for failure to meet the attendance requirements set forth in Subsection (a) above. Such removal shall be accomplished by the adoption of an ordinance under the procedures set forth in the Charter. No such removal shall be accomplished by an emergency ordinance. Such removal shall be effective upon the effective date of said ordinance.

(Prior code 2-2-3, 2-2-4; Ord. 13 §1, 1989; Ord. 4 §1, 2009; Ord. No. 3 , § 1, 2-7-2022)

### **Sec. 2-2-30. Regular meetings.**

The regular meetings of the Town Council shall be held on the first and third Mondays of each calendar month at Town Hall at a time to be set from time-to-time by the Town Council, except that no meeting shall be held on a legal holiday.

### **Sec. 2-2-40. Conduct of meetings; voting.**

- (a) Meetings of the Town Council shall be conducted by the Mayor, according to the rules and procedures adopted by the Town Council.
- (b) A majority shall constitute a quorum to do business at all meetings of the Town Council, and each member, including the Mayor, shall vote upon every question put by the Chair unless allowed by the Town Council to abstain. The Mayor shall preside at all meetings of the Town Council and shall have the same voting powers as any member of the Town Council. Upon the taking of any vote, the Town Clerk shall record in the minutes the names of those voting and their votes.
- (c) At the hour appointed for meeting, the members shall be called to order by the Mayor or, in his or her absence, by the Mayor Pro Tem, and the Town Clerk shall announce whether a quorum is present. If a quorum is present, the Town Council shall proceed with the business before it, in the manner and order as established by the Town Council.

(Ord. 4 §1, 2009)

### **Sec. 2-2-50. Designation of official public posting places.**

The Town's three (3) official public posting places for posting public notices announcing Town Council meetings and other important items, and for posting copies of ordinances after adoption, shall be designated by resolution of the Town Council.

### **Sec. 2-2-60. Boards and commissions.**

The Town Council shall create and appoint members to such boards and commissions as may now or hereafter exist, including but not limited to the following:

- (1) Board of Zoning and Architectural Review (See Charter 8.1(B)); and
- (2) Planning Commission.

## **ARTICLE 3 Officers and Employees**

### **Sec. 2-3-10. Appointed officers.**

- (a) The following officers of the Town shall be appointed by a majority vote of all the members of the Town Council:
- (1) Town Manager;
  - (2) Town Attorney; and
  - (3) Municipal Judge.
- (b) Said officers shall hold their respective offices until their successors are duly appointed and qualified. Vacancies shall be filled by appointment of the Town Council.

(Ord. 4 §1, 2009)

### **Sec. 2-3-20. Powers and duties of officers.**

Appointed officers of the Town shall have such power and perform such duties as are now or hereafter may be prescribed by state law and the ordinances of the Town, shall further perform any additional duties required by the Town Council, and shall be subject to the control and orders of the Town Council.

### **Sec. 2-3-30. Administrative services.**

- (a) All executive and administrative offices shall adhere to the following policies, except when the Town Manager directs that deviations from these provisions are necessary to carry out the necessary administrative services of the Town:
- (1) Office hours: Be open from 8:30 a.m. through 5:00 p.m. on weekdays, and be closed on Saturdays, Sundays and legal holidays.
  - (2) Cooperation between departments: Furnish, upon the direction of the Town Manager, any other department such service, labor and materials as may be requisitioned by such department and as its own facilities permit, through the same procedures and subject to the same audit controls as other expenditures are incurred.
  - (3) Daily deposit: Make a daily deposit of any moneys received directly from the public.
- (b) Subject to the approval of the Town Council, the Town Manager may from time to time promulgate such rules and regulations as may be necessary to implement and carry out the administrative services provided by the Town, including a personnel manual; provided, however, that such rules and regulations shall not be inconsistent herewith.

(Prior code 2-1-1; Ord. 4 §1, 2009)

### **Sec. 2-3-40. Social Security.**

In the opinion of the Town Council, the extension of the social security system to employees and officers of the Town will be of great benefit not only to the employees and officers by providing that said employees and

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officers may participate in the provision of the old-age and survivors insurance system, but also to the Town by the efficiency of its government.

## **ARTICLE 4 Code of Conduct**

### **Sec. 2-4-10. Purpose.**

The purpose of this Article is to protect the public health, safety and welfare and the integrity of Town government by defining and prescribing certain conflicts of interest that may arise between the Town and Town Councilmembers, employees or appointees to a Town board, commission, task force or similar body. The Town Council intends to prohibit the appearance and perception of impropriety as well as actual conflicts of interest. This Article also intends to protect the integrity of Town government by providing standards of conduct and guidelines for public officials and public employees to follow when such officials' or employees' private interests as citizens conflict with their public duties; to foster public trust by defining standards of honest government and prohibiting the use of public office for private gain; to specify rules to avoid any appearance of impropriety that may result from the dealings of a public official or public employee with the Town; and to provide a mechanism to enforce the Town's code of conduct.

### **Sec. 2-4-20. Definitions.**

As used in this Article, the following words shall have the definitions ascribed to them, unless otherwise provided:

*Affiliate or affiliated with* means an employee, partner, agent, stockholder, joint venturer, corporate member, director, manager or officer of any business organization, or counsel, consultant, representative or a person who shares office space with such organization.

*Appear on behalf of* means to act as a witness, advocate, expert or otherwise support the position of another person.

*Business or undertaking* means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation or other individual or organization carrying on a business or personal undertaking, whether or not operated for profit.

*Contract* means any arrangement or agreement pursuant to which any real or personal property, service or other thing of value is to be furnished, transferred, leased or bailed for a valuable consideration.

*Employment* means providing personal services as an employee or an independent contractor, with or without consideration.

*Gift* means any payment, entertainment, subscription, forbearance, service or any other thing of value, rendering or deposit of money, which is transferred to a donor directly or in trust for his or her benefit.

*Official action* means any legislative, administrative or quasi-judicial act of any public official or employee and any vote, decision, recommendation, approval, disapproval or other action, including inaction (as applicable under the circumstances), which involves the use of discretionary authority.

*Public employee or employee* means any person holding any paid position of employment with the Town and whose primary income is derived from Town employment.

*Public official or official* means any person holding a position with the Town by election and any person holding a position as an appointee of the Town Council or the Town Manager, serving on any Town board, commission, task force or similar body.

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*Relative* means any person related to a public official or an employee by blood, marriage or adoption, through the second degree of consanguinity, including, without limitation, the following: spouse, parents, parents-in-law, children, children-in-law, brothers, sisters, brothers-in-law, sisters-in-law, grandparents, grandchildren, aunts, uncles, cousins, nephews and nieces. A separation between spouses shall not be deemed to terminate relationships described above which exist only because of marriage.

*Substantial interest* means a situation where there exists the reasonable possibility of: (i) a pecuniary gain by the Town Councilmember, appointee to a Town board, commission, task force or similar body, or a relative thereof, or a Town employee from the outcome of any official action; or (ii) the business or undertaking for which the Town Councilmember, appointee to a Town board, commission, task force or similar body or a Town employee is an affiliate, or his or her relative is an affiliate, standing to economically benefit from the outcome of any official action where, considering all of the surrounding circumstances, a reasonably prudent person observing the situation would expect a marked tendency to make or influence a decision other than an objective decision.

*Transaction* means any contract; any sale or lease of any interest in land, material, supplies or services; or any granting of a development right, license, permit or application. A *transaction* does not include any official action which is legislative in nature and which is of general applicability in which the subject Town official or employee shares the same personal or financial interests as the entire membership of a common class of citizens or residents of the Town, or owners of property in the Town.

### **Sec. 2-4-30. Conflicts of interest prohibited.**

- (a) Town Councilmember and board, commission or task force member conflicts of interest. No Town Councilmember or board, commission or task force member shall appear before the Town Council or any Town board, commission, task force or similar body where such individual has a conflict of interest as identified in Section 2-4-40 below.
- (b) Town employee conflicts of interest. No Town employee shall appear on behalf of or be employed by a business or undertaking or other person concerning any transaction with the Town, or before the Town Council or any Town board, commission, task force or similar body where such individual has a conflict of interest as identified in Section 2-4-40. An employee may appear before such a body on his or her own behalf or on behalf of such employee's relative. Nothing in this Article shall be deemed to prohibit the Town Manager from establishing additional policies and regulations to prevent conflicts of interest between Town employees and the Town, provided that such policies are no less stringent than the requirements contained in this Article.
- (c) Town Councilmembers and Municipal Court. No Town Councilmember shall appear on behalf of or be employed by another person, or be affiliated with a business or undertaking appearing on behalf of or employed by another person, concerning any matter before the Municipal Court; however, a Councilmember or a member of such a business or undertaking may appear on his or her own behalf or on behalf of such person's relative in Municipal Court.
- (d) Town employees and Municipal Court. No Town employee shall appear on behalf of or be employed by another person, or be affiliated with a business or undertaking that appears on behalf of or is employed by another person, concerning any matter before the Municipal Court; however, an employee may appear before the Municipal Court on his or her own behalf, and an employee other than a Municipal Judge may appear on behalf of such employee's relative. This authority is intended to allow employees to assist relatives in matters before the Municipal Court to the extent permitted by law.
- (e) Board, commission or task force member and Municipal Court. An appointee to a Town board, commission, task force or similar body may appear before the Municipal Court and may be affiliated with a business or undertaking appearing before the Municipal Court.

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(Ord. 10 §1, 2009)

### **Sec. 2-4-40. Identifying conflicts of interest.**

A Town Councilmember, an appointee to a Town board, commission, task force or similar body or a Town employee shall have a conflict of interest and shall follow the procedure prescribed by Subsection 2-4-60(a) below if such member, appointee or employee:

- (1) Has a substantial interest in any transaction with the Town;
- (2) Has a substantial interest as an affiliate of a business or undertaking with a substantial interest in any transaction with the Town;
- (3) Has a substantial interest as an affiliate of a business or undertaking appearing on behalf of or employed by a person with a substantial interest in any transaction with the Town;
- (4) Is an affiliate of a business or undertaking that has taken an official position on any transaction with the Town (unless the individual or such individual's relative has no substantial interest in the outcome of the official action, in which case such individual shall simply identify on the record his or her position);
- (5) Is an affiliate of a business or undertaking that is or could be substantially affected by a transaction with the Town (unless the individual or such individual's relative has no substantial interest in the outcome of the official action, in which case such individual shall simply identify on the record his or her position); or
- (6) Is required to receive official notice of a quasi-judicial action from the Town.

### **Sec. 2-4-50. Consent to sue.**

No Town Councilmember or appointee to any Town board, commission, task force or similar body shall be a party to or, by himself or herself or as an affiliate of a business or undertaking, appear on behalf of a party in any civil suit in which the Town is an adverse party, unless the member or appointee first obtains the consent of the Town Council.

### **Sec. 2-4-60. Disclosure and recusal.**

- (a) Disclosure required. No person described in Subsection 2-4-30(a) or (b) or Section 2-4-40 above shall fail to give written notice of the interest described in such section to the Town Council or the Town board, commission, task force or similar body of which the person is a member and the Town Manager, as soon as reasonably possible after the interest has arisen. Notwithstanding the foregoing, no written notice is required if such person discloses the interest described in Subsection 2-4-30(a) or (b) or Section 2-4-40 above on the record of a public meeting of the Town Council or the Town board, commission, task force or similar body of which the person is a member. The interested Councilmember, employee or appointee shall thereafter refrain from attempting to influence the decisions of the other members of the governing body and:
  - (1) Refrain from voting upon or otherwise taking official action in such transaction;
  - (2) Physically absent himself or herself from the room in which a matter related to such transaction is being considered; and
  - (3) Not discuss any matter related to such transaction with any other member of the Town Council, board, commission, task force or similar body of which the person is a member.

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- (b) Recusal by Town Council, board, commission, task force or similar body. The Town Council and any Town board, commission, task force or similar body may order recusal of one (1) of its members if that member has an obligation to do so under Subsection 2-4-30(a) or (b) or Section 2-4-40 above and has failed to do so. Such an order is valid if reached after majority vote of the members of the body, not including the member whose recusal is sought, based on competent evidence.

(Ord. 10 §1, 2009)

### **Sec. 2-4-70. Use of public office or confidential information.**

No Town Councilmember, employee or appointee to a Town board, commission, task force or similar body shall use his or her public office or position, or disclose or use confidential information obtained as a result of holding his or her public office or position, to obtain financial gain, whether for personal gain, gain for his or her relative, gain of any property or entity in which the official or employee has a substantial interest, or gain for any person or for any entity with whom the official or employee is negotiating for or has any arrangement concerning prospective employment. However, a Town Councilmember, employee or appointee to a Town board, commission or task force may provide services to the Town for compensation, provided that the services are provided pursuant to an administrative policy established for the purpose of the fair distribution of Town contracts and employment.

### **Sec. 2-4-80. Duty to maintain confidential information.**

- (a) No Town Councilmember or appointee to a Town board, commission, task force or similar body shall disclose confidential information without the permission of the Town Council or similar body, when the confidentiality privilege lawfully belongs to the body as a whole. The sanction for a member of the Town Council, board, commission, task force or similar body shall be censure of the body, reached by a majority vote of the body, not including the member charged with disclosing such confidential information.
- (b) No Town employee shall disclose confidential information, obtained as a result of holding his or her public office or position, unless the employee has first received approval by the Town Manager or the Town Attorney.

(Prior code 2-3-5; Ord. 4 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 2-4-90. Gifts to officials and employees.**

- (a) Gifts prohibited. No Town Councilmember, appointee to a Town board, commission, task force or similar body, Town employee or relative of such employee or official shall accept anything of value, including without limitation a gift, favor or promise of future employment if:
- (1) The official or employee is in a position to take official action with regard to the donor; or
  - (2) The Town has an existing, ongoing or pending contract, business or regulatory relationship with the donor.
- (b) Exceptions and items not considered gifts. The following shall not be considered gifts for purposes of this Section, and it shall not be a violation of this Article for a person to accept the same:
- (1) Campaign contributions as permitted by law.
  - (2) An unsolicited, occasional nonpecuniary gift of a maximum amount of fifty dollars (\$50.00) or less in value. The maximum amount will be adjusted on January 1, 2005, and annually thereafter to reflect changes in the United States Bureau of Labor Statistics Consumer Price Index for the Denver-Boulder Consolidated Metropolitan Statistical Area for All Urban Consumers, All Goods, or its successor index.

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- (3) A gift from a relative.
  - (4) An award, publicly presented, in recognition of public service.
  - (5) Reasonable expenses paid by other governments or governmentally related organizations for attendance at a convention, fact-finding mission or trip, or other meeting, if the person is scheduled to deliver a speech, make a presentation, participate in a panel or represent the Town.
  - (6) Items which are similarly available to all employees of the Town or to the general public on the same terms and conditions.

(Prior code 2-3-6; Ord. 4 §1, 2004)

### **Sec. 2-4-100. Prior and subsequent employment.**

- (a) Prior employment. No person shall be disqualified from service with the Town as an official or employee solely because of his or her prior employment. Officials and employees shall not take official action with respect to their former employers for a period of six (6) months from the date of termination of the prior employment.
- (b) Disclosure by Town Councilmembers. Members of the Town Council shall report to the Town Manager any change in their employment status that could give rise to a conflict of interest under this Article.
- (c) Activities that occur after termination of employment or office. No former official or employee shall seek or obtain employment concerning matters upon which he or she took official action during his or her service with the Town for six (6) months following termination of office or employment. This provision may be waived by the Town Council or the Town Manager.
- (d) Appearance and participation after termination. No former official or employee shall appear before, or participate in, a Town board, commission, task force or similar body on which he or she was a member or served directly as an employee concerning any matter or on which he or she took official action during his or her service with the Town for twelve (12) months following termination of office or employment. This prohibition may be waived by the Town Council by appointment or vote, or by an order of a body having jurisdiction thereover.
- (e) Participation in litigation after termination: No former official shall engage in any action or litigation in which the Town is involved on behalf of any other person or entity, if the action or litigation involves a matter upon which the person took official action during his or her service with the Town for twelve (12) months following termination of service with the Town.

(Prior code 2-3-7; Ord. 4 §1, 2004)

### **Sec. 2-4-110. Employment of relatives.**

No official or employee shall appoint, hire or advocate the appointment or hiring by the Town of any person who is his or her relative. In the event that an employee is concerned that the employee's decision to appoint, hire or advocate the appointment or hiring by the Town of a person who is the employee's relative may cause an appearance of violating this Section, the employee may request that the Town Manager make such decision on the employee's behalf.

### **Sec. 2-4-120. Voting on annual budget resolution.**

Nothing in this Article shall prohibit a Town Councilmember from voting on the resolution adopting the annual fiscal year budget, regardless of whether or not such Town Councilmember may otherwise have a conflict

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of interest with respect to a line item contained in that budget, such Town Councilmember's right to vote on the resolution adopting the annual fiscal year budget being expressly permitted hereunder.

### **Sec. 2-4-130. Enforcement.**

- (a) Violations prohibited. No person shall violate the requirements of this Article.
- (b) Complaints. A complaint alleging a violation of this Article may be initiated by any of the following:
  - (1) Complaints initiated by Town Manager: The Town Manager may initiate an investigation of any Town employee, other than an employee directly reporting to the Town Council, if facts are alleged to the Town Manager in any form that, if true, would constitute a violation of the provisions of this Article.
  - (2) Complaints initiated by citizen: A citizen of the Town may initiate an investigation of any Town Councilmember, employee or appointee to a Town board, commission, task force or similar body by filing a sworn statement with the Town Clerk setting forth facts which, if true, would constitute a violation of a provision of this Article.
  - (3) Complaints initiated by Town Council: The Town Council may initiate an investigation of any of its employees, and of any Town Councilmember or appointee to a Town board, commission, task force or similar body, if facts are alleged to the Town Council that, if true, would constitute a violation of the provisions of this Article.
- (c) Investigation of complaint. The Town Manager (for Town employees) or the Town Council (for all others) may appoint the Town Attorney or a special counsel to conduct an investigation regarding a violation of this Article. The Town Attorney may request that the Town Council or the Town Manager appoint special counsel to investigate and prosecute any case that may cause the Town Attorney to have a conflict of interest may cause an appearance of impropriety under the provisions of this Article or may violate any rule regarding professional responsibility.
- (d) Response to all complaints required. A public official or body, or appointee thereof, conducting an investigation pursuant to Subsection (b) above shall prepare written findings of fact and conclusions of law in response to all complaints that shall be made available to the public upon completion of the investigation. The response may include a finding that the complaint has no merit, is frivolous, is groundless or is brought for purposes of harassment.
- (e) Limitations. No action may be taken on any complaint that is filed later than twelve (12) months after a violation of this Article is alleged to have occurred.

(Prior code 2-3-10; Ord. 4 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 2-4-140. Sanctions and remedies for violation.**

- (a) Contracts voidable. If a contract or sale is consummated contrary to the provisions of Section 2-4-40 above, the Town Council may void the contract or sale.
- (b) Removal by Town Council. The Town Council may remove any member of a Town board, commission, task force or similar body that it finds has willfully violated any provision of this Article, or the Town Manager; or the Town Council may direct the Town Manager to remove any employees that it finds has willfully violated any provision of this Article.
- (c) Sanction recommendations. If the party conducting an investigation pursuant to Section 2-4-130 finds that a Town Councilmember, an appointee to a Town board, commission, task force or similar body, or an employee has violated any provision of this Article, the investigator shall provide its findings and

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recommendations to the Town Manager or Town Council, as appropriate, who or which in turn may take any of the following actions:

- (1) In the case of a Town Councilmember, a motion of censure;
- (2) In the case of a Town employee, a motion of censure or a recommendation that the employee's appointing authority consider disciplining or discharging the employee; or
- (3) Removal as provided in Subsection (b) above.

As an alternative or in addition to the sanctions imposed herein, the Town Council may resolve that any person or entity causing, inducing or soliciting a public official or public employee to violate this Article may not be awarded any Town contract, grant, loan or any other thing of value for a period of twelve (12) months or that any such contract, grant, loan or thing of value maybe terminated, repaid or forfeited.

- (d) Civil remedies. Any person affected by a Town transaction may commence a civil action in the District Court in and for the County of Gunnison for equitable relief to enforce the provisions of this Article upon a showing of willful violation of any provision of this Article. Before filing such an action, the person shall present the claim to the Town Attorney to investigate in accordance with Subsection 2-4-130(c) above. The Town Attorney or appointed special counsel shall have sixty (60) days to act thereon. No civil action in district court pursuant to this Subsection may be commenced later than twelve (12) months after a violation of this Article is alleged to have occurred.
- (e) Defense: It shall be a defense to any charge of a violation of this Article if the Town councilmember, employee or appointee to a Town board, commission, task force or similar body obtained an advisory opinion pursuant to Section 2-4-150 below and was acting in accordance with the advice provided thereby.

(Prior code 2-3-11; Ord. 4 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 2-4-150. Advisory opinions and outside counsel appointment.**

- (a) Advisory opinions. Any Town Councilmember, employee or appointee to a Town board, commission, task force or similar body may request advisory opinion from the Town Attorney whenever a question arises as to the applicability of this Article to a particular situation.
- (b) Appointment of outside counsel. If a significant controversy arises under this Article, the Town Attorney may appoint a neutral outside counsel to assist in resolving the issue.

(Prior code 2-3-12; Ord. 4 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 2-4-160. Exemptions.**

Nothing in this Article shall be deemed to apply to a Town employee or appointee to a Town board, commission, task force or similar body who appears before any such body to urge action on a policy or issue of a general civic nature.

## **ARTICLE 5 Municipal Court**

### ***Division 1 Administration***

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### **Sec. 2-5-10. Creation of Municipal Court.**

There is hereby created and established a Municipal Court in and for the Town, pursuant to and governed by the provisions of state statutes. The Municipal Court is hereby designated as a "qualified municipal court of record." Pursuant to this designation, a verbatim record of the proceedings and evidence at trials of the Municipal Court shall be kept by electronic device of sufficient quality for the preparation of full and accurate transcripts from such recordings.

### **Sec. 2-5-20. Original jurisdiction.**

The Municipal Court shall have original jurisdiction of all cases arising under the provisions of this Code and ordinances of the Town, with full power to punish violators thereof by the imposition of such fines and penalties as are prescribed in this Code or by ordinance. USE AT BEGINNING OF EACH TITLE:

### **Sec. 2-5-30. Qualification of Judge.**

The Town Council hereby requires that any person serving as Municipal Judge or Deputy Municipal Judge shall be admitted to the Colorado Bar and be currently licensed to practice law in the State.

### **Sec. 2-5-40. Oath of office.**

Before entering upon the duties of his or her office, the Municipal Judge shall take an oath of affirmation that he or she will support the Constitution of the United States, the Constitution of the State and the laws of the Town, and will faithfully perform the duties of his or her office.

### **Sec. 2-5-50. Court Clerk.**

- (a) The Municipal Judge may appoint an individual to serve as Court Clerk, whose duties shall be those assigned by the Municipal Judge. The compensation of the Court Clerk shall be an annual salary set by the Town Council, and shall be payable as are other salaries to municipal employees.
- (b) The Court Clerk shall file monthly reports with the Town Clerk of all monies collected by him or her.

(Prior code 12-1-4; Ord. 4 §1, 2009)

### **Sec. 2-5-60. Sessions generally.**

There shall be regular sessions of the Municipal Court for the trial of cases as may be fixed by the Municipal Judge. The Municipal Judge may hold special sessions of court at any time, including Sundays, holidays and evenings.

### **Sec. 2-5-70. Appropriations.**

The Town Council shall, on an annual basis, budget and appropriate such monies as may be necessary for the proper operation of the Municipal Court.

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### **Sec. 2-5-80. Rules of procedure.**

In addition to other powers, the Municipal Judge shall have full power and authority to make and adopt rules and regulations for conducting the business of the Municipal Court, consistent with the Municipal Court Rules of Procedure as promulgated by the Colorado Supreme Court.

### **Sec. 2-5-90. Contempt power.**

- (a) When the Court finds any person to be in contempt, the Court may vindicate its dignity by imposing on the contemnor a fine not to exceed one thousand dollars (\$1,000.00) and imprisonment not to exceed a term of one (1) year.
- (b) In cases of indirect contempt, the alleged contemnor shall have all the rights, privileges, safeguards and protections of a defendant in a petty offense case, including but not limited to a formal written complaint, arraignment and trial by jury.

(Ord. 4 §1, 2009)

### **Sec. 2-5-100. Violations of bail bond conditions.**

- (a) A person who is released on bail bond of whatever kind, and either before, during, or after release is accused by compliant, information, indictment, or the filing of a delinquency petition of any violation of the Town Code arising from the conduct for which he was arrested or received a summons, commits a misdemeanor if he knowingly fails to appear for trial or other proceedings in the case in which the bail bond was filed or if he knowingly violates the conditions of the bail bond.
- (b) A person who is convicted of violating bail bond conditions shall be subject to a fine not to exceed one thousand dollars (\$1,000.00) and imprisonment not to exceed a term of one (1) year, or such other penalty as may be imposed under Section 1-4-20 of the Town Code.

( Ord. No. 26 , § 1, 10-19-2020)

## ***Division 2 Procedures***

### **Sec. 2-5-210. Deferred judgment.**

- (a) In any case in which the offender has entered a plea of guilty, the Municipal Court has the power, with the consent of the offender and the Town Marshal or Town Attorney, to continue the case for a period not to exceed one (1) year from the date of entry of the plea for the purpose of entering judgment and sentence upon such plea, except that such period may be extended for an additional time of up to six (6) months if the failure to pay restitution is the sole condition of the deferred sentence which has not been fulfilled because of inability to pay, and the offender has shown a future ability to pay.
- (b) If an offender has received a deferred judgment and violates one (1) or more of the conditions of the deferred judgment, the Municipal Court shall enter judgment and impose sentence upon the offender's original plea of guilty. Whether a breach of conditions has occurred shall be determined by the Municipal Court without a jury upon application of the Town Attorney and upon written notice of hearing of not less than ten (10) days to the offender or his or her attorney of record.

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(c) Whenever a deferred judgment arrangement is entered into as set forth above, the offender shall pay the Town additional costs as stated in the annual fee schedule approved by the Town Council prior to the Municipal Court being requested to approve the arrangement or stipulation.

(Prior code 9-10-2; Ord. 17 §1, 1992; Ord. 15 §3, 1997; Ord. 10 §1, 1998; Ord. 1 §1, 2000; Ord. 4 §1, 2009)

### **Sec. 2-5-220. Failure to pay judgment; confinement.**

Upon the rendition of judgment against any defendant for violating any ordinance of the Town, the Municipal Judge shall make an order, and enter the same upon his or her docket, that if the defendant neglects or refuses to satisfy such judgment and cost of suit, he or she shall be confined in jail or such other place as the Town Manager may designate. Execution may be issued immediately on the rendition of judgment and placed in the hands of the Town Marshal for collection.

### **Sec. 2-5-230. Failure to pay judgment; labor.**

Every person against whom any penalty, fine or forfeiture shall be recovered under this Code, who refuses or neglects to pay the same, when demanded upon execution, shall be committed to the Town jail or such other place as the Town Manager may designate. Such person shall labor at such work as his or her strength will permit until said fine, penalty or forfeiture and all costs thereon are fully paid, to be allowed at the rate of fair amount per day for each day's work performed under the direction of the Town Manager or Town Marshal; provided that no such person shall be required to work more than eight (8) hours per day; and provided further, that no such imprisonment shall exceed ninety (90) days for any one (1) offense.

### **Sec. 2-5-240. Report of work performed.**

The Town Marshal shall, as often as required, make a report to the Town Council of the number of days work performed in the pursuance of this Division, and by whom performed.

### **Sec. 2-5-250. Confinement prior to trial.**

A party in custody who cannot be tried on account of the absence of witnesses or other cause, and who cannot give bail for his or her appearances, may be confined in jail or other place of confinement provided for the purpose, as set forth by law.

### **Sec. 2-5-260. Failure to answer summons.**

When a defendant fails to appear at the time set for the trial, the Municipal Judge shall hear and examine the witnesses offered on the part of the Town, and shall render judgment by default for such sum as the Municipal Judge may deem proper.

### **Sec. 2-5-270. Town officer as competent witness.**

In all prosecutions instituted by the Town, any officer of the Town shall be a competent witness of the Town.

### **Sec. 2-5-280. Payment of costs.**

In all prosecutions for fine or penalty, when the defendant is acquitted, the informer or prosecutor may, in the discretion of the Municipal Judge, be adjudged to pay the costs if it appears to the satisfaction of the Municipal Judge that the prosecution was instituted vexatiously or without reasonable cause.

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## **Sec. 2-5-290. Complaint by Town Marshal.**

Whenever any credible person gives information to the Town Marshal that any person has violated any ordinance of the Town, it shall be the duty of the Town Marshal thereupon to make a complaint before the Municipal Judge for a violation of such ordinance. The procedure to be followed by the Municipal Judge for such complaint and proceedings shall be the same as is prescribed for other cases in this Article.

## **Sec. 2-5-300. Basis of complaints.**

Any complaint made for the violation of an ordinance of the Town may be made upon information and belief of any person.

# **ARTICLE 6 Marshal's Department**

## **Sec. 2-6-10. Creation; composition.**

There is hereby established a Marshal's Department for the Town, which shall consist of one (1) Town Marshal and such police officers as may be appointed by the Town Manager from time to time as hereinafter provided, for the safety and good order of the Town.

## **Sec. 2-6-20. Departmental regulations.**

The Marshal's Department shall be operated and managed in accordance with such departmental rules and regulations as may from time to time be adopted by the Town Council.

## **Sec. 2-6-30. Duties of Town Marshal.**

It shall be the duty of the Town Marshal to:

- (1) See that the ordinances of the Town and the laws of the State are duly enforced and the rules and regulations of the Marshal's Department obeyed, and perform such duties as may be required by the Town Council.
- (2) Direct the operations of the Marshal's Department, subject to the rules and regulations thereof.
- (3) Render such accounts of the Marshal's Department, his or her duties and receipts as may be required by the Town Council, and keep the records of his or her office open to inspection by the Town Council at any time.

## **Sec. 2-6-40. Deputy marshals.**

The Town Manager is hereby authorized to appoint persons of suitable character as police officers of the Town, to act as deputies under the direction of the Town Marshal, and to pay them for their services on behalf of the Town.

## **Sec. 2-6-50. Special police officers.**

In case of emergency, the Town Manager is hereby authorized to appoint persons of suitable character as special police officers, and may at any time appoint any officer of the Town as a special police officer. Such police

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officers shall possess the same powers as police officers on the regular force, shall obey the rules and regulations of the Marshal's Department and shall act under the directions of the Town Marshal.

### **Sec. 2-6-60. Duties of police officers.**

All members of the Marshal's Department shall have power and duties as follows:

- (1) They shall perform all duties required by the Town Marshal.
- (2) They shall be the enforcement officers of the Town and shall see that the provisions of the ordinances of the Town and the laws of the State are complied with.
- (3) They shall execute and return all writs and processes directed to them by the Municipal Judge in any case arising under a Town ordinance, and they may serve the same in any part of the County.

### **Sec. 2-6-70. Arrest power.**

- (a) The Marshal and police officers, as conservators of the peace, shall have the power to arrest a person when:
  - (1) Such police officer has a warrant commanding that such person be arrested;
  - (2) Any crime has been or is being committed by such person in his or her presence; or
  - (3) Such police officer has probable cause to believe that an offense was committed by the person to be arrested.
- (b) Such police officers shall have all powers granted under the laws of the State to perform their duties for the Town.

(Prior code 7-1-2; Ord. 4 §1, 2009)

### **Sec. 2-6-80. Oath of officers.**

Before entering upon the duties of his or her office, the Town Marshal and each police officer shall take and subscribe an oath that he or she will support the Constitution of the United States, the Constitution and laws of the State and the ordinances of the Town, and that he or she will faithfully perform the duties of the office upon which he or she is about to enter.

### **Sec. 2-6-90. Parking control officers.**

The Town Manager is hereby authorized to appoint persons of suitable character as parking control officers of the Town, to act under the direction of the Town Marshal, and to pay them for their services on behalf of the Town. Such parking control officers shall possess only the power to issue citations for violations of parking ordinances of the Town and other duties with respect to such power.

### **Sec. 2-6-100. Emergency evacuation policy.**

When a situation dictates that evacuation of the citizens, residents and visitors of the Town may be necessary to protect lives, even though the real danger may be several hours away, the Town Marshal, under the direction of the Town Manager, will issue an order for evacuation. When practical, the Town Marshal shall confer with the Mayor and Town Manager prior to issuing the order.

## **ARTICLE 7 Planning Commission**

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## **Sec. 2-7-10. Creation.**

Pursuant to state law, there is hereby created a Planning Commission for the Town. The Town Council shall serve as the Planning Commission. The Planning Commission shall have all of the authority, power and responsibilities granted and required of it as set forth in this Code and state law, and shall hereinafter be referred to as the "Planning Commission." (Prior code 15-1-1; Ord. 29 §1, 1995; Ord. 4 §1, 2009)

## **Sec. 2-7-20. Members; terms.**

The Planning Commission shall be comprised of one (1) Chair, who shall be the Mayor, one (1) Chair who shall be the Mayor Pro Tem, and five (5) members who shall be members of the Town Council. The terms of the Chair, Vice Chair and members of the Planning Commission shall coincide with the terms of the serving Town Council members; and their removal, and the filling of any vacancies shall be the same as set forth in Section 3.8 of the Home Rule Charter.

## **Sec. 2-7-30. Purpose.**

The Planning Commission is created for the following purposes:

- (1) To prepare and maintain, subject to periodic revision as necessary, a Master Plan as described by state statutes.
- (2) To implement the provisions of Chapters 16 and 17 of this Code, and to perform all functions and powers referred to in said chapters where reference is made.
- (3) To study and recommend to the Town Council amendments to the Zoning Map of the Town.
- (4) To study and recommend appropriate zoning classifications for all annexations to the Town.
- (5) To exchange information with the various governmental agencies charged with planning and zoning responsibilities and with the Board of Zoning and Architectural Review.
- (6) To have all other duties and powers incidental to the above and any and all powers and duties set out by state statute, except that nothing herein shall permit the Planning Commission to make amendments or changes in the zoning of the Town, such powers expressly being reserved by the Town Council.

## **Sec. 2-7-40. Meetings; quorum.**

Meetings of the Planning Commission shall be called by the Chair or, in his or her absence, by the Vice Chair, as appropriate, given the business to be transacted by the Planning Commission. Four (4) members of the Planning Commission shall be a quorum for the transaction of business. The meetings of the Planning Commission shall be open to the public, except as otherwise allowed by the Colorado Sunshine Act of 1972, as amended; and it shall take official action only at a public meeting by resolution or motion adopted by the affirmative vote of at least four (4) members of the Planning Commission, unless otherwise required by state law.

## **Sec. 2-7-50. Record of proceedings.**

Planning Commission meetings shall be recorded for the purpose of creating a record thereof, and the Town Clerk shall be present at all meetings and shall provide written minutes of the official actions taken by the Planning Commission, which minutes shall be open for inspection by any person at reasonable times.

## **ARTICLE 8 Creative District and Public Art Commission<sup>1</sup>**

### **Sec. 2-8-10. Creation.**

There is hereby established pursuant to C.R.S. § 24-48.5-314, a Crested Butte Creative District (CBCD).

( Ord. No. 36 , § 1, 10-7-2019)

### **Sec. 2-8-20. Public Art Commission.**

A Public Art Commission is hereby established for the CBCD that shall undertake the following tasks and responsibilities:

- (1) Maintain, implement and update the Arts in Public Places Policy (AIPP) for the Town of Crested Butte;
- (2) Approve public art projects, subject to authorization by the Town Council of the expenditure, in an amount not to exceed two percent (2%) of the total project cost of capital improvement projects located within the CBCD or Town Parks;
- (3) Accept and place public art donations;
- (4) Oversee public art maintenance and de-commissioning;
- (5) Agree to public art proposals to be located on Town Property subject to necessary agreements and authorization by Council; and
- (6) Solicit ideas and feedback from the community on public art and creative placemaking.

( Ord. No. 36 , § 1, 10-7-2019)

### **Sec. 2-8-30. Public Art Commission members and terms.**

The Public Art Commission shall be composed as follows:

- (1) The Public Art Commission shall include seven (7) members appointed by Town Council. One (1) member shall be an employee or board member of the Center for the Arts. Six (6) members shall be appointed from the community at large having an active interest in public art, preserving the sense of place of the Town's public spaces, and in the mission of the CBCD. In appointing members, the Town Council shall seek to appoint members with past experience in art jurying and shall strive for representation of diverse community interests. A Town Council member shall serve as an ex officio member and shall be the Town's liaison to the Public Art Commission. The Town Council member shall only vote in the event of a tie.
- (2) Members shall serve without compensation, except for those expenses incurred in connection with the work of the Public Art Commission as approved by the Town Manager or their designee.

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<sup>1</sup>Ord. No. 36 , § 1, adopted October 7, 2019, repealed the former Art. 8, §§ 2-8-10—2-8-80, and enacted a new Art. 8 as set out herein. The former Art. 8 pertained to Creative District and Commission and derived from Ord. No. 14, § 1, 12-21-2015; Ord. No. 12 , § 1, 5-15-2017.

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- (3) Terms of the members shall be two (2) years and shall be staggered so that the initial terms of three (3) members shall expire on January 1, 2021 and the initial terms of four (4) members shall expire on January 1, 2022, provided that the initial appointment occurs in 2020 (1<sup>st</sup> year of operation). In the event of death, resignation or removal of any member, his or her successor shall be appointed for the duration of the unexpired term.

( Ord. No. 36 , § 1, 10-7-2019)

### **Sec. 2-8-40. Officers.**

- (1) Chairperson. The Public Art Commission shall select one (1) of its members to serve as chairperson each year. The chairperson shall preside at meetings of the Commission, arrange for production and presentation of an annual report to the Town Council and meet with the staff liaison concerning the implementation of the Arts in Public Places.
- (2) Vice Chairperson. The Commission shall select one (1) of its members as vice-chairperson who shall assume the duties of the chairperson in his or her absence.
- (3) Secretary. The Town staff liaison shall serve as secretary who shall keep the minutes of Commission meetings and make the same available for public inspection at Town Hall.

( Ord. No. 36 , § 1, 10-7-2019)

### **Sec. 2-8-50. Meetings and voting.**

- (1) The Public Art Commission shall meet at least four (4) times per year and may meet more often upon request of the chairperson or a majority of the members.
- (2) Notice of each meeting of the Public Art Commission shall be given no less than five (5) days prior to the date of the meeting to each member, either personally, by mail or E-mail. The Town Clerk shall post notice of all meetings in the same manner as posting Town Council meetings.
- (3) Meetings shall be held at Town Hall, unless the subject of the meeting demands a different venue, in which case notice of the meeting shall contain such alternate location.
- (4) Four (4) members of the Public Art Commission shall constitute a quorum. In the absence of a quorum at any meeting, the members may continue the meeting to a date certain up to thirty (30) days without further notice.
- (5) Meetings and records of the Public Art Commission are governed by the Colorado Open Records Act and the Colorado Open Meetings Act.

( Ord. No. 36 , § 1, 10-7-2019)

### **Sec. 2-8-60. Record of proceedings.**

- (1) Public Art Commission meetings shall have action minutes taken on all voting decisions of the members that shall be available for public inspection at the Town Clerk's office.
- (2) Decisions by the Public Art Commission shall be in writing and forwarded to the Town Council.

( Ord. No. 36 , § 1, 10-7-2019)

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### **Sec. 2-8-80. Action by Town Council.**

Following the decision by the Public Art Commission and review by the Town Attorney, the Town Manager shall place on the agenda of the Town Council for approval all necessary funding requests, and agreements, leases, or other documentation needed to carry out the decisions of the Public Art Commission.

( Ord. No. 36 , § 1, 10-7-2019)

## **ARTICLE 9 Emergency Powers**

### **Sec. 2-9-10. Disaster and emergency declaration.**

- (a) The Town Council has the power to declare in a regular or emergency meeting that a state of emergency exists and issue an order if an event has occurred or the threat of an event is imminent that would threaten public health, safety, and welfare and that requires immediate response by the Town. The Town Council shall direct the Town Manager to publish the declaration and order, send a copy to the Gunnison County Board of Health and other appropriate emergency response agencies, and disseminate it to the public.
- (b) A state of emergency remains in effect until the Mayor or designee, in consultation with the Town Manager, declares that the threat of danger has passed or that the emergency conditions no longer exist. The Town Council may terminate a state of emergency at any time. The Town Manager shall immediately issue a notice affecting the termination of the state of emergency.

( Ord. No. 7 , § 1, 3-13-2020)

### **Sec. 2-9-20. Emergency powers.**

- (a) The issuance of a declaration of emergency empowers the Town Manager to exercise emergency powers permitted by state and local law. The Town Council maintains all of its normal powers throughout the emergency period and will convene either in person or electronically to perform its normal business and legislative powers when and if the situation demands.
- (b) In addition to any other powers granted by the State of Colorado during a state of emergency, the Town Manager may promulgate regulations or issue orders as he or she deems necessary to protect life and property, preserve critical resources, or otherwise implement the Town's Emergency Response Plan. These regulations or orders may include provisions to accomplish the following:
  - (1) Suspend the provisions of the Municipal Code that prescribe procedures and timeframes for conduct of Town business and public hearings, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency or would otherwise not be possible because of concerns regarding public health, safety and welfare.
  - (2) Suspend any Council meetings, meetings of the Board of Zoning and Architectural Review, public hearings, and related municipal functions.
  - (3) Delay accepting or processing applications for permits, licenses, and other approvals.
  - (4) Control the size of any public gatherings or events in the Town to less than any size limit imposed by Gunnison County pursuant to the County emergency powers.
  - (5) Temporarily reduce the occupancy limit for any place of business.

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- (6) Transfer the direction, personnel, or functions of Town departments for the purpose of performing or facilitating emergency services.
  - (7) Subject to any applicable legal requirements to provide compensation, commandeer or utilize any private property the Town Manager finds necessary to cope with the emergency.
  - (8) Direct evacuation efforts of persons from any stricken or threatened area within the Town if the Town Manager deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery measures.
  - (9) Prescribe route, mode of transportation, and destination in connection with evacuation.
  - (10) Control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises therein.
  - (11) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, or combustibles within the Town.
  - (12) Make provisions for the availability and use of temporary emergency housing.
  - (13) Waive all provisions for competitive bidding and direct the finance director to purchase necessary supplies in the open market.
  - (14) Exercise all powers permitted by Town Charter and state law to require emergency services of any Town officer or employee and command the aid of as many citizens of the Town as he or she deems necessary in the execution of his or her duties.

( Ord. No. 7 , § 1, 3-13-2020)

## CHAPTER 4

### Revenue and Finance

#### ARTICLE 1 General and Special Funds

##### **Sec. 4-1-10. Custody and management of funds.**

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Town Treasurer. The Town Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the Town shall be invested or deposited by the Town Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the Town Council may transfer out of any fund any amount at any time to be used for such purpose as the Town Council may direct.

##### **Sec. 4-1-20. General Fund created.**

There is hereby created a fund, to be known as the *General Fund*, which shall consist of the following:

- (1) All cash balances of the Town not specifically belonging to any existing special fund of the Town.
- (2) All fixed assets of the Town (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the Town.

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### **Sec. 4-1-30. Capital Fund created.**

- (a) There is hereby created a fund, to be known as the *Capital Fund*, for land acquisition and capital improvements. The revenues from a tax levy for capital outlay purposes shall be recorded in the capital reserve fund. Such revenues may be supplemented by gifts and donations, and shall be made for the following purposes:
  - (1) Acquisition of land and construction of structures thereon, or acquisition of land with existing structures thereon and equipment and furnishings therein.
  - (2) Construction of additions to existing structures;
  - (3) Procurement of equipment for new buildings and additions to existing buildings, and installation thereof.
  - (4) Alterations and improvements to existing structures where the total estimated cost of such projects for labor and materials is in excess of five thousand dollars (\$5,000.00).
  - (5) Acquisition of vehicles or other equipment, the estimated unit cost of which, including any necessary installation, is in excess of five thousand dollars (\$5,000.00).
  - (6) Installment purchase agreements of lease agreements with an option to purchase for a period not to exceed thirty (30) years under which the Town becomes entitled to the use of real property and related equipment for parks, playgrounds and other public property.
  - (7) Annual maintenance costs and expenditures incurred on street, park and building maintenance.
  - (8) Any other purposes allowed by law.
- (b) Expenditures from the fund, other than for installment purchase agreements with an option to purchase, as provided for in Paragraph (3) above, shall be authorized by a resolution adopted by the Town Council at any regular or special meeting of the Town Council. The resolution shall specifically set forth the purpose of the expenditure, the estimated total cost of the project, the location of the structure to be constructed, added to, altered or repaired, a description of any equipment to be purchased, and where such equipment will be installed.
- (c) Any balance remaining upon the completion of any authorized project may be encumbered for future projects which are authorized as provided in Paragraph (a)(3) above.

(Prior code 4-1-1; Ord. 22 §1, 2007; Ord. 4 §1, 2009)

### **Sec. 4-1-40. Conservation Trust Fund created.**

There is hereby created a special fund, to be known as the *Conservation Trust Fund*, and the funds therein shall be used only for the purposes allowed by law.

### **Sec. 4-1-50. Street and Alley Fund created.**

- (a) There is hereby established a special fund to be known as the *Street and Alley Fund*, for the purpose of improving and maintaining, on a long-term basis, the streets and alleys within the Town. Such fund shall be kept separately, used only for street and alley improvement and maintenance, and shall use as revenues the revenues generated by the street and alley tax as described hereafter, as well as any other revenues that the Town Council may distribute into said fund from time to time.

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- (b) There is hereby levied a property tax levy for every year in the amount of sixteen (16) mills on all taxable property within the Town, for the purpose of funding the Street and Alley Fund. The revenues generated by said tax shall be used only for the Street and Alley Fund and its designated purposes. Said property tax levy shall be over and above, and in addition to, any other property tax levy which may be set by the Town Council from year to year. In the event that the State's formula for setting assessed valuation is changed, the property tax levy hereby set shall be adjusted in such fashion to yield the same revenues as prior to such formula change, excepting any increase of revenues resulting from the introduction of new taxable property.

(Prior code 4-6-1, 4-6-2; Ord. 4 §1, 2009)

#### **Sec. 4-1-60. Tax Funds created.**

- (a) There is hereby created a special fund, to be known as the *Ordinance No. 15, Series 1979 Tax Fund*, and the funds therein shall be used only for the purposes allowed in Section 4-4-90(a) of this Chapter and allowed by law.
- (b) There is hereby created a special fund, to be known as the *Ordinance No. 12, Series 1991 Tax Fund*, and the funds therein shall be used only for the purposes allowed in Section 4-4-90(b) of this Chapter and allowed by law.

(Ord. 4 §1, 2009)

#### **Sec. 4-1-70. Affordable Housing Fund created.**

- (a) There is hereby created a fund, to be known as the Affordable Housing Fund for the purpose of creating, improving and maintaining workforce and affordable housing. The revenues from the vacation rental excise tax, and payments made in lieu of providing Resident Occupied Affordable Housing shall be recorded in the affordable housing fund. Such revenues may be supplemented by gifts and donations. Such fund shall be kept separately, and used only for the following purposes supporting and directly related to affordable or workforce housing:
- (1) Construction of new deed restricted units for rental and homeownership;
  - (2) Construction and maintenance of rental housing for municipal employees;
  - (3) Administration of deed restrictions, affordable housing programs and rental property management;
  - (4) Land acquisition;
  - (5) Down payment assistance;
  - (6) Construction of infrastructure to serve new affordable housing units;
  - (7) Contracts for affordable housing services;
  - (8) Legal fees;
  - (9) Supporting the Gunnison Valley Regional Housing Authority or subsequent housing authorities in the County;
  - (10) Acquisition, repair and restoration of units;
  - (11) The deed-restriction of existing units;
  - (12) Leveraging of grant funds or servicing of debt;
  - (13) Education and training for homeownership and related topics; and

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(14) Any other purposes allowed by law.

( Ord. No. 35 , § 1, 12-4-2017)

## **ARTICLE 2 Sales Tax**

### **Sec. 4-2-10. Short title.**

This Article shall be known and cited as the *Town of Crested Butte Sales Tax Ordinance*. (Ord. 26 §2, 2003)

### **Sec. 4-2-20. Purpose.**

The purpose of this Article is to impose a sales tax on all retail sales, certain leases of tangible property and the furnishing of certain services as hereafter defined, within the Town, and to provide to the Town the authority and administrative mechanisms to collect and administer said sales taxes. All sales, leases and purchases of tangible personal property and the furnishing of certain services, as defined in this Article, are taxable unless specifically exempted in this Article or by other statutory authority. The sales tax imposed by this Article applies to each transfer of ownership, possession and control of such property, and may occur more than once during the life of the property.

### **Sec. 4-2-30. Definitions.**

The following words and phrases, as used in this Article, shall have the following meanings:

*Agricultural producer* means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.

*Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

*Automotive vehicle* means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive Vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

*Business* means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

*Candy* means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

*Carrier access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

*Charitable organization* means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and

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voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

*City or Town* means the municipality of the Town of Crested Butte.

*Coins* means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

*Coin operated device* means any device operated by coins or currency or any substitute therefor.

*Collection costs* shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distress, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

*Commercial packaging materials* means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial packaging materials does not include commercial shipping materials.

*Commercial shipping materials* means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial shipping materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

*Community organization* means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

*Construction equipment* means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

*Construction materials* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.

*Consumer* means any person in the Town who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the Town.

*Contract auditor* means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

*Contractor* means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.

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*Cover charge* means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

*Data processing equipment* means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

*Digital product* means an electronic product including, but not limited to: (1) "digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings." (2) "digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) "digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) "digital books" which means works that are generally recognized in the ordinary and usual sense as "books".

*Distribution* means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.

*Dual residency* means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the Town. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the Town for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the Town, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.

*Dwelling unit* means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.

*Economic nexus* means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:

- (A) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or
- (B) In the current calendar year, ninety (90) days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

*Engaged in business in the Town* means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; (5) retailer or vendor in

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the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve-month period; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Section 4-2-30 of the Code.

*Factory built housing* means a manufactured home or modular home.

*Finance Director* means the Finance Director of (name of municipality) or such other person designated by the municipality; Finance Director shall also include such person's designee.

*Food for home consumption* means food for domestic home consumption as defined in 7 U.S.C. Sec. 2012(k)(2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. Sec. 2012(t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

*Garage sales* means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

*Gross sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

*Internet access services* means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

*Internet subscription service* means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.

*License* means a Town of Crested Butte sales and/or use tax license.

*Linen services* means services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

*Machinery* means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

*Manufactured home* means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

*Manufacturing* means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

*Marketplace* means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

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*Marketplace facilitator:*

- (A) Means a person who:
- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
  - (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
  - (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
- (B) "Marketplace facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

*Medical marijuana* means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid "registry identification card" issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

*Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

*Modular home* means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.

*Motor fuel* means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

*Multichannel seller* means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and/or through other means.

*Newspaper* means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *Newspaper* does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

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*Online garage sales* means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

*Parent* means a parent of a student.

*Person* means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

*Photovoltaic system* means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

*Precious metal bullion* means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

*Prepress preparation material* means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

*Preprinted newspaper supplements* shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

*Prescription drugs for animals* means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

*Prescription drugs for humans* means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

*Price or purchase price* means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation

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vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

*Price or purchase price* includes:

The amount of money received or due in cash and credits.

Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.

Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.

Transportation and other charges to effect delivery of tangible personal property to the purchaser.

Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

*Price or purchase price* shall not include:

Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.

The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.

Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

*Private communications services* means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

*Purchase or sale* means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;

A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services; Performance of taxable services; or

Barter or exchange for other tangible personal property, other taxable products, or services.

The terms Purchase and Sale do not include:

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A division of partnership assets among the partners according to their interests in the partnership;

- (1) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (2) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (3) A transfer of a partnership or limited liability company interest;
- (4) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (5) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (6) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (7) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty (80) percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (8) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (8) shall constitute a sale. For the purposes of this paragraph (8), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

*Recreation services* means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.

*Renewable energy* means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

*Resident* means a person who resides or maintains one or more places of business within the Town, regardless of whether that person also resides or maintains a place of business outside of the Town.

*Retail sales* means all sales except wholesale sales.

*Retailer or vendor* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms "retailer" or "vendor" shall include, but are not limited to, any:

- (1) Auctioneer;

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- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
  - (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
  - (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; or
  - (5) Marketplace facilitator, marketplace seller, or multichannel seller.

*Retailer-Contractor* means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

*Return* means any form prescribed by the town administration for computing and reporting a total tax liability.

*Sale that benefits a Colorado School* means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

*Sales tax* means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

*School* means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

*Security system services* means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

*Soft drink* means a nonalcoholic beverage that contains natural or artificial sweeteners. "Soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

*Software program* means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes: (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer; (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS")," "mass produced" or "standardized;" (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and (4) The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

*Software as a service* means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.

*Software license fee* means a fee charged for the right to use, access, or maintain software programs.

*Software maintenance agreement* means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support.

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*Solar thermal systems* means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.

*Sound system services* means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

*Special fuel* means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

*Special sales event* means any sales event which includes more than three (3) vendors taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.

*Storage* means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the Town from any person or vendor.

*Student* means any person enrolled in a school.

*Tangible personal property* means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

*Tax* means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

*Tax deficiency or deficiency* means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

*Taxable sales* means gross sales less any exemptions and deductions specified in this Code.

*Taxable services* means services subject to tax pursuant to this Code.

*Taxpayer* means any person obligated to collect and/or pay tax under the terms of this Code.

*Telecommunications service* means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication.

*Television and entertainment services* means audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

*Therapeutic device* means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

*Toll free telecommunications service* means a telecommunications service that allows a caller to dial a number without incurring an additional charge for the call.

*Total tax liability* means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

*Transient/temporary sale* means a sale by any person who engages in a temporary business of selling and delivering goods within the Town for a period of no more than seven consecutive days.

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*Transient/temporary vendor* means any person who engages in the business of transient/temporary sales.

*Use* means the exercise, for any length of time by any person within the Town of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the Town from any person or vendor or used in the performance of a contract in the Town whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

*Use tax* means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the Town.

*Wholesale sales* means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this chapter.

*Wholesaler* means any person doing an organized wholesale or jobbing business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

#### **Sec. 4-2-40. Rate, imposition, collection and distribution of sales tax.**

- (a) Sales tax. There is hereby levied in, and shall be paid to and collected by, the Town a tax or excise upon all sales of tangible personal property and services specified in Section 4-2-60(a) in the amount of four and one-half percent (4.5%).
- (b) Imposition and collection. The tax specified herein is imposed upon the purchaser. Any seller engaged in business within the Town shall collect the tax and remit it to the Town pursuant to this Article.
- (c) Marketplace sales.
  - (A) (1) A marketplace facilitator engaged in business in the Town is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.
  - (2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under Section 4-2-30 of the Code. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
  - (3) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.
  - (4) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
    - a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or

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- b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.
  - (5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.
  - (B) Auditing. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace, as provided in Section 4-2-210 of the Town Code. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.
- (d) Distribution.
- (1) Except as specified in this Subsection, the Town shall distribute the proceeds generated from four percent (4%) of the four and one-half percent (4.5%) sales tax on a formula allocating twenty-five percent (25%) thereof to local transportation services, and allocating the remaining seventy-five percent (75%) thereof to the Town's General Fund and Capital Fund at the discretion of the Town Council, based on the projected operational and capital needs of the Town for the ensuing year. Such allocation shall occur as a part of the Town's annual budget process, subject to public hearing, and adopted by resolution on or before the final day for the certification of the ensuing year's property tax levy to the County. Sales tax revenues may also be reallocated during the budget year at the discretion of the Town Council in accordance with the Town's budget policy addressing recessionary circumstances or other unanticipated revenue shortfalls.
  - (2) Except as specified in this Subsection, the Town shall distribute proceeds from the one-half percent (0.5%) parks and recreation sales tax on a formula allocating one hundred percent (100%) thereof to parks and recreation facility maintenance and parks and recreation capital programs and trails. Allocation within such areas shall occur as a part of the Town's annual budget process, subject to public hearing, and adopted by resolution on or before the final day for the certification of the ensuing year's property tax levy to the County. Sales tax revenues may also be reallocated in such areas during the budget year at the discretion of the Town Council in accordance with the Town's budget policy addressing recessionary circumstances or other unanticipated revenue shortfalls.
- (e) Sales tax refund. The Town may provide for a rebate or refund of taxes paid hereunder to residents of the Town who, because of advanced age, disability or income status, are determined by the Town Council to be entitled to such rebate or refund under the following circumstances and conditions:
- (1) Any resident as defined in Section 4-2-30 above may, not later than April 15 of every calendar year so long as this Section is in effect, apply on such forms as shall be provided by the Finance Director, for an annual sales tax refund from the Town in the amount of forty dollars (\$40.00) for himself or herself; and, in addition, for every person who is a member of his or her household for whom he or she is entitled to claim a dependent exemption under and pursuant to the Internal Revenue Code, an additional forty dollars (\$40.00).
  - (2) Each application for a sales tax refund shall be completed completely and truthfully by the applicant or his or her legal designee.
  - (3) No person claimed as a dependent on the sales tax refund application of another resident shall receive a sales tax refund.
  - (4) If a sales tax refund is claimed for the same person on more than one (1) sales tax refund application, the Finance Director shall determine the proper resident entitled to claim the sales tax refund.

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- (5) Each sales tax refund application shall be examined and reviewed by the Finance Director and, upon satisfaction that the applicant qualifies for a sales tax refund, the Town Clerk shall authorize payment to the applicant through the Finance Director.
  - (f) The taxes imposed in this Article shall continue to be levied and collected until amended or repealed by ordinance.
  - (g) The taxes imposed in the Article shall be in addition to all other taxes imposed by law.

(Ord. 26 §2, 2003; Ord. 6, § 1, 2015 ; Ord. No. 4 , § 4, 2-7-2022)

### **Sec. 4-2-50. Sales tax schedule.**

The sales taxes imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations approved by the Executive Director of the Colorado Department of Revenue.

### **Sec. 4-2-60. Transactions, items and services subject to sales tax.**

- (a) The tax levied by Section 4-2-40 above shall apply to the price of the following:
  - (1) Tangible personal property that is sold, leased or rented for any duration, whether or not such property has been included in a previous transaction.
  - (2) Telecommunications service, access services and WATS/800 service.
  - (3) Installation in the Town of equipment required to receive or transmit telecommunications service, and telecommunications services, whether furnished by public or private corporations or enterprises for all intrastate telephone or telecommunications services, including access and WATS/800 services, sold by local telecommunications service providers originating from or received on telecommunications equipment located within the Town; provided, however, that the charge for the service is billed to a person and to any affiliates residing within or doing business at a location within the Town.
  - (4) Gas and electric services, whether furnished by governmental, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for resale.
  - (5) The entire amount charged to any person for lodging services.
  - (6) The amount paid for all meals and beverages prepared or furnished by any restaurant, eating house, snack bar, catering service, hotel, drugstore, delicatessen or other such carry-out shop, food vending or push cart, mobile vending service, vending machines, club, resort, medical facility or other such place at which meals or food are regularly sold, or sold in conjunction with another business or enterprise.
  - (7) Admissions and cover charges if tangible personal property such as food or beverages, and/or gifts are received as consideration for the amount paid.
  - (8) The sale, lease or transfer of computer equipment, programs and software.
  - (9) Pay, cable or subscription television services sold, purchased, leased, rented, furnished or used, including any equipment rentals furnished as a part of the price or separately stated, if the charge is billed to a person residing in or doing business at a location within the Town.
  - (10) Coin-operated and other such vending devices that dispense food or tangible personal property.
  - (11) Linen and towel services.
  - (12) Dry-cleaning services.

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- (13) Automotive vehicle repair services and associated automobile parts.
  - (14) Security devices, smoke or chemical detection equipment and hazardous substance detection equipment, whether purchased or leased.
  - (15) The sale of food.
  - (16) Sale of medical marijuana.
  - (17) Sale of medical marijuana paraphernalia or paraphernalia.
- (b) For the purpose of this Article, all retail sales are consummated at the place of business of the seller, provider or retailer, unless the tangible personal property sold or provided is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include the delivery charges, when such charges are subject to the state sales and use tax imposed by state statute, regardless of the place to which delivery is made.
  - (c) In the event a retailer or sales provider of tangible personal property has no permanent place of business in the Town or has more than one (1) place of business, the place, places and conditions upon which the retail sales are consummated shall be the same as those in Subsection (b) above for the purpose of the sales tax imposed by this Article.

(Ord. 26 §2, 2003; Ord. 15 §4, 2009)

#### **Sec. 4-2-70. Exemptions from sales tax.**

The tax levied by Section 4-2-40 above shall not apply to the following:

- (1) Automotive vehicles sold to nonresidents of the Town for registration outside the Town.
- (2) Tangible personal property when both of the following conditions exist:
  - a. The sales are to individuals who reside or businesses which are located outside the Town; and
  - b. The articles purchased are delivered to the purchaser outside the Town by common carrier, by the conveyance of the seller or by mail, and such articles delivered are used outside the Town.
- (3) The sale and purchase of medical supplies, prescription drugs for humans, prescription drugs for animals, and therapeutic devices.
- (4) All direct sales to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organization.
- (5) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by charitable organizations in the conduct of their regular charitable functions and activities.
- (6) All direct sales to the federal government, the State or their departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
- (7) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by the federal government, the State or their departments or institutions, and the political subdivisions thereof, in their governmental capacities only.

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- (8) All sales which the Town is prohibited from taxing under the Constitution laws of the United States, or the Constitution or laws of the State.
  - (9) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
  - (10) Motor fuel upon which there has been accrued or paid either gasoline tax or special fuel tax, required by Article 27 of Title 39, C.R.S., and which is not subject to refund.
  - (11) Neat cattle, sheep, lambs, fish for stock purposes; swine and goats; and mares and stallions for breeding purposes.
  - (12) Feed for livestock or poultry, seeds and orchard trees when such products are to be used in the commercial production of livestock or crops.
  - (13) All wholesale sales.
  - (14) Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a consistent part of the finished product.
  - (15) Exempt commercial packaging materials.
  - (16) Newsprint and preprinted newspaper supplements which become attached to, or inserted in and distributed with, newspapers.
  - (17) Newsprint and printer's ink for use by publishers and commercial printers.
  - (18) Tangible personal property sold for rental or leasing inventory, including but not limited to coin-operated devices, provided that such property is not otherwise used except for customer demonstration or display.
  - (19) Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor is never exempt.
  - (20) Construction materials, if the purchaser of such materials presents to the retailer a building permit which evidences that a use tax on such materials has been paid or is required to be paid to the Town or any other municipality.
  - (21) Tangible personal property sold through coin-operated devices for a price of fifteen cents (\$0.15) or less.
  - (22) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline.
  - (23) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S.
  - (24) The sale of recreation services, but not equipment.
  - (25) The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805(5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.
  - (26) The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

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(Ord. 26 §2, 2003; Ord. No. 40 , § 1, 12-2-2019; Ord. No. 34 , § 1, 1-4-2021; Ord. No. 23 , § 2, 12-5-2022)

### **Sec. 4-2-80. Exemption; burden of proof.**

The burden of proving that any retailer is exempt from collecting or paying sales tax shall be on the retailer under such reasonable requirements of proof as the Town Manager or the Finance Director may prescribe.

### **Sec. 4-2-90. Deductions from gross sales.**

- (a) Deductions from gross sales. If included in reported gross sales, the following are deducted from gross sales:
  - (1) Refunds. The price of tangible personal property or taxable services returned by a purchaser when the price and the sales tax collected are refunded in cash or by credit.
  - (2) Bad debts. Taxable sales which are represented by accounts not secured by conditional sales contract, rental purchase contract or security interest, and which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State; provided, however, that if such amounts are thereafter collected by the taxpayer, a tax shall be paid on the amount so collected.
  - (3) Interest and finance charges. The amount of interest or finance charges on credit extended in connection with any sale, if the interest or finance charges are separately stated from the price.
- (b) Credits from tax due:
  - (1) Vendor's fee. A retailer's collection and remittance expense equal to one and one-half percent (1½%) of the sum of the sales tax computed, and any excess tax collected, may be taken as a credit against sales tax paid, on or before the due date. Such vendor's fee shall be forfeited for any sales tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Article.
  - (2) Amounts previously paid pursuant to a tax levied by a municipality may be credited against the tax due on transactions or items other than construction materials as follows:
    - a. When the present owner or user has previously paid a legally imposed sales or use tax on the transaction or item, except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established by Section 4-2-40 above.
    - b. When the present owner or user of construction equipment has not previously paid a legally imposed sales or use tax attributable to any one (1) municipality on the full price of such equipment, the credit shall be the aggregate value of all such taxes paid on such equipment up to the amount of tax due to the Town on such equipment.

(Ord. 26 §2, 2003; Ord. 19 §1, 2009)

### **Sec. 4-2-100. Credit sales.**

- (a) In the case of a sale upon credit, a contract for sale where the price is paid in installments and title does not pass until a future date, a sale secured by a chattel mortgage or a conditional sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total purchase price.
- (b) If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the

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remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account.

(Ord. 26 §2, 2003)

**Sec. 4-2-110. Acquisition, inception or cessation of business.**

- (a) Acquisition of existing business:
  - (1) Seller's responsibilities: Any person engaged in business in the Town who sells such business shall file a final return. The reporting period shall end on the date of the transfer of ownership of the business in question.
  - (2) Purchaser's responsibilities.
    - a. Any person who purchases an existing business shall be responsible for determining whether there is any tax due from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such tax due, unless the former owner produces a receipt from the Town showing that all tax due has been paid or a certificate from the Town indicating that there is no tax due.
    - b. Any amount so withheld shall be paid to the Town within ten (10) days of the date of the sale of the business.
    - c. Any purchaser who fails to withhold such tax due, or fails to pay to the Town the amount so withheld within the ten-day period shall, as well as the seller, be liable for any tax due.
- (b) Cessation of business. Every person engaged in business in the Town who quits doing business in the Town shall file a final return. The reporting period of such return shall end on the last day of business in the Town.

(Ord. 26 §2, 2003)

**Sec. 4-2-120. Retailer responsible for collection and payment of tax.**

Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the sales tax rate established by Section 4-2-40 above.

- (1) Tax added to price. Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise, hold out or state to the public or to any consumer, either directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer, that it will not be added to the price or, if added, that it or any part thereof shall be refunded.
  - a. Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from electing to include in his or her purchase price any tax levied under this Section.
  - b. Sales tax may be included in the price of items sold from coin-operated devices or the price of utilizing such devices.
- (2) Tax constitutes debt. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as other debts.

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- (3) Excess tax. No retailer shall retain any sales tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected, and include it in the calculation of tax due.
  - (4) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect, and the purchaser shall pay, such tax. The purchaser may submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser.

#### **Sec. 4-2-130. Trust status of tax in possession of retailer.**

All sales tax collected by any retailer shall be the property of the Town and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

#### **Sec. 4-2-140. Filing returns; due date.**

- (a) Every taxpayer shall file a return, whether or not a tax is due, and remit any tax due to the Town on or before the twentieth day of the month following the reporting period. Failure to receive a return does not relieve a taxpayer of his or her legal responsibility for filing a return on or before the due date.
- (b) A retailer engaged in business in the Town at two (2) or more locations, whether inside or outside the Town, who collects sales tax, may file one (1) return for all such locations when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.
- (c) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying the tax due. Such good cause shall not include the retailer's inability to pay taxes due the Town due to other debts incurred by the retailer or his or her business.
- (d) No person shall make any false statement in connection with a return.

(Prior code 4-7-1; Ord. 26 §2, 2003)

#### **Sec. 4-2-150. Reporting period taxes and bag fee.**

- (a) Unless otherwise approved by the Town, taxpayers must file returns and pay taxes as follows:
  - (1) Upon approval of the Finance Director, a taxpayer whose monthly tax is ten dollars (\$10.00) or less may file returns and pay tax annually, semi-annually, quarterly or monthly.
  - (2) Upon approval of the Finance Director, a taxpayer whose monthly tax due is more than ten dollars (\$10.00) and less than twenty dollars (\$20.00) may file returns and pay tax semi-annually, quarterly or monthly.
  - (3) Upon approval of the Finance Director, a taxpayer whose monthly tax due is more than twenty (\$20.00) and less than forty dollars (\$40.00) may file returns and pay tax quarterly or monthly.
  - (4) A taxpayer whose monthly tax due is forty dollars (\$40.00) or more shall file returns and pay tax monthly.

For the purpose of the timing of the filing of returns, the amounts considered in Paragraphs (1) through (4) above must be consistent for a period of three (3) consecutive months to be approved for any schedule other than reporting monthly.

- (b) The reporting period for a final return shall end on the date of the transfer of ownership or cessation of the business.

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- (c) The reporting period for a vendor selling tangible personal property at a temporary location or site of a special event within the Town shall end on the day the temporary location closes or special event concludes.
  - (d) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director. Immediately following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted.
  - (e) The bag fee imposed pursuant to C.R.S. § 25-17-505 shall be reported and paid on the same schedule as the taxpayers tax returns and payments are made commencing January 1, 2023.

(Prior code 4-7-15; Ord. 26 §2, 2003; Ord. No. 23 , § 2, 12-5-2022)

#### **Sec. 4-2-160. Duty to keep books and records.**

- (a) Every person engaged in business in the Town shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.
- (b) Every person shall provide all such records for audit by the Town during normal business hours.

(Prior code 4-7-16; Ord. 26 §2, 2003)

#### **Sec. 4-2-170. License required.**

- (a) Except as provided in this Section, any person engaged in the business of selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town must first obtain a sales tax license. No sales tax license shall be required for any governmental agency or charitable organization which is exempt from the sales tax under this Article. However, although such organizations may be exempt from paying sales taxes on the purchases of tangible personal property, the collection, reporting and payment of appropriate sales taxes to the Town is required on the sale or auction of tangible personal property even when used for the purpose of fundraising, whether or not a sales tax license is required or has been obtained.
- (b) When the business of selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption is transacted by one (1) person at two (2) or more separate locations inside the Town, a separate sales tax license for each place of business shall be required.

(Prior code 4-7-17; Ord. 26 §2, 2003; Ord. 14 §§1, 2, 2004)

#### **Sec. 4-2-180. License; application and content.**

- (a) Persons for whom a license is required shall first submit to the Finance Director an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as the Town Clerk and Finance Director may require.
- (b) Licenses shall be in effect for two (2) years. Licenses which are granted shall be issued without fee by the Finance Director on January 1 every two (2) years and provided to the license holder as soon as practical thereafter.
- (c) Licenses shall be renewed upon renewal of the general business license, or upon completion of a license renewal request.

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- (d) Each license shall be numbered, shall show the name, mailing address, location and character of business of the license, and shall be posted in a conspicuous place at the business location for which it is issued.
  - (e) No license shall be transferable. After any sale or acquisition of a business, the new owner shall apply for a new license.

(Prior code 4-7-18; Ord. 26 §2, 2003)

#### **Sec. 4-2-190. License cancellation or revocation.**

- (a) Cancellation:
  - (1) The Finance Director may cancel any license upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town.
  - (2) Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency, the Finance Director shall give notice to the taxpayer that the sales tax license has been cancelled. Such notice shall be in writing and may be either personally delivered to the taxpayer by the Town Marshal, any other law enforcement officer or a Town official designated by the Municipal Judge, or may be delivered to the taxpayer by certified mail with appropriate return receipt.
- (b) Revocation. The Finance Director may, after reasonable notice and a full hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this Article.
- (c) Appeal. Any person may appeal a finding and order revoking his or her license in District Court pursuant to Rule 106 (a)(4) of the Colorado Rules of Civil Procedure.
- (d) No taxpayer shall continue engaging in business in the Town after his or her license has been cancelled or revoked.

(Prior code 4-7-19; Ord. 26 §2, 2003; Ord. 14 §3, 2004; Ord. 4 §1, 2009)

#### **Sec. 4-2-200. Authority of Finance Director.**

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

- (1) Forms and procedures. The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax.
- (2) Regulations. The Finance Director may formulate and promulgate, after hearing, appropriate and additional regulations to effectuate the purpose of this Article.
- (3) Additional information. The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.
- (4) Subpoenas. The Finance Director may issue a subpoena to command a person to attend and give testimony, or to produce books, records or accounts.
  - a. Any subpoenas issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure, including payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees shall be paid by the Town. When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of the service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.

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- b. If a subpoena issued by the Finance Director is duly served and the respondent fails to attend, give testimony or produce books, accounts or records as commanded, the Finance Director may request the Town Attorney to file a motion with the Municipal Court for an order enforcing the subpoena.
  - (5) Oaths. The Finance Director is authorized to administer oaths and take testimony at the hearing.
  - (6) Agents. The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.
  - (7) Partial payments. The Finance Director may accept any partial payment made and apply such payment toward the tax due. Deposit of such payment shall not in any way imply that the remaining balance is or has been abated.
  - (8) Notices. Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent postage paid by certified mail to the last known address of the taxpayer, or served in person by an officer of the Town Marshal's office.

#### **Sec. 4-2-210. Audit of record.**

- (a) For the purpose of ascertaining the correct amount of tax due from any person engaged in business in the Town, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, records and accounts of such person.
- (b) All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director or an authorized agent, the Finance Director may issue a subpoena to require that the taxpayer or his or her representative attend a hearing or produce any such books, accounts or records for examination.
- (c) Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the Finance Director deems appropriate:
  - (1) By comparing the tax reported and paid on returns to the actual tax due.
  - (2) By identifying transactions on which the tax was not properly or accurately collected or paid.
  - (3) By identifying other irregularities in the calculation of tax due.
- (d) Any charitable organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in business in the Town.

(Prior code 4-7-21; Ord. 26 §2, 2003)

#### **Sec. 4-2-220. Coordinated audit.**

- (a) Any taxpayer licensed in the Town pursuant to this Article and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection may request a coordinated audit as provided herein.
- (b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by certified mail return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a

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current sales tax license and a declaration that the taxpayer will sign a waiver of any passage of time based limitation upon the Town's right to recover tax owed by the taxpayer for the audit period.

- (c) Except as provided in Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of any statute of limitations may be audited by the Town during the twelve (12) months after such a request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.
- (d) If the Town desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (c) above, the Finance Director shall so notify the finance director or other proper authority of the municipality whose notice of audit prompted the taxpayer's request for a coordinated audit. The Finance Director shall cooperate with other participating municipalities in arranging the time in which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
- (e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the Town, the Finance Director shall facilitate arrangements between the Town and other municipalities participating in the coordinated audit, unless and until an official from another participating municipality agrees to assume this responsibility. The Finance Director shall cooperate with other participating municipalities to, whenever practical, minimize the number of auditors who will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.
- (f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the Town, the Finance Director shall, once arrangements for the coordinated audit between the Town and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period of time to be audited and the records most likely to be required by the participating municipalities for completion of the coordinated audit. The Finance Director shall also propose a schedule for the coordinated audit.
- (g) The coordinated audit procedure set forth in this Section shall not apply:
  - (1) When the proposed audit is a jeopardy audit;
  - (2) To audits for which a notice of audit was given prior to the effective date of the initial ordinance codified herein;
  - (3) When a taxpayer refuses to promptly sign a waiver of any pertinent statutes of limitations; or
  - (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided for in Subsection (b) above.

(Prior code 4-7-21.5; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

#### **Sec. 4-2-230. Tax information confidential.**

- (a) All specific information gained under the provisions of this Article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through an audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.
- (b) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a copy of such

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confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee or legal representative of the Town.

- (c) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding.

(Prior code 4-7-22; Ord. 26 §2, 2003)

#### **Sec. 4-2-240. Overpayment from returns.**

- (a) If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified.
- (b) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.
- (c) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period.

(Prior code 4-7-23; Ord. 26 §2, 2003)

#### **Sec. 4-2-250. Tax overpayment determined through audit.**

If the Town ascertains through audit of a taxpayer's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment.

#### **Sec. 4-2-260. Refunds of disputed tax.**

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase.

#### **Sec. 4-2-270. Claim for refund.**

- (a) No tax overpayment, except as provided in Subsection 4-2-240(b), shall be refunded unless a claim for refund is signed and submitted to the Town by the taxpayer.
- (b) An application for refund of tax shall:
  - (1) Be made on a claim for refund form furnished by the Town.
  - (2) Be signed by the taxpayer.
  - (3) Include adequate documentation of the claim.
- (c) The Finance Director shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.
- (d) Refunds are not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.

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(e) No person shall make any false statement in connection with a claim for refund.

(Prior code 4-7-26; Ord. 26 §2, 2003)

**Sec. 4-2-280. Intercity claims for recovery.**

- (a) The intent of this Section is to streamline and standardize the procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect and remit sales and use taxes to the Town.
- (b) As used herein, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong jurisdiction.
- (c) When it is determined by the Finance Director that sales and use tax owed to the Town has been reported and paid to another municipality or jurisdiction, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted and that, as of the date of the notice, the vendor must cease improper tax collections and remittances.
- (d) The Town may make a written claim for recovery directly to the municipality or jurisdiction that received the tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for the collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality or jurisdiction, evidence to substantiate the claim and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality or jurisdiction to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim. The approval of such extension by the Town shall not unreasonably be withheld.
- (e) Within ninety (90) days after receipt of a claim of recovery, the municipality or jurisdiction receiving taxes in error shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied, in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the municipality receiving taxes in error shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of the approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.
- (f) A municipality or jurisdiction claimed to be receiving taxes in error may deny a claim for recovery on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.
- (g) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality or jurisdiction that was wrongly paid the tax receives the claim for recovery.

(Prior code 4-7-27; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

**Sec. 4-2-290. Underpayments from returns.**

- (a) If the amount remitted with a return is less than the tax computed from information in such return, the taxpayer shall be notified.
- (b) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.
- (c) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period.

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(Prior code 4-7-28; Ord. 26 §2, 2003)

**Sec. 4-2-300. Tax deficiencies from failure to file.**

- (a) If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.
- (b) If any taxpayer neglects or refuses to file a return by the date due, the tax due shall be estimated based on such information as may be available, and a notice of assessment shall be issued.
- (c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment.

(Prior code 4-7-29; Ord. 26 §2, 2003)

**Sec. 4-2-310. Tax deficiencies determined through audit.**

If the Town determines through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

**Sec. 4-2-320. Penalties.**

A penalty shall be levied for any tax deficiency.

- (1) Penalty for late payment. For transactions consummated after the effective date of the initial ordinance codified herein, the penalty for late payment shall be fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater. Additionally, one-half percent (0.5%) of the tax deficiency per month from the date when due, not exceeding eighteen percent (18%) in the aggregate, shall be assessed.
- (2) Penalty for fraud. If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred percent (100%) of the total tax deficiency.
- (3) Abatement of penalty. Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the taxpayer submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause therefor.

**Sec. 4-2-330. Interest.**

- (a) Interest shall be levied on any tax deficiency.
- (b) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For transactions consummated after the effective date of the initial ordinance codified herein, the monthly interest rate determined by the Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.
- (c) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the due date of such assessment and the payment date established in an informal meeting, or thirty (30) days after the date of a finding of fact, conclusion or decision issued after a hearing.
- (d) Interest properly assessed on any tax deficiency shall not be abated.

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(Prior code 4-7-32; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

### **Sec. 4-2-340. Notice of assessment.**

- (a) The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.
- (b) Notices of assessment shall be in writing and delivered in person or sent postage paid by first class mail, to the last known address of the taxpayer.
- (c) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.
- (d) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists.

(Prior code 4-7-33; Ord. 26 §2, 2003)

### **Sec. 4-2-350. Protest of notice of assessment or denial of refund.**

- (a) Any notice of assessment may be protested by the taxpayer to whom it is issued.
  - (1) A protest of a notice of assessment issued to a vendor or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.
  - (2) When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner.
- (b) Any denial of a claim for a refund may be protested by the taxpayer who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.
- (c) Any timely protest entitles a taxpayer to a hearing under the provision of this Article.
  - (1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the taxpayer to resolve the issues.
  - (2) Participation in such an informal meeting does not prevent either the taxpayer or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting.

(Prior code 4-7-34; Ord. 26 §2, 2003)

### **Sec. 4-2-360. Hearings.**

- (a) The Town shall commence a hearing within ninety (90) days after the Town's receipt of the taxpayer's written protest; except that the Town may extend such period if the delay is requested by the taxpayer. The Finance Director shall notify the taxpayer in writing of the time and place of such hearing.
- (b) Every hearing shall be held within the Town and before the Finance Director.

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- (c) The taxpayer may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required.
  - (d) Based on the evidence presented at the hearing, the Finance Director shall issue a finding of fact, conclusions and decision which may modify or abate in full the tax, penalties and/or interest protested at the hearing, approve a refund or uphold the assessment.
  - (e) After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial of refund.
  - (f) Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the finding of fact, conclusions and decision.

(Prior code 4-7-35; Ord. 26 §2, 2003)

#### **Sec. 4-2-370. Appeals.**

- (a) Subsequent to a hearing, the taxpayer may appeal the decision of the Finance Director in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (b) Upon appeal to the District Court, the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director.
- (c) An appeal of a final decision of the Finance Director in a hearing held pursuant to Section 4-2-360 above shall be commenced within thirty (30) days of such decision.

(Prior code 4-7-36; Ord. 26 §2, 2003)

#### **Sec. 4-2-380. Lien for tax due.**

- (a) Issuance. If any tax due is not paid by the payment date of a notice of assessment, the Finance Director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the tax due, the date of accrual thereof and the location of the property, and shall be certified by the Finance Director.
- (b) Filing. The notice of lien shall be filed in the office of the clerk and recorder of any county in the State in which the real and personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.
- (c) Priority. The attachment and priority of such lien shall be as follows:
  - (1) Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any taxpayer, including those under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.
  - (2) Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade and business fixtures shall be a first and prior lien except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.
  - (3) The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the clerk and recorder of the county where the property is located or based.

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- (4) Motor vehicles which are property registered in this State, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has earned reserve, allowance for depreciation not to exceed the fair market value, or similar interest which is or may be credited to the lease.
  - (5) Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this Section.
- (d) Enforcement against real property. If a notice of lien is filed against any real property, the Finance Director may direct the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(Prior code 4-7-37; Ord. 26 §2, 2003)

#### **Sec. 4-2-390. Performance of lien.**

- (a) Any lien for tax due shall continue until a release of lien is filed by the Finance Director.
- (b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired.

(Prior code 4-7-38; Ord. 26 §2, 2003)

#### **Sec. 4-2-400. Release of lien.**

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of the lien with the clerk and recorder of the county in which the lien was filed.

#### **Sec. 4-2-410. Civil action to recover tax due.**

- (a) Any unpaid tax due shall constitute a debt of the taxpayer to the Town, and the Finance Director may direct the Town Attorney to file a civil action to collect such taxes due.
- (b) The return filed by a taxpayer or the notice of assessment issued by the Finance Director shall be prima facie proof of the tax due.
- (c) If a judgment is obtained by the Town, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment.

(Prior code 4-7-40; Ord. 26 §2, 2003)

#### **Sec. 4-2-420. Jeopardy assessment.**

- (a) Issuance. If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the Town Manager may declare the taxable period immediately terminated, require

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the Finance Director to determine the tax and issue a jeopardy assessment and demand payment. Any tax so assessed shall be due and payable immediately.

- (b) Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the Town Manager.
- (c) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of the tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the Town.

(Prior code 4-7-41; Ord. 26 §2, 2003)

#### **Sec. 4-2-430. Distraint and sale.**

- (a) Unless such property is exempt by state statute from distraint and sale, the Town Manager may sign and issue a warrant directed to any employee or agent of the Town, or any sheriff of any county in the State, commanding the distraint and sale of personal property of the taxpayer on which a lien has attached for payment of the tax due.
  - (1) Such warrant may be issued if such tax due is not paid on or before twenty-one (21) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.
  - (2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment have been issued.
- (b) If the taxpayer does not volunteer entry into the premises, the Town Manager may apply to the Municipal Court for a warrant authorizing any employee of the Town to search for and distrain property located within the Town to enforce the collection of the tax due.
  - (1) The Town Manager shall demonstrate to the Municipal Court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due.
  - (2) If a jeopardy assessment and demand for payment have been issued, the Town Manager shall specify to the Municipal Court why collection of the tax will be jeopardized.
  - (3) The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.
- (c) Disposal of distrained property:
  - (1) A signed inventory of the property distrained shall be made by the Town or its agent. Prior to the sale, the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the tax due and related expenses incurred to date, and the time and place of sale.
  - (2) A notice of time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu of thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where the distraint is made, and in at least two (2) other places of general public view within such county.
  - (3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the Town or its agent for no more than ninety (90) days from the date originally fixed for the sale.
  - (4) The property shall be sold at public auction for not less than a fair minimum price and, if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the Town and the Town shall file a release of lien thereon. If the property is purchased by

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the Town, such property may be disposed of in the same manner as other Town property and the lien thereon shall be released.

- (5) The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the Town or its agent may accept the higher bid.
  - (6) The property offered for sale may be redeemed if the owner, possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.
  - (7) The Town or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale, and shall transfer to the purchaser all right, title and interest of the taxpayer in and to the property sold.
    - a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.
    - b. When the property sold consists of securities or other evidence of debt, the certificate of sale shall be good and valid evidence of title.
  - (8) Any surplus remaining after satisfaction of the tax due, plus any costs of making the distraint and advertising the sale, may be distributed by the Town, first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner or other person having a legal right thereto.
  - (9) The Finance Director shall submit a written account of the sale to the Town Manager.
- (d) Exempt property. Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described Subsection 4-2-380(c) above.
- (e) Return of property. The taxpayer or any person who claims an ownership interest or right of possession in the distraint property may petition the Town Manager, or the Municipal Court if the property was seized pursuant to warrant issued by the court, for return of the property.
- (1) The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the Town's interest, or that the property is exempt from the Town's lien.
  - (2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned.

(Prior code 4-7-42; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

#### **Sec. 4-2-440. Status of tax due in bankruptcy and receivership.**

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or restrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of the Finance Director for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant.

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## **Sec. 4-2-450. Violations; summons and complaints; penalty.**

- (a) It shall be a violation of this Article to fail to perform any applicable affirmative duty specified in this Article, including but not limited to:
  - (1) The failure of any person engaged in business in the Town to obtain a license.
  - (2) The failure of any taxpayer to file a timely return or to make timely payment of any tax due.
  - (3) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing.
  - (4) The evasion of collection of any sales tax by any person, or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.
- (b) The Finance Director may direct the issuance of a complaint and summons to appear before the Municipal Court to any person who may be in violation of this Article or of the rules and regulations promulgated by the Finance Director to enforce this Article.
- (c) Violations of this Article shall be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 4-7-44; Ord. 26 §2, 2003; Ord. 4 §1, 2009)

## **Sec. 4-2-460. Statute of limitations.**

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained herein shall be as follows:

- (1) Refunds.
  - a. Any claim for refund for disputed tax shall be submitted to the Town on or before sixty (60) days from the date of such purchase.
  - b. Any claim for refund resulting from a notice of overpayment shall be submitted to the Town on or before thirty (30) days after the date of such notice of overpayment.
  - c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the Town.
- (2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due.
- (3) Liens. No notice of lien shall be issued more than three (3) years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for each extended period.
- (4) Returns.
  - a. When a taxpayer fails or refuses to file a return, the tax due may be assessed and collected at any time.
  - b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun at any time.
- (5) Protests. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director in other than written form, or after the period allowed in this Article.
- (6) Extension. The period of limitation may be extended before its expiration.
  - a. The taxpayer and Finance Director may agree in writing to extend the period.

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- b. If the Town provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. *Audit period* is the thirty-six-month reporting period preceding the date of the notice of audit.
  - (7) Performance of an audit does not constitute a waiver or exemption from the statute of limitations, or preclude additional audits of the same period within the parameters of this Section.

## **ARTICLE 3 Use Tax**

### **Sec. 4-3-10. Purpose.**

The purpose of this Article is to levy a use tax on the privilege of use, storage or consumption of construction or building materials and motor vehicles in the Town, which construction or building materials and motor vehicles were purchased at retail outside the Town. This Article shall supersede the provisions of Article 2, Title 29, C.R.S.

### **Sec. 4-3-20. Definitions.**

- (a) As used in this Article, unless the context otherwise requires, the words contained herein that are defined in Article 2 of this Chapter.
- (b) The term *floor area* shall be defined as set forth in Section 16-1-20 of this Code.

(Prior code 4-4-2; Ord. 4 §1, 2009)

### **Sec. 4-3-30. Application of funds.**

Funds received pursuant to this Article shall be deposited sixty percent (60%) into the Capital Reserve Fund and forty percent (40%) into the General Fund.

### **Sec. 4-3-40. Construction or building materials use tax.**

- (a) Imposition and amount. There is hereby imposed on the privilege of use, storage or consumption of construction or building materials in the Town which were purchased at retail outside the Town a use tax of four and one-half percent (4.5%) of the retail purchase price of such construction or building materials.
- (b) Payment and collection.
  - (1) The use tax imposed this Section shall be paid to the Town Clerk prior to issuance of a building permit or as provided hereinafter. For purposes of this Section, sixty percent (60%) of the total valuation of any construction or building project shall be deemed to be the retail purchase price of the construction or building materials used, stored or consumed in such project, which constitutes the taxable amount upon which this tax is imposed. The total valuation of any construction or building project shall be determined by applying the cost-per-square-foot factor for the subject building type, "good" class, if available, as determined by the Building Inspector and as set forth in the section titled "Building Valuation Data" of the building standards as adopted by the Town in Chapter 18 of this Code, to: a) the total floor area of such project, including remodeled, renovated, repaired or restored area equal to or greater than one-half ( $\frac{1}{2}$ ) of the total floor area of the existing building; b) fifty percent (50%) of the area of unroofed porches or terraces and basements or attics used only for accessory storage or service; and c) fifty percent (50%) of the area of remodeled, renovated, repaired or restored area,

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- provided that such remodeled, renovated, repaired or restored area is not greater than one-half (½) of the total floor area of the existing building.
- (2) Any person who does not elect to pay the use tax estimate prior to the issuance of a building permit must monthly make reports and returns to the Town remitting the use tax and providing all information required by the Town.
  - (3) No certificate of occupancy shall be issued for any building unless all use taxes due hereunder have been paid or arrangements thereof made with the Finance Director.
- (c) Refund. Upon issuance of a certificate of occupancy by the Town for such construction project, the taxpayer may apply to the Finance Director for refund of any overpayment of the estimated use tax by providing documentation of the actual purchase of all construction or building materials used, stored or consumed in the project upon which the tax was paid and any credits to which the taxpayer is entitled as set forth in Section 4-3-60 below.
  - (d) Time limit for refund. The taxpayer must file for a refund under this Section within two (2) years from the end of the year in which a certificate of occupancy is issued. A failure by the taxpayer to file for a refund within this time limit will result in the absolute forfeiture of the right to a refund, and any funds for which an application for refund is not received within the time limit herein established shall be deposited in the manner set forth in Section 4-3-30 above.

(Prior code 4-4-4; Ord. 6 § 1, 1999; Ord. 4 § 1, 2009; Ord. 7, § 1, 2015 )

#### **Sec. 4-3-50. Motor vehicle use tax.**

- (a) Imposition and amount. There is hereby imposed on the privilege of use, storage or consumption of every motor vehicle in the Town which was purchased outside the Town, for which registration is required by the laws of the State, a use tax of four percent (4%) of the retail purchase price of the motor vehicle.
- (b) Registration, payment, collection and remittance. No registration shall be made of any motor vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Colorado Department of Revenue or its agents, until the tax due under this Section has been paid. The tax shall be collected by the authorized agent of the Colorado Department of Revenue in the county in which the taxpayer resides. The Town Manager is authorized to enter into intergovernmental contracts with the Colorado Department of Revenue and/or counties for collection of this tax, including the payment of a fee for such assistance.

(Prior code 4-4-5; Ord. 4 § 1, 2009)

#### **Sec. 4-3-60. Exemptions, credits and application procedure.**

- (a) Exemptions. The construction or building materials use tax and motor vehicle tax imposed by Sections 4-3-40 and 4-3-50 above shall not apply:
  - (1) To the storage, use or consumption of said property by the United States government or the State, or its institutions or political subdivisions, in their governmental capacities.
  - (2) To the storage, use or consumption of said property the sale of which has already been subjected to a sales tax of another Colorado town, city or county. The amount of the credit shall be equal to the tax paid by the purchaser by reason of the imposition of a sales tax of such town, city or county, but in no event shall the amount of credit exceed the tax imposed by this Article. This exemption shall be denied if a tax paid such town, city or county was not legally due under the law of such town, city or county or the State under Section 29-2-105(2), C.R.S., or if the laws of such town, city or county are not

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compatible with those of the Town regarding taxation and exemption therefrom as applied to the specific transaction.

- (3) To the use, storage, distribution or consumption in the Town of said property and upon the sale of which a retail sales tax at a rate equal to or greater than four percent (4%) has been imposed, collected and remitted to a municipal corporation organized and existing under the authority of the State Constitution.
    - a. If the rate of retail sales tax paid to such Colorado municipal corporation is less than four percent (4%), the net difference between the tax due under this Article and the tax computed at the rate of such other retail sales tax shall be due and owing; however, in no event shall the amount of credit exceed the tax imposed by this Article. This exemption shall be denied if a tax paid to another Colorado municipal corporation was not legally due under the laws of such municipal corporation, or if the laws of the Colorado municipal corporation are not compatible with those of the Town as to specific taxation and exemption as applied to the transaction in question.
    - b. The use, storage, distribution or consumption in the Town of said property and upon the sale of which any other state, or any other state in combination with any subdivision thereof, has imposed and collected a retail sales tax at a rate equal to or greater than the combined Town, county and state tax rate, is exempt from the levy of the Town's use tax. If the rate of retail sales tax paid to such other state and/or its political subdivisions is four percent (4%) or less, then the full four percent (4%) use tax is due. If the rate of retail sales tax paid the other state and/or its political subdivisions is more than four percent (4%) but less than the combined Town, county and state tax rate, then the Town's use tax will be due on the net difference between that tax paid in excess of four percent (4%) and the combined Town, county and state tax rate. In no instance shall the Town's tax credit or charge exceed four percent (4%). This exemption shall be denied if a tax paid to another state and/or its subdivisions was not legally due under the laws of such state and/or its subdivisions, or the laws of that state and/or its subdivisions are not compatible with those of the Town as to specific taxation and exemption as applied to the transaction in question.
  - (4) To the storage, use or consumption of said property the sale of which is subject to a retail sales tax imposed by the Town;
  - (5) To the storage, use or consumption of said property if such property was purchased outside the Town by a nonresident and used for a substantial length of time and for the primary purpose of which it was acquired prior to being brought into Town and, in the case of a motor vehicle, the owner registered, titled and licensed said motor vehicle outside of the Town or the County;
  - (6) To the storage, use or consumption of said property brought into the Town for resale, either in its original form or as an ingredient of a manufactured or compounded product, not including building construction, in the regular course of business;
  - (7) To the storage, use or consumption of said property if a written contract was entered into for the purchase thereof prior to the effective date of this Article.
- (b) Exemption application procedure. The taxpayer desiring an exemption or credit from the use tax imposed by Sections 4-3-40 and 4-3-50 above may apply to the Finance Director for such exemption or credit at any time based upon one (1) or more exemptions set forth in this Section, and shall provide the Town with any documents the Town deems necessary to evaluate such request. Prior to the granting of any exemption or credit by the Town, the taxpayer shall be subject to all terms and provisions of this Article.

(Prior code 4-4-6; Ord. 2 §1, 1994; Ord. 4 §1, 2009)

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**Sec. 4-3-70. Penalty.**

In addition to payment of any tax due, any person violating this Article or any section hereof shall be guilty of a misdemeanor and, upon conviction thereof, may be punished in accordance with the provisions of Section 1-4-20 of this Code.

**Sec. 4-3-80. Amendment.**

The Town Council may amend, alter or change this Article at any time, except the provisions of Sections 4-3-30, 4-3-40(a) and 4-3-50(a) above, or any other provision whereby the purpose of this Article would be defeated, including the revocation of this Article at such time as the County effects a county-wide use tax of four percent (4%) on building or construction materials and motor vehicles; provided, however, that the Town will be entitled to receive as much revenue under the County's use tax as it would be entitled to receive under this tax; and any such amendments, alterations or changes need not be submitted to the qualified electors of the Town for their approval.

**Sec. 4-3-90. Use tax nonapplicability.**

For transactions consummated on or after January 1, 1986, the Town's use tax shall not apply to the storage of construction and building materials.

**Sec. 4-3-100. Use tax nonapplicability to use or consumption occurring more than three years after most recent sale.**

For transactions consummated on or after January 1, 1986, the Town's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the Town which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

**Sec. 4-3-110. Use tax collection limitation of actions.**

For transactions consummated on or after January 1, 1986:

- (1) No tax, interest thereon or penalties with respect thereto shall be assessed, nor shall any notice of lien be filed, distress warrant issued or suit for collection be instituted, nor any other action to collect the same be commenced more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the Town Manager may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.
- (2) In the case of failure to file a return, the use tax may be assessed and collected at any time.

**Sec. 4-3-120. Use tax refunds limitation of actions.**

For transactions consummated on or after January 1, 1986:

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- (1) An application for refund of use tax paid under dispute by a purchaser or user who claims an exemption pursuant to Section 4-3-60 above shall be made within sixty (60) days after the storage, use or consumption of the goods or services whereon an exemption is claimed.
  - (2) An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of storage, use or consumption of the goods for which the refund is claimed.

**Sec. 4-3-130. Use tax interest on underpayment, nonpayment or extensions of time for payment of tax.**

- (a) If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-3-170 below shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the Town Manager.
- (b) Interest prescribed under this Section and Sections 4-3-140, 4-3-150 and 4-3-160 of this Article shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.
- (c) If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.
- (d) Interest prescribed under this Section and Sections 4-3-140, 4-3-150 and 4-3-160 of this Article on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

(Prior code 4-4-13)

**Sec. 4-3-140. Use tax deficiency due to negligence.**

If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of this Article or of authorized rules and regulations of the Town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-3-170 below, in addition to the interest provided by Section 4-3-130 above, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to him or her by the Town Manager. If any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added one hundred percent (100%) of the total amount of the deficiency; and, in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town Manager, and an additional three percent (3%) per month on said amount shall be added from the date the return was due until paid.

**Sec. 4-3-150. Use tax neglect or refusal to make return or to pay.**

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town Manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent, and shall add thereto a penalty equal to ten percent

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(10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-3-170 below, plus one-half of one percent (0.5%) per month from the date when due.

#### **Sec. 4-3-160. Penalty interest on unpaid use tax.**

Any use tax due and unpaid shall be a debt to the Town and shall draw interest at the rate imposed under Section 4-3-170 below, in addition to the interest provided by Section 4-3-130 above, from the time when due until paid.

#### **Sec. 4-3-170. Rate of interest.**

When interest is required or permitted to be charged under any provisions of Sections 4-3-130 through 4-3-160 of this Article, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.

#### **Sec. 4-3-180. Other remedies.**

Nothing in Sections 4-3-130 through 4-3-170 above shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes.

#### **Sec. 4-3-190. Use tax collection map of municipal boundaries.**

The Town Manager shall make available to any requesting vendor a map showing the boundaries of the Town. For transactions consummated on or after January 1, 1986, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to him or her.

#### **Sec. 4-3-200. Use tax dispute resolution procedure for deficiency notice or claim for refund.**

For transactions consummated on or after January 1, 1986, the taxpayer may elect a state hearing on the Town Manager's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section.

- (1) As used in this Section, *state hearing* means a hearing before the Executive Director of the Department of Revenue or delegate thereof, as provided in Section 29-2-106.1(3), C.R.S.
- (2) When the Town asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the Town shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the Town's denial of such taxpayer's claim for a refund of use tax paid.
- (3) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he or she has not exhausted local remedies or if he or she fails to request such hearing within the time period provided for in this Paragraph. For purposes of this Paragraph, *exhaustion of local remedies* means:
  - a. The taxpayer has timely requested in writing a hearing before the Town and the Town has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required; however, the taxpayer may elect to submit a

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- brief, in which case the Town may submit a brief. The Town shall hold such hearing and issue the final decision thereon within ninety (90) days after the Town's receipt of the taxpayer's written request therefor, except that the Town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer. In any such event, the Town shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor; or
- b. The taxpayer has timely requested in writing a hearing before the Town and the Town has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in Subparagraph a. above.
- (4) If a taxpayer has exhausted his or her local remedies as provided in Paragraph (3) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in Subsections 29-1-106.1(3) through (7), C.R.S.
- (5) If the deficiency notice or claim for refund involves only the Town, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the district court of the County as provided in Section 29-2-106.1(8), C.R.S., provided that the taxpayer complies with the procedures set forth in Paragraph (3) above.
- (6) If the Town reasonably finds that the collection of use tax will be jeopardized by delay, the Town may utilize the procedures set forth in Section 39-21-111, C.R.S.

## **ARTICLE 4 Land Transfer Excise Tax**

### **Sec. 4-4-10. Imposition of excise tax.**

There is hereby imposed an excise tax on all transfers by deeds, instruments, writings, certain leases or any other documents by which any lands, tenements or other interests in real property located in the Town are sold, granted, assigned, transferred or otherwise conveyed to or vested in a purchaser thereof, or any person, except as may be specifically exempted by Section 4-4-50 of this Article. Said tax shall be due and payable as set forth in Section 4-4-100 of this Article.

### **Sec. 4-4-20. Persons liable for tax.**

Any seller or person who transfers an interest in real property which is subject to the tax imposed under Section 4-4-10 above, and any purchaser or any other person to whom such a transfer is made, shall be jointly and severally liable for payment of the tax.

### **Sec. 4-4-30. Definitions.**

The following words and phrases, as used in this Article, shall have the following meaning:

*Artifice or device* includes, but is not limited to, (1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or organization, or (2) such a transfer plus the intent to ultimately assign the controlling interest in such association or organization.

*Consideration* means and includes actual cash paid and/or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to real property, and shall include the amount of any lien, mortgage, contract indebtedness or other encumbrance, either given to

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secure the purchase price or any part thereof, or remaining unpaid on the property at the time of the sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State or a municipal or quasi-government corporation or district for taxes, special benefits or improvements. In the event the transaction or transfer is by lease or similar agreement not specifically exempted in Section 4-4-50 below, *consideration* means the capitalization of ten percent (10%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, if any, other than rent, paid or to be paid.

*Deed in lieu of foreclosure* means a conveyance by a property owner to a secured party or wholly owned subsidiary of the secured party of property which is the subject of a mortgage, deed of trust or other security instrument in consideration of the cancellation of all or part of the indebtedness secured by such security instrument or release of the debtor or guarantor from any personal liability of such indebtedness.

*Financial institution* means, for purposes of this Chapter, an insured bank, commercial bank or trust company or credit union.

*Real property* means real property as defined by and under the laws of the State.

*Transfer* means and includes any grant or conveyance of the ownership of title to real property that is evidenced by any deed, conveyance, instrument or writing wherein or whereby title to real property situated in the Town is granted or conveyed, or the conveyance of a possessory interest and all other indicia of ownership in real property without the passing of legal title, subject to the exclusions provided in this Article.

#### **Sec. 4-4-40. Amount of tax.**

The amount of said tax payable in each class shall be as follows:

- (1) Where there is no consideration or where the consideration is five hundred dollars (\$500.00) or less, no tax hereunder shall be payable. The mere statement on the face of the instrument of transfer that the consideration received in connection therewith is five hundred dollars (\$500.00) or less shall not be deemed adequate supporting evidence that the consideration in the subject transfer is five hundred dollars (\$500.00) or less.
- (2) Where the consideration exceeds five hundred dollars (\$500.00), the tax payable shall be three percent (3%) of such consideration.

#### **Sec. 4-4-50. Exemptions.**

The tax imposed under the authority of this Article shall not apply to:

- (1) Any document wherein the United States or any agency or instrumentality thereof, the State, any county, city and county, municipality, district or other political subdivision of the State is either the grantor or grantee.
- (2) Any document transferring title to real property in consequence of a gift of such property, where no consideration other than love and affection or charitable donation is evidenced by the terms of the document of transfer.
- (3) Any transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership in real property; however, if additional consideration or value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration.
- (4) Transfers pursuant to a decree of separation or divorce except where the transfer is made to a third party.

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- (5) Any transfer of title or change of interest in real property by reason of death, will or decree of distribution.
  - (6) Any transfer made pursuant to business organization, reorganization or restructuring, including but not limited to mergers or consolidations of corporations, or by a subsidiary to a parent corporation, for no consideration other than cancellation or surrender of the subsidiary's stock or ownership interest. The transfer of at least seventeen percent (17%) of the stock in a corporation or seventeen percent (17%) of any ownership interest in a business entity whose assets include real property within the Town shall not be included in this exemption, and such transfer shall be subject to imposition of the excise tax imposed under Section 4-4-10 above.
  - (7) Any transfer to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Act or in an equity receivership proceeding.
  - (8) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of titles; or granting easements, rights-of-way or licenses.
  - (9) Any decree or order of a court of record quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.
  - (10) Any transfer granting or conveying title to cemetery lots.
  - (11) Any lease of any real property or assignment or transfer of any interest in any such lease, provided that the terms and conditions of such lease do not constitute a de facto conveyance of the subject property. In the latter event, the land transfer tax shall be based upon the capitalization at five percent (5%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined, or at the election of the Town Manager, the tax shall be based upon the assessed value of the property covered by the lease.
  - (12) Any mineral transfer or mineral royalty transfer.
  - (13) Any transfer to secure a debt or other obligation, or release of real property which is security for a debt or other obligation.
  - (14) Any executory contract for the sale of real property of less than three (3) years' duration, under which the purchaser is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract.
  - (15) a. Any transfer under execution, sale or foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed; or deed in lieu of foreclosure; provided that such transfer shall be exempt only: (i) if the grantee is the person holding the obligation or instrument which is being cancelled, in whole or part, in exchange for the transfer or upon which the proceeding is based, as applicable, or the grantee is a junior lienholder or exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution; (ii) if such grantee is the original obligation holder or a financial institution; and (iii) to the extent of the obligation which is being canceled, in whole or in part, in exchange for the transfer or is being satisfied at the execution or foreclosure sale and any obligations to prior lienholders paid from the sale.  
b. Notwithstanding Subparagraph a. above, where the grantee is not the original obligation holder or a financial institution and where the other requirements of Subparagraph a. are otherwise met, such transfer may still qualify for an exemption from the tax pursuant to this Paragraph; provided that the transferee must, as market conditions allow, resell the property in order to satisfy the obligation within two (2) years of the transfer. If, however, the property is not sold

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within two (2) years of the transfer or within any extension of such time beyond two (2) years as the Town Manager may allow for good cause shown, then the transfer shall not be considered exempt pursuant to this Paragraph and shall be considered an artifice and taxable as provided for in this Chapter. Where the transfer is not otherwise exempt pursuant to Subparagraph a. above, the Town Manager shall place a lien or other form of security on the subject property, as approved by the Town Attorney, equal to the amount of tax that may be levied on the transfer at the time thereof.

- c. A purchaser at an execution or foreclosure sale who holds no security interest or redemption rights in the property, and who acquires title to the property upon expiration of all redemption periods, is required to pay the tax.
  - d. For deeds in lieu of foreclosure transfers, in order to qualify for an exemption from the tax pursuant to this Paragraph, the obligation that is being cancelled must be in default at the time of the transfer and no additional consideration shall be exchanged between the transferor and transferee in connection with such transfer. The transferor and transferee shall provide to the Town Manager an affidavit approved by the Town Attorney certifying the existence of the default at the time of the transfer and that no additional consideration has or will be exchanged in connection with the transfer.
- (16) Any transfer that is made pursuant to a valid and legally enforceable contract entered into between the seller and purchaser prior to the effective date of the initial ordinance codified herein, and which transaction is completed on or before June 1, 1980.

#### **Sec. 4-4-60. Application for exemption; artifice.**

- (a) In the event of any transfer that the grantor or grantee thereof desires to establish is exempt from the applicability of the tax, except where the instrument of transfer contains language clearly establishing that the transfer is exempt as determined by the Town Manager, the grantor or grantee thereunder shall apply for and obtain from the Town Manager a certificate of exemption, which shall be affixed to such document of transfer in advance of the recording thereof with the County Clerk and Recorder. The certificate of exemption shall be in substantially the same form as found in Appendix O to this Code. Where no such certificate of exemption is given or the instrument of transfer does not otherwise contain language clearly establishing that the transfer is exempt as determined by the Town Manager, the transfer shall be deemed nonexempt under this Article and subject to the tax.
- (b) Notwithstanding Section 4-4-50 hereof, if an artifice or device is employed in connection with the transfer of real property, which term *artifice or device* shall constitute a transaction or transactions the substantial purpose of which is to evade the provisions of this Article and the imposition of the tax hereunder, then such transfer shall nevertheless be subject to the tax.
- (c) Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the Town Manager may immediately appeal to the Town Council for a determination of such exemption; and such appeal shall be considered by the Town Council within thirty (30) days of receipt of the same. In the event of a determination by the Town Council favorable to the appellant, any tax previously deposited, or so much thereof as may be allowed by the Town Manager, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the Town Council within thirty (30) days of the receipt thereof, the decision will be deemed favorable to the appellant.

(Ord. 13 §4, 2012)

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### **Sec. 4-4-70. Lands affected.**

The tax imposed under the authority of this Article shall apply to all real property located within the Town not specifically exempted hereunder. When a transfer subject to the Article includes real property located within the Town, the tax imposed under the authority of this Article shall apply only to real property located within the Town, and said tax shall be assessed on that part of the consideration fairly attributable to that part of such real property located within the Town, as determined by the Town Manager.

### **Sec. 4-4-80. Town Manager to enforce.**

- (a) The Town Manager is charged with the enforcement of the provisions of this Article and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations to implement the intent and purposes of this Article.
- (b) At the time of any transfer upon which a tax is imposed under authority of this Article, the person liable for said tax shall make a report to the Town Manager on forms prescribed by him or her, setting forth the true, complete and actual consideration for the transfer, the names and addresses of the parties thereto, the location of the real property transferred and such other information as may be required by the Town Manager.
- (c) For the purposes of collection of the tax imposed under authority of this Article, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate agencies or other closing agents or agencies permitted as such to do business under the laws of the State may collect said tax and remit the same to the Town for and on behalf of the person liable for said tax.
- (d) The Town Manager is hereby authorized to negotiate and enter into an intergovernmental contract with appropriate officials of the County for the collection of this tax, including the payment of a fee to the County for assisting in said collection.

(Prior code 4-3-8; Ord. 4 §1, 2009)

### **Sec. 4-4-90. Application of funds.**

- (a) One-half ( $\frac{1}{2}$ ) of the proceeds received by the Town pursuant to this Article shall be deposited in the Ordinance No. 15, Series 1979 Tax Fund, created in Article 1 of this Chapter. This fund shall be subject to appropriation only for the capital improvement projects set forth in Paragraphs (1), (2) and (3) below as follows:
  - (1) Streets, alleys, parking areas and other public rights-of-way owned by the Town, including acquisition of real property related to this project category.
  - (2) Lower cost housing, including acquisition of real property and construction of improvements related to this project category.
  - (3) Parks and open space and community centers, including acquisition of real property and construction of improvements related to this project category.

In addition, the funds may be appropriated for the payment of principal and interest on bonds issued for one (1) or more of the capital improvement project categories established herein.

- (b) One-half ( $\frac{1}{2}$ ) of the proceeds received by the Town pursuant to this Article shall be deposited in the Ordinance No. 12, Series 1991 Tax Fund, created in Article 1 of this Chapter. This fund shall be subject to appropriation only for those purposes set forth in Paragraphs (2), (3), (4) and (5) below to accomplish the

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preservation of open space and access outside the Town boundaries as they exist as of November 5, 1991, and financing activities relative thereto. In furtherance thereof, the Town Council may do the following:

- (1) Deposit all or part of this fund into federally insured, interest-bearing accounts, or otherwise invest such funds as the Town Council deems appropriate.
- (2) Purchase, lease, hold, have, use and take possession of interests in real property, obtain easements, including conservation easements, licenses in real property and first rights of refusal; and sell, lease, mortgage, deed in trust, alienate, subdivide, trade or dispose of the same.
- (3) Administer and manage real property and easements and licenses therein for the benefit of the citizens of the Town.
- (4) Designate such other entities as it deems appropriate to perform those functions set forth in Paragraphs (2) and (3) above, and appropriate funds for the administration of such entities.

In addition, the funds may be appropriated for the payment of principal and interest on bonds issued for the purposes set forth in Paragraphs (1) through (4) above.

#### **Sec. 4-4-100. Due dates, delinquencies, penalties, interest.**

- (a) The tax imposed under the authority of this Article is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid within thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of twelve percent (12%) of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. Interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall constitute part of the tax.
- (b) No deed, instrument of conveyance or document of transfer shall be filed of record in the office of the County Clerk and Recorder or attempt made to so record the document until and unless said tax and all penalties and interest thereon have been paid in full.

(Prior code 4-3-10)

#### **Sec. 4-4-110. Lien.**

- (a) The amount of the tax imposed under Section 4-4-10 above, together with penalty and interest due thereon, is hereby assessed against the property transferred and, if not paid when due, shall constitute a lien on the property for the amount thereof, which lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.
- (b) If the tax is unpaid and delinquent, the Town Manager shall give written notification to the seller and purchaser, at the address shown on the deed or instrument or his or her last known address, of said delinquency. Said notification shall be mailed by certified mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid in full within thirty (30) days of the effective date of notification, the Town Manager shall mark the same as delinquent on the Town's tax roll and shall certify such delinquency to the County Treasurer, pursuant to Sections 31-20-105 and 31-20-106, C.R.S., and the Board of County Commissioners, who shall extend such delinquencies upon the real property tax rolls of the County and collect the same in the manner set forth for real property taxes. Upon certification of the delinquent taxes, the penalties and interest thereon shall also become due and owing.

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- (c) The amount of the tax, penalty and interest imposed under the provisions of this Article shall be deemed a debt owed to the Town. Any person owing money to the Town under the provisions of this Article shall be liable in an action brought in the name of the Town for the recovery of the delinquent amount, plus the attorney's fees and other costs expended by the Town in such action.
  - (d) Any person who fails or refuses to pay any tax due hereunder may be punished by a fine not exceeding three hundred dollars (\$300.00) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.
  - (e) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Prior code 4-3-11; Ord. 4 §1, 2009; Ord. 8 §2, 2010)

## **ARTICLE 5 Telephone Utility Occupation Tax**

### **Sec. 4-5-10. Levy of tax.**

There is hereby levied on and against each telephone utility company operating within the Town a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town and of supplying local exchange telephone service to the inhabitants of the Town and surrounding areas. The amount of the tax levied hereby shall be:

- (1) For six (6) months after the date on which the tax begins to accrue as provided in Section 4-5-20 below, thirty-five cents (\$0.35) per month per telephone account for which local exchange telephone service is provided from within the corporate limits of the Town of Crested Butte on said date; and
- (2) For each subsequent six-month period, thirty-six cents (\$0.36) per month per telephone account for which local exchange telephone service is provided from within the corporate limits of the Town on June 1 and December 1 of each year.

### **Sec. 4-5-20. Time payment of tax.**

The tax levied by this Article shall begin to accrue on December 1, 1980, and shall be due and payable on December 31, 1980, and in four (4) equal quarterly installments for years subsequent to 1980, to be paid on the last business day of the months of March, June, September and December.

### **Sec. 4-5-30. Filing statement.**

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 4-5-20 above, each telephone utility company subject to this Article shall file with the Town Clerk, in such form as the Town Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided from within the corporate limits of the Town on said date. Such statement shall be filed within thirty (30) days after June 1 and December 1 of each subsequent year, showing such accounts on June 1 and December 1 of that year.

### **Sec. 4-5-40. Failure to pay.**

If any telephone utility company subject to the provisions of this Article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same, together with an

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addition of fourteen percent (14%) of the amount of taxes due, shall be and hereby is declared to be a debt due and owing from such company to the Town.

**Sec. 4-5-50. Penalty clause.**

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the semiannual statement of accounts provided in Section 4-5-30 above, said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided, however, that each day after said statement shall become delinquent during which the officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

**Sec. 4-5-60. Inspection of records.**

The Town and its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Article, and to make copies of the entries or contents thereof.

**Sec. 4-5-70. Local purpose.**

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Article shall be construed to mean that any telephone utility company is issued a franchise by the Town.

**Sec. 4-5-80. Tax in lieu of other taxes.**

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the Town on any telephone utility company subject to the provisions of this Article.

## **ARTICLE 6 Purchasing Procedures and Policies**

**Sec. 4-6-10 Purchasing policies by resolution.**

The Council shall establish by resolution and may amend from time to time, purchasing policies for goods, services, and public improvements.

( Ord. No. 9 , § 1, 5-7-2018)

**Sec. 4-6-20 Public improvements.**

Purchasing policies and procedures for public improvements shall establish a contract amount above which bidding will be required and the process for advertising bid requests and awarding contracts to conforming bidders.

( Ord. No. 9 , § 1, 5-7-2018)

## **ARTICLE 7 Industrial Revenue Development Bonds**

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## **Sec. 4-7-10. Definitions.**

- (a) General. For purposes of this Article, all terms, words and phrases shall be defined and construed in accordance with the "County and Municipality Development Revenue Bond Act," Title 29, Article 3, C.R.S.
- (b) Processing fees and costs. In addition to reimbursement of out-of-pocket costs, processing fees and costs shall include the time and effort of Town officials and staff.
- (c) Applicant. The applicant may be any person or legal entity or combination thereof filing an application with the Town for industrial revenue development bond project financing.

(Prior code 20-1-1; Ord. 4 §1, 2009)

## **Sec. 4-7-20. Policy.**

- (a) General. The Town desires the stimulation of economic growth and development in the Town. To achieve this purpose, the Town recognizes the need to coordinate and cooperate with the private sector in a joint effort. A principal mechanism for implementing positive government action is the use of industrial development revenue bonds (IDRB) pursuant to the County and Municipality Development Bond Act.
- (b) Factors. The prime requirements for the approval of an IDRB proposal shall be that the Town receive a demonstrated public benefit involving one (1) or more of the following:
  - (1) Creation of additional jobs in the Town.
  - (2) Increase of the tax base resulting in a net fiscal benefit for the Town.
  - (3) Stimulation of additional business investment.
  - (4) Provision of facilities or benefits to Town citizens for economic, recreational or health purposes in a manner that complements the Town's own programs or facilities.
  - (5) Carrying out stated goals and objectives of the Town.
  - (6) No placement of a burden on existing Town services or utilities beyond that which can be reasonable and economically accommodated.
  - (7) Discouragement of the issuance of IDRBs for business activities which would directly compete with established businesses in the Town.
- (c) Facilities and programs. All facilities and programs that may be financial under state statutes are eligible for consideration by the Town. Competitive impact resulting from the facility or program will be considered and addressed in approving an IDRB issue.
- (d) Financial responsibility. Applicants for IDRB issues must clearly demonstrate financial responsibility sufficient to amortize the proposed bond issue. The plan for marketing the IDRBs shall determine the following general financial standards used by the Town to evaluate the proposal:
  - (1) The Town may at its sole discretion retain an independent financial advisor at the expense of the project applicant.
  - (2) The applicant shall select qualified financial consultants and/or underwriters, as well as legal counsel, to prepare all necessary documents and materials. The Town may rely on the opinion of such experts, and the application shall be accompanied by a preliminary financial analysis by the underwriter regarding the economic soundness of the applicant, as well as the financial consultant/underwriter's opinion regarding the financial strength of the applicant, feasibility of the project and the underwriter's ability to market the financing.

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- (3) Prior to the sale of IDRBS, the applicant may be required to furnish to the Town, before passage of the final resolution, a comfort letter from the lending institution which has reviewed the economic feasibility of the project, including the financial responsibility of any guarantors, and which finds that, in its professional judgment, it is an economically viable project.
  - (e) Other economic considerations. The criteria set forth in this Section to evaluate applications are not intended as minimum requirements, and each application shall be considered on its individual merits and shall further include consideration of the following:
    - (1) Asset life span versus term of the bond issue.
    - (2) Special purpose buildings.
    - (3) Management strength of applicant.
    - (4) Size of the bond issue.

(Prior code 20-1-2; Ord. 4 §1, 2009)

### **Sec. 4-7-30. Procedures.**

The order of events to be followed by an applicant in submitting an IDRBS project proposal to the Town shall be as follows:

- (1) Application. The applicant submits an application to the Town Manager which includes information prescribed by the Town. The applicant shall submit his or her application on forms provided by the Town and shall further execute an agreement with the Town to assume all expenses of the Town in connection with the project proposal.
- (2) Staff review. Within sixty (60) working days after submittal of a complete application, the Town Manager shall make a written report of the staff's recommendations. Extension of the review period may be granted by the Town Manager. The staff may request the Town's bond attorney or the Town's financial advisor to submit recommendations.
- (3) Inducement resolution. As soon as practicable after the staff recommendations, an inducement resolution will be placed on the agenda of the Town Council for public hearing action. The inducement resolution may be submitted to the Town's bonds counsel for approval. An approved inducement resolution shall remain in effect for one (1) year from the date of passage.
- (4) Bond ordinance. The definitive bond ordinance shall be filed at the office of the Town Manager at least fourteen (14) days prior to the date it is to be introduced at a meeting of the Town Council. Such bond ordinance shall be reviewed by the Town's staff and its consultants, if staff so requests, for compliance with all of the Town's requirements.
- (5) Closing. Closing of the sale of the bonds shall proceed on a reasonable time schedule after final passage of the bond ordinance.
- (6) Fees and reimbursement of expenses:
  - a. The application for the issuance of IDRBS shall be accompanied by a nonrefundable application fee equal to the Town's expenses in reviewing, processing and issuing the same.
  - b. In addition to reimbursable out-of-pocket costs, a processing fee for industrial development bond applications, processing and review shall be charged by the Town and paid by the applicant in an amount established by resolution of the Town Council.
  - c. The applicant shall be required to deposit with the Town such an amount as may be recommended by the Finance Director with the approval of the Town Manager pursuant to the

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agreement filed with the application to reimburse the Town for all direct, extraordinary and out-of-pocket expenses. This deposit shall be made within seven (7) days after passage of the inducement resolution and changed in the event the bonds are not sold. Any expenditures made by the Town charged against the deposit will be reimbursed to the Town upon bond closing, and the full deposit will be returned to the applicant.

#### **Sec. 4-7-40. Rules and regulations.**

The Town may from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article, including setting fee schedules for direct, extraordinary and out-of-pocket expenses based on objective data; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **ARTICLE 8 Collection of Delinquent Amounts**

#### **Sec. 4-8-10. Collection procedure.**

In addition to any other lawful means, the Town may collect and recover any charges, assessments, fees and taxes, or other amounts not paid to the Town in good funds as due, by certifying such delinquent amounts to the County Treasurer, pursuant to Sections 31-20-105 and 31-20-106, C.R.S., to be collected in the same manner as real property taxes against the property to which such delinquent amounts are appropriately attributed. Delinquent amounts which may be so certified shall include, but not be limited to, amounts due under this Code, including Town building, land use, nuisance, licensing, permitting and utility regulations and ordinances and Town fees, expenses and charges for review and processing of licenses, permits, land use, zoning and annexation applications.

### **ARTICLE 9 Vacation Rental Tax**

#### **Sec. 4-9-10. Purpose.**

The purpose of this Article shall be to impose an excise tax known as a vacation rental tax on vacation rentals the proceeds of which will be recorded in the Affordable Housing Fund established by Sec. 4-1-70 for the purposes of supporting and directly related to affordable or workforce housing.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-20. Effective date.**

This Article shall be effective commencing on January 1, 2018, and shall apply to all vacation rentals.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-30. Definitions.**

*Economic nexus* means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:

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- (A) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or
  - (B) In the current calendar year, ninety (90) days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

*Engaged in business in the Town* means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; (5) retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve-month period; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Section 4-2-30 of the Code.

*License* means a vacation rental license required by Chapter 6 of Article 6 of this Code.

*Marketplace* means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

*Marketplace facilitator:*

- (A) Means a person who:
  - (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
  - (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
  - (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
- (B) "Marketplace facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

*Multichannel seller* means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and/or through other means.

*Vacation Rental* has the same meaning as in Section 16-1-20 of this Code.

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*Vendor* means any person who holds a license. Vendor also includes a marketplace facilitator, marketplace seller, or multichannel seller engaged in the business of vacation rentals in the Town.

( Ord. No. 35 , § 3, 12-4-2017; Ord. No. 4 , § 6, 2-7-2022)

#### **Sec. 4-9-40. Rate, imposition, collection, and distribution of vacation rental tax.**

- (a) There is hereby levied by the Town an excise tax of up to seven and one-half (7.5) percent on the amount charged to any person for a vacation rental.
- (b) A vendor shall collect the tax and remit it to the Town pursuant to this Article.
- (c) The Town shall record the proceeds of the vacation rental tax in the Affordable Housing Fund.

( Ord. No. 35 , § 3, 12-4-2017; Ord. No. 20 , § 2, 10-18-2021/Election 11-2-2021)

#### **Sec. 4-9-50. Vacation rental tax schedule.**

The vacation rental tax imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations approved by the Finance Director.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-60. Transactions, items and services subject to vacation rental tax.**

The vacation rental tax shall apply to the price charged to any person(s) for use of a vacation rental.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-70. Exemptions from vacation rental excise tax.**

The tax levied by Section 4-9-40 above shall not apply to the following:

- (a) All vacation rentals to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organization.
- (b) All vacation rentals to the federal government, the State or their departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
- (c) All vacation rentals which the Town is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-80. Exemption; burden of proof.**

The burden of proving that a vacation rental is exempt from the vacation rental tax shall be on the purchaser under such reasonable requirements of proof as the Town Manager or the Finance Director may prescribe.

( Ord. No. 35 , § 3, 12-4-2017)

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### **Sec. 4-9-90. Credit sales.**

If a vendor transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the vacation rental tax on the balance of the total rental price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a vendor to a closely held subsidiary shall not be deemed to require the vendor to pay the vacation rental tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account.

(Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-100. Acquisition, inception or cessation of vacation rental business.**

- (a) Any person who owns a vacation rental property who sells such property shall file a final return. The reporting period shall end on the date of the transfer of ownership of the business in question.
- (b) Any person who purchases an existing vacation rental property shall be responsible for determining whether there is any tax due from that property and shall withhold from the initial purchase payment an amount sufficient to cover all such tax due, unless the former owner produces a receipt from the Town showing that all tax due has been paid or a certificate from the Town indicating that there is no tax due.

Any amount so withheld shall be paid to the Town within ten (10) days of the date of the sale of the property. Any purchaser who fails to withhold such tax due, or fails to pay to the Town the amount so withheld within the ten-day period shall, as well as the seller, be liable for any tax due.

- (c) Every person who owns vacation rental property in the Town who ceases using such property for vacation rental purposes shall file a final return. The reporting period of such return shall end on the last day of renting property for vacation rental purposes.

(Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-110. Vendor responsible for collection and payment of tax.**

Every vendor engaged in the vacation rental business in the Town shall be liable and responsible for collecting and paying to the Town an amount equivalent to the amount charged to any person for a vacation rental multiplied by the vacation rental tax rate established by Section 4-9-40 of this Code.

- (1) Vendors shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no vendor shall advertise, hold out or state to the public or to any consumer, either directly or indirectly, that the vacation rental tax or any part thereof shall be assumed or absorbed by the vendor, that it will not be added to the price or, if added, that it or any part thereof shall be refunded.
- (2) Any tax added to the price by a vendor shall constitute a debt from the purchaser to the vendor until paid, and shall be recoverable at law in the same manner as other debts.
- (3) No vendor shall retain any vacation rental tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected, and include it in the calculation of tax due.
- (4) When a dispute arises between a vendor and a purchaser who claims that the rental is exempt from the tax, the vendor shall collect, and the purchaser shall pay, such tax. The purchaser may submit a

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claim for refund to the Town within sixty (60) days of the date of rental. Any such tax refunded by the Town will be paid directly to the purchaser.

(5) Marketplace sales.

- (A) (1) A marketplace facilitator engaged in business in the Town is required to collect and remit vacation rental tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect vacation rental tax had the sale not been facilitated by the marketplace facilitator.
- (2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under Section 4-9-30 of the Code. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
- (3) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.
- (4) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
- a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit vacation rental tax on all sales subject to tax under this article; or
  - b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect vacation rental tax and will collect vacation rental tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.
- (5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.
- (B) Auditing. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace, as provided in Section 4-9-170 of the Town Code. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

( Ord. No. 35 , § 3, 12-4-2017; Ord. No. 4 , § 6, 2-7-2022)

#### **Sec. 4-9-120. Trust status of tax in possession of vendor.**

All vacation rental tax collected by any vendor shall be the property of the Town and remain public money in the hands of such vendor, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

( Ord. No. 35 , § 3, 12-4-2017)

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### **Sec. 4-9-130. Filing returns; due date.**

- (a) Every vendor shall file a return, whether or not a tax is due, and remit any tax due to the Town on or before the twentieth day of the month following the reporting period. Failure to receive a return does not relieve a vendor of his or her legal responsibility for filing a return on or before the due date.
- (b) A vendor engaged in business in the Town at two (2) or more locations who collects vacation rental tax, may file one (1) return for all such locations when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.
- (c) For good cause shown in a written request of a vendor, the Finance Director may extend the time for making returns and paying the tax due. Such good cause shall not include the vendor's inability to pay taxes due the Town due to other debts incurred by the vendor or his or her business.
- (d) No person shall make any false statement in connection with a return.

(Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-140. Reporting periods.**

- (a) Unless otherwise approved by the Town, vendors must file returns and pay taxes as follows:
  - (1) Upon approval of the Finance Director, a vendor whose monthly tax is ten dollars (\$10.00) or less may file returns and pay tax annually, semi-annually, quarterly or monthly.
  - (2) Upon approval of the Finance Director, a vendor whose monthly tax due is more than ten dollars (\$10.00) and less than twenty dollars (\$20.00) may file returns and pay tax semi-annually, quarterly or monthly.
  - (3) Upon approval of the Finance Director, a vendor whose monthly tax due is more than twenty (\$20.00) and less than forty dollars (\$40.00) may file returns and pay tax quarterly or monthly.
  - (4) A vendor whose monthly tax due is forty dollars (\$40.00) or more shall file returns and pay tax monthly.

For the purpose of the timing of the filing of returns, the amounts considered in Paragraphs (1) through (4) above must be consistent for a period of three (3) consecutive months to be approved for any schedule other than reporting monthly.

- (b) The reporting period for a final return shall end on the date of the transfer of ownership or cessation of the business renting property for vacation rental purposes.
- (c) If any vendor who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director. Immediately following notice of such revocation, the vendor shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted.

(Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-150. Duty to keep books and records.**

- (a) Every vendor shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.
- (b) Every vendor shall provide all such records for audit by the Town during normal business hours.

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( Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-160. Authority of finance director.**

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

- (1) The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax.
- (2) The Finance Director may formulate and promulgate, after hearing, appropriate and additional regulations to effectuate the purpose of this Article.
- (3) The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.
- (4) The Finance Director may issue a subpoena to command a person to attend and give testimony, or to produce books, records or accounts.
  - a. Any subpoenas issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure, including payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees shall be paid by the Town. When a witness is subpoenaed at the insistence of the vendor, the Finance Director may require that the cost of the service of the subpoena and the fee be paid by the vendor. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.
  - b. If a subpoena issued by the Finance Director is duly served and the respondent fails to attend, give testimony or produce books, accounts or records as commanded, the Finance Director may request the Town Attorney to file a motion with the Municipal Court for an order enforcing the subpoena.
- (5) The Finance Director is authorized to administer oaths and take testimony at the hearing.
- (6) The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.
- (7) The Finance Director may accept any partial payment made and apply such payment toward the tax due. Deposit of such payment shall not in any way imply that the remaining balance is or has been abated.
- (8) Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent postage paid by certified mail to the last known address of the vendor, or served in person by an officer of the Town Marshal's office.

( Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-170. Audit of record.**

- (a) For the purpose of ascertaining the correct amount of tax due from any vendor in the Town, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, records and accounts of such person.
- (b) All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any vendor refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director or an authorized agent, the Finance Director

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may issue a subpoena to require that the vendor or his or her representative attend a hearing or produce any such books, accounts or records for examination.

- (c) Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the Finance Director deems appropriate:
  - (1) By comparing the tax reported and paid on returns to the actual tax due.
  - (2) By identifying transactions on which the tax was not properly or accurately collected or paid.
  - (3) By identifying other irregularities in the calculation of tax due.
- (d) Any organization claiming exemption under the provisions of this Article is subject to audit in the same manner as a vendor.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-180. Tax information confidential.**

- (a) All specific information gained under the provisions of this Article which is used to determine the tax due from a vendor, whether furnished by the vendor or obtained through an audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.
- (b) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a vendor or his or her duly authorized representative of a copy of such confidential information relating to such vendor, the publication of statistics so classified as to prevent the identification of particular vendors, or the inspection of such confidential information by an officer, employee or legal representative of the Town.
- (c) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-190. Overpayment from returns.**

- (a) If the amount remitted with the return is more than the tax due as computed from information in such return, the vendor shall be notified.
- (b) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the vendor may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.
- (c) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-200. Tax overpayment determined through audit.**

If the Town ascertains through audit of a vendor's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund if such claim is signed and submitted by the vendor within thirty (30) days of the date of the notice of overpayment.

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(Supp. No. 20)

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( Ord. No. 35 , § 3, 12-4-2017)

**Sec. 4-9-210. Refunds of disputed tax.**

Refunds of tax paid to a vendor by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase.

( Ord. No. 35 , § 3, 12-4-2017)

**Sec. 4-9-220. Claim for refund.**

- (a) No tax overpayment, except as provided in Subsection 4-9-190(b), shall be refunded unless a claim for refund is signed and submitted to the Town by the vendor.
- (b) An application for refund of tax shall:
  - (1) Be made on a claim for refund form furnished by the Town.
  - (2) Be signed by the vendor.
  - (3) Include adequate documentation of the claim.
- (c) The Finance Director shall examine the claim for refund and give written notice to the vendor of the amount to be refunded or denied.
- (d) Refunds are not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.
- (e) No person shall make any false statement in connection with a claim for refund.

( Ord. No. 35 , § 3, 12-4-2017)

**Sec. 4-9-230. Intercity claims for recovery.**

- (a) The intent of this Section is to streamline and standardize the procedures related to situations where tax has been remitted to the incorrect government. It is not intended to reduce or eliminate the responsibilities of the vendor to correctly pay, collect and remit vacation rental taxes to the Town.
- (b) As used herein, claim for recovery means a claim for reimbursement of vacation rental taxes paid to the wrong jurisdiction.
- (c) When it is determined by the Finance Director that vacation rental tax owed to the Town has been reported and paid to another municipality or jurisdiction, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted and that, as of the date of the notice, the vendor must cease improper tax collections and remittances.
- (d) The Town may make a written claim for recovery directly to the municipality or jurisdiction that received the tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for the collection of the tax from the vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the vendor and/or vendor releasing its claim to the taxes paid to the wrong municipality or jurisdiction, evidence to substantiate the claim and a request that the municipality or jurisdiction approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality or jurisdiction to which the Town submits a claim for

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recovery may, for good cause, request an extension of time to investigate the claim. The approval of such extension by the Town shall not unreasonably be withheld.

- (e) Within ninety (90) days after receipt of a claim of recovery, the municipality or jurisdiction receiving taxes in error shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied, in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the municipality or jurisdiction receiving taxes in error shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of the approval. If a claim is submitted jointly by a municipality and a vendor or vendor, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.
- (f) A municipality or jurisdiction claimed to be receiving taxes in error may deny a claim for recovery on the grounds that it has previously paid a claim for recovery arising out of an audit of the same vendor.
- (g) The period subject to a claim for recovery shall be limited to the thirty-six month period prior to the date the municipality or jurisdiction that was wrongly paid the tax receives the claim for recovery.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-240. Underpayments from returns.**

- (a) If the amount remitted with a return is less than the tax computed from information in such return, the vendor shall be notified.
- (b) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.
- (c) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-250. Tax deficiencies from failure to file.**

- (a) If any vendor neglects or refuses to obtain a vacation rental license, the amount of tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.
- (b) If any vendor neglects or refuses to file a return by the date due, the tax due shall be estimated based on such information as may be available, and a notice of assessment shall be issued.
- (c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-260. Tax deficiencies determined through audit.**

If the Town determines through an audit of the vendor's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

( Ord. No. 35 , § 3, 12-4-2017)

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### **Sec. 4-9-270. Penalties.**

A penalty shall be levied for any tax deficiency.

- (1) For transactions consummated after the effective date of the initial ordinance codified herein, the penalty for late payment shall be fifteen dollars (\$15.00) or ten (10) percent of the tax deficiency, whichever is greater. Additionally, one-half (0.5) percent of the tax deficiency per month from the date when due, not exceeding eighteen (18) percent in the aggregate, shall be assessed.
- (2) If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred (100) percent of the total tax deficiency.
- (3) Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the vendor submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause therefor.

( Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-280. Interest.**

- (a) Interest shall be levied on any tax deficiency.
- (b) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For transactions consummated after the effective date of the initial ordinance codified herein, the monthly interest rate determined by the Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.
- (c) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the due date of such assessment and the payment date established in an informal meeting, or thirty (30) days after the date of a finding of fact, conclusion or decision issued after a hearing.
- (d) Interest properly assessed on any tax deficiency shall not be abated.

( Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-290. Notice of assessment.**

- (a) The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.
- (b) Notices of assessment shall be in writing and delivered in person or sent postage paid by first class mail, to the last known address of the vendor.
- (c) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.
- (d) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists.

( Ord. No. 35 , § 3, 12-4-2017)

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### **Sec. 4-9-300. Protest of notice of assessment or denial of refund.**

- (a) Any notice of assessment may be protested by the vendor to whom it is issued.
  - (1) A protest of a notice of assessment issued to a vendor or vendor for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.
  - (2) When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the vendor fails to pursue the protest in a timely manner.
- (b) Any denial of a claim for a refund may be protested by the vendor who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.
- (c) Any timely protest entitles a vendor to a hearing under the provision of this Article.
  - (1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the vendor to resolve the issues.
  - (2) Participation in such an informal meeting does not prevent either the vendor or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting.

( Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-310. Hearings.**

- (a) The Town shall commence a hearing within ninety (90) days after the Town's receipt of the vendor's written protest; except that the Town may extend such period if the delay is requested by the vendor. The Finance Director shall notify the vendor in writing of the time and place of such hearing.
- (b) Every hearing shall be held within the Town and before the Finance Director.
- (c) The vendor may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the vendor, are pertinent to the protest. The filing of briefs shall not be required.
- (d) Based on the evidence presented at the hearing, the Finance Director shall issue a finding of fact, conclusions and decision which may modify or abate in full the tax, penalties and/or interest protested at the hearing, approve a refund or uphold the assessment.
- (e) After such hearing, the vendor shall not be entitled to a second hearing on the same notice of assessment or denial of refund.
- (f) Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the finding of fact, conclusions and decision.

( Ord. No. 35 , § 3, 12-4-2017)

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### **Sec. 4-9-320. Appeals.**

- (a) Subsequent to a hearing, the vendor may appeal the decision of the Finance Director in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (b) Upon appeal to the District Court, the vendor shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director.
- (c) An appeal of a final decision of the Finance Director in a hearing held pursuant to Section 4-9-310 above shall be commenced within thirty (30) days of such decision.

( Ord. No. 35 , § 3, 12-4-2017)

### **Sec. 4-9-330. Lien for tax due.**

- (a) If any tax due is not paid by the payment date of a notice of assessment, the Finance Director may issue a notice of lien on the real and personal property of the vendor. Such lien shall specify the name of the vendor, the tax due, the date of accrual thereof and the location of the property, and shall be certified by the Finance Director.
- (b) The notice of lien shall be filed in the office of the clerk and recorder of any county in the State in which the real and personal property of the vendor is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.
- (c) The attachment and priority of such lien shall be as follows:
  - (1) Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any vendor, including those under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.
  - (2) Such lien on the real and tangible personal property of the vendor that is not goods, stock in trade and business fixtures shall be a first and prior lien except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.
  - (3) The personal property of an owner who has made a bona fide lease to a vendor shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the clerk and recorder of the county where the property is located or based.
  - (4) Motor vehicles which are property registered in this State, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has earned reserve, allowance for depreciation not to exceed the fair market value, or similar interest which is or may be credited to the lease.
  - (5) Where a lessor and lessee are blood relatives or relatives by law or have twenty-five (25) percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this Section.
- (d) If a notice of lien is filed against any real property, the Finance Director may direct the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real

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property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-340. Performance of lien.**

- (a) Any lien for tax due shall continue until a release of lien is filed by the Finance Director.
- (b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-350. Release of lien.**

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of the lien with the clerk and recorder of the county in which the lien was filed.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-360. Civil action to recover tax due.**

- (a) Any unpaid tax due shall constitute a debt of the vendor to the Town, and the Finance Director may direct the Town Attorney to file a civil action to collect such taxes due.
- (b) The return filed by a vendor or the notice of assessment issued by the Finance Director shall be *prima facie* proof of the tax due.
- (c) If a judgment is obtained by the Town, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-370. Jeopardy assessment.**

- (a) If the collection of any tax due from a vendor, whether or not previously assessed, will be jeopardized by delay, the Town Manager may declare the taxable period immediately terminated, require the Finance Director to determine the tax and issue a jeopardy assessment and demand payment. Any tax so assessed shall be due and payable immediately.
- (b) Enforcement of a jeopardy assessment and demand for payment may be stayed if the vendor gives security for payment which is satisfactory to the Town Manager.
- (c) If, in the opinion of the vendor, the jeopardy assessment is not for the correct amount of the tax due, the vendor shall pay the tax due as assessed and submit a claim for refund to the Town.

( Ord. No. 35 , § 3, 12-4-2017)

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## **Sec. 4-9-380. Distraint and sale.**

- (a) Unless such property is exempt by state statute from distraint and sale, the Town Manager may sign and issue a warrant directed to any employee or agent of the Town, or any sheriff of any county in the State, commanding the distraint and sale of personal property of the vendor on which a lien has attached for payment of the tax due.
  - (1) Such warrant may be issued if such tax due is not paid on or before twenty-one (21) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.
  - (2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment have been issued.
- (b) If the vendor does not volunteer entry into the premises, the Town Manager may apply to the Municipal Court for a warrant authorizing any employee of the Town to search for and distrain property located within the Town to enforce the collection of the tax due.
  - (1) The Town Manager shall demonstrate to the Municipal Court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due.
  - (2) If a jeopardy assessment and demand for payment have been issued, the Town Manager shall specify to the Municipal Court why collection of the tax will be jeopardized.
  - (3) The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.
- (c) Disposal of distrained property:
  - (1) A signed inventory of the property distrained shall be made by the Town or its agent. Prior to the sale, the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the tax due and related expenses incurred to date, and the time and place of sale.
  - (2) A notice of time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu of thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where the distraint is made, and in at least two (2) other places of general public view within such county.
  - (3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the Town or its agent for no more than ninety (90) days from the date originally fixed for the sale.
  - (4) The property shall be sold at public auction for not less than a fair minimum price and, if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the Town and the Town shall file a release of lien thereon. If the property is purchased by the Town, such property may be disposed of in the same manner as other Town property and the lien thereon shall be released.
  - (5) The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the Town or its agent may accept the higher bid.
  - (6) The property offered for sale may be redeemed if the owner, possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.

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- (7) The Town or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale, and shall transfer to the purchaser all right, title and interest of the vendor in and to the property sold.
    - a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.
    - b. When the property sold consists of securities or other evidence of debt, the certificate of sale shall be good and valid evidence of title.
  - (8) Any surplus remaining after satisfaction of the tax due, plus any costs of making the distraint and advertising the sale, may be distributed by the Town, first to other jurisdictions which have filed liens or claims of vacation rental or personal property ad valorem taxes, and second to the owner or other person having a legal right thereto.
  - (9) The Finance Director shall submit a written account of the sale to the Town Manager.
- (d) Exempt property. Property of the vendor subject to distraint shall include the personal property of the vendor and the goods, stock in trade and business fixtures owned or used by any vendor, including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described Subsection 4-9-330(c) above.
- (e) Return of property. The vendor or any person who claims an ownership interest or right of possession in the distraint property may petition the Town Manager, or the Municipal Court if the property was seized pursuant to warrant issued by the court, for return of the property.
- (1) The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the Town's interest, or that the property is exempt from the Town's lien.
  - (2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines by a preponderance of the evidence in favor of the vendor or other petitioner, the property shall be returned.

(Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-390. Status of tax due in bankruptcy and receivership.**

Whenever the business or property of any vendor is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the vendor. No sheriff, receiver, assignee or other officer shall sell the property of any such vendor under process or order of the Finance Director for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant.

(Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-400. Violations; summons and complaints; penalty.**

- (a) It shall be a violation of this Article to fail to perform any applicable affirmative duty specified in this Article, including but not limited to:
  - (1) The failure of any vendor in the Town to obtain a license.
  - (2) The failure of any vendor to file a timely return or to make timely payment of any tax due.
  - (3) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing.

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- (4) The evasion of collection of any vacation rental tax by any person, or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.
  - (b) The Finance Director may direct the issuance of a complaint and summons to appear before the Municipal Court to any person who may be in violation of this Article or of the rules and regulations promulgated by the Finance Director to enforce this Article.
  - (c) Violations of this Article shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

( Ord. No. 35 , § 3, 12-4-2017)

#### **Sec. 4-9-410. Statute of limitations.**

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained herein shall be as follows:

- (1) Refunds.
  - a. Any claim for refund for disputed tax shall be submitted to the Town on or before sixty (60) days from the date of such purchase.
  - b. Any claim for refund resulting from a notice of overpayment shall be submitted to the Town on or before thirty (30) days after the date of such notice of overpayment.
  - c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the Town.
- (2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due.
- (3) Liens. No notice of lien shall be issued more than three (3) years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for each extended period.
- (4) Returns.
  - a. When a vendor fails or refuses to file a return, the tax due may be assessed and collected at any time.
  - b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun at any time.
- (5) Protests. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director in other than written form, or after the period allowed in this Article.
- (6) Extension. The period of limitation may be extended before its expiration.
  - a. The vendor and Finance Director may agree in writing to extend the period.
  - b. If the Town provides written notice to the vendor prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. Audit period is the thirty-six-month reporting period preceding the date of the notice of audit.
- (7) Performance of an audit does not constitute a waiver or exemption from the statute of limitations, or preclude additional audits of the same period within the parameters of this Section.

( Ord. No. 35 , § 3, 12-4-2017)

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(Supp. No. 20)

## **ARTICLE 10 Cigarette, Tobacco and Nicotine Products Tax**

### **Sec. 4-10-10. Purpose.**

The purpose of this Article shall be to impose a sales tax known as a cigarette, tobacco and nicotine tax on any and all tobacco and nicotine containing products the proceeds of which will be recorded in the General Fund for the purposes of supporting health, safety and other needs deemed necessary.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-20. Effective date.**

This Article shall be effective commencing on January 1, 2020, and shall apply to all cigarette, tobacco and nicotine product sales.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-30. Definitions.**

Cigarettes, tobacco and nicotine products shall mean a product that contains nicotine or tobacco or is derived from tobacco and intended to be ingested or inhaled by or applied to the skin of an individual.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-40. Rate, imposition, collection, and distribution of vacation rental tax.**

- (a) There is hereby levied by the Town a tax of fifteen cents (\$0.15) per cigarette or three dollars (\$3.00) per pack of twenty (20) cigarettes.
- (b) All other tobacco (not cigarettes) and nicotine products shall be taxed at forty percent (40%) of retail price.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-50. Cigarette, tobacco and nicotine products tax schedule.**

The cigarette, tobacco and nicotine products tax imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations approved by the Finance Director.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-60. Transactions, items and services subject to cigarette, tobacco and nicotine product tax.**

The cigarette, tobacco and nicotine product tax shall apply to the retail price charged to any person(s) purchasing said product(s).

( Ord. No. 40 , § 2, 12-2-2019)

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### **Sec. 4-10-70. Exemptions from cigarette, tobacco and nicotine product tax.**

The tax levied by Section 4-10-60 shall not apply to FDA-approved nicotine cessation products, such as patches, gum and lozenges.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-80. Vendor responsible for collection and payment of tax.**

Every vendor engaged in the selling of cigarette, tobacco and nicotine products in the Town shall be liable and responsible for collecting and paying to the Town an amount equivalent to the amount charged to any person for cigarettes, tobacco and nicotine products multiplied by the cigarette, tobacco and nicotine product tax rates established by Section 4-10-40 of this Code.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-90. Trust status of tax in possession of vendor.**

All cigarette, tobacco and nicotine products tax collected by any vendor shall be the property of the Town and remain public money in the hands of such vendor, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-100. Filing returns; due date.**

Every vendor shall file a return, whether or not a tax is due, and remit any tax due to the Town in accordance with Section 4-2-140.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-110. Duty to keep books and records.**

Every vendor shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-120. Authority of Finance Director.**

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

- (1) The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax.
- (2) The Finance Director may formulate and promulgate, after hearing, appropriate and additional regulations to effectuate the purpose of this Article.
- (3) The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.

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- (4) The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.
  - (5) The Finance Director may accept any partial payment made and apply such payment toward the tax due. Deposit of such payment shall not in any way imply that the remaining balance is or has been abated.
  - (6) Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent postage paid by certified mail to the last known address of the vendor, or served in person by an officer of the Town Marshal's office.

( Ord. No. 40 , § 2, 12-2-2019)

#### **Sec. 4-10-130. Audit of record.**

- (a) For the purpose of ascertaining the correct amount of tax due from any vendor in the Town, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, records and accounts of such person.
- (b) All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any vendor refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director or an authorized agent, the Finance Director may issue a subpoena to require that the vendor or his or her representative attend a hearing or produce any such books, accounts or records for examination.
- (c) Any tax deficiency or overpayment ascertained through audit shall be computed by one or more of the following methods as the Finance Director deems appropriate:
  - (1) By comparing the tax reported and paid on returns to the actual tax due.
  - (2) By identifying transactions on which the tax was not properly or accurately collected or paid.
  - (3) By identifying other irregularities in the calculation of tax due.

( Ord. No. 40 , § 2, 12-2-2019)

#### **Sec. 4-10-140. Tax information confidential.**

- (a) All specific information gained under the provisions of this Article which is used to determine the tax due from a vendor, whether furnished by the vendor or obtained through an audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.
- (b) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a vendor or his or her duly authorized representative of a copy of such confidential information relating to such vendor, the publication of statistics so classified as to prevent the identification of particular vendors, or the inspection of such confidential information by an officer, employee or legal representative of the Town.
- (c) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding.

( Ord. No. 40 , § 2, 12-2-2019)

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### **Sec. 4-10-150. Overpayment from returns.**

- (a) If the amount remitted with the return is more than the tax due as computed from information in such return, the vendor shall be notified.
- (b) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the vendor may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.
- (c) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-160. Tax overpayment determined through audit.**

If the Town ascertains through audit of a vendor's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund if such claim is signed and submitted by the vendor within thirty (30) days of the date of the notice of overpayment.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-170. Underpayments from returns.**

- (a) If the amount remitted with a return is less than the tax computed from information in such return, the vendor shall be notified.
- (b) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.
- (c) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-180. Tax deficiencies determined through audit.**

If the Town determines through an audit of the vendor's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-190. Penalties.**

A penalty shall be levied for any tax deficiency as outlined in Section 4-2-320.

( Ord. No. 40 , § 2, 12-2-2019)

### **Sec. 4-10-200. Interest.**

Interest shall be levied on any tax deficiency as outlined in Section 4-2-330.

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( Ord. No. 40 , § 2, 12-2-2019)

**Sec. 4-10-210. Notice of assessment.**

- (a) The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.
- (b) Notices of assessment shall be in writing and delivered in person or sent postage paid by first class mail, to the last known address of the vendor.
- (c) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.
- (d) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists.

( Ord. No. 40 , § 2, 12-2-2019)

**Sec. 4-10-220. Protest of notice of assessment or denial of refund.**

- (a) Any notice of assessment may be protested by the vendor to whom it is issued.
  - (1) A protest of a notice of assessment issued to a vendor or vendor for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.
  - (2) When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the vendor fails to pursue the protest in a timely manner.
- (b) Any denial of a claim for a refund may be protested by the vendor who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.
- (c) Any timely protest entitles a vendor to a hearing under the provision of this Article.
  - (1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the vendor to resolve the issues.
  - (2) Participation in such an informal meeting does not prevent either the vendor or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting.

( Ord. No. 40 , § 2, 12-2-2019)

**Sec. 4-10-230. Status of tax due in bankruptcy and receivership.**

Whenever the business or property of any vendor is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the vendor. No sheriff, receiver, assignee or other officer shall sell the property of any such vendor under process or order of the Finance Director for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant.

## **CHAPTER 5**

### **Franchises and Communication Systems**

#### **ARTICLE 1 Franchises Generally**

##### **Sec. 5-1-10. General powers.**

The Town shall have and exercise with regard to all utilities and franchises, all municipal powers, including without limitation all powers now existing and which may be hereafter provided by the state constitution and state statutes. The right of the Town to construct, purchase or condemn any public utility, work or way is expressly reserved. Except as otherwise provided by the state constitution or this Code, all powers concerning the granting, amending, revoking or otherwise dealing in franchises shall be exercised by the Town Council.

##### **Sec. 5-1-20. Water rights.**

The Town shall have the power to buy, sell, exchange, lease, own and control water rights.

##### **Sec. 5-1-30. Utility rates and service areas.**

The Town Council shall by ordinance establish rates for services provided by municipally owned utilities. If the Town Council desires to extend the municipal water utility transmission lines beyond Town boundaries, it shall do so by ordinance.

##### **Sec. 5-1-40. Granting of franchises.**

No franchise shall be granted except by ordinance.

##### **Sec. 5-1-50. Franchise records.**

The Town Council shall cause to be kept in the office of the Town Clerk an indexed franchise record in which shall be transcribed copies of all franchises heretofore and hereafter granted. The index shall give the name of the grantee and any assignees. The record, a complete history of all such franchises, shall include a comprehensive and convenient reference to all actions at law affecting the same, and copies of all annual reports and such other matters of information and public interest as the Town Council may from time to time require.

##### **Sec. 5-1-60. Existing franchises.**

All franchise ordinances of the Town in effect at the time that this Code is adopted shall remain in full force and effect according to their provisions and terms until the expiration date provided in such ordinance or until modified by another franchise as provided in Section 5-1-40 above.

#### **ARTICLE 2 Cable TV Franchise**

## ***Division 1 Definition of Terms.***

### **Sec. 5-2-05. Terms.**

For the purpose of this Agreement the following terms, phrases, words and their derivations shall have the following meanings when used herein with initial capital letters. Other defined terms are set forth throughout this Agreement, and shall have the meanings ascribed herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" means mandatory and "may" means permissive. Words not defined shall be given their common and ordinary meaning.

The following terms shall be defined as set forth in the Section 602 of the Cable Act (47 U.S.C. § 522) — "Affiliate," "Cable Operator," "Cable Service," "Cable System," "Channel," "Franchise" and "Person" — and "Franchise Fee" shall be as defined in Section 622 of the Cable Act (47 U.S.C. § 542)

**Access** shall mean the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community as determined by the Grantor, including the Grantor and its designees, of the access channel as set forth in this agreement, and as permitted under applicable law.

**Access channel** means a downstream signaling path provided by the cable system to deliver access programming to all subscribers in the service area.

**Applicable law** shall mean any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue, provided, however that any statute, ordinance, order or regulation that has been preempted by a higher governmental or legal authority, which prior to preemption had the force and effect of law, shall no longer be considered applicable law. This definition shall not be considered a waiver of the right of any party to assert the position that a statute, ordinance, order or regulation has not been preempted.

**Council** shall mean the Crested Butte Town Council, the governing body of the Grantor.

**Cable Act** shall mean the Cable Communications Policy Act of 1984, as amended (47 U.S.C. §§ 521, et seq.)

**Designated access provider** shall mean the entity or entities designated now or in the future by the Grantor to manage or co-manage the access channel and facilities. The Grantor may be a designated access provider.

**FCC** shall mean the Federal Communications Commission and any successor governmental entity thereto.

**Gross revenue** means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee (or any affiliate of the Grantee who is a cable operator providing cable services over the cable system in the service area) from the operation of the cable system to provide cable services in the service area, including but not limited to (1) late fees, (2) installation and reconnection fees, (3) upgrade and downgrade fees, (4) converter and remote control rental fees, (5) parental control device rental fees, (6) advertising revenue (less commissions paid to third party agents, but not internal commissions earned by employees of the Grantee or its affiliates), (7) home shopping commissions, and (8) interactive guides. Notwithstanding the foregoing, "Gross Revenue" shall not include: (i) any taxes, fees or assessments collected by the Grantee from subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, franchise fee, the access capital grant, or any sales or utility taxes; (ii) unrecovered bad debt; (iii) credits, refunds and deposits paid to Subscribers; and (iv) any exclusions available under applicable Law.

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The parties acknowledge that the Grantee may need to allocate gross revenue between cable services (which are subject to the franchise fee) and non-cable services (which are not subject to the franchise fee but may be subject to other fees and/or taxes), when these two (2) types of services are bundled together in a discounted package offered to subscribers. The Grantee shall make such allocation in accordance with generally accepted accounting principles, but in no event shall the Grantee allocate gross revenue between cable services and non-cable services where such services are bundled together in a discounted package offered to subscribers for the purpose of evading its franchise fee obligations under this Agreement.

*Service area* shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Division 6.

*Standard installation* shall mean any cable service installation that measures up to one hundred twenty-five (125) feet from the point of connection to the Grantee's existing cable system.

*State* shall mean the State of Colorado.

*Street* shall include each of the following located within the service area: public streets, roadways, highways, bridges, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, transportation and public utility easements, rights-of-way and similar public ways and extensions and additions thereto, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system, subject to this Agreement and applicable law.

*Subscriber* shall mean any person lawfully receiving cable service from the Grantee.

( Ord. No. 22 , § 2, 10-1-2018)

## ***Division 2 Grant of Franchise***

### **Sec. 5-2-10. Grant.**

The Grantor hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, now in existence and as may be created or established during the term of this Agreement; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a cable system. This Agreement shall constitute both a right and an obligation to provide the cable services required by, and to fulfill the obligations set forth in, the provisions of this Agreement. Nothing in this franchise shall be construed to prohibit or authorize the Grantee from offering any service over its cable system that is not prohibited by applicable law.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-20. Term.**

This Agreement and the rights, privileges and authority hereby granted shall be for an initial term of ten (10) years, commencing on the effective date of this Agreement as set forth in Section 5-2-880.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-30. Police powers and conflicts with Agreement.**

Notwithstanding any provision to the contrary herein, this Agreement, the Grantor and the Grantee are subject to and shall be governed by applicable law, including but not limited to the Cable Act and the Town of

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Crested Butte Charter and Municipal Code. The Grantee shall at all times during the term of this Agreement be subject to all lawful exercise of the Grantor's police power, and the Grantor's right to adopt and enforce generally applicable and non-discriminatory ordinances and regulations necessary to the safety, health, and welfare of the public; provided, however, that such hereinafter enacted ordinances and regulations shall be reasonable and not materially modify the terms of this Agreement. In the event of a conflict between a provision of this Agreement and a provision of Grantor police power reflected in a generally applicable local ordinance, rule or regulation, local law shall be controlling, provided, however, such local law has not been preempted by any federal or state laws, rules, regulations or orders.

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 3 Franchise Renewal.***

#### **Sec. 5-2-50. Procedures for renewal.**

The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of this Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act (47 U.S.C. § 546), or any such successor statute. Notwithstanding anything to the contrary set forth herein, the parties agree that at any time during the term of the then current Agreement, while affording the public adequate notice and opportunity for comment, the parties may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. The parties consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act (47 U.S.C. § 546).

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 4 Indemnification and Insurance.***

#### **Sec. 5-2-80. Indemnification.**

- (a) The Grantee shall indemnify and hold the Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities or judgments for injury to any person or property to the extent caused by the negligent construction, repair, extension, maintenance, operation or removal of the Grantee's wires, poles or other equipment of any kind or character used in connection with the operation of the cable system. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the cable system, including any access channel. In addition, if the Grantor is named as a defendant in a complaint, demand, claim or action ("action") that alleges that the Grantee's actions or omissions or the cable system was a cause of injury identified in the action, and subject to subsection 5-2-80(c), the Grantor shall, within ten (10) business days of receipt of such action, give the Grantee written notice of its obligation to defend the Grantor, and tender the defense thereof to the Grantee. The Grantee shall have the right to defend, settle or compromise such actions and the Grantor shall cooperate fully with the Grantee in such defense. Notwithstanding the foregoing, if the Grantee believes in good faith that a tendered action has little or no merit with respect to the Grantee's liability, the Grantee may refuse the defense of such action, in which case the Grantor will in good faith defend the action and the Grantee shall cooperate fully with the Grantor in such defense and may participate in such defense at the Grantee's option; provided that if the Grantee is determined to be liable in such action, the Grantee shall be responsible for indemnifying the Grantor as set forth in subsection 5-2-80(a) and reimburse the Grantor for the prorata (with respect to any other claims made in the same action, if any) attorney fees and other costs

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incurred by the Grantor associated with the defense. If the Grantor believes that any such action should be settled or compromised in any manner that will result in liability or other obligation for or restraint on the Grantee under this Agreement or otherwise, such settlement or compromise shall only be done with the prior written consent of the Grantee.

- (b) Notwithstanding subsection 5-2-80(b), if the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor.
- (c) The indemnification obligations of the Grantee set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for the Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement or the terms, applicability or limitations of any insurance held by the Grantee, provided, however, that the Grantee's obligations to indemnify pursuant to this section shall be reduced by any amounts paid by any third parties directly or indirectly to the indemnified parties related to the same claims, including insurance proceeds.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-90. Insurance.**

- (a) The Grantee shall maintain throughout the term of this Agreement insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial general liability	\$1,000,000 per occurrence, \$2,000,000 general aggregate
Auto liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence combined single limit (C.S.L.)
Umbrella liability	\$1,000,000 per occurrence

- (b) The Grantor shall be added as an additional insured, arising out of work performed by the Grantee, to the above commercial general liability, auto liability and umbrella liability insurance coverages.
- (c) The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-100. Performance bond.**

Except as expressly provided herein or as required by a generally applicable law, the Grantee shall not be required to obtain or maintain a bond, letter of credit or other surety as a condition of this Agreement. The Grantor acknowledges that the legal, technical and financial qualifications of the Grantee are sufficient as of the effective date to afford compliance with the terms of this Agreement and the enforcement thereof. The Grantee and the Grantor recognize that the costs associated with bonds, letters of credit and other surety may ultimately be borne by subscribers in the form of increased rates for cable service. In order to minimize such costs, the Grantor agrees to only require a performance bond if there is a change in the Grantee's legal, financial or technical qualifications that would materially impair or prohibit its ability to comply with the terms of this Agreement. The Grantor further agrees that in no event shall it require a performance bond in an amount greater than twelve thousand five hundred dollars (\$12,500). In the event that a performance bond is required in the future, the Grantor agrees to give the Grantee at least sixty (60) days' prior written notice thereof stating the exact reason for

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the requirement. The performance bond may only be drawn upon by the Grantee in the event, following any notice and opportunity to cure periods provided in this Agreement or under applicable law:

- (a) The Grantee fails to pay the Grantor any amounts due under the terms of this Agreement;
- (b) The Grantee fails to reimburse costs borne by the Grantor to correct violations of this Agreement not corrected by the Grantee; or
- (c) The Grantee fails to pay any monetary remedies or damages assessed by a court of law against the Grantee and awarded to Grantor for a violation of this Agreement.

The Grantor shall give the Grantee written notice of any withdrawal under this Section 5-2-100 at the time of such withdrawal.

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 5 Service Obligations.***

#### **Sec. 5-2-130. No discrimination.**

The Grantee shall not deny cable service, deny access to cable service, or otherwise discriminate against subscribers, access channel users, or general citizens on the basis of race, color, religion, national origin, age, sex or sexual orientation. The Grantee shall comply at all times with all applicable laws relating to nondiscrimination. Subject to Section 6 and the Grantee's rights under Section 625 of the Cable Act (47 U.S.C. § 545), all residential structures in the service area shall have the same availability of cable services from the Grantee's cable system under non-discriminatory rates, terms and conditions.

( Ord. No. 22 , § 2, 10-1-2018)

#### **Sec. 5-2-140. Privacy.**

The Grantee shall fully comply with the privacy rights of subscribers as contained in Section 631 of the Cable Act (47 U.S.C. § 551).

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 6 Service Availability.***

#### **Sec. 5-2-160. Service area.**

The Grantee shall continue to provide cable service to all residences within the service area where the Grantee offers cable service as of the effective date. Upon receipt of a request for cable service from a potential residential subscriber(s) in an unserved portion of the service area, and a written commitment from such subscriber(s) (or payment in advance if required by the Grantee) to pay any applicable non-standard installation charges associated with providing cable service (if applicable), the Grantee shall extend the cable system to the street in front of such residence(s), provided that the average density is equal to or greater than thirty (30) residences per linear strand mile of cable as measured from the Grantee's closest technologically feasible tie-in point to its trunk line or distribution cable that is actively delivering cable service as of the date of such request for cable service.

( Ord. No. 22 , § 2, 10-1-2018)

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### **Sec. 5-2-170. Subscriber charges for extensions of the cable system.**

No potential Subscriber shall be refused cable service arbitrarily. However, if an area does not meet the density requirements of Section 5-2-160 above, the Grantee shall only be required to extend the cable system to the street in that area if the potential subscribers are willing to pay the capital costs of extending the cable system and any applicable non-standard installation charges associated with providing cable service. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. Subscribers shall also be responsible for any standard or non-standard installation charges to extend the cable system from the tap to the residence. Such cost estimates shall be submitted to and accepted by the potential subscriber(s) in writing before any cable system extension or installation is required. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the cable system into any annexed area which is not contiguous to the present service area of the Grantee, if the Grantee does not, at the time of annexation, have the legal authority to locate its cable system in the areas necessary to reach such annexed parts of the service area. At such time as the Grantee has the legal authority to access the newly annexed areas, cable service shall be made available in accordance with the density requirements of this Section 5-2-170.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-180. Limitations.**

Nothing herein shall require the Grantee to provide cable service to any person who fails to abide by the Grantee's terms and conditions of cable service. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions where applicable, to the extent permitted under applicable law. The Grantor acknowledges that the Grantee cannot control the dissemination of particular cable services beyond the point of demarcation at a multiple dwelling unit. Cable service offered to subscribers pursuant to this Agreement shall be conditioned upon the Grantee having legal access to any such subscriber's dwelling unit or other units wherein such cable service is provided.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-190. New development underground.**

In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner make reasonable efforts to give the Grantee at least thirty (30) but at no time less than five (5), business days, prior written notice of such construction or development, and of the particular dates on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. The Grantee shall also provide specifications as needed for trenching. Costs of trenching and dedication of streets required to bring service to the development shall be borne by the developer or property owner; except that if the Grantee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by the Grantee.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-200. Annexation.**

The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided cable service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of

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this Agreement upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below and Sections 5-2-160 and 5-2-170 above. The Grantor shall also notify the Grantee in writing of all new street address assignments or changes within the service area. The Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor the franchise fees on gross revenue received from the operation of the cable system to provide cable services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the service area in an Excel format or in a format that will allow the Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the service area, the Grantee shall pay the franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 5-2-820 with a copy to the Director of Government Affairs. In any audit of the franchise fees due under this Agreement, the Grantee shall not be liable for the franchise fees on annexed areas unless and until the Grantee has received notification and information that meets the standards set forth in this section.

( Ord. No. 22 , § 2, 10-1-2018)

#### **Sec. 5-2-210. Cable service to schools and Town facilities.**

Upon thirty (30) days' written request, Grantee will provide, at its expense, standard installation and one outlet and equipment of basic cable service to the Town facilities listed in Exhibit A to the ordinance codified herein which exhibit is incorporated herein by reference, and to not more than three (3) additional locations within the geographical limits of the Town which are owned by the Town and used for a municipal purpose and are accessible by a standard installation.

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 7 Construction and Technical Standards.***

#### **Sec. 5-2-250. Compliance with Codes.**

All construction practices and installation of equipment shall be done in accordance with applicable law.

( Ord. No. 22 , § 2, 10-1-2018)

#### **Sec. 5-2-260. Construction standards and requirements.**

All portions of the Grantee's cable system located in the streets shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

( Ord. No. 22 , § 2, 10-1-2018)

#### **Sec. 5-2-270. Safety.**

The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

( Ord. No. 22 , § 2, 10-1-2018)

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## **Sec. 5-2-280. Network technical requirements**

The cable system shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to cable systems contained in Part 76, Subpart K of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

( Ord. No. 22 , § 2, 10-1-2018)

## **Sec. 5-2-290. Performance monitoring.**

- (a) The Grantee shall, at the Grantee's sole expense, test the cable system consistent with the FCC regulations and all other tests, as required by generally applicable law, reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Agreement.
- (b) The Grantee shall maintain written records of all results of its cable system tests, performed by or for the Grantee, for the period required by the FCC. Copies of such test results will be provided to the Grantor upon request.
- (c) As of the effective date, the FCC semi-annual testing is conducted in January/February and July/August of each year. If the Grantor contacts the Grantee at least sixty (60) days prior to the next FCC semi-annual test period (i.e., before November 1 and May 1 respectively of each year), the Grantee shall provide the Grantor with no less than thirty (30) days prior written notice of the actual date(s) for FCC compliance testing, and representatives of the Grantor may witness such technical performance tests; provided, however, that such representatives shall not interfere with the testing. If the required FCC testing periods are changed during the term of this Agreement, the parties shall negotiate in good faith to amend the dates in this subsection to achieve the same result with respect to the parties' respective notice obligations.
- (d) The Grantee will comply with industry standards with respect to testing drops and related passive equipment during installations to assure that the drop and passive equipment can pass the full cable system capacity.
- (e) The results of any tests required to be filed by the Grantee with the FCC shall upon request of the Grantor also be filed with the Grantor within ten (10) days of such request.

( Ord. No. 22 , § 2, 10-1-2018)

## **Sec. 5-2-300. Emergency use.**

The Grantee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and state applicable law, including all testing requirements. If such requirements include the Grantor's activation of the EAS, then the Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's cable system in any manner that results in inappropriate use thereof, or any loss or damage to the cable system. The Grantor's use of the EAS is subject to a heightened standard of care given the purpose of the EAS and as such, the Grantor shall exercise all necessary attention, caution and prudence to ensure that the EAS is only used properly, lawfully and as required to alert citizens of emergencies.

( Ord. No. 22 , § 2, 10-1-2018)

## ***Division 8 Conditions on Street Occupancy.***

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### **Sec. 5-2-350. General conditions.**

The Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible and when granted permission by the owners of such facilities for commercially reasonable rates, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-360. Underground construction.**

The facilities of the Grantee shall be installed underground in those portions of the service area where telephone and electric utility services are both already underground or being placed underground at the time of cable system construction, and in accordance with applicable law. All underground transmission lines shall be placed at a minimum of twelve (12) inches in depth. In areas where either telephone or electric utility facilities are installed aerially at the time of cable system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are placed underground by the facilities owner, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, the Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities; provided however that nothing herein shall require reimbursement to the Grantee or shall affect the Grantee's undergrounding obligation if the funds which are utilized for the reimbursement of other entities are restricted and preclude reimbursement to the Grantee.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-370. Construction codes and permits.**

Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any street within the franchise area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the franchise area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such streets.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-380. System construction.**

All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way

( Ord. No. 22 , § 2, 10-1-2018)

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### **Sec. 5-2-390. Work of contractors or subcontractors.**

The Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by the Grantee. The Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Agreement and applicable law. It is the Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on the Grantee's behalf are familiar with the requirements of this Agreement and applicable laws governing the work performed by them.

(Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-400. Relocation of Grantee facilities.**

Grantee shall relocate any facility within the Town that is reasonably necessary in order to facilitate a change in street grade, water main, wastewater, storm water or other Town public works project. Prior to the commencement of work on any such public works project, the Town shall confer with the Grantee in order to design such public work in a manner to, as far as practicable, avoid the necessity for relocation of Grantee's distribution lines and/or equipment. Grantee shall not be responsible for any removal, relaying or relocation costs required solely for aesthetic reasons or which are not supported by reasonable engineering standards and practices. Grantee shall only be required to remove, relay or relocate any specific portion of its underground or overhead distribution lines or equipment, at Grantee's expense, only once. If the Town requests removal, relaying or relocation of the same distribution lines and/or equipment a second time during the term of this franchise, the Town shall bear the entire cost of each removal, relaying or relocation. Relocation of underground facilities shall be underground. Relocation of aboveground facilities shall be above ground unless the Town agrees to pay the additional cost of undergrounding the facilities and only when such undergoing is supported by engineering standards and practices.

(Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-410. Restoration of public ways.**

Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the cable system to a condition reasonably comparable to the condition of the streets immediately prior to such damage or disturbance. Grantee shall not be responsible to replace landscaping in streets.

(Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-420. Tree trimming.**

Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

(Ord. No. 22 , § 2, 10-1-2018)

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### **Sec. 5-2-430. Relocation for the Grantor.**

The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-440. Relocation for a third party.**

The Grantee shall, on the request of any person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the street as necessary any property of the Grantee, provided that the expense of such is paid by any such person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

( Ord. No. 22 , § 2, 10-1-2018)

## ***Division 9 Customer Service and Rates.***

### **Sec. 5-2-480. Customer service standards and consumer protection.**

The Grantee shall comply with the customer service standards promulgated by the FCC, as may be amended from time to time. The Grantee shall furnish such information, as reasonably requested by the Grantor, to enable the Grantor to evaluate compliance with the customer service standards in effect at a given time. Upon request, the Grantee will provide Grantor with a copy (or information necessary to access the document electronically) of the form of subscriber terms of service then in effect. The Grantor reserves all rights under applicable law to adopt additional customer service standards that purport to apply to the Grantee, and the Grantee reserves all rights to challenge any such customer service standard that it believes is inconsistent with its contractual rights under this Agreement or applicable law, and all rights pursuant to applicable law to pass through the costs of complying with any such customer service standard to subscribers.

- (a) Phone service. The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.
- (b) Notification of service procedures. The Grantee shall furnish each subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. The Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, or changes in programming services or channel positions provided the change is within the control of the Grantee. Grantee shall endeavor to provide advance written notice to Grantor prior to changes in channel positions that are not within its control, and in any event, shall provide such written notice to Grantor no later than thirty (30) days after such change in channel positions have been made effective.

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- (c) Continuity of service. It shall be the right of all subscribers to continue receiving cable service insofar as their financial and other obligations to the Grantee are honored, and subject to the Grantee's rights under Section 5-2-780 of this Agreement.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-490. Rate regulation.**

Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC or other applicable law.

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 10 Franchise Fee.***

#### **Sec. 5-2-530. Amount of fee.**

The Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual gross revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise Fees may but are not required to be passed through to Subscribers as a line item on subscriber bills or otherwise as the grantee chooses, consistent with applicable law. The Grantee shall not deduct from the franchise fee any items listed under Section 622(g)(2) of the Cable Act (47 U.S.C. 542(g)(2)) The Grantee reserves its right to offset from the franchise fee any payment made to the Grantor if permitted by applicable law and the Grantor reserves its right to challenge the legality of any such offset.

( Ord. No. 22 , § 2, 10-1-2018)

#### **Sec. 5-2-540. Payment of fee.**

Payment of the franchise fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter, and transmitted by electronic funds transfer to a bank account designated by Grantor. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to this Agreement shall commence sixty (60) days after the effective date of this Agreement as set forth in Section 5-2-870. If any franchise fee payment or recomputed payment is not made on or before the dates specified herein, the Grantee shall pay an interest charge, computed from the last day of the fiscal year in which such payment was due, at the annual rate equal to the lowest of (A) the maximum rate permitted under state applicable law, (B) eight percent (8%) or (C) that established by the State Bank Commissioner pursuant to C.R.S. 39-21-110.5 in effect as of the due date (which is the prime rate of interest as reported by the Wall Street Journal on July 1st of the previous calendar year, plus three percent (3%), rounded to the nearest full percent) Upon receipt of a written request from the Grantor, the Grantee shall provide the Grantor a report showing the basis of any such franchise fee payment, including the applicable gross revenue.

( Ord. No. 22 , § 2, 10-1-2018)

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**Sec. 5-2-550. Accord and satisfaction.**

No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Agreement.

( Ord. No. 22 , § 2, 10-1-2018)

**Sec. 5-2-560. Limitation on recovery.**

The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

( Ord. No. 22 , § 2, 10-1-2018)

**Sec. 5-2-570. Review.**

All amounts paid by the Grantee to the Grantor under this Agreement and all records reasonably related to the administration or enforcement of this Agreement shall be subject to review and if justified, re-computation by the Grantor upon thirty (30) days written notice to Grantee. The Grantor shall specifically have the right to review relevant data related to the allocation of revenue to cable services in the event Grantee offers Cable Services bundled with non-cable services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Grantor subscribers during the review period. To the extent that the Grantor does not believe that the relevant data supplied is sufficient for the Grantor to complete its audit/review, the Grantor may require other relevant data. For purposes of this Section 5-2-570, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as general ledgers) and (3) sample customer bills used by Grantee to determine gross revenue for the service area that would allow the City to re-compute the gross revenue determination.

If such review indicates an aggregate, undisputed underpayment of franchise fees or access capital fees of five percent (5%) or more, then the Grantee will reimburse the cost of such review up to a maximum of five thousand dollars (\$5,000.00); provided, however, that such review will be conducted no more frequently than once every three (3) years. If there is a dispute regarding a claimed underpayment, that if accurate, would result in an underpayment of franchise fees or access capital fees of five percent (5%) or more, and if the dispute is ultimately resolved in favor of the Grantor, then at the time of such resolution, the Grantee will reimburse the cost of such review up to a maximum of five thousand dollars (\$5,000.00).

( Ord. No. 22 , § 2, 10-1-2018)

***Division 11 Transfer of Franchise.*****Sec. 5-2-600. Franchise transfer or change of control.**

This Agreement shall not be assigned, sold, or transferred other than by operation of law or to an affiliate of the grantee, nor shall control of the Agreement or of the Grantee be assumed by another party who is not an affiliate of the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. No such consent shall be required, however, for a transfer in trust, by

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mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Agreement or cable system to secure indebtedness.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-610. Notification and Application to Grantor.**

In accordance with federal law, the Grantee and the transferee shall make a written request of the Grantor for its consent to any actual or proposed (a) assignment, sale or transfer of this Agreement other than by operation of law or to an affiliate of the Grantee, or (b) change of control of this Agreement or of the Grantee to another party who is not an affiliate of the Grantee. Such request shall be accompanied by all information required by federal law. Within thirty (30) days of receiving such a request, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee or any other information permitted by federal law. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given, unless the Grantor and the Grantee have agreed to an extension of time.

( Ord. No. 22 , § 2, 10-1-2018)

## ***Division 12 Records, Reports and Maps.***

### **Sec. 5-2-650. Reports required.**

The Grantee's schedule of charges for regular subscriber service, its policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-660. Records required.**

The Grantee shall at all times maintain:

- (a) A record of all written complaints received regarding interruptions or degradation of cable service, which record shall be maintained for one (1) year.
- (b) A full and complete set of plans, records and strand maps showing the location of the cable system.
- (c) All financial and accounting records necessary to demonstrate compliance with this Agreement, including, without limitation, all records necessary to conduct the franchise fee and financial review described in Section 5-2-570.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-670. Inspection of records.**

The Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any of the Grantee's records maintained by the Grantee as is reasonably necessary to ensure the Grantee's compliance with this Agreement. Such notice shall specifically reference the subsection of the Agreement that is under review so that the Grantee

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may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act (47 U.S.C. § 551) The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent the Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Agreement, or for any other reason, it shall advise the Grantee in advance so that the Grantee may take appropriate steps to protect its interests. If the Grantee requests that the Grantor continue to oppose such release, then until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of the Grantee's books and records marked confidential, as set forth above, to any person, and the Grantee shall reimburse the Grantor for all reasonable costs and attorneys' fees incurred in any legal proceedings related to same. If the Grantee does not request that the Grantor oppose such release, then the Grantor shall make an independent judgment with respect to such release, and the Grantee shall not be liable for any costs related to same.

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 13 Access.***

#### **Sec. 5-2-700. Access channel.**

Upon prior written notice to Grantee, but not less than one hundred eighty (180) days, Grantor may request the use of one channel on the cable system for use by the Grantor for non-commercial, video programming for public, education and government ("PEG") access programming. The PEG channel may be placed on any tier of service available to subscribers. Grantor, or its designee shall be responsible for providing any necessary production or playback equipment and shall be responsible for securing and supervising any trained/qualified personnel who conduct the operation of the PEG channel.

( Ord. No. 22 , § 2, 10-1-2018)

#### **Sec. 5-2-710. Indemnification and restrictions.**

The Grantor shall indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the Grantor's use of the aforementioned PEG channel whether Grantor operates the PEG channel from Grantor's facilities or a third party's facilities. Grantee shall not be responsible for operating and managing the PEG channel including approving any PEG programming. Grantor reserves the right to permit a third party to operate and manage the PEG channel on the Grantor's behalf or for obtaining releases from programmers for any PEG programming. The PEG channel shall not be used for commercial purposes, including but not limited to advertising or leased access. Grantor agrees to notify any person using PEG channels of these non-commercial use requirements, but shall not be responsible for any individual's exercise of free speech.

( Ord. No. 22 , § 2, 10-1-2018)

### ***Division 14 Enforcement or Revocation.***

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### **Sec. 5-2-730. Notice of violation.**

If the Grantor believes that the Grantee has not complied with the terms of this Agreement, the Grantor shall first informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "violation notice").

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-740. Grantee's right to cure or respond.**

The Grantee shall have thirty (30) days from receipt of the violation notice to (A) respond to the Grantor, contesting the assertion of noncompliance, (B) to cure such default, or (C) if, by the nature of default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed. If (i) the Grantee fails to respond to the violation notice received from the Grantor, (ii) the Grantee responds to the Grantor, contesting the assertion of the noncompliance, but the Grantor disagrees with the Grantee's response, or (iii) if the default is not remedied within the thirty-day cure period set forth above, the Grantor may pursue any remedies available to it under applicable law; provided, that the Grantor shall not conduct an administrative proceeding or hearing. The Grantee reserves all legal and equitable rights under applicable law to challenge or appeal any action by the Grantor with respect to an alleged violation of this Agreement.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-750. Alternative remedies.**

No provision of this Agreement shall be deemed to bar the right of the Grantor to seek or obtain judicial relief from a violation of any provision of this Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Grantor to recover monetary damages for such violations by the Grantee, or to seek and obtain judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

( Ord. No. 22 , § 2, 10-1-2018)

## ***Division 15 Miscellaneous Provisions.***

### **Sec. 5-2-780. Force majeure.**

The Grantee shall not be held in default under, or in noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which the Grantee's cable system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

( Ord. No. 22 , § 2, 10-1-2018)

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## **Sec. 5-2-790 Minor violations.**

Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of this Agreement for violations of this Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the service area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or subscribers.

( Ord. No. 22 , § 2, 10-1-2018)

## **Sec. 5-2-800. Action of parties.**

In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

( Ord. No. 22 , § 2, 10-1-2018)

## **Sec. 5-2-810. Equal protection.**

No cable operator shall be permitted to locate a cable system in the streets in order to provide cable service in the service area without a franchise. The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the streets to provide cable services within the service area. If the Grantor grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from the Grantee's material obligations under this Agreement, then the Grantor agrees that the obligations in this Agreement will, pursuant to the process set forth in this section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: the franchise fee; gross revenue definition; insurance; cable system build-out requirements; security instruments; the access channel and the access capital grant; customer service standards; required reports and related record keeping; level playing field (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require word for word identical franchise provisions so long as the regulatory and financial burdens on each entity are materially equivalent.

- (a) The modification process of this Agreement as provided for in this section shall only be initiated by written notice by the Grantee to the Grantor regarding specified obligations. The Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive franchise which are materially different from the Grantee's obligations under this Agreement; (2) identifying the Agreement terms and conditions for which the Grantee is seeking amendments; (3) providing text for any proposed Agreement amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent.
- (b) Upon receipt of the Grantee's written notice as provided in subsection 5-2-810(a), the Grantor and the Grantee agree that they will use best efforts in good faith to negotiate the Grantee's proposed Agreement modifications, and that such negotiation will proceed and conclude within a ninety-day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Grantor and the Grantee reach agreement on the Agreement modifications pursuant to such negotiations, then the Grantor shall amend this Agreement to include the modifications.

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- (c) If the parties fail to reach agreement in the negotiations as provided for in subsection 5-2-810(b), the Grantee may, at its option, elect to replace this Agreement by opting into the franchise or other similar lawful authorization to use the streets in order to provide cable service that the Grantor grants to another provider of cable services, so as to ensure that the regulatory and financial burdens on each entity are equivalent. If the Grantee so elects, the Grantor shall immediately commence proceedings to replace this Agreement with the franchise issued to the other cable services provider.
  - (d) Nothing in this section shall be deemed a waiver of any remedies available to the Grantee under applicable law, including but not limited to Section 625 of the Cable Act (47 U.S.C. § 545)
  - (e) Should the Grantee seek an amendment to this Agreement or a replacement franchise pursuant to this section, while the parties shall pursue the adoption of such amendments or replacement franchise pursuant to subsections 5-2-810(a) through (d), any such amendments or replacement Franchise shall not become effective unless and until the new entrant makes cable services available for purchase by subscribers or customers under its agreement with the Grantor.

( Ord. No. 22 , § 2, 10-1-2018)

## **Sec. 5-2-820. Notices.**

Unless otherwise provided by applicable law, all notices, reports or demands pursuant to this Agreement shall be in writing and shall be deemed to be sufficiently given upon delivery to the persons at the respective addresses set forth below by hand delivery, by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service such as Federal Express. The Grantee shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means, including e-mail. Either party may notify the other from time to time of the email address at which that party wishes to received notices electronically.

If to Grantor:

Town of Crested Butte  
Attn: Dara MacDonald, Town Manager  
P. O. Box 39  
507 Maroon Ave.  
Crested Butte, CO 81224

If to Grantee:

Spectrum Pacific West LLC  
Attn: Government Affairs  
6399 S. Fiddler's Green Circle, Sixth Floor  
Greenwood Village, CO 80111

With a copy to:

Charter Communications  
Attn: Vice President of Government Affairs  
601 Massachusetts Ave. NW, Suite 400W  
Washington, DC 20001

( Ord. No. 22 , § 2, 10-1-2018)

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### **Sec. 5-2-830. Public notice.**

Minimum public notice of (A) any public hearings relating to this Agreement or (B) any grant of a franchise by the Grantor to any other person(s) to provide cable services utilizing any system or technology requiring use of the streets, shall be as provided by applicable law unless a longer period is otherwise specifically set forth in this Agreement. Grantor shall utilize best efforts to provide written notice to the Grantee within thirty (30) days of Grantor's receipt from any other person(s) of an application or request for a franchise(s) to provide cable services utilizing any system or technology requiring use of the streets. Notwithstanding the foregoing, it shall not be a violation of the Grantor's obligations under this franchise if a failure to provide such notice is unintentional.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-840. Reservation of rights.**

Each party reserves its rights to enforce provisions of applicable law to the rights, duties and obligations of this franchise, as they may change in the future. Further, each party reserves its rights to challenge the applicability to any future changes in the law to the rights, duties and obligations of this franchise.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-850. Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-860. Entire Agreement.**

This Agreement and any exhibits hereto constitute the entire agreement between the Grantee and the Grantor and supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-870. Administration of franchise.**

This Agreement is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Agreement must be made in writing, signed by the Grantor and the Grantee.

( Ord. No. 22 , § 2, 10-1-2018)

### **Sec. 5-2-880. Effective date.**

This Agreement will take effect and be in full force from such date of acceptance by the Grantee recorded on the signature page of this Agreement (the "effective date").

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(Supp. No. 20)

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( Ord. No. 22 , § 2, 10-1-2018)

**Sec. 5-2-890. Publication costs.**

This Agreement shall be published in accordance with applicable law. The Grantee shall reimburse the Grantor for all costs incurred in publishing this Agreement and any notices or ordinances in connection with its adoption if such publication is required by applicable law.

( Ord. No. 22 , § 2, 10-1-2018)

**Sec. 5-2-900. Venue and jurisdiction.**

The parties agree that any action arising out of this Agreement will be brought in the district court of Gunnison County or federal courts located in the State of Colorado, irrevocably submit to the exclusive jurisdiction of any such court and waive any objection that such party may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agree not to plead or claim the same.

( Ord. No. 22 , § 2, 10-1-2018)

## **ARTICLE 3 Electric Franchise**

### ***Division 1 Grant of Franchise***

**Sec. 5-3-10. Grant of franchise.**

The Town grants to Gunnison County Electric Association, Inc.

**Sec. 5-3-20. Effective date and duration.**

Upon execution hereof by GCEA, this franchise shall take effect for a period of fifteen (15) years retroactive to February 12, 2012, and expiring on February 12, 2027, unless extended by agreement of the Town and GCEA.

### ***Division 2 Franchise Fees***

**Sec. 5-3-110. Annual funding.**

- (a) In consideration of the grant of this franchise, GCEA will initially fund up to ten thousand dollars (\$10,000) per year. These funds may be utilized at the Town's discretion for street lights, school crosswalks, public walkway lighting, public clocks, public sign lighting, seasonal decorative lighting and the receptacles to facilitate such seasonal lighting. These funds may also be utilized for energy-efficient upgrades to public facilities. The funds may also be used for energy-efficient projects, including, without limitation, lighting efficiency upgrades, electric appliance upgrades, insulation upgrades and pump and motor efficiency upgrades. Studies to determine the practicality of efficiency and renewable energy proposals require the mutual agreement between the Town and GCEA, which will not be unreasonably withheld. This funding level shall be adjusted annually by the Town as measured by the Consumer Price Index Urban (Denver) CPI

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published by the Bureau of Labor Statistics, 911 Walnut Street, 15th Floor, Kansas City, Missouri 64106, or any successor, comparable index.

Funding Amount = \$10,000 X (Current year CPI /2011 Baseline CPI)

If any portion of the annual funding is unused, the unused funding amount will be carried over for the following two (2) calendar years. At the end of the respective carryover period or at the end of the term of the franchise, the unused portion of the annual funding amount will expire.

- (b) GCEA will account for the funding amounts on a first in/first out basis by using all available unexpired carryover funding amounts for request before using the current year's funding amount.
- (c) The Town, at its option, may use the current year's funding amount and the available unexpired funding amounts during any calendar year. If the Town's street lighting or other mutually agreed project expenditures exceed the available balance of funding amounts, the Town shall pay the excess cost.
- (d) GCEA agrees to provide to the Town an annual written summary and accounting, no later than February 28 of each year, of all annual funding credits and undergrounding credits used by the Town in the previous calendar year and the balance of lighting and undergrounding credits carried over for the benefit of the Town.

(Ord. 12 §2, 2012)

### **Sec. 5-3-120. Credit from prior franchise.**

As additional consideration for this franchise, GCEA agrees to carry over the unused fund balance of twenty-one thousand six hundred one dollars and seventy-six cents (\$21,601.76). This balance was accrued under Section 5-3-110, Annual Funding, of the previous franchise agreement and the Addendum effective January 1, 1999, incorporated in the franchise as Exhibit A of the previous franchise agreement that expired February 12, 2012. These funds may be utilized at the Town's pleasure for street lights, school crosswalks, public walkway lighting fixtures, seasonal decorative lighting and other mutually agreed project expenditures under Section 5-3-110 above. It may also be used to supplement the available fund balance as set forth in Section 5-3-110 above. Unused funds will expire at the end of the term of this agreement.

### **Sec. 5-3-130. Provision of electricity.**

GCEA will provide, at its expense, all electrical energy necessary to service the Town for street lighting, school crosswalks, seasonal decorative lighting, public clocks and public walkway lighting purposes only. All electrical energy provided for the purpose of such lighting will be offset by GCEA's Green Power Program.

### **Sec. 5-3-140. Ornamental lighting.**

If the Town wishes to install exterior ornamental lighting, GCEA will do so and bill the Town for GCEA's actual cost of installation. This cost may be paid in whole or in part with the ten thousand dollars (\$10,000) per year funded to the Town as set forth in Section 5-3-110 above. However, the cost of underground electrical conduit and/or supply lines for the installation of ornamental lighting will be borne by GCEA. Said installation shall be made within a reasonable time as GCEA's work load permits. Any ornamental street lighting shall be installed in accordance with the then current edition of the National Electrical Code.

### **Sec. 5-3-150. No surcharge on franchise fee.**

It is the intention and agreement of the Town and GCEA that, so long as the Town accepts the municipal street lighting fixtures, electrical energy, reserve funds and the credit from the prior franchise agreement, as set

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forth in this franchise, the consumers of energy located within the Town will not be surcharged to reimburse GCEA for such franchise fees. In the event that GCEA is ordered, by an entity of competent jurisdiction, to place a surcharge upon consumers of GCEA located in the Town to pay for such franchise fees as described herein, the Town may, at its option, reopen and renegotiate the terms of this Division in order to avoid such a surcharge.

### **Sec. 5-3-160. Sustainable energy initiatives.**

The Town and GCEA have goals to study, evaluate and implement clean, sustainable and reliable electrical energy sources that are economically prudent and provide affordable alternatives to conventional electric generation methods. The Town and GCEA agree to cooperate as appropriate to develop plans that meet these objectives and the goals as outlined in the Town's Energy Action Plan. Further, GCEA agrees to cooperate with the Town, as appropriate and beneficial, on renewable energy projects and other new technology as it becomes available.

## ***Division 3 Supply, Construction and Design***

### **Sec. 5-3-210. Supply of electricity.**

GCEA shall take all reasonable and necessary steps to provide an adequate supply of electricity to its consumers within the Town at the lowest reasonable cost consistent with long-term, reliable supplies. If the supply of electricity to said consumers should be interrupted, GCEA shall take all necessary and reasonable actions to restore such supply within the shortest practicable time. The kind and quality of service shall conform to standard electrical engineering and operating practices and shall be, at a minimum, equivalent to that furnished to other comparable municipalities in the State. The distribution of electrical energy by GCEA shall conform with the applicable standards promulgated by the PUC and with the tariff provisions of GCEA setting standards for such distribution, as they may be amended from time to time.

### **Sec. 5-3-220. Restoration of service.**

In the event GCEA's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, GCEA shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

### **Sec. 5-3-230. Obligations regarding GCEA facilities.**

GCEA shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner. GCEA's facilities will be of sufficient quality and durability to provide safe, efficient and reliable electric service to the Town and its residents and property owners. GCEA shall use reasonable good faith efforts not to interfere with the Town's water mains, sewer mains or other municipal utilities use, shall minimize any disruption of the use of streets and other public places and shall be responsible for repairing, at its expense, all damage done to municipal facilities and rights-of-way resulting from GCEA's failure to exercise reasonable good faith efforts. Similarly, GCEA shall use reasonable good faith efforts not to interfere with the rights or reasonable convenience of property owners whose property adjoins the public rights-of-way, and shall be responsible for repairing, at its expense, all damage done to such private property resulting from GCEA's failure to exercise reasonable good faith efforts. GCEA shall also erect, locate and maintain its facilities in such a way so as to limit, to the greatest extent possible after best efforts, interference with historical and other natural features, which will be permitted only upon receipt of prior written approval by the Town. GCEA will consult with the Town on removal or significant alterations to trees with the exception of an emergency condition. GCEA facilities shall be installed in public easements as approved by the Town, so as to cause a minimal amount of interference with such property.

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### **Sec. 5-3-240. Excavation and construction.**

All excavation and construction work done by GCEA shall be done in accordance with all Town laws and regulations in a timely and expeditious manner which minimizes inconvenience to the public and individuals. GCEA will provide a one-week advanced notice for any significant or major construction activity that may cause inconvenience to the public or interrupt Town services within Town property or public right-of-ways. In the event of an emergency or service interruption, GCEA will notify the Town as soon as practical of such activity. All public and private property disturbed by GCEA excavation or construction activities shall be timely restored by GCEA, at its expense, to substantially its former condition. GCEA shall warrant any restorations or improvements within public right-of-ways performed by GCEA or its agents for a period of two (2) years after completion. GCEA shall not be responsible to replace landscaping in a public right-of-way.

### **Sec. 5-3-250. Relocation of GCEA facilities.**

GCEA shall relocate any facility within the Town that is reasonably necessary in order to facilitate a change in street grade, water main, wastewater, stormwater or other Town public works project. Prior to the commencement of work on any such public works project, the Town shall confer with GCEA in order to design such public work in a manner to, as far as practicable, avoid the necessity for relocation of GCEA's distribution lines and/or equipment. GCEA shall not be responsible for any removal, relaying or relocation costs required solely for aesthetic reasons or which are not supported by reasonable electrical engineering standards and practices. GCEA shall only be required to remove, relay or relocate any specific portion of its underground or overhead distribution lines or equipment, at GCEA's expense, only once. If the Town requests removal, relaying or relocation of the same distribution lines and/or equipment a second time during the term of this franchise, the Town shall bear the entire cost of each removal, relaying or relocation. Relocation of underground facilities shall be underground. Relocation of aboveground facilities shall be above ground unless the Town agrees to pay the additional cost of undergrounding the facilities and only when such undergrounding is supported by engineering standards and practices. The Town may elect to fund such undergrounding projects in whole or part under the provisions outlined in Section 5-3-300 below to the extent funds are available under those provisions.

### **Sec. 5-3-260. Service to new areas.**

If the boundaries of the Town are expanded during the term of this franchise, GCEA shall timely extend service to users in the expanded area, in accordance with GCEA's Extension Policy and this franchise.

### **Sec. 5-3-270. Planned power outages.**

In the event the planned activities of GCEA necessitate a partial or complete power outage in the Town, GCEA agrees to inform the Town Manager no less than seven (7) days prior to such outage, or as soon as reasonably possible following the decision by GCEA, in order to minimize disruption to the community.

### **Sec. 5-3-280. Town regulation.**

The Town expressly reserves, and GCEA hereby recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as may be deemed necessary by the Town in the reasonable exercise of its taxation power and its police powers for the protection of the health, safety and welfare of its citizens.

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### **Sec. 5-3-290. Underground construction in new areas.**

GCEA shall place electrical distribution lines underground to serve new areas in accordance with GCEA's tariffs and line extension policies and the Town's ordinances and regulations.

### **Sec. 5-3-300. Undergrounding of existing facilities.**

- (a) The Town may elect to use the remaining thirty-two thousand nine hundred seventy-eight dollars and forty-six cents (\$32,978.46) in the existing undergrounding reserve fund to pay part of the cost of underground existing facilities which unreasonably interfere with the reasonable use of private or public real property. When the owner of private real property desires the undergrounding of existing facilities, the Town and GCEA shall review such application to determine if undergrounding is warranted. If so determined, GCEA shall prepare an itemized estimate of the costs of such undergrounding and provide it to the Town for its review. The Town and GCEA shall then negotiate in good faith to determine the scope and estimated costs of the project. Costs of such projects "as-built" shall be divided equally among GCEA, the Town through its reserve fund if agreed to at its sole discretion, and the owner of the affected property, if any, unless otherwise agreed. If the Town requests that GCEA facilities be converted from overhead to underground, solely as a benefit to the Town and without involvement from any affected property owner, the cost shall be equally shared between GCEA and the Town. Such conversions are limited to the funding level in the reserve fund.
- (b) This provision shall not be construed to bind either party or infer a position by either party as to who is responsible for the expense of undergrounding electrical facilities. The reserve fund shall remain in an interest-bearing account with a lending institution designated by the Town. All interest earned shall be included in the fund.
- (c) Any facility shall be eligible for cost-sharing relocation pursuant to this Section only one (1) time during the term of this franchise.

(Ord. 12 §2, 2012)

### **Sec. 5-3-310. Consultation with Town regarding construction and design.**

Prior to construction of any transmission lines or generating plant, substation or similar structure within the Town, GCEA shall provide the Town with reasonable notice of its intent to construct and shall furnish to the Town a copy of the plans for such facilities. Upon reasonable notice from the Town, GCEA agrees to meet with the Town prior to construction of such facilities to discuss the perceived impacts such construction may have and to pursue the possible mitigation of those impacts. Any buildings or similar structures shall be subject to approval by the Board of Zoning and Architectural Review ("BOZAR").

### **Sec. 5-3-320. Compliance with PUC regulations.**

The electrical energy which GCEA distributes shall conform with the all current GCEA Rules and Regulations and applicable standards promulgated by the PUC in its Rules Regulating the Service of Electric Utilities, or any successor standards, and with standard setting tariff provisions of GCEA, that may be amended from time to time.

### **Sec. 5-3-330. Inspection.**

The Town shall have the right to inspect at all reasonable times any portion of GCEA's system used to serve the Town and its residents. The Town shall also have access at all reasonable times to GCEA records for the purpose of determining GCEA compliance with this franchise. GCEA agrees to cooperate with the Town in

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conducting such inspections and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

## ***Division 4 Town Use of GCEA Facilities***

### **Sec. 5-3-410. Town use.**

The Town shall have the right to use all poles and suitable overhead structures constructed by GCEA within the Town for public governmental uses, which uses shall not include the distribution or transmission of electricity. Such uses by the Town shall be without cost; provided that GCEA shall be indemnified and shall assume no liability nor shall it be put to any additional expense in connection with the use of said poles and structures by the Town, and said use shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with GCEA's use of the same and shall comply with the National Electric Safety Code. GCEA shall allow others holding a franchise, except for electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by GCEA and such holder of a franchise from the Town.

### **Sec. 5-3-420. Underground conduit.**

If GCEA installs new electric underground conduit or opens a trench or replaces such conduit, GCEA shall provide adequate advance notice of such activity to permit additional installation of conduit and wire for the Town and other underground users. If the Town desires to have additional conduit and wire installed for its use, it will so notify GCEA and provide similar conduit and wire to GCEA at the Town's expense. GCEA agrees to install such conduit and wire for the Town, and the Town shall pay the prorated amount of GCEA's actual cost attributable to installing the Town's conduit and wire. "Actual cost" shall not include GCEA's cost of opening and closing the trench.

## ***Division 5 Miscellaneous***

### **Sec. 5-3-510. Publication costs; payment of expenses incurred by Town.**

GCEA shall pay in advance or timely reimburse the Town for its publication costs associated with the ordinance approving this franchise.

### **Sec. 5-3-520. Extension policy compliance.**

GCEA shall forthwith file with the Town Clerk its Extension Policy as filed with the Public Utilities Commission of Colorado, and GCEA shall not make or refuse to make any extension except as permitted by said policy. In addition, upon acceptance of this franchise, GCEA, at its own expense, shall have copies of its Extension Policy as filed with the Public Utilities Commission of Colorado available for distribution upon request of any person.

### **Sec. 5-3-530. Assignment; approval required.**

Neither party shall sell or otherwise transfer any rights or obligations pursuant to this franchise without the prior written approval of the other, which approval shall not be unreasonably withheld. The grounds for any disapproval shall be set forth in writing.

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### **Sec. 5-3-540. Amendment.**

- (a) Benefit of other franchises. GCEA shall advise the Town within sixty (60) days of the execution of a subsequent franchise agreement entered into by GCEA and any other municipality within the State, or any change to any existing franchise agreement. If any change occurs in the terms of an existing franchise by GCEA with any other municipality or GCEA enters into any new franchise agreement with any other municipality, the Town may review and request an amendment of any term or provision of this franchise, including the consideration to be received by the Town as a part of this franchise. GCEA shall not be obligated to amend the terms of this franchise unless such change is to the equivalent provision contained in a new or amended franchise entered into by GCEA with any other municipality in the State.
- (b) Requests for amendments. The Town and GCEA recognize and agree that substantial, industry-wide changes regarding the sale and distribution of electrical energy may occur during the term of this franchise. At any time during the term of this franchise, either party may propose amendments to this franchise by giving thirty (30) days' written notice to the other party. Thereafter, both parties will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendments.

(Ord. 12 §2, 2012)

### **Sec. 5-3-550. Attorneys' fees.**

Should either party bring an action to enforce or interpret the terms and provisions hereof or the rights of the parties, the prevailing party in any such action shall be entitled to all of its costs, including, without limitation, expert and other witness fees, and reasonable attorneys' fees incurred in such action.

### **Sec. 5-3-560. Successors and assigns.**

The rights, privileges, franchises and obligations granted and contained in this franchise shall inure to the benefit of and be binding upon the parties, their successors and assigns. Any such assignment shall be subject to the provision requiring prior written approval as set forth in Section 5-3-530 above.

### **Sec. 5-3-570. Representatives.**

Each party shall designate, from time to time, in writing, representatives for itself who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand-delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed by written notice to either party, delivered in person or by certified mail to the other party. Until any such changes are made, notices shall be sent to the Town Manager and to GCEA's Chief Executive Officer. Currently the addresses are as follows:

For the Town of Crested Butte:

Town Manager  
Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224-0039

For GCEA:

Chief Executive Officer  
Gunnison County Electric Assn, Inc.

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P.O. Box 180  
Gunnison, CO 81230-0180

(Ord. 12 §2, 2012)

### **Sec. 5-3-580. Severability.**

In the event any one (1) or more of the provisions of this franchise or the enforcement thereof shall be determined by a court with jurisdiction to be illegal, unlawful or unconstitutional, the same shall not be construed to alter, annul or repeal or otherwise affect any of the remaining terms, provisions, restrictions, requirements or conditions of this franchise.

### **Sec. 5-3-590. Entire agreement.**

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

### **Sec. 5-3-600. Changes in utility regulation.**

In the event new federal or state legislation materially affects the terms and conditions of this franchise, the parties agree to renegotiate the affected terms and conditions in good faith.

### **Sec. 5-3-610. Indemnification.**

GCEA shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims and demands whatsoever in nature arising out of the operations of GCEA within the Town pursuant to this franchise and shall pay all reasonable expenses arising therefrom, inclusive of attorneys' fees and costs. The Town and GCEA will each provide prompt written notice to the other of the pendency of any claim or action against either party arising out of the exercise by GCEA of its rights under this franchise. The Town and GCEA will each be permitted, at their own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, GCEA shall not be obligated to indemnify, defend or hold the Town harmless to the extent any liability, damage, claim and/or demand arises out of or is in connection with the negligent act or failure to act of the Town or the Town's officers, agents or employees.

### **Sec. 5-3-620. Insurance.**

GCEA shall provide the Town with proof of liability insurance consisting of a certificate of insurance and shall notify the Town of any changes to GCEA's liability insurance. The amounts of insurance shall not be less than ten million dollars (\$10,000,000.00) per occurrence and shall cover the companies' premises, facilities and operations including the risk of explosion, collapse, and underground hazards.

### **Sec. 5-3-630. Default; remedies.**

The failure of a party to timely observe or perform any obligation, term or condition required to be observed or performed under this franchise that is not cured within twenty (20) days following receipt of written notice of such failure, or such shorter or longer time period where otherwise provided in this franchise, shall constitute a material default under this franchise and shall allow the nondefaulting party to: (i) recover damages due to such default, including reasonable attorneys' fees costs and expenses; (ii) terminate this franchise; and/or (iii) pursue all remedies available at law and in equity. All remedies may be independently and concurrently applied.

## ARTICLE 4 Gas Franchise

### Sec. 5-4-10. Grant of franchise.

The Town hereby grants to Company, for the period specified and subject to the conditions, terms and provisions contained in the franchise, a nonexclusive right to furnish, sell and distribute gas to the Town and to all residents of the Town. Subject to the conditions, terms and provisions contained in the franchise, the Town also hereby grants to the Company a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all Facilities reasonably necessary to furnish, sell and distribute gas within, into and through the Town and to its residents and a nonexclusive right to make reasonable use of the streets and other public places and easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise.

### Sec. 5-4-20. Term of franchise.

This franchise shall take effect on February 4, 2013. The initial term of this franchise shall be for ten (10) years, beginning with said effective date of this franchise and expiring February 4, 2023; provided, this franchise and all rights and privileges herein provided shall be extended for two (2) successive periods of five (5) years each unless a notice of intent to renegotiate is given in writing by either party at least six (6) months before the end of such initial term or before the end of the first extended term, as the case may be.

### Sec. 5-4-30. Definitions.

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word *shall* is mandatory and *may* is permissive. Words not defined in this Section shall be given their common and ordinary meanings.

*Company* refers to Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

*Distribution facilities* refers to and is only that portion of the Company's gas distribution system within the Town which delivers gas from the Town gate stations (Town border) to the point-of-delivery of the customer, including all devices connected to that system.

*Emergency* refers to ruptures and leakage of pipelines, explosions, fires and similar instances where immediate action is necessary to prevent loss of life or significant damage to underground facilities and advance notice of proposed excavation is impracticable under the circumstances.

*Facilities* refer to and are all facilities reasonably necessary to provide gas service into, within and through the Town and include, but are not limited to, plants, works, systems, regulator stations, transmission and distribution structures, equipment, rectifiers, valves, above and underground lines, meters and wires.

*Gas* refers to natural gas, a mixture of predominantly methane with other hydrocarbons in lesser proportions, or other fuel gas mixtures that may include hydrogen, that provide fuel for lighting, heating, cooling, motive power, cogeneration, fuel cell, vehicle fuel and other processes.

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*Public easements* refer to and are public and dedicated easements created and available for use by a natural gas public utility for their facilities.

*Public Utilities Commission* or *PUC* refers to and is the Public Utilities Commission of the State or other authority succeeding to the regulatory powers of the Public Utilities Commission.

*Residents* refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

*Revenues* refer to and are those amounts of money which the Company receives from its customers within the Town from the sale of gas or tariff services provided under rates authorized by the Public Utilities Commission and from the use by others of its facilities within the Town, and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

*Streets and other public places* refer to and are streets, alleys, viaducts, bridges, roads, lanes, utility easements and other public ways in said Town.

*Tariff service* is a service provided by the Company pursuant to its Tariff which is filed with and approved by the PUC, for which the Company may charge a fee. Such fees include, but are not limited to, fees for connecting and disconnecting customers, for transferring service and for returned check charges.

*Town* refers to the Town of Crested Butte, Gunnison County, Colorado, a Colorado home rule municipality, and includes the territory as it currently is, or may in the future be, included within the boundaries of the Town.

*Transportation* refers to the movement of gas, owned by others, into the Company's distribution system for redelivery to the end user's facility within the Town. This includes the movement of gas that has been, or may be, accumulated by an aggregator or broker for the purpose of providing the end user, within the Town, with fuel for uses normally associated with gas.

#### **Sec. 5-4-40. Franchise fee.**

- (a) In consideration for the franchise rights granted herein which provide, among other things, for the Company's use of the streets and public utility easements which are valuable public properties acquired and maintained by the Town at great expense to its residents and in recognition that the grant to the Company of the use of the streets and public easements is a valuable right, the Company shall pay the Town the sums provided in this Section. Except as specified in this franchise, payment of the franchise fee shall not exempt the Company from any other lawful taxes or fees; however, the franchise fee provided for herein shall constitute the exclusive monetary payment by the Company to the Town for the Company's use and occupancy of the streets and public easements except as specifically provided herein.
- (b) The Company shall pay, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to the aggregate of the following:
  - (1) Three percent (3%) of the Company's revenue (including natural gas transportation revenue by the Company) derived from residents within the Town during the preceding calendar quarter.
  - (2) The Company shall provide a list and addresses of transportation customers in the Town franchise area once each calendar year.

(Ord. 1 §2, 2013)

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(Supp. No. 20)

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## **Sec. 5-4-50. Payment schedule.**

- (a) For franchise fees owed on revenues received after the effective date hereof, payment shall be made within thirty (30) days after each calendar quarter during the term hereof. Adjustments shall be allowed for net write-offs of uncollectible amounts. All payments shall be made to the Town Finance Director. The Town Finance Director or other authorized representative shall have reasonable access to the appropriate books of the Company at the Company's offices in Crested Butte, Colorado (or at Company's nearest office if Company has no office in Crested Butte) for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed, upon at least ten (10) days' notice by the Town and during regular business hours.
- (b) In the event an error by the Company results in an overpayment of the franchise fee to the Town and said overpayment is in excess of five thousand dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is five thousand dollars (\$5,000.00) or less, credit shall be taken against the next payment.
- (c) In the event an error by the Company results in an underpayment of the franchise fee to the Town, the full amount of such underpayment shall be paid to the Town within thirty (30) days after the discovery of the error.

(Ord. 1 §2, 2013)

## **Sec. 5-4-60. Change of franchise fee.**

Once during each calendar year of the franchise, the Town Council, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee that the Town may be entitled to receive as a part of the franchise; provided, however, that the Town Council may only change the franchise fee amount such as to cause the Town to receive a franchise fee under this franchise equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in the State.

## **Sec. 5-4-70. Franchise fee payment in lieu of other fees.**

Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, easement tax, franchise tax or charge, license tax, permit fee, inspection fee, bond, street tax, street or alley rental or charge, business license fee or any other tax, fee, charge, levy or rental in connection with the privilege of doing business or in connection with the physical operation thereof or in connection with the physical occupation of the streets and public easements, but does not exempt the Company from any other lawful taxation upon its property or any other tax not related to the franchise and does not, except as otherwise herein provided, exempt the Company from the payment of other fees assessed generally upon businesses.

## **Sec. 5-4-80. Contract obligation.**

If the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason by any court of proper authority, the Company is contractually bound to pay the Town an amount that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder.

## **Sec. 5-4-90. Supply of gas.**

The Company shall take all reasonable steps to provide an adequate supply of gas to its customers at a reasonable cost. If the supply of gas to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

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### **Sec. 5-4-100. Restoration of service.**

In the event the Company's gas system or any part thereof is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

### **Sec. 5-4-110. Obligations regarding Company facilities.**

The Company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient gas service to the Town and its residents. Company facilities shall not unreasonably interfere with the Town's water mains, sewer mains, electric distribution lines and facilities or other municipal use of streets and other public places. The Company shall construct and maintain its facilities in such a way so as to minimize the interference with trees, historical and other natural features. Company facilities, where reasonably practicable, shall be installed in public easements so as to cause a minimal amount of interference with such public and private property, but nothing herein shall be construed as preventing the Company from obtaining private easements or rights-of-way, whether through purchase or the powers of eminent domain, where and when the Company deems necessary. The Company will comply with all landscape and aesthetic requirements of the Town insofar as these requirements do not interfere with the safe operation and regulatory compliance of gas equipment, fixtures or facilities.

### **Sec. 5-4-120. Excavation and construction.**

All excavation and construction work done by the Company and its subcontractors shall be done pursuant to permits issued by the Town and in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. The Company will provide three (3) days' advance notice to the Town prior to construction for any routine maintenance or new construction project that has a direct impact on Town property or a public right-of-way. The Company and its subcontractors shall not be obligated for payment of any fee to the Town to obtain any permit. All public and private property legally placed in public easements disturbed by the Company or its subcontractors' excavation or construction activities shall be restored by the Company or its subcontractors at the Company's expense to substantially its former condition or, upon the Town's request, to such improved condition as will result in said property meeting current code conditions imposed upon said property by the Town; provided, however, that the Company shall not be put to any additional expense as a result of returning said property to an improved condition rather than to substantially its former condition. All work shall be completed in a workmanlike manner. Any subsidence or degradation of the pavement which occurs as a result of the Company or its subcontractors' excavation will be corrected in a timely and expeditious manner. The Company shall comply with the Town's criteria on pavement warranty and restorations for any excavations on Town property or the public right-of-way, including alleys and streets.

### **Sec. 5-4-130. Relocation of Company facilities.**

- (a) Any relocation of the Company's facilities in any street or other public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within a reasonable time as mutually agreed to by the parties; provided, however, that the Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times.
- (b) Relocated underground facilities shall be underground. Relocated aboveground facilities shall be above ground unless the Town agrees to pay the additional cost of moving them underground. Notwithstanding the previous sentence, the Company expressly reserves, and the Town expressly recognizes, the Company's right

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to make the final decision in the relocation of its facilities when, in the reasonable discretion of the Company, such decision is necessary either technically or for safety and benefit of the Town and its residents and in compliance with Section 5-4-110 above.

(Ord. 1 §2, 2013)

**Sec. 5-4-140. Service to new areas.**

If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

**Sec. 5-4-150. Town not required to advance funds.**

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the Town for municipal uses within the Town limits without requiring the Town to advance funds prior to construction. Requests for new service extensions will be performed in compliance with the tariffs in effect at the time of the request, which are on file with the Public Utilities Commission.

**Sec. 5-4-160. Technological improvements.**

- (a) The Company shall generally introduce and install, as soon as practicable, gas energy technological advances in its equipment and service within the Town when such advances, in the Company's reasonable discretion, are technically and economically feasible and are safe and beneficial to the Town and its residents. Upon request by the Town, which request shall not be made more frequently than once every twelve (12) months, the Company shall review and promptly report advances which have occurred in the gas utility industry that have been incorporated into the Company's operations in the Town in the previous year or will be so incorporated in the six (6) months following the Town's request. The Company shall report in advance to the Town any plans to include technological advances relating to gas facilities already in place.
- (b) The Company agrees to cooperate as appropriate to facilitate energy efficiency and sustainability as outlined in the Town's Energy Action Plan. This includes making available to the Company's customers within the Town any energy efficiency or conservation programs sponsored by the Company in the State, as well as cooperating in future initiatives to save energy and track energy use within the Town. Notwithstanding the foregoing, the Company shall not be obligated to participate in any energy efficiency or sustainability initiative that constitutes a significant financial burden to the Company or that has not been approved by the Public Utilities Commission.

(Ord. 1 §2, 2013)

**Sec. 5-4-170. Rates.**

The Company shall furnish natural gas within the corporate limits of the Town, as such limits now exist or may, during the term of this franchise, be extended, to the residents thereof and to any person or persons or corporation doing business in the Town, or any addition thereto, at the rates and under the terms and conditions set forth in the tariffs filed with or fixed by the PUC or by any other competent authority having jurisdiction in the premises.

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### **Sec. 5-4-180. No discrimination.**

The Company shall not unlawfully discriminate against any consumer within the Town with respect to charges for natural gas or services rendered.

### **Sec. 5-4-190. Company rules and regulations.**

The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of natural gas and payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers as shall be necessary to ensure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its office at Denver, Colorado, available to the public, copies of its tariffs concurrently in effect and on file from time to time with the PUC and other competent authority having jurisdiction in the premises.

### **Sec. 5-4-200. Town regulation.**

The Town expressly reserves and the Company expressly recognizes the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provision, ordinances and rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

### **Sec. 5-4-210. Compliance with Town requirements.**

Except in instances of emergency, the Company will comply with all Town requirements and obtain any permits required regarding curb and pavement cuts, excavating, digging and related construction activities. Except in instances of emergency, the Town may require that all installations be coordinated with the Town's capital improvement programs. If an emergency requires a curb or pavement cut, the Company shall notify the Town as soon as practical after the emergency is safely mitigated.

### **Sec. 5-4-220. Town review of construction and design.**

Except in instances of emergency, prior to construction of any significant facilities aboveground, for gas control buildings, regulator stations or similar structures within the Town, unless otherwise requested in writing by the Town, the Company shall furnish to the Town the plans for such facilities. In addition, upon request, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia, that the Company is in compliance with the following requirements:

- (1) That all applicable laws, including building and zoning codes, applicable design guidelines duly adopted by the Town and air and water pollution regulations, are complied with;
- (2) That aesthetic and good planning principles have been given due consideration; and
- (3) That adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the Town. The Town shall not require the Company to meet any standard higher than those required to meet federal, state or local laws.

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### **Sec. 5-4-230. Compliance with PUC regulations.**

The gas which the Company distributes shall conform with the minimum standards promulgated by the PUC in the Rules Regulating the Service of Gas Utilities and with the tariff provisions of the Company setting standards, as the same may be amended from time to time.

### **Sec. 5-4-240. Compliance with federal, state and local laws.**

The Company shall comply with all applicable federal, state and local laws. The Company shall use its commercially reasonable best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the Town's request, the Company will provide the Town with a status report of such measures.

### **Sec. 5-4-250. Inspection.**

The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Company agrees to cooperate with the Town in conducting the inspection and to correct any reasonable discrepancies affecting the Town's interest in a prompt and efficient manner.

### **Sec. 5-4-260. Weed control.**

The Company agrees to participate in local efforts to control the proliferation of noxious weeds within streets and other public places by paying the amount of one thousand dollars (\$1,000.00) to the Town on or before June 1 annually during the term of this franchise.

### **Sec. 5-4-270. Public Utilities Commission regulation.**

The lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission, which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise, are controlling over any inconsistent provision in this franchise dealing with the same subject matter. To the best of the Company's knowledge, no provision of the franchise is inconsistent with any of the currently effective provisions of the Company's tariffs.

### **Sec. 5-4-280. Reports on Company operations.**

Upon reasonable notice, the Company shall submit reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company within the Town limits under this franchise. The Town will ensure the confidentiality of information which, in the Company's reasonable discretion, it deems to be confidential and proprietary, to the extent provided by law. The Company understands that the Town is subject to the state public records statute.

### **Sec. 5-4-290. Copies of tariffs, all PUC filings.**

The Company shall keep on file in its Denver, Colorado office all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of all filings affecting said service which it makes with the PUC. Should the Company's gas cost adjustment rates for service within the Town increase by ten percent (10%) or more, the Company shall meet all PUC notification requirements.

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### **Sec. 5-4-300. Notice of emergency or force majeure events.**

In recognition that the Town is responsible for public safety functions and emergency response, the Company commits to notify the Town telephonically with a follow-up by telefax of any emergency or force majeure event existing within or affecting its distribution facilities. The parties will endeavor to coordinate an appropriate and reasonable response to any such emergency or force majeure event. In addition, the Company agrees to notify the Town of any extraordinary event on the Company's system that would require a response by the Town in pursuit of its public safety and emergency response functions, such extraordinary event to include, but not be limited to, a reasonable determination by the Company as to the existence of an improper level of odorant or a significant planned or unplanned interruption in the Company's gas supplies serving the Town.

### **Sec. 5-4-310. Indemnification of Town; Town held harmless.**

The Company shall construct, maintain and operate its facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, that said obligation of the Company shall not increase or decrease its liability on third party claims. The Company shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims and demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this franchise and shall pay all reasonable expenses arising therefrom, including, without limitation, reasonable attorneys' fees. The Town and the Company will each provide prompt written notice to the other of the pendency of any claim or action against either party arising out of the exercise by the Company of its franchise rights. The Company and the Town will each be permitted at their own expense to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien is determined to have arisen out of or in connection with any negligent act or failure to act of the Town or the Town's officers, agents or employees. In the event that the Town institutes litigation against the Company for a material breach of this franchise and the Town is the substantially prevailing party, the Company shall reimburse the Town all costs related thereto, including reasonable attorneys' fees.

### **Sec. 5-4-320. Payment of expenses incurred by Town in relation to ordinance.**

At the Town's option, the Company shall pay in advance or reimburse the Town for actual expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise.

### **Sec. 5-4-330. Financial responsibility.**

The Company shall procure and thereafter continuously maintain adequate general liability insurance coverage for as long as this franchise remains in effect at the Company's expense, with a limit of not less than ten million dollars (\$10,000,000.00) aggregate and per occurrence, covering liability arising from premises, operations, including risks of explosion, collapse and underground hazards, independent contractors, personal injury, products, completed operations and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required policy, this franchise shall be defined as an insured contract. A certificate of insurance evidencing the Company's compliance with this Section shall be filed with the Town's Finance Director on or before the effective date of this franchise and in the event of any material reduction to the policy thereafter. The Town shall be entitled to thirty (30) days' written notice prior to cancellation, termination or lapse of any insurance coverage referred to in said certificate. The Town may require the Company to furnish a complete copy of the policy, including all declarations and endorsements, upon written notice to Company.

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**Sec. 5-4-340. Transfer of franchise; consent of Town required.**

The Company shall not transfer or assign any rights under this franchise to a third party unless the Town shall approve such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld by the Town. A corporate merger, consolidation or reorganization involving the Company shall not constitute a transfer or assignment for purposes hereof.

**Sec. 5-4-350. Town's right to purchase or condemn.**

Any right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes and the Town Charter, are hereby expressly reserved and may be exercised at any time during the term of this franchise, as provided by the Colorado Constitution and statutes.

**Sec. 5-4-360. Continued cooperation by Company.**

In the event the Town exercises any right it may have under applicable law to purchase or condemn, the Company agrees that, at the Town's request, it will continue to supply and service its supplies under this franchise for the duration of the term of this franchise, pursuant to terms and conditions negotiated for such continued operation.

**Sec. 5-4-370. Removal of Company facilities at end of franchise; limitations on Company removal.**

In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever and the Town has not purchased or condemned the system and has not provided for alternative gas service, the Company shall not be required nor shall it have the right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to for such services provided during the term of this franchise. However, in the event the obligation to maintain the facilities continues beyond the expiration of the franchise agreement, the Company and Town shall negotiate the terms and conditions for such continued operation. Only upon receipt of written notice from the Town stating that the Town has adequate alternative gas sources to provide for the people of the Town shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

**Sec. 5-4-380. Forfeiture and cure.**

Both the Company and the Town recognize that there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. The failure of a party to timely observe or perform any material obligation, term or condition required to be observed or performed under this franchise that is not cured within thirty (30) days following receipt of written notice of such failure, or such shorter or longer time period where otherwise provided in this franchise, shall constitute a material breach and default under this franchise and shall allow the nondefaulting party to: (i) recover actual damages due to such default, including reasonable attorneys' fees, costs and expenses; (ii) terminate this franchise; and/or (iii) pursue all remedies available at law and in equity. All remedies may be independently and concurrently applied; provided, however, that termination shall not be effective unless and until the procedures described below have been followed:

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- (1) The Town must deliver to the Company, by certified mail or hand-delivery, a written notice. Such notice must: (i) fairly and fully set forth in detail each of the alleged acts or omissions of the Company that the Town contends constitutes a substantial breach of any material provision hereof; (ii) designate which of the terms and conditions hereof the Town contends the Company breached; and (iii) specify the date, time and place at which a public hearing will be held by the governing body of the Town for the purpose of determining whether the allegations contained in the notice did, in fact, occur; provided, however, that the date of such hearing may not be less than fifteen (15) days after the date of such notice.
  - (2) Within ten (10) days following the adjournment of the public hearing described in Paragraph (1) above, the Town must deliver to the Company, by certified mail, a written notice setting forth: (i) the acts and omissions of the Company described in the first notice that the governing body of the Town determines to have in fact occurred; and (ii) the specific terms and conditions of this franchise listed in the first notice that the governing body of the Town determines to have in fact been breached by such acts or omissions of the Company.
  - (3) The Town shall permit the Company the opportunity to substantially correct and cure all the breaches hereof set forth in the written notice described in Paragraph (2) above, provided that such breaches are amenable to cure, within thirty (30) days after the Company's receipt of such notice before termination occurs.

#### **Sec. 5-4-390. Judicial review.**

Any such declaration of forfeiture shall be subject to judicial review as provided by law.

#### **Sec. 5-4-400. Other legal remedies.**

Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violation of this franchise.

#### **Sec. 5-4-410. Continued obligations.**

Upon forfeiture, the Company shall continue to provide service to the Town and its residents in accordance with the terms hereof until the Town makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the Town.

#### **Sec. 5-4-420. Force majeure.**

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of undertakings being suspended, and the time during which the Company is so prevented herein, shall mean any cause not reasonably within the Company's control and includes, but is not limited to, acts of God, strikes, lockouts, wars, riots, orders or decrees of any lawfully constituted federal, state or local body, contagious or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies or labor permits, temporary failure of gas supply, or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this franchise.

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**Sec. 5-4-430. Amendments to franchise.**

At any time during the term of this franchise, the Town or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendments desired, and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendments unless otherwise provided by this franchise or law.

**Sec. 5-4-440. Successors and assigns.**

The rights, privileges and obligations granted and contained in this franchise shall inure to the benefit of and be binding upon Atmos Energy Corporation, its successors and assigns.

**Sec. 5-4-450. Third parties.**

Nothing contained in this franchise shall be construed to provide rights to third parties.

**Sec. 5-4-460. Representatives.**

Both parties shall designate from time to time, in writing, representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand-delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to Atmos Energy Corporation, Vice President of Operations. Currently the addresses are as follows:

For the Town of Crested Butte:

Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224  
970-349-5338

For the Company:

1555 Blake St. Suite # 400  
Denver CO 80202

(Ord. 1 §2, 2013)

**Sec. 5-4-470. Entire agreement.**

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

## **ARTICLE 5 Emergency Telephone Charge**

**Sec. 5-5-10. Delegation of authority.**

The Town Council hereby delegates its authority under Section 29-11-203(3), C.R.S., to annually establish a rate of charge for provision of the 911 emergency telephone service, to the governing board of the

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Gunnison/Hinsdale Combined Emergency Telephone Service Authority and said governing board is also hereby delegated the authority to collect the emergency telephone service charge in amounts deemed appropriate by it, not to exceed the amount authorized by Section 29-11-102(a), C.R.S.

**Sec. 5-5-20. Emergency telephone charge imposed.**

The governing body of the Gunnison/ Hinsdale Combined Emergency Telephone Service Authority is hereby authorized to annually establish and collect an emergency telephone service charge upon all telephone exchanges served by the Authority and upon wireless users in an amount not to exceed one dollar (\$1.00) per month, as authorized by Section 29-11-102(b)(2), C.R.S., such charge to commence January 1, 2003. Upon recommendation of the Authority, the Town Council may, by resolution, authorize the Authority to raise or lower the emergency telephone charge, but in no event shall such charge exceed the amount of two percent (2%) of the tariff as approved by the Public Utilities Commission.

## **CHAPTER 6**

### **Business Licenses and Regulations**

#### **ARTICLE 1 Licensing Provisions**

**Sec. 6-1-10. Scope.**

It is not intended by this Chapter to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this Chapter. Where this Chapter imposes a greater restriction upon persons, premises or personal property than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this Chapter shall control.

**Sec. 6-1-20. Definitions.**

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word *shall* is always mandatory and not merely directory.

*Business* means all kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit or benefit, either directly or indirectly, on any premises in this Town, or anywhere else within its jurisdiction.

*Insignia* means any tag, plate, badge, emblem, sticker or any other kind of device which may be required for any use in connection with any license.

*License* or *licensee*, as used generally herein, includes respectively the words *permit* or *permittee*, or the holder for any use or period of time of any similar privilege, wherever relevant to any provision of this Chapter or other law or ordinance.

*License Officer* means the Town Clerk.

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*Premises* means all lands, structures and places; the equipment and appurtenances connected or used therewith in any business; and any personal property which is either affixed to, or is otherwise used in connection with any such business conducted on such premises.

### **Sec. 6-1-30. Application of Code licensing provisions.**

- (a) Compliance required. It shall be unlawful for any person, either directly or indirectly, to conduct any business or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license is required by any law or ordinance of this Town, without a license therefor being first procured and kept in effect at all such times as required by this Chapter or other law or ordinance of this Town.
- (b) One act doing business. For the purpose of this Article, any person shall be deemed to be in business, and thus subject to the requirements of Subsection (a) above, when he or she does at least one (1) act of:
  - (1) Selling any goods or service.
  - (2) Soliciting business or offering goods or services for sale or hire.
  - (3) Acquiring or using any vehicle or any premises in the Town for business purposes.
- (c) Agents responsible for obtaining license. The agents or other representatives of nonresidents who are doing business in this Town shall be personally responsible for the compliance of their principals and of the businesses they represent with this Chapter.
- (d) Separate license for branch establishments.
  - (1) A license shall be obtained in the manner prescribed herein for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this Chapter shall not be deemed to be separate places of business or branch establishments.
  - (2) Each rental real property shall be deemed a branch establishment or separate place of business for the purposes of this Chapter when there is a representative of the owner or the owner's agent on the premises who is authorized to transact business for such owner or owner's agent, or there is a regular employee of the owner or of the owner's agent working on the premises.
- (e) Joint license. A person engaged in two (2) or more businesses at the same location shall not be required to obtain separate licenses for conducting each of such businesses but, when eligible, shall be issued one (1) license which shall specify on its face all such businesses.
- (f) No license shall be required of any person for any mere delivery in the Town of any property purchased or acquired in good faith from such person at his regular place of business outside the Town where intent by such person is shown to exist to evade the provisions of this Article.

(Prior code 5-1-4; Ord. 21 §§1—3, 2007; Ord. 4 §1, 2009)

### **Sec. 6-1-40. License Officer.**

Issue licenses. The License Officer shall collect all license fees and shall issue licenses in the name of the Town to all persons qualified under the provisions of this Article and shall:

- (1) Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this Article.

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- (2) Adopt all forms and prescribe the information to be given therein as to character and other relevant matter for all necessary papers.
  - (3) Require all applicants to submit all certifications of fact necessary to the administration of this Article.
  - (4) Submit all applications, in a proper case, to interested Town officials for their endorsements thereon as to compliance by the applicant with all Town regulations which they have the duty of enforcing.
  - (5) Investigate and determine the eligibility of any applicant for a license as prescribed herein.
  - (6) Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this Article.
  - (7) Notify any applicant of the acceptance or rejection of his or her application and, upon his or her refusal of any license or permit, at the applicant's request, state in writing the reasons therefor and deliver them to the applicant.

### **Sec. 6-1-50. Qualifications of applicants.**

General standards to be applied. The general standards herein set out relative to the qualifications of every applicant for a license shall be considered and applied by the License Officer. The applicant shall:

- (1) Not be in default under the provisions of this Article or indebted or obligated in any manner to the Town except for current taxes.
- (2) Upon request of the Licensing Officer, present a certificate of occupancy furnished by the Building Inspector to the effect that the proposed use of any premises is not a violation of Chapter 16 of this Code.

### **Sec. 6-1-60. Procedure for issuance of license.**

- (a) Formal application required. Every person required to procure a license under the provisions of any ordinance or law of the Town shall submit an application for such license to the License Officer. The application shall:
  - (1) Require the disclosure of all information necessary for compliance with Section 6-1-50 above and of any other information which the License Officer shall find to be reasonably necessary to the fair administration of this Article.
  - (2) Be accompanied by the full amount of the fees chargeable for such license.
- (b) Issuance of receipts. Whenever a license cannot be issued at the time the application for the same is made, the License Officer shall issue a receipt to the applicant for the money paid in advance, subject to the following conditions: Such receipt shall not be construed as the approval of the License Officer for the issuance of a license; nor shall it entitle or authorize the applicant to open or maintain any business contrary to the provisions of this Article.
- (c) Renewal license procedure. The applicant for the renewal of a license shall submit an application for such license to the License Officer. The application shall Require the disclosure of such information concerning the applicant's demeanor and the conduct and operation of the applicant's business during the preceding licensing period as is reasonably necessary to the determination by the License Officer of the applicant's eligibility for a renewal license and to a possible adjustment of license fee.
- (d) Duplicate license procedure. A duplicate license or special permit shall be issued by the License Officer to replace any license previously issued, which has been lost, stolen, defaced or destroyed, without any willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit sworn to before a notary

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public of this State attesting to such fact, upon and the payment to the License Officer of a fee as established by resolution of the Town Council.

- (e) Supplemental license procedure. When a licensee places himself or herself in a new status as provided in Paragraph 6-1-70(2) below, the License Officer shall issue a supplemental license and such additional insignia as may be required.
- (f) Nonapproval of license. The License Officer shall, upon disapproving any application submitted under the provisions of this Article, refund all fees paid in advance to the applicant, provided that the applicant is not otherwise indebted to the Town.
- (g) Compliance pending legal action. When the issuance of a license is denied and any action *is* instituted by the applicant to compel its issuance, such applicant shall not engage in the business for which the license was refused unless a license is issued to him or her pursuant to a judgment ordering the same.

(Prior code 5-1-7; Ord. 4 §1, 2009)

## **Sec. 6-1-70. Determination of license fee.**

Fee established. License fees shall be in the amounts established in the this Article, and as further determined under this Section.

- (1) The following rules shall apply to a person who, on the effective date of the initial ordinance codified herein, holds a valid unexpired license from the Town for any business required to be licensed hereunder:
  - a. Credit less than fee: In the event that the amount of the prorata of the license fee previously paid, based upon the unexpired portion of the period for which such previous license was issued, is less than the amount of fee imposed hereunder, the applicant shall receive credit on the new fee to the extent of such prorated amount.
  - b. Credit exceeds fee: In the event that prorated credit as computed in Subparagraph a. above is greater than the amount of fee imposed hereunder, the amount of license fee imposed by this Article shall be the amount of such prorated credit.
  - c. Where applicant indebted. In no case where an applicant is indebted in any manner to the Town shall he or she be entitled to a credit or rebate.
- (2) The License Officer shall adjust the fee as follows:
  - a. Change in license status. Require the payment of an additional or higher license fee, to be prorated for the balance of the license period, when a licensee places himself or herself in such status under this Article by making any other lawful and material change of any kind in his or her business.
  - b. Prorated fee for new business. Any applicant obtaining a license for a business or other licensed activity commenced with less than three (3) months remaining in the applicable license period shall pay a license fee equal to one-third (?) of the applicable yearly licensed fee.
- (3) Rebate of fee.
  - a. General prohibition. Except as herein provided, no rebate or refund of any license fee or part thereof shall be made by reason of the nonuse of such license or by reason of a change of location or business rendering the use of such license ineffective.
  - b. Special cases. The License Officer shall have the authority to refund a license fee or prorated portion thereof where:

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1. The license fee was collected through an error;
  2. The licensee has been prevented from enjoying the full license privilege due to his or her death or incapacity to engage in such business;
  3. The licensee has entered the armed services of the United States through induction or enlistment and is thereby rendered unable to conduct such business;
  4. The licensed business is forced to close before the expiration of the license period by reason of the taking over of the business or licensed premises by the United States government, the State or the Town; or
  5. The licensed business was destroyed by fire or other casualty through no fault of the licensee.
- c. Basis of rebate. A rebate or refund as provided herein shall be based upon the number of days in the license period remaining after the occurrence of the event relied upon for rebate.

### **Sec. 6-1-80. Contents of license.**

Each license issued hereunder shall state upon its face the following:

- (1) The name of the licensee and any other name under which such business is to be conducted;
- (2) The kind and address of each business so licensed;
- (3) The amount of the license fee therefor;
- (4) The dates of issuance and expiration thereof; and
- (5) Such other information as the License Officer shall determine.

### **Sec. 6-1-90. Forms of licenses.**

All license certificates shall be issued by the Town Clerk under the seal of the Town, signed by the Town Clerk.

### **Sec. 6-1-100. Duties of licensee.**

- (a) General standards of conduct. Every licensee under this Chapter shall:
  - (1) Permit all reasonable inspections of his or her business and examination of his or her books by public authorities so authorized by law.
  - (2) Ascertain and at all times comply with all laws and regulations applicable to such licensed business.
  - (3) Avoid all forbidden, improper or unnecessary practices or conditions which affect or may affect the public health, morals or welfare.
  - (4) Refrain from operating the licensed businesses on premises after expiration of his or her license and during the period his or her license is revoked or suspended.
- (b) Display of license. Every licensee under this Chapter shall post and maintain such license upon the licensed premises in a place where it may be seen at all times.
  - (1) Where the licensed premises donor have a window facing a public way at street level or a glass door opening upon the public way, such insignia shall be affixed to the glass in the door, window or other

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prominent place in the nearest proximity to the principal public entrance to such establishment and shall be placed and maintained so as to be plainly visible from such public entrance.

- (2) Vehicles.
    - a. Any general or special license fees, required for any kind of vehicle for the privilege of being operated upon the public highways by any statute or ordinance, shall not abrogate, limit or affect any further requirements of this Chapter, or of other ordinances or laws, for additional and separate licenses, permits and insignia and fees for such vehicles or other uses, for and relating to the privilege of using the same in the business so licensed.
    - b. The licensee shall affix any insignia delivered for use in connection with a licensed motor vehicle on the inside of the windshield of the vehicle or as may be otherwise prescribed by the License Officer or by law.
    - c. The licensee shall affix any metal or other durable type of insignia delivered for use in connection with a wagon or other vehicle not operated by motor power securely on the outside of such vehicle.
  - (3) The licensee shall carry such license on his or her person when he or she has no licensed business premises.
  - (4) The licensee shall affix any insignia delivered for use in connection therewith upon the outside of any coin, vending or other business machine or device, so that it may be seen at all times.
  - (5) The licensee shall not allow any license, special permit or insignia to remain posted, displayed, or used after the period for which it was issued has expired; when it has been suspended or revoked, or for any other reason becomes ineffective. The licensee shall promptly return such inoperative license, special permit or insignia to the License Officer.
  - (6) The licensee shall not loan, sell, give or assign to any other person or allow any other person to use or display, to destroy, damage or remove, or to have in his or her possession, except as authorized by the License Officer or by law, any license or insignia which has been issued to said licensee.
- (c) New location desired. A licensee shall have the right to change the location of the licensed business, provided that he or she shall:
- (1) Obtain written permission from the License Officer for such change of location.
  - (2) Pay a relocation fee in an amount established by resolution of the Town Council.

(Prior code 5-1-11; Ord. 7 §2, 1998; Ord. 4 §1, 2009)

### **Sec. 6-1-110. Transfer of license.**

- (a) When authorized. A licensee hereunder shall have the right to transfer his or her license to another person, provided that he or she shall:
  - (1) Obtain written permission from the License Officer for such transfer.
  - (2) Execute the transfer in the form and under the conditions required by law and as prescribed by the License Officer.
  - (3) Promptly report the completed act of transfer to the License Officer.
  - (4) Promptly surrender any license certificate and, when required by the License Officer, all licensing insignia.

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- (b) New license issued. Upon the completion of a transfer of license in compliance with Subsection (a) above, the License Officer shall issue a new license and insignia to the transferee for the unexpired term of the old license.
    - (1) The new license issued hereunder shall authorize the transferee to engage in the same business at the same location or at such other place as shall be approved by the License Officer and named in the new license.
    - (2) The License Officer shall collect a transfer fee in an amount established by resolution of the Town Council from the transferee prior to the issuance of the new license.

(Prior code 5-1-12; Ord. 7 §3, 1998; Ord. 4 §1, 2009)

### **Sec. 6-1-120. Inspections; enforcement.**

- (a) Persons authorized. The following persons are authorized to conduct inspections in the manner prescribed herein:
  - (1) The License Officer shall make all investigations reasonably necessary to the enforcement of this Chapter.
  - (2) The License Officer shall have the authority to order the inspection of licensees, their businesses and premises, by all Town officials having duties to perform with reference to such licensees or businesses.
  - (3) All police officers shall inspect and examine businesses to enforce compliance with this Chapter.
- (b) Authority of inspectors. All persons authorized herein to inspect licensees and businesses shall have the authority to enter, with or without search warrant, at all reasonable times, the following premises:
  - (1) Those premises for which a license is required.
  - (2) Those premises for which a license was issued and which, at the time of inspection, are operating under such license.
  - (3) Those premises for which the license has been revoked or suspended.
- (c) Reports by inspectors. Persons inspecting licensees, their businesses or premises as herein authorized shall report all violations of this Chapter or of other laws or ordinances to the License Officer, and shall submit such other reports as the License Officer shall order.

(Prior code 5-1-13; Ord. 7 §4, 1998; Ord. 4 §1, 2009)

### **Sec. 6-1-130. Penalties.**

The violation of any provision of this Chapter shall be a misdemeanor and, upon conviction thereof, the violator shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

## **ARTICLE 2 Business Occupation Licenses**

### **Sec. 6-2-10. Purpose.**

The purpose of this Article shall be to require the licensing and regulation of business activities, occupations and enterprises conducted within the Town and provide the Town with necessary information relating to businesses and professions operating with the Town, in order to protect the health, welfare and safety of its

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inhabitants, to generate and raise additional revenues for the Town for the purpose of marketing the Town and its environs as a year-round resort, and to promote and market activities and events beneficial to the business community.

### **Sec. 6-2-20. Definitions.**

For purposes of this Article, the following definitions shall apply:

*Accommodation space* means that space located within a lodge, including a bed, available for overnight occupancy by a person, otherwise commonly referred to in the ski industry as a pillow.

*Employee* means any person receiving compensation from a business subject to the provisions of this Article, subject only to the following: any person who works in excess of twenty (20) hours per week is considered a full-time employee. Any combination of persons who together work twenty (20) hours or more per week are counted as one (1) full-time employee for each increment of twenty (20) hours per week or fraction thereof worked. An *employee* includes an owner, manager, partner, associate or proprietor who works for and receives compensation from his or her business; and, further, includes commissioned agents or independent contractors performing services for the business or more than a temporary basis.

*Lodge* means any property or establishment which holds itself out to the public to rent rooms or accommodations for private profit or benefit, either directly or indirectly, on any premises in this Town for periods of less than thirty (30) days per rental period. Included within this definition are hotels, boarding houses, condominiums and short-term rental houses.

### **Sec. 6-2-30. Prohibition.**

It is unlawful for any person to conduct business within the Town without having first obtained an occupational business license from the Licensing Officer. Any such license issued shall be for the calendar year for which it is issued, unless sooner revoked.

### **Sec. 6-2-40. License tax.**

A business occupation licensing tax is hereby levied and there shall be collected and paid on any person doing business in the Town of Crested Butte, Colorado, in the amount as set forth in Appendix A to this Code, in the calendar and fiscal year 2018.

### **Sec. 6-2-50. Use of proceeds.**

It is hereby declared that the proceeds from the fee imposed pursuant to this Article shall be used for marketing and promotion of the Town's principal industry, for tourism and for payment of expenses related to promotion and marketing of events beneficial to the business community, including payment of reasonable costs incurred in connection with the administration of this Article.

### **Sec. 6-2-60. Administration.**

- (a) Except for those provisions of this Article concerning licensing specifically referring to the Licensing Officer, the administration of this Article is hereby vested in and shall be exercised by the Finance Director, who may prescribe forms and make reasonable rules and regulations in conformity with this Article for the making of returns, the ascertainment, assessment and collection of the fee imposed hereunder, and for the proper administration and enforcement thereof.

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- (b) An application for a license pursuant to this Article, renewals thereof and the general administration of business occupation licenses shall be conducted in accordance with the Town's general licensing procedures under Article 1 of this Chapter.
  - (c) Applicants must pay their license fees on or before January 31 of any year fees are owed.
  - (d) An applicant shall state, by certification as to truthfulness prepared by the Licensing Officer, at the time of application hereunder, the total number of full-time and part-time employees the applicant had for the subject business for the immediately prior year, and the number of such employees the applicant intends to have for the upcoming year. The fees payable under this Subsection shall be based upon the number of employees set forth for the upcoming year in such certification. The certification shall be based on the average number of employees employed during the months of operation.

(Prior code 5-2-6; Ord. 27 §3, 1990; Ord. 7 §6, 1998)

### **Sec. 6-2-70. Licensee duties.**

It shall be the duty of each person subject to compliance with this Article to do the following:

- (1) Obtain a renewal of the license annually, if the licensee remains in business or is otherwise liable to account for the fee herein provided.
- (2) Ascertain and continuously comply with all laws and regulations applicable to such licensed business, including compliance with the duties of a licensee set forth at Section 6-1-100 of this Chapter.

### **Sec. 6-2-80. Enforcement; penalties.**

In addition to the general licensing provisions for enforcement and penalties contained in Article 1 of this Chapter, the following shall apply: Pursuant to Section 31-20-101, et seq., C.R.S., the Town may cause any delinquent charges or fees, including but not limited to attorney's fees and costs associated with enforcing this Article made or levied hereunder, to be certified to the County Treasurer, to be collected and paid over by the County Treasurer in the same manner as real or personal property taxes, including the provisions for the creation of a lien upon the subject property.

## **ARTICLE 3 Liquor Licenses**

### **Sec. 6-3-10. General provisions.**

- (a) The provisions of the Colorado Liquor Code, Article 47 of Title 12, C.R.S., and the provisions of the Colorado Beer Code, Article 46 of Title 12, C.R.S., together with regulations of the Colorado Department of Revenue, Liquor Enforcement Division, which are applicable to local liquor license authorities and local liquor license applications, are hereby adopted as part of this Article and are incorporated herein by reference, except to the extent of any inconsistency with the other provisions of this Article. Nothing herein shall be construed to alter or amend powers to condition, suspend or revoke a license.
- (b) The Town Council shall constitute the Local Liquor Licensing Authority.
- (c) The Town Clerk shall function as Clerk to the Town Council as the Local Liquor Licensing Authority, and the Town Attorney shall function as its legal counsel. The Town Marshal shall perform investigative functions on behalf of the Local Liquor Licensing Authority.
- (d) The prohibition in state law against allowing liquor licensed premises within five hundred (500) feet of a school is eliminated pursuant to Section 12-47-138(1)(d)(IV), C.R.S., only as the same may be applied to hotel

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and restaurant liquor licenses within five hundred (500) feet of the Crested Butte Community School and the Crested Butte Academy.

(Prior code 5-6-1; Ord. 9 §1, 1988; Ord. 11 §1, 1988; Ord. 2 §1, 1995; Ord. 3 §2, 1996)

### **Sec. 6-3-20. Renewal applications.**

- (a) The Town Clerk is hereby authorized to process and approve liquor license renewal applications on behalf of the Town Council, subject to the following conditions:
  - (1) No Colorado Liquor or Beer Code violations by the licensee or employees have occurred during the previous year;
  - (2) No modification of the licensed premises has taken place without prior written consent of the Town Council and State Licensing authority; and
  - (3) No written complaints concerning conduct of the licensee or his or her employees, or alleging violation of the Colorado Liquor or Beer Codes, have been received by the Town Clerk or Marshal's Department. The Town Clerk shall, within ninety (90) days prior to the date that any renewal is required, publish one (1) notice in the official Town newspaper which contains the following information:
    - a. The name and location of the licensed establishment subject to renewal;
    - b. That complaints concerning the conduct of the licensee or employees of the same should be directed, in writing, to the Town Clerk; and
    - c. The date, not sooner than ten (10) days after such publication, by which any such complaints should be submitted.
- (b) In the event that a violation has occurred as provided in Paragraph (a)(1) above, a premises modification has taken place as provided in Paragraph (a)(2) above or a written complaint has been received as provided in Paragraph (a)(3) above, the application shall be brought to the Town Council for a public hearing.

(Prior code 5-6-2; Ord. 9 §1, 1988; Ord. 4 §1, 2009)

### **Sec. 6-3-30. Fines in lieu of suspension.**

The optional provisions of Sections 12-47-110(3)–(6) and 12-46-107(5)–(8), C.R.S., pertaining to payment of fines in lieu of suspension of a retail license, are hereby adopted.

### **Sec. 6-3-40. Alcoholic beverage tastings.**

- (a) Tastings allowed. Tastings may be conducted by retail liquor store or liquor-licensed drugstore licensees in accordance with this Section and pursuant to Section 12-47-301, C.R.S., as the term *tastings* is therein defined. It is unlawful for any person or licensee to conduct tastings within the Town unless authorized in accordance with this Section.
- (b) Alcoholic beverage tastings license required. A retail liquor store or liquor-licensed drugstore licensee may conduct tastings only pursuant to a valid alcoholic beverage tastings license.
- (c) Application. A retail liquor store or liquor-licensed drugstore licensee who wishes to conduct tastings shall submit an application to the Local Liquor Licensing Authority on forms supplied by the Local Liquor Licensing Authority. Such application shall be accompanied by a nonrefundable annual fee as established by resolution of the Town Council.

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- (d) Approval or denial of application. If the applicant demonstrates that he or she is able to conduct tastings without violating the provisions of this Section or Section 12-47-301(10)(a), C.R.S., and without creating a public safety risk to the neighborhood, the application shall be approved and the alcoholic beverage tastings license issued. Otherwise, the application shall be denied. The Town Clerk is hereby authorized to process and approve alcoholic beverage tastings licenses.
  - (e) Annual license. An alcoholic beverage tastings license shall be valid for one (1) year, and shall run concurrently with the retail liquor store or liquor-licensed drugstore license of the holder of the alcoholic beverage tastings license; provided, however, that the first alcoholic beverage tastings license issued to a retail liquor store or liquor-licensed drugstore licensee shall be valid only until the expiration of the then-current retail liquor store or liquor-licensed drugstore license.
  - (f) Limitations on tastings. Tastings conducted by the holder of an alcoholic beverage tastings license shall be subject to the limitations and requirements set forth in Section 12-47-301(10)(c), C.R.S., and limitations set forth in this Article. Compliance with the limitations and requirements set forth in Section 12-47-301(10)(c), C.R.S., and this Article shall be a term and condition of any alcoholic beverage tastings license, whether or not expressly set forth in the alcoholic beverage tastings license.
  - (g) Limitations on authorization. Tastings once authorized shall be subject to the following limitations:
    - (1) Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the Liquor Enforcement Division in the Colorado Department of Revenue and who is either a retail liquor store licensee, a liquor-licensed drugstore licensee or an employee of a licensee, and only on a licensee's licensed premises.
    - (2) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub or winery licensed pursuant to Section 12-47-403, C.R.S., at a cost that is not less than the laid-in cost of such alcohol.
    - (3) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half ( $\frac{1}{2}$ ) ounce of spirituous liquor.
    - (4) Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.
    - (5) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcoholic beverages; and, in no case earlier than 11:00 a.m. or later than 7:00 p.m.
    - (6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.
    - (7) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.
    - (8) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.
    - (9) The licensee shall not serve more than four (4) individual samples to a patron during a tasting.
    - (10) Alcohol samples shall be in open containers and shall be provided to a patron free of charge.
    - (11) Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed one hundred four (104) days per year.
    - (12) No manufacturer of spirituous vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

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- (13) A violation of this Section or of Section 12-47-801, C.R.S., by a retail liquor store or liquor-licensed drugstore licensee, whether by his or her employees, agents or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting.
  - (14) A retail liquor store or liquor-licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee.
  - (15) Nothing in this Section shall affect the ability of a Colorado winery licensed pursuant to Section 12-47-402 or 12-47-403, C.R.S., to conduct a tasting pursuant to the authority of Section 12-47-402(2) or 12-47-403(2)(e), C.R.S.
- (h) Written notice to Marshal's Department required. A written notice to the Marshal's Department must be provided at least seventy-two (72) hours before a licensee is allowed to conduct a tasting. The notice shall include the name of the liquor-licensed premises, the person who is submitting the notice and the date and time the tasting is to take place.
  - (i) Proof of qualifications of persons conducting tastings. Upon the request of any peace officer, the holder of an alcoholic beverage tastings license shall provide proof that tastings are to be conducted only by a person who has completed a server training program that meets the standards established by the Liquor Enforcement Division in the Colorado Department of Revenue, and who is either the retail liquor store licensee, a liquor-licensed drugstore licensee or an employee of such licensee.

(Prior code 5-6-4; Ord. 18 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 6-3-50. Educational requirements.**

Every hotel and restaurant licensee, registered manager and licensee's employee is encouraged to obtain a certificate of completion from an educational program of training for intervention procedures for servers of alcohol. Those registered managers obtaining a certificate of completion may file a copy of the certificate of completion with the Authority with an application of renewal of a liquor license.

## **ARTICLE 4 Vending Licenses and Special Events**

### **Sec. 6-4-10. Definitions.**

For purposes of this Article, the following definitions shall apply:

*Booth* means a temporary structure that is readily movable and is used for vending food that is no more than thirty-six (36) square feet in area, within a six (6) feet by six (6) feet footprint, and nine and half (9.5) feet in height, including umbrellas and other similar devices, that is removed from its vending location every night.

*Farmers' market vendor* means vendor of food products or produce who vends exclusively on the public property area established for the farmers' market.

*Food cart* means handcart or booth from which food such as hot dogs, tacos, ice cream, candy, nonalcoholic beverages and other traditional, hand-carried ready-to-eat food and drink are sold. A *food cart vendor* is one who sells food and drink using a food cart and who meets the definition of *vendor* found in this Article. *Food cart vending* is the act of selling food and drink using a food cart by one who meets the definition of *vendor* found in this Article.

*Food supplier vendor* means person who vends food products strictly to private places of business, does not vend on public property and does not use a handcart.

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*Food truck* means a licensed vehicle or licensed vehicles that aggregate do not exceed the maximum size of eight (8) feet wide by twenty (20) feet long that are mobile and used for vending food.

*Handcart* means structure with at least two (2) operational wheels, that is mobile and is used for vending food or merchandise and that's no more than twenty-four (24) square feet in size and seven (7) feet in height, excluding umbrellas and other similar devices.

*Merchandise truck* means a licensed motor vehicle no greater than eight (8) feet wide by twenty (20) feet long that is mobile and is used for vending merchandise.

*Peddler* means one who sells merchandise or services or solicits orders for the sale and future delivery of merchandise or services on a door-to-door basis in or upon private residences in the Town, without prior invitation to do so by the owner or occupant of such private residence.

*Special event* means any performance, activity, parade, festival, athletic event or other public gathering held on Town property and sponsored by a nonprofit enterprise or for-profit organization.

*Street entertainer* or *musician* means person engaged in free and public temporary, short-term musical performances, or other sorts of free, personalized entertainment.

*Vendor* means a business not having a fixed, physical location for its operation within the Town at any time during the calendar year, but which otherwise does business within the Town.

#### **Sec. 6-4-20. License required.**

It is unlawful for a vendor to do business or a street entertainer or musician to engage in entertainment without a business occupation license and an outdoor vending license, or to otherwise engage in activity in noncompliance with the provisions of this Chapter.

#### **Sec. 6-4-30. Outdoor vending license requirements.**

All outdoor vending activities shall occur from a handcart, merchandise cart or late-night food truck, unless otherwise specified in this Section. Outdoor vending activities shall be subject to each of the regulations set forth herein.

- (1) Each applicant for a license shall obtain all required health, sales tax or other required permits or licenses from all applicable government departments. The vendor shall publicly display all such permits including, without limitation, a Town business occupation license.
- (2) License applications shall be made on the form provided by the Town Manager for the license sought, and shall contain all the information required by the form, including any required attachments or exhibits. The Town Manager may reject incomplete applications.
- (3) The holder of a license which authorizes the licensee to go upon public property shall indemnify and hold harmless the Town, its officers, employees and agents against any and all claims arising from any occurrence occasioned by the licensed use, and shall maintain, during the period of the license, comprehensive general public liability and property damage insurance, naming the Town, its officers, employees and agents as insureds; providing that the insurance is primary insurance, and no other insurance maintained by the Town will be called upon to contribute a loss covered by the Town; and providing for thirty (30) days' notice of cancellation or material change to the Town.
- (4) A license issued under the provisions of this Section may be transferred or assigned as part of the sale of the assets of the business to which the license has been issued. Such license shall be subject to all other rules and regulations regarding licenses.

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- (5) A license is valid for a one-year period, beginning January 1 and ending December 31. A license is automatically renewable unless the license is revoked. A licensee who wishes to continue operating after the expiration of the license shall follow the application procedures required of a new applicant.
  - (6) Licenses shall be issued on a first-come, first-served basis. If applications are received simultaneously, the Town Manager shall determine priority by lot.
  - (7) A vendor shall vend no less than eighty (80) days per license year. In the event that a vendor vends less than eighty (80) days per license year, his or her license shall not be renewed for the following year.
  - (8) No more than a single vending license may be held by any person or by any one (1) entity or association.
  - (9) No more than seven (7) vendors total shall be allowed on public property at any given time at Sixth Street and Elk Avenue.

#### **Sec. 6-4-40. Peddling prohibited.**

It is unlawful for solicitors, peddlers, hawkers or itinerant merchants to peddle in or upon private residences in the Town without prior invitation to do so by the owner or occupant of such residence. This prohibition shall not be applicable to persons representing charitable, religious or civic enterprises, who possess proof of such status. Peddling is prohibited as a nuisance pursuant to Section 7-2-190 of this Code.

#### **Sec. 6-4-50. Maintaining cart and late-night food truck vending areas.**

A cart or late-night food truck 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.

#### **Sec. 6-4-60. Food cart regulations.**

Food carts, food cart vendors and food cart vending are subject to each of the following regulations:

- (1) Food cart vendors may only operate at the farmers' market, the Town parking lot at 1st Street and Elk Avenue, or other areas as the Town Manager may designate.
- (2) Food cart vendors are permitted at Town-owned recreational facilities during Town-sponsored or Town-managed activities.
- (3) Any food cart operating on public property or private property may be required to move at the request of Town officials for health, sanitation and safety reasons or for failure to comply with the requirements of this Code.
- (4) All food vendors operating on public property must provide proof of liability insurance to the Town, and may be required to provide such information and complete such applications in connection with a license to vend as the Town may determine is necessary.
- (5) A food cart operating on private property must have written permission from the property owner to vend on the site, operate from a stationary position and maintain high standards of site cleanliness.
- (6) Food cart vendors may not attract attention by noise-making devices, voice calls, flags, banners, balloons or other such devices.
- (7) Signs must be limited to the cart itself and may not extend beyond the cart (except for the area of the umbrella).

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- (8) Advertising is limited to the product sold, the name of the business and a price list.
  - (9) No more than a single cart (whether a food cart or a merchandise cart) may operate on any individual Town lot. In the event a property has a legal description describing it in terms as other than a lot, in order to determine what is a lot for purposes of this Section, reference shall be made to the official plat of the Town. Where property is depicted thereon as a lot, such property shall be considered a lot.
  - (10) A food cart may not be stored on public property or rights-of-way when not in operation. The area in which a food cart is stored must be kept in a neat, clean and hazard-free condition; food must be properly stored or disposed of; and all items must be secured in a manner so as to not attract animals or vermin.
  - (11) Nonfood merchandise may not be sold from a food cart, except where such nonfood merchandise is specific to the subject food cart business.
  - (12) No food cart may operate between the hours of 2:30 a.m. and 6:00 a.m.
  - (13) Effective in 2021, no more than seven (7) licenses for food carts may be issued in any one (1) calendar year.

#### **Sec. 6-4-70. Merchandise cart and truck regulations.**

Merchandise carts and trucks, merchandise cart and truck vendors, and merchandise cart and truck vending are subject to the following regulations:

- (1) Merchandise carts and merchandise trucks may not occur on public streets, sidewalks, alleys or other public rights-of-way except as specified in subsection (3) below. Merchandise trucks and carts on private property shall be located at least ten (10) feet away from any sidewalk adjacent to the property.
- (2) A merchandise cart may only operate on private property, must have written permission from the property owner to vend on the site, must operate from a stationary position and must maintain high standards of site cleanliness.
- (3) A merchandise truck may operate on private property, must have written permission from the property owner to vend on the site, must operate from a stationary position and must maintain high standards of site cleanliness. A merchandise truck may also operate in the designated zone at the four-way intersection at 6th and Elk Avenue, or at the Big Mine Ice Arena. A merchandise truck may only operate starting on the Friday of Memorial Day weekend until September 30 of a calendar year.
- (4) A merchandise cart or merchandise truck may be required to move at the request of Town officials for health, sanitation and safety reasons, upon verifiable complaint from the public related to unfair or improper business practices, or for failure to comply with the requirements of this Chapter.
- (5) Merchandise cart or merchandise truck vendors may not attract attention by noise-making devices, voice calls, flags, banners, balloons or other such devices.
- (6) Signs must be limited to the cart or truck itself and may not extend beyond the cart or truck (except for the area of the umbrella)
- (7) Advertising is limited to the product sold, the name of the business and a price list.
- (8) No more than a single cart or truck (whether a food cart or merchandise cart) may operate on any individual Town lot. In the event a property has a legal description describing it in terms as other than a lot, in order to determine what is a lot for purposes of this Section, reference shall be made to the official plat of the Town. Where property is depicted thereon as a lot, such property shall be considered a lot.

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- (9) No more than two (2) licenses for either merchandise carts or merchandise trucks may be issued in any one (1) calendar year.

### **Sec. 6-4-80. Late-night food truck regulations.**

Food trucks are subject to each of the following regulations:

- (1) Four (4) total parking spots in the four-way parking lot will be designated for two (2) food trucks. The designated parking spots will be on the south side of the parking lot and specifically assigned by the Town Manager at the time of license issuance. Food truck vendors may operate from public parking spaces in the "B-1" Business Zone District during designated hours.
- (2) Food truck vendors may operate between the hours of 6:00 a.m. and 9:00 p.m. in the designated parking spots in the four-way parking lot and between the hours of 9:00 p.m. and 2:30 a.m. in public parking spaces in the "B-1" Business Zone District.
- (3) Any food truck operating on public property shall be required to move at the request of Town officials for health, sanitation and safety reasons or for failure to comply with the requirements of this Code.
- (4) All food truck vendors operating on public property must provide proof of liability insurance to the Town and shall be required to provide such information and complete such applications in connection with a license to vend as the Town may determine necessary.
- (5) Food truck vendors may not attract attention by noise-making devices, music, voice calls, flags, banners, balloons or other such devices.
- (6) All signage shall be limited to the food truck itself and shall comply with Paragraph 16-18-20(23) of this Code. Only the food products for sale, the name of the business and a price list shall be listed on any food truck signage.
- (7) When the food truck is not in operation, all foodstuff must be properly stored or disposed of and all items must be secured in a manner so as not to attract animals or other pests.
- (8) No seating or tables shall be set up upon or in the vicinity of the food truck.
- (9) Nonfood items may not be sold from a food truck.
- (10) No more than two (2) licenses for food trucks may be issued in any calendar year. The annual fee for a license for a food truck shall be set by resolution of the Town Council.
- (11) Town of Crested Butte will not provide power in the form of electricity or otherwise nor will the Town of Crested Butte provide sewer/water or any other utilities for any food truck operations. A generator supplied by the vendor itself may be used but only in compliance with Town Code section 10-9-60.
- (12) If a food truck vendor license is not utilized at least once in any four-week period the license may be revoked by the Town.

### **Sec. 6-4-90. Street musician and entertainer regulations.**

Street musicians and entertainers are subject to each of the following regulations:

- (1) They may operate only on designated areas of public property, including the farmers' market area at 6th Street and Elk Avenue, the Town parking lot at 1st Street and Elk Ave, a designated spot at 3rd Street and Elk Avenue or any other place on public property, provided that no complaints are being lodged by nearby business proprietors.

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- (2) They may work for tips, but may not overtly solicit tips, beg, barter or otherwise engage passersby for money.
  - (3) They may not employ mechanically enhanced or electronically amplified sound, and may not otherwise interfere with the normal peace and tranquility of the area.
  - (4) They may not be representatives of any licensed for-profit business, nor may they advertise products, events, concerts or businesses other than themselves.
  - (5) They may not block the public right-of-way or impede public access to any street, alley, sidewalk or private business entrance or exit.
  - (6) They may not reach out to, touch or physically contact passersby in any manner, without first obtaining permission from the person to be contacted.
  - (7) They may operate from 11:00 a.m. to 10:00 p.m. daily.
  - (8) They shall be required to pay a license fee as set by resolution of the Town Council.

#### **Sec. 6-4-100. Farmers' market vendor regulations.**

Those vendors meeting the definition of a farmers' market vendor may vend at the public property at the corner of Elk Avenue and 6th Street. Farmers' market vendors may vend other than from a handcart.

#### **Sec. 6-4-110. Food supplier regulations.**

Those vendors meeting the definition of a *food supplier vendor* may vend on private property, other than in the residential zones of the Town. Food supplier vendors may vend other than from a handcart.

#### **Sec. 6-4-120. Special event permit required.**

It shall be unlawful for any person to organize, maintain, operate or otherwise sponsor a special event without receiving prior approval from the Town. Events sponsored by the Town are exempt from the requirement for a special event permit.

#### **Sec. 6-4-130. Denial of licenses.**

- (a) The Town Manager may deny an application for a license under this Section upon determination that:
  - (1) The applicant has failed to supply any of the information required on the application;
  - (2) The applicant has failed to obtain required insurance;
  - (3) The applicant has failed to pay the required license fee;
  - (4) The applicant is not qualified by experience, training or education to engage in the activity authorized by the license; or
  - (5) The applicant has been finally convicted of an offense and would create danger to the public health, safety or welfare if the applicant were to engage in such offensive conduct after the license were issued.
- (b) If the Town Manager denies a license application under this Section, the Town Manager shall notify the applicant in writing stating the specific grounds for the denial. The applicant may thereafter appeal the denial of the application to the Town Manager under the procedures otherwise set forth in this Code.

(Prior code 5-7-5; Ord. 7 §12, 2003; Ord. 3 §6, 2012)

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### **Sec. 6-4-140. Revocation of licenses.**

- (a) In addition to any other provisions of this Code or other ordinances of the Town, the Town Manager may suspend or revoke a license issued under this Article if:
  - (1) The licensee fails to meet the qualifications required of an applicant;
  - (2) The licensee violates any provision of this Code or other ordinance of the Town governing the activities permitted by the license;
  - (3) The licensee obtained the license by fraud or misrepresentation; or
  - (4) The licensee is convicted of an offense and would create a danger to the public health, safety and welfare if the licensee were to engage in such conduct after the license was issued.
- (b) If the Town Manager finds one (1) of the grounds in Subsection (a) above or any other ground for suspension or revocation in this Code, the Town Manager shall determine whether to revoke the license for the remainder of its term or suspend it for any shorter period according to the severity of the disqualification, its effect on public health, safety and welfare, and the time during which the disqualification can be remedied, if at all.
- (c) Before the hearing required by Subsection (d) below, the Town Manager may suspend a license for up to thirty (30) days, if the Town Manager determines that the suspension is in the interest of public health, safety and welfare. The Town Manager may include in the temporary suspension reasonable orders or conditions with which the licensee shall comply to protect any work in progress and the public health and safety. Any breach of such conditions or orders is an independent ground for suspension or revocation of the license.
- (d) Except for such emergency suspension authorized by Subsection (c) above, no such suspension or revocation is final until the licensee has been given the opportunity for a hearing to contest the suspension or revocation under the hearing procedures otherwise set forth in this Code.
- (e) If, after a hearing, the suspension or revocation is upheld, the Town Manager may include reasonable orders or conditions with which the person whose license has been suspended or revoked shall comply to protect any work in progress and the public health, safety and welfare.
- (f) No person whose license is revoked under this Section may receive a refund of any part of the license fee paid for the license.
- (g) No person who has had a license suspended or revoked under this Section is entitled to obtain the same or any similar license under this Chapter during the period of suspension or revocation, either in the person's own name or as a principal in another business that applies for a license.
- (h) Nothing in this Section shall be deemed to prohibit the Town Manager from imposing other penalties authorized by this Code or other ordinance of the Town, including filing a complaint in the Municipal Court for a violation of this Code or other ordinance of the Town.

(Prior code 5-7-5; Ord. 7 §12, 2003; Ord. 4 §1, 2009; Ord. 3 §6, 2012)

### **Sec. 6-4-150. Vending activities allowed without a license.**

The following vending activities are allowed without an outdoor vending license, provided that the activity or use does not constitute a hazard to public health, safety or welfare or property or does not violate any other law of the Town.

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- (1) Free distribution of information, flyers, pamphlets, brochures or petitions and sale of raffle tickets for the benefit of nonprofit or charitable organizations without the use of a booth, structure, cart or other equipment; provided, however, that a table and chair may be used for this purpose in a location to be designated by the Town Manager from time to time and without obstructing pedestrian passage.
  - (2) Sale or free distribution of newspapers or other similar printed materials from unattended vending machines no larger than two (2) feet in width, three (3) feet in length and four (4) feet in height in locations designated by the Town Manager and without obstructing pedestrian passage.
  - (3) Yard sales, meaning sale of personal goods and effects on private property, excluding any sale of new merchandise or any sales constituting an ongoing commercial enterprise.
  - (4) Vendors fourteen (14) years of age or under may utilize a temporary booth for no longer than three (3) consecutive days.

## **ARTICLE 5 Marijuana Establishment Licensing**

### **Sec. 6-5-10. Purpose.**

The purpose of this Article is to implement the provisions of Title 12, Article 43.3, C.R.S., known as the Colorado Medical Marijuana Code, and Title 12, Article 43.4, C.R.S., known as the Colorado Retail Marijuana Code, as amended, which authorize the licensing and regulation of marijuana establishments, afford local government the option to determine whether or not to allow certain medical and retail marijuana businesses within their jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law. By adoption of this Article, the Town Council does not intend to authorize or make legal any act that is not permitted under federal or state law.

### **Sec. 6-5-20. Effective date; applicability.**

This Article shall be effective October 1, 2013, and shall govern all applications submitted to the Local Licensing Authority for the licensing of marijuana establishments in the Town under the Colorado Retail Marijuana Code and the Colorado Medical Marijuana Code, as applicable.

### **Sec. 6-5-30. Incorporation of state law.**

The provisions of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and any rules and regulations promulgated thereunder, as amended, are incorporated herein by reference, except to the extent that more restrictive or additional regulations are set forth in this Article.

### **Sec. 6-5-40. Definitions.**

For purposes of this Article, the following definitions shall apply:

*Adjacent* or *adjoining* means adjacent to or contiguous with the proposed location of a marijuana establishment. Adjacency shall not be deemed to exist where a platted or dedicated public street or alley exists between the proposed marijuana establishment and another property. For purposes of medical marijuana centers, retail marijuana stores and retail marijuana testing facilities, adjacency shall also not be deemed to exist where such marijuana establishments share a common ceiling or floor with another premises and where the marijuana establishment and the other property are not otherwise adjacent within the meaning of this definition. For purposes of medical marijuana-infused product manufacturers and retail

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marijuana products manufacturers, adjacency shall be deemed to exist where such marijuana establishments share a common ceiling or floor with another premises.

*Alcoholic beverage* shall have the meaning ascribed to such term in Section 10-7-10 of this Code.

*Applicant* means any person who has submitted an application for a license or a renewal thereof pursuant to this Article. An applicant must be twenty-one (21) years of age or older. If an applicant is an entity, the term *applicant*, as applied in this Article, shall include all those persons who have a financial or management interest in the entity, including, without limitation, the shareholders, members, directors, officers and managers of such entity.

*Application* means an application for a license submitted pursuant to this Article.

*Board* means the Board of Zoning and Architectural Review.

*Building Official* means the Town Building Official as defined and referred to elsewhere in this Code.

*Cultivation* means the process by which a person promotes the germination and growth of a seed to a marijuana plant.

*Good cause* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code, as applicable.

*License* means a license to operate a marijuana establishment issued by the Town pursuant to this Article.

*Licensee* means the applicant or its permitted transferee or assignee to which a license has been issued, transferred or assigned pursuant to this Article.

*Local Licensing Authority* shall have the meaning ascribed to such term in Section 6-5-50 below.

*Marijuana establishment* shall include each and all of the following businesses: medical marijuana center, medical marijuana-infused product manufacturer, retail marijuana store, retail marijuana products manufacturer and retail marijuana testing facility.

*Marijuana paraphernalia or paraphernalia* means devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana, including but not limited to rolling papers and related tools, water pipes and vaporizers.

*Medical marijuana* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

*Medical marijuana center* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

*Medical marijuana-infused product* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

*Medical marijuana-infused product manufacturer* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

*Optional premises* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

*Optional premises cultivation operation* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code.

*Patient* has the meaning provided in Section 14 of Article XVIII of the Colorado Constitution.

*Person* means a natural person, partnership, association, company, corporation, limited liability company or other organization, or a manager, agent, owner, director, servant, officer or employee thereof.

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*Premises* means a distinct and definite location which may include a building, part of a building, a room or any other definite contiguous area.

*Retail marijuana* shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

*Retail marijuana cultivation facility* shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

*Retail marijuana products* shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

*Retail marijuana products manufacturer* shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

*Retail marijuana store* shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

*Retail marijuana testing facility* shall have the meaning ascribed to such term in the Colorado Retail Marijuana Code.

*State Licensing Authority* shall have the meaning ascribed to such term in the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code, as applicable.

### **Sec. 6-5-50. Local Licensing Authority.**

There shall be and is hereby created a local licensing authority for marijuana establishments. The Town Council shall constitute the Local Licensing Authority. The Town Clerk shall serve as clerk to the Local Licensing Authority and the Town Attorney shall serve as its legal counsel.

### **Sec. 6-5-60. Functions and powers of Local Licensing Authority.**

- (a) The Local Licensing Authority shall have all the powers of the Local Licensing Authority as set forth in the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code and this Article. Such powers shall include, without limitation, the power to require any applicant or licensee to furnish any relevant information in connection with the application or license for a marijuana establishment, the power to promulgate rules and regulations concerning the procedures for hearings before the Local Licensing Authority and the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing which the Local Licensing Authority is authorized to conduct. Any such subpoenas shall be served in the same manner as a subpoena issued by the District Court for the State.
- (b) The Local Licensing Authority shall have the power and authority to issue licenses for marijuana establishments pursuant to this Article.

(Ord. 19 §7, 2013)

### **Sec. 6-5-70. Optional premises cultivation operations and retail marijuana cultivation facilities prohibited.**

Optional premises cultivation operations and retail marijuana cultivation facilities are strictly prohibited in the Town, and the Local Licensing Authority shall not have the power and authority to license such businesses.

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## **Sec. 6-5-80. Town and state licenses required.**

It shall be unlawful for any person to establish or operate a marijuana establishment in the Town without first having obtained from the Local Licensing Authority and the State Licensing Authority a license for such marijuana establishment. Such license shall be kept current at all times, and the failure to maintain a current license from both the Town and the State shall constitute a violation of this Section.

## **Sec. 6-5-90. Classes of licenses authorized.**

The Local Licensing Authority may issue and grant to an applicant a license from any of the following classes, and the Town hereby authorizes the issuance of licenses of the following classes by the State Licensing Authority in locations in the Town allowed under this Code, subject to the requirements of this Article:

- (1) Medical marijuana centers;
- (2) Medical marijuana-infused product manufacturers;
- (3) Retail marijuana stores;
- (4) Retail marijuana products manufacturers; and
- (5) Retail marijuana testing facilities.

The Local Licensing Authority may issue dual licenses for:

- (1) Medical marijuana centers and retail marijuana stores; and
- (2) Medical marijuana-infused product manufacturers and retail marijuana product manufacturers.

The requirements of this Code shall apply equally to each, including, without limitation, the requirement to pay all application and other fees.

## **Sec. 6-5-100. Requirements for application; ongoing requirements.**

- (a) A person seeking to obtain or renew a license or gain a transfer of a license shall file an application with the clerk for the Local Licensing Authority on forms provided by the clerk.
- (b) An application for a license under this Article shall contain, at a minimum, the following information and submittals:
  - (1) Application fee.
  - (2) The applicant's personal and identification information.
  - (3) The street address of the proposed marijuana establishment.
  - (4) If the applicant is not the sole owner of the proposed location of the marijuana establishment, a notarized statement from the owner or co-owners of such property authorizing the submission of the application.
  - (5) Evidence of a right to possess (e.g., vesting deed, lease, option to lease) the property that is the subject of the marijuana establishment.
  - (6) A statement of the applicant's personal, financial and business backgrounds.
  - (7) A complete set of the applicant's fingerprints as taken by the Marshal's Department.

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- (8) A sworn statement, to be acknowledged by the applicant and the owner of the premises, that the applicant, owner and all the employees of the marijuana establishment may be subject to prosecution under state, federal and local controlled substance laws.
  - (9) An acknowledged waiver by the applicant and the owner of the premises that the applicant, owner and all employees of the marijuana establishment waive any and all claims against the Town in connection with the approval and subsequent operation of the marijuana establishment.
  - (10) An acknowledgement and consent that the Town will conduct a background investigation, including, without limitation, criminal history check, and the Town will be entitled to full and complete disclosure of all financial records of the marijuana establishment, including, without limitation, records of deposit, withdrawals, balances and loans.
  - (11) Drawings to scale of the premises and all entryways and exits thereto as required by the Building Official.
  - (12) Proof of State of Colorado residency.
  - (13) All of those items required in the application form.
  - (14) Any additional information and submittals that the Local Licensing Authority reasonably determines to be necessary and appropriate in connection with the investigation and review of the application.
- (c) For the purposes of Paragraphs (b)(2), (6), (8), (10), (12) and (14) above, the proposed manager of the marijuana establishment, all persons having a financial interest in the marijuana establishment and, if the applicant is an entity, all persons having a financial interest or other interest in the entity shall be expected to comply with said application requirements.
  - (d) Marijuana establishments shall submit the following at the time of submittal of the application:
    - (1) An operations plan for the marijuana establishment that shall contain, without limitation: (i) a security plan that complies with this Article, the Colorado Medical Marijuana Code or Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder; (ii) hours of operation; (iii) number of employees; (iv) a description of all products to be sold; (v) a description of all products to be manufactured; and (vi) the application and all submittals and supporting documentation submitted to the State Licensing Authority.
    - (2) If the applicant is an entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status and proof of registration (e.g., articles of incorporation, articles of organization) with or certificate of good standing from the Colorado Secretary of State, as applicable, and organizational documents (e.g., operating agreement, stockholders agreement, partnership agreement, stock, membership and partnership interest ledgers).
    - (3) A complete lighting plan that is in compliance with the applicable requirements contained in this Code.
    - (4) A complete signage plan that is in compliance with the applicable requirements contained in this Code.
    - (5) Any additional supporting documentation that the Local Licensing Authority determines to be necessary and appropriate in evaluating the application.
  - (e) Following receipt of a license for a marijuana establishment from the Town and a conditional use permit from the Board, the licensee shall apply for and obtain a Town sales tax license and a Town business license before commencing operations.
  - (f) The licensee shall at all times maintain an active, up-to-date and valid state sales tax license, Town sales tax license and Town business license.
  - (g) The licensee shall make no physical change, modification or alteration to the licensed premises without the prior approval of the Local Licensing Authority, and the Board where required. For purposes hereof, a

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physical change, modification or alteration of premises shall be as described in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the regulations thereunder, including Sections 16.115 and R-305, respectively.

- (h) The licensee shall at all times keep and maintain the application and all associated submittals and supporting documentation up to date and current during the license term and any renewal.
- (i) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain any other required Town permits related to the operation of the approved marijuana establishment, including but not limited to any additional required conditional use permits, development approvals and building permits required by this Code.

(Ord. 19 §7, 2013)

#### **Sec. 6-5-110. Duration of license.**

Each license shall be valid for one (1) year from the date of issuance and may be renewed only as permitted in this Article. All renewals of a license shall be for no more than one (1) year.

#### **Sec. 6-5-120. Number of licenses; first-come, first-served.**

- (a) Only five (5) licenses total for the following marijuana establishments shall be allowed at any given time:
  - (1) Medical marijuana centers, retail marijuana stores and dual medical marijuana centers and retail marijuana stores; and
  - (2) Medical marijuana-infused product manufacturers and retail marijuana product manufacturers.

Only two (2) licenses for retail marijuana testing facilities shall be allowed at any given time. Dual licenses for (i) medical marijuana centers and retail marijuana stores, and (ii) medical marijuana-infused product manufacturers and retail marijuana product manufacturers shall be allowed under one (1) license.

- (b) Applications shall be received by the clerk for the Local Licensing Authority on a first-come, first-served basis. The clerk for the Local Licensing Authority may not accept an application for a license until such time as the State Licensing Authority has approved the application subject only to Local Licensing Authority approval.

(Ord. 19 §7, 2013)

#### **Sec. 6-5-130. Processing of new applications; public hearing, notice, posting and publication.**

Applications for licenses shall be processed by the Local Licensing Authority pursuant to the requirements and procedures of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, inclusive of, without limitation, the notice and hearing requirements contained in Sections 12-43.3-302 and 12-43.4-302, C.R.S., as applicable, and the rules and regulations promulgated thereunder. Applications for new licenses shall only be approved after a hearing held by the Local Licensing Authority in accordance with the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, as applicable, and the rules and regulations promulgated thereunder. No hearing of the Local Licensing Authority shall occur until after the Board has granted a conditional use permit for the marijuana establishment.

#### **Sec. 6-5-140. Processing of renewal applications; license renewal requirements.**

All license renewal applications shall be applied for by the licensee thereof, and processed by the Local Licensing Authority pursuant to the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code,

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inclusive of, without limitation, the provisions contained in Sections 12-43.3-311 and 12-43.4-310, C.R.S., as applicable, and the rules and regulations promulgated thereunder. Except where the Local Licensing Authority holds a hearing on account of complaints filed against the subject license or licensee, the license or licensee has a history of violations, or the licensee is not in compliance with this Code, including, without limitation, the requirement to pay sales tax, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder or there are allegations against the license or licensee that would constitute good cause, the clerk shall process such renewal application administratively pursuant to this Article, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder and issue the license without a hearing of the Local Licensing Authority.

### **Sec. 6-5-150. Initial application and renewal fees.**

- (a) An applicant shall pay the Town a nonrefundable application fee when the application is filed and then annually thereafter as part of any renewal. The purpose of the fee is to cover the administrative costs of processing the application and renewal and to defray the costs and expenses incurred by the Town in regulating marijuana establishments and enforcing the requirements of this Article. Application and renewal fees shall be set by resolution of the Town Council and may be amended from time to time.
- (b) If the Board denies the issuance of a conditional use permit for the premises of the marijuana establishment, the application fee shall nevertheless be deemed liquidated.

(Ord. 19 §7, 2013)

### **Sec. 6-5-160. Denial of issuance of license or renewal.**

The Local Licensing Authority shall deny any application, whether for an initial application or any renewal, that does not meet the requirements of this Code, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder. The Local Licensing Authority may also deny any application that contains any false, misleading or incomplete information and for good cause shown. Denial of an application for a license shall be reviewed only by a court of competent jurisdiction.

### **Sec. 6-5-170. Suspension and revocation of license.**

A license may be suspended and/or revoked in accordance with the requirements and procedures of this Code, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, including, without limitation, the provisions contained in Sections 12-43.3-601 and 12-43.4-601, C.R.S., as applicable, and the rules and regulations promulgated thereunder.

### **Sec. 6-5-180. Authority to impose conditions on license.**

The Local Licensing Authority shall have the authority to impose any and all such reasonable terms and conditions on a license and any renewal thereof as may be necessary to protect public health, safety and welfare and to obtain compliance with the requirements of this Code, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder, and other applicable law.

### **Sec. 6-5-190. License conditional upon granting of conditional use by Board.**

Notwithstanding anything contained in this Article, the issuance of a license for a marijuana establishment shall be only after and conditioned upon the Board granting a conditional use permit for the marijuana establishment. Should a license expire, be terminated or not renewed, the conditional use for the marijuana establishment shall automatically expire or be terminated without further action by the Board or Town Council.

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## **Sec. 6-5-200. Contents of license.**

A license shall contain, without limitation, the following information:

- (1) The name of the licensee;
- (2) The effective date of the license;
- (3) The address of the premises connected with the license to operate the medical marijuana establishment or retail marijuana establishment;
- (4) Any conditions of approval imposed upon the license by the Local Licensing Authority pursuant to Section 6-5-180 of this Article;
- (5) The date of the expiration of the license;
- (6) Reference to this Article;
- (7) Reference to the conditional use permit given by the Board inclusive of any conditions contained therein; and
- (8) Signature of the Town Clerk.

## **Sec. 6-5-210. Inspection of premises.**

Prior to the issuance of a conditional use permit, the premises at which the marijuana establishment will be operated shall be inspected by the Building Official to determine compliance with the Town's building and technical codes. No conditional use permit shall be issued if the premises at which the marijuana establishment will be operated fails to comply at the time of issuance of the permit with the Town's building and technical codes and this Article. Throughout the term of the license, the Building Official may inspect the premises at which the marijuana establishment is operated to determine continuing compliance with the Town's building and technical codes and this Article. Access to such premises may be obtained by the Building Official in accordance with the applicable provisions of this Code.

## **Sec. 6-5-220. License in gross; license transferrable.**

The license shall be deemed to be a license in gross and shall not be a property right. The license is transferable and assignable; provided that the requirements of this Article, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder, are at all times satisfied by the transferee or assignee.

## **Sec. 6-5-230. Duties of licensee.**

It is the duty and obligation of each licensee to:

- (1) Comply with all of the terms and conditions of the license and any special conditions on the license imposed by the Local Licensing Authority pursuant to Section 6-5-180 of this Article;
- (2) Comply with all of the requirements of this Article;
- (3) Comply with all other applicable provisions of this Code, Town ordinances and other Town requirements;
- (4) Comply with the conditional use permit given by the Board;

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- (5) Comply with all state laws and administrative regulations pertaining to marijuana establishments, including but not limited to Sections 14 and 16 of Article XVIII of the Colorado Constitution, Title 18, Article 18, C.R.S., the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder; and
  - (6) If the Local Licensing Authority has a reasonable suspicion that the licensee is violating or has violated the terms and conditions of the license, the licensee shall allow inspection of its records, building or structure and operations by the Town for the purpose of determining the licensee's compliance with the terms and conditions of the license. Nothing in this Section shall abrogate or affect (i) any applicable confidentiality provision of state or federal law, or (ii) any applicable statutory or constitutional prohibition against unreasonable searches and seizures of property. In the event of any conflict between this Section and any applicable state or federal law, the applicable provision of state or federal law shall in all cases prevail and control.

#### **Sec. 6-5-240. Posting of license.**

The license shall be continuously posted in a conspicuous location at the marijuana establishment.

#### **Sec. 6-5-250. Limitation on sale of paraphernalia.**

Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including but not limited to rolling papers and related tools, water pipes and vaporizers, may lawfully be sold at a medical marijuana center or retail marijuana store; provided that, in the case of medical marijuana and medical marijuana-infused products, such items may only be sold or provided to patients or primary caregivers and as are reasonably necessary for the consumption of medical marijuana in accordance with state law, and, in the case of retail marijuana and retail marijuana products, such items may only be sold to persons in accordance with Section 16 of Article XVIII of the Colorado Constitution, the Colorado Retail Marijuana Code and the rules and regulations promulgated thereunder.

#### **Sec. 6-5-260. Restrictions on sale of foodstuffs.**

No marijuana establishment may be colocated with food cooking and preparation facilities that prepare, produce or assemble foodstuffs, whether for medical or nonmedical purposes. The preparation of all medical marijuana and retail marijuana products shall be in accordance with applicable law, including the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder, as well as any Town requirements.

#### **Sec. 6-5-270. Hours of operation.**

Medical marijuana centers and retail marijuana stores may be open for the sale of medical marijuana, medical marijuana-infused products and retail marijuana products, as applicable, during the hours of 9:00 a.m. to 9:00 p.m. only, seven (7) days per week. There shall be no restriction on the hours of operation of other marijuana establishments.

#### **Sec. 6-5-280. Signage.**

- (a) All signage for medical marijuana centers and retail marijuana stores shall comply with the requirements of Chapter 16, Article 18 of this Code.
- (b) No marijuana establishment shall use any advertising material that is misleading, deceptive or false, or that, as evidenced either by the content of the advertising material or by the medium or the manner in which the

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advertising is disseminated, is designed to appeal to minors, including, without limitation, the depiction of a marijuana leaf or plant, medical marijuana-infused products and retail marijuana products such as, for example, lollipops, candies, cookies and brownies.

- (c) It shall be unlawful for any marijuana establishment to advertise anywhere in the Town where the advertisement is visible to members of the public from any street, sidewalk, public right-of-way, park or public place, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device, any sign mounted on a vehicle, any hand-held or portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle or posted upon any public or private property without the consent of the property owner. The following prohibition shall not apply:
- (1) Any sign located on the premises which exists solely for the purpose of identifying the location of the marijuana establishment and which otherwise complies with this Code;
  - (2) Any advertisement contained within a newspaper, magazine or other publication of general circulation within the Town; or
  - (3) Advertising which is purely incidental to sponsorship or a charitable event by a marijuana establishment.

For purpose hereof, *advertise*, *advertising* and *advertisement* shall mean the act of drawing the public's attention to a marijuana establishment in order to promote the business of the same.

#### **Sec. 6-5-290. Required warnings to be posted.**

There shall be posted in a conspicuous location in each medical marijuana center and retail marijuana store a legible sign containing warnings that:

- (1) The use of marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;
- (2) Loitering in or around a medical marijuana center or retail marijuana store is prohibited by state and Town laws; and
- (3) Possession and distribution of marijuana is a violation of federal law.

All signage shall comply with this Code, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules promulgated thereunder.

#### **Sec. 6-5-300. On-site consumption of marijuana and marijuana products.**

The consumption, ingestion or inhalation of marijuana, medical marijuana-infused products and retail marijuana products on or within the premises of a marijuana establishment is strictly prohibited.

#### **Sec. 6-5-310. On-site consumption of alcohol.**

The sale, ingestion or consumption of any alcoholic beverage within a marijuana establishment is prohibited.

#### **Sec. 6-5-320. Restrictions on cultivation, growing and manufacturing of marijuana and marijuana products; storage.**

- (a) The growing and cultivation of any kind on or within the premises of a marijuana establishment is strictly prohibited.

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- (b) The manufacturing of medical marijuana-infused products and retail marijuana products on or within the premises of a medical marijuana center, any retail marijuana store or any retail marijuana testing facility is strictly prohibited.
  - (c) All marijuana establishment product and paraphernalia storage, dispensing, sale and distribution activities shall be conducted only on the premises licensed in connection with such product and paraphernalia, indoors and shall be strictly prohibited from delivery to any person at any other location.
  - (d) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the marijuana establishment must be undertaken and maintained at all times. In the event that any odors, debris, items, dust, fluids or other substances shall exit the marijuana establishment, the owner of the subject premises and the licensee shall be jointly and severally responsible for such conditions and shall be responsible for full cleanup, cessation and/or mitigation of this condition immediately. Marijuana establishments shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner in accordance with this Code, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and any rules and regulations promulgated thereunder.

(Ord. 19 §7, 2013)

#### **Sec. 6-5-330. Display; deliveries.**

- (a) No marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be displayed so as to be visible through glass, windows or doors by a person of normal visual acuity standing at the outside perimeter of the marijuana establishment. No marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be visible from a public sidewalk or right-of-way.
- (b) All deliveries of marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be conducted discreetly and out of plain sight of all other persons not associated with the marijuana establishment and shall comply with the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder.

(Ord. 19 §7, 2013)

#### **Sec. 6-5-340. Security requirements.**

The licensee shall provide security as provided in, and the premises shall at all times comply with, the security requirements set forth in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder.

#### **Sec. 6-5-350. Disposal.**

The disposal of, without limitation, unwanted marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia shall be undertaken in accordance with the provisions of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the rules and regulations promulgated thereunder.

#### **Sec. 6-5-360. Sales tax.**

Each licensee shall collect and remit Town sales tax on all marijuana establishment products and paraphernalia and other tangible personal property sold by the licensee at a medical marijuana center or retail marijuana store in accordance with this Code. Failure to timely remit Town sales tax in accordance with this Code shall be grounds for the suspension, revocation or nonrenewal of any license.

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### **Sec. 6-5-370. Recordkeeping.**

- (a) Each licensee shall maintain an accurate, complete and up-to-date record at all times of all marijuana, medical marijuana-infused products, retail marijuana products and paraphernalia and other tangible personal property produced, distributed and sold by the marijuana establishment and the amounts paid therefor. Such information shall be available for Town review upon request.
- (b) The licensee's records described in Subsection (a) above shall be available for inspection by the Marshal's Department pursuant to Rule 41, C.R.C.P., or Rule 241 of the Colorado Municipal Court Rules of Procedure.
- (c) Nothing in this Section shall abrogate or affect: (1) any applicable confidentiality provision of state or federal law; or (2) any applicable statutory or constitutional prohibition against unreasonable searches and seizure of property. In the event of any conflict between this Section and any applicable state or federal law, the applicable provision of state or federal law shall control.

(Ord. 19 §7, 2013)

### **Sec. 6-5-380. Violation and penalty; remedies cumulative.**

Any person who violates any of the provisions of this Article shall be subject to the violation and penalty provisions set forth in Chapter 1, Article 4 of this Code. All remedies contemplated in this Section shall be deemed cumulative and concurrent.

### **Sec. 6-5-390. No waiver of governmental immunity.**

In adopting this Article, the Town Council is relying on, and does not waive or intend to waive by any provision of this Article, the monetary limitations (presently three hundred fifty thousand dollars [\$350,000.00] per person and nine hundred ninety thousand dollars [\$990,000.00] per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or any other limitation, right, immunity or protection otherwise available to the Town, its officers, its employees, insurance, insurance pools, agents and attorneys, whether at law and/or in equity.

### **Sec. 6-5-400. No Town liability.**

By accepting a license issued pursuant to this Article, the licensee, jointly and severally if more than one (1), waives and releases the Town, its officers, elected officials, employees, attorneys, insurers, insurance pools and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of the owners, operators, employees, clients or customers of any marijuana establishment for a violation of state or federal laws, rules or regulations.

### **Sec. 6-5-410. Indemnification of Town.**

By accepting a license issued pursuant to this Article, the licensee, jointly and severally if more than one (1), shall indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, insurers and insurance pool against all liability, claims, damages and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss, claim, damage or demand of any kind whatsoever, which arise out of or are in any manner connected with the operation of any marijuana establishment that is the subject of a license. The licensee further agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims, losses, damages or demands at its expense and to bear all other costs and expenses related thereto, including court costs and attorneys' fees.

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### **Sec. 6-5-420. Other laws remain applicable.**

The provisions of this Article do not, and are not intended to, protect licensees, operators, employees, customers, property owners and clients of a permitted marijuana establishment from prosecution pursuant to any laws that may prohibit the growing, cultivation, sale, use, distribution or possession of controlled substances. In addition, as of the date of the adoption of this Article, the growing, cultivation, sale, possession, distribution and use of marijuana remains a crime in violation of federal controlled substances laws, and this Article affords no protection against prosecution under such federal laws. Licensee, operators, employees, customers, property owners and clients of the permitted marijuana establishment assume any and all risk and any and all liability arising or resulting from the operation of the marijuana establishment. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town shall not become a personal liability of such person or of the Town.

## **ARTICLE 6 Vacation Rental Licenses<sup>2</sup>**

### **Sec. 6-6-10. Purpose.**

The purpose of this Article shall be to require the licensing of vacation rentals. Such licensing shall provide the Town with necessary information relating to the operation of vacation rentals in order to protect the health, safety and welfare of the residents and visitors of Crested Butte.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-20. Effective date.**

This Article shall be effective January 1, 2023, and shall govern all applications submitted to the Licensing Official for the licensing of vacation rentals.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-30. Definitions.**

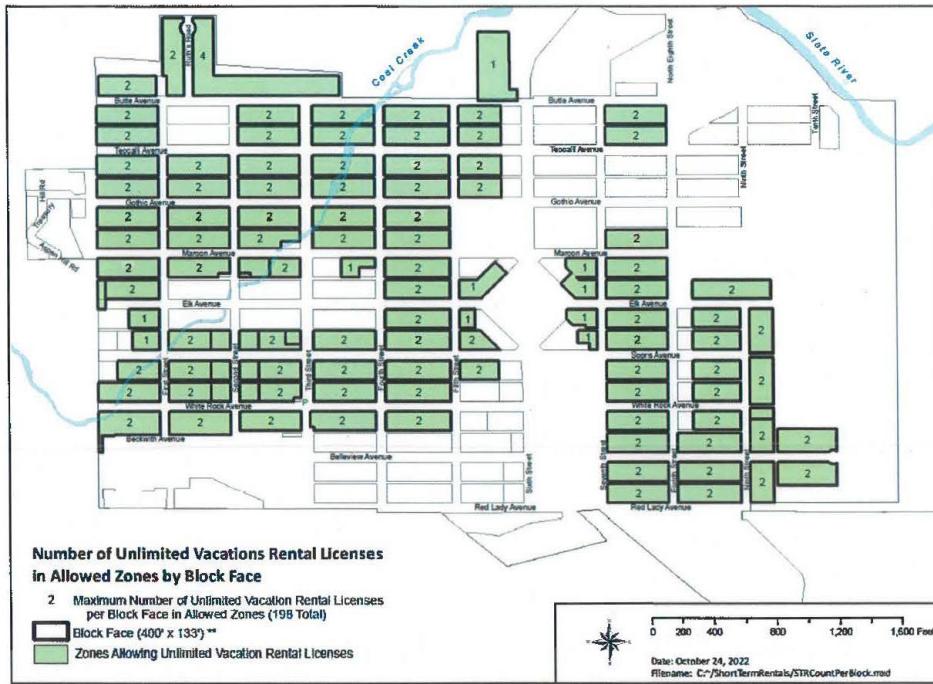
[The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

*Block Face:* A block face is defined as four hundred (400) linear feet long along one (1) side of a Town block, typically running north to south, and one hundred thirty-three (133) linear feet wide, typically running east to west, as shown below. A block face is generally bounded by the public right-of-way, typically by two (2) street intersections and an alley.

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<sup>2</sup>Ord. No. 21 , § 2(Exh. A), adopted November 21, 2022, amended Article 6 in its entirety to read as herein set out.

Former Article 6, §§ 6-6-10—6-6-200, pertained to similar subject matter, and derived from Ord. 12 §1, 2016; Ord. No. 6 , § 3, 6-5-2017; Ord. No. 35 , § 2, 12-4-2017.



\*\* One block face is considered 400' of block length. For block faces smaller in length than 200 linear feet, a maximum of 1 vacation rental license will be allowed at any given time. For block faces 200 – 400 linear feet long, a maximum of 2 vacation rentals licenses will be allowed at any given time. A total maximum number of 198 vacation rental licenses will be allowed within the Town of Crested Butte as based on this calculation.

*Licensing Official* means the Town Building Official or such other officers as designated by the Town Manager.

*Owner* shall mean any person or entity with more than a fifteen percent (15%) ownership interest in a property either individually or as a member of an LLC, corporation, trust, or partnership.

*Property* as used in this Section means the unit or residence for which a license is being applied.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### Sec. 6-6-40. License required; compliance.

- (a) It shall be unlawful and a violation of this Article for any person to use any property as a vacation rental without first having obtained a vacation rental license from the Licensing Official. All vacation rentals shall strictly comply with the requirements of the Code.
- (b) The owner of any property found to be operating a vacation rental without a license after January 1, 2018, shall be ordered to cease such activity on the property. Any property that is being operated in violation of these regulations shall be ineligible for a vacation rental license for a period of two (2) years from the discovery of the violation.
- (c) No vacation rentals shall be operated without a valid license issued pursuant to this Section 6-6.
- (d) Classes of Vacation Rental Licenses.
  - (1) Primary license.
    - a. Primary licenses may be held by any natural person who is a primary occupant of the Property for a minimum of six (6) months every calendar year for which the license is issued.
    - b. Primary occupant may be the owner of the Property or a long-term lessee.

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- c. Primary licenses are permitted in any zone district within the town.
  - d. Primary licenses are limited to no more than ninety (90) nights of vacation rental in any calendar year.
  - e. Primary licenses are not permitted for any property which is subject to a deed restriction or private covenant prohibiting Vacation Rental or Short-Term Rental of the Property.
  - f. No more than one (1) license may be held by any Primary Occupant.
- (2) Unlimited license.
- a. Unlimited licenses may be held by any natural person.
  - b. Unlimited licenses are permitted only in the following zone districts: R1, R1A, R1C, R1D, R1E, R2, R2C, R3C, B3, B4.
  - c. Unlimited licenses must rent a minimum of thirty (30) nights in any calendar year.
  - d. Unlimited licenses are not permitted for any property which is subject to a deed restriction or private covenant prohibiting Vacation Rental or Short-Term Rental of the Property.
  - e. No more than one (1) license may be held by any owner.
  - f. A maximum of two (2) Unlimited Licenses will be allowed per Block Face in allowed zones, as shown below. For Block Faces smaller in length than two hundred (200) linear feet, a maximum of one (1) vacation rental license regardless of type will be allowed at any given time. For block faces 200—400 linear feet long, a maximum of two (2) unlimited licenses will be allowed at any given time.
  - g. A total maximum number of one hundred ninety-eight (198) unlimited vacation rental licenses will be allowed within the Town of Crested Butte.
- (3) Pre-existing Non-Conforming license.
- a. Any license issued and active as of December 1, 2022.
- (e) Issuance, Renewals and Transfers.
- (1) New license applications will be accepted annually between October 1—October 31 for the following calendar year subject to the process outlined in paragraph (2) below. Applications will be on forms provided by the Town and shall include the following:
- a. Type of license being applied for.
  - b. Evidence of ownership or evidence of a long-term lease for the Property with written permission of the owner.
  - c. Evidence that the Property is not subject to a deed restriction or private covenant prohibiting vacation or short-term rentals.
  - d. Evidence that the Property currently meets all applicable Town regulations, including but not limited to zoning, which will be verified by the Town via an inspection.
- (2) New license issuance.
- a. Primary licenses. On or before December 31 annually the Town shall issue Primary Licenses to those applicants that meet the requirements in Section 16-40-90 and are in compliance with all other requirements of the Town Code that apply to the applicant and the Property the license has been applied for.

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- b. Unlimited licenses. If, on or before December 31 of any year, there are more available licenses than applications the Town shall issue Unlimited licenses to those applicants that meet the requirements of Section 16-40-90 and are in compliance with all other requirements of the Town Code that apply to the applicant and the Property the license has been applied for. If there are more applicants than available licenses the Town shall issue licenses by lottery.
  - (3) Renewal applications will be accepted annually between October 1—October 31 for the following calendar year. Applications will be on forms provided by the Town and shall include all those items specified for a new application and in addition shall include the following:
    - a. Type of license being renewed.
    - b. For Primary Licenses, evidence that the Property has not been rented for more than ninety (90) nights in the current calendar year (this shall include evidence of bookings for November and December).
    - c. For Unlimited Licenses, evidence that the Property has been rented for a minimum of thirty (30) nights in the current calendar year (this may include evidence of bookings for November and December).
    - d. Applicants shall provide an affidavit confirming compliance with all applicable town codes including but not limited to zoning. The Town may confirm via an inspection at such times and intervals as the Town determines.
    - e. To be eligible for renewal, a license must be in good standing. The Town reserved the right to deny any renewal based on: complaint history whether a citation was issued or not; failure to timely pay taxes; failure to meet any criteria set forth in the Town Code and the seriousness of any violation prosecuted under Section 6-6-120.
    - f. For good cause shown, an applicant for renewal may request a waiver of the minimum nights rented as applicable, The Town Manager shall render a decision regarding the waiver. Good cause shall include but not be limited to the long-term rental of the Property, temporary relocation for work or personal obligations, and permitted construction of the unit. Good standing for compliance with zoning regulations, demonstrated on a bi-annual basis.
  - (4) Pre-existing non-conforming renewals. Renewal applications will be accepted annually between October 1—31 for the following calendar year. Applications will be on forms provided by the Town and shall include all information specified in subsections (1) and (2) above. Applicants for renewal of Pre-existing Non-Conforming Licenses shall not be required to comply with Ownership nor Block Face limitations. Beginning with the renewal cycle for 2024. Applicants for renewal of Pre-existing Non-Conforming Licenses must be natural persons and they must meet the renewal requirements listed above.
  - (5) No license regardless of type is transferable from one (1) owner or primary occupant to another. In the event of sale of the Property or termination of a long-term lease, the license shall automatically terminate.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

## **Sec. 6-6-50. No transfer.**

A vacation rental license attaches only to the property for which it is issued and is non- transferrable upon sale or other transfer of ownership of the property. Upon such transfer of ownership, the new owner of the property shall apply for a vacation rental license if it wishes to continue the use of the property as a vacation rental.

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( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-60. Sales tax and vacation rental excise tax.**

The owner of a vacation rental shall cause sales tax and vacation rental excise tax to be collected and remitted to the Town as required under the Code.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-70. Business occupation license.**

The owner of a vacation rental property must possess a current Town business license. The business license must be renewed annually where the owner desires to use the property as a vacation rental. A vacation rental license may be denied or revoked if the owner of the vacation rental property does not have a current business license.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-80. Local contact.**

All vacation rental licenses shall include a local responsible contact person capable of physically responding to issues that may arise at the vacation rental property within one (1) hour of the initial attempt to contact the vacation rental property owner. The local contact must have physical access to the vacation rental property and shall be authorized to make decisions regarding the vacation rental property on behalf of the owner.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-90. License and good neighbor policy display.**

- (a) Every vacation rental license shall be issued a unique number. The vacation rental license number shall be displayed in all advertisements for the vacation rental property. Advertisements for the vacation rental property shall include any act, regardless of medium, of drawing the public's attention to the vacation rental property in order to promote the availability of the vacation rental property.
- (b) Each vacation rental property shall prominently display on site and available to all renters the "Good neighbor" policy, including the rules and regulations of the Town that apply to the occupancy of the vacation rental property. Such information shall include information pertinent to the neighborhood where the vacation rental property is located, including, but not limited to, parking restrictions, restrictions on noise and amplified sound, trash disposal, storage and collection schedule, relevant water restrictions and any other information as required by the Licensing Official,

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-100. Parking required.**

All vacation rental properties must keep and maintain all off street parking approved in conjunction with the Town zoning code or an approved development approval for the vacation rental property and made available for year-round use by vacation rental tenants.

( Ord. No. 21 , § 2(Exh. A), 11-21-2022)

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(Supp. No. 20)

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### **Sec. 6-6-110. Maximum occupancy.**

The maximum occupancy of any vacation rental property is ten (10) people. Occupancy may be adjusted following physical inspection of the vacation rental property. The basis for the occupancy determination shall be an allowance of two (2) occupants per legitimate bedroom plus two (2) additional occupants. Any increase above ten (10) people in a vacation rental property shall include an on-site parking space for each four (4) additional occupants (or part thereof) in addition to any parking required by this Article. Such parking requirements shall be in addition to any other parking requirements that must be satisfied under the Code.

(Ord. No. 21, § 2(Exh. A), 11-21-2022)

### **Sec. 6-6-120. Enforcement, suspension, and revocation.**

- (a) A violation of Section 16-14-90 of the Code shall also be punishable by denial of a license for a vacation rental for the property that has offended such limitation for a period of two (2) years from Town's discovery of the unlawful lease or rental.
- (b) Any license holder may be subject to fines up to the maximum allowed pursuant to Section 1-4-20, suspension or revocation of their license for violating any provision of the Town code and such rules or regulations. Each day of a continuing violation shall be considered a separate offense and shall be subject to the maximum fines allowed for each day of the violation, may be adopted.
- (c) Specific Violations.
  - (1) Failure of an owner or the designated responsible party to respond to an inquiry or complaint from an occupant or the Town within one (1) hour.
  - (2) Failure to prominently display the properties vacation rental licensing number in any advertisement regarding the rental of the property.
  - (3) Failure of the occupants of the building to not adhere to the parking required by the zoning code or approved development plan.
  - (4) Failure to adhere to the total allowed occupancy limit.
  - (5) Failure to prominently display the "Good neighbor" guidelines.
  - (6) Failure to remit sales and excise taxes.
- (d) Three-strike policy. If any license holder or Owner is convicted, pleads guilty or nolo contendere to three (3) or more violations on a rolling one-year basis, the Town shall revoke the license and the license holder or any Owner of the Property shall be banned from applying for any type of license for a period of two (2) years.

(Ord. No. 21, § 2(Exh. A), 11-21-2022)

## **ARTICLE 7 Entertainment District**

### **Sec. 6-7-10. Definitions.**

As used in this Chapter, the following words shall have the following meanings:

*Common consumption area* means a pedestrian area located wholly within the Entertainment District and approved by the Local Licensing Authority that uses physical barriers to close the area to motor vehicle traffic and limit pedestrian access.

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*Common Consumption Area Law* means Sections 12-47-301(11), 12-47-908, 12-47-909 of the Colorado Revised Statutes, as amended.

*Entertainment District* means the Town of Crested Butte Elk Avenue Entertainment District with a size no more than one hundred (100) acres and containing at least twenty thousand (20,000) square feet of premises licensed as a tavern, hotel and restaurant, brew pub or vintner's restaurant at the time said District is created.

*Licensee* means a person to whom a license is granted by the Local Licensing Authority to manufacture or sell alcoholic beverages as provided under the Colorado Liquor Code.

*Local Licensing Authority* means the Town Council of the Town of Crested Butte.

*Promotional Association* means an association that is incorporated within the State of Colorado that organizes and promotes entertainment activities within a common consumption area, is organized or authorized by two (2) or more persons who own or lease property within the Entertainment District and is certified by the Local Licensing Authority.

In addition to the definitions provided above, the other defined terms in C.R.S. Section 12-47-103 are incorporated into this Article by reference.

(Ord. No. 10, § 1, 2014)

### **Sec. 6-7-20. Creation of Entertainment District and general requirements.**

- (a) In order to exercise the Town's local option to allow common consumption areas in the Town and to effectuate the purposes and intent of C.R.S. Section 12-47-301(11), there is hereby designated the "Town of Crested Butte Elk Avenue Entertainment District" whose boundaries include:

From the northwest corner of Lot 17 of Block 29, continuing north along the east side of the First Street right-of-way to the southwest corner of Lot 16 of Block 20, thence east along the north side of the alleys of Blocks 20, 21, and 22 and the Second Street and Third Street rights-of-way to the southeast corner of Lot 1, Block 22, thence south along the west side of the Fourth Street right-of-way to the northeast corner of Lot 32, Block 27, thence west along the south side of the alleys of Blocks 27, 28, and 29 and the Third Street and Second Street rights-of-way to the point of beginning. Inclusive of Block 21, Lot 5 and the adjacent Third Street right-of-way and Block 28, East 100 feet of Lots 28-29 and the adjacent west 28 feet of the Third Street right-of-way.

Such Entertainment District has been established by Resolution No. 10, Series 2014.

- (b) Properties may be included or excluded from the Entertainment District by resolutions of the Town Council. By establishing the Entertainment District, the Town authorizes the licensing of designated common consumption areas in which alcoholic beverages may be sold and consumed subject to the requirements of this Article, the Code and the Common Consumption Area Law.
- (c) The Local Licensing Authority has the following powers with respect to common consumption areas and promotional associations:
- (1) Designate one (1) or more common consumption areas;
  - (2) Certify or decertify a promotional association;
  - (3) Authorize, de-authorize or refuse to authorize or reauthorize a licensee's attachment of licensed establishment to a common consumption area;

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- (4) Impose reasonable conditions of approval on the licensing of common consumption areas, certification of promotional associations or the attachment of licensed establishments to common consumption area; and
  - (5) Exercise all powers necessary to effectuate the purposes of the Common Consumption Area Law.
- (d) The standards for common consumption area licenses issued to promotional associations shall be in addition to all other standards applicable under this Article, the Code and the Colorado Liquor Code.
  - (e) Decisions on applications for common consumption areas, promotional associations and inclusions and exclusions from the common consumption area shall be made by the Local Licensing Authority within thirty (30) days of receipt of a complete application therefor. A decision to deny any such application by the Local Licensing Authority shall be in writing and shall be provided to the applicant within five (5) business days of the decision having been rendered.

( Ord. No. 10, § 1, 2014 )

### **Sec. 6-7-30. Common consumption areas.**

- (a) Within the Entertainment District, common consumption areas may be licensed by the Local Licensing Authority upon application by a promotional association in conformance with the requirements of this Article and the Colorado Liquor Code.
- (b) Promotional association may submit an application for the designation of a common consumption area on forms provided by the Town Clerk and approved by the Town Attorney in accordance with the following minimum information:
  - (1) Application and license fees;
  - (2) Name, address and list of all officers of promotional association;
  - (3) Documentation of how the application addresses the reasonable requirements of the neighborhood or desires of the adult inhabitants;
  - (4) The size in terms of acreage or square footage of the common consumption area;
  - (5) Proposed hours, dates and days of operation of the common consumption area;
  - (6) A site plan detailing the proposed common consumption area including, without limitation, the following information: boundaries of the area, location and description of physical barriers, location of all entrances and exits, location of all attached licensed premises and location of signs to be posted notifying customers of the hours of operation and restrictions associated with the common consumption area;
  - (7) A security plan detailing security arrangements for the common consumption area including but not limited to the following information: evidence of completed liquor training of all serving personnel approved by the Town Clerk and number and location of security personnel during the days and hours of operation of the common consumption area;
  - (8) Signed statement that the common consumption area and all licensed establishments therein can be operated in compliance with this Article, all applicable provisions of this Code and the Colorado Liquor Code;
  - (9) Lease, license or other right evidencing legal authorization for use of the common consumption area; and

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- (10) Proof of insurance of general liability and liquor liability naming the Town of Crested Butte, its elected, officers, employees, agents, attorneys and insurers as additional insureds in a minimum amount of one million dollars (\$1,000,000.00).
  - (c) An application for establishment of a common consumption area shall be considered at a duly noticed public hearing of the Liquor Licensing Authority based on the following criteria of approval:
    - (1) There must be at least two (2) licensed establishments attached to a common consumption area;
    - (2) Use of the common consumption area is compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants; and
    - (3) Evidence that the common consumption area is clearly delineated maintained using physical barriers to prohibit motor vehicle traffic (except emergency vehicles) and to limit pedestrian access.
  - (d) A tavern, hotel and restaurant, brew pub, retail gaming tavern or vintner's restaurant licensee may request attachment to the licensed common consumption area by submitting an application to the Local Licensing Authority with the following information:
    - (1) Written request and approval from the promotional association to allow the licensee to be attached to a common consumption area.
    - (2) Confirmation that the licensee's licensed premises is located within or on the perimeter of the Entertainment District and attached to a common consumption area.
  - (e) The Local Licensing Authority may reject a licensee's attachment to a common consumption area if the licensed premises is not within or on the perimeter of the common consumption area and if the licensee:
    - (1) Fails to obtain consent from the promotional association to be attached to a common consumption area;
    - (2) Fails to establish that the licensed premises and common consumption area can be operated without violating this Article or the Common Consumption [Area] Law;
    - (3) Creates a public safety risk to the neighborhood in terms of law enforcement call-outs, breaches in securing the perimeter of the common consumption area, unauthorized liquor consumption outside of the common consumption area, noise or nuisance complaints generated from activities within the common consumption area, or similar, documented public safety risks; or
    - (4) Violates Section 12-47-909 of the Colorado Liquor Code.
  - (f) All renewal applications for common consumption areas shall be submitted to the City Clerk no later than forty-five (45) days prior to the date on which the license expires. If there is evidence that the license should not be renewed, the Town Clerk shall set the application for hearing with the Local Licensing Authority.

( Ord. No. 10, § 1, 2014 )

## **Sec. 6-7-40. Promotional associations.**

- (a) For certification and re-certification as a promotional association, the following information is required to be submitted to the Town Clerk in conjunction with or prior to application for establishment of a common consumption area:
  - (1) Application fee;
  - (2) Copy of articles of incorporation and bylaws;
  - (3) List of names of all directors and officers of the promotional association;

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- (4) List of licensed establishments attached to a common consumption area; and
  - (5) Certificates of general liability and liquor liability insurance are provided in the amounts required under this Article.
- (b) The Local Licensing Authority may certify a promotional association if the following criteria of approval are met:
    - (1) The annual reporting requirements have been or will be met;
    - (2) Evidence establishes that the common consumption area can be and is operated without violating the Colorado Liquor Code, this Article or other applicable provision of this Code;
    - (3) There are at least two (2) licensed premises attached to a common consumption area; and
    - (4) The required insurance as set forth in this Article is provided and will be continuously maintained.
  - (c) A promotional association shall apply for annual recertification by March 1 of each year on forms prepared and approved by the Town Clerk.
  - (d) The Local Licensing Authority may decertify a promotional association subject to the process as provided in Section 12-47-601 of the Colorado Liquor Code.
  - (e) Operational requirements of promotional associations.
    - (1) The size of the licensed common consumption area shall not be modified except with the approval of the Local Licensing Authority.
    - (2) The promotional association shall provide adequate security in terms of personnel, physical barriers, training and similar means, to ensure compliance with the Colorado Liquor Code and to prevent a public safety risk to the neighborhood.
    - (3) The promotional association shall post signs at the entrances and exits of the common consumption [area] notifying customers of the hours of operation and restrictions associated with the common consumption area.
    - (4) No one shall leave the common consumption area with an unconsumed alcohol beverage.
    - (5) All serving personnel must complete a liquor training program approved by the Town Clerk prior to staffing the common consumption area.

( Ord. No. 10, § 1, 2014 )

Ord. No. 10, § 1, adopted Aug. 8, 2014 , supplied provisions to be added to this Code as §§ 6-7-30—6-7-50. In order to maintain the numbering style of the Code, at the discretion of the editor, said provisions have been redesignated as §§ 6-7-40—6-7-60.

## **Sec. 6-7-50. Violations.**

Noncompliance with any provision of this Article or the Common Consumption Law shall be deemed a violation of this Code. Violations of this Article shall be cause for suspension or revocation of the licensed premises, the common consumption area license or decertification of the promotional association, as applicable and may be subject to other enforcement provisions set forth in the Code and the Common Consumption Law.

( Ord. No. 10, § 1, 2014 )

Editor's note(s)—See editor's note following § 6-7-40.

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## **Sec. 6-7-60. Fees.**

Application, renewal and licensing fees shall be established and amended by resolutions of the Town Council.  
(Ord. No. 10, § 1, 2014)

Editor's note(s)—See editor's note following § 6-7-40.

# **CHAPTER 7**

## **Health, Sanitation and Animals**

### **ARTICLE 1 Administration and Abatement of Nuisances**

#### **Sec. 7-1-10. Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated:

*Abandoned vehicle* means a vehicle which has been left with the intention not to retain possession of or assert ownership over it. The intent need not coincide with the act of leaving. It is *prima facie* evidence of the necessary intent that:

- a. The vehicle has been left for more than thirty (30) days unattended and unmoved; or
- b. License plates or other identifying marks have been removed from the vehicle; or
- c. The vehicle has been damaged or is deteriorated so extensively that it has value only for junk or salvage; and
- d. The owner has been notified by the Town to remove the vehicle, and it has not been removed within fourteen (14) days after notification.

*Brush* means voluntary growth of bushes and such as are growing out of place at the location where growing, and shall include all cuttings from trees and bushes; and also high and rank shrubbery growth which may conceal filthy deposits.

*Inoperable vehicle* means any automobile, truck, tractor, motorcycle or self-propelled vehicle which is in a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed. The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- a. Absence of an effective registration plate upon such vehicle.
- b. Placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports.
- c. Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

*Litter* means the scattering or dropping of rubbish, trash or other matter, organic or mineral.

*Nuisance* means any state of things prohibited by or allowed to exist in violation of this Chapter or any of the provisions hereof and not otherwise specified.

*Refuse* means and includes any grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, rubbish containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction

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materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material; all rubbish of any kind or nature whatsoever; and any other materials commonly known as rubbish or refuse of any kind or character or by any means known.

*Rubbish* means any type of debris, trash, waste or rejected matter.

*Trash* means any worn out, broken up or used refuse, rubbish, toppings, twigs, leaves of trees or worthless matter or material.

*Weed* means an unsightly, useless, troublesome or injurious growing herbaceous plant, and shall include all rank vegetable growth which exhales unpleasant and noxious odors and also high and rank vegetable growth that may conceal filthy deposits.

*Wreckedorjunked vehicle* means any vehicle formerly used for transportation which does not have a current Colorado registration or does not meet the requirements of a safe vehicle under state law, and has been inoperative for a period of at least thirty (30) days. The term does not include wrecked or junked vehicles within fully enclosed buildings or vehicles held for sale by motor vehicle dealers.

### **Sec. 7-1-20. Common law nuisances.**

Any nuisance which has been declared to be such by state courts or statutes or known as such at common law shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Article.

### **Sec. 7-1-30. Author of nuisances.**

Any state of things prohibited by this Article shall be deemed to be a nuisance; and any person who shall hereafter make, cause to be made or exist, maintain, continue, increase, suffer or permit any nuisance specified in this Chapter, and any person who shall hereafter make, cause to be made or exist, maintain, continue, suffer or permit any state of things prohibited by this Article, in any manner specified herein and not otherwise specified shall be deemed the author of a nuisance.

### **Sec. 7-1-40. Prohibition of nuisances.**

No person being the owner, agent or occupant of, or having under his or her control, any building, lot, premises or unimproved real estate within the limits of the Town, shall maintain or allow any nuisance to be or remain therein.

### **Sec. 7-1-50. Ascertaining nuisances.**

Whenever the pursuit of any trade, business or manufacture or the maintenance of any substance or condition of things shall, upon investigation, be considered by the Town Manager dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance and shall be abated.

### **Sec. 7-1-60. Constitution of separate offense.**

In the case of a nuisance in or upon any street, alley or other public or private grounds, the author thereof shall be deemed guilty of a separate offense for every period of twenty-four (24) hours' continuance thereof after notice has been given to abate the same.

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### **Sec. 7-1-70. Filing complaint.**

In addition to or in lieu of any procedure for abatement, a direct complaint may be filed by any person or police officer against any person who violates any provision of this Chapter.

### **Sec. 7-1-80. Abatement of nuisance; notice.**

- (a) In all cases where a nuisance shall be found in any building or upon any grounds or other premises within the jurisdiction of the Town, twenty-four (24) hours' notice shall be given, in writing, signed by the Town Manager, to the owner of said premises or the occupant or person in possession, charge or control of such building or other premises where he or she is known and can be found, to abate such nuisance and comply with the requirements of this Chapter. However, in the case where accumulated refuse has been deemed to be the nuisance, the Town Manager shall require the removal of such accumulated refuse within thirty (30) days of such notice.
- (b) Should any such nuisance, within or upon any public or private premises or as aforesaid, not be abated forthwith after the notice herein provided shall be given, the Town Marshal and any deputy shall have authority to abate any such nuisance, whether the same is upon private or public ground or premises, and to call for any necessary assistance and incur the necessary expense for the abatement of such nuisance.
- (c) The Town Marshal or deputy may, if necessary in the interest of public safety, remove and abate any such nuisance summarily without notice if he or she reasonably believes that attempts to provide notice as set forth in Subsection (a) above would be unsuccessful or result in unnecessary delay.
- (d) The expense incurred by the Town in abating any nuisance may be recovered from the author thereof as set forth in this Chapter.

(Prior code 9-1-4; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 7-1-90. Right of entry.**

The Town Manager, Town Marshal or any other authorized person may enter upon or into any lot, house or other building or premises, with the proper respect for the occupant's constitutional rights, to examine the same and to ascertain whether any such nuisance exists, and shall be free from any action or liability on account thereof.

### **Sec. 7-1-100. Report of costs.**

Upon the completion of any work by the Town contemplated by this Chapter, the Public Works Director shall report, in writing, to the Town Manager, which report shall make a clear statement of the work done by the Town and the expense incurred in so doing, so that the Town Manager may determine the cost of such work. The Public Works Superintendent shall make a separate report for each lot or parcel of land.

### **Sec. 7-1-110. Assessment of property.**

After considering the report of the Public Works Superintendent, the Town Manager shall determine and assess the whole cost for the abatement thereof, including five percent (5%) for the inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the nuisance was abated.

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## **Sec. 7-1-120. Notice of assessment.**

The Town Clerk, as soon as may be after such assessment is made, shall send by certified mail, return receipt requested, addressed to the owner of such lots or tracts of land at the reputed post office address, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner and the amount of the assessment.

## **Sec. 7-1-130. Payment of assessment.**

- (a) It shall be the duty of the owner to pay such assessment or object thereto, in writing, within thirty (30) days after the receipt of such notice, and in case of his or her failure to do so, he or she shall be liable personally for the amount of the assessment. The same shall be a lien upon the respective lot or parcel of land from the time of such assessment, and the Town shall have all remedies for collection thereof provided by state statutes, for the purpose of having the same placed upon the tax list and collected in the same manner as taxes are now collected. The assessment shall be a lien against each lot or tract of land until it is paid and shall have priority over all other liens except general taxes and prior special assessments.
- (b) The amount of such assessment may be paid to the Town Clerk at any time before the tax list is placed in the hands of the County Treasurer, but thereafter only to the County Treasurer.

(Ord. 4 §1, 2009)

## **Sec. 7-1-140. Objection to assessment; hearing.**

In the event any owner desires to object to said assessment, he or she shall, within thirty (30) days after the receipt of said notice, file a written objection thereto with the Town Clerk, who shall thereupon schedule a hearing before the Town Council within thirty (30) days when said objector may appear before the Town Council.

## **Sec. 7-1-150. Certified assessment.**

In case the owner shall fail to pay such assessment or object thereto within the required time as provided above, then it shall be the duty of the Town Clerk to certify the amount of the assessment to the proper county officers, who shall collect the assessment as provided for by state law for the collection of delinquent general taxes.

## **Sec. 7-1-160. Cumulative remedies.**

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge, conviction or violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

## **Sec. 7-1-170. Concurrent remedies.**

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action and, when applicable, the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under this Code or any other provision of law.

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**Sec. 7-1-180. Violations and penalties.**

Any person who violates any of the provisions of this Chapter shall be subject to the provisions of Section 1-4-20 of this Code. If a deadline for removal or abatement of the nuisance has expired, no notice, other than the initial notice given in this Article, shall be required.(Prior code 9-1-5, 9-1-7; Ord. 17 §1 1992; Ord. 4 §1, 2009)

## **ARTICLE 2 Nuisances**

**Sec. 7-2-10. Accumulation to constitute nuisance.**

Whenever there shall be in or upon any lot or piece of ground within the limits of the Town any damaged merchandise, litter, trash, rubbish, garbage, wrecked car, inoperable cars or other wrecked vehicles or an accumulation of junk vehicles or junk of any type upon any private or public property, except in areas specifically zoned in Chapter 16 of this Code for said purposes or otherwise designated by the Town for such purposes, the existence of any such material or items shall constitute a nuisance and shall be a violation of this Article.

**Sec. 7-2-20. Posting handbills, posters and placards.**

Any handbill, poster, placard or painted or printed matter which shall be stuck, posted or pasted upon any public or private house or other building or upon any fence, power pole, telephone pole, streetlight pole, traffic control post or other structure without the permission of the owner, agent or occupant of the house shall be deemed a nuisance and may be abated as provided in this Chapter.

**Sec. 7-2-30. Stagnant ponds.**

The permitting of stagnant water on any lot or piece of ground within the Town limits is hereby declared to be a nuisance. Every owner or occupant of a lot or piece of ground within the Town is hereby required to drain or fill up said lot or piece of ground whenever the same is necessary so as to prevent stagnant water or other nuisances from accumulating thereon. It is unlawful for any such owner or occupant to permit or maintain any such nuisance.

**Sec. 7-2-40. Nuisances on public property.**

- (a) No person shall throw or deposit, or cause or permit to be thrown or deposited, any offal composed of animal or vegetable substance or both, any dead animal, excrement, garbage or other offensive matter upon any street, alley, sidewalk or public grounds.
- (b) No person shall throw upon or deposit in any street, alley, sidewalk, park or public grounds in or belonging to this Town any paper, old clothes, tin cans, boards or boxes, cloth of any kind, boots, shoes, hats, leather, hair, straw, hay, manure or rags. No person shall spit, expectorate or throw or deposit any spit, saliva, expectoration, tobacco juice or tobacco quid in or upon any sidewalk or in or upon any floor of any public building within the Town.
- (c) Any person who throws, deposits or causes to be thrown or deposited upon any street, alley or other public place any earth, sand, dirt, rocks, boulders, plaster, lime or other material shall be deemed the author of a nuisance.

(Prior code 9-1-16, 9-1-21; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

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## **Sec. 7-2-50. Streams and water supply.**

No person shall throw or deposit or cause or permit to be thrown or deposited in the Town anything specified in any foregoing part of this Section, or any other substance that would tend to have a polluting effect, into the water of any stream, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near any such place as to be liable to pollute the water.

## **Sec. 7-2-60. Sewer inlet.**

No person shall, in the Town, deposit in or throw into any sewer (sanitary or storm) or sewer inlet any article that might cause the sewer or sewer inlet to choke up or become nauseous or offensive to others or injurious to public health.

## **Sec. 7-2-70. Privies.**

No person shall maintain, keep, permit or suffer to exist any privy, cesspool, water closet or any other receptacle whatsoever for human excrement or other substances, which is not in compliance with applicable plumbing and building codes adopted by the Town. (Prior code 9-1-19; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

## **Sec. 7-2-80. Water closets.**

Nothing in this Article shall be construed to prevent the use of a water closet suitably connected with a sewer for the discharge of contents, which water closet shall have suitable water service for keeping the same clean, and which water closet and attendant plumbing shall be constructed in accordance with applicable plumbing codes adopted by the Town.

## **Sec. 7-2-90. Nauseous liquids.**

No person shall discharge or allow to be discharged out of or from, or permit to flow from, any business, residence or property any foul or nauseous liquid or substance of any kind into or upon any adjacent ground or lot or into any street, alley or other public place.

## **Sec. 7-2-100. Cellars, vaults, drains and sewers.**

Any cellar, vault, drain, sewer or other place upon or within any private premises or grounds that is nauseous or offensive to others or injurious to public health, through an accumulation or deposit of nauseous, offensive or foul water or other substance, shall be deemed a nuisance.

## **Sec. 7-2-110. Deposit of nauseous or offensive substances.**

- (a) No person shall deposit upon, throw upon or cause to be deposited or thrown upon the private premises of others, or upon private premises which he or she may own in whole or in part, in which he or she may have any property interest or of which he or she may have possession or control, any substance whether liquid, solid or otherwise, that he or she should reasonably know to be, or to become through an accumulation or deposition thereof, nauseous or offensive to others or injurious to public health.
- (b) No person shall deposit upon or in any place in the Town, not authorized elsewhere in this Chapter, any substance which emits smells or odors or is otherwise detrimental to public comfort or public health. Nonperson in possession or control of any premises shall maintain, permit or suffer to exist any substance in any such place not authorized by this Chapter.

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(Prior code 9-1-13, 9-1-20; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

**Sec. 7-2-120. Stale matter.**

No person shall keep, collect or use, or cause to be kept, collected or used, any stale, putrid or stinking fat or grease or other stale matter, or render or fry out the same, other than such matter kept for normal weekly trash accumulation.

**Sec. 7-2-130. Transporting garbage, manure.**

Every vehicle or trailer used to transport manure, garbage, swill or offal in any street in the Town shall be fitted with a substantial tight box thereon so that no portion of such filth will be scattered or thrown into such street.

**Sec. 7-2-140. Dumping on property.**

No person shall use any land, premises or property within the Town for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind.

**Sec. 7-2-150. Slaughterhouse prohibited.**

No slaughterhouse or other place for slaughtering animals shall be kept within the Town, nor shall any person keep any green, unsalted hides for a period exceeding twenty-four (24) hours.

**Sec. 7-2-160. Corrals, barns and pens.**

Any corral, barn, stable, pen or other place in the Town, or within one (1) mile of the corporate limits thereof, where horses, cattle, sheep, swine or other animals are kept or where any business or establishment is maintained or carried on, that is nauseous, unwholesome or offensive to others or injurious to the public health, shall be deemed a nuisance.

**Sec. 7-2-170. Dead animal removal.**

When any animal larger than a dog dies in the Town, it shall be the duty of the owner or keeper thereof to remove the body of such animal forthwith beyond the limits of the Town. If such body is not forthwith removed, the same shall be deemed a nuisance, and such owner or keeper will be the author of the nuisance. When the body of any such dead animal is in any street, highway or public grounds in the Town, it shall be the duty of the Town Marshal to cause such body to be removed forthwith beyond the limits of the Town. Any dead animal so removed from the Town shall be burned or buried in the earth sufficiently deep to prevent the escape of effluvia injurious to the public health.

**Sec. 7-2-180. Noisemakers.**

The use of music, noisemakers or loudspeakers on the streets of the Town for the sale or vending of products, advertising or other commercial purposes is hereby declared to be a nuisance and is prohibited by the terms of this Chapter.

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## **Sec. 7-2-190. Inoperable vehicles.**

It is unlawful for any person or agent, either as owner, lessee, tenant or occupant of any lot or land within the Town, to park, store or deposit or permit to be parked, stored or deposited thereon an inoperable vehicle unless such vehicle is enclosed in a garage or other building. The provisions of this Section shall not apply to any person or agent with one (1) vehicle inoperable for a period of less than thirty (30) consecutive days, or to any person who is conducting a business enterprise in compliance with existing zoning regulations.

## **Sec. 7-2-200. Abandoned, wrecked and junked vehicles.**

- (a) An abandoned, wrecked or junked vehicle, as defined in this Chapter, is declared a public nuisance.
- (b) It is unlawful for any owner or occupant of any real property within the Town to permit an abandoned, wrecked or junked vehicle to remain upon such real property for more than thirty (30) days. An owner or occupant of such real property shall notify the Town Manager as soon as he or she becomes aware that a vehicle has been abandoned on his or her property.
- (c) It is unlawful for any owner of an abandoned, wrecked or junked vehicle to allow the same to be parked or kept upon any real property, including public property, in the Town for more than thirty (30) days.
- (d) Abatement and enforcement procedures.
  - (1) The Town Manager may designate any employee of the Town to inspect all premises and places within the Town as often as is practical to determine whether an abandoned, wrecked or junked vehicle is stored within the Town. Upon satisfactory evidence to the Town Manager that such vehicle exists, he or she shall cause to be issued and served a written notice to the owner or occupant of the real property upon which the vehicle is found, or to the owner of the vehicle if such vehicle is on public property. Such notice shall require that the vehicle be removed within fourteen (14) days from the date of such notice. The notice shall be served personally by an employee of the Town upon the owner of the real property if he or she can be found within the Town; or if not, upon the occupant of the property upon which the vehicle is found. If it not possible to serve the notice personally upon the owner or occupant of the real property, then the Town Manager shall cause the notice to be posted in some conspicuous place on the primary residence upon the property; and if there is no such primary residence, then upon the vehicle. If the vehicle is stored upon public property, the notice shall be placed upon the vehicle. Nothing in this Section shall be construed to prevent the removal of a vehicle from public property to place the same out of a position of danger to the traveling public or Town employees, pending disposal of the vehicle.
  - (2) At the end of the fourteen-day period, if such vehicle has not been made operable or placed within an enclosed building, the Town Manager or designated employee shall have the right to go upon the real property to remove the vehicle and abate the nuisance. The vehicle may be stored by the Town and then sold at public auction. The proceeds from such auction shall be applied to the costs of removal, storage and payment of any fine incurred by the vehicle owner or the owner of the real property upon which the vehicle was stored, if such owner consented to the storage. If the auction proceeds are not claimed by any person having the right thereto within ninety (90) days after the auction, such money shall be placed in the Town's general fund. If no bids are offered for the vehicle, the Town may sell it for salvage and/or cause it to be removed for disposal. The Town may bid on any auctioned vehicle.
  - (3) In order to give notice of a vehicle which has been abandoned or stored within the Town, where the owner of the real property upon which it is abandoned or stored did not consent to such abandonment or storage, the Town Manager may cause the requisite notice to be served upon the owner of the vehicle by certified mail, return receipt requested. Service of such notice shall be deemed to have been

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completed when the addressee signs the return receipt or refuses to accept delivery of the notice. If the owner cannot be determined, the notice may be placed upon the vehicle.

- (4) If the owner of real property within the Town who has consented to the abandonment or storage of a vehicle on his or her real property fails to pay the costs incurred by the Town to cause such vehicle to be removed and sold or disposed of, within thirty (30) days after being notified of his or her obligation to pay such costs, the Town Clerk is authorized to cause such costs to be placed against the property upon which the vehicle was abandoned or stored. The Town Clerk shall mark the same delinquent on the Town's tax roll and certify such delinquency to the County Treasurer and County Commissioners, who shall extend such delinquencies upon the real property tax rolls of the County and collect the same in the manner set forth for general property taxes. Upon certification of the delinquent assessment, any penalties, together with interest at the rate of twelve percent (12%) per annum thereon, shall also become due.
- (5) Any administrative decision made pursuant to this Section may be appealed by an aggrieved property owner or vehicle owner to the Town Council; provided that such appeal is filed, in writing, with the Town Clerk within seven (7) days following the date the administrative decision is made, or the date a notice under this Section is given in person, signed for or refused. Any person filing an appeal which is determined by the Town Council to be frivolous or groundless may be required to pay the attorneys' fees incurred by the Town to resolve the appeal. Upon receipt of such appeal, the Town Clerk shall schedule a public hearing to consider the appeal. Notice of such hearing shall be published once in the Town's official newspaper, at least ten (10) days prior to said hearing. At said appeal hearing, the Town Council shall consider the appeal and render a decision based upon the requirements and considerations of this Section. Unless it adopts a motion to overrule the appealed decision, the decision shall stand.

(Prior code 9-1-22; Ord. 17 §1, 1992; Ord. 45 §1, 1995; Ord. 4 §1, 2009)

### **Sec. 7-2-210. Dangerous and unsafe buildings.**

- (a) Any building, structure or tenement of any kind situated within the limits of the Town which, by reason of natural decay, defective structure or otherwise, has become unsafe and dangerous to the individuals inhabiting the same, and to those passing along the streets, alleys or highways of the Town, shall be and the same is hereby declared a nuisance.
- (b) Whenever a building, structure or other tenement is discovered to be in the condition mentioned above, notice by any of the individuals set forth in Section 7-1-80 of this Chapter shall be given at once to the owner, agent or occupant of the same, to immediately repair, remedy or abate the nuisance. The notice required hereunder shall be written or printed, and may be signed by the Town Marshal or deputy marshal. Such written or printed notice shall be served by leaving a copy thereof with the party to be notified.
- (c) Any owner, agent or occupant of any building, structure or tenement, who shall allow or permit the same to become a nuisance, or who shall permit the same to remain a nuisance for a period of twenty-four (24) hours, or such longer time as reasonably set by the serving official, after notice duly served upon him or her, to remedy or repair the same, or to abate the nuisance, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with the provisions of Section 1-4-20 of this Code.
- (d) If any owner of such building, structure or tenement is not a resident of the Town and such building is not occupied; or if any owner, agent or occupant of any such building, structure or tenement fails or refuses to repair or remedy the same after notice as aforesaid, then the Town may proceed to remedy and abate the nuisance at the expense of the owner of the building, structure or tenement, and the costs and expenses thereof shall be assessed upon the lot or lands upon which said building, structure or tenement stands, and collected as a special assessment in the manner and form prescribed by ordinance.

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(Prior code 9-1-6, 9-1-7; Ord. 17 §1, 1992 Ord. 4 §1, 2009)

**Sec. 7-2-220. Vacant residential dwellings.**

All broken windows in a vacant dwelling shall be replaced by the owner or agent within seventy-two (72) hours after notice is given by the Town Marshal.

**Sec. 7-2-230. Accumulation of refuse prohibited.**

Any accumulation of refuse or other material on any premises, improved or unimproved, in the Town is prohibited and is hereby declared to be a nuisance.

**Sec. 7-2-240. Responsibility for refuse on premises.**

It shall be the duty of every person, whether owner, lessee or renter of any vacant lot, building or premises, including any place of business, hotel, restaurant, dwelling house, apartment, tenement or any other establishment, at all times to maintain the premises 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. 7-2-250. Removal of refuse from business.**

Discarded refuse, including automobile parts, stoves, furniture and junkyard refuse, shall be removed periodically by the proprietor so that the premises are clean and orderly at all times. Silt and similar deposits from automobile wash racks shall be removed. Any accumulation of refuse that is highly explosive or flammable which might endanger life or property shall be removed to such places as approved by the Town Marshal or the Fire Chief. Such removal shall be handled by the establishments responsible therefor.

## **ARTICLE 3 Undesirable Plant Management and Enforcement**

Ord. 11 § 1, 2016 repealed Art. 3 in its entirety and enacted a new Art. 3 to read as set out herein. Former Art. 3, §§ 7-3-10, 7-3-20, pertained to weeds and brush and derived from Ord. 4 §1, 2009.

### ***Division 1 General***

**Sec. 7-3-10. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to such terms in this section, except where the context clearly indicates a different meaning:

*Colorado Noxious Weed Act* or the Act means the provisions contained in C.R.S. §35-5.5-101 *et seq.*

*Commissioner* means the commissioner of the Colorado Department of Agriculture or his designee.

*Department* means the Colorado Department of Agriculture.

*Federal agency* means each agency, bureau or department of the federal government responsible for administering or managing federal lands.

*Integrated management* means the planning and implementation of a coordinated program utilizing a variety of methods for the management of noxious weeds, the purpose of which is to achieve specified

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management objectives and promote desirable plant communities. Such methods may include, but are not limited to, education, preventive measures, good stewardship and the following integrated management techniques as further described in the Management Plan.

*Landowner* means any owner of record of State, County, municipal or private land and includes an owner of any easement, right-of-way or estate in land.

*Local noxious weed* means any alien plant of local importance that has been declared a noxious weed by the Weed Advisory Board.

*Management* means any activity that prevents a plant from establishing, reproducing or dispersing itself.

*Management objective* means the specific, desired result of integrated management efforts as described in the Management Plan.

*Management plan* means the Weed Management Plan for the Town of Crested Butte as developed by the Weed Advisory Board and adopted by resolutions of the Town Council.

*Native plant* means a plant species that is indigenous to the State of Colorado.

*Noxious weed* means an alien plant or parts of an alien plant that have been designated by rule by the Commissioner or the Department as being noxious or any plant that has been declared a local noxious weed by the Weed Advisory Board, and which meets one (1) or more of the following criteria described in the Management Plan.

*Property owner* means any individual, partnership, corporation, association or federal, State or local government or agency thereof owning, occupying or controlling any land, easement or right-of-way, including any State, County, municipal or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, gas or oil pipeline, high-voltage electrical transmission line or right-of-way for a canal or lateral.

*State noxious weed* means any noxious weed identified by the Commissioner or the Department by rule pursuant to the terms and provisions of the Colorado Noxious Weed Act. Such weeds may be referred to herein as A List weeds, B List weeds or C List weeds depending upon their designation as such by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108.

*Undesirable plant* means a noxious plant species that is designated as undesirable by this Article, the Commissioner or by the Weed Advisory Board.

*A List weeds* shall mean all noxious weeds in Crested Butte that are designated for eradication, either by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108 or by local designation by the Weed Advisory Board.

*B List weeds* shall mean all noxious weeds in Crested Butte that are designated for required management, either by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108 or by local designation by the Weed Advisory Board.

*C List weeds* shall mean all noxious weeds in Crested Butte that are designated for recommended management, either by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108 or by local designation by the Weed Advisory Board.

*Undesirable plant management* means the planning and implementation of an integrated program to manage undesirable plant species pursuant to the Management Plan.

*Town Council* means the Town Council of the Town of Crested Butte, Colorado.

*Town Manager* means the Town Manager of the Town in title, as well as any designee, including any Town staff member or other employee of the Town, or any agent, delegate or contractor of the Town.

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*Weed* means any undesirable plant.

*Weed Advisory Board* means the persons appointed by the Town Council to advise on matters of noxious weed program direction.

### **Sec. 7-3-20. Duty to manage undesirable plants; landowner responsibility.**

It is the duty of all property owners to use integrated management pursuant to the Management Plan to manage and prevent the spread of all noxious weeds and undesirable plants on the Town of Crested Butte Noxious Weed List.

### **Sec. 7-3-30. Local priority weed list.**

The Town Council, after consultation with the Weed Advisory Board, may elevate the status of any B List weed or C List weed that is located within Crested Butte from the B List weed or C List weed to that of an A List weed or B List weed, as applicable, if deemed necessary and appropriate. The Town Council, after consultation with the Weed Advisory Board, may also, at any time, apply to the Commissioner for a waiver of compliance with an eradication designation set forth by the Commissioner for any particular A List weed or B List weed designated for eradication in Crested Butte, pursuant to C.R.S. §35-5.5-108.5(3)(c). If such a waiver is approved, the noxious weed in question shall be reclassified as either a B List weed or C List weed, as may be determined by the Town Council.

### **Sec. 7-3-40. Designation of additional undesirable plants.**

The Town Council may designate additional undesirable plants or weeds not otherwise designated as State noxious weeds for eradication or management within Crested Butte pursuant to the terms of C.R.S. §35-5.5-108(3) after a public hearing following thirty (30) days' prior public notice.

### **Sec. 7-3-50. Weed Management Plan; adoption and updates.**

The Weed Advisory Board has, pursuant to the direction of the Town Council, developed the Management Plan, and will review such Management Plan on an annual basis for any desired changes or adjustments to such plan and shall report to the Town Council on such basis with any recommended changes or adjustments. As part of such review, the Weed Advisory Board will review the list of noxious weeds and undesirable plants to consider additional weeds and to prioritize control efforts. The Management Plan must be renewed and adopted by the Town Council not less than once every three (3) years, but nothing shall prevent the Town Council from approving any changes or adjustments to the Management Plan more frequently. The Town Manager shall maintain the Management Plan and the priority weed list and make them available to the general public.

### **Sec. 7-3-60. Importation and cultivation.**

Persons are prohibited from importing seeds, propagative plant parts or live plants and cultivating any noxious weed within the Town of Crested Butte, and any such person doing so shall be fully prosecutable pursuant to the terms of C.R.S. §35-5.5-104.5.

## ***Division 2 Administration and Enforcement***

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### **Sec. 7-3-70. Administering agency.**

The Town Council shall provide for the administration and enforcement of the Management Plan authorized by this Article through the use of agents, delegates or employees, and may hire additional staff or provide for the performance of all or part of the Management Plan by contract. The primary duty and responsibility of administering the Management Plan is hereby delegated to the Town Manager, and the Town Manager shall be the Town Council's primary officer in enforcement and administration thereof. Any agent, delegate, employee, Town staff or contractor applying or recommending the use of regulated chemical control methods shall be licensed by the Department for such application or recommendation.

### **Sec. 7-3-80. Weed advisory board.**

The Town Council shall appoint a Weed Advisory Board consisting of Town staff, local land management partners, weed experts, general community members and other interested community members. The Weed Advisory Board shall have all of the authority and powers set forth herein as well as all of the authority and powers set forth in C.R.S. §35-5.5-107. The Town Council shall be entitled to appoint ex-officio members, as they may determine in their sole discretion.

### **Sec. 7-3-90. Identification and inspection of noxious weeds—Methods of identification.**

- (a) The Town Manager shall have the right to enter upon any premises, lands or places whether public or private, during reasonable business hours for the purpose of inspecting for the existence of noxious weed infestations, when at least one (1) of the following has occurred:
  - (1) The landowner or occupant has requested an inspection;
  - (2) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection;
  - (3) The Town Manager has made a visual inspection from a public right-of-way or other area and has reason to believe that a noxious weed infestation exists; or
  - (4) The Town Manager has inspected a current aerial satellite map of the property and determined there is reason to believe that a noxious weed infestation exists.
- (b) Where entry onto private premises is required to investigate the existence of noxious weeds, on-site inspections may be scheduled at any reasonable time upon the landowner or occupant's consent. No entry onto such lands shall be permitted unless one (1) of the following occurs:
  - (1) Verbal permission to inspect the property is granted by the landowner or occupant of said property, or
  - (2) Such landowner or occupant is notified of such pending inspection by certified mail at least ten (10) days prior to such inspection.

If after notification landowner or occupant fails to respond within ten (10) days to the request to inspect the premises or otherwise denies access to the Town Manager, the Town Manager may seek an inspection warrant issued by the Town of Crested Butte Municipal Court having jurisdiction over the land pursuant to the provisions of C.R.S. §35-5.5-109(2)(b) or §35-5.5-108.5(5)(b)(I).

### **Sec. 7-3-100. Notice of presence of noxious weeds—Notice letter.**

- (a) Private lands. Upon a discovery of the presence of noxious weeds on private premises, the Town Manager has the authority to notify the landowner or occupant of the presence of noxious weeds. If a second notice from the Town Manager is necessary, such notice shall include the following:

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- (1) The property inspection date;
  - (2) The landowner and/or occupant of record;
  - (3) The property tax ID number or legal description of the property, and/or aerial map;
  - (4) The noxious weeds to be managed;
  - (5) If the noxious weeds are weeds designated for eradication pursuant to designation as A List Weeds, identification of eradication as the required management objective;
  - (6) Advisement to the landowner or occupant to commence either eradication of the noxious weeds within five (5) days or management of the noxious weeds within ten (10) days after receipt of notice or submit an acceptable plan and schedule for the completion of the plan for compliance.
  - (7) Identification of the integrated weed management techniques presented by the Commissioner for eradication or the best available control methods of integrated management;
  - (8) The options of notice compliance;
  - (9) The consequences for non-compliance with the notice, an offer of Town consultation in Management Plan development, and notice of landowner and/or occupant's right to request a hearing before an arbitration panel.
  - (10) Statement that the Town Manager will seek an inspection warrant (right of entry) from the Town of Crested Butte Municipal Court, to enter property and manage identified noxious weeds unless the landowner and/or occupant complies with notice, submits an acceptable plan and schedule for completion of the plan or submits a written request for a hearing before the arbitration panel within ten (10) days.
- (b) Public lands.
- (1) The Town Manager may give notice to any State or federal department, or agency that administers or supervises lands under such governmental control within Crested Butte, to manage noxious weeds on its land.
  - (2) Such notice shall specify the best available methods of integrated management.

( Ord. 11 §1, 2016)

### **Sec. 7-3-110. Duty to consult.**

Where possible, the Town Manager shall consult with the affected landowner, occupant, State or federal department, or agency that administers or supervises lands under such governmental control within Crested Butte in the development of a plan for the management of noxious weeds on the premises or lands.

### **Sec. 7-3-120. Eradication and management of weeds—Landowner; occupant or public agency response.**

- (1) A Landowner, occupant, State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte receiving notification of the presence of noxious weeds pursuant to Section 7-3-220 above shall respond within a reasonable time after receipt thereof, but in no event to exceed five (5) days if eradication is ordered and ten (10) days if management is ordered, by any of the following:
  - (a) Complying with the terms of the notification.

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- (b) Acknowledging the terms of the notification and submitting an acceptable plan and schedule for the completion of the plan for compliance.
  - (c) If only management is ordered, requesting an arbitration panel to determine the final Management Plan. The panel shall be selected by the Town Manager, and shall include:
    - (i) A weed management specialist or weed scientist;
    - (ii) A landowner owning similar lands in Crested Butte; and
    - (iii) A third member chosen by agreement of the first two (2) panel members.
  - (d) The landowner or occupant is entitled to challenge any one (1) member of the panel, and the Town Manager shall name a new panel member from the same category.
- (2) Costs for the arbitration panel shall be paid by the requesting landowner or occupant. The decision of the arbitration panel shall be final.

( Ord. 11 §1, 2016)

### **Sec. 7-3-130. Enforcement—Direct action by Town to manage weeds.**

In the event that the landowner, occupant, State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte fails to comply with any notice to eradicate or manage the identified weeds or implement the plan developed by the arbitration panel, the Town Manager shall provide for and compel the eradication or management of such weeds in any manner deemed necessary by the Town Manager and in compliance with the provisions of C.R.S. §35-5-108.5, 35-5.5-109(5) or 35-5-110(3).

### **Sec. 7-3-140. Equal application.**

No eradication or management of noxious weeds on private property shall occur without applying the same or greater management measures to any land or rights-of-way owned, administered or controlled by the Town that are adjacent to the private property.

### **Sec. 7-3-150. Assessment of costs for treatment and eradication of noxious weeds—Private lands.**

If the Town Manager provides for and/or compels the management or eradication of noxious weeds on private lands, the Town shall be entitled to recover certain costs.

### **Sec. 7-3-160. Recoverable costs/method of collection—Management.**

- (1) If the Town Manager compels and provides for the management of noxious weeds pursuant to the provisions of C.R.S. §35-5-109, the Town is entitled to assess the whole cost thereof, including up to twenty percent (20%) for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.
- (2) Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.
- (3) Such assessment may be certified to the Gunnison County Treasurer for the collection of taxes.
- (4) Any funds collected shall be deposited in the Town Council's weed fund or any similar fund.

( Ord. 11 §1, 2016)

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### **Sec. 7-3-170. Recoverable costs/method of collection—Eradication of a list weeds.**

- (1) If the Town Manager compels and provides for the eradication of noxious weeds pursuant to their classification as A List weeds, the Town Council is entitled to assess the whole cost of eradicating such weeds, including up to one hundred percent (100%) of inspection, eradication and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.
- (2) Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.
- (3) Such assessment may be certified to the Gunnison County Treasurer for the collection of taxes.
- (4) Any funds collected shall be deposited in the Town Council's weed fund or any similar fund.

(Ord. 11 §1, 2016)

### **Sec. 7-3-180. Landowner or occupant protest.**

- (1) The Town Manager shall send a "Payment Notice/Potential Lien Assessment" letter by certified and regular mail to the landowner or occupant prior to any assessment on landowner or occupant's property.
- (2) Landowner or occupant shall be given thirty (30) days from the date on the Payment Notice/Potential Lien Assessment letter to respond.
  - (a) In the event landowner or occupant fails to respond to the letter within the prescribed thirty (30) days, the Town Manager shall assess a lien on landowner or occupant's property and may certify such lien to the Gunnison County Treasurer.
  - (b) If the landowner or occupant responds within the prescribed thirty (30) days and disputes the amount of the assessment, he or she is entitled to be heard before the Weed Advisory Board as to his or her concerns.

(Ord. 11 §1, 2016)

### **Sec. 7-3-190. Assessment of costs—Hearing.**

- (1) The landowner or occupant, or an attorney on his or her behalf, will be allowed to present testimony to the Weed Advisory Board as to why they should not assess a lien on landowner or occupant's property for the costs outlined in the Payment Notice/Potential Lien Assessment letter.
- (2) The Town Manager will need to be present at the hearing to provide evidence favoring the imposition of a lien on landowner or occupant's property.
- (3) The Town Manager must show that prior to compelling the management of noxious weeds on landowner and/or occupant's property the Town Manager applied the same or greater management measures to any land or rights-of-way owned or administered by the Town that are adjacent to the private property.
- (4) The Town Manager must show that the level of management called for in the notice or the Management Plan developed by the arbitration panel has been successfully achieved pursuant to Section 7-3-300 hereof.
- (5) The Weed Advisory Board may either grant or deny the lien assessment or continue the matter to a subsequent date certain.
- (6) If the Weed Advisory Board grants the lien assessment, the Certification of Assessed Costs shall be filed with the County Treasurer's Office.

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( Ord. 11 §1, 2016)

### **Sec. 7-3-200. Limitations.**

The Weed Advisory Board shall not assess the cost of providing for or compelling the management of noxious weeds on private property until the level of management called for in the notice or the Management Plan developed by the arbitration panel has been completed.

### **Sec. 7-3-210. Recoverable costs/method of collection—Public lands.**

- (1) Any expenses incurred by the Town Council in the undertaking of the eradication or management of noxious weeds on public lands shall be a proper charge against such State board, department, or agency that has jurisdiction over the lands.
- (2) An agreement for the reimbursement of such expenses shall be reached within two (2) weeks after the date such an expense is submitted to such State board, department or agency, such agreement to be set forth in writing.
- (3) If an agreement is not reached or the charge is not immediately paid, such charge shall be submitted to the controller, who shall treat such amount as an encumbrance on the budget of the State board, department or agency involved or such charge may be recovered in any court with jurisdiction over such lands.

( Ord. 11 §1, 2016)

### **Sec. 7-3-220. Scheduling and hearing.**

The State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte is afforded the same scheduling and hearing protections as provided to landowners or occupants of private lands hereunder.

### **Sec. 7-3-230. Miscellaneous - additional provisions.**

- (1) The Town Manager, shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purposes of ensuring compliance with any of the above requirements concerning noxious weed management and any other local requirements.
- (2) No agent, employee, or delegate of the Town shall have a civil cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land for purposes consistent with the above requirements except when the landowner or occupant willfully or deliberately caused such damages.
- (3) It shall be the duty of the Town Council to confirm that all public roads, public highways, public rights-of-way and any easements appurtenant thereto, under its jurisdiction are in compliance with C.R.S. §35-5.5-101 et seq., and any violations thereof shall be the financial responsibility of the appropriate the landowner, occupant, State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte.

( Ord. 11 §1, 2016)

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### **Sec. 7-3-240. Cooperation with federal and State agencies.**

The Town Council may enter into cooperative agreements with State, federal, and County departments and agencies for the integrated management of undesirable plants within their respective territorial jurisdictions.

### **Sec. 7-3-250. Public nuisance—Abatement.**

All undesirable plants at any and all stages thereof, their carriers, and any and all premises, plants and things infested or exposed to infestation may be declared to be a public nuisance by the Town Manager. Once declared, such nuisances shall be subject to all laws and remedies relating to the prevention and abatement of nuisances. The Town Manager, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance as in its discretion appears necessary. The remedies of this section shall be in addition to all other remedies provided by law.

## **ARTICLE 4 Trees**

### **Sec. 7-4-10. Trees and limbs in public right-of-way.**

It shall be the duty of the owner of any property adjacent to the public right-of-way to remove any trees or limbs located in or above the public right-of-way when such trees or limbs constitute a danger to public safety. Such trees and limbs shall constitute a nuisance. For the purposes of this Section, a danger to public safety shall include all trees and limbs which hinder visibility or which may otherwise affect public health, safety and welfare, and trees and limbs which present a structural defect which may cause the tree or limb to fall on a person or on property of value.

### **Sec. 7-4-20. Control of trees and shrubs.**

- (a) Trees, shrubs and other vegetation which are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to people or property within the Town are hereby declared a nuisance.
- (b) The Town shall give written notice to the owner or occupant of any property abutting Town rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way or other public property with such unsafe condition. The Town shall correct any such unsafe condition immediately upon the expiration of the notice period specified in the notice of abatement.
- (c) It is unlawful and deemed a nuisance for any person to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plant upon public property or public right-of-way or other public parks and greenbelts within the Town, unless authorized or directed by the Town.
- (d) It is unlawful and deemed a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the Town, unless a person notifies the Town of such damage or destruction and makes arrangements to repair or replace such vegetation or pay for the cost of such repair or replacement.

(Ord. 4 §1, 2009)

## **ARTICLE 5 Animals**

## ***Division 1 Dogs***

### **Sec. 7-5-10. Definitions.**

Whenever the following words or phrases are used in this Article, they shall have the meanings herein ascribed to them, unless the context indicates otherwise:

*At large* means off the premises of the owner or guardian, not under the control of a person and restrained by a substantial chain or leash not exceeding ten (10) feet in length, or physically confined without access to passers-by, except in such areas designated by the Town Council by resolution, and pursuant to such rules and regulations as are established by resolution of the Town Council.

*Dog* means both them ale and female of the species.

*Neutered* means spayed or castrated dog.

*Owner* means any person firm, association or corporation owning, keeping or harboring a dog.

### **Sec. 7-5-20. License and registration required.**

- (a) All dogs kept, harbored or maintained by their owners in the Town shall be licensed and registered if over three (3) months of age. The owner shall state at the time application is made for such license, his or her name and address and the name, breed, color and sex of each dog owned or kept by him or her. Such application shall be accompanied by a certificate from a licensed veterinarian that the dog has been vaccinated for rabies in the manner provided for in Section 7-5-40 below and payment of a fee amount which shall be established by resolution of the Town Council. The provisions of this Section shall not be intended to apply to dogs whose owners are nonresidents temporarily within the Town, to dogs brought into the Town for the purpose of participating in any dog show, nor to "seeing-eye" dogs properly trained to assist blind persons when such dogs are actually being used by blind persons for the purpose of aiding them in going from place to place.
- (b) Upon payment of the license fee, the Town Clerk shall issue to the owner a metallic tag for each dog so licensed. The shape of the tag shall be changed every year and shall have stamped thereon the year for which it was issued.
- (c) Each license and registration so issued by the Town Clerk shall be for the period from January 1 through December 31 of the year in which it is issued.
- (d) There shall be a grace period of thirty (30) days for compliance by owners from each due date for licenses and registrations required under this Article.

(Prior code 8-1-2; Ord. 14 §3, 1999; Ord. 10 §3, 2001; Ord. 4 §1, 2009)

### **Sec. 7-5-30. Tag and collar.**

Every owner shall be required to provide each dog with a collar to which the license tag must be affixed, and shall see that the collar and tag are constantly worn. In case a dog tag is lost or destroyed, a duplicate will be issued by the Town Clerk or designee upon presentation of a receipt showing the payment of the license fee for the current year and the payment of a fee as established by resolution of the Town Council for the issuance of a

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duplicate tag. Dog tags shall not be transferable from one (1) dog to another, and no refund shall be made on any dog license fee.

### **Sec. 7-5-40. Vaccination.**

It is unlawful to own, keep, harbor or possess any dog over the age of six (6) months which has not been vaccinated against rabies. The owner shall have the dog vaccinated by a licensed veterinarian, and shall keep the vaccinations current. The vaccines used will be ones licensed by the U.S. Department of Agriculture and approved by the Colorado Department of Public Health and Environment and will provide for at least a two-year duration of immunity. A certificate of vaccination shall be completed in duplicate by the veterinarian, one (1) copy to be issued to the dog owner and one (1) copy retained in the veterinarian's file. In the event that the dog is not of age to be properly vaccinated, the vaccination shall be waived until the dog has reached such age and shall then be immediately obtained as provided herein and a certificate delivered to the Town.

### **Sec. 7-5-50. Vaccination certificate to accompany application.**

No dog shall be licensed as provided in Section 7-5-20 above unless a valid certificate of rabies vaccination accompanies the application for the license.

### **Sec. 7-5-60. Dogs running at large.**

No person owning or keeping any dog shall fail to keep the dog on the premises of the owner or keeper unless the dog is:

- (1) On a chain or leash not exceeding ten (10) feet in length held by a person; or
- (2) Physically confined without access to passers-by.

### **Sec. 7-5-70. Unattended dogs prohibited in public areas.**

- (a) It is unlawful to leave a dog on any street, alley or other public property unless attended by the owner or some other person, regardless of whether or not said dog is attached to a leash or a rope; provided, however, that it shall be lawful to leave an unattended dog in a motor vehicle so long as the dog does not leave the motor vehicle except in compliance with Section 7-5-60 above or unless it is otherwise a violation of this Code.
- (b) Notwithstanding the provisions of this Section, the Town Council may, at its sole discretion, authorize by resolution the establishment of particular places on public property where dogs may be tied or hitched to a fixed object subject to such rules and regulations as may be promulgated by the Town Council.

(Prior code 8-1-7; Ord. 14 §7, 1999; Ord. 9 §1, 2002; Ord. 4 §1, 2009)

### **Sec. 7-5-80. Dogs excluded from parks.**

It shall be unlawful for an owner, keeper or any other person to allow any dog to enter or be in any public park within the Town, whether leashed or unleashed, with the exception of Totem Pole Park, Verzuh Rotary Park, parts of the 8th Street Greenway and Academy Park, wherein dogs shall be permitted as long as all dogs shall be leashed therein at all times, and dog excrement shall be promptly removed and all other rules and regulations regarding dogs are obeyed. Dogs may also be permitted to be unrestrained in such areas designated by the Town Council by resolution and pursuant to such rules and regulations as are established by resolution and pursuant to such rules and regulations as are established by resolution of the Town Council.

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## **Sec. 7-5-90. Obligations of owner.**

The owner of any dog shall:

- (1) Not allow any dog to obstruct or interfere with any person or motor vehicle on public property.
- (2) Keep and maintain such dog so that it does not, by noise or other activity, injure or interfere with the rights of other persons.
- (3) Commit no inhumane or cruel action against such dog.
- (4) Be liable and responsible for any damages caused by such dog at all times that it is off of the owner's premises.
- (5) Remove animal excrement.
  - a. No owner of any animal shall fail to prevent such animal from defecating upon any property other than the premises of the owner of such animal.
  - b. It is a specific defense to a charge of violating this Subsection that the defecation occurred on private property with express permission of the owner or all tenants thereof.
  - c. It is a specific defense to a charge of violating this Subsection that the owner immediately removed or cleaned up such deposit and disposed of it by depositing it in a toilet or a receptacle ordinarily used for garbage and covered by a lid or in an otherwise lawful and sanitary manner.
  - d. The violation of this Paragraph is a strict liability offense punishable on the first conviction by a fine of twenty-five dollars (\$25.00), and a fine of fifty dollars (\$50.00) for the second conviction within two (2) years. For a third and subsequent offense within two (2) years, the general penalty provisions of Section 7-5-180 of this Article shall apply.

## **Sec. 7-5-100. Impounding of dog.**

It shall be the duty of the Town Marshal or any other official designated by the Town Manager to catch and impound any dog that is not wearing a proper license as herein provided, that is not under proper control or confined to premises as herein provided or is in violation of any section of this Article, in a pound to be designated by the Town Manager; provided, however, that if any dog cannot be safely caught and impounded because of its dangerous or vicious propensities, such dog may be destroyed.

## **Sec. 7-5-110. Notice to owner and period of impounding.**

Upon the impounding of any dog, it shall be the duty of the person impounding such dog to notify the owner thereof, if known. If the owner is not known, there shall be posted at the main door of the Town Hall, for a period of not less than three (3) days, a notice containing a description of the dog impounded. Any dogs impounded shall be kept for a period of three (3) days unless sooner redeemed by its owner. A fraction of a day shall be computed as being a full day for the purposes of this Section.

## **Sec. 7-5-120. Disposition of impounded dog.**

Any owner may redeem a dog from the dog pound upon proof of ownership thereof and payment of a care and maintenance fee related to the actual cost of impounding such dog not to exceed an amount set by resolution of the Town Council per day or any portion of a day that a dog is maintained at the dog pound or any greater fee that might be charged by a veterinarian for the impounding of such dog and upon payment of a redemption fee as set by resolution of the Town Council and upon written proof of vaccination and registration of the dog, as

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provided by this Article. If the owner of a dog has not redeemed the same within three (3) days after impounding such dog and notice being given as required by this Article, then such dog may be euthanized or redeemed by any other person paying the required fee and having such dog vaccinated and registered as provided by this Article.

### **Sec. 7-5-130. Hydrophobia.**

Whenever the Mayor shall apprehend danger from hydrophobia in the Town, it shall be his or her duty to issue proclamation requiring any and all persons owning or keeping any dog to securely muzzle such animal for such period as he or she may fix in said proclamation, and during said time it shall be unlawful for any owner or keeper of any dog to allow the same to go off of or leave the owner's or caretaker's premises without being muzzled as required by such proclamation.

### **Sec. 7-5-140. Vicious or dangerous dogs.**

- (a) Definition. For purposes of this Article, a *vicious or dangerous dog* means any dog which:
  - (1) Bites any person in a public place;
  - (2) Bites any person in a place upon private property where persons not owning said property are likely to be present by reason of invitation which is either direct or implied;
  - (3) Jumps upon any person in a public place, or in a place upon private property where persons are likely to be present by direct or implied invitation, while evidencing growling, barking or any other aggressive or intimidating behavior;
  - (4) Attacks or bites any other animal in any public place or upon any private property not owned or occupied by the owner or custodian of said dog; or
  - (5) Has or is suspected of having rabies or any other disease dangerous to humans or other animals.
- (b) Unlawful to keep a vicious or dangerous dog. It is unlawful to keep, harbor or maintain any vicious or dangerous dog within the Town.
- (c) Disposition of vicious or dangerous dogs. Upon a finding by the Municipal Court that a dog is vicious or dangerous as defined herein, the Town Marshal and Town Manager shall have any one (1) or combination of the following powers to dispose of said dog:
  - (1) Confiscate and destroy the dog in some humane fashion.
  - (2) Order the dog permanently removed from Town.
  - (3) Order the dog confined to certain areas of the Town or certain areas of property within the Town.
  - (4) Establish any other condition deemed reasonable to protect the public.

Any dog suspected by the Town Marshal's Department of being a vicious or dangerous dog shall be deemed a public nuisance and may be confiscated by the Town Marshal's Department and held pending a determination by the Municipal Court that said dog is vicious or dangerous at or before the next regularly scheduled session of Municipal Court. If the Municipal Judge finds, by a preponderance of evidence available, that a dog is vicious or dangerous, the Municipal Judge may order any one (1) or more of the dispositions set forth in Paragraphs (1) through (4) above, regardless of any finding that the owner of said dog has violated Subsection (b) above.

### **Sec. 7-5-150. Interference with officer.**

No person shall hinder or delay the Town Marshal or other police officer, in the discharge of the duties enjoined upon him or her by this Article.

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### **Sec. 7-5-160. Unlawful to poison dog.**

It is unlawful for any person to poison any dog or distribute poison in any manner whatsoever with the intent or for the purpose of poisoning any dog within the Town, and any person violating this Section shall be punished as hereinafter provided.

### **Sec. 7-5-170. Authority to destroy and dispose of dog.**

- (a) Any dog unprovokedly biting, attacking or assaulting human beings or other animals, either on public or private property, except where such human being or animal is trespassing upon or destroying or defacing the property of the owner of such dog, may be destroyed by the Town Marshal or other police officer.
- (b) Upon destruction of the dog as provided in Subsection (a) above, the Town Marshal shall immediately dispose of the body.

(Prior code 8-1-15, 8-1-18; Ord. 4 §1, 2009)

### **Sec. 7-5-180. Violations and penalties.**

- (a) A person in violation of Section 7-5-60 or 7-5-70 of this Article shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00). If a third offense of Section 7-5-60 or 7-5-70 occurs within six (6) months from the date of the first offense, the owner shall be issued a summons to appear in Municipal Court and, if found guilty, the owner shall be ordered to remove such dog permanently from the Town. A person in violation of Section 7-5-20 of this Article shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00). In assessing such fines, the Municipal Judge shall not have the authority to reduce, suspend or otherwise allow a fine less than the minimum fines set forth herein.
- (b) A person in violation of any provision of this Article other than Section 7-5-20, 7-5-60 or 7-5-70 shall be fined not less than twenty-five dollars (\$25.00) not more than three hundred dollars (\$300.00), by imprisonment nor exceeding ninety (90) days, or by both such fine and imprisonment.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article.
- (d) Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorney's fees, occasioned by reason of such violation.
- (e) The remedies provided by this Article are cumulative and not exclusive and are in addition to any other remedies provided by law.

(Prior code 8-1-19; Ord. 4 §1, 2009)

## ***Division 2 Livestock***

### **Sec. 7-5-310. Purpose.**

The purpose of these regulations is to provide for the orderly and safe keeping and treatment of livestock within the Town. While the keeping of livestock provides benefit and enjoyment to those residents who choose to do so, it also has the potential to create nuisances to property and business owners in proximity to such activities. Through these regulations, the Town may ensure that the activities of residents who choose to keep livestock do not infringe on the use and enjoyment of property and the conduct of business within the Town.

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## **Sec. 7-5-320. Definitions.**

The definitions and terms used in this Article are defined as follows:

*Animalnuisance* means any noise, odor, waste or other by-product of the keeping of domestic livestock which disturbs, disrupts or prevents the use and enjoyment of property, the conduct of business or violates certain portions of this Article.

*Keeping of livestock* means the boarding of domesticated livestock animals on property within the Town boundaries for the purpose of food production or other agricultural uses.

*Livestock animals* means animals generally used for food production or other agricultural purposes, including but not limited to chickens, pigs, ducks, goats, cows, sheep and horses.

*Runningatlarge* shall be taken and held to apply to any of such animals driven or straying away from the property or premises of the owner or keeper thereof or from any point within the Town, into and upon the streets, alleys, public parks or other public places of the Town, or upon the property or premises owned, held or occupied by any person within the Town. The term shall also apply to such animals when picketed; provided, however, that such term shall not apply to animals driven through the Town upon and along the streets thereof.

*Shelter* means any structure or device used to house livestock as protection from weather, predators or other similar hazards.

## **Sec. 7-5-330. Keeping of livestock.**

- (a) Except as hereinafter provided, residents of the Town may keep the following livestock animals on property in Town: up to six (6) chicken hens or rabbits or combination of chicken hens and rabbits and no more than one (1) potbellied pig. The total number of livestock animals on a property at any given time may not exceed seven (7). Livestock animals not permitted in the Town include, but are not limited to cows, sheep, goats, llamas, ducks, geese and all pigs not otherwise identified in this Division.
- (b) All livestock animals must be kept under adequate shelter, protected from weather, predators and other hazards and must at all times be contained in a secure and humane area entirely on private property. Said shelter must protect the livestock from foxes, coyotes, bears, mountain lions, hawks, eagles, domestic dogs and other predators. Said shelter must be a permanent, stick-built structure or approved prefabricated model as determined by the Building Official. Shelters above thirty (30) inches in height may not be located in front yards, and must satisfy design review and comply with building setback and all Code requirements as identified in Chapters 16 and 18 of this Code.
- (c) The keeping of livestock animals and the activities associated with the keeping of livestock animals, such as feeding, cleaning and storage, must not violate this Article relative to the protection of wildlife in the Town. Feed must be stored in a bear-proof container if located outdoors. All applicable animal treatment, abandonment and control laws apply to livestock animals.
- (d) No livestock animal shall create a nuisance to any private property owner or the conduct of business. Animal waste products must be removed from the site regularly, and the accumulation of waste or excrement shall be deemed a nuisance. The Town shall determine if an activity or condition on a property containing livestock animals constitutes a nuisance and can require the owner to remedy the situation or remove the livestock animals at the sole expense of the owner.
- (e) The production of animals or animal products for commercial sale, with the exception of eggs produced by chicken hens, shall not be permitted under this Division. A person producing chicken hen eggs for commercial sale must possess a Town business license and a sales tax license and any relevant state licenses

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or permits. The slaughter of animals for the purpose of meat production for commercial sale is not permitted by this Division.

(Ord. 14 §1, 2011)

### **Sec. 7-5-340. Running at large prohibited.**

No livestock animals, horses, asses, mules, cattle, sheep or swine shall be permitted to run at large within the corporate limits of the Town.

### **Sec. 7-5-350. Impoundment of animals running at large.**

It shall be the duty of the Town Marshal, any police officer or any person appointed in writing by the Town Marshal for said purpose, to take up, stable or impound any such animals designated in Section 7-5-340 above found running at large.

### **Sec. 7-5-360. Interfering with officer.**

Any person who obstructs, hinders or delays the Town Marshal, the Building Official or other officer in the discharge of any duty arising under this Article, who opens or breaks open, or who, in any manner, directly or indirectly aids or assists in opening or breaking open any pen or enclosure, with the intent of releasing any animal described in Section 7-5-340 confined therein pursuant to the provisions of this Division, shall on conviction thereof be fined in the sum of not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00) for each offense.

### **Sec. 7-5-370. Penalties.**

- (a) A persons found to be in violation of any provision of this Division shall be subject to a fine not to exceed one hundred dollars (\$100.00) for each offense, and/or be made to remove nuisance livestock animals or remedy conditions deemed to be a nuisance at the discretion of the Town. Each instance of violation shall be deemed a separate offense for purposes hereof.
- (b) If any animal is found running at large contrary to the provisions of this Article, the Town Marshal may, instead of impounding such animal as described in Section 7-5-350 above, file a complaint with the Municipal Judge against the owner of said animal. Upon the hearing of said complaint, if it is proved that any such owner has theretofore and during the preceding twelve (12) months allowed his or her animal to run at large in the Town contrary to this Division or that theretofore and during the preceding twelve (12) months any animal belonging to such owner had been impounded, then said owner shall be subject to a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) for each offense.

(Ord. 14 §1, 2011)

### **Sec. 7-5-380. Exemptions.**

The following shall be exempt from the requirements of this Division:

- (1) Properties zoned "A-O," "R1A" and "P" and approved for agricultural uses; and
- (2) Portions of Town Blocks 1, 2, 11 and 12 in the "R1" zone where historical agricultural uses exists.

This exemption shall be abandoned as portions of the applicable property are sold and approved for residential development.

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(Supp. No. 20)

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### ***Division 3 Wildlife Protection***

#### **Sec. 7-5-510. Definitions.**

The definitions and terms used in this Article are defined as follows:

*Enforcement officer* means any Town Marshal, Community Service Officer or designated Town official.

*Person or persons* means any lawful person or entity that is the owner, manager, operator, resident, tenant, employee, homeowners' association or other responsible party for any subject property, or division thereof, or of any business located on said subject property.

*Wildlife* means any nondomestic mammal or avian indigenous to the Crested Butte area, including but not limited to bear, elk, deer, raccoon, coyote, beaver, skunk, badger, bobcat, mountain lion, porcupine and fox.

*Wildlife-resistant Dumpster* means a Dumpster with a metal lid that has a latching device which prevents wildlife access to its contents.

*Wildlife-resistant refuse container* means any fully enclosed polycart or metal container with a lid. The lid must have a latching mechanism, which prevents access to the contents by wildlife. Wildlife-resistant containers must be approved by the Town or its contractor.

#### **Sec. 7-5-520. Wildlife-resistant refuse containers or enclosure required.**

- (a) Any refuse container, whether residential or commercial, regardless of size, that receives refuse which is edible by wildlife shall be: (1) an approved wildlife-resistant refuse container; (2) a wildlife-resistant Dumpster; or (3) a refuse container which is stored within a building, house or garage.
- (b) Any restaurant waste grease must be deposited in a wildlife-proof commercial grease container or a container which is stored within a building, house or garage.

(Ord. 10 §3, 2007)

#### **Sec. 7-5-530. Maintenance and operation of wildlife-resistant refuse containers and Dumpsters.**

- (a) Wildlife-resistant refuse containers and Dumpsters must be kept closed and secure when refuse is not being deposited.
- (b) It shall be the responsibility of any person to keep all refuse containers, Dumpsters and grease containers in good and operable condition and repair when in use.

(Ord. 10 §3, 2007; Ord. 9 §4, 2008)

#### **Sec. 7-5-540. Residential refuse disposal.**

- (a) All residential containers that receive refuse edible by wildlife, except wildlife-resistant refuse containers, must be secured inside the home, garage, business or wildlife-resistant trash enclosure. Persons unable to

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keep their refuse container inside the home, garage, business or wildlife-resistant trash enclosure shall store their refuse in a wildlife-resistant refuse container.

- (b) Persons with curbside pickup shall place their refuse containers at the curb between the hours of 6:00 a.m. and 6:00 p.m. of the day for scheduled collection; except that any wildlife-resistant refuse container may be placed for curbside pickup between the hours of 6:00 p.m. on the day preceding the day for scheduled collection and 6:00 p.m. of the day for scheduled collection. After pickup, all refuse containers, except wildlife-resistant refuse containers, must be re-secured inside the home, garage, business or wildlife-resistant enclosure by 6:00 p.m. on the day for scheduled collection. Wildlife-resistant refuse containers must also be removed from the curb after pickup by 6:00 p.m. on the day for scheduled collection.

(Ord. 10 §3, 2007; Ord. 9 §5, 2008)

### **Sec. 7-5-550. Feeding of wildlife.**

- (a) No person shall knowingly leave or store any refuse, food product, pet food or grain in a manner which would constitute a lure, attraction or enticement of wildlife.
- (b) Bird feeders are permitted; however, between the dates of April 15 and November 15, all feeders must be suspended on a cable or other device so that they are inaccessible to bears, and the area below said feeders must be kept free from the accumulation of seed debris.

(Ord. 10 §3, 2007)

### **Sec. 7-5-560. Construction site refuse disposal.**

All construction sites must have a designated container that receives refuse edible by wildlife. This container shall be either a wildlife-resistant refuse container or a container that is emptied at the end of each workday and then securely stored inside a trailer or building.

### **Sec. 7-5-570. Interference with enforcement officer.**

No person shall interfere with, molest, hinder or impede any enforcement officer in the discharge of his or her duties as herein prescribed or violate any of the provisions of this Article.

### **Sec. 7-5-580. Enforcement.**

- (a) Enforcement officers may issue a warning notice, a citation requiring the purchase of a wildlife-resistant refuse container or a summons and complaint to any person in violation of this Article.
- (b) An enforcement officer shall have the right to inspect property concerning any wildlife concern or potential wildlife attractant.

(Ord. 10 §3, 2007)

### **Sec. 7-5-590. Penalty assessment.**

The violation of any provision of this Article by any person shall be unlawful and subject the offending person to fines in amounts not to exceed one hundred dollars (\$100.00) for the first offense; two hundred dollars (\$200.00) for the second offense; and three hundred dollars (\$300.00) for the third offense. Any additional offense after the third offense shall subject the offending person to the issuance of a summons and fines not to exceed

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one-thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.

## **ARTICLE 6 Prohibitions on Disposable Plastic Bags; Standards for the Use of Permitted Paper Bags**

### **Sec. 7-6-10. Purpose.**

The purpose of these regulations is to protect public health and safety and implement the general goals of the Energy Action Plan of the Town of Crested Butte (EAP) by prohibiting the use of disposable plastic bags and mandating certain standards for the use of permitted paper bags.

### **Sec. 7-6-20. Applicability.**

Commencing September 1, 2018, disposable plastic bags shall not be used, retail or wholesale, within Town limits by any business. Commencing September 1, 2018, non-permitted paper bags shall not be used, retail or wholesale, within Town limits by any business, and only permitted paper bags may be used.

### **Sec. 7-6-30. Definitions.**

The following terms shall have meanings ascribed thereto:

*Disposable plastic bag* means a bag made from either non-compostable plastic or compostable plastic provided by a business to a customer at the point of sale for the purpose of transporting goods. The term "Disposable Plastic Bag" shall not include:

- (a) Bags used by consumers inside stores to:
  - (1) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;
  - (2) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
  - (3) Contain or wrap flowers, potted plants, or other items where dampness may be a problem;
  - (4) Contain unwrapped prepared foods or bakery goods;
  - (5) Contain artworks; and
  - (6) Contain books and periodicals.
- (b) Bags provided by pharmacists to contain prescription drugs or bags provided by a medical marijuana center to provide the product to the patient;
- (c) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;
- (d) Reusable carryout bags;
- (e) Non-permitted paper bags and permitted paper bags, as defined herein; or
- (f) Bags provided to the consumer for the purpose of transporting a partially consumed bottle of vinous liquor (wine) pursuant to the provisions of C.R.S. §12-47-421.

*Retailer* means a retail establishment or business that is a retail operation in the business of selling goods.

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*Non-permitted paper bags* means a paper bag provided by a business to a customer at the point of sale for the purpose of transporting goods, which does not meet the standards of a "Permitted Paper Bag".

*Permitted paper bags* means a paper bag provided by a Retailer to a customer at the point of sale for the purpose of transporting goods, which meets all of the following requirements:

- (a) The bag is manufactured from forty percent (40%) recycled content; and
- (b) The bag is one hundred percent (100%) recyclable.

*Reusable carryout bag* means a bag that is specifically intended for multiple reuse and is made of cloth, fiber, or other machine washable fabric that is at least 2.25 millimeters thick and capable of carrying a minimum of eighteen (18) pounds with at least seventy-five (75) uses per bag. Reusable carry-out bags that are used for the transport of foodstuffs shall be machine washed periodically or otherwise replaced for health and safety reasons.

#### **Sec. 7-6-40. Implementation of disposable plastic bag ban.**

- (a) Retailers shall only offer either a reusable carryout bag or a permitted paper bag to a consumer for use.
- (b) Violation of the requirements set forth in this section shall subject the offending person and/or business to the penalties set forth in this Article.

(Ord. 5 §1, 2016)

#### **Sec. 7-6-50. Town-wide prohibition on disposable plastic bags.**

- (a) Disposable plastic bags shall not be used, retail or wholesale, within Town limits by any business.
- (b) Violation of the requirements set forth in this Section shall subject the offending person and/or business to the penalties set forth in this Article.

(Ord. 5 §1, 2016)

#### **Sec. 7-6-60. Violations and penalties.**

Any person and/or business upon conviction of a violation of any provision of this Article, shall be subject to the following penalties:

- (a) Upon the first violation, a one-time-only written warning notice that a violation has occurred shall be issued by the Town to the person and/or business. No monetary penalty shall be imposed for the first violation.
- (b) Upon a subsequent violation and conviction, the Town shall impose a penalty on the person and/or business. The penalty shall not exceed:
  - (1) Fifty dollars (\$50.00) for the first violation after the written warning;
  - (2) One hundred dollars (\$100.00) for the second violation in the same calendar year of the first violation; and,
  - (3) Three hundred dollars (\$300.00) for the third and each subsequent violation in the same calendar year of the earlier violations.
- (c) No more than one (1) penalty shall be imposed upon a person and/or business within any seven-day period.

## CHAPTER 8

### Vehicles and Traffic

#### ARTICLE 1 Model Traffic Code

##### **Sec. 8-1-10. Adoption.**

Pursuant to Parts 1 and 2 of Article 16 of Title 31, C.R.S. and Part 4 of Article 15 of Title 30, C.R.S., there is hereby adopted by reference Articles I and II, inclusive, of the 2020 edition of the "Model Traffic Code" promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700., Denver, CO 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the Town. The purpose of this Ordinance and the Code adopted herein is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the state and the nation.

##### **Sec. 8-1-20. Copy on file.**

Three (3) copies of the Model Traffic Code adopted herein are now filed in the office of the Town Clerk and may be inspected during regular business hours. The 2020 edition of the Model Traffic Code is adopted as if set out at length.

##### **Sec. 8-1-30. Amendments.**

The Model Traffic Code is subject to the following additions, deletions or modifications:

- (1) Parking is allowed on Elk Avenue, subject to the restrictions set forth in Article 2 of this Chapter.
- (2) The provisions of this Chapter pertaining to alternate side of the street parking, winter parking and traffic and fire hydrant zones are hereby reaffirmed and made a part of the adopted code.
- (3) No person shall use any sidewalk within the Town for travel on skis, toboggans, coasting sleds, snowmobiles, roller skates, skateboards or similar devices.
- (4) Section 109 of the Model Traffic Code is hereby amended by adding thereto the following Paragraphs(13), (14), (15) and (16):
  - "(13) A snowmobile may be operated on the streets and highways under the jurisdiction of the Town only when such operation is authorized by a special ordinance or addition to this code and appropriate notice is given thereof, and then only in the manner and on such streets prescribed by such ordinance consistent with the provisions of state law."
  - "(14) A limited access snowmobile/snow cat route is designated within the Town of Crested Butte for use only by the Nordic Center. Said route shall be designated by the Town Manager no later than the 15th day of October of each year. Any snowmobile or snow cat operated on said route will conform to all applicable state laws regarding their operation, will conform to all ordinances and laws pertaining to the movement and operation of other vehicles and shall not be operated by anyone under the age of sixteen. The Nordic Center will be allowed to operate snowmobiles or

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snow cats on the route at any time provided that such operations are minimized in length and frequency."

- "(15) A limited access snow cat route shall be designated within the Town for the use by private individuals or business entities of rubber-tracked snow cat machines on Town public streets and highways. Said route shall be designated by the Town Manager by October 15 of each calendar year. Permission for the use of any snow cat shall be given by permit only, and once obtained from the Town as described herein below, shall be for a period beginning on November 1 and expiring on April 30 of the following calendar year. Any such snow cat shall be operated only on such route, and the use thereof shall at all times conform to applicable state laws and regulations regarding its operation on public streets and highways, including, without limitation, applicable licensing, registration and insurance requirements, shall conform to all ordinances and laws pertaining to the movement and operation of other vehicles and shall not be operated by anyone under the age of sixteen or between the hours of 9:00 p.m. and 7:00 a.m. A permitted private snow cat shall make no more than four (4) trips within Town per calendar day. For purposes hereof, 'trip' shall be an act of operating a snow cat on a public street or highway within Town."
- "(16) (a) A permit shall be first obtained from the Town before any snow cat may be used on public streets and highways. It is unlawful for any person to operate any snow cat on public streets and highways without a permit from the Town or to otherwise operate a snow cat in noncompliance with the provisions of this Section. The Town may issue no more than three (3) permits for Nordic operations and the operation of other snow cats on public streets and highways during each permitting period. Each snow cat shall, at a minimum: (i) be street lawful under applicable law; (ii) not exceed 20,000 pounds gross vehicle weight; (iii) without limiting the requirements of Chapter 8, Article 9 of the Crested Butte Municipal Code, not exceed the decibel levels prescribed for motor vehicles in Section 10-9-60; and (iv) be able to maintain posted speed limits within Town so as not to impede traffic flow."
- "(b) Application for a permit for the use of a snow cat on public streets and highways shall be submitted to the Town Manager on forms contained in the office of the Town Clerk. The Town Manager may reject any application for being incomplete. As a condition to granting such a permit, the Town shall receive, without limitation, from the applicant therefor, financial security (e.g., irrevocable standby letter of credit, payment bond) acceptable to the Town sufficient to pay for any damage to or destruction caused to public property by such snow cat."
- "(c) Permits for snow cats shall be publicly displayed on the snow cat when in use. A permit may be used for more than one (1) specific snow cat, provided that: (i) the application for such permit lists each snow cat that the permit applies to if more than one (1); (ii) where more than one (1) snow cat issued under a given permit, the permittee must be the same person, entity or business operation for all of the snow cats; and (iii) at all times when a snow cat is in use, the permit must be placed in a conspicuous place."
- "(d) The holder of a permit for a snow cat shall assume the risk and indemnify, defend and hold harmless the Town, its elected officials, officers, employees and agents against any and all claims arising from any occurrence occasioned by the permitted use and shall maintain, during the period of the permit, comprehensive general public liability and property damage insurance, naming the Town, its officers, elected officials, employees and agents as additional insureds, providing that the insurance is primary insurance and that no other insurance maintained by the Town shall be called upon to contribute a loss covered by the Town and providing for thirty (30) days' notice of cancellation or material change to the Town."

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- "(e) A permit issued under the provisions of this Section may not be transferred or assigned for any reason. Any such transfer or assignment shall make the subject permit void ab initio."
  - "(f) A snow cat permit is automatically renewable unless the permit is revoked in the same manner as other Town-issued licenses, provided that a permittee who desires to continue operating a snow cat under the permit after the expiration of the permit shall follow the application procedures required of a new applicant. All permits for snow cats issued under the provisions of this Section shall be for snow cats that are being operated in Town no less frequently than once per two (2) calendar weeks."
  - "(g) All snow cat permits shall be issued on a first-come, first-served basis. If two (2) or more applications are received simultaneously, the Town Manager shall determine priority by lot."
  - "(h) No more than one (1) permit for operation of a snow cat under the provisions of this Section may be held by any person, entity or business operation."

"(17) Skiing shall be permitted on the following Town streets:"

- "1. On the entire length of Butte Avenue, from the east boundary of Town to the west boundary of Town; and"
- "2. On First Street from Whiterock Avenue to Butte Avenue; and"
- "3. On Whiterock Avenue from the east side of Second Street to the west side of First Street; and"
- "4. On Third Street from Bellevue Avenue to Red Lady Avenue; and"
- "5. On Red Lady Avenue from Third Street to the Town Ranch; and"
- "6. On Eighth Street from Red Lady Avenue to Butte Avenue; and"
- "7. On Elk Avenue from the east side of Sixth Street to the east side of Block 69; and"
- "8. On Teocalli Avenue from the west boundary of Town to First Street."

"The explanatory map, attached to this Code as Appendix B, shall illustrate where skiers may traverse Town streets. Skiers on Town streets shall ski in a safe and prudent manner, and shall follow all rules and regulations generally applicable to pedestrians."

"(18) Kicksleds, coaster sleds and toboggans being pulled by human power, shall be allowed on the streets and alleys within the Town, provided that they not be allowed on Elk Avenue, on Sixth Street, on Gothic Road, or on Maroon Avenue west of First Street, except that such devices may be used only to cross these avenues and streets. Lights and reflectors, as defined in section 221 of this code, must be used on the devices between sunset and sunrise."

- (5) Subsection 802(1) of the Model Traffic Code is hereby amended to read as follows:
- "(1) When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be, to so yield to a pedestrian within a crosswalk."
- (6) Section 1204 of the Model Traffic Code is hereby amended by adding thereto the following language:  
"Without, in any respect, limiting the application of this section to the following examples, a vehicle shall be deemed to be parked in violation of this section if:  
"1. It is not moved to a different parking place at least once every twenty-four (24) hours during uninterrupted snowfall.

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"2. It is not moved to a new parking place within twenty-four (24) hours after a snowfall of six inches or more.

"3. It is parked so as two lanes of traffic cannot pass in the street."

(Ord. 19 §§2, 3, 1992; Ord. 16 §§1, 2, 1994; Ord. 46 §2, 1995; Ord. 2 §§2, 3, 2004; Ord. 4 §1, 2009; Ord. 13 §1, 2009; Ord. 31 §§1, 2, 2010; Ord. 37 §1, 2010; Ord. No. 33 , § 1, 11-20-2017)

### **Sec. 8-1-40. Application.**

This Article shall apply to every street, alley, sidewalk area, driveway, park and every other public way, place or parking area, either within or outside the corporate limits of the Town, the use of which the Town has jurisdiction and authority to regulate. The provisions of sections 1401, 1402, 1413 and Part 16 of the adopted Model Traffic Code, respectively concerning reckless driving, careless driving, eluding a police officer and accidents and accident reports, shall apply not only to public places and ways but also throughout the Town.

### **Sec. 8-1-50. Interpretation.**

This Article shall be so interpreted and construed as to effectuate its general purpose to conform with the State's uniform system for the regulation of vehicles and traffic. Article and section headings of this Article and the adopted code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section thereof.

### **Sec. 8-1-60. Violation; penalty.**

- (a) Any person who violates any of the provisions stated or adopted in this Article shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), by imprisonment not exceeding one (1) year, or by both such fine and imprisonment, except that the violation of a traffic infraction, as set forth in the state statutes, shall constitute a civil matter and shall be penalized by the payment of a fine. The fine amount shall be established pursuant to the penalty schedule set forth at Section 42-4-1701, C.R.S. Each day that any violation of this Article continues to exist shall constitute a separate and additional offense.
- (b) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article.
- (c) Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (d) The remedies provided in this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.

(Ord. 19 §4, 1992; Ord. 46 §3, 1995; Ord. 7 §1, 2001; Ord. 4 §1, 2009)

## **ARTICLE 2 Parking Regulations**

### **Sec. 8-2-10. Intent and purpose.**

The Town Council finds and declares that the provisions of this Article are enacted for the following reasons:

- (1) To reduce hazardous traffic conditions resulting from the use of streets within residential districts for vehicles parked by persons not residing within the Town;

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- (2) To protect the Town's citizens and visitors from polluted air, excessive noise and refuse caused by the entry of such vehicles;
  - (3) To protect the residents from unreasonable burdens in gaining access to their residences;
  - (4) To preserve the character of Town;
  - (5) To encourage the use of public transportation;
  - (6) To promote efficiency in the maintenance of streets in a clean and safe condition;
  - (7) To preserve the value of the property in Town;
  - (8) To promote traffic safety and the safety of children and other pedestrians;
  - (9) To forestall dangers arising from the blocking of fire lanes, hydrants and other facilities required by emergency vehicles, both in reaching victims and in transporting them to hospitals;
  - (10) To facilitate the movement of traffic in the event of accidents and other disasters; and
  - (11) To promote the peace, comfort, convenience and welfare of all inhabitants of the Town.

## **Sec. 8-2-20. Definitions.**

The following definitions shall apply to the interpretation and enforcement of this Article:

*Abandon* means to leave a thing with the intention not to retain possession of or assert ownership over it. The intent need not coincide with the act of leaving.

*East side* of any roadway shall mean that part of any north-south street or alley which is geographically east of the curb placement of said street or alley.

*Fire hydrant zone* means the area adjacent to every fire hydrant within the Town, extending five (5) feet along the curb in each direction from every fire hydrant, then running perpendicular from each curb to the centerline of the roadway.

*Maintained public parking* means the seven (7) feet beyond the roadway on either side and within the street, which may also be described as seven (7) feet beyond the curbs on either side.

*North side* of any roadway shall mean that part of any east-west street or alley which is geographically north of the curb placement of said street or alley.

*Park* shall mean to leave a vehicle or to allow a vehicle to remain stationary and unoccupied on a public street or alley.

*Public snow storage* means the remaining nonmaintained portion of the street beyond the maintained public parking on either side available for private parking and snow storage.

*Roadway* means that portion of a street improved, designed or ordinarily used for vehicular travel and designated as that portion of the street between curbs or twelve (12) feet on either side of the centerline of the street. The entire width of the alley is designated as roadway.

*South side* of any roadway shall mean that part of any east-west street or alley which is geographically south of the curb placement of said street or alley.

*Street* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; but does not include *alleys* which are only seasonally maintained and are considered as public service access only for purposes of this Article.

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*Vehicle* shall mean any device which is capable of moving itself or of being moved from place to place upon wheels, including but not limited to automobiles, four-wheel drive vehicles, trucks, all-terrain vehicles, snowmobiles, tractors, backhoes, trailers and other mechanized conveyances and machinery.

*West side* of any roadway shall mean that part of any north-south street or alley which is geographically west of the curb placement of said street or alley.

### **Sec. 8-2-30. Parking.**

In addition to provisions of the Model Traffic Code as adopted by the Town in Article 1 of this Chapter, the requirements set forth in this Article shall apply.

### **Sec. 8-2-40. Prohibited parking.**

Parking within the roadway is prohibited.

### **Sec. 8-2-50. Winter Parking Rules.**

- (a) The requirements of this Section collectively known as "Winter Parking Rules" shall apply from November 1 to April 30, unless the Town Manager gives proper notice to the public that conditions no longer exist that necessitate implementation of the provisions of this Section.
- (b) On odd numbered days between 10:00 p.m. and 10:00 a.m. the next day, it shall be unlawful to park a vehicle on any odd numbered address of any street or alley, except Elk Avenue from Sixth Street to First Street.
- (c) On even numbered days between 10:00 p.m. and 10:00 a.m. the next day, it shall be unlawful to park a vehicle on any even numbered address of any street or alley, except Elk Avenue from Sixth Street to First Street.
- (d) On every day between the hours of 2:00 a.m. and 8:00 a.m., it shall be unlawful to park a vehicle:
  - (1) On Elk Avenue from Sixth Street to First Street.
  - (2) In the following Town public parking lots:
    - a. The lots immediately east of the intersection of Sixth Street and Elk Avenue.
    - b. The lot immediately south of the intersection of First Street and Elk Avenue.
    - c. The lot at the Crested Butte Nordic Center/Big Mine Park.
    - d. The lot on the north side of the alley west of Second Street between Elk Avenue and Maroon Avenue.
    - e. The lot at the Fire Hall located at 306 Maroon Avenue.
    - f. The lot immediately north of the Crested Butte Mountain Heritage Museum located at 331 Elk Avenue.
- (e) On every day between the hours of 2:00 a.m. and 7:00 a.m., it shall be unlawful to park a vehicle on Third Street from one hundred twenty-five (125) feet north of Elk Avenue to one hundred twenty-five (125) feet south of Elk Avenue.
- (f) On every day, between Elk Avenue and Sopris Avenue and Elk Avenue and Maroon Avenue from one hundred (100) feet west of Second Street to one hundred fifty (150) feet east of Third Street, it shall be

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unlawful to park a vehicle in the alleys and to place a trash collection device, including Dumpsters, on any public street, alley or right-of-way.

- (g) No person shall park a vehicle at any time on the west side of Second Street from Elk Avenue to Sopris Avenue and on the south side of Whiterock Avenue from Second Street to one hundred (100) feet east of Second Street.

(Prior code 11-2-3; Ord. 11 §1, 1989; Ord. 6 §1, 1991; Ord. 15 §1, 1991; Ord. 7 §1, 2006; Ord. 4 §1, 2009; Ord. No. 12 , § 1, 5-21-2018)

### **Sec. 8-2-60. Designated loading zones.**

Between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, no parking at all shall be permitted in the designated loading zones located:

- (1) On the north side of Elk Avenue, between First Street and Second Street. This designated loading zone is approximately seventy (70) feet in length.
- (2) On the east side of Second Street, between Coal Creek and Elk Avenue. This designated loading zone is approximately sixty-four (64) feet in length.
- (3) On the north side of Elk Avenue between Second Street and Third Street. This designated loading zone is approximately seventy (70) feet in length.
- (4) On the north side of Elk Avenue between Third Street and Fourth Street. This designated loading zone is approximately thirty-eight (38) feet in length.

Between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, parking shall be permitted for a maximum of ten (10) minutes per vehicle in the designated loading zones located:

- (1) On the north side of Elk Avenue, between Second Street and Third Street, the designated loading zone is approximately forty (40) feet in length.

### **Sec. 8-2-70. Stalled or inoperative vehicles.**

- (a) No person operating a motor vehicle during the effective period of the Winter Parking Rules shall allow such vehicle to become stalled wholly or partly because the drive wheels thereof are not equipped with effective tire chains or snow tires.
- (b) No person operating a motor vehicle during the effective period of the Winter Parking Rules on which there is a parking prohibition in effect shall allow such vehicle to become stalled or to become inoperative.

(Prior code 11-2-3)

### **Sec. 8-2-80. Two-hour parking limits.**

These following provisions shall be collectively known as the "Two-Hour Parking Limits":

- (1) The two-hour parking limits shall be in effect throughout the year, as provided for below.
- (2) Between the hours of 8:00 a.m. and 8:00 p.m., it shall be unlawful to park a vehicle for longer than two (2) hours within the area of Elk Avenue, from the west side of Sixth Street to the east side of First Street, on Second Street from the alley between Elk Avenue and Sopris Avenue to the alley between Elk Avenue and Maroon Avenue, on Third Street from Sopris Avenue to Maroon Avenue, on Fourth Street from Sopris Avenue to Maroon Avenue, and on Fifth Street from the alley between Elk Avenue

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and Sopris Avenue to the alley between Elk Avenue and Maroon Avenue, except that parking in designated loading zones, Monday through Fridays, is regulated pursuant to Section 8-2-60 above, and the 10-minute parking area regulated pursuant to Section 8-2-82 below. At all times during which the designated loading zone rules contained in Section 8-2-60 above or the Winter Parking Rules contained in Section 8-2-50 above are not applicable, then parking is permitted in those designated loading zones for not more than two (2) hours per vehicle, with the exception of the designated loading zone located on Second Street, to which the two-hour parking limits do not apply.

### **Sec. 8-2-82. 10-minute parking limits.**

These following provisions shall be collectively known as the "10-Minute Parking Limits":

- (1) The 10-minute parking limits shall be in effect during the one-way operation of Elk Avenue.
- (2) Between the hours of 8:00 a.m. and 8:00 p.m., it shall be unlawful to park a vehicle for longer than 10-minutes on Elk Avenue, on the marked 100-feet on the south side of Elk Avenue between Second Street and Third Street.

### **Sec. 8-2-85. Residential and employee permitted parking.**

Only persons with a current Town issued residential, or employee parking permit shall be allowed to park on:

- (1) Maroon Avenue from west of Fifth Street.
- (2) Sopris Avenue from west of Sixth Street.
- (3) Elk Avenue from west of First Street.
- (4) First Street from the alley between Whiterock Avenue and Sopris Avenue to the alley between Sopris Avenue and Elk Avenue and from the alley between Elk Avenue and Maroon Avenue to the alley between Maroon Avenue and Gothic Avenue.
- (5) Second Street from the alley between Whiterock Avenue and Sopris Avenue to the alley between Sopris Avenue and Elk Avenue and from the alley between Elk Avenue and Maroon Avenue to the alley between Maroon Avenue and Gothic Avenue.
- (6) Fifth Street from the alley between Whiterock Avenue and Sopris Avenue to the alley between Sopris Avenue and Elk Avenue and along the west side of Fifth Street from Maroon Avenue to the alley between Maroon Avenue and Gothic Avenue.

### **Sec. 8-2-90. Licensing for off-street private use.**

The Town Manager is hereby authorized to issue revocable licenses to property owners within the Town for landscaping and access upon consideration of the following:

- (1) The effect on the safety of the residents and visitors from intensive vehicle parking;
- (2) The difficulty or inability of residents and visitors of the immediate area to obtain adequate curbside parking adjacent to or near residences and businesses because of widespread use of available curbside parking spaces by nonresident motorists;
- (3) The likelihood of alleviating any problem of nonavailability of residential parking spaces;
- (4) The desire of the residents in the immediate area for the institution of a license in that area;
- (5) The need for some parking spaces to be available in the area for use by the general public;

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- (6) The actual planned use to be made of the public property and the exact dimensions of the portion of the street to be so used; and
  - (7) The effect on snow removal and storage.

### **Sec. 8-2-100. Residential parking permit signs.**

- (a) The Town shall post signs within the Town giving reasonable notice of the provisions of this Article.
- (b) The signs shall be of such character as to inform readily an ordinarily observant person that parking is prohibited within the Town roadways; and signs shall be of such character and placed frequently enough to readily inform an ordinarily observant person of the Winter Parking Rules, two-hour limits, and residential and employee parking permit areas.

(Prior code 11-2-5; Ord. 4 §1, 2009; Ord. 9 , § 4, 2021)

### **Sec. 8-2-110. Regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **Sec. 8-2-120. Abandonment of vehicles.**

- (a) It is unlawful for any person to abandon any vehicle upon a street, highway, alley, right-of-way or any other Town property, or upon any private property within the Town without the express consent of the owner or person in lawful charge of such private property.
- (b) It is prima facie evidence of the necessary intent to abandon the vehicle that:
  - (1) The vehicle has been left for more than seven (7) days unattended and unmoved;
  - (2) License plates or other identifying marks have been removed from the vehicle;
  - (3) The vehicle has been extensively damaged or deteriorated; or
  - (4) The owner has been notified by the Town Marshal or a deputy marshal to remove the vehicle, and it has not been removed within three (3) days after notification.

(Prior code 11-2-7; Ord. 19 §6, 1992; Ord. 4 §1, 2009)

### **Sec. 8-2-130. Parking in fire hydrant zones.**

- (a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control device, as follows:
  - (1) In any fire hydrant zone; or
  - (2) In any manner so as to obstruct access to a fire hydrant.
- (b) Any person who violates any provision of this Section may be fined up to one thousand dollars (\$1,000.00) for each offense.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Section.

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- (d) Any person violating any provision of this Section shall be liable to the Town for any expense, loss or damage, including reasonable attorney's fees, occasioned by reason of such violation.
  - (e) The remedies provided by this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.

(Prior code 11-3-2, 11-3-3; Ord. 19 §8, 1992; Ord. 4 §1, 2009)

### **Sec. 8-2-140. Restrictions on parking of vehicles for certain purposes.**

- (a) It shall be unlawful, except as otherwise permitted in any license given to such person by the Town, for any person to park any vehicle upon the Sixth Street right-of-way or in any roadway, street, maintained public parking, public snow storage or alley within one hundred (100) feet of the Sixth Street right-of-way for the purpose of:
  - (1) Displaying such vehicle for sale (for four [4] hours or greater).
  - (2) Soliciting business.
  - (3) Selling merchandise from such vehicle.
  - (4) Dead or broken down (whether temporary or permanent in nature) storage.
- (b) It shall be unlawful, except as otherwise permitted in any license given to such person by the Town, for any person to park any vehicle on any Town-owned or controlled parking lot or other facility for the purpose of:
  - (1) Displaying such vehicle for sale (for four [4] hours or greater).
  - (2) Soliciting business.
  - (3) Selling merchandise from such vehicle.
  - (4) Dead or broken down (whether temporary or permanent in nature) storage.
- (c) No person whose business involves the repairing, servicing, towing, wrecking or salvaging of vehicles shall park, leave standing or store any vehicle on any roadway, street, maintained public parking, public snow storage, alley or Town-owned or controlled parking lot or other facility after that person has accepted, obtained or exercised custody of the vehicle, except as otherwise permitted in any license given to such person by the Town.

(Ord. 26 §1, 2010)

### **Sec. 8-2-150. Violation and penalty.**

- (a) Penalty. Any person who is convicted of, or admits guilt to, a violation of this Article shall be guilty of a traffic infraction and shall be fined for such violation in accordance with the fine schedule adopted by Town as part of its annual fee schedule.
- (b) Evidence with respect to vehicles parked or left in violation of Article. In any prosecution with regard to a vehicle parked or left in a place or in a condition in violation of any provision of this Article, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this Article, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall be *prima facie* evidence that the defendant was the person who parked or left the vehicle in violation of this Article.

(Prior code 11-2-8; Ord. 19 §7, 1992; Ord. 2 §5, 2004; Ord. 4 §1, 2009; Ord. 26 §1, 2010; Ord. 9 , § 5, 2021)

## ARTICLE 3 Towing and Impoundment Regulations

### Sec. 8-3-10. Legislative intent.

The purpose of this Article is to protect the public health, safety and welfare by prohibiting the storage of abandoned or inoperable vehicles on public property and to establish procedures for removing from public or private property any vehicle that obstructs traffic, is so defective as to pose a safety hazard, is involved in criminal conduct or whose impoundment is otherwise authorized.

### Sec. 8-3-20. Authority to impound vehicle.

- (a) A peace officer is authorized to remove or cause to be removed a vehicle from any public or private property when:
- (1) A vehicle is situated in a manner that it obstructs the normal movement of traffic or creates a hazard to other traffic on a public street, public alley or public parking lot and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;
  - (2) A vehicle being driven on a street is so defective as to pose an imminent hazard to the public safety;
  - (3) A vehicle is found unattended and situated in a manner that obstructs the commencement or ongoing operation of a public construction, maintenance or repair project or street closure; and seventy-two (72) hours' advance notice of the parking prohibition, the time it is effective and that the vehicle will be towed away at the owner's expense has been conspicuously posted and reasonable efforts have been made to maintain notice on the site;
  - (4) The driver of a vehicle is taken into custody by the Marshal's Department;
  - (5) Removal of a vehicle is necessary in the interest of the public health or safety because of fire, flood, snow, storm or other emergency, and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;
  - (6) There is probable cause to believe that the operator's license of the driver of a vehicle is suspended, revoked, denied or canceled;
  - (7) There is probable cause to believe that a vehicle is stolen;
  - (8) A vehicle blocks ingress to or egress from a public or private driveway, and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;
  - (9) Tow-away zones:
    - a. A vehicle has been found upon a street, public parking lot or other public property in a signed "tow away zone," and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;
    - b. A vehicle has been found parked at a parking space on a street with parking limits for seventy-two (72) or more hours without being moved, there is a warning on the sign which indicates that such a vehicle may be towed and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;
  - (10) Impoundment is authorized by Sections 8-3-60 and 8-3-70 of this Article, except that if, but for a ticket issued to the vehicle while it was being operated under a lease whose term was less than thirty (30)

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days, impoundment or immobilization of such vehicle would not have been authorized under said Sections, then no such vehicle shall be impounded or immobilized under the authority of this Subsection after the Municipal Court has been notified of such lease;

- (11) A vehicle is parked in a space designated for handicapped parking without displaying the placard or license plate required by that section; such space is also designated as a "tow away" space by any sign or pavement marking on or near the space using the term "tow away," displaying a tow-away symbol, or otherwise reasonably indicating that vehicles illegally parked in such space will be towed away; and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal;
  - (12) The Town Manager has posted "tow-away" no-parking zones within any park, parkway, recreation area or open space to clear off-street parking areas after designated hours of operation and to clear designated fire roads and other emergency access routes and a vehicle is parked in violation of such traffic control devices; or
  - (13) There is probable cause to believe that a vehicle is being vandalized or its parts are being stolen, and reasonable inquiries have been made on abutting properties in an effort to locate the person in possession of the vehicle.
- (b) Within seventy-two (72) hours of the time that a motor vehicle is impounded pursuant to Subsection (a) above, the Town Manager shall give notice by certified or first-class mail to the registered owner of such motor vehicle:
- (1) That the motor vehicle has been removed and impounded;
  - (2) Of the reason therefor;
  - (3) Of the location of the vehicle;
  - (4) That the vehicle owner has a right to contest the validity of the impoundment by requesting a prompt hearing within fifteen (15) days from the date on which such notice is mailed;
  - (5) That if the vehicle is not claimed by the owner or the owner's authorized agent and any accrued removal and storage charges are not paid in full within thirty (30) days of the date on which the notice is mailed, the vehicle will be sold. If the vehicle has been appraised at a reasonable market value of less than two hundred dollars (\$200.00), the notice shall so state and shall indicate that the period for payment and reclaiming of the vehicle before sale is fifteen (15) days;
  - (6) If the vehicle is not registered in Colorado, or if the license plate or vehicle identification number is expired, altered or missing, the Town Manager shall send the notice required in this Section as soon as reasonably practicable, but without regard to the seventy-two-hour limit;
  - (7) If the vehicle was impounded pursuant to Sections 8-3-60 and 8-3-70 of this Article, the notice shall also specify the total amount of fines, late fees, scofflaw fees and administrative impound fees which must also be paid before the vehicle may be reclaimed; and
  - (8) If the vehicle was reclaimed from impoundment or a hearing concerning the impoundment was set before the notice required by this Section was sent, then no such notice need be given.
- (c) Nothing in this Chapter shall be deemed to restrict the authority possessed by any peace officer under other provisions of law to seize any motor vehicle or part thereof if it is or contains evidence or is an instrumentality of a crime. Such provisions include, without limitation, the authority to seize a vehicle when there is probable cause to believe that a vehicle has been involved in a hit-and-run accident or contains stolen parts, or when a search of a vehicle has been authorized by court order. The release of any vehicle so seized shall be governed by the provisions of law under which it was seized. When such vehicle is released pursuant to such provisions, its owner shall be notified and shall not be liable for the towing or storage

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charges attributable solely to such seizure, but shall be liable for such costs to the extent attributable to any charge which arose concurrently under this Chapter. Any vehicle not retrieved within seventy-two (72) hours of notice under this Subsection shall be deemed abandoned, and the Town Manager shall dispose of such vehicle in accordance with Section 8-3-80 of this Article.

- (d) This Section does not apply to bicycles.

(Ord. 12 §1, 2005)

**Sec. 8-3-30. Abandoned or inoperable vehicles.**

- (a) Any vehicle left in one (1) location upon any public property without the consent of the property owner, for a continuous period of more than seventy-two (72) hours constitutes an abandoned vehicle, which is a public nuisance. Proof that the vehicle's odometer shows movement of no more than two-tenths (0.2) of a mile during a period of at least seventy-two (72) hours shall constitute prima facie evidence that the vehicle was left in one (1) location.
- (b) Any inoperable vehicle or any parts thereof left on any public property constitutes an inoperable vehicle, which is a public nuisance.
- (c) If a peace officer has probable cause to believe that a vehicle left unattended on public property is an abandoned or inoperable motor vehicle, the officer shall leave under the windshield wiper or otherwise attach to the vehicle a conspicuous warning notice that:
  - (1) States the date and the time that the notice was attached to the vehicle;
  - (2) Orders removal of an inoperable vehicle, as prescribed by Subsection (d) below, or the moving of an abandoned vehicle, as prescribed by Subsection (a) above, from the location within seven (7) days of the notice;
  - (3) Warns that, if the vehicle is still parked in violation of Subsection (a) or (d) of this Section after seven (7) days from the date of the notice, it may be impounded by order of the Marshal's Department and that the vehicle owner will be liable for the expenses of such impoundment; and
  - (4) Advises the person in possession of the vehicle that such person has a right to a prompt hearing to determine whether or not the vehicle has been parked in violation of Subsection (a) or (b) of this Section, if such person requests such hearing within seven (7) days from the date and time that such notice is attached to the vehicle.
- (d) Within forty-eight (48) hours of the time that a notice is attached to a vehicle under Subsection (c) above, the Town Manager shall give written notice by certified or first class mail to the registered owner of the vehicle containing all of the information described in Subsection (c) above. The notice shall also advise the owner that, if the vehicle is towed and is not claimed by the owner or the owner's authorized agent and the amount of any accrued removal and storage charges and the impoundment fee are not paid within thirty (30) days from the date and time that the vehicle is impounded, the vehicle will be sold. If the vehicle has been appraised at a reasonable market value of less than two hundred dollars (\$200.00), the notice shall so state and shall indicate that the period for payment and reclaiming of the vehicle before sale is fifteen (15) days.
- (e) If the vehicle is not registered in Colorado, or if the license plate or vehicle identification number is expired, altered or missing, the Town Manager shall send the notice required in this Section as soon as is reasonably practicable, but without regard to the forty-eight-hour limit.
- (f) If an abandoned or inoperable vehicle or any part thereof is still parked in violation of Subsection (a) or (b) above after seven (7) days from the date and time that the notice prescribed by Subsection (d) above is

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attached to the vehicle, a peace officer may cause the vehicle and parts thereof to be removed and impounded by a towing carrier, unless a hearing requested pursuant to Section 8-3-40 of this Article is pending or unless a hearing officer has determined that the vehicle is not parked in violation of this Section.

- (g) A vehicle or parts impounded pursuant to this Section shall be released to its owner when payment to the Town of an administrative impoundment fee of an amount established by resolution of the Town Council, and payment to the towing carrier of the costs of towing and storage, unless ordered released as a result of a hearing held pursuant to Section 8-3-40.
- (h) This Section does not apply to bicycles.

(Ord. 12 §1, 2005; Ord. 4 §1, 2009)

### **Sec. 8-3-40. Hearing.**

- (a) The owner of a vehicle impounded by or at the request of the Town pursuant to this Article or a person in possession of a vehicle at the time it was so impounded is entitled to a hearing regarding the impoundment, if such person requests a hearing within fifteen (15) days from the date the notice of impoundment was mailed or within fifteen (15) days of reclaiming the vehicle from impoundment if no notice was mailed and if such person had no hearing prior to the time of the impoundment. The hearing shall be conducted before a judge or a hearing officer appointed by the presiding judge of the Municipal Court within five (5) business days of the time of request for the hearing, unless the person requesting the hearing waives the five-day requirement. If a person requests a hearing and secures the release of the vehicle pursuant to Subsection (b) below, and a summons and complaint or parking ticket has been issued which alleges a violation of this Article which formed the basis of the impoundment, the hearing officer may schedule the hearing provided by this Section to coincide with the trial of the infraction, or may continue the hearing to such time. Within forty-eight (48) hours of a request for a hearing under this Section, the hearing officer shall obtain from the responsible Town department the records concerning the impound and shall determine from these records, and from any supplementary affidavits as the responsible department may provide, whether or not probable cause existed for the impoundment of the vehicle. If the hearing officer determines that no probable cause existed for the impoundment based on these written materials, the hearing officer shall so find, shall issue a final order that the vehicle shall be released immediately to the person entitled to possession and shall assess the costs of removal and impoundment against the Town. Copies of such order shall be provided to the responsible Town department and mailed to the person requesting the hearing. If the hearing officer determines that probable cause existed, the hearing officer shall so notify the responsible Town department and the person requesting the hearing at the hearing, but such a finding shall not change the burden of proof at such hearing.
- (b) A person who requests a post-impoundment hearing may obtain the release of the vehicle prior to the hearing by posting a bond in the amount of the towing and storage charges due as of the date of the request, plus an amount established by resolution of the Town Council in administrative costs. If such person fails to appear at the date and time of the scheduled hearing, the hearing request shall be dismissed with prejudice, and the bond amount shall be forfeited to the Town.
- (c) The party requesting the hearing bears the burden of establishing that such person has the right to possession of the vehicle. The Town bears the burden of establishing the validity of the proposed or completed impoundment. The standard of proof is a preponderance of the evidence.
- (d) Failure of any person to request an impoundment hearing within the time provided or attend any such hearing constitutes a waiver of the right to such hearing and a determination of all issues then existing as supporting the impoundment or immobilization.

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- (e) At a hearing prior to the impoundment of a vehicle allegedly parked in violation of Section 8-3-30 of this Article, the hearing officer shall determine whether the vehicle is parked in violation of such Section. If the hearing officer so finds, he or she shall order the vehicle removed and impounded and assess the costs thereof against the vehicle.
  - (f) At a hearing following the impoundment of a vehicle pursuant to Sections 8-3-20 and 8-3-30 above, or immobilization of a vehicle pursuant to Section 8-3-70 below, the hearing officer shall determine whether the vehicle was subject to impoundment under Section 8-3-20 or 8-3-70, or was parked in violation of Section 8-3-30. If the hearing officer so finds, the hearing officer shall assess the costs of removal and impoundment, including without limitation any administrative impound fee, against the vehicle. If the hearing officer does not so find, he or she shall order the vehicle released immediately to the person entitled to possession and shall assess the costs of removal and impoundment against the Town.
  - (g) This Section does not apply to bicycles.

(Ord. 12 §1, 2005; Ord. 4 §1, 2009)

### **Sec. 8-3-50. Failure to claim vehicle.**

If a vehicle, other than a bicycle, that has been impounded by the Town pursuant to this Article is still under impoundment seventy-two (72) hours from the time at which notice prescribed by this Article has been mailed to the registered owner and the owner has not requested a hearing pursuant to Section 8-3-40 above or obtained the release of the vehicle by paying accumulated removal and impoundment charges, the vehicle shall be deemed abandoned, and the Town Manager shall dispose of such vehicle in accordance with Section 8-3-80 of this Article. However, disposal shall be stayed if a timely request is made for a hearing as provided by this Article.

### **Sec. 8-3-60. Parking infractions and scofflaw list.**

- (a) Any person wishing to pay a fine for a parking infraction may pay the fine before or after the date specified in the parking ticket at the Town Clerk's office. Such payment discharges the obligation to pay the fine and results in dismissal of the case.
- (b) Courtesy notice of overdue parking ticket:
  - (1) The Town may give notice by first-class mail to the registered owner of any vehicle for which there is an overdue parking ticket, stating that there has been no response to the ticket and:
    - a. The date and the nature of the ticket overdue and the amount, including late fees, due.
    - b. That a response is due within ten (10) days after the date of mailing.
    - c. That the owner shall, by said deadline, respond to the notice by paying the total amount due or by arranging a hearing with the Town Clerk for contesting the charges, fees and amounts due, in which case the owner shall post a cash bond for the total amount due or make other arrangements approved by the Municipal Judge.
    - d. That, if the vehicle owner fails to respond within the prescribed time period, the owner will forfeit the right to a trial or hearing to contest the tickets and a default judgment will be entered.

The letter may also explain the scofflaw provisions of this Section.

- (2) The notice allowed by this Subsection is sufficient if mailed to the address provided by a government vehicle registration office. If the Town is unable, after exercising due diligence, to discover any mailing address, then notice is sufficient if it is published once in a newspaper of general circulation in the

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Town, posted on the vehicle, personally served on the vehicle owner or driver or provided by any other means that provides due process.

- (3) If the date for response specified in the letter passes without payment of the fines and fees or posting of sufficient bond, a default judgment shall be deemed entered upon all tickets specified in the notice.
- (c) As frequently as practicable, the Town shall prepare and update the scofflaw list (which may also be known as the "pick-up list"), consisting of vehicles involved in such number of overdue parking tickets as the Town shall determine is sufficient to include on the pick-up list.
  - (1) There is hereby imposed upon the owner of every vehicle on the scofflaw list a civil penalty in accordance with the fine schedule adopted by Town as part of its annual fee schedule.
  - (2) The Town shall give notice by first class mail to the registered owner of each vehicle on the scofflaw list, stating that the vehicle is on the scofflaw list and:
    - a. The date and the nature of each ticket overdue and the amount due on each;
    - b. That a scofflaw list fee in the amount specified in Paragraph (c)(1) above has been imposed to cover administrative costs;
    - c. The total amount currently due;
    - d. A specific deadline for response, no less than ten (10) days after the date of mailing;
    - e. That the owner shall, by said deadline, respond to the notice. Response shall be by paying the total amount due. However, for any ticket for which a courtesy notice has not previously been mailed and a default judgment entered, response may also be made by arranging a hearing with the Town Clerk for contesting the charges, fees and amounts due, in which case the owner shall post a cash bond for the total amount due or make other arrangements approved by the Municipal Judge;
    - f. That, if the vehicle owner fails to respond within the prescribed time period, the listed vehicle will be subject to immediate immobilization or impoundment. For any ticket for which a courtesy notice has not previously been mailed and a default judgment entered, the notice shall also state that, if the date for response specified in the scofflaw notice passes without payment of the fines and fees or posting of sufficient bond, a default judgment shall be deemed entered upon all tickets specified in the notice, and the owner will forfeit the right to a trial or hearing to contest the tickets. If a default judgment has previously been entered, the notice shall so state;
    - g. That an immobilization or impoundment fee in the amount specified in subsection (c)(1) above will be imposed upon every vehicle immobilized or impounded to cover administrative costs; and
    - h. That, if the vehicle is impounded, the owner will also be required to pay the costs of towing and storage.
  - (3) The notice required by Paragraph (c)(2) above is sufficient if mailed to the address provided by a government vehicle registration office. If the Town is unable, after exercising due diligence, to discover any mailing address, then notice is sufficient if it is published once in a newspaper of general circulation in the Town, posted on the vehicle, personally served on the vehicle owner or driver or provided by any other means that provides due process.
  - (4) If the date for response specified in Subparagraph (c)(2)d. of this Section passes without payment of the fines and fees or, if permitted, posting of sufficient bond, such vehicle may be immobilized or impounded and a default judgment, if not previously entered, shall be deemed entered upon all tickets specified in the notice.

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- (5) Upon contacting the driver of any vehicle on the scofflaw list for which no response has been made within the deadline stated in the notice while that vehicle is located upon any public property or private property open to the use of the public, a peace officer shall inform the driver thereof that violations are alleged against the vehicle to which no response has been made and request the driver forthwith to appear with the officer at the Town Clerk's office (or to the Marshal's Office after the office's normal business hours) to respond to the charges in the manner indicated by this Section. If such driver fails or refuses to comply with this request forthwith, if such driver cannot demonstrate that the driver has on the driver's person sufficient cash or other means of payment of a type approved by the Municipal Court, or if the vehicle located is unattended at the time the officer initially determines that it is subject to impoundment or immobilization, the peace officer shall cause such vehicle to be immobilized or impounded.
  - (6) If the owner or an agent of the owner pays the fines and fees, including the amount specified above, if any, and all towing and storage charges, if any, posts a bond to cover such fines, fees and charges, or arranges any combination of payment and bond to cover the total due, the Town shall remove such vehicle from the scofflaw list and release it from immobilization or impoundment. If any parking ticket not included on the scofflaw list for which the owner is liable becomes overdue before the owner or agent appears to pay or post bond, such subsequent tickets shall also be paid or bond shall be posted therefor before the vehicle is removed from the scofflaw list or released from immobilization or impoundment.
- (d) The owner of a vehicle that is subject to the procedures of this Section and Section 8-3-70 below is entitled to:
- (1) A trial conducted under the usual procedures for allegations of violation of a parking infraction, to dispute any of the underlying parking tickets not in default. Whether or not the vehicle was parked in violation of the provision alleged shall be the only issue at such a trial;
  - (2) A hearing, if a motion is filed with the court to set aside the default on any ticket on the ground that the notice required by this Section before a default may be entered was not properly given;
  - (3) An administrative hearing to dispute the applicability of the scofflaw fee on the ground that a parking ticket was not served. Such hearing shall be conducted in the same manner as and, where applicable, shall be combined with, the hearing under Section 8-3-40 of this Article, concerning the immobilization or impoundment fee. The fact that a person is found not guilty of one (1) or all of the underlying parking tickets is not relevant to the issue of the applicability of the scofflaw fee; and
  - (4) A post-impoundment hearing to challenge the immobilization or impoundment fee as prescribed by Section 8-3-40 of this Article.

(Ord. 12 §1, 2005; Ord. 4 §1, 2009; Ord. 9 , § 7, 2021)

## **Sec. 8-3-70. Booting.**

- (a) At the discretion of a peace officer, any vehicle on the scofflaw list subject to impoundment under Section 8-3-60 above may first be immobilized by installing on such vehicle a device known as a *boot*, which clamps and locks on to a wheel of the vehicle and impedes movement of such vehicle.
- (b) The person installing the boot shall leave under the windshield wiper or otherwise attach to such vehicle a notice advising the owner that such vehicle has been booted by the Town for failure to pay or contest one (1) or more parking tickets; that release of the boot may be obtained by paying the fines and fees due or by posting a bond to cover such amounts; that, unless such payments are made, the vehicle will be impounded; and that it is unlawful for any person to remove or attempt to remove the boot, to damage the boot or to move the vehicle with the boot attached.

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- (c) No parking restriction otherwise applicable to the vehicle applies while the vehicle is immobilized by a boot installed under the provisions of this Section.
  - (d) Upon notification that the vehicle has been removed from the scofflaw list, the Town shall promptly remove the boot from such vehicle.

(Ord. 12 §1, 2005)

### **Sec. 8-3-80. Disposition of motor vehicles.**

The Town Manager may dispose of impounded motor vehicles in any of the following ways:

- (1) By following the procedures provided by state law for disposal of abandoned vehicles; or
- (2) If the Town Manager determines that some other method of disposal is more efficient, the Town Manager may adopt such a method. Such method shall provide:
  - a. Reasonable notice to the owner and any lienholders of record by mail or publication at least thirty (30) days before disposition of the vehicle. However, if the vehicle has been appraised to determine its reasonable market value by the Town Marshal, by any employee of the Marshal's Department designated by the Town Marshal or by a licensed motor vehicle dealer as having a value of less than two hundred dollars (\$200.00), then the vehicle may be disposed of no less than fifteen (15) days after the date of the notice. Notice is deemed given on the date it is delivered, mailed or published, whichever is earliest. The notice shall indicate whether the holding period is fifteen (15) or thirty (30) days. Before giving notice, the Town Manager shall make inquiry through the licensing authority of the State of registration of the vehicle, if that can be ascertained from the license plate or vehicle identification number, if any, as to the name and mailing address of the owner and lienholders of record. Notice shall be delivered or sent by first-class or certified mail to such persons. If the Town Manager's inquiries produce no information, the Town Manager shall publish the notice at least once in a newspaper of general circulation in the Town. The notice shall state the grounds upon which impoundment was authorized, the location of the vehicle and the person to whom the owner or lienholder may apply to reclaim the vehicle prior to its disposal. Notice given to the owner pursuant to Section 8-3-20 or 8-3-30 of this Article satisfies the requirement of this Section for notice to the owner.
  - b. For disposition of the vehicle:
    - 1. If the vehicle has been appraised and the towing and storage charges at the end of the applicable holding period exceed the appraised value, then the Town Manager may sell the vehicle to the towing and impoundment lot operators, if such were involved, for the amount of the accrued charges;
    - 2. The Town Manager may sell the vehicle at a private sale; or
    - 3. The Town Manager may sell the vehicle at a public sale.
  - c. For delivery of a bill of sale to the purchaser. The Town Manager shall send a copy of such bill of sale, together with a written report of the sale, to the Colorado Department of Revenue. If the appraised value of the vehicle was less than two hundred dollars (\$200.00), or if, in the case of a vehicle sold without appraisal, the sale was for less than two hundred dollars (\$200.00), the bill of sale shall state that the vehicle is sold only for the purpose of junking or dismantling the vehicle, and that the purchaser acquires no right to a certificate of title for such vehicle. Such purchaser shall also be given a copy of the report which is sent to the Colorado Department of Revenue.

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- d. For disposition of the proceeds from a sale pursuant to Subparagraph b.2. or b.3. of this Paragraph in the following manner:
    - 1. The costs of towing and storage in an impound lot shall be paid to the towing and impound lot operators in accordance with the contract such operators may have with the Town for such services. Such contract may provide, without limitation, that the towing and impound lot operator will receive only a percentage of the proceeds, but not to exceed such costs. If such services were not performed pursuant to a contract with the Town, payment shall be calculated in the manner provided by state law.
    - 2. From the balance, if any, there shall be deposited into the general fund of the Town reasonable expenses to the Town on account of the abandonment of the vehicle, including without limitation the costs of the search for owners and lienholders, notice, appraisal, advertising, sale and any other fees or penalties, including without limitation those on account of parking infractions due with respect to the vehicle.
    - 3. The remaining balance, if any, shall then be paid first to any lienholder of record and, second, to any owner of record as their interests may appear on such records, or to any person submitting proof of an enforceable interest in such vehicle as of the date of sale. If no such person is known to the Town Manager, such balance shall be deposited into the General Fund of the Town.
    - 4. There is no right of redemption from any sale made pursuant to this Section. After a vehicle has been sold pursuant to such terms, neither the Town nor any officer, agent or employee thereof is liable for any failure to deliver such vehicle to any person other than the purchaser at such sale.

## **ARTICLE 4 Speed Limits**

### **Sec. 8-4-10. Speed on streets.**

No person shall drive a vehicle on a street or highway within the Town at a speed greater than is reasonable and prudent under existing conditions.

### **Sec. 8-4-20. Traffic calming and special hazards.**

- (a) Except when traffic calming or a special hazard exists that requires a lower speed and, except as provided in Subsection (b) or Subsection (c) below, any speed in excess of fifteen (15) miles per hour on any street within the Town shall be *prima facie* evidence that the speed is not reasonable or prudent, and that such speed is unlawful.
- (b) Except when traffic calming or a special hazard exists that requires a lower speed, any speed in excess of twenty-five (25) miles per hour on Sixth Street north to the Town boundary from Gothic Avenue, and from Highway 135 (Sixth Street) south to the Town boundary from Elk Avenue, shall be *prima facie* evidence that the speed is not reasonable and prudent, and that such speed is unlawful.
- (c) During any months of the year when the Town converts traffic flow on Elk Avenue to one-way or two-way traffic with restricted flow due to the installation of seasonal parklets/patios from Fifth Street to First Street or the Town implements other seasonal traffic calming on Elk Avenue, any speed in excess of ten (10) miles per hour on Elk Avenue between Sixth Street and First Street shall be *prima facie* evidence that the speed is not reasonable and prudent, and speeds in excess of ten (10) miles per hour on Elk Avenue during this time period shall be unlawful.

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(Prior code 11-5-1; Ord. No. 7, § 1, 5-3-2021 ; Ord. No. 5 , § 1, 4-4-2022)

### **Sec. 8-4-30. Alley regulations.**

- (a) No person shall drive a vehicle in an alley within the Town at a speed greater than is reasonable and prudent under existing conditions.
- (b) Except when a special hazard exists that requires a lower speed, any speed in excess of five (5) miles per hour on any alley within the Town shall be *prima facie* evidence that the speed is not reasonable and prudent, and that such speed is unlawful.

(Prior code 11-5-2)

### **Sec. 8-4-40. Definitions.**

The following definitions shall apply to the interpretation and enforcement of this Article only:

*Street* shall be defined as any platted street within the Town, according to the official plat thereof, recorded in the office of the County Clerk and Recorder and bearing Reception Number 260766.

*Traffic calming.* Traffic calming is the combination of physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users.

*Vehicle*, for the purposes of this Article, shall be as defined in Section 102 of the 2003 Model Traffic Code, as adopted in Section 8-1-10 of this Chapter.

### **Sec. 8-4-50. Violation; penalty.**

Any person who is convicted of, or who admits guilt to, a violation of this Article shall be guilty of a traffic infraction and shall be fined in accordance with the fine schedule set forth in Section 42-4-1701(4)(L), C.R.S.

## **ARTICLE 5 Vehicle Weight Limits**

### **Sec. 8-5-10. Definitions.**

The following definitions shall apply to the interpretation and enforcement of this Article:

*Bus* means every motor vehicle designed and used to carry eight (8) or more passengers for compensation.

*Commercial vehicle* means any vehicle designed, used or maintained primarily for the transportation of goods or other property for compensation.

*Government entity* means the United States government or any branch thereof, the State of Colorado or any branch thereof, any legally recognized county or municipality, and any quasi-governmental unit or district recognized by the State.

*School bus* means every motor vehicle operated for the transportation of children or other students to or from any school.

*Semi-trailer* means every vehicle of the trailer type which is used in conjunction with a motor vehicle in such a fashion that some part of its own weight and the weight of its own load rests upon or is carried by the other motor vehicle.

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*Truck* means any motor vehicle which is used for the transportation or delivery of goods or other property, with a body built and designed for that purpose.

### **Sec. 8-5-20. Compliance with Model Traffic Code.**

This Article has been adopted pursuant to and in accordance with Part 5 of the Model Traffic Code, as adopted by the Town in Section 8-1-10 of this Chapter. The Town Marshal shall cause the erection of such signs and the scheduling of said limits on gross weight of vehicles as may be required by said Part 5, and the Model Traffic Code in general.

### **Sec. 8-5-30. Weight limits.**

- (a) No person shall operate, drive or move a commercial vehicle, truck or semi-trailer which has more than a gross weight of twenty thousand pounds (20,000), upon the following streets within the Town without a permit issued by the Town, as hereinafter set forth:
  - (1) First Street.
  - (2) Second Street.
  - (3) Third Street.
  - (4) Fourth Street.
  - (5) Fifth Street.
  - (6) Seventh Street.
  - (7) Eighth Street.
  - (8) Ninth Street.
  - (9) Aspen Hill Lane.
  - (10) Beckwith Avenue.
  - (11) Bellevue Avenue.
  - (12) Butte Avenue.
  - (13) Elk Avenue.
  - (14) Maroon Avenue.
  - (15) Red Lady Avenue.
  - (16) Ruth Road.
  - (17) Sopris Avenue.
  - (18) Teocalli Avenue.
  - (19) Treasury Hill Road.
- (b) No person shall operate, drive or move a commercial vehicle, truck or semi-trailer on any other right-of-way or public street not designated under Subsection (a) above within the platted limits of the Town of a size, weight or load exceeding the limitations set forth in Part 4 of Article 4 of Title 42, C.R.S.
- (c) The Town may from time to time designate truck routes and traffic restrictions as to certain rights-of-way or public streets as it deems necessary to implement and carry out the intent of this Article. Said truck routes

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may be established as to any public right-of-way or street, no matter what weight limit may be designated otherwise by this Article.

- (d) Any weight limit, restriction or truck route established pursuant to this Article shall be effective only after official signs or other traffic control devices conforming to the official Colorado manual and specifications are placed appropriately to give notice of such local traffic regulations.

(Prior code 11-6-3; Ord. 4 §1, 2009)

### **Sec. 8-5-40. Exceptions.**

The terms and provisions of this Article shall not apply to the following:

- (1) Any vehicle defined herein which is traveling upon the restricted streets within the Town to make a local delivery to a home, residence or business within the Town.
- (2) Any vehicle which is driven by a resident of the Town traveling to or from his or her home located within the Town limits.
- (3) Any bus or school bus as defined herein.
- (4) Any authorized emergency vehicle.
- (5) Any vehicle owned and/or operated by any government entity in the course of official government business.

### **Sec. 8-5-50. Excess weight permit.**

- (a) It shall be the duty of the Town Manager to administer and enforce all provisions of this Article, including administration of permit applications made pursuant to this Article.
- (b) All applications for excess weight permits shall be made on forms provided by the Town for that purpose, and shall include the following information:
  - (1) A description of the vehicle, including the VIN number.
  - (2) The name of the applicant.
  - (3) A gross vehicle weight slip or scale ticket evidencing the total weight of the vehicle and load being transported, issued by properly licensed or certified scales.
  - (4) A statement of the route the applicant intends to follow through the Town.
  - (5) A statement of the number of times the applicant intends to travel on the route through the Town.
- (c) The Town Manager shall charge a fee for any excess weight permit application sufficient to cover related Town expenses in issuing the permit and the damage such use by the applicant will cause to the public streets and rights-of-way of the Town.
- (d) Upon receipt of an application acceptable to the Town Manager accompanied by the appropriate fee, a written permit shall be issued allowing the applicant to pass through the Town along a designated route for a limited number of times.

(Prior code 11-6-5; Ord. 4 §1, 2009)

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### **Sec. 8-5-60. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article, including setting a fee schedule based on objective data; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **Sec. 8-5-70. Conflicting provisions.**

In the event of a conflict between the Model Traffic Code and any provision set forth in this Article, such conflict shall be resolved in favor of this Article.

### **Sec. 8-5-80. Violation, liability and penalty.**

- (a) Any person who violates any provision of this Article shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation of this Article continues to exist shall constitute a separate and additional offense.
- (b) Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin or abate any violation of this Article.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.
- (e) Any police officer of the Town having reason to believe that the weight of a vehicle and load is unlawful is authorized to require the driver to stop and submit to a weighing of the same by means of either portable or stationary scales, or shall require that such vehicle be driven to the nearest public scales in the event such scales are within five (5) miles.

(Prior code 11-6-6; Ord. 4 §1, 2009)

## **ARTICLE 6 Idling Vehicles**

### **Sec. 8-6-10. Purpose.**

The purpose of these regulations is to preserve public health and the environmental quality in the Town through the elimination of harmful emissions from internal combustion engines. Emissions from the engines of commercial and passenger vehicles, as well as equipment such as snow and leaf blowers, lawn mowers, snowmobiles, motorcycles and similar fuel-burning devices, can cause serious public health hazards and undermine the environmental quality and aesthetic appeal of the Town. These provisions are intended to reduce the unnecessary emission of greenhouse gasses while providing for the reasonable operation of such vehicles and other similar devices.

### **Sec. 8-6-20. Definitions.**

The following definitions shall apply to the interpretation and enforcement of this Article:

*Unattended vehicle* means any commercial or passenger vehicle or equipment left idling in place without a driver or passenger occupant of the vehicle.

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*Vehicle idling* means the operation of a gasoline or diesel combustion engine while the vehicle is not in motion or otherwise performing its intended function.

### **Sec. 8-6-30. Restrictions.**

- (a) Except as hereinafter provided, it shall be unlawful for any person to idle or permit the idling of the motor of any stationary motor vehicle or other internal combustion engine for a prolonged or unreasonable period of time determined herein to be three (3) minutes or more. Proof that the motor vehicle was left idling for a period of time of longer than three (3) minutes shall be *prima facie* proof that said vehicle was idling for a prolonged and unreasonable period of time.
- (b) It shall be unlawful for motor vehicles or other internal combustion engines within the Town to be left idling while unattended by a driver, operator or passenger for any period of time.
- (c) When weather conditions warrant, motor vehicles shall be permitted to idle to aid in the removal of snow and ice to facilitate safe operation of the vehicle. Vehicles shall be permitted to idle in these circumstances for no longer than is reasonably required to remove snow and ice or for five (5) minutes, whichever is shorter. Vehicles idling to facilitate the removal of snow and ice must be attended at all times during the idling period.
- (d) Trucks and equipment with refrigeration systems or similar fossil fuel-burning devices ancillary to the vehicle engine must turn off such devices in addition to the primary vehicle engine within three (3) minutes of parking the vehicle within the Town.

(Ord. 15 §1, 2011)

### **Sec. 8-6-40. Exemptions.**

The following activities shall be exempt from the requirements of this Article:

- (1) Authorized law enforcement, safety and emergency equipment that require engine idling for auxiliary power, safety purposes or proper operation.
- (2) Engines that must be operated in idle mode for safety reasons, including but not limited to the operation of cranes and forklifts used in the construction industry.
- (3) Public transportation vehicles such as buses that idle for the pick-up and drop-off of passengers.
- (4) Heavy-duty diesel engines where the manufacturer's specifications require engine idling for warm-up and cool-down periods, (the permitted idle time for these vehicles shall not exceed the minimum time recommended in the manufacturer specifications).
- (5) Vehicles forced to remain motionless on a roadway due to traffic conditions for up to ten minutes. Motionless vehicles standing for more than ten (10) minutes must turn off engines until the flow of traffic resumes.
- (6) Vehicle occupants in distress or other circumstances where vehicle idling is required for the life-safety of the vehicle occupants.

### **Sec. 8-6-50. Penalties.**

Persons found to be in violation of any provision of this Article shall be subject to a fine not to exceed one hundred dollars (\$100.00) for each offense. Each incidence of violation shall be deemed a separate offense. In any prosecution with regard to a vehicle parked or left in a place or in a condition in violation of any provision of this Article, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of

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this Article, together with proof that the defendant named in the complaint was at the time the registered owner of such vehicle, shall be *prima facie* evidence that the defendant was the person who parked or left the vehicle in violation of this Article.

## **CHAPTER 10**

### **General Offenses**

#### **ARTICLE 1 General Provisions**

##### **Sec. 10-1-10. Definitions.**

As used in this Chapter, the following terms shall have the meanings hereafter set forth when used in this Chapter:

*Intentionally* or *with intent*. When the element of intent is part of an offense, it is a specific intent offense. A person acts *intentionally* or *with intent* when his or her conscious objective is to cause the specific result proscribed by the section defining the offense. It is immaterial to the issue of specific intent whether or not the result actually occurred.

*Knowingly* or *willfully*. When the mental culpability required for an offense is *knowingly* or *willfully*, the offense is a general intent crime. A person acts *knowingly* or *willfully* with respect to conduct or to a circumstance described by the section defining the offense when he or she is aware that his or her conduct is of such nature or that such circumstance exists or when he or she is aware that his or her conduct is practically certain to cause the result.

*Recklessly*. A person acts *recklessly* when he or she consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

##### **Sec. 10-1-20. Criminal intent.**

- (a) It is unlawful for a person to commit the offense of criminal intent. A person commits criminal intent if, acting with the kind of culpability otherwise required for the commission of an offense, he or she engages in conduct constituting a substantial step toward the commission of the offense. *A substantial step* is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.
- (b) A person who engages in conduct intending to aid another to commit an offense commits criminal intent if the conduct would establish his or her complicity under Section 18-1-603, C.R.S., were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.
- (c) It is an affirmative defense to a charge under this Section that the defendant abandoned his or her effort to commit the crime or otherwise prevented its commission, under circumstances manifesting the complete and voluntary renunciation of this criminal intent.
- (d) Criminal intent to commit a misdemeanor is a misdemeanor.
- (e) Criminal intent to commit a petty offense is a crime of the same class as the offense itself.

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(Prior code 9-9-4; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-1-30. Conspiracy.**

- (a) A person commits conspiracy to commit a crime if, with the intent to promote or facilitate its commission, he or she agrees with any other person or persons that they, or one (1) or more of them, will engage in conduct which constitutes a crime or an attempt to commit a crime, or he or she agrees to aid the other person or persons in the planning or commission of a crime or of an attempt to commit such crime.
- (b) No person may be convicted of conspiracy to commit a crime, unless an overt act in pursuance of that conspiracy is proved to have been done by him or her or by a person with whom he or she conspired.
- (c) If a person knows that one with whom he or she conspires to commit a crime has conspired with another person to commit the same crime, he or she is guilty of conspiring to commit a crime with the other person, whether or not he or she knows the other person's identity.
- (d) If a person conspires to commit a number of crimes, he or she is guilty of only one (1) conspiracy so long as such multiple crimes are part of a single criminal episode.
- (e) Conspiracy to commit a misdemeanor is a misdemeanor.
- (f) Conspiracy to commit a petty offense is a crime of the same class as the offense itself.

(Prior code 9-9-5; Ord. 17 §1 1992; Ord. 4 §1, 2009)

### **Sec. 10-1-40. Complicity.**

A person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets or advises the other person in planning or committing the offense or, after gaining knowledge that an offense has been committed, he or she conceals such knowledge from any court or law enforcement official, or harbors or protects a person charged with or convicted of an offense.

### **Sec. 10-1-50. Accessory to crime.**

- (a) A person is an accessory to crime if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he or she renders assistance to such person.
- (b) *Render assistance* means to:
  - (1) Harbor or conceal the other;
  - (2) Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law;
  - (3) Provide such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;
  - (4) By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution or punishment of such person; or
  - (5) Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.

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- (c) Being an accessory to crime is a Class 1 petty offense if the offender knows that the person being assisted has committed, has been convicted of or is charged by pending information, indictment or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this Code as a misdemeanor of any class.

(Ord. 4 §1, 2009)

#### **Sec. 10-1-60. Aiding and abetting.**

Every person who commits, attempts to commit, conspires to commit, aids or abets in the commission of any act declared herein to be in violation of the ordinances of the Town, whether individually or in connection with one (1) or more persons, as a principal, agent or accessory, shall be guilty of such offense, and every person who fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any ordinance of the Town is likewise guilty of such offense.

## **ARTICLE 2 Government and Public Officers**

#### **Sec. 10-2-10. Definitions.**

For purposes of this Chapter, the following words shall be defined as set forth below:

*Government* includes any branch, subdivision, institution or agency of the government of this State or this Town.

*Governmental function* includes any activity which a public servant is legally authorized to undertake on behalf of a government.

*Publicservant* means any officer or employee of the government, whether elected or appointed, and any person participating as an advisor or consultant, engaged in the service of process or otherwise performing a governmental function, but the term does not include witnesses.

#### **Sec. 10-2-20. Obstructing government operations.**

- (a) It is unlawful to obstruct government operations.
- (b) A person commits obstructing government operations if he or she intentionally obstructs, impairs or hinders the performance of a governmental function by a public official, employee or servant, by using or threatening to use violence, force or physical interference or obstacle.
- (c) It is an affirmative defense that:
  - (1) The obstruction, impairment or hindrance was of unlawful action by a public servant;
  - (2) The obstruction, impairment or hindrance was of the making of an arrest; or
  - (3) The obstruction, impairment or hindrance was by lawful activities in connection with a labor dispute with the government.

(Ord. 4 §1, 2009)

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### **Sec. 10-2-30. Obstructing a peace officer or firefighter.**

- (a) No person shall willfully fail or refuse to comply with any lawful order, signal or direction of a police officer made or given in the discharge of the police officer's duties.
- (b) No person shall, in any way, interfere with or hinder any police officer who is discharging or apparently discharging the duties of the position.
- (c) It is unlawful to obstruct a peace officer or firefighter.
- (d) A person commits obstructing a peace officer or firefighter when, by using or threatening to use violence, force or physical interference or obstacle, such person knowingly obstructs, impairs or hinders the enforcement of the law or the preservation of the peace by a peace officer, acting under color of his or her official authority, or knowingly obstructs, impairs or hinders the prevention, control or abatement of fire by a firefighter, acting under color of his or her official authority.
- (e) It is no defense to a prosecution under this Section that the peace officer or firefighter was acting in an illegal manner, if the peace officer or firefighter was acting under color of his or her official authority as defined in Subsection 10-2-50(c) below.
- (f) This Section does not apply to obstruction, impairment or hindrance of the making of an arrest.

(Ord. 4 §1, 2009)

### **Sec. 10-2-40. Resisting arrest.**

- (a) It is unlawful to resist arrest.
- (b) A person commits resisting arrest if he or she knowingly prevents or attempts to prevent any peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another by:
  - (1) Using or threatening to use physical force or violence against the peace officer or another; or
  - (2) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another.
- (c) It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest which in fact was unlawful, if he or she was acting under color of his or her official authority and, in attempting to make the arrest, he or she was not resorting to unreasonable or excessive force giving rise to the right of self defense. A peace officer acts *under color of his or her official authority* when, in the regular course of assigned duties, he or she is called upon to make, and does make, a judgment in good faith, based upon surrounding facts and circumstances, that an arrest should be made by him or her.
- (d) The term *peace officer*, as used in this Section, means a peace officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted.

(Prior code 7-1-6; Ord. 4 §1, 2009)

### **Sec. 10-2-50. False reporting to authorities.**

- (a) It is unlawful for a person to falsely report to authorities. A person commits false reporting to authorities if he or she:

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- (1) Knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, ambulance service or any other government agency which deals with emergencies involving danger to life or property;
  - (2) Makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern when he or she knows that it did not occur;
  - (3) Makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false;
  - (4) Knowingly gives false information to any law enforcement officer with the purpose of implicating another; or
  - (5) Provides false identifying information to law enforcement authorities.
- (b) For purposes of this Section, *false identifying information* means a person's name, address, birth date, social security number, driver's license or State identification number.

(Ord. 16 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 10-2-60. Interference with public works.**

It is unlawful for any person to hinder or obstruct any person employed by the Town from making, repairing or performing any public improvement or work for the Town.

### **Sec. 10-2-70. Removing vehicles from impound lot.**

It is unlawful for any person, without authority of the Town, to remove or attempt to remove a motor vehicle from any area, whether enclosed or not, which is used by the Town, whether temporarily or permanently, for impounding or storing motor vehicles.

### **Sec. 10-2-80. Duty of citizens to aid police officers.**

It is the duty of all persons in the Town, when called upon by any police officer or member of the Marshal's Department, to promptly aid and assist him or her in the discharge of his or her duties. A person who refuses to give aid and assistance shall be fined an amount not exceeding one hundred dollars (\$100.00).

### **Sec. 10-2-90. Failure to obey lawful order.**

It is unlawful for any person to fail to obey a lawful order of the Town Marshal or other police officer or fire department official made during the conduct of such officer's duties.

## **ARTICLE 3 Streets and Public Places**

### **Sec. 10-3-10. Unlawful conduct on public property.**

- (a) It is unlawful for any person to enter or remain in any public building or on any public property or to conduct himself or herself in or on them in violation of any order, rule or regulation concerning any matter prescribed in this Section, limiting or prohibiting the use, activities or conduct in such public building or on such public property, issued by any officer or agency having the power of control, management or supervision of the

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building or property. In addition to any authority granted by any other law, each such officer or agency may adopt such orders, rules or regulations as are reasonably necessary for the administration, protection and maintenance of such public buildings and property, specifically, orders, rules and regulations upon the following matters:

- (1) Preservation of property, vegetation, wildlife, signs, markers, statues, buildings, grounds and other structures, and any object of scientific, historical or scenic interest;
  - (2) Restriction or limitation of the use of such public buildings or property as to time, manner or permitted activities;
  - (3) Prohibition of activities or conduct within public buildings or on public property which may be reasonably expected to substantially interfere with the use and enjoyment of such places by others or which may constitute a general nuisance;
  - (4) Camping and picnicking, public meetings and assemblages and other individual or group usages, including the place, time and manner in which such activities may be permitted;
  - (5) Use of all vehicles as to place, time and manner of use; and
  - (6) Control and limitation of fires and designation of places where fires are permitted.
- (b) No conviction may be obtained under this Section unless notice of such limitation or prohibition is prominently posted at all public entrances to such building or property or unless such notice is actually first given the person by the office or agency, including any agent thereof or by any law enforcement officer having jurisdiction or authority to enforce this Section.
  - (c) Any person who violates this Section is guilty of unlawful conduct on public property.

(Ord. 4 §1, 2009)

### **Sec. 10-3-20. Trespass or interference in public buildings.**

- (a) No person shall so conduct himself or herself at or in any public building owned, operated or controlled by the Town as to willfully deny to any public official, public employee or invitee on such premises the lawful rights of such official, employee or invitee to enter, to use the facilities of or to leave any such public building.
- (b) No person shall, at or in any public building, willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion or intimidation or by force and violence or threat thereof.
- (c) No person shall willfully refuse or fail to leave any such public building upon being requested to do so by the Town officer charged with maintaining order in such public building, if the person has committed, is committing, threatens to commit or incites others to commit any act which did, or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in the public building.
- (d) No person shall, at any meeting or session conducted by any judicial, legislative or administrative body or official at or in any public building, willfully impede, disrupt or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce or hinder any member of such body or official engaged in the performance of duties at such meeting or session.
- (e) No person shall, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official at or in any public building, willfully impede, disrupt or hinder the normal proceedings of such body or official.

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- (f) The term *public building*, as used in this Section, includes any premises being temporarily used by a public officer or employee in the discharge of his or her official duties.
  - (g) Any person who violates any of the provisions of this Section commits an unlawful act.
- (Ord. 4 §1, 2009)

#### **Sec. 10-3-30. Interfering with use of streets or sidewalks.**

It is unlawful for any person, alone or in a group or assemblage of persons, whose standing, remaining or congregating on any public highway, street, alley or sidewalk in the Town shall obstruct, interfere with or prevent the free, unobstructed and reasonable use of that public highway, street, alley or sidewalk by any other person, to fail or refuse to yield to the reasonable use or passage of any other person on that public highway, street, alley or sidewalk or to fail or refuse to move on, disperse or cease such obstruction or interference immediately upon being so ordered by any police officer of the Town or other authorized peace officer.

#### **Sec. 10-3-40. Obstruction of public right-of-way.**

- (a) No person or other legal entity shall obstruct or by any act or omission allow the obstruction of any street, alley, sidewalk or other public right-of-way within the Town. An obstruction shall be deemed to exist whenever the placement of any object or the carrying on of any activity upon a street, alley, sidewalk or other public right-of-way interferes or reasonably could interfere with the free and unhindered flow of vehicular or pedestrian traffic. For the purposes of this Section, the placing or keeping of any dumpster or other trash storage receptacle in excess of fifty (50) gallons capacity shall be deemed an obstruction per se and a violation hereof, if such dumpster or receptacle is kept upon the right-of-way or public sidewalk on Elk Avenue from First Street to the intersection of Highway 135.
- (b) No person or other legal entity shall be prosecuted for a violation of this Section unless such person or entity fails to permanently discontinue the obstructing activity or permanently remove the obstructing object after requested to do so by the Town Manager or any law enforcement officer.

(Prior code 11-7-1, 11-7-2, 11-7-3; Ord. 19 §13, 1992; Ord. 4 §1, 2009)

#### **Sec. 10-3-50. Excavation safety.**

It is unlawful for any person to have or keep open and uncovered any hole, drain, ditch, pit, vault or other subterranean opening into which persons, animals or vehicles may fall, without providing adequate lights, fencing or other obstruction to warn against and prevent such occurrence.

#### **Sec. 10-3-60. Depositing of snow, ice and building materials.**

It is unlawful for any person, without permission from the Town, to deposit, move so as to obstruct reasonable access, place, store or leave any materials or objects, including snow, ice and building or construction materials, on public property, within Coal Creek or against any fire hydrant or public building.

#### **Sec. 10-3-70. Damage or removal of street signs.**

It is unlawful for any person without proper authorization to remove, deface, damage or destroy any street sign or sign erected or placed in or adjacent to any street indicating the name of such street.

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### **Sec. 10-3-80. Tire chains.**

No person shall operate any motor vehicle upon any paved Town street with chains on the tires when said street is not covered with snow or ice. This prohibition shall not apply to State Highway 135 and the Gothic County Road, otherwise known as Sixth Street, and shall also not apply to Elk Avenue from Sixth Street to the west end of Town. Any person who violates this Section shall be guilty of a misdemeanor and shall be fined up to three hundred dollars (\$300.00) or imprisoned not to exceed ninety (90) days, or punished by both said fine and imprisonment.

### **Sec. 10-3-90. Camping.**

All forms of overnight camping are prohibited. No person shall set up tents, shacks or any other temporary shelter for the purpose of overnight camping, nor shall any person leave in a park after closing hours any movable structure or special vehicle to be used or that could be used for such purpose, such as a house trailer, camp trailer, camp wagon or the like. Camping in certain town parks may be permitted in conjunction with an approved special event permit.

## **ARTICLE 4 Public, Private and Personal Property**

### **Sec. 10-4-10. Criminal mischief.**

It is unlawful for any person to knowingly damage the real or personal property of one (1) or more other persons in the course of a single criminal episode where the aggregate damage to the real or personal property is less than five hundred dollars (\$500.00).

### **Sec. 10-4-20. Damaging or destroying public property.**

It is unlawful for any person to intentionally, knowingly, willfully, maliciously or wantonly damage or destroy any real property or improvements thereto, or moveable or personal property belonging to or under the control of the Town, without authority to do such act. (Prior code 9-4-11; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-4-30. Damaging or destroying private property.**

It is unlawful for any person to either intentionally, knowingly, willfully, maliciously or wantonly damage or destroy real property or improvements thereto, or moveable or personal property, belonging to any person.

### **Sec. 10-4-40. Damaging or removing trees.**

It is unlawful for any person to intentionally or knowingly damage, deface, mutilate, remove, pull down, break or in any way interfere with, molest or secrete any tree belonging to or under the control of the Town, or any other person within the Town.

### **Sec. 10-4-50. Trespassing.**

- (a) It is unlawful for any person to knowingly enter, occupy, use or remain on or in any privately owned property, real or personal, without the permission of the owner or persons entitled to the possession thereof.

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- (b) It is unlawful for any person to take down any fence, let down any bars or take away any gate so as to expose any enclosure, or to ride or drive across, lodge, camp or sleep on the premises of another within the limits of the Town without the permission of the owner or occupant of such premises.

(Prior code 9-4-8, 9-4-9; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-4-60. Littering.**

- (a) It is unlawful for any person to place, deposit, throw or leave any garbage, refuse, trash, glass, litter or any discarded object, including paper, old clothes cloth of any kind, boots, shoes, hats, leather, hair, grass, junk cars, straw, hay, trash or any other thing, any street, alley, sidewalk or public or private property in the Town without permission of the owner or person having control thereof, except when such refuse is placed in a public or private receptacle or container installed for that purpose.
- (b) It is unlawful for any person, while a driver or passenger in a vehicle, to throw or deposit litter upon any street or other public place within the Town or upon private property.

(Prior code 9-4-14; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-4-70. Theft.**

It is unlawful for a person to commit theft. A person commits theft when he or she knowingly obtains or exercises control over anything of another without authorization or by threat or deception when the value of the thing is less than five hundred dollars (\$500.00), and:

- (1) Intends to deprive the other person permanently of the use or benefit of the thing of value;
- (2) Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or
- (3) Uses, conceals or abandons the thing of value, intending that such use, concealment or abandonment will deprive the other person permanently of its use and benefit; or
- (4) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person.

### **Sec. 10-4-80. Theft of rental property.**

It is unlawful for a person to commit theft of rental property. A person commits theft of rental property if:

- (1) He or she obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the personal property; or
- (2) He or she, having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return the property to the owner thereof or his or her representative or to the person from whom he or she has received it within seventy-two (72) hours after the time at which he or she agreed to return it; and
- (3) The value of the property involved is less than five hundred dollars (\$500.00).

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### **Sec. 10-4-90. Theft by receiving.**

It is unlawful to commit theft by receiving. A person commits theft by receiving when he or she receives, retains, loans money by pawn or pledge on or disposes of anything of value of another, knowing or believing that the thing of value has been stolen, or when such person reasonably should know that said thing of value has been stolen, and when he or she intends to deprive the lawful owner permanently of the use or benefit of the thing of value, where the value of such thing is less than five hundred dollars (\$500.00).

### **Sec. 10-4-100. Theft of services.**

It is unlawful for any person to knowingly obtain a service from another without the authorization of the person supplying the service or without properly compensating said person for the service obtained, when the value of such service is less than five hundred dollars (\$500.00).

### **Sec. 10-4-110. Concealment of goods.**

If any person willfully conceals unpurchased goods, wares or merchandise valued at less than five hundred dollars (\$500.00) owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment is on his or her own person or otherwise and whether on or off the premises of the store or mercantile establishment, such concealment constitutes *prima facie* evidence that the person intended to commit the crime of theft.

### **Sec. 10-4-120. Damage to light and water fixtures.**

It is unlawful for any person to willfully, maliciously or negligently damage, pull down or in any manner break any lamp post, bracket, electric light globe or fixture, hydrant or any other object or article used for the purpose of furnishing light, power or water to the inhabitants of the Town.

### **Sec. 10-4-130. Use of lamp posts and trees.**

It is unlawful for any person to hitch any horse, mule or other animal to any of the lamp posts of the Town or trees planted along the sidewalks of the Town, or to place any writing, printing or other devices upon any of such lamp posts or trees for the purpose of advertising any business or for any other cause whatever.

### **Sec. 10-4-140. Tampering and unauthorized connection.**

- (a) Any person who connects any pipe, tube, stopcock, wire, cord, socket, motor or other instrument or contrivance with any main, service pipe or other medium conducting or supplying gas, water or electricity to any building without the knowledge and consent of the person supplying such gas, water or electricity commits tampering and unauthorized connection, which is unlawful.
- (b) Any person who in any manner alters, obstructs or interferes with any meter pit, meter or metering device provided for measuring or registering the quantity of gas, water or electricity passing through said meter without the knowledge and consent of the person owning said meter commits tampering and unauthorized connection, which is unlawful.
- (c) A person who tampers with property of another with intent to cause injury, inconvenience or annoyance to that person or to another, or if he or she knowingly makes unauthorized connection with property of a utility, commits tampering and unauthorized connection, which is unlawful.

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- (d) Nothing in this Section shall be construed to apply to any licensed electrical or plumbing contractor while performing usual and ordinary services in accordance with recognized customs and standards.

(Ord. 4 §1, 2009)

## **ARTICLE 5 Public Peace, Order and Decency**

### **Sec. 10-5-10. Disorderly conduct.**

A person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

- (1) Makes a coarse and obviously offensive utterance, gesture or display in a public place and the utterance, gesture or display tends to incite an immediate breach of the peace;
- (2) Makes unreasonable noise in a public place or near a private residence that he or she has no right to occupy;
- (3) Fights with another in a public place except in an amateur or professional contest of athletic skill;
- (4) Not being a peace officer, discharges a deadly weapon in a public place except when engaged in lawful target practice or hunting; or
- (5) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

### **Sec. 10-5-20. Disrupting lawful assembly.**

A person commits disrupting lawful assembly if, intending to prevent or disrupt any lawful meeting, procession or gathering, he or she significantly obstructs or interferes with such meeting, procession or gathering by physical action, verbal utterance or other means except by privilege granted by the Constitutions of the State of Colorado and the United States.

### **Sec. 10-5-30. Harassment.**

- (a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:
- (1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact;
  - (2) In a public place directs obscene language or makes an obscene gesture to or at another person;
  - (3) Follows a person in or about a public place;
  - (4) Initiates communication with a person, anonymously or otherwise, by telephone, computer, computer network or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network or computer system which is obscene;
  - (5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
  - (6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

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- (7) Repeatedly insults, taunts, challenges or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.
  - (b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.
  - (c) Any act prohibited by Paragraph (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail or other electronic communication was either made or received.

(Prior code 9-3-6; Ord. 17 §1, 1992; Ord. 4 §2, 1997; Ord. 4 §1, 2009)

#### **Sec. 10-5-40. Loitering.**

- (a) The word *loiter* means to be dilatory, to stand idly around, to linger, delay or wander about, or to remain, abide or tarry in a public place.
- (b) A person commits a Class 1 petty offense if he or she:
  - (1) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia;
  - (2) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;
  - (3) With intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, loiters in a school building or on school grounds or within one hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in the building or on the grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil, or any other specific legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer; or
  - (4) Loiters with one (1) or more persons for the purpose of unlawfully using or possessing a controlled substance, as defined in Section 10-7-10 of this Chapter.
- (c) It is an affirmative defense that the defendant's acts were lawful and he or she was exercising his or her rights of lawful assembly as part of a peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise.

(Ord. 4 §1, 2009; Ord. 14 §2, 2016)

#### **Sec. 10-5-50. False alarms.**

Any person who shall intentionally make or give a false alarm of fire shall be deemed guilty of a misdemeanor.

#### **Sec. 10-5-60. Storage of flammable liquids.**

It is unlawful to store or cause to be stored or parked, except for delivery, any tank vehicle carrying flammable liquids or gases upon any streets, ways or avenues of the Town or in any other part of the Town, except those areas zoned for such uses.

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## **Sec. 10-5-70. Explosives.**

It is unlawful for any person to store within the Town limits or within one (1) mile thereof any amount of gunpowder, blasting powder, nitroglycerine, dynamite or other high explosive in excess of one (1) fifty-pound box or in excess of five hundred (500) caps or other devices used for the detonation of such high explosives.

## **Sec. 10-5-80. Fireworks.**

- (a) It is unlawful for any person to knowingly display, sell, cast, throw, light or fire any fireworks without written authorization from the Town Marshal.
- (b) *Fireworks*, as used in this Section, means any squib, rocket, cracker, torpedo, grenade, gun, revolver, pistol, cap, cartridge or other combustible firecrackers of any kind.
- (c) Nothing in this Section shall prohibit the display, sale or use of traffic signaling flares, photographic flash equipment or public fireworks displays, conducted under the supervision of and with the permission of the Town Marshal or Fire Chief.

(Prior code 9-6-5; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

## **Sec. 10-5-90. Abandoned containers and appliances.**

It is unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure or within any unoccupied or abandoned building, structure or dwelling under his or her control, in a place accessible to children, any abandoned, unattended or discarded ice box, refrigerator, washer, dryer, freezer or other container or appliance which has a door, lid, snap lock or other locking device which may not be released from the inside, without first removing said door, lid, snap lock or other locking device.

## **Sec. 10-5-100. Throwing stones or missiles.**

It is unlawful for any person to throw a stone or other missile at any person, animal, public or private property, building, structure, tree or shrub, other than in the normal course during an athletic or sporting event.

## **Sec. 10-5-110. Fraud by check.**

- (a) As used in this Section, unless the context otherwise requires:

*Check* means a written, unconditional order to pay a certain sum in money, drawn on a bank, payable on demand, and signed by the drawer. *Check*, for the purposes of this Section only, also includes a negotiable order of withdrawal and a share draft.

*Drawee* means the bank upon which a check is drawn or a bank, savings and loan association, industrial bank or credit union on which a negotiable order of withdrawal or a share draft is drawn.

*Drawer* means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature is that of himself or herself or of a person authorized to draw the check on himself or herself.

*Insufficient funds* means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account or share draft account with the drawee, or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to be dishonored for insufficient funds.

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*Issue.* A person issues a check when he or she makes, draws, delivers or passes it or causes it to be made, drawn, delivered or passed.

*Negotiable order of withdrawal* and *share draft* mean negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.

*Negotiable order of withdrawal account* means an account in a bank, savings and loan association or industrial bank, and *share draft account* means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, industrial bank or credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

- (b) In adopting this Section, the Town Council finds that, as a matter of policy, the issuance and delivery of a known bad check by any person is, in itself, not only harmful to the person to whom it is given but is also injurious to the community at large and is, therefore, a proper subject for criminal sanction without regard to the purpose for which the check was given.
- (c) Any person, knowing he or she has insufficient funds with the drawee who, with intent to defraud, issues a check for a sum less than five hundred dollars (\$500.00) for the payment of services, wages, salary, commissions, labor, rent, money, property or other thing of value, commits fraud by check, which is unlawful.
- (d) Any person, having acquired rights with respect to a check which is not paid because the drawer has insufficient funds, shall have standing to file a complaint under this Section, whether or not he or she is the payee, holder or bearer of the check.
- (e) Any person who opens a checking account, negotiable order of withdrawal account or share draft account using false identification or an assumed name for the purpose of issuing fraudulent checks commits fraud by check, which is unlawful.
- (f) If deferred prosecution is ordered, the court as a condition of supervision may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.
- (g) A bank, savings and loan association, industrial bank or credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to the Town Attorney, Town Marshal, District Attorney or other person authorized by the Town who is investigating or prosecuting a charge under this Section.
- (h) This Section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of this Section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:
  - (1) He or she has no account upon which the check or order is drawn with the bank or other drawee at the time he or she issues the check or order; or
  - (2) He or she has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty (30) days after issue.

(Prior code 9-9-1; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

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### **Sec. 10-5-120. Fraudulent driver's license or identification card.**

- (a) No person shall have in his or her possession a lawfully issued driver's, minor driver's or provisional driver's license, instruction permit or identification card, knowing that such license, permit or identification card has been falsely altered by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter or any other means so that such license, permit or identification card in its thus altered form falsely appears or purports to be in all respects an authentic and lawfully issued license, permit or identification card.
- (b) No person shall have in his or her possession a paper, document or other instrument which falsely appears or purports to be in all respects a lawfully issued and authentic driver's, minor driver's or provisional driver's license, instruction permit or identification card, knowing that such instrument was falsely made and was not lawfully issued.
- (c) No person shall display or represent as being such person's own any driver's license, minor driver's or provisional driver's license, instruction permit or identification card, which was lawfully issued to another person.
- (d) No person shall permit any unlawful use of a driver's license or identification card issued to such person.
- (e) No person shall photograph, photostat, duplicate or in any way reproduce any driver's license, identification card or facsimile thereof for the purpose of distribution, resale, reuse or manipulation of the data or images contained in such driver's license or identification card, unless authorized by law.

(Prior code 9-9-10; Ord. 2 §1, 2000; Ord. 4 §1, 2009)

### **Sec. 10-5-130. Public indecency.**

It is unlawful to commit public indecency. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

- (1) An act of sexual intercourse or deviate sexual intercourse;
- (2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
- (3) A lewd fondling or caress of the body of another person.

### **Sec. 10-5-140. Urinating or defecating in public.**

It is unlawful for any person to urinate or defecate in any way or place open to public view.

### **Sec. 10-5-150. Cruelty to animals.**

It is unlawful for any person to torture, cruelly beat, needlessly injure, kill, mistreat, neglect or abandon any animal, or cause or procure the same to be done or, having the charge and custody of any animal, to fail to provide it with proper food, drink or protection from the weather.

## **ARTICLE 6 Minors**

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**Sec. 10-6-10. Parent or guardian aiding, abetting.**

It is unlawful for any person to knowingly permit any minor child, or to aid, abet, approve, encourage, allow, permit, tolerate or consent to the violation by any minor child of any provision of this Article or any ordinances of the Town.

**Sec. 10-6-20. Encouraging delinquency.**

It is unlawful for any person, by any act or neglect, to encourage, aid or cause a child to come within the purview of the juvenile authorities, and it shall likewise be unlawful for any person, after notice that a driver's license of any child has been suspended or revoked, to permit such child to operate a motor vehicle during the period that such driver's license is suspended.

**Sec. 10-6-30. False statement; false credentials.**

It is unlawful for any person under twenty-one (21) years of age to make false statements, to furnish, present or exhibit any fictitious or false registration card, identification card, note or other document for any unlawful purpose, or to furnish, present or exhibit such document or documents issued to a person other than the one presenting the same for the purpose of gaining admission to prohibited places for the purpose of procuring the sale, gift or delivery of prohibited articles, including beer, liquor, wine or fermented malt beverages as defined in this Chapter.

**Sec. 10-6-40. Services of others.**

It is unlawful for any person under the age of twenty-one (21) years to engage or utilize the services of any other person, whether for remuneration or not, to procure any article which the any person under the age of twenty-one (21) years is forbidden by law to purchase.

**Sec. 10-6-50. Loitering and other acts around schools.**

It is unlawful for any person to loiter, idle, wander, stroll or play in, about or on any public, private or parochial school, college or seminary grounds or buildings, either on foot or in or on any vehicle, without having some lawful business therein or thereabout or in connection with such school or the employees thereof, or for any person to:

- (1) Annoy, disturb or otherwise prevent the orderly conduct of classes and activities of any such school;
- (2) Annoy, disturb, assault or molest any student or employee of any such school, college or seminary while in any such school building or on any school grounds;
- (3) Conduct himself or herself in a lewd, wanton or lascivious manner in speech or behavior in or about any school building or school grounds; or
- (4) Park or move a vehicle in the immediate vicinity of or on the grounds of any such school, college or seminary for the purpose of annoying or molesting the students or employees thereof or in an effort to induce, entice or invite students into such vehicles for immoral purposes.

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**Sec. 10-6-60. Unlawful possession of tobacco/nicotine products by minor persons under the age of eighteen.**

- (a) No minor person under the age of eighteen years shall possess any tobacco/nicotine product within the Town. "Tobacco/Nicotine Product" means any product that contains or is derived from tobacco or contains nicotine, and is intended to be ingested or inhaled by or applied to the skin of any individual: including but not limited to cigarettes, cigars, chewing tobacco, e-cigarettes, vape pens, or vaporized apparatus, except that "tobacco/nicotine product" does not mean any product that the Food and Drug Administration of the United States Department of Health and Human Services has approved as a tobacco use cessation product.
- (b) No minor person under the age of eighteen years shall purchase or attempt to purchase any tobacco/nicotine product within the Town.
- (c) No person shall knowingly give, sell, or distribute any tobacco/nicotine product to any minor person who is under the age of eighteen years within the Town.
- (d) It shall not be an offense under this section if the minor person under the age of eighteen years was acting at the direction of an employee of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of cigarettes and tobacco products to persons under the age of eighteen years.
- (e) Violation of any of the provisions of this section is a noncriminal offense.
  - (1) A minor person receiving a summons for the violation of Section 10-6-60 shall appear in Crested Butte Municipal Court with a parent or legal guardian on the date set forth on the summons. Should the minor person fail to appear with a parent or legal guardian, a summons shall be issued for both the minor and the minor's parent(s) or legal guardian(s) compelling the attendance in Crested Butte Municipal Court of the minor and at least one (1) of the minor's parents or legal guardians.
  - (2) Upon issuance of a first summons and complaint for a violation of Section 10-6-60, if such minor person appears before the Municipal Court accompanied by a parent or guardian, such minor person shall be eligible to enter into a deferred prosecution stipulation with the Town, provided the minor person agrees to participate in and complete a tobacco product education class and to pay any fees associated therewith. Following completion of this education class, the charges against the minor person shall be dismissed with prejudice.
  - (3) Upon the issuance of a second summons and complaint and a conviction for a violation of Section 10-6-60, the Court shall assess a penalty consistent with the Court's fee schedule for this offense, which is one hundred dollars (\$100.00).
  - (4) For a third or more summons and complaint and a conviction for a violation of Section 10-6-60, the Court shall assess a penalty which is double the Court's fee schedule for the conviction.

( Ord. No. 8 , § 1, 4-1-2019)

## **ARTICLE 7 Alcoholic Beverages and Drugs**

**Sec. 10-7-10. Definitions.**

For purposes of this Code, the following words shall have the meanings ascribed hereafter:

*Alcoholic beverage* or *alcoholic liquor* means fermented malt beverage or malt, vinous or spirituous liquors.

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*Controlled substance* means a drug or other substance or an immediate precursor which is declared to be a controlled substance under this Article, and also includes marijuana and marijuana concentrate.

*Drug paraphernalia* means any machine, instrument, tool, equipment or device which is primarily designed and intended for one (1) or more of the following:

- a. To introduce into the human body any controlled substance under circumstances in violation of state law;
- b. To enhance the effect on the human body of any controlled substance under circumstances in violation of state law;
- c. To conceal any quantity of any controlled substance under circumstances in violation of state law; or
- d. To test the strength, effectiveness or purity of any controlled substance under circumstances in violation of state law.

*Establishment* means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group or residence, and any real property, including buildings and improvements connected therewith, and shall also include any members, employees and occupants associated therewith.

*Fermented malt beverage* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent (0.5%) and not more than three and two-tenths percent (3.2%) alcohol by weight.

*Malt liquor* includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent (3.2%) of alcohol by weight.

*Marijuana or marijuana* means all parts of the plant *cannabis sativa L.*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin. It does not include the mature stalks of the plant, the fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination if these items exist apart from any other item defined as *marijuana* herein.

*Private property* means any dwelling and its curtilage which is being used by a natural person for habitation and which is not open to the public, and privately owned real property which is not open to the public. *Private property* shall not include:

- a. Any establishment which has or is required to have a license pursuant to Article 46, 47 or 48 of Title 12, C.R.S.;
- b. Any establishment which sells alcoholic beverages or upon which alcoholic beverages are sold; or
- c. Any establishment which leases, rents or provides accommodations to members of the public generally.

*Public place* means any place commonly or usually open to the general public or to which members of the general public may resort, or accessible to members of the general public. By way of illustration, such public places include but are not limited to public ways, streets, buildings, sidewalks, alleys, parking lots, shopping centers, shopping center malls, places of business usually open to the general public, and automobiles or other vehicles in or upon any such place or places, but shall not include the interior or enclosed yard area of private homes, residences, condominiums or apartments.

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*Spirituous liquor* means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (0.5%) alcohol and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except malt liquors and vinous liquors shall be construed to be spirituous liquor.

*Vinous liquor* means wine and fortified wines which contain not less than one-half of one percent (0.5%) and not more than twenty-one percent (21%) of alcohol by volume and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

### **Sec. 10-7-20. Alcohol-related violations.**

- (a) It is unlawful for any person under the age of twenty-one (21) years to represent himself or herself to be over the age of twenty-one (21) years for the purpose of purchasing within the Town any alcoholic beverage.
- (b) It is unlawful for any person under the age of twenty-one (21) years to attempt to purchase, purchase or obtain, either directly or through an intermediary, any alcoholic beverage.
- (c) It is unlawful for any person under the age of twenty-one (21) years to possess or consume, whether actual or constructive, fermented malt beverage or malt, vinous or spirituous liquors.
- (d) It is unlawful to sell alcoholic beverages to any person under the age of twenty-one (21) years, or to permit any fermented malt beverage, malt or vinous liquors to be sold or dispensed by a person under eighteen (18) years of age, or spirituous liquors to be sold or dispensed by a person under twenty-one (21) years of age, or to permit any such person to participate in the sale or dispensing thereof.
- (e) It is unlawful for any person, whether for remuneration or not, to procure for any person under twenty-one (21) years of age any alcoholic beverage.
- (f) It is unlawful in any place of business where alcoholic beverages are sold and consumed upon the premises, for any person to beg or to solicit any patron or customer or visitor in such premises to purchase any alcoholic beverage for the one begging or soliciting.
- (g) It is unlawful for any person to sell, serve, give away, dispose of, exchange, deliver or permit the sale, serving, giving or procuring of alcoholic beverage to a visibly intoxicated person or known habitual drunkard, or to otherwise violate any provision of the Colorado Liquor Code.

(Prior code 9-5-1, 9-5-4; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-7-30. Illegal possession or consumption of alcoholic beverages by an underage person.**

- (a) Any person under twenty-one (21) years of age who possesses or consumes alcoholic beverages anywhere in the Town commits illegal possession or consumption of alcoholic beverages by an underage person. Illegal possession or consumption of alcoholic beverages by an underage person is a strict liability offense.
- (b) It is an affirmative defense to the offense described in Subsection (a) above that the alcoholic beverage was possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:
  - (1) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the alcoholic beverages were possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption; or

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- (2) When the existence of alcoholic beverages in a person's body was due solely to the ingestion of a confectionery which contained alcoholic beverages within the limits prescribed in the state statutes, or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion, or solely from the ingestion of a beverage which contained less than one-half of one percent (0.5%) of alcoholic beverages by weight.
  - (c) The possession or consumption of alcoholic beverages shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.
  - (d) Prima facie evidence of a violation of Subsection (a) above shall consist of:
    - (1) Evidence that the defendant was under twenty-one (21) years of age and possessed or consumed alcoholic beverages anywhere in this State; or
    - (2) Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with alcoholic beverage intoxication or impairment while present anywhere in this State.
  - (e) During any trial for a violation of Subsection (a) above, any bottle, can or other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages.
  - (f) A parent or legal guardian of a person under twenty-one (21) years of age, or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of, alcoholic beverages to or by a person under the age of twenty-one (21) years under the conditions described in Subsection (b)(1) above. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to Article 46, 47 or 48 of Title 12, C.R.S., or any members, employees or occupants of any such establishment to give, provide, make available or sell alcoholic beverages to a person under twenty-one (21) years of age.
  - (g) Illegal possession or consumption of any alcoholic beverage by an underage person is a petty offense punishable as follows:
    - (1) Upon conviction of a first offense, illegal possession or consumption of an alcoholic beverage by an underage person shall be punishable by a fine of not more than two hundred fifty dollars (\$250.00).
    - (2) Upon conviction of a second offense, illegal possession or consumption of alcoholic beverage by an underage person shall be punishable by a fine of not more than five hundred dollars (\$500.00).
    - (3) Upon conviction of a third or subsequent offense, which shall be a Class 2 misdemeanor, illegal possession or consumption of an alcoholic beverage by an underage person shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) and/or one (1) year of incarceration.

The requirements set forth in this Subsection are not intended to, and shall not, substitute for or otherwise abridge or modify the requirements and conditions set forth in Section 18-13-122(2)(b)(I)—(IV), C.R.S., the same Sections to continue in full force and effect and to apply to an underage person convicted of possessing or consuming ethyl alcohol as indicated therein.

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### **Sec. 10-7-40. Sales near schools.**

It is unlawful for any person to sell, offer or expose for sale or gift any alcoholic beverage within a distance of five hundred (500) feet from any private, public or parochial school, said distance to be computed by direct measurement from the nearest property lines. However, this prohibition shall not affect the rights of any person holding a lawful permit or license to conduct such business within the restricted area hereby established; nor shall this prohibition prevent the renewal, upon the expiration thereof, of any license in effect at such time authorizing such business within the restricted area hereby established.

### **Sec. 10-7-50. Public drinking.**

- (a) It shall be unlawful for any person to carry, drink or consume or have any open containers of alcoholic beverages on any street, sidewalk, alley, any other public right-of-way, in any automobile or on the grounds or in the facilities of any public or private school, except where authorized by the governing authority of such institution.
- (b) No person shall drink any alcoholic beverages in or on any of the above enumerated places.
- (c) It shall be unlawful for any person to drink or consume any alcoholic beverage from glass or other breakable container on any public property within the Town.
- (d) It shall be unlawful for any person to possess any unsealed alcoholic beverage in any container of any kind or description on any public street, sidewalk or other public right of way. For purposes hereof, the term *unsealed* means that the cap, top or access to the alcoholic beverage is broken or opened so that such beverage may be consumed without further action by the person. Notwithstanding the foregoing, the provisions of this Section shall not apply to a person in possession of one (1) opened but resealed container of partially consumed alcoholic beverage which was lawfully removed from a licensed premises pursuant to Section 12-47-412, C.R.S.
- (e) It shall not be a violation of this provision to store or consume any alcoholic beverage in conformance with, and pursuant to the terms of, any validly issued permit or license.
- (f) The Town Council may, by motion at any regular or special meeting, abate the provisions set forth in this Section as to specific location at specific times; provided, however, that such abatement otherwise meets all requirements of the Colorado Liquor Code. Any such abatement shall be immediately reported by the Town Clerk, in writing, to the Town Marshal.

(Prior codes 9-5-2, 9-5-3; Ord. 15 §1, 1997; Ord. 22 §1, 2008; Ord. 4 §1, 2009)

### **Sec. 10-7-60. Possession of drug paraphernalia.**

- (a) A person commits possession of drug paraphernalia if he or she possesses drug paraphernalia and intends to use the drug paraphernalia under circumstances in violation of state law.
- (b) Any person who commits possession of drug paraphernalia commits a petty offense and shall be punished by a fine of not more than one hundred dollars (\$100.00).

(Prior code 9-9-8; Ord. 15 §2, 1997; Ord. 4 §1, 2009)

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### **Sec. 10-7-70. Possession of marijuana.**

- (a) Any person who knowingly possesses, displays, consumes or uses not more than one (1) ounce of marijuana commits a petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00).
- (b) The provisions of this Section shall not apply to any person who possesses or uses marijuana pursuant to the Dangerous Drugs Therapeutic Research Act.

(Prior code 9-9-7; Ord. 15 §2, 1997; Ord. 4 §1, 2009)

### **Sec. 10-7-80. Abusing toxic vapors.**

- (a) As used in this Section, the term *toxic vapors* means the following substances or products containing such substances: alcohols, including methyl, isopropyl, propyl or butyl; aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate; acetone; benzene; carbon tetrachloride; cyclohexane; Freons, including Freon 11 and Freon 12; hexane; methyl ethyl ketone; methyl isobutyl ketone; naphtha; perchlorethylene; toluene; trichloroethane or xylene.
- (b) No person shall knowingly smell or inhale the fumes of toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system. No person shall knowingly possess, buy or use any such substance for the purposes described in this Section. This Subsection shall not apply to the inhalation of anesthesia for medical or dental purposes.
- (c) It is unlawful for any person knowingly to sell, offer for sale, deliver or give away to any other person any substance or product releasing toxic vapors, where the seller, offeror or deliverer knows or has reason to believe that such substance will be used for the purpose of inducing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses of the nervous system.
- (d) In a prosecution for a violation of this Section, evidence that a container lists one (1) or more of the substances described in Subsection (a) above as one (1) of its ingredients shall be *prima facie* evidence that the substance in such container contains toxic vapors and emits the fumes thereof.

(Ord. 4 §1, 2009)

### **Sec. 10-7-90. Knowingly allowing underage persons to possess or consume ethyl alcohol on private property.**

- (a) No person who is in possession and control of private property shall knowingly allow any person under twenty-one (21) years of age to possess or consume ethyl alcohol anywhere on the private property in his or her possession and control.
- (b) No person in possession and control of private property shall knowingly host, permit or allow persons under twenty-one (21) years of age to gather at said property where ethyl alcohol is available without making reasonable efforts to ensure that all persons under twenty-one (21) years of age do not possess ethyl alcohol or consume ethyl alcohol. *Reasonable efforts* shall include, but are not limited to, limiting the amount of ethyl alcohol available, limiting the size of the gathering, restricting access to ethyl alcohol by persons under twenty-one (21) years of age and obtaining a valid government-issued identification confirming each person's age.
- (c) It shall be an affirmative defense to this Section if ethyl alcohol is possessed or consumed in accordance with Subsection 10-7-30(b) of this Chapter.

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- (d) Knowingly allowing underage persons to possess or consume ethyl alcohol on private property shall be a misdemeanor and, upon conviction, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00).
  - (e) A surcharge in the sum of ten dollars (\$10.00) is hereby levied upon each criminal action resulting in a conviction or in a deferred judgment and sentence.

(Ord. 2 §1, 2011)

## ARTICLE 8 Weapons

### Sec. 10-8-10. Definitions.

- (a) As used in this Article, unless the context otherwise requires, the following definitions shall apply:

*Blackjack* includes any billy, sand club, sandbag or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact.

*Bomb* means any explosive or incendiary device or Molotov cocktail as defined in Section 9-7-103, C.R.S., or any chemical device which causes or can cause an explosion, which is not specifically designed for lawful and legitimate use in the hands of its possessor.

*Firearm* means any pistol, revolver, rifle, shotgun or other device designed to shoot, throw or hurl a projectile by means of gunpowder or other explosive.

*Gas gun* means a device designed for projecting gas-filled projectiles which release their contents after having been projected from the device and includes projectiles designed for use in such device.

*Gravity knife* means any knife that has a blade released from the handle or sheath thereof by the force of gravity or the application of centrifugal force that, when released, is locked in place by means of a button, lever or other device.

*Handgun* means a pistol, revolver or other firearm of any description, loaded or unloaded, from which any shot, bullet or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable or magazine breech, does not exceed twelve (12) inches.

*Knife* means any dagger, dirk, knife or stiletto with a blade over three and one-half (3½) inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing or tearing wounds; but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.

*Nunchaku* means an instrument consisting of two (2) sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain which is in the design of a weapon used in connection with the practice of a system of self-defense.

*Stun gun* means a device capable of temporarily immobilizing a person by the infliction of an electrical charge.

*Switchblade knife* means any knife the blade of which opens automatically by hand pressure applied to a button, spring or other device in its handle.

*Throwing star* means a disk having sharp radiating points or any disk-shaped bladed object which is handheld and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense.

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(b) It is an affirmative defense to any provision of this Article that the act was committed by a peace officer in the lawful discharge of his or her duties.

(Prior code 9-6-1; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-8-20. Open carry of a firearm.**

It is unlawful for any person, except law enforcement officers in the performance of their duties, to openly carry a firearm in any Town-owned or -operated building, or on any Town-owned or -operated park, recreation area or property upon which the Town Manager has directed to be posted a notification that the carrying of firearms is prohibited. Such Town-owned or -operated building, or Town-owned or -operated park, recreation area or property shall include:

Park and Trail List:

Town Park  
Gothic Field  
Rainbow Park  
Big Mine Park  
Tommy V Field/Town Ranch  
8th Street Greenway  
Three Ladies Park  
Totem Pole Park  
Henderson Park  
Dirt Jump Park

Properties List:

Old Town Hall	132 Elk Avenue
308 3rd Street	308 3rd Street
Old Rock Jail	409 2nd Street
Old Rock Library	504 Maroon Avenue
Marshals Building	508 Maroon Avenue
Town Hall	507 Maroon Avenue
Big Mine Park Warming House	620 2nd Street
Center for the Arts	606 6th Street
Visitor Center	601 6th Street
Public Works Shops & Yard	801 Butte Avenue
Public Works Storage Facility	801 Butte Avenue
Parks Shop & Yard	801 Butte Avenue
Wastewater Treatment Plant	800 Butte Avenue
Water Treatment Plant	800 Reservoir Road
Stepping Stones	705 & 715 7th Street
Denver & Rio Grande Depot	716 Elk Avenue
Tony's Shed	Behind Museum
Search & Rescue	Public Works Yard

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Fire Hall	306 3rd Street
Zamboni Shed	Big Mine Park
Park Bathrooms & Pavilions	Yelinick & Rainbow Parks

( Ord. No. 3, § 1, 2014 )

### **Sec. 10-8-30. Carrying concealed weapon; forfeiture.**

- (a) It is unlawful for any person to knowingly carry on his or her person, possess or personally display any firearm, whether concealed or not.
- (b) Nothing in this Section shall make it unlawful for a person to carry, possess or display a firearm if that person is:
  - (1) In or on his or her own dwelling, place of business or property, or property under his or her legal control;
  - (2) In a private motor vehicle and carrying or displaying the firearm in plain view for protection of person or property while traveling;
  - (3) Directly proceeding to or returning from target practice, hunting or other legal use of the firearm, and carrying the firearm in plain view and unloaded and properly cased;
  - (4) In possession of valid legal authority to possess, carry or display said firearm, which authority has been duly issued pursuant to state or federal law; or
  - (5) Participating in a parade or other cultural event and the firearm is not loaded with live ammunition.
- (c) It is unlawful for any person to wear under his or her clothes or concealed about his or her person, or to display in a threatening manner any dangerous or deadly weapon, including but not limited to any pistol, revolver, metallic knuckles, Bowie knife, dirk, dagger or knife resembling a Bowie knife, or any other dangerous or deadly weapon.
- (d) It is unlawful for any person to sell, offer to sell, display, use, possess or carry any knife having the appearance of a pocket knife the blade of which can be opened by a flick of a button, pressure on the handle or other mechanical contrivance. Any such knife is hereby declared to be a dangerous or deadly weapon within the meaning of Subsection (c) above.
- (e) It is an affirmative defense to a charge under this Section that the defendant carried a knife which he or she uses for sports, fishing or other lawful use.
- (f) Nothing in this Section shall be construed to forbid a United States Marshal, sheriff, constable, deputy and any regular, special or ex officio police officer or other law enforcement officer from carrying or wearing, while on duty, such weapons as shall be necessary in the proper discharge of his or her duties.

(Prior code 9-6-1, 9-6-2; Ord. 17 §1, 1992; Ord. 4 §1, 2009; Ord. No. 3, §§ 1, 2, 2014 )

Ord. No. 3, § 1, adopted Apr. 7, 2014 , renumbered §§ 10-8-20—10-8-50 as §§ 10-8-30—10-8-60.

### **Sec. 10-8-40. Disposition of confiscated concealed weapons.**

Any peace officer, upon making an arrest under this Article, may seize the firearm and place the same in safekeeping as directed by the Town Marshal, and it shall thereafter be disposed of pursuant to an order of the

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court having jurisdiction over the matter. Should the person arrested be convicted of a violation of this Section, the court may order that the firearm be forfeited and destroyed, or retained by the Town Marshal.

Editor's note(s)—See editor's note following § 10-8-30.

### **Sec. 10-8-50. Prohibited use of weapons.**

- (a) A person commits a misdemeanor if he or she:
  - (1) Knowingly and unlawfully aims a firearm at another person;
  - (2) Recklessly or with criminal negligence discharges a firearm or shoots a bow and arrow;
  - (3) Knowingly sets a loaded gun, trap or device designed to cause an explosion upon being tripped or approached, and leaves it unattended by a competent person immediately present;
  - (4) Has in his or her possession a firearm while he or she is under the influence of intoxicating liquor or of a controlled substance. Possession of a permit issued under Section 18-12-105(2)(c), C.R.S., is no defense to a violation of this Section; or
  - (5) Knowingly aims, swings or throws a throwing star or nunchaku at another person, or knowingly possesses a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, nonaccessible container.
- (b) It is unlawful for any person, except peace officers in the performance of their duties, to fire or discharge any bomb, cannon, gun, pistol, rifle, firearm or like weapon within the Town, without prior permission in writing from the Town, which permission shall limit the time and place of such firing.
- (c) Nothing contained in this Section shall prevent the use of any such instruments in shooting galleries or in any private grounds or residences under circumstances when such instrument can be fired, discharged or operated in such a manner as not to endanger persons or property and also in such manner as to prevent the projectile from traversing any grounds or space outside the limits of such gallery, grounds or residence.
- (d) Nothing contained in this Section shall prevent the use of any such instruments by any peace officer as shall be necessary in the proper discharge of his or her duties.

(Prior code 9-6-4; Ord. 17 §1, 1992; Ord. 4 §1, 2009; Ord. No. 3, § 1, 2014 )

Editor's note(s)—See editor's note following § 10-8-30.

### **Sec. 10-8-60. Selling weapons to intoxicated persons.**

- (a) It is unlawful for any person to purchase, sell, loan or furnish any gun, pistol or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, to any person in a condition of agitation and excitability or to any minor under the age of eighteen (18) years.
- (b) Such unlawful purchase, sale, loan or furnishing shall be grounds for revocation of any license issued by the Town to such person.

(Ord. 4 §1, 2009; Ord. No. 3, § 1, 2014 )

Editor's note(s)—See editor's note following § 10-8-30.

## ARTICLE 9 Regulation of Noise

### Sec. 10-9-10. Declaration of policy.

The Town Council finds that noise is a source of environmental pollution that is a threat to public peace and to the health, safety and welfare of the residents and visitors of the Town. Noise has an adverse effect on persons and, accordingly, represents a threat to the economic and aesthetic well-being of the community. Furthermore, the Town Council finds that it is the responsibility of individuals and businesses creating noise to mitigate and abate such noise and not the responsibility of those that are impacted by the noise. Based on these findings, the Town Council has determined that it is sound policy to establish standards for noise levels permitted in Town, types of noise permitted and prohibited and time periods in which certain noises are permitted and prohibited.

### Sec. 10-9-20. Definitions.

For purposes of this Article only, capitalized terms contained herein shall have the following meanings ascribed to such terms. All terminology used in this Article and not otherwise defined below shall have the meanings generally ascribed to such terminology in the applicable publications of the American National Standards Institute (ANSI) or its successor organization.

*Commercial District* means any area zoned primarily for commercial, business or other high-impact uses, including but not limited to C, B1, B2, B3 and T zone districts.

*Construction Activities* means any and all activities incidental to the erection, demolition, altering, assembling, installing or equipping of buildings, structures, roads or appurtenances thereto, including, without limitation, land clearing, grading, excavating, filling, landscaping, the use of power equipment and the delivery, loading or unloading of materials and equipment.

*Enforcement Officer* means any member of the Marshal's Department or its designated representative.

*Nighttime* means the period from 10:00 p.m. to 7:00 a.m. daily.

*Noise Suppression Plan* means that plan for noise management and/or mitigation as set forth in Section 10-9-80 below.

*Property Line* means an imaginary line at the ground surface and its vertical extension, which separates the real property owned or rented by one (1) person from that which is owned or rented by another person and separates real property from public premises, or in multiple-dwelling units, from the adjoining unit, such as the wall between two (2) apartments.

*Recipient Party* means any person, business or other legal entity that is the recipient of any noise as addressed in this Article.

*Recreation and Public District* means any area zoned primarily for recreation, sporting and entertainment and similar types of uses, including but not limited to the Public District.

*Residential District* means any area zoned primarily for residential use or other low-impact use, including but not limited to R1, R1A, R1B, R1C, R1D, R1E, R2, R2A, R2C, R3C and R4 Districts.

*Sound Level Meter* means an apparatus or instrument, including a microphone, amplifier, attenuator, output meter and frequency weighting networks, for the measurement of sound levels.

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*Source Party* means any person, business or other legal entity that is the generator or source of any noise as addressed in this Article.

*Special Event* means any performance, sporting event, artistic showing, festive, commercial or gathering activity or other gathering on public property for a limited period of time which is sponsored by an organization, whether not for profit or not where:

- a. The expenditure of Town resources is contemplated or deemed necessary by Town personnel to maintain public health, safety and welfare;
- b. The event will be conducted on property that requires that the Town issue a special event permit, pursuant to Section 6-4-110 of this Code; or
- c. The event is expected to have visual, noise or other environmental impact on the immediate vicinity or surrounding area of the event.

### **Sec. 10-9-30. Standards.**

Standards used in the measurement of sound as provided for in this Article shall be as follows:

- (1) Sound level measurement shall be made with a Sound Level Meter using the "A" weighting scale set on "slow" response.
- (2) Measurements shall be taken at the property line of the recipient party, applying the sound pressure levels of the Zone Classification set forth in Table 10-1 of the recipient party's property as set forth in Subsection 10-9-60(a) below. Where the recipient party is an enforcement officer only, the location for taking said measurement shall be the source party's property line, applying the sound pressure levels of the Zone classification set forth in Table 10-1 of the source party's property as set forth in Subsection 10-9-60(a). The sound level meter shall be used according to the manufacturer's specifications.
- (3) Background noise levels shall be taken for comparison with a given source for accuracy of a measurement. Enforcement actions will be taken if the source of noise is greater than the stated permissible levels and the background noise level.
- (4) Extraneous or momentary spikes in the background noise readings shall not be used to compare with the source noise readings.
- (5) If the source is constant and too loud to determine the background noise level, then the enforcement officer must find a similar site and distance to test for the background noise level.

### **Sec. 10-9-40. Prohibited noise.**

It shall be unlawful for any person to create, cause or allow the continuance of any unreasonably loud, disturbing, unusual, frightening or unnecessary noise which interferes with a neighboring resident's reasonable use of his or her property. Such noise may include, but is not limited to, the following:

- (1) Horns and signaling devices: The intentional sounding of any horn or signaling device of a motor vehicle on any street or public place continuously or intermittently, except as an emergency warning device.
- (2) The sounding of a security alarm for more than three (3) minutes.
- (3) The repair, rebuilding or testing of any motor vehicle during nighttime.
- (4) Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises therefrom.

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- (5) Operating any motor vehicle, motorcycle, truck, equipment or snowmobile in any manner that includes the removal or modification of any manufacturers' supplied equipment, including, without limitation, the exhaust system, which causes unreasonable or disturbing noise.
  - (6) Operating any motor vehicle or motorcycle in a manner as to constitute unreasonable and disturbing noise.
  - (7) Noisy parties: Congregating because of or participating in any party or gathering of people during nighttime in such a manner as to disturb the peace.
  - (8) The playing of any radio, phonograph, musical instrument, outdoor speakers, television or any such device in such a manner so as to disturb the peace of nearby persons during the nighttime.
  - (9) Any periodic, impulsive or shrill noise which is loud enough to disturb the peace of others within any residence during the nighttime.
  - (10) The yelling, shouting, whistling or singing on the public streets or private property at nighttime in such a manner as to disturb the peace.
  - (11) Construction between the hours of 7:00 p.m. and 7:00 a.m., Monday through Saturday, and before 8:00 a.m. and after 5:00 p.m. on Sundays.
  - (12) The use or firing of explosives, firearms or similar devices, which create loud sound.
  - (13) Slamming of Dumpster container covers and doors.

### **Sec. 10-9-50. Permitted noise.**

The following noises are allowed to exceed the noise levels permitted in the zone district as further described in this Article at the times specified herein, unless deemed a disturbance of the peace by an enforcement officer.

- (1) Sound emanating from outdoor athletic events between 7:00 a.m. and 10:00 p.m.
- (2) Construction activities between 7:00 a.m. and 7:00 p.m., Monday through Friday, and 8:00 a.m. and 5:00 p.m. on Saturdays and Sundays, provided that the following conditions are met:
  - a. Noise levels do not exceed eighty (80) decibels at the property line.
  - b. Equipment is operated in accordance with the manufacturers' specifications and with all standard manufacturers' mufflers and noise-reducing equipment in use and in properly operating condition.
  - c. Notices shall be posted to inform workers, including subcontractors, about the basic noise requirements as well as specific noise restrictions to the project.
  - d. Jackhammers, drills, large compressors and other types of equipment that exceed eighty (80) decibels must be used in conjunction with an approved noise suppression plan as approved by the Marshal's Department.
- (3) Special events, farmers' markets or other events to which the public is invited, provided that the following conditions are met:
  - a. The maximum decibel level at the perimeter of the event does not exceed one hundred (100) decibels.
  - b. Amplified noise shall be created only between the hours of 9:00 a.m. and 10:00 p.m.

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- c. Neighbors within two hundred fifty (250) feet of the site of the proposed sound source are notified. Such notification must be in writing and be delivered seven (7) days prior to the start of the event.
  - d. The arrangement of loudspeakers or the sound instruments must be such that they minimize the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically caused dispersal of sound beyond the property lines.
  - e. All reasonable measures are taken to baffle or reduce noise impacts on the neighbors.
  - f. Event organizers agree to cooperate with the Marshal's Department in addressing noise complaints from neighbors, which may include the termination of the event.
  - g. Organizers of special events or other events that the public is invited to may request a variance from noise restrictions set forth in this Article from the Town Council. The variance request must meet the following requirements before a variance is granted:
    - 1. The variance request shall include reasons why the variance should be granted, how the public good will outweigh impacts on neighbors and other factors supporting the request.
    - 2. If approved, the variance shall contain all conditions upon which said variance has been granted, including but not limited to the effective dates, times of day, location, sound pressure level or equipment limitation. The Town Council may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.
- (4) Private events to which the public is not invited and that are located at a park, business or nonprofit facility with the following conditions:
- a. Private events must comply with the requirements of Subparagraphs (3)a. through (3)f. above governing public events.
  - b. A maximum of two (2) per week at any property.
  - c. If complaints are received from neighbors about noise from a private event, the event organizer must meet with the Marshal's Department and implement additional control measures for future events to prevent disturbance of neighbors.
  - d. An administrative fee of up to two hundred fifty dollars (\$250.00) is required for review of additional control measures.

#### **Sec. 10-9-60. Maximum permitted noise levels by zone district.**

- (a) No person or group of persons shall operate or cause to be operated any continuous, regular or frequent source of noise that exceeds the maximum permissible sound pressure level set forth in Table 10-1 below.

**Table 10-1**  
**Maximum Sound Pressure Levels**

<b>Zone Classification</b>	<b>Nighttime (10:00 p.m. to 7:00 a.m.)</b>	<b>Daytime (7:00 a.m. to 10:00 p.m.)</b>
Residential District	50 dBA	55 dBA
Commercial District	60 dBA	60 dBA
Recreation and Public District	55 dBA	65 dBA

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- (b) No person shall drive, operate, move, cause or knowingly permit to be driven a motor vehicle or combination of vehicles at any time in such a manner to exceed the noise limits for the category of motor vehicle shown in Table 10-2 below.

**Table 10-2**  
**Noise Limits for Motor Vehicles**

<b>Type of Vehicle</b>	<b>Noise Level dBA for Speed of 25 mph or Less</b>
Motor vehicles with a manufacturer's gross vehicle weight rating (GVWR) or gross combination weight rating of 10,000 pounds or more, or by any combination of vehicles towed by such motor vehicles	82
Any other motor vehicle (less than 10,000 pounds) or any combination of vehicles towed by any motor vehicle	80

- (c) Noise shall be measured at a distance of at least twenty-five (25) feet from the vehicle with the sound level meter at least four (4) feet above the immediate surrounding surface.

(Ord. 19 §1, 2007; Ord. 17 §1, 2008; Ord. 13 §1, 2013)

### **Sec. 10-9-70. Exemptions.**

The following uses and activities shall be exempt from noise level regulations:

- (1) Emergency work that is necessary to restore property to a safe condition following a fire, accident or other disaster, to restore public utilities or to protect persons or property from an imminent danger. Such work must comply with the requirements of this Article for a noise suppression plan as approved by the Marshal's Department, except where the activity is undertaken as part of any governmental activity.
- (2) Noises of safety signals, warning devices and emergency pressure-relief valves.
- (3) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- (4) Use of firearms or other devices by enforcement officers in the performance of their official duties and training.
- (5) Noises resulting from public transportation vehicles and buses.
- (6) Noise from snowplowing, street cleaning or trash collection.
- (7) Lawful fireworks.

### **Sec. 10-9-80. Noise suppression plan.**

- (a) Where a noise suppression plan is required under this Article, such noise suppression plan shall be submitted to the Marshal's Department for approval and shall include the following:
  - (1) Contact information for the applicant.
  - (2) Dates of the activity.
  - (3) Hours of the activity.

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- (4) Location of the activity.
  - (5) Any equipment constraints that prevent common noise-reduction measures.
  - (6) Description of how noise-blocking or -reducing measures will be utilized and implemented.
  - (7) A layout map of the locations of baffles and other sound-blocking or -reducing measures with relation to the source of noise.

All submittals must be timely for adequate review.

- (b) Approval may be granted upon a good and sufficient showing that:
  - (1) The activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with this Article; and
  - (2) No reasonable alternative is available to the applicant.
- (c) An administrative fee of up to two hundred fifty dollars (\$250.00) is required for review of any noise suppression plan. Such fee shall not apply to any governmental activity.
- (d) Notwithstanding anything contained in this Article to the contrary, the Town may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects of noise upon the community or the surrounding neighborhood.

(Ord. 19 §1, 2007; Ord. 17 §1, 2008)

### **Sec. 10-9-90. Enforcement; penalty.**

An enforcement officer shall have the right to inspect property concerning any noise complaint or, absent any complaint, on his or her own. Enforcement officers may issue a warning notice or summons and complaint to any person in violation of this Article. Any person who shall be the source of any noise in violation of this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not more than one thousand dollars (\$1,000.00) for each violation and/or incarcerated for not more than one (1) year for each separate offense.

## **ARTICLE 10 Alarm Systems**

### **Sec. 10-10-10. Definitions.**

As used in this Article, unless the context otherwise requires, the following definitions shall apply:

*Alarm notification* means a notification intended to summon the Marshal's and/or Fire Department, which is designed either to be initiated purposely by a person or by an alarm system that responds to a stimulus characteristic of unauthorized intrusion or fire.

*Alarm site* means a single premises or location served by an alarm system under the control of one (1) owner, manager or person.

*Alarm system* means a device or system that emits, transmits or relays a signal intended to summon the police services of the Marshal's Department or the fire emergency services provided by the Crested Butte Fire Protection District (hereinafter "Fire Department"), including but not limited to local alarms, direct notification alarms and motor vehicle theft alarms.

*False alarm notification* means an alarm notification to the Marshal's Department or Fire Department, when the responding officer finds no evidence of fire, unauthorized intrusion, attempted unauthorized intrusion, robbery, attempted robbery, theft or an attempt to take a person hostage.

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*Person in control of an alarm system* means the owner of an alarm site, the owner of a business located at an alarm site, the local manager of a business located at an alarm site or the owner or operator of a motor vehicle containing a theft alarm.

### **Sec. 10-10-20. Reporting of alarm system.**

The presence of an alarm system, except a motor vehicle theft alarm, and its mode of operation shall be reported to one (1) or both of the Marshal's Department and Fire Department which it is intended to summon by a person in control of that alarm system. Such reporting shall occur within ten (10) days after its installation.

### **Sec. 10-10-30. Maintenance of alarm system.**

An alarm system shall be maintained and operated in such fashion that false alarm notifications are not created. Any false alarm notifications in excess of five (5) within any twelve-month period from any one (1) alarm site or motor vehicle shall be conclusive evidence that the alarm system is not being maintained and operated in such a fashion that false alarm notifications are not created.

### **Sec. 10-10-40. Violation; penalty.**

- (a) Any person in control of an alarm system who violates the provisions of Sections 10-10-20 and 10-10-30 above shall be guilty of a misdemeanor. Upon conviction thereof, such person shall be fined as follows, with the minimum fines deemed mandatory fines not subject to reduction by the Municipal Judge:
  - (1) Violation of Section 10-10-20 above shall result in a minimum fine of one hundred dollars (\$100.00).
  - (2) Violation of Section 10-10-30 above shall result in a minimum fine of fifty dollars (\$50.00) if the police are summoned by the false alarm notification.
  - (3) Violation of Section 10-10-30 above shall result in a minimum fine of two hundred fifty dollars (\$250.00) if the Fire Department is summoned by the false alarm notification.
- (b) Each false alarm notification in excess of five (5) within any twelve-month period shall be deemed a separate offense.

(Prior code 9-7-4; Ord. 2 §1, 1988; Ord. 17 §1, 1992; Ord. 4 §1, 2009)

### **Sec. 10-10-50. No liability.**

The Town, Town Marshal, deputies or other authorized personnel shall not be liable if they are required to cause damage to a motor vehicle by reasonably gaining entrance thereto for the purpose of stopping an alarm notification.

## **ARTICLE 11 Discriminatory Practices**

### **Sec. 10-11-10. Declaration of policy.**

It is the policy of the Town to prevent discrimination against anyone because of his or her race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical or mental disability, sexual orientation, family responsibility or political affiliation. The purpose of this Article is to establish guidelines for nondiscrimination within the Town by identifying those acts or actions which are incompatible with the best interests of the Town's residents and visitors.

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## **Sec. 10-11-20. Definitions.**

For the purposes of this Article, unless otherwise apparent from the context, the following definitions apply:

*Discrimination or to discriminate* means, without limitation, any act which, because of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical or mental disability, sexual orientation, family responsibility or political affiliation, results in the unequal treatment or separation of any person; or denies, prevents, limits or otherwise adversely affects the benefit or enjoyment by any person of employment, ownership or occupancy of real property or public services or accommodations. Such discrimination is unlawful and is a violation of this Article; provided, however, that the physical condition of an existing building or structure shall not, of itself, constitute discrimination.

*Housing* means any building, structure, vacant land or part thereof during the period it is advertised, listed or offered for sale, lease, rent or transfer of ownership, and during the period while it is being sold, leased or rented. *Housing* shall not include transfers of property by will or gift.

*Public services or accommodations* means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages or accommodations to the public.

*Sexual orientation* means the choice of sexual partners; i.e., bisexual, homosexual or heterosexual.

## **Sec. 10-11-30. Discriminatory employment practices prohibited.**

It is unlawful for any person who is an employer or employment agency, directly or indirectly, to discriminate against any person with regard to application for employment, hiring, occupational training, tenure, promotion, compensation, layoff, discharge or any other term or condition of employment except when based upon a bona fide occupational qualification. This Section shall not prohibit a religious organization or institution from restricting employment opportunities to persons of the religious denomination and advertising such restriction if a bona fide religious purpose exists for the restriction.

## **Sec. 10-11-40. Discriminatory housing practices prohibited.**

It is unlawful for any person, directly or indirectly, to discriminate against or to accord adverse, unlawful or unequal treatment to any other person with respect to the acquisition, occupancy, use and enjoyment of any housing, including the sale, transfer, rental or lease thereof. This Section shall not prohibit:

- (1) A person who seeks to share a dwelling unit with another from discriminating.
- (2) The owner of an owner-occupied one-family dwelling from discriminating.
- (3) The owner of an owner-occupied two-family dwelling or the owner or lessor of a housing facility devoted entirely to housing individuals of one (1) sex from limiting lessees or tenants to the members of one (1) sex.
- (4) Any religious or denominational institution or organization that is operated, supervised or controlled by a religious or denominational organization from limited admission or giving preference to persons of the same religion or denomination or for making such selection of buyers, lessees or tenants as will promote a bona fide religious denominational purpose.

## **Sec. 10-11-50. Discriminatory public service and accommodation practices prohibited.**

It is unlawful for a person engaged in providing services or accommodations to the public to discriminate, directly or indirectly, against any other person by refusing to allow the full and equal use and enjoyment of the goods, services, facilities, privileges, advantages, including accommodations, and the terms and the conditions

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under which the same are made available to the public generally, or to provide adverse, unlawful or unequal treatment to any person in connection therewith. This Section shall not prohibit:

- (1) Persons from restricting admission to a place of public accommodation to individuals of one (1) sex if such restriction bears a bona fide relationship to the goods, services, facilities, privileges, advantages or accommodations of such place of public accommodation.
- (2) Any religious or denominational institution that is operated, supervised or controlled by a religious or denominational organization from limited admission to persons of the same religion or denomination as will promote a bona fide religious or denominational purpose.

### **Sec. 10-11-60. Penalties; civil liability.**

- (a) Any person who violates the provisions of this Article shall be deemed guilty of an offense and, upon conviction thereof, shall be punished in accordance with the provisions of Section 1-4-20 of this Code.
- (b) In addition, any person claiming to be aggrieved by an unlawful discriminatory act shall have a cause of action in any court of competent jurisdiction for compensatory damages, punitive damages, or both, and such other remedies as may be appropriate, including specifically the issuing of restraining orders and such temporary or permanent injunctions as are necessary to obtain complete compliance with this Article. In addition, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
- (c) Whenever it appears that the holder of a permit, license, franchise, benefit or advantage issued by the Town is in violation of this Article, notwithstanding any other action it may take or may have taken under the authority of the provisions of this Article, the Town may take such action regarding the temporary or permanent suspension of the violator's business license, permit, franchise, benefit or advantage as it considers appropriate based on the facts disclosed to it.

(Prior code 2-6-6; Ord. 6 §1, 1993; Ord. 4 §1, 2009)

## **ARTICLE 12 Pandhandling**

### **Sec. 10-12-10. Purpose.**

The Town has the authority and power to regulate behavior in the use of sidewalks, streets, parks and other public places by panhandlers and to otherwise protect the safety and convenience of its residents and visitors and to maintain order in public places from panhandling activities, all of which are valid and reasonable governmental objectives and interests. The Town makes no distinction nor expresses a basis of opinion as to any message or content conveyed or delivered with solicitation or panhandling, but rather is attempting by the provisions of this Article to regulate the time, place and manner of the conduct of the solicitor or panhandler and not upon the content of the message they carry. Specifically, the Town intends by this Article to regulate panhandling activities through reasonable time, place and manner restrictions that will serve to protect property, public safety and will otherwise benefit the general health, safety and welfare of residents and visitors of Crested Butte.

### **Sec. 10-12-20. Definitions.**

The following terms shall have the meanings ascribed thereto throughout this Article:

*Coercive* means to compel another person by physical force to do what his or her free will would refuse.

*Intimidating* means conduct that puts the fear of bodily harm in another person.

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*Obscene* means a blatantly offensive description of a sexual act or solicitation to commit a sexual act, whether or not such sexual act is normal or perverted, actual or simulated, including, but not limited to, masturbation, cunnilingus, fellatio, anilingus or human excretory functions.

*Panhandle* or *panhandling* shall include using the spoken, singing, written or printed word, or any bodily gestures, signs or other means of communicating with the purpose of obtaining a gift of money or any other thing of value.

*Public place* means a place where a governmental entity has title or right of access, to which the public also has access, including, but not limited to, any sidewalk, street, alley, bridges, buildings, driveways, highway, public parking lot or public parking garages, plaza, transportation facility, school, place of amusement, park, playground or restrooms.

*Sidewalk* means that portion of a street between the curbline and the adjacent property lines intended for the use by the public.

*Threatening* means conduct that expresses an avowed present determination or intent to inflict physical or other harm or injury to another person presently or in the future.

### **Sec. 10-12-30. Prohibited panhandling activities.**

It shall be unlawful for any person to panhandle if such panhandling involves the following prohibited conduct:

- (1) If the person panhandling engages in conduct toward the person solicited that is coercive, intimidating, obscene or threatening and that causes the person solicited to reasonably fear for his or her safety.
- (2) If the person panhandling directs fighting words to the person solicited that are likely to create an imminent breach of the peace.
- (3) If the person panhandling touches or grabs any person being solicited.
- (4) If the person panhandles in such a manner so as to intentionally obstruct or block a sidewalk, doorway, entryway or other passageway in a public place used by the public or obstructs the passage of a person solicited or requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person.

### **Sec. 10-12-40. Violation.**

A violation of this Article shall be enforced pursuant to Chapter 1, Article 4 of the Code.

## **CHAPTER 11**

## **Streets, Sidewalks and Public Property**

### **ARTICLE 1 Streets, Sidewalks, Snow Management, and Snow Shed Remediation<sup>3</sup>**

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<sup>3</sup>Ord. No. 27 , § 1, adopted July 2, 2019, amended Article 1 title to read as herein set out. Formerly, such title pertained to Streets, Sidewalks and Snow Management.

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### **Sec. 11-1-10. Ordinary and normal maintenance of sidewalks.**

- (a) The owner or other person in charge of or having the control or supervision of any premises shall perform ordinary and normal maintenance on the sidewalks adjoining such premises, keep such sidewalks in good and clean condition and remove all weeds, trash, leaves and any other debris from such sidewalks as necessary in order to provide safe, efficient and clean passage to pedestrian traffic. It shall be unlawful for any person to fail or refuse to comply with this requirement.
- (b) Sidewalk definition. For purposes of this Article, *sidewalk* shall include only the concrete portion of a pedestrian way fronting or adjacent to any private property.
- (c) Owner or other person in charge definition. For purposes of this Article, an *owner or other person in charge of or having the control and supervision of the premises* shall include, without limitation, an owner, tenant, occupant, lessee or other owner of a beneficial interest in the premises.

(Ord. 3 §2, 2007)

### **Sec. 11-1-20. Failure to comply.**

Upon the failure or refusal of an owner or other person in charge of or having the control and supervision of the premises to perform ordinary and normal maintenance and upkeep on any sidewalk, the Town Manager may correct or maintain the same, as the case may be, by day's work or contract. Where any owner or other person in charge of or having control and supervision of the premises adjoining any sidewalk fails to perform ordinary and normal maintenance and upkeep on such sidewalk, said person shall be guilty of a misdemeanor and subject to a maximum fine of one hundred dollars (\$100.00) for each offense.

### **Sec. 11-1-30. Town's election to maintain not a waiver.**

The Town may, at its election, undertake to maintain any sidewalk as described in Section 11-1-10 above in its sole discretion. Notwithstanding the Town's undertaking to maintain any sidewalks, neither the Town's election to maintain any sidewalks nor the Town's actual undertaking such maintenance shall limit the responsibility of the owner or other person in charge of or having the control and supervision of the premises adjoining such sidewalks to maintain the same as required under this Article.

### **Sec. 11-1-40. Removal of snow and ice from sidewalks by adjoining parties; sidewalks with snowmelt systems.**

- (a) Removal of snow and ice generally. Any owner or other person in charge of or having the control and supervision of any premises adjacent to any sidewalk shall cause to be removed and cleared away snow or ice from a path of at least five (5) feet in width from so much of the sidewalk as is adjacent to said premises. For owners or other persons in charge of or having the control and supervision of any premises with adjacent sidewalks that have snowmelt systems, such persons shall see to it that ice accumulating on sidewalks of neighboring premises that are a result of the heated sidewalk shall be similarly removed and cleared away. It shall be unlawful for any person to fail or refuse to comply with this requirement.
- (b) Sidewalks with snowmelt systems. Where any owner or other person in charge of or having the control and supervision of any premises installs or constructs sidewalks with snowmelt systems, the costs of all equipment and any energy necessary to heat such sidewalks shall be the sole responsibility of the owner or other person in charge of or having the control and supervision of any premises. Where any sidewalk with a snowmelt system is creating a dangerous condition through the build-up of ice on such sidewalk or any curb, gutter street or alley or any neighboring sidewalk curb, gutter, street or alley, the Town may, at its sole

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discretion, require the owner or other person in charge of or having the control and supervision of such sidewalk to turn off the snowmelt functions on said sidewalk. At all times, the construction and operation of sidewalks with snowmelt systems must comply with applicable Town restrictions and requirements related to snowmelt systems contained in the Town's Energy Conservation Code, as amended.

(Ord. 3 §2, 2007)

#### **Sec. 11-1-50. Failure to comply with snow removal requirements.**

In the event of the failure of any owner or other person in charge of or having the control and supervision of any premises to clear away snow and ice from any adjacent sidewalk as required in Section 11-1-40 above, the Town Manager may, at his or her election, cause such work to be performed by day's work or contract. Where any owner or other person in charge of or having control and supervision of any premises fails to clear away snow and ice from any sidewalk as required by Section 11-1-40, such person shall be guilty of a misdemeanor and subject to a maximum fine of one hundred dollars (\$100.00) for each offense. Nothing contained in Section 11-1-40 or this Section shall affect or otherwise alter the liability of any owner or other person in charge of or having the control and supervision of any premises adjacent to any sidewalk or the Town as it exists under state law, as amended. Notwithstanding the Town's undertaking to clear away snow and ice from any sidewalk, neither the Town's election to perform such work nor the Town's actual undertaking to perform such work shall limit the responsibility of the owner or other person in charge or having the control and supervision of the premises adjoining such sidewalks to clear away snow and ice from any sidewalk as required under Section 11-1-40.

#### **Sec. 11-1-60. Snow management.**

- (a) Snow management guidelines. The Town Council shall adopt Town guidelines ("Snow Management Guideline") that address, without limitation, the hauling, dumping, transportation and storage of snow in advance of each upcoming snow season. A current copy of the Snow Management Guidelines shall be kept and maintained in the office of the Town Clerk. The Snow Management Guidelines are adopted herein by this reference and shall be enforced by the Town Manager under the terms set forth herein.
- (b) Hauling, dumping, transportation and storage. All hauling, dumping, transportation and storage of snow shall be undertaken as, when and where identified and described in the Snow Management Guidelines. No person shall dump, deposit or store snow on any Town-owned property, any public rights-of-way or on any street or alley, except as otherwise permitted by the Town in writing.
- (c) Prohibited activities. No snow from outside the Town's boundaries shall be dumped, transported, stored or otherwise deposited, for any period of time, within the Town, other than where passing through Town to destinations outside of Town, without the prior written permission of the Town. Snow permitted to be dumped and stored within the Town shall contain no foreign debris, trash or other materials. No petroleum products, foreign agents or hazardous substances and hazardous wastes (as defined by the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA], 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 and Resource Conservation and Recovery Act [RCRA], 42 U.S.C. § 6902, et seq.) shall be used in the hauling, dumping and depositing of snow, other than as inherent in the function and operation of machinery used therefor.
- (d) Enforcement; penalties. No person shall haul, dump, transport or store snow without strictly complying with the requirements of this Section, inclusive of the Snow Management Guidelines. Any person who violates this Section shall be guilty of a misdemeanor and subject to a maximum fine of one thousand dollars (\$1,000.00) per offense or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day any such activity shall exist out of compliance with this Section shall be a separate offense hereunder. The Marshal's Department or the Town Manager may enforce the penalties provided hereunder, including, without limitation, by proper summons to appear in a court of competent jurisdiction.

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The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or otherwise remove any violation of this Section. In the event that the Town elects to abate or remove such a violation, the Town's reasonable costs and expenses in conjunction with such abatement shall be properly chargeable to the offending person. No election by the Town to so abate a violation shall limit the responsibility or liability of the offending party or cause the Town to incur such responsibility or liability. Remedies provided in this Section are cumulative and concurrent and not intended to be exclusive, and the same are in addition to all other rights provided at law and in equity.

- (e) Any person permitted to haul, dump, transport or store snow within Town shall comply with the following requirements:
  - (1) Keep and maintain in force at all times during the performance of such activities a snow management permit issued by the Town Manager.
  - (2) Provide the Town with a certificate of insurance naming the Town as an additional insured reflecting coverage satisfactory to the Town Manager.
  - (3) Snow stored on Town-owned property, public rights-of-way, streets and alleys shall be removed no later than April 1 of each year, except as otherwise permitted by the Town Manager in writing.
  - (4) Snow accumulated in alleys shall be hauled away after the snow has reached a point of one-half (1/2) the height of any adjacent fence line, or as deemed necessary by the Town Manager.
  - (5) Persons hauling, dumping, transporting or storing snow within Town shall be responsible and liable for any damage to private and public property as set forth in snow management permit.

(Ord. 27 §2, 2008; Ord. 4 §1, 2009; Ord. 18 §1, 2016)

### **Sec. 11-1-70. Snow shed remediation.**

- (a) Purpose. The purpose of this Section shall be to protect public health, safety, and welfare by preventing built-up snow and ice on the roofs of buildings from shedding onto public areas and public streets and rights-of-way maintained by the Town.
- (b) Removal of snow and ice from roofs. The owner or other person in charge of or having control and supervision of any building located within or adjacent to public areas and public streets and rights-of-way maintained by the Town shall remove snow and ice build-up from the building's roof within a reasonable time, but no more than twenty-four (24) hours, following a snowstorm to ensure that each roof plane of the building does not shed snow or ice onto such public areas or public streets and rights-of-way.
- (c) Roof snow and ice management.
  - (1) During months that snow accumulates, all eaves and other roof areas of a building that could result in shedding of snow and ice onto public areas and public streets and rights-of-way maintained by the Town shall be inspected on a weekly basis, at a minimum.
  - (2) Upon identifying a potentially hazardous build-up of snow or ice as a result of inspections or upon receiving notice by a representative of the Town:
    - (i) The hazard area shall be immediately cordoned off using appropriate fencing or Town approved barriers. In the event that the cordoned off area is an entrance or egress, directions to the alternate entrance or egress area shall be clearly posted.
    - (ii) Appropriate work crews shall be immediately scheduled to remove the built-up snow or ice. Diligent and reasonable efforts shall be made to complete the snow and ice removal activity within twenty-four (24) hours of identifying the hazard or receiving notice from the Town.

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- (iii) All snow and ice removal activities shall be safely completed. At all times during the removal activities there shall be at least one (1) worker posted at ground level to monitor pedestrian safety.
  - (d) Failure to comply and notice of violation. Failure to remove potentially hazardous snow and ice build-up from a building's roof within twenty-four (24) hours following a snowstorm shall constitute a violation of this Section 11-1-70. The Town shall give written notice to the owner or other person in charge of or having control and supervision of the building, delivered to the party's last known local address, requiring that the built-up snow and ice be removed within twenty-four (24) hours of receiving notice. Upon failure or refusal to timely remedy or otherwise respond to the notice, the Town may, at its election, remove the snow and ice build-up on the building's roof at the owner's expense.
    - (1) If the Town determines the snow and ice build-up on a building's roof poses an immediate threat to public safety, the Town may, at its election, remove the snow and ice build-up at the owner's expense.
  - (e) Town's election to remove the snow and ice build-up as described in Section 11-1-70(c) is not a waiver. Notwithstanding the Town's undertaking to remove the snow and ice build-up on a building's roof, neither the Town's election to perform such work nor the Town's actual undertaking to perform such work shall limit the responsibility of the owner or other person in charge or having the control and supervision of the building to remove the snow and ice build-up on the building's roof as required under this Section 11-1-70.
  - (f) Liability for property damage and injury to pedestrians.
    - (1) The building owner is liable for any damages caused to Town property or private property, or injury to pedestrians from snow and ice falling off the building's roof.
    - (2) It is the building owner's responsibility to repair, at owner's expense, any damage to Town property or private property resulting from roof snow and ice removal operations.

( Ord. No. 27 , § 2, 7-2-2019)

## ARTICLE 2 Excavations

### *Division I General*

#### **Sec. 11-2-10. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed below:

*Applicant* means the owner of the project for which the contractor is undertaking the work as opposed to the contractor simply performing the work. The applicant and the permittee shall be the same person.

*Curb cut* means that portion of the street curb or roadway frontage that abuts a driveway.

*Emergency* means any event which may threaten public health or safety or that results in an interruption in the provision of service, including, but not limited to damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, damaged electrical and communications facilities or as otherwise recommended by the Town Manager.

*Pavement and/or paved improvements* include any improvement constructed of asphalt concrete, seal and chip, concrete or similar impervious wearing surface, including but not limited to roadway, sidewalk, curb, gutter and similar improvements.

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*Permittee* means the owner of the project for which the contractor is undertaking the work as opposed to the contractor simply performing the work. The permittee and the applicant shall be the same person.

*Public Works Criteria for Design and Construction* means the current *Public Works Department Criteria for Design and Construction: Earthwork, Sewer and Water* adopted by the Town Manager governing the design and construction specifications for construction and excavation in the public rights-of-way. Such Public Works Criteria for Design and Construction may be updated and amended from time to time by the Town Manager.

*Public Works Director* means the Director of the Town Public Works Department. For the purposes of this Article, the Public Works Director shall also include the Town Manager.

*Street improvement* includes roadway and alley paving, sidewalks, driveways, curbs, gutters, street lights, street signs, traffic signs and signals, storm sewers, culverts, bridges and drainage appurtenances and similar items.

*Town Manager* means the Town Manager in title.

#### **Sec. 11-2-20. Town Manager to enforce.**

The Town Manager shall enforce these regulations and shall have the authority to adopt policies, procedures and criteria for the implementation of these regulations.

### ***Division II Occupancy of Public Rights-of-Way***

#### **Sec. 11-2-30. Occupancy of public right-of-way prohibited without encroachment license; application fee.**

- (a) No person shall occupy, construct, place or maintain within any public right-of-way any building, structure, appurtenance, fence, tree, vegetation or other obstruction without first having obtained an encroachment license from the Town Manager. Any person seeking an encroachment license must submit an application on forms provided by the Town accompanied by an administrative fee in an amount prescribed by the Town. The Town Manager may specify the terms and conditions under which an encroachment license is to be issued so as to protect the best interests of the Town. All encroachment licenses granted under this Section shall be revocable by the Town with or without cause at any time.
- (b) All encroachments shall comply with the most current edition of the Public Works Criteria for Design and Construction.
- (c) Nothing contained in this Section shall be construed to apply to improvements or activities undertaken within a public right-of-way by the Town, its employees, contractors or agents, the placement of temporary safety barricades or structures around excavations, construction within a public right-of-way or the placement of other devices or structures that may be required to be placed in the public right-of-way by reason of state or federal law or regulation.

(Ord. 17 §1, 2013)

#### **Sec. 11-2-40. Temporary construction within public right-of-way restricted.**

Temporary guardrails, pedestrian walkways, protective canopies, field offices and similar items shall not be constructed on public right-of-way without prior approval of the Public Works Director.

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**Sec. 11-2-50. Temporary storage of merchandise on public right-of-way restricted.**

It shall be unlawful for any person receiving or delivering merchandise, commodities or construction materials within the Town to place, keep or suffer to be kept upon the public rights-of-way any such merchandise, commodities or construction materials without the prior approval of the Public Works Director.

**Sec. 11-2-60. Obstruction of ditches and gutters prohibited.**

No person shall obstruct or damage in any manner any street improvement, ditch, gutter, drain, catch basin, culvert or other drainage improvement within the public rights-of-way or under control of the Town.

**Sec. 11-2-70. Dangerous openings in streets.**

No person shall leave or keep open any cellar door, pit, vault, manhole or other subterranean opening on any street, alley, sidewalk or other public way, or keep such opening in an unsecured condition so that vehicles, persons or animals will be in danger of sustaining injury or damage.

**Sec. 11-2-80. Obstructing excavations, construction or repairs prohibited.**

It shall be unlawful for any person to hinder or obstruct any excavation or the construction or repair of any paving, sidewalk, curb, gutter, drainage improvement, utility or other street improvements performed pursuant to the provisions of this Article.

**Sec. 11-2-90. Damage, removal, etc. of safety barricades or devices prohibited.**

It shall be unlawful to damage, displace, remove or interfere with any barricade, warning light or other safety appliance or device which is lawfully placed around or about any excavation or other street improvement construction in any street, alley, sidewalk or other public right-of-way.

**Sec. 11-2-100. Draining water onto public right-of-way restricted.**

- (a) No person shall drain water from any swimming pool, therapy pool, hot tub or similar improvement onto a public right-of-way without approval of the Public Works Director. Emergency overflow shall be permitted upon approval of the Town Manager.
- (b) No person shall discharge water from subterranean structures (e.g., basement, foundation, footer drain) onto any public right-of-way.

(Ord. 17 §1, 2013)

### ***Division III Construction and Excavation Within Public Rights-of-Way***

**Sec. 11-2-110. Permit required.**

- (a) It shall be unlawful for any person to undertake any construction, installation, excavation, maintenance or repair within or dig up, open, disturb, grade, excavate or otherwise alter any public right-of-way, or use, occupy or stage construction materials in any public right-of-way without first having obtained a permit for such work from the Town Manager. A separate permit shall be required for each such construction or

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excavation project. All permits granted under this Section shall be revocable by the Town with or without cause at any time.

- (b) No sidewalk, driveway, curb, gutter or related street improvement required by this Article shall be constructed or repaired without complying with the requirements of this Article and the Public Works Criteria for Design and Construction.

(Ord. 17 §1, 2013)

### **Sec. 11-2-120. Application.**

Application for a right-of-way permit shall be made no later than one (1) week prior to the planned commencement of the work. The Town Manager may allow the applicant to obtain a permit sooner than one (1) week prior to the planned commencement of the work if the scope of the work is deemed to be *de minimis*. Emergency situations shall be exempt; however, a permit for such emergency work must be obtained as soon as is possible and no later than the next business day.

### **Sec. 11-2-130. Plans and specifications required for construction.**

No permit for construction within any Town public right-of-way shall be issued until plans have been submitted to and approved by the Public Works Director.

### **Sec. 11-2-140. Fees, surety and insurance.**

No permit shall be issued unless the applicant has entered into the required agreements, paid the required fees, filed the appropriate surety instruments and delivered the required insurance documentation to the Town as follows:

- (1) An indemnification and hold harmless agreement as approved by the Town Attorney.
- (2) Permit fees in amounts prescribed by the Town.
- (3) Surety in the form of, at the election of the Town Manager, an irrevocable letter of credit or cash deposit in an amount equal to the total cost of construction, including labor and materials, or five hundred dollars (\$500.00), whichever is greater. Such surety shall be given to the Town on terms acceptable to the Town Attorney and shall guarantee the complete and final performance and maintenance of the work, any materials and equipment furnished in connection therewith, and that the workmanship employed in the performance of the work described in the right-of-way permit will be of such character and quality as to ensure it to be free from all defects, in continuous good order and in a condition satisfactory to the Public Works Director for a period of two (2) years from the date of issuance of the final inspection log indicating one hundred percent (100%) satisfactory completion of the work and final acceptance thereof. Such surety shall be noncancellable for at least two (2) full years from the date of issuance of satisfactory completion.
- (4) If the Town must replace or repair the improvements within two (2) years of acceptance of the work, the Town may execute upon the letter of credit or cash deposit.
- (5) Insurance with terms, limits and coverages as required by the permit application.

### **Sec. 11-2-150. Permittee to repair all public rights-of-way.**

All construction work permitted in the public rights-of-way shall be performed such that such public rights-of-way, streets, alleys and all sidewalks, driveway, curb, gutters and related street improvements are returned to

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the same condition or better, if required in the permit, as existed prior to the commencement of such work. All such work shall be performed in accordance with the Public Works Criteria for Design and Construction and subject to inspections and final approval by the Public Works Director.

**Sec. 11-2-160. Conditions and special requirements for issuance.**

Permits under this Article shall be issued subject to any other special requirements or conditions that the Town Manager deems necessary in order to maintain the health, welfare, safety and convenience of the public.

**Sec. 11-2-170. Change in scope of work; duty to notify.**

If there is any change in the scope or extent of the work described in the approved right-of-way permit, the permittee shall immediately notify the Public Works Director.

**Sec. 11-2-180. Issuance of permit in certain months restricted.**

No permit required by this Article shall be issued for any construction or excavation within any public rights-of-way for the period from November 1 through March 31, except in cases of an emergency.

**Sec. 11-2-190. Permit to be kept and exhibited at site.**

The permit required by this Article shall be kept at the project site while the work is in progress and shall be presented to the Public Works Director upon request.

**Sec. 11-2-200. Construction and excavation subject to inspection.**

- (a) All work requiring a permit pursuant to the provisions of this Article shall be subject to inspection by the Public Works Director at all times. It shall be unlawful to obstruct or hinder any such inspection. It is the responsibility of the permittee to contact the Public Works Director twenty-four (24) hours in advance for required inspections. All inspections must be scheduled during regular office hours at Town Hall, which are from the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.
- (b) Field tests of construction materials shall be required by the Public Works Director to ascertain compliance with the Town criteria and specifications. An independent testing firm must make tests. All testing and retesting expenses shall be paid by the permittee. A written copy of all test reports must be submitted to the Public Works Director within twenty-four (24) hours following completion of field and laboratory material tests.

(Ord. 17 §1, 2013)

**Sec. 11-2-210. Emergency access required.**

No construction shall be performed or excavation made in such manner so as to prohibit access by emergency vehicles to any building, structure or dwelling unit abutting the street or public rights-of-way. It shall be the responsibility of the permittee to notify the Public Works Director when any construction or excavation obstructs the roadway from sunset to sunrise.

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## **Sec. 11-2-220. Safety measures and barricades required.**

- (a) It shall be unlawful for any person to perform any work requiring a permit pursuant to the provisions of this Article without providing sufficient warning lights and safety barricades or fencing around the construction or excavation from sunset to sunrise to prevent persons, animals and vehicles from sustaining injury or damage.
- (b) From sunrise to sunset, safety barricades or fencing shall be maintained.
- (c) Flagmen, signals, special traffic signing, walkways, ramps, canopies or other similar safety precautions shall be required when the Public Works Director deems necessary in order to maintain the health, welfare, safety and convenience of the public and shall conform to applicable law.
- (d) All state laws, provisions of this Code, Town ordinances and requirements contained in the Public Works Criteria for Design and Construction addressing measures for the safety of workmen and the public shall be observed by the permittee.

(Ord. 17 §1, 2013)

## **Sec. 11-2-230. Protection of street improvements, utilities and adjacent property.**

Any person performing any work requiring a permit pursuant to the provisions of this Article shall provide shoring, bracing, piling or other necessary devices and shall use the necessary precautions to protect street improvements, utilities and adjacent property from damage or disturbance. It shall be the responsibility of the permittee to obtain the location of any underground utilities.

## **Sec. 11-2-240. Responsibility to protect street improvements, utilities or property and report their damage.**

It is the responsibility of the permittee to sustain, secure and protect any pipes, poles, mains, cables, conduits, street improvements or property from damage or disturbance that was not previously authorized. If damage occurs, the permittee shall immediately notify the Public Works Director and the affected utility.

## **Sec. 11-2-250. Maintenance of backfill and temporary patch.**

- (a) All backfill and any pavement or improvement shall be maintained in a satisfactory condition, and all places showing signs of settlement shall be filled and maintained for a period of twenty-four (24) months following the date of final acceptance. When the permittee is notified by the Public Works Director that any backfill, patch or paved improvement is hazardous, it shall immediately correct such hazardous condition. If the hazardous condition is not repaired within three (3) working days after notification, the Town may elect to repair the hazardous condition. The expense of such repair shall be the responsibility of the permittee. Repair by the Town will not release the permittee from responsibility for subsequent failures.
- (b) Backhoe equipment outriggers shall be fitted with rubber pads or other like protective material whenever outriggers are placed on any paved surface. Tracked vehicles that may damage pavement surfaces shall not be permitted on paved surfaces unless specific precautions are taken to protect the surface. The permittee shall be responsible for any damage caused to the pavement by the operation of such equipment. Should the permittee fail to make such repairs within three (3) days to the satisfaction of the Town, the Town may repair any damage and charge the permittee.
- (c) Any utilities or paved improvements damaged by settlement shall be immediately repaired by the permittee to the satisfaction of the Public Works Director. If the damage is not repaired within three (3) working days

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after notification, the Town may elect to repair the damage. The expense of such repair shall be the responsibility of the permittee. Repair by the Town will not release the permittee from responsibility for subsequent damage by settlement.

- (d) The permittee shall be responsible for the cost to the Town of all claims for damages made and actions brought against the Town for and on account of such damage.

(Ord. 17 §1, 2013)

### **Sec. 11-2-260. Compliance required.**

Any work performed that is not in strict conformity with this Article shall, within ten (10) days after notice to the permittee, be made to conform to this Article at the expense of the permittee, or the same shall be corrected or removed by the Town at the expense of the permittee and the cost of such correction or removal may be assessed upon and made a lien upon the land so benefited. The Town shall have the right to make an assessment against the property and collect such costs in the same manner as general taxes are collected under state and local laws.

### **Sec. 11-2-270. Warranty period.**

All materials and workmanship employed in the performance of the work described in the right-of-way permit will be of such character and quality so as to ensure it to be free from all defects, in continuous good order and in a condition satisfactory to the Public Works Director for a period of two (2) years from the date of issuance of the final inspection log indicating one hundred percent (100%) satisfactory completion of the work and final acceptance thereof.

### **Sec. 11-2-280. Termination of project if not expeditiously completed.**

All work shall be commenced at the time specified on the permit and shall be diligently and continuously preformed until completed, with a maximum allowable time as set forth in the permit. In the event that weather, process of law or any other unexpected obstacles cause work to be stopped for so long that public travel is unreasonably obstructed, the Public Works Director may order the excavation refilled, compacted and repaved as if the work contemplated in the permit were actually completed.

### **Sec. 11-2-290. Repaving.**

In the case of excavations requiring repaving, the permittee shall follow all applicable Town standards including the Public Works Criteria for Design and Construction. The Public Works Director shall have sole discretion concerning the quality and acceptance of a paved improvement. No certificate of occupancy shall be issued for the project connected with such work that has unacceptable paved improvements or patches.

### **Sec. 11-2-300. As-built drawings required.**

The Town will furnish the applicant with a map of the area proposed for development. Upon completion of the work, the applicant shall furnish a mark-up of the map showing all utilities encountered during the excavation and construction, their size, identification and location, based on swing ties to fixed monuments such as manholes, streetlights, curbs and their depths below the surface of the street, alley or sidewalk area. This mark-up shall also identify any new improvements made to the area, including but not limited to utility connections, sidewalks, driveways, curb, gutter or other street improvement. These as-built drawings may also be submitted in a digital format where acceptable to the Town.

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### **Sec. 11-2-310. Excavation under existing curb, gutter and sidewalk.**

If any excavation occurs under existing curb, gutter or sidewalk, that curb and gutter and sidewalk shall be removed and replaced. The replacement shall be from the nearest concrete joint. The curb, gutter and sidewalk must be replaced within seven (7) working days after the excavation is complete. The permittee may bore under curb, gutter and sidewalk and not have to replace the same to the extent approved by the Public Works Director. All such work shall be performed in accordance with the Public Works Criteria for Design and Construction.

### **Sec. 11-2-320. Responsibility to repair sidewalks, driveways and gutters.**

- (a) When notified that any public rights-of-way, street, alley, sidewalk, driveway, curb, gutter, street improvement or any combination thereof is in need of repair, the Public Works Director shall cause notice to be served upon the owner or other person in charge of or having the control and supervision of the premises to repair such public rights-of-way, street, alley, sidewalk, driveway, curb, gutter or street improvement within thirty (30) days. It shall be unlawful for any person to fail or refuse to comply with such notice to repair. Upon a failure or refusal to comply with such a notice to repair, the Town may repair the same by day's work or by contract, and the cost of such repair may be assessed upon and made a lien upon the land so benefited. The Town shall have the right to make an assessment against the property and collect such costs in the same manner as general taxes are collected under state and local laws. In addition thereto, the Town may cause an action to be instituted against the permittee and the owner or the person in charge of the property upon whom such notice was served, in any court of competent jurisdiction to recover such costs. All such remedies shall be cumulative and may be concurrently pursued.
- (b) For the purpose of this Article, a sidewalk in need of repair shall mean a sidewalk experiencing any of the following conditions: (i) concrete that is spalling or crumbling; (ii) vertical displacement of the adjoining sidewalk section is in excess of three-fourths ( $\frac{3}{4}$ ) inch; (iii) lateral displacement of adjoining sidewalk sections in excess of one (1) inch; or (iv) sidewalks that have a transverse slope in excess of one (1) inch per foot or the combination of the transverse and longitudinal grade is insufficient for adequate drainage of the sidewalk causing accumulation of water and ice.

(Ord. 17 §1, 2013)

### **Sec. 11-2-330. Violation.**

- (a) Any person who violates any provision of this Article shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of this Article shall be liable to the Town for any expense, loss, cost or damage, including reasonable attorneys' fees and the costs of enforcement occasioned by reason of such violation.

(Ord. 17 §1, 2013)

## **ARTICLE 3 Public Parks**

### **Sec. 11-3-10. Definitions.**

For the purpose of this Article, the following terms, phrases, words and their derivations shall have the meaning given herein:

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*Director* means the person immediately in charge of any park area and its activities, and to whom all park attendants of such area are responsible.

*Park* means a park, stream bank margins, playground, recreation center or any other area in the Town, owned or used by the Town, and devoted to active or passive recreation.

*Vehicle* means any wheeled conveyance, whether motor-powered, animal-drawn or self-propelled. The term shall include any trailer in tow of any size, kind or description. An exception is made for baby carriages and vehicles in the service of the Town parks.

### **Sec. 11-3-20. Park property.**

- (a) Buildings and other property. No person shall:
  - (1) Willfully mark, deface, disfigure, injure, tamper with, displace or remove any building, bridges, tables, benches, fireplaces, railings, paving or paving material, water lines or other public utilities or parts or appurtenances thereof, signs, notices or placards, whether temporary or permanent, monuments, stakes, posts or other boundary markers, or other structures, equipment, facilities, park property or appurtenances whatsoever, either real or personal.
  - (2) No person over the age of six (6) years shall use the restrooms and washrooms designated for the opposite sex.
  - (3) Dig or remove any sand, whether submerged or not, or any soil, rock, stones, trees, shrubs, plants, wood or materials, or make any excavation by tool, equipment, blasting or other means or agency.
  - (4) Construct, erect or create any building or structures of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon or across such lands, except on special written permit issued hereunder.
- (b) Trees, shrubbery and lawns. No person shall:
  - (1) Damage, cut, carve, transplant or remove any tree or plant; or injure the bark or pick the flowers or seeds of any tree or plant; attach any rope, wire or other contrivance to any tree or plant; dig in or otherwise disturb grass areas; or in any other way injure or impair the natural beauty or usefulness of any area.
  - (2) Climb any tree or walk, stand or sit upon monuments, vases, fountains, railing, fences or backstops or upon any other property not designated or customarily used for such purposes.
- (c) In addition to the provisions of Section 7-5-80 of this Code pertaining to dogs, all other animals are prohibited from the Town parks.

(Prior code 19-2-3; Ord. 4 §1, 2009)

### **Sec. 11-3-30. Traffic.**

- (a) No person shall ride, drive, park or otherwise have a vehicle in a Town park, except in areas specifically designated for such vehicles by the Director, or as provided herein as to specific vehicles.
- (b) In areas designated for vehicle operation, in all instances pedestrians shall have the right-of-way.
- (c) Bicycles. No person shall:
  - (1) Ride a bicycle on other than a paved vehicular road or path designed for that purpose. A bicyclist shall be permitted to wheel or push a bicycle by hand over grassy areas or trail or on any paved area reserved for pedestrian use, but specifically not including playing fields.

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- (2) Ride a bicycle other than on the right-hand side of the road paving as close as conditions permit; and bicycles shall be kept in single file when two (2) or more are operating as a group. Bicyclists shall at all times operate their machines with reasonable regard to the safety of others, signal all turns, pass to the right of any vehicle they are overtaking, and pass to the right of any vehicles they may be meeting.
  - (3) Ride any other person on a bicycle; except a rider carrying children in equipment or seats reasonably calculated to assure the safe operation of the bicycle.

(Prior code 19-2-5; Ord. 4 §1, 2009)

#### **Sec. 11-3-40. Games.**

No person shall take part in or abet the playing of any games involving thrown or otherwise propelled objects such as balls, stones, arrows, javelins or model airplanes, except in areas set apart for such forms of recreation. The playing of rough or comparatively dangerous games such as football and baseball is prohibited except on the fields and courts or areas provided therefor. Roller-skating, skateboarding and Rollerblading are prohibited in all areas of Town parks.

#### **Sec. 11-3-50. Behavior.**

- (a) No person shall bring glass containers into the park, or have any glass containers in his or her possession.
- (b) No person shall enter a park or be under the influence of intoxicating liquor while in a park.

(Prior code 19-2-7; Ord. 4 §1, 2009)

#### **Sec. 11-3-60. Fireworks and explosives.**

No person shall bring into, have in his or her possession, or set off or otherwise cause to explode, discharge or burn in the park any firecrackers, torpedo, rocket or other fireworks or explosives of inflammable material; or discharge them to throw them into any such area from land or highway adjacent thereto. This prohibition includes any substance, compound, mixture or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints.

#### **Sec. 11-3-70. Fires.**

No person shall build or attempt to build a fire except in such areas and under such regulations as may be designated by the Director. No person shall drop, throw or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco paper or other inflammable material, within any park area or on any highway, road or street abutting or continuous thereto.

#### **Sec. 11-3-80. Closed areas, posting of notice.**

No person shall enter an area posted as "Closed to the Public," nor shall any person use or abet the use of any area in violation of posted notices.

#### **Sec. 11-3-90. Frozen water.**

No person shall go onto the ice on any of the waters except such areas as are designed as skating fields, and provided that a safety signal is displayed.

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### **Sec. 11-3-100. Loitering; boisterousness.**

No person shall sleep or protractedly lounge on the seats, benches or other areas, engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the public peace.

### **Sec. 11-3-110. Permit required.**

- (a) No person shall fail to produce and exhibit any permit from the Director he or she claims to have, upon request of any authorized person who desires to inspect the same for the purpose of enforcing compliance with any ordinance or rule.
- (b) No person shall disturb or interfere unreasonably with any person or party occupying any area, or participating in any activity under the authority of a permit.

(Prior code 19-2-7; Ord. 4 §1, 2009)

### **Sec. 11-3-120. Big Mine Skate Park regulations.**

Rules and regulations for the use of the Big Mine Skate Park shall be promulgated by the Town Manager, which rules shall be adopted to maximize safe use of the Big Mine Skate Park, respect for others using the skate park and minimize the impacts of use on the adjacent neighborhood. Such rules and regulations shall be posted at the Big Mine Skate Park by the Town Manager, and also shall be available at the Parks and Recreation Department. A violation of such rules and regulations shall be a misdemeanor offense, subject to the penalties for misdemeanors set forth in Section 1-4-20 of this Code.

### **Sec. 11-3-130. Green Lake Trail regulations.**

- (a) The following rules and regulations shall govern the public use of the Green Lake Trail:
  - (1) The trail shall be used only for pedestrian, nonmotorized bicycling and cross-country skiing.
  - (2) No motorized vehicles, horses or pack animals shall be permitted on the trail.
  - (3) Where the trail crosses private property, all dogs must be restrained by a leash, rope or other similar device physically connecting the dog to the owner or other person.
  - (4) All users must stay on the posted trail and avoid trespassing upon the private land over which the trail crosses.
  - (5) No user of the trail shall litter or otherwise leave trash or other debris on or near the trail.
  - (6) No user shall damage trees, shrubbery or other natural features, or signs or other constructed improvements while using the trail.
  - (7) Bicyclists shall yield the right-of-way to pedestrians on the trail.
  - (8) All users shall obey temporary closure signs and directives.
- (b) Any person engaging in any activity not in compliance with the regulations set forth in this Section shall have committed a misdemeanor and shall be fined in accordance with the provisions of Section 1-4-20 of this Code. Nothing herein shall limit the Town from seeking any other remedies that may be provided by law, including restitution or payment of costs and reasonable attorney's fees for enforcement.

(Prior code 15-5-3, 15-5-4; Ord. 16 §1, 1998; Ord. 4 §1, 2009)

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### **Sec. 11-3-140. Vending and peddling.**

No person shall expose or offer for sale any article or thing, nor shall he or she station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing. Exception shall be made as to any regularly licensed concessionaire or outdoor vending licensee approved by the Town Manager.

### **Sec. 11-3-150. Advertising.**

No person shall announce, advertise or call the public attention in any way to any article or service for sale or hire.

### **Sec. 11-3-160. Signs.**

No person shall paste, glue, tack or otherwise post any sign, placard, advertisement or inscription whatever, nor shall any person erect or cause to be erected any sign whatever on any public lands or highways or roads adjacent to a park.

### **Sec. 11-3-170. Hours of operation.**

Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during designated hours. The opening and closing hours for each individual park shall be posted therein for public information.

### **Sec. 11-3-180. Closed areas.**

Any section or part of any park may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses, as the Director shall find reasonably necessary.

### **Sec. 11-3-190. Lost and found.**

The finding of lost articles by park attendants shall be reported to the Director, who shall make every reasonable effort to locate the owners. The Director shall make every reasonable effort to find articles reported as lost.

### **Sec. 11-3-200. Park permit, application.**

A permit shall be obtained from the Director in order to reserve a park or park facility before participating in park activities involving fifteen (15) or more people, commercial or private in nature.

- (1) Application. A person seeking the appropriate issuance of a permit hereunder shall file the appropriate application with the Director. The application shall state:
  - a. The name and address of the applicant.
  - b. The name and address of the person, corporation or association sponsoring the activity, if any.
  - c. The day and hours for which the permit is desired.
  - d. The park or portion thereof for which such permit is desired.
  - e. An estimate of the anticipated attendance.

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- f. Any other information which the Director shall find reasonably necessary to make a fair determination as to whether a permit should be issued hereunder.

The applicant shall tender a deposit for cleanup set by the Director in a reasonable amount to assure that the area used will be returned to its original condition expeditiously. In addition, the applicant shall tender a fee of an amount established by resolution of the Town Council for the permit. Any costs incurred by the Town for damage and cleanup shall be deducted from the deposit and the balance remaining shall be returned to the applicant in a reasonable amount of time.

- (2) Standards for issuance. The Director shall issue a permit hereunder when he or she finds:
  - a. That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park.
  - b. That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
  - c. That the proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct.
  - d. That the proposed activity will not entail unusual, extraordinary or burdensome expense or police operation by the Town.
  - e. That the facilities desired have not been reserved for other use at the day and hour required in the application.
- (3) Appeal. Within five (5) days after receipt of an application, the Director shall apprise an applicant in writing of his or her reasons for refusing a permit, and any aggrieved person shall have the right to appeal in writing within ten (10) days to the Town Council, which shall consider the application under the standards set forth in Paragraph (2) above and sustain or overrule the Director's decision within thirty (30) days. The decision of the Town Council shall be final.
- (4) Effect of permit. A permittee shall be bound by park rules and regulations and all applicable ordinances fully as though the same were inserted in said permits.
- (5) Liability of permittee. The person to whom a permit is issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person to whom such permit was issued.
- (6) Revocation. The Director shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance, or upon good cause shown.

## **ARTICLE 4 Cemetery Regulations**

### **Sec. 11-4-10. Legal agents.**

The Town Manager and Town Clerk are hereby made the legal agents to hold and have full charge of the Crested Butte Cemetery, with full power to do and perform any and all things necessary or proper to protect the same in a good condition. The Town Clerk shall keep a record of all sales made of lots therein, and shall keep a record showing the name of each purchaser, the date of purchase, the number of the lot purchased and the amount paid therefor. He or she shall also keep a book of blank certificates of sale, with stubs showing a memorandum of each sale.

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**Sec. 11-4-20. Sale of lots.**

Any person who desires to purchase a lot in the cemetery shall pay to the Town an amount established by resolution of the Town Council. The Town Clerk will issue to such purchaser a cemetery deed to a lot selected by such purchaser which deed shall be signed by the Town Manager, attested by the Town Clerk and impressed with the seal of the Town. After the initial purchase of a lot from the Town, title to such lot can be transferred only by exchanging the existing deed for a new deed in the office of the Town Clerk. The consideration paid in any such transfer shall not be greater than the original purchase price of the lot.

**Sec. 11-4-30. Lots for indigent persons.**

Block 1, Lots 1 through 116 and Block 24, Lots 1 through 32 of the cemetery are hereby set aside for the burial of poor persons. Upon proper information being furnished to the Town Manager that any poor person has died, leaving property or assets insufficient to cover the cost of purchasing a lot for burial, a certificate shall be issued in accordance with the regulations herein set forth, except that no charge shall be made therefor. If there is no relative or friend who desires to take title to such lot and care for the same, then such certificate shall run to the Town.

**Sec. 11-4-40. Defacing cemetery property or lots.**

Any person who in any manner defaces or damages any fence, monument, tombstone memorial, lot or other fixture or object situated in or belonging to any part of the property known as the Crested Butte Cemetery shall be guilty of a misdemeanor and, on conviction of a violation of this Section, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), together with all costs of prosecution, including reasonable attorney fees, occasioned by reason of such act, and/or by imprisonment not exceeding ninety (90) days. Any person convicted under this Section shall additionally be liable and responsible to the Town for any and all expense, cost, loss and damages occasioned by such violation.

**Sec. 11-4-50. Rules and regulations.**

The Town Council is hereby authorized to make such reasonable regulations and rules to govern the conduct of the business relating to the cemetery as it may from time to time deem best.

**Sec. 11-4-60. Prohibition of structures.**

No building, memorial or structure of any kind is permitted in or on the cemetery in excess of seven (7) feet in height, and no above-ground mausoleum or crypt of any kind shall be permitted.

## **CHAPTER 13**

## **Municipal Utilities**

### **ARTICLE 1 Water and Sewer Systems**

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### **Sec. 13-1-10. Sanitation District.**

The Town is the owner of a municipal sewage system, with the usual facilities for the collection, treatment and disposal of sewage. The Town shall provide the necessary service in connection therewith in accordance with the rules, regulations, terms, provisions, conditions, rates, charges, payments, penalties and limitations as set forth in this Chapter and prescribed for the use of said sewer system within the boundaries of the Town of Crested Butte Sanitation District, its limits and boundaries being the entire platted area of the Town.

### **Sec. 13-1-20. Town waterworks.**

The Town is the owner of a municipal water plant, with the usual and necessary water lines, appurtenances and appliances for the furnishing of water for domestic, commercial and fire protection purposes. The Town shall furnish the water and provide the necessary service in connection therewith in accordance with the rules, regulations, terms, provisions, conditions, rates, charges, payments, penalties and limitations as set forth in this Chapter and prescribed for the use of the water and the operation of the plant in connection therewith, its limits and boundaries being the entire platted area of the Town.

### **Sec. 13-1-30. Policy and purpose.**

It is hereby declared that the rules and regulations herein set forth are to serve a public use and are necessary to insure and protect the health, safety, prosperity, security and general welfare of the inhabitants of the Town.

### **Sec. 13-1-40. Definitions.**

For the purposes of this Chapter, the following terms shall have the meanings herein given:

*Actual cost* means all direct costs applicable to the construction of a given facility, including construction, engineering, inspection, plan approval fees, all fees and costs of administration and other costs necessary for completion.

*Base allotment* means the amount of water a customer represented by an EQR may use within the base rate as established by the Town from time to time.

*Base rate* means the monetary assessment each month for each customer-based EQR as calculated by the Town, and adjusted from time to time, to provide a revenue source intended to cover the Town's fixed operating costs in producing, treating and supplying its customers with the base allotment of water.

*Bathroom* means a room equipped with a toilet, lavatory and shower and/or bathtub.

*Bathtub* means any bathing fixture with a water capacity of one hundred fifty (150) gallons or less.

*Biochemical oxygen demand* or *BOD* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Celsius, expressed in milligrams per liter.

*Block* means the incremental range, as established by the Town from time to time, by which assessments are directed to water customers represented by one (1) or more EQRs for water use above the base rate of consumption, and the basis for which additional charges above the base rate shall be assessed to the Town's water customers.

*Block rate* means the monetary assessment each month for each customer-based EQR as calculated by the Town, and adjusted from time to time, for water consumed in excess of the base allotment.

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*Building drain* means that part of the lowest horizontal piping of a building drainage system from the stack or horizontal branch, exclusive of storm sewer, extending to a point not less than five (5) feet outside the building wall.

*Customer* means any person authorized to use the public water or sewer system under a permit issued by the Town.

*Equivalent Residential Use* or *EQR* means the estimated use of the Town water and sewer systems by a single-family residence of up to one thousand eight hundred seventy-five (1,875) square feet in floor area. Nonresidential uses and larger residential uses are calculated using the equivalent residential use as a basis.

*Family* means an individual, two (2) or more persons related by blood or marriage or between whom there is a legally recognized relationship, or not more than five (5) unrelated persons living together as a single housekeeping unit in a residential unit.

*Fee Schedule* means a list of fees for goods and/or services as established and periodically amended by Town Council.

*Industrial waste* means the liquid wastes from industrial processes as distinct from sanitary sewage.

*Kitchen* means a designated space containing at least one (1) device or appliance for heating food, a separate sink with hot and cold running water and a refrigeration appliance.

*Metered water rate* means the monetary assessment as established by the Town, and recalculated from time to time, based on dollars assessed per one thousand (1,000) gallons of water used per EQR, which shall not be less than the base rate.

*Owner* means the person owning the real property served by the Town water or sewer system.

*Public sewer line* means a sewer in which all owners of abutting properties have equal rights, and which is controlled by the Town.

*Rental unit, long-term* means a residential property rented by a natural person or entity to any other natural person, for a term of not less than six (6) months, which limitation of rental term shall be recorded in the real property records of the County pursuant to Section 16-9-70 of this Code. Such property may not be rented to any person with greater than ten percent (10%) ownership interest in the property, or to any person with greater than ten percent (10%) ownership interest in any entity with ownership of the property. For purposes of this definition, *natural person* is only an individual and shall not include any association, firm, partnership, corporation or any other entity.

*Residential unit* means one (1) or more rooms, in addition to separate kitchen and bath facilities, intended or designed for occupancy by a family, independent of other families, on a long-term basis.

*Restaurant* means a place where meals and other foods are served to the public, whether for consumption on or off the premises, and where alcoholic beverages may be served. Food is prepared on-site, utilizing service, dish and food preparation washing facilities. The term includes restricted food service establishments, which are subject to different parking and EQR requirements. The term does not include:

- a. Private boarding and rooming houses;
- b. Child care centers, hospitals and nursing homes;
- c. Establishments existing primarily for purposes other than providing beverages or food which do not have seating for consuming food or beverages, and which serve only coffee, tea or other beverages, popcorn or cotton candy, and prepackaged nonperishable doughnuts, pastries or other similar items obtained from sources complying with all relevant state laws;
- d. Vendors, as defined in Section 6-4-10 of this Code; or

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e. Theaters not providing more than traditional theater snacks to their patrons.

*Restricted food service establishment* means a food service establishment serving only prepackaged food in individual portions which may be warmed or otherwise handled after selection on site only by the purchaser, or serving ice cream. These establishments do not cook raw food, use waitpersons or mechanical dishwashers, or serve alcoholic beverages. At least one (1) restroom is required on the premises for such establishments without patron seating, and at least two (2) restrooms, male and female, are required on the premises for such establishments with patron seating. One (1) three-compartment sink for dishwashing and one (1) separate hand sink are required on the premises. One (1) compartment of the three-compartment sink may be designed for vegetable preparation if it is individually, indirectly wasted or air-gapped on the waste line. Since mechanical dishwashers are not allowed in restricted food service establishments, in order to mitigate the potential greater usage of paper or plastic to serve food, such establishments are required to use recycled paper for all food-related paper containers, and no plastic containers may be used. The use of a hood to eliminate steam, smoke, grease or heat (as defined in the Mechanical Code as adopted by the Town) or an automatic dishwasher shall define the establishment as a *restaurant*. A restricted food service establishment shall have a maximum of three (3) fixture units as defined in the Plumbing Code as adopted by the Town. Additional fixture units shall define an establishment as a *restaurant*.

*Service line* means the water or sewer line that connects the Town's distribution system to the owner's property or structure, including that part of such line on public property, any valves or cleanouts within said line, and all valves, water meters, attachments or other fixtures constituting the physical tap-in to the Town system.

*Sewage* means any liquid waste containing animal or vegetable matter in suspension or solution from residences, businesses, institutions and industrial establishments.

*Sewer* means a pipe or conduit for carrying sewage.

*Square footage for fee calculation* means the square footage for calculating fees, which shall be determined by measuring all interior square footage with five (5) feet or greater of headroom above the floor system including adjacent walls. Below grade spaces that fit the above definition are included. Garages shall be charged at full square footage if they are conditioned space and at fifty percent (50%) if they are not conditioned. Accessory buildings that are neither heated nor plumbed shall not incur a tap increment.

*Tap or connection* means the action of connecting the service line to the Town system.

*Town system-sewer* means the sewer system, including all lines, owned and maintained by the Town.

*Town system-water* means the water system, including all lines, owned and maintained by the Town.

*User* means any person to whom water or sewer service is supplied, whether it is a renter, record owner, corporation, company, individual, public entity, etc.

*Wastewater treatment plant or WWTP* means that portion of the WWTW designed to provide treatment of wastewater.

*Wastewater treatment works or WWTW* means wastewater treatment works as defined in 33 U.S.C. § 1292 that are owned and operated by the Town. The term includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It further includes any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste. As used herein, it shall include wastewater facilities that form the WWTW, the Town's sewer system and any sewers that convey wastewaters to the WWTW from persons or sources within the Town and outside the Town who are, by contract or agreement with the Town, users of the Town's WWTW.

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*Water meter* means a required electronic measuring device, approved and inspected by the Town when installed on a water customer's service line, from which water usage may be determined for each EQR by employees of the Town, or a designated agent, periodically monitoring readings emitted from the meter.

**Sec. 13-1-50. Connection with Town system required.**

- (a) All new buildings or structures containing plumbing fixtures or facilities shall be connected to the Town water system and sewer system.
- (b) All existing buildings and structures containing or required to contain plumbing facilities or fixtures shall connect to the Town water and sewer systems when that system line is available within one hundred fifty (150) feet of the property line of the property upon which the building or structure is situated. Said connection shall be made within three (3) months from the date that said sewer and/or water line is available, unless extended for good cause, by written agreement.

(Prior code 14-1-5; Ord. 7 §6, 1994)

**Sec. 13-1-60. Private systems prohibited.**

A private well or any other source of water shall not be constructed, installed or maintained within the Town. No private sewage disposal system, septic tank, vault, closet, privy or cesspool of any type or description shall be constructed, kept or maintained at any place within the Town.

**Sec. 13-1-70. Damage to system unlawful.**

No person shall alter, maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, equipment or appurtenance which is part of the Town's water or sewer system, including water meters, or attempt to avoid any lawful service charges. No person shall interfere with any water meter or its associated equipment, or in any way attempt to alter a water meter reading, affect the accuracy of a water meter reading or allow the unmetered flow of water to take place. Any person violating this Section is subject to criminal prosecution on a misdemeanor charge and, upon conviction, shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

**Sec. 13-1-80. Permit required.**

- (a) No person shall open, uncover or in any way connect any plumbing to the Town system without first obtaining a written permit from the Town.
- (b) No person shall construct, install, move, expand, connect or disconnect any plumbing service or any portion of a service line on public or private land to any Town system line, or change the use for which the services are supplied which, when connected or changed, requires the payment of a system development fee, an incremental system development fee, an increased service charge, a connection charge or a disconnection charge, without first obtaining a written permit from the Town.

(Prior code 14-1-7; Ord. 7 §7, 1994; Ord. 3 §3, 2001)

**Sec. 13-1-90. Application for permit.**

The application for the permit required by Section 13-1-80 above shall be in writing, signed by the owner of the property for which the permit is sought and shall contain, in addition, the following information:

- (1) The name and address of the owner of the property.

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- (2) The street address of the property for which the permit is sought.
  - (3) The legal description of the property for which the permit is sought.
  - (4) A description of the structures and buildings located on or to be constructed or enlarged on the property for which the permit is sought, which shall include:
    - a. The number of square feet in each building or structure; and
    - b. The number of dwelling, office, commercial or other units on the property.
  - (5) The location of every service line and the point at which each service line will be connected to the Town system.
  - (6) A description of the type and size of each connection to be made between a service line and the Town system.
  - (7) A description of the pipe and any valves to be used in the service line, including the materials and size.
  - (8) Any other information which, due to the particular circumstances of the property or use thereof, the Town reasonably deems necessary to ascertain whether or not the permit should be issued.

### **Sec. 13-1-100. Issuance of permit.**

If the application discloses that all work to be performed under the permit will be in full compliance with all state statutes and Town resolutions and ordinances, the permit shall be issued only as part of a building permit or change of use approval for the subject property upon payment of all fees and charges required by this Code. All existing and future tap permits are appurtenant to the real property and structures identified in the applications therefor and, if not so identified, to the real property and structures they serve; and neither the permits nor their ownership may be separated from the ownership of said real property or structure.

### **Sec. 13-1-110. System development fee.**

- (a) A system development fee must be paid prior to the issuance of the permit required above; prior to the commencement of the construction; prior to installation or expansion of use of a service line; and prior to connecting any service line to a Town system.
- (b) The system development fee for a single-family residence shall be an amount as set forth in the fee schedule and multiplied by the EQR of that use for the Town System-Water, except as otherwise set forth in Subsection (e) below; and an amount as set forth in the fee schedule and multiplied by the EQR of that use for Town System-Sewer, except as otherwise set forth in Subsection (e) below.
- (c) The system development fee for every other type of use shall be an amount as set forth in the fee schedule and multiplied by the EQR of that use for Town System-Water, except as otherwise set forth in Subsection (e) below; and an amount as set forth in the fee schedule and multiplied by the EQR of that use for Town System-Sewer, except as otherwise set forth in Subsection (e) below.
- (d)
  - (1) Incremental Water System Development Fee = [(EQR) new minus (EQR) old] times (current system development fee), for Town System-Water.
  - (2) Incremental Sewer System Development Fee = [(EQR) new minus (EQR old)] times (current system development fee), for Town System-Sewer.
- (e) The system development fee for rental units, accessory dwellings, long-term and other Town-recognized affordable housing units and lots shall be waived upon execution of a restrictive covenant for qualified residents.

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(Prior code 14-1-10; Ord. 14 §1, 1993; Ord. 1 §1, 1994; Ord. 3 §3, 1995; Ord. 43 §1, 1995; Ord. 21 §2, 1997; Ord. 16 §1, 1999; Ord. 19 §1, 2001; Ord. 8 §1, 2003; Ord. 29 §1, 2003; Ord. 17 §1, 2005; Ord. 32 §1, 2007; Ord. 24 §1, 2008; Ord. 18 §1, 2009; Ord. 34 §1, 2010; Ord. No. 13, § 1, 2014 ; Ord. No. 31 , § 1, 11-6-2017; Ord. No. 19 , § 3, 10-18-2021; Ord. No. 24 , § 2(Exh. A), 12-19-2022; Ord. No. 2 , § 3(Exh. A), 3-6-2023)

### **Sec. 13-1-120. Metered water rates per meter.**

- (a) There is hereby levied and charged against all owners, as defined in this Article, a minimum monthly service charge per installed meter for water used at a base rate as set forth in the fee schedule for the first four thousand (4,000) gallons used per applicable EQR, or additional fraction thereof (base allotment).
- (b) There is hereby levied and charged against all owners, as defined in this Article, a block rate charge per installed meter for water used in excess of the base allotment per applicable EQR, or additional fraction thereof as set forth in the fee schedule.
- (c) The base allotment shall always be multiplied by the applicable number of EQRs and any additional fractions thereof.
- (d) Monthly service charges shall commence upon the issuance of a certificate of occupancy or temporary certificate of occupancy. There shall be no abatement or reduction of the monthly service charge, except as otherwise provided in Section 13-1-140 above.
- (e) There is no maximum assessment amount.

(Prior code 14-1-11; Ord. 14 §1, 1993; Ord. 7 §9, 1994; Ord. 14 §1, 1994; Ord. 43 §2, 1995; Ord. 21, 1997; Ord. 16 §2, 1999; Ord. 19 §2, 2001; Ord. 25 §1, 2003; Ord. 20 §1, 2004; Ord. 23 §§1, 3, 2004; Ord. 32 §2, 2007; Ord. 24 §2, 2008; Ord. 4 §1, 2009; Ord. 11 §1, 2009; Ord. 34 §§2, 3, 2010; Ord. 17 §1, 2011; Ord. No. 13, § 2, 2014 ; Ord. 10, § 1, 2015 ; Ord. No. 31 , § 2, 11-6-2017; Ord. No. 37 , § 1, 10-21-2019; Ord. No. 19 , § 1, 10-18-21; Ord. No. 24 , § 2(Exh. A), 12-19-2022)

### **Sec. 13-1-130. Assessment of water rates.**

Metered water rates shall be assessed each month, commencing with the monthly bill mailed by the Town and received by owners in January 2004, based on the formula established in Section 13-1-120 above. Owners or customers with new or additional EQRs and associated water meters will be assessed the base rate and any applicable additional usage charges commencing upon the issuance of a certificate of occupancy, or upon evidence of water usage based on readings from the water meter, whichever comes first.

### **Sec. 13-1-140. Abatement of metered water charges.**

There shall be no abatement or reduction in metered water charges as established in this Article, except as otherwise provided in this Article or elsewhere in this Code.

### **Sec. 13-1-150. Sewer service rates.**

- (a) There is hereby levied and charged against all owners as defined in this Article a monthly service charge for the use of Town sewer system. The monthly service charge for use of Town sewer system shall be in an amount as set forth in the fee schedule times the respective EQR calculated pursuant to Section 13-1-170 below. Monthly service charges shall commence upon the issuance of a certificate of occupancy or temporary certificate of occupancy. There shall be no abatement or reduction of the monthly service charge, except as otherwise provided in Section 13-1-140 above.

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- (b) There is hereby levied and charged against all owners as defined in this Article a monthly service charge for the use of the WWTW a pretreatment charge for any property that is required to have a grease interceptor or oil/sand separator and that does not have such system installed and operating in accordance with Town requirements. The monthly service charge for use of WWTW shall be an amount as set forth in the fee schedule times the respective EQR calculated for restaurants pursuant to Section 13-1-170 below. Monthly service charges shall not be abated or reduced until the variance for the installation of a grease interceptor or oil/sand separator effecting the subject property is terminated.

(Ord. 34 §4, 2010; Ord. 15 §3, 2013; Ord. No. 20, § 1, 2013 ; Ord. No. 13, § 4, 2014 ; Ord. 10, § 2, 2015 ; Ord. 15 §1, 2016; Ord. No. 31 , § 3, 11-6-2017; Ord. No. 37 , § 2, 10-21-2019; Ord. No. 19 , § 2, 10-18-21; Ord. No. 24 , § 2(Exh. A), 12-19-2022)

### **Sec. 13-1-160. Availability of service fee.**

- (a) There is hereby levied and charged against all owners of a building site, as that term is defined in Chapter 16 of this Code, within the Town whose building site is located within one hundred fifty (150) feet of water or sewer lines installed and ready for connection but to which lines said building site is not connected, an availability of service fee in the amount as set forth in the fee schedule for water for each building site and for sewer for each building site, respectively. If the costs of the water or sewer line are paid by a person or entity other than the Town, the applicable availability of service fee will not commence until the building site is thereafter sold by the developer.
- (b) Any owner of a building site who uses such building site as a yard incidental to a residential use may be exempted from the requirement to pay this availability of service fee, upon proof of such yard use and execution and recordation of a restrictive covenant evidencing such owner's agreement that such building site will be used as a yard and for no other purpose, to the satisfaction of the Town Manager. In the event that any owner who has executed such a restrictive covenant desires to rescind such covenant, prior to the Town's agreement to rescind such covenant, the owner must pay all availability of service fees that would have been charged hereunder but for his or her execution of such restrictive covenant, plus eighteen percent (18%) interest on the total fee.
- (c) The Town Manager shall have the discretion to partially or totally waive the availability of service fee levied and charged against an owner of a building site if such site is utilized by the Town for parking, snow storage, open space or other public purpose. The terms and conditions of any such waiver shall be set forth in writing and executed by the property owner and Town Manager.
- (d) Termination of the availability of service fee will occur upon issuance of a temporary certificate of occupancy or a certificate of occupancy and initiation of the monthly service charges.

(Prior code 14-1-12; Ord. 7 § 11, 1994; Ord. 3 § 2, 1995; Ord. 43 § 3, 1995; Ord. 19 § 3, 2001; Ord. 17 § 3, 2005; Ord. 24 §4, 2008; Ord. 34 § 5, 2010; Ord. 10, § 3, 2015 ; Ord. No. 24 , § 2(Exh. A), 12-19-2022)

### **Sec. 13-1-170. Equivalent Residential Use Schedule.**

- (a) The following Equivalent Residential Use Units, or EQRs, are hereby established for the various customer classifications within the Town. Unless otherwise specified, EQRs shall be rounded to the nearest hundredth for purposes of calculating system development fees and rounded to the nearest tenth for purposes of calculating service rates.

**Equivalent Residential Use Schedule**

<i>Customer Classification</i>	<i>EQR</i>
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1. Permanent residential units:	
a. Residential units with a square footage of 1,875 or less	1.0
b. Residential units with a square footage greater than 1,875 shall have an EQR calculated by the following formula: <u>square footage of unit = EQR 1,875</u>	
2. Transient residential units for rent in hotels, motels, lodges and residences:	
a. Basic rate, including manager's quarters	1.0
b. Each additional sleeping unit without cooking facilities	0.35
c. Each additional sleeping unit with cooking facilities	0.5
3. Bars, restaurants and establishments serving food and/or beverages:	
a. Establishments with a floor area of 375 square feet or less of seating space; also the base rate for any restaurant use	1.36
b. Each additional 375 square feet of seating space or part thereof	0.55
c. Restricted food service establishments:	
1) The EQR for such an establishment with no seating that is a minor part of another existing business with at least 1 existing restroom shall be included in such other business use	
2) The EQR for such an establishment with 375 square feet or less of seating space that is a minor part of another existing business with at least 2 existing restrooms shall be included in such other business use	
3) Such an establishment with no seating which is added to an existing business space with no EQR or no restroom, or when it is the only use in a building or condominium unit	1.0
4) Such an establishment with a floor area of 375 square feet or less of seating space when it is the only use in a building or condominium unit	1.36
5) Each additional 375 square feet of seating space or part thereof when it is the only use in a building or condominium unit	0.55
6) Outdoor seating areas of restaurants shall be charged one-quarter the equivalent residential use base rate otherwise required for restaurants	
4. Automobile service stations:	
a. Without a wash rack	1.36
b. Additional for each wash rack	0.8
5. Commercial or public buildings used as stores, offices, warehouses or other similar uses, including small businesses:	
a. Each building or customer with 1,500 square feet or less, or each such use of 400 square feet or less accompanied by 1 living unit	1.0
b. Each additional 1,500 square feet or part thereof	0.5
c. Each additional 1,500 square feet or part thereof, when used as nonoccupied retail, showroom, shop or warehouse space	0.3
d. Each first pair of public restrooms	1.0
e. Each additional pair of public restrooms in excess of 1 pair	0.8
6. Churches and other nonprofit organization halls with no residence or regular eating facilities	1.0
7. Public or private schools:	
a. Base rate for first 50 students or part thereof	2.0
b. Each additional 30 students or part thereof	1.0
8. Swimming pools, hot tubs and other bathing fixtures larger than a bathtub in conjunction with other use classifications:	
a. Bathing fixtures with a water capacity of 151 to 750 gallons:	

1) Fixtures which use is restricted to private, noncommercial, residential purposes only	0.00
2) Fixtures associated with any commercial establishment	0.1
b. Bathing fixtures with a water capacity of 751 to 5,000 gallons	0.2
c. Fixtures with a water capacity of 5,001 gallons or more	0.2 per 5,000 gallons or part thereof
9. Coin-operated Laundromats, per machine in service by load capacity:	
a. Basic fee, including first standard size machine	1.0
b. Each additional machine less than 12 lbs. (standard size)	0.5
c. Each additional machine of 12.1 to 21.0 lb. capacity	0.7
d. Each additional machine of 21.1 to 31.0 lb. capacity	1.0
e. Each additional machine of 31.1 to 41.0 lb. capacity	1.3
f. Each additional machine of 41.1 to 51.0 lb. capacity	1.6
g. Each additional machine of 51.1 to 61.0 lb. capacity	2.0
10. Metered service, where meters are required for any user as determined by the Town:	
a. Minimum rate for first 10,000 gallons monthly	1.0
b. Each additional 1,200 gallons, or fraction thereof, per month	0.1
11. Congregate housing	
a. Base rate for every three (3) bedrooms	1.0

- (b) Rates for uses not specifically described in the above schedule shall be individually negotiated.
- (c) Any building or structure containing multiple uses shall have a cumulative EQR based on the sum of the separate uses.
- (d) The minimum EQR, or base rate, shall be no less than one (1.0) for each customer.

(Prior code 14-1-13; Ord. 7 §12, 1994; Ord. 3 §4, 1995; Ord. 8 §2, 2003; Ord. 25 §1, 2003; Ord. 8 §2, 2005; Ord. 4 §1, 2009; Ord. 21 §2, 2010; Ord. 10 §5, 2012)

### **Sec. 13-1-180. Disconnection and reconnection charges.**

After a service line has been tapped into the Town water system, there may be levied a charge established by resolution of the Town Council for turning water service off or on.

### **Sec. 13-1-190. Miscellaneous rates and provisions.**

Any person may dump trailer sanitary tanks upon being granted specific permission to do so by the Town, only at a location designated by the Town. There may be levied a charge as set by resolution of the Town Council per one hundred (100) gallons for any such permitted dumping.

### **Sec. 13-1-200. Payment of charges and fees.**

All service charges shall be paid monthly, in advance, on or before the 15th of the month at the office of the Town. In the event of default or tardiness in any payment required by this Article, including system development fees, incremental system development fees, monthly service charges, disconnection fees or reconnection fees and connection charges, there shall be added a delinquency charge of three percent (3%) per month of delinquency, plus the reasonable costs of collection, including attorneys' fees. Service charges shall be charged against the

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property owner commencing upon the issuance of a certificate of occupancy, at the time of actual occupancy or six (6) months after payment of the system development fee, whichever occurs first.

**Sec. 13-1-210. Lien for nonpayment.**

In the event of a failure to make any payment called for by this Article, the Town Clerk shall certify to the County the amount due, which shall become a lien on the real property upon which said payment is due, and shall be collected in the manner set forth for general property taxes.

**Sec. 13-1-220. Maintenance by owner.**

Each owner shall be responsible for installing and maintaining the entire length of his or her own service line, including that portion which traverses public property, except that water meters may only be maintained, repaired or replaced by the Town. The Town shall, in its sole discretion, make the determination that a water meter must be repaired or replaced. Such repair or replacement, which shall be accomplished at the Town's direction, using the type of water meter as determined by the Town and in such manner and by such method as the Town may determine, shall be at the expense of the owner. It is the duty of each user to notify the Town if his or her water meter is operating defectively. If repair or replacement of a meter is required, the cost of such repair or replacement shall be added to the user's service charge bill. Breaks, leaks, frozen lines and other stoppages or malfunctions in the service line shall be repaired by the owner within seventy-two (72) hours after the Town notifies the owner of the break, leak, freezing or other stoppage or malfunction, or he or she otherwise has knowledge thereof; provided, however, that if weather conditions render immediate repair impossible, the time may be extended upon written consent of the Town. If satisfactory progress towards repair of the break, leak or other malfunction has not been made within the required time, the Town shall have the right and authority to repair or have repaired the service line at the expense of the owner, and to assess and collect said expense in the manner set forth for other charges and fees. If the owner is not evident, the Town may repair the service line without notice to the owner and assess said expense to the owner, once identified.

**Sec. 13-1-230. Discharges into sewer system.**

- (a) No person shall discharge or allow to be discharged sewage, substances, materials, waters or wastes into the Town sewer system if the same may have an adverse effect on the WWTW, any receiving waters, otherwise endanger the health and safety of persons, animal and plant life or otherwise constitute a nuisance.
- (b) No person shall discharge or allow to be discharged any of the following described sewage, substances, materials, waters or wastes into the WWTW unless otherwise agreed upon by the Town and consistent with the Town's pretreatment program requirements:
  - (1) Any solid or viscous substances in quantities or amounts or of such size capable of causing obstructions to flow or pass-through or interference with the proper operation of the WWTW.
  - (2) Sludge or other material from sewage or industrial waste treatment plants or from water treatment plants.
  - (3) Water accumulated in excavations or accumulated as a result of grading, water taken from the ground by well points or any other drainage associated with construction.
  - (4) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit or exceeding any lower limit fixed by the Town to prevent odor nuisances, where the volume of the heated discharge represents a significant portion of the flow through a particular part of the WWTW.
  - (5) Any sewage, substances, materials, waters or wastes having a pH lower than 5.5 or greater than 9.0.

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- (6) Any sewage, substances, materials, waters or wastes containing grease or oil or other substances that will solidify or become discernibly viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit, or any sewage, substances, materials, waters or wastes containing or possessing heat in amounts that are likely to inhibit biological activity in the WWTW resulting in obstructions to flow or pass-through or interference with the proper operation of the WWTW. In no case shall heat be allowed in such quantities that the temperature in the WWTW exceeds one hundred four (104) degrees Fahrenheit.
  - (7) Any sewage, substances, materials, waters or wastes containing fats, wax, grease or oils, whether emulsified or not, in quantities or amounts capable of causing obstructions to flow or pass-through or interference with the proper operation of the WWTW.
  - (8) Any petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that may cause obstructions to flow or pass-through or interference with the proper operation of the WWTW.
  - (9) Any gasoline, benzene, naphtha, fuel oil, lubricating oil or other flammable or explosive liquid, solid, gas or pollutant that may create a fire or explosion hazard, including but not limited to waste streams with a closed cup flashpoint of less than sixty (60) degrees Celsius or one hundred forty (140) degrees Fahrenheit using the test method specified by 40 C.F.R. § 261.21.
  - (10) Any sewage, substances, materials, waters or wastes that contain concentrated dye waste or other waste that is either highly colored or could become highly colored by reacting with any other waste.
  - (11) Any sewage, substances, materials, waters or wastes that can result in the presence of toxic or poisonous solids, liquids, vapors, fumes or gases in sufficient quantity, either individually or by interaction with other wastes, that could contaminate the sludge processed by the WWTW or could injure or interfere with any sewage treatment process or constitute a hazard to the health and safety of persons, animals and plant life, create a public nuisance or create any hazard in the receiving waters of the WWTW.
  - (12) Any sewage, substances, materials, waters or wastes that contain a corrosive, noxious or malodorous gas or substance which, either individually or in reaction with other wastes, is capable of causing damage to the WWTW, of creating a public nuisance or hazard or of preventing entry into the WWTW for maintenance and repair.
  - (13) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Town in compliance with applicable state or federal law or regulations.
  - (14) Quantities of flow and/or concentrations of flow that constitute a sludge in the WWTW.
  - (15) Any storm water, surface water, groundwater, roof runoff or subsurface drainage to the WWTW, unless the Town grants permission. Storm water and all other unpolluted drainage shall be discharged to such WWTW locations as are specifically designated by the Town.
  - (16) Any sewage, substances, materials, waters or wastes, including oxygen-demanding pollutants, discharged at a flow rate, pollutant concentration, BOD concentration or in such volume that could exceed the hydraulic or organic capacity of the WWTW or that will cause interference within the WWTW.
  - (17) Any sewage, substances, materials, waters or wastes containing substances that are not amenable to treatment or reduction by the WWTW treatment processes, or are amenable to treatment only to such degree that the WWTW effluent cannot meet the State's requirements for discharge into receiving waters.
  - (18) Any trucked or hauled sewage, substances, materials, waters or wastes, except at discharge points designated by the Town.

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- (19) Ethylene glycol, (i.e., antifreeze) over one-half ( $\frac{1}{2}$ ) gallon.
  - (c) All nondomestic, commercial and industrial users and dischargers are subject to the Town's pretreatment program requirements.
  - (d) Where any preliminary treatment or flow-equalizing facilities are provided for any sewage, substances, materials, waters or wastes, the same shall be maintained continuously in satisfactory and effective operation by the owner thereof at his or her sole cost and expense.

(Ord. 15 §4, 2013)

#### **Sec. 13-1-240. Abandonment of service lines or tap permit.**

- (a) A service line and tap permit shall be presumed to be abandoned by the owner when service charges have been unpaid for a period of one (1) year. Upon abandonment pursuant to this Section, Town service can be resumed only upon payment of a new system development fee and any other current or past due service charges.
- (b) If a structure served by a Town system is torn down or destroyed, the owner can either voluntarily abandon the service line and tap permit, or prevent abandonment by paying all past due service charges, and current service charges, to the Town in an amount of fifty percent (50%) of the structure's EQR rate until such time as the structure is replaced and a certificate of occupancy is issued therefor. After such time, the appropriate full service charge shall be assessed.
- (c) An owner may voluntarily abandon his or her service line and tap permit by written notice of his or her intention to do so to the Town. Such service line and tap permit shall be deemed abandoned upon receipt of said notice. The service line or tap permit may not be restored unless and until a new system development fee and all current and past due service charges have been paid.
- (d) If a service line and tap permit are abandoned pursuant to this Section, service charges to the property or structure shall cease to accrue upon the effective date of the abandonment.

(Prior code 14-1-20; Ord. 7 §17, 1994)

#### **Sec. 13-1-250. Construction standards.**

- (a) Water lines, appurtenances and equipment shall be constructed in accordance with the Town's *Public Works Criteria for Design and Construction: Earthwork, Sewer and Water* and must meet the following standards:
  - (1) The owner shall furnish the Town with as-built drawings at the completion of construction, showing the location and dimensions of all construction and the type of materials used therein.
  - (2) All pipe installation, trenching, backfilling and other necessary construction for the service line shall be done and paid for by the owner.
  - (3) Every water service line for single-family residences shall be no less than three-fourths ( $\frac{3}{4}$ ) inch in diameter. Water service lines for all other types of users shall be of sufficient size to accommodate the anticipated usage, and in no event shall any water service line be constructed or installed without the prior written approval of the Town by issuance of a permit in accordance with Section 13-1-100 of this Article.
  - (4) All water service lines shall be of water-tight construction and properly connected to the Town water supply system so as to achieve a smooth flow of water.

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- (5) The entire length of every service line and all appurtenances thereto, whether located on private or public property, shall be constructed of materials as required by the Town and installed and inspected for approval as required by the Town.
  - (6) The entire length of every service line shall be inspected and approved in writing by the Town after installation and before the trench is backfilled.
  - (7) Every service line shall be connected to the Town water supply system at such point as the Town shall designate in writing.
  - (8) No more than one (1) residential unit shall be allowed to use a single service line or tap-in, and each separate building on each property shall be tapped into the Town water supply system using a separate and individual service line and tap. The above provisions may be waived in writing at the sole discretion of and by the Town Manager for good cause shown.
  - (9) Each water service line shall contain a curb stop.
  - (10) The owner shall own and maintain the service line from the building water supply line to the Town's water line upon a street or alley.
  - (11) All water meters shall have devices for remote reading. The type of water meter and location of the meter and remote reading shall be approved and inspected by the Town.
- (b) Sewer lines, appurtenances and equipment shall be constructed in accordance with the Town's *Pubic Works Criteria for Design and Construction: Earthwork, Sewer and Water* and must meet the following standards:
- (1) The owner shall furnish the Town with as-built drawings at the completion of construction, showing the location and dimensions of all sewers, manholes, cleanouts and service connections.
  - (2) The owner shall own and maintain the service line from the public sewer line to the building drain.
  - (3) All the pipe installation, trenching, backfilling and other necessary construction for the service line shall be done by the owner or his or her contractor, and paid for by the owner.
  - (4) All service lines shall be constructed of materials as required by the Town and installed and inspected for approval as required by the Town. All pipe installed for service lines shall have watertight joints and shall be inspected and approved by the Town after installation and before the trench is backfilled. The connection to the public sewer shall be at a point designated by the Town.
  - (5) No more than one (1) user shall be allowed to use a single sewer connection line, and each separate building on separate property shall be required to tap into the sewer system using a separate and individual service line and tap. The above provisions may be waived in writing at the sole discretion of and by the Town Manager for good cause shown.
  - (6) All service lines shall be not less than four (4) inches of inside diameter and shall be installed and laid with a slope or fall of not less than one percent (1%). All connections to the sewer system shall be a "Y" branch or connection. A minimum of one (1) outside cleanout for each fifty (50) feet of service line shall be installed.
  - (7) All service lines shall be of watertight construction and properly connected to the sewer system in a manner to result in a smooth exit, with no part of the service line protruding into the service main.
  - (8) All private sewage disposal systems, septic tanks, vaults, closets, privies or cesspools shall be properly disconnected, sealed, filled in and covered as may be required, within one (1) year or a reasonable period thereafter from the date of connection of the property upon which the same is located to the sewer system.

(Prior code 14-1-21; Ord. 7 §§18—20, 1994; Ord. 3 §5, 2001; Ord. 4 §1, 2009; Ord. 15 §§5, 6, 2013; Ord. 3 §1, 2016)

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## **Sec. 13-1-260. Discontinuance of water service.**

In addition to other remedies provided by this Code, the Town may discontinue water services to any property or unit for which charges or fees as provided for in this Chapter are delinquent for more than sixty (60) days. In such event, the Town Clerk shall give written notice of delinquency and intent to discontinue water service to the property unit after sixty (60) days of delinquency. Such notice shall state the amount of such charges or fees due and that the water service shall be discontinued at any time after sixty (60) days of delinquency, but no sooner than twenty (20) days after the date of said notice. Charges to such property or unit shall continue after discontinuance of service, unless the service line is deemed abandoned pursuant to Section 13-1-240 above. All costs associated with disconnection and reconnection shall be paid by the owner.

## **Sec. 13-1-270. Extension of Town systems within Town boundaries.**

- (a) No person, unless contracted by the Town to do so, may extend the Town system without compliance with all of the following conditions:
  - (1) The Town Council makes a specific determination for each piece of property and building for which service is sought:
    - a. That it is in the best interest of the Town to allow private construction of such service; and
    - b. That the service could be provided without jeopardizing the capacity of the Town system to adequately serve all Town customers.
  - (2) The applicant agrees, in writing, to comply with all provisions of this Code.
  - (3) The applicant submits plans and specifications of sufficient detail to allow a determination to be made by the Town Engineer that the proposed construction will be at least equal to the Town's standards for the same type of construction.
  - (4) The applicant agrees to complete construction of the Town system according to the plans and specifications submitted and approved by the Town Engineer. The applicant further agrees to arrange for, at the applicant's expense, an independent qualified inspector acceptable to the Town to inspect all work to certify that it is in compliance with the approved plans and specifications.
  - (5) The applicant furnishes a performance bond or other suitable collateral sufficient to ensure that the construction will be completed in accordance with Town standards.
  - (6) The applicant agrees to assume all construction and related costs associated with the project.
  - (7) The applicant agrees to complete the project within a specified amount of time.
  - (8) The applicant agrees to be liable for all damages to persons or property related to the project.
- (b) Where Town system lines are installed by a particular developer and accepted by the Town, and where said system lines may also later serve future developers, the Town may enter into a rebate agreement with the first developer in accordance with the following:
  - (1) The Town shall determine what equitable portion of the original cost should be attributed to future developers and that this amount will be collected from future developers and rebated to the initial developer.
  - (2) Rebates shall be made only over a maximum period of ten (10) years from the date of completion of the system line, and shall not include any interest value.

(Prior code 14-1-23; Ord. 3 §6, 2001; Ord. 4 §1, 2009)

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### **Sec. 13-1-280. Extension of Town systems outside Town boundaries.**

- (a) The Town's water and sewer services and systems may be expanded to serve users outside of the Town's boundaries only upon compliance with all of the terms and conditions hereafter stated.
- (b) The owner of any land outside of the Town's boundaries may request, in writing, water and/or sewer service for such lands by means of an extension of the Town's systems, subject to the requirements of this Section. Such request must include:
  - (1) A legal description of the real property to be served;
  - (2) A description of the nature and scope of the land owner's proposed development;
  - (3) A statement as to the timing of the completion of the development;
  - (4) An estimate as to probable flow requirements;
  - (5) A description, with copies of all supporting documents, of the property rights (e.g., easements) that allow for such extension.
- (c) Upon receipt of the written request referred to in subsection (b) above, the Town Manager, or his/her designee shall transmit copies of the request to the other Town departments for comment and review. Upon the Town Manager's receipt of comments from the other Town departments, the Town Manager shall prepare a staff report and place the request on the Town Council's agenda for review and approval or disapproval by the Town Council. The Town Council shall thereafter decide whether to provide such water and/or sewer service in accordance with the subject request.
- (d) If the Town Council elects to provide such water and/or sewer service, that fact shall be communicated to the applicant therefor, and the applicant shall thereafter prepare and submit to the Town Manager, at the applicant's expense, an engineering feasibility study. Such study shall include, but not be limited to:
  - (1) Preliminary designs and cost estimates of required sewage collection and water distribution systems;
  - (2) Preliminary design of connection methods to the Town's systems;
  - (3) Hydraulic analysis of the combined systems showing the effect of the added area on the Town's existing systems;
  - (4) Preliminary design and cost estimates for any treatment facilities required to be added as a result of the service to the applicant's area; and
  - (5) Such additional information as the Town Manager deems necessary, appropriate or prudent.
- (e) Upon the Town Manager's completion of review of the feasibility study, the Town Manager shall transmit copies of the study to the other Town departments for comment and review. Upon the Town Manager's receipt of comments from the other Town departments, the Town Manager shall prepare a staff report, including the requirements for the provision and receipt of water and/or sewer service beyond Town boundaries applicable to the applicant's request. Requirements for said provision and receipt shall be, at a minimum:
  - (1) Where annexation is required by the Town Council, the subject property owner shall execute, without limitation, a pre-annexation agreement prior to the extension of water and/or sewer service. The pre-annexation agreement shall, among other things, require that the property owner agrees that its land shall be annexed if and when the Town elects that such property shall be annexed.
  - (2) For all other projects seeking to connect to the Town's sewer system under this Section, the following minimum requirements must be met:

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- a. Sewer service shall be extended only to single-family residential units, accessory dwelling units and/or guesthouses.
  - b. Sewer service shall only be extended within the service area and land identified in Appendix "A" attached hereto.
  - c. Once sewer service is extended, there shall be no further subdivision or change in use of the subject property.
- (3) For all other projects seeking to connect to the Town's water system under this Section, the following minimum requirements must be met:
- a. Notwithstanding any provision of the Code to the contrary, potable water shall not be used for irrigation purposes, except when Town-approved conservation measures are utilized.
  - b. The extension of water service shall occur only if there are public benefits provided by the applicant and users such as, for example, river access trails, senior water rights and voluntary real estate transfer taxes approved by the Town Council.
- (4) For all projects seeking to connect to the Town's sewer and/or water systems under this Section, and where annexation is not otherwise required, the following minimum requirements must be met:
- a. The Town shall maintain all water and sewer systems and associated infrastructure; however, the costs to maintain such systems shall be paid for by the users thereof through increased user fees. If user fees prove to be inadequate to cover the costs of maintenance of such water and sewer systems, said user fees shall be increased accordingly. The Town shall not maintain service lines, which shall be maintained by the users thereof at their sole cost and expense.
  - b. Construction of water and sewer systems must be in accordance with the Town's specifications, and may require, without limitation, additional site engineering for site limitations and constraints and will minimize, to the maximum extent possible, impacts to wetlands and threatened and endangered species.
  - c. All water and sewer systems shall be designed and installed by the Town or, if the applicant requests and the Town agrees, by an engineer or contractor selected by the applicant, so long as the Town reviews and approves all aspects of such systems, including, without limitation, all drawings, specifications, vendor terms and work performed.
  - d. Applicant shall deed all water and sewer systems to the Town upon completion and acceptance by the Town, or at some specified date subsequent to completion as required by the Town.
  - e. The applicant shall provide year-round access by easement or public right to the Town for the purposes of maintaining all the deed facilities associated with any proposed sewer and water extension. When any part of the water and sewer system is not located in the public right of way, acceptable easements shall be given therefor to the Town.
  - f. Service area customers shall agree to abide by the Town's rules and regulations governing use of the Town's water and sewer systems.
  - g. Single-family residences served by the Town water and/or sewer systems shall not exceed five thousand (5,000) square feet.
  - h. The applicant for water and/or sewer service shall pay all applicable system development fees.
  - i. Taps fees for water and sewer service shall be one and one-half (1.5) times the in-Town rate. Tap fees shall be one (1) EQR if deed restricted to be consistent with the Town's policies for deed restrictions on accessory dwellings.
  - j. Monthly service fees for water and sewer service shall be two (2) times the in-Town rate.

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- k. If the subject property is annexed at a later date, all fees shall be the same as the fees other Town residents pay for such services at the time of annexation, unless site limitations or other considerations indicate they should be higher as determined by the Town or as otherwise determined by the Town Council.
    - l. The applicant shall contract with the Town to make such additional financial commitments and contributions to the Town in order to ensure that such extension of water and/or sewer service does not adversely affect the Town from a financial perspective.
  - (5) An agreement for the provision and receipt of water and/or sewer service beyond Town boundaries not otherwise inconsistent with the requirements of this Section shall be prepared by the Town Attorney and approved by the Town Council. Such agreement shall incorporate and include, without limitation, terms and conditions that address the requirements of this Section. The Town Manager's staff report regarding the request shall be incorporated in the agreement prepared by the Town Attorney. Upon execution by the applicant and the Town, said agreement shall be recorded on the official land records of Gunnison County and the obligations and requirements contained therein shall be a burden upon and run with the subject property.
  - (6) Unless waived by the Town Council, the applicant shall pay all costs and expenses whatsoever incurred by the Town, including, without limitation, all costs and expenses in connection with any legal publications, notices, filings, reproduction of materials, public hearings, recording of documents, engineering services, attorneys' services, consultant services, time of Town staff, permits and easements, in connection with the provision and receipt of water and/or sewer service beyond Town boundaries and the transactions contemplated in this Section. In connection therewith, the applicant shall deliver to the Town an executed costs and expenses reimbursement agreement obligating the applicant to reimburse the Town for all costs and expenses whatsoever incurred by the Town in connection with the processing, review and prosecution of the request for connection to Town water and sewer beyond Town boundaries.

(Ord. 25 §1, 2010; Ord. 13 §1, 2016)

### **Sec. 13-1-290. Inspection and tests.**

All plumbing, sewers, sewer lines and water service lines, including water meters and taps within the Town, are subject to inspection, testing, maintenance and repair during reasonable hours by the Town or its authorized representative in order to assure compliance with the Code. It shall be the duty of each user to notify the Town if any such plumbing, sewers, sewer lines and water service lines, including water meters and taps, are not operating properly.

### **Sec. 13-1-300. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Chapter; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **Sec. 13-1-310. Discount for prepayment of service charges.**

Any owner who pays a year's service charge in advance, on or before January 31 of any calendar year, shall be given a discount of four percent (4%) off the amount of twelve (12) monthly service charges.

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### **Sec. 13-1-320. Rebate of system development fee.**

In the event that any owner does not actually connect to a Town system within six (6) months of the granting of the permit referred to in Section 13-1-80 of this Article, he or she may apply for a rebate of the system development fee. In such event, ninety percent (90%) of the system development fee shall be rebated to the owner. The remaining ten percent (10%) of such fee retained by the Town shall be deemed necessary to cover the Town's administrative costs and capital expansion plans made in reliance of anticipated systems development needs. All service charges and connection fees paid by the owner in such circumstances shall be entirely retained by the Town.

### **Sec. 13-1-330. Discount of sewer and water monthly base rate service charges.**

- (a) Any user of the Town systems who is a natural person, customer of the utility and resident who meets any of the following qualifications may apply for a sewer and water monthly base rate service charge discount. The user must:
  - (1) Be permanently disabled, or
  - (2) Be enrolled in a federal or state financial assistance program, or
  - (3) Have maintained his or her primary residence within the Town for at least the last ten (10) years and is sixty-two (62) years of age or older.
- (b) Application shall be made on such forms as shall be provided by the Town, for a sewer and water monthly base rate service charge discount from the Town in an amount equal to fifty percent (50%) of the base rate service charge as may be amended from time to time.
- (c) Each service charge discount application shall be examined and reviewed by the Town Manager for such purpose and, if he or she is satisfied that the applicant qualifies for a discount, he or she shall direct the Finance Director to apply the discount to which the applicant is entitled to the subsequent month's billing period. The discount will then be applied to the monthly base rate service charges moving forward until such time as the resident no longer resides at the residence identified on the application.

( Ord. No. 1 , 1-18-2022)

Ord. No. 1 , adopted January 18, 2022, repealed the former § 13-1-330, and enacted a new § 13-1-330 as set out herein. The former § 13-1-330 pertained to rebate of sewer and water service charges and derived from Prior code 14-1-29; Ord. 2 § 1, 1989; Ord. 3 § 1, 1995; Ord. 3 § 8, 2001; Ord. 4 § 1, 2009.

### **Sec. 13-1-340. Applicability.**

This Chapter shall apply to all property within the boundaries of the Town, whether or not such property is connected to the Town's system; and shall, in addition, apply to all property outside of the Town to which service is furnished by the Town.

### **Sec. 13-1-350. Violation, liability and penalty.**

Any person who violates any provision of this Article may be fined as provided in Section 1-4-20 of this Code. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article. Any person violating any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation. The remedies provided by this Article are cumulative and not exclusive, and are in addition to any other remedies provided by law.

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**Sec. 13-1-360. Liability of Town.**

It is expressly ordained by the Town and agreed to by the consumer that no claim shall be made against the Town by reason of the breaking of any service pipe or cock or for any accidental failure in the supply of water.

## **ARTICLE 2 Water and Sewer Regulations**

**Sec. 13-2-10. Use of water during fire alarms.**

During an alarm of fire and while the water pressure is on the pipes, the use of fountains, yard and street sprinklers and motors is expressly prohibited.

**Sec. 13-2-20. Waste of water prohibited.**

Consumers shall prevent unnecessary waste of water, shall keep sprinklers, pipes, hydrants, faucets, valves, hoses, stop boxes at the curb line and all apparatus in good condition at their own expense, and keep all water outlets closed when not in actual use. Keys to sprinklers are not allowed to remain exposed to use by others, nor shall these be used without a nozzle or used to throw water beyond the limits to be sprinkled.

**Sec. 13-2-30. Running water unlawful.**

The water at wash basins, water closets, urinals, baths, motors or any other places must not be left running to prevent water from freezing in the pipes or for any other purpose, without permission from the Town; and, for all unnecessary waste of water, the Town reserves the right to shut off the supply.

**Sec. 13-2-40. Use of lawn sprinklers and other domestic irrigation.**

- (a) No user of water from the Town water system shall use or allow the use of Town water for watering and/or domestic irrigation except as hereafter set forth:
  - (1) No person, customer or property owner whose use or property is located on the north or west side of a Town street or having a street address ending in an odd number shall use Town water for lawn watering or domestic irrigation on any numbered day of the month ending in zero or an even number.
  - (2) No person, customer or property owner whose use or property is located on the south or east side of a Town street or having a street address ending in zero or an even number shall use Town water for lawn watering or domestic irrigation on any numbered day of the month ending in an odd number.
  - (3) Notwithstanding Paragraphs (1) and (2) above, no person, customer or owner shall use Town water for lawn watering or domestic irrigation between the hours of 10:00 a.m. and 5:00 p.m. or 10:00 p.m. and 5:00 a.m. on any day.
  - (4) For the purpose of this Section, *domestic irrigation* shall mean any outside watering of gardens, soil or vegetation.
  - (5) Notwithstanding any provision of this Section, a person, customer or property owner installing a new lawn may obtain permission from the Town Manager for daily watering of said lawn until such time as the grasses are established, so long as such daily watering is limited to the hours set forth in Paragraph (3) above.

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- (6) Notwithstanding any other section of this Code to the contrary, any person who violates the provisions of this Section shall commit offenses and be subject to a penalty as follows:
    - a. Any first offense shall be a petty offense subject to a twenty-five-dollar penalty assessment fine.
    - b. Any second offense shall be a petty offense subject to a fifty-dollar penalty assessment fine.
    - c. Any third or subsequent offense shall be a misdemeanor punishable by a mandatory minimum fine of one hundred dollars (\$100.00), up to and including three hundred dollars (\$300.00) for each offense.
  - (7) Notwithstanding the above restrictions on the use of lawn sprinklers and other domestic irrigation, the Town Manager may direct the use of lawn sprinklers and other domestic irrigation on public property at such times and on such schedule as the Town Manager may determine is necessary for the preservation of public property.
- (b) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Article. Any person violating any provisions of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorney's fees, occasioned by reason of such violation. The remedies provided by this Article are cumulative and not exclusive, and are in addition to other remedies provided by law.

(Prior code 14-1-35; Ord. 6 §1, 1989; Ord. 7 §§26—28, 1994; Ord. 21 §1, 2001; Ord. 4 §1, 2009)

### **Sec. 13-2-50. Mandatory on-site inspections.**

- (a) Water lines. After October 1, of each year, no water lines shall be connected to any Town water main, nor shall any work be performed to install any water line, until after an official designated by the Town has inspected the site where the work is to be performed and given permission for the work to proceed. The inspection required by this Section shall be required until such time in the spring of each year that said official has ascertained and posted a public notice that the ground has thawed.
- (b) Sewer lines. After October 1 of each year, no sewer line shall be connected to any Town sewer collection line, nor shall any work be performed to install any sewer line, until after an official designated by the Town has inspected the site where the work is to be performed and given permission for the work to proceed. The inspection required by this Section shall be required until such time in the spring of each year that said official has ascertained and posted notice that the ground has thawed.

(Prior code 14-2-1, 14-2-2; Ord. 4 §1, 2009)

### **Sec. 13-2-60. Installation of conservation devices.**

All newly constructed units within the Town for which a tap-in permit is required pursuant to Section 13-1-80 of this Chapter, and all remodeling or renovation projects involving the installation of new plumbing and plumbing fixtures, shall include the following conservation devices:

- (1) Water saver toilets not to exceed three and one-half (3½) gallons per flush.
- (2) Shower heads with a nonadjustable flow control which will not allow a flow in excess of three and one-half (3½) gallons per minute.
- (3) All faucets of a water-saving design which limits the maximum flow to five (5) gallons per minute.

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### **Sec. 13-2-70. Water meters required.**

Each and every structure located within the Town which utilizes Town water or Town water service, and any other use which utilizes Town water or Town water service, shall have in place a Town-approved and inspected water meter device by April 1, 2003. The type and location of such meter shall be determined by the Utilities Director. Users will pay all costs associated with the purchase and installation of such meters.

- (1) Users who have not installed Town-approved and Town-inspected water meters as of April 1, 2003, shall be charged a monthly water service charge in the amount of four (4) times the EQR base charge for the use, and shall be in violation of this Article, subjecting them to penalties set forth in this Code and elsewhere. A grace period of ninety (90) days from the above date, until June 29, 2003, for the imposition of penalties for failure to be in compliance with all of the requirements of this Section, shall be granted.
- (2) No certificate of occupancy shall be issued for any structure for which a water meter has not been installed.
- (3) The only use of Town water which is permitted without a meter shall be the following:
  - a. Use for firefighting, including fire sprinkler systems within a structure, the testing of those systems and local fire department training purposes; and
  - b. Water system maintenance by the Town.
- (4) Users with meters already in place as of April 1, 2003, shall replace those meters with meters approved and inspected by the Town. The Town shall bear the cost of those replacement meters. The user shall pay the costs of the installation of the replacement meters.

### **Sec. 13-2-80. Requirement for issuance of permits.**

No permit for a tap-in to the Town's water and sewer system, as required by Section 13-1-80 of this Chapter, shall be granted and issued unless the conservation devices and water meter required by this Code shall be installed and used.

### **Sec. 13-2-90. Dumping of sump pump water.**

It is unlawful for any person to discharge water from sump pumps or other groundwater collection devices into the Town's sewer system.

### **Sec. 13-2-100. Limitation on issuance of tap-in permits.**

- (a) Purpose of limitation. The power to limit the issuance of tap-in permits is created in order to promote the public health, welfare and safety of the citizens of the Town. More specifically, said permit limitations will provide that development within the Town's boundaries will proceed in an orderly fashion and not in advance of the Town's ability to provide services for said development.
- (b) Limitation of permits. No permit for a tap-in to the Town's water and sewer system, as required by Section 13-1-80 and as issued pursuant to Section 13-1-100 of this Chapter, shall be granted and issued unless done so under the terms, conditions and restrictions hereafter set forth.
- (c) Grant of building permits. No building permit shall be issued by the Town pursuant to Chapter 18, Article 13 of this Code, for new units requiring a connection to the Town water and/or sewer system, or for expansion or change in use if the same raises the EQR rating for such use, unless and until a tap permit is granted and all system development and other fees have been paid as required by this Chapter.

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- (d) Paradise Park Subdivision. Tap-in permits will not be issued for structures in the one-hundred-year floodplain within Paradise Park Subdivision. The Town will deny future tap-in permits to property owners for significant new facility construction to be located in designated flood hazard areas in the Paradise Park Subdivision unless there are no practical alternatives. A *designated flood hazard area* is a floodway or floodplain, so determined by Federal Emergency Management Agency (FEMA) or another responsible agency of federal, state or local government, involving a one-hundred-year frequency flood hazard. This special mitigation measure will only pertain to newly issued taps within the impact area of the project to be financed by the United States Department of Agriculture, Rural Utilities Service (RUS), and will not involve any other areas within the Town's overall service area. This impact area of the project has been determined to be Paradise Park Subdivision.

(Prior code 14-4-6; Ord. 7 §30, 1994; Ord. 2 §12, 2003)

#### **Sec. 13-2-110. Violation and penalty.**

- (a) Offense. Any person who violates any of the provisions of this Chapter shall be fined in accordance with the provisions of Section 1-4-20 of this Code.
- (b) Actions. The erection, construction, alteration, enlargement, conversion, moving or maintenance of any building; and the use of any land, building or structure; which activity or use is continued, operated or maintained contrary to any provision of this Chapter; shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Chapter.
- (c) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Prior code 14-4-5; Ord. 7 §29, 1994; Ord. 4 §1, 2009)

### **ARTICLE 3 Backflow Prevention and Cross-Connection Control Regulations**

#### **Sec. 13-3-10. Purpose.**

The purpose of these regulations is to protect the Town's water system from contaminants or pollutants that could enter the distribution system by backflow from a customer's water supply system through the service connection.

#### **Sec. 13-3-20. Applicability.**

These regulations apply to all commercial, industrial and multi-family residential service connections within the Town and to any persons outside the Town who are, by contract or agreement with the Town, users of the Town's water system. Such persons shall install an appropriate backflow prevention assembly. These regulations do not apply to single-family residential service connections unless the Town becomes aware of a cross-connection at the single-family connection.

#### **Sec. 13-3-30. Authority.**

The Town shall have the authority to survey all service connections within the water supply system to determine if the connection is a cross-connection. The Town shall have the authority to control all service connections within the water supply system if the connection is a cross-connection. The Town may control any

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service connections within the water supply system in lieu of a survey as long as the service connection is controlled with an air gap or reduced pressure zone backflow prevention assembly. The Town may collect fees for the administration of this program. The Town shall maintain records of cross-connection surveys and the installation, testing and repair of all backflow prevention assemblies installed for containment and containment by isolation purposes. The Town Manager shall administer, implement and enforce the provisions of these regulations.

### **Sec. 13-3-40. Definitions.**

The following terms shall have meanings ascribed thereto:

*Active date* means the first day that a backflow prevention assembly or backflow prevention method is used to control a cross-connection in each calendar year.

*Air gap* is a physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel installed in accordance with standard AMSE A112.1.2.

*Backflow* means the undesirable reversal of flow of water or mixtures of water and other liquids, gases or other substances into the public water systems distribution system from any source or sources other than its intended source.

*Backflow containment event* means backflow into a public water system from an uncontrolled cross-connection such that the water quality no longer meets the Colorado Primary Drinking Water Regulations or presents an immediate health and/or safety risk to the public.

*Backflow prevention assembly* means any mechanical assembly installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the mechanical assembly is appropriate for the identified contaminant at the cross-connection and is an in-line field-testable assembly.

*Backflow prevention method* means any method and/or non-testable device installed at a water service line or at a plumbing fixture to prevent a backflow contamination event, provided that the method or non-testable device is appropriate for the identified contaminant at the cross-connection.

*Certified cross-connection control technician* means a person who possesses a valid Backflow Prevention Assembly Tester certification from one (1) of the following approved organizations: American Society of Sanitary Engineering (ASSE) or the American Backflow Prevention Association (ABPA). If a certification has expired, the certification is invalid.

*Containment* means the installation of a backflow prevention assembly or a backflow prevention method at any connection to the public water system that supplies an auxiliary water system, location, facility, or area such that backflow from a cross-connection into the public water system is prevented.

*Containment by isolation* means the installation of backflow prevention assemblies or backflow prevention methods at all cross-connections identified within a customer's water system such that backflow from a cross-connection into the public water system is prevented.

*Controlled* means having a properly installed, maintained, and tested or inspected backflow prevention assembly or backflow prevention method that prevents backflow through a cross-connection.

*Cross-connection* means any connection that could allow any water, fluid, or gas such that the water quality could present an unacceptable health and/or safety risk to the public, to flow from any pipe, plumbing fixture, or a customer's water system into a public water system's distribution system or any other part of the public water system through backflow.

*Multi-family* means a single residential connection to the public water system's distribution system from which two (2) or more separate dwelling units are supplied water.

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*Single family* means and single dwelling which is: (i) occupied by a single family and is supplied by a separate service line; or (ii) comprised of multiple living units where each living unit is supplied by a separate service line.

*Uncontrolled* means not having a properly installed and maintained and tested or inspected backflow prevention assembly or backflow prevention method, or the backflow prevention assembly or backflow prevention method does not prevent backflow through a cross-connection.

*Water supply system* means a water distribution system, piping, connection fittings, valves and appurtenances within a building, structure or premises. Water supply systems are also referred to commonly as premise plumbing systems.

### **Sec. 13-3-50. Requirements.**

- (a) Commercial, industrial and multi-family service connections shall be subject to a survey for cross-connections. If a cross-connection has been identified an appropriate backflow prevention assembly and or method shall be installed at the customer's water service connection within one hundred twenty (120) days of its discovery. The assembly shall be installed downstream of the water meter or as close to that location as deemed practical by the Town. If the assembly or method cannot be installed within one hundred twenty (120) days, the Town will take action to control or remove the cross-connection, suspended service to the cross-connection or receive an alternative compliance schedule from the Colorado Department of Public Health and Environment.
- (b) In no case shall it be permissible to have connections or tees between the meter and the containment backflow prevention assembly. In instances where a reduced pressure principle backflow preventer cannot be installed, the owner must install approved backflow prevention devices or methods at all cross-connections within the owner's plumbing system.
- (c) Backflow prevention assemblies and methods shall be installed in a location which provides access for maintenance, testing and repair.
- (d) Reduced pressure principle backflow preventers shall not be installed in manner subject to flooding.
- (e) Provisions shall be made to provide adequate drainage from the discharge of water from reduced pressure principle backflow prevention assemblies. Such discharge shall be conveyed in a matter that does not impact waters of the State of Colorado.
- (f) All assemblies and devices shall be protected to prevent freezing. Those assemblies and methods used for seasonal services may be removed in lieu of being protected from freezing. The devices must be reinstalled and then tested by a certified cross-connection control technician prior to the service being activated.
- (g) Where a backflow prevention assembly or method is installed on a water supply system using storage water heating equipment such that thermal expansion causes an increase in pressure, a device for controlling pressure shall be installed.
- (h) All backflow prevention assemblies shall be tested at the time of installation and on an annual schedule thereafter. Such tests must be conducted by a certified cross-connection control technician. The Town may, at its election, undertake inspection testing and/or repair of backflow prevention assemblies in its sole discretion. The Town's election to inspect or repair such assemblies shall not limit the owner's responsibilities within this Section.
- (i) The Town shall require inspection testing, maintenance and as needed repairs and replacement of all backflow prevention assemblies and methods, and of all required installations within the owner's plumbing system in the cases where containment assemblies and or methods cannot be installed.

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- (j) All costs for design, installation, maintenance, testing and as needed repair and replacement are to be borne by the customer.
  - (k) No grandfathering is permitted except for fire sprinkler systems where the installation of a backflow prevention assembly or method will comprise the integrity of the fire sprinkler system.
  - (l) For new buildings, all building plans must be submitted to Town and approved prior to the issuance of water service. Plans must depict:
    - (1) Water service type, size and location.
    - (2) Meter size and location.
    - (3) Backflow prevention assembly size, type and location.
    - (4) Fire sprinkler system(s) service line, size and type of backflow prevention assembly.
      - a. All fire sprinkling lines shall have a minimum protection of an approved double check-valve assembly for containment of the system.
      - b. All glycol (ethylene or propylene), or antifreeze systems shall have an approved reduced pressure principle backflow preventer for containment.
      - c. Dry fire systems shall have an approved double check-valve assembly installed upstream of the air pressure valve.
      - d. In cases where the installation of a backflow prevention assembly or method will comprise the integrity of the fire sprinkler system the Town will not require the backflow protection. The Town will measure chlorine residual at the service connection once a month and perform periodic bacteriological testing at the site. If the Town suspects water quality issues the public water system will evaluate the practicability of requiring that the fire sprinkler system be flushed periodically.

( Ord. 3 §1, 2016)

### **Sec. 13-3-60. Inspection, testing and repair.**

- (a) Backflow prevention devices or methods shall be tested by a certified cross-connection control technician upon installation and tested at least annually, thereafter. Tests shall be made at the expense of the customer. Any backflow prevention devices or methods that are untestable shall be inspected at least once annually by a certified cross-connection control technician. Inspections shall be made at the expense of the customer.
- (b) As necessary, backflow prevention devices shall be repaired and retested or replaced and tested at the expense of the customer whenever the devices are found to be defective.
- (c) Testing gauges shall be tested and calibrated for accuracy at least once annually.

( Ord. 3 §1, 2016)

### **Sec. 13-3-70. Reporting and recordkeeping.**

- (a) Copies of records of test reports, repairs and retests or replacements shall be kept by the customer for a minimum of three (3) years.
- (b) Copies of records of test reports, repairs and retests shall be submitted to the Town by mail, facsimile or E-mail by the testing company or testing technician.

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- (c) Information on test reports shall include, but may not be limited to:
- (1) Assembly or method type.
  - (2) Assembly or method location.
  - (3) Assembly make, model and serial number.
  - (4) Assembly size.
  - (5) Test date.
  - (6) Test results including all results that would justify a pass or fail outcome.
  - (7) Certified cross-connection control technician certification agency.
  - (8) Technician's certification number.
  - (9) Technician's certification expiration date.
  - (10) Test kit manufacturer, model and serial number.
  - (11) Test kit calibration date.

(Ord. 3 §1, 2016)

### **Sec. 13-3-80. Right-of-entry.**

A properly credentialed representative of the Town shall have the right of entry to survey any and all buildings and premises for the presence of cross-connections for possible contamination risk to and for determining compliance with this Article. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of customers throughout the Town's water distribution system.

### **Sec. 13-3-90. Compliance.**

- (a) Customers shall cooperate with the installation, inspection, testing, maintenance, and as needed repair and replacement of backflow prevention assemblies and with the survey process. For any identified uncontrolled cross-connections, the Town shall complete one (1) or more of the following actions within one hundred twenty (120) days of its discovery:
  - (1) Control the cross-connection.
  - (2) Remove the cross-connection.
  - (3) Suspend service to the cross-connection.
  - (4) Charge a monthly water service charge in the amount of four (4) times the EQR base charge for the use, and shall be in violation, subjecting customer to penalties set forth in the Town Code.
- (b) The Town shall give notice in writing to any owner whose plumbing system has been found to present a risk to the Town water distribution system through an uncontrolled cross-connection. The notice and order shall state that the owner must install a backflow prevention assembly or method at each service connection to the owner's premises to contain the water service. The notice and order will give a date by which the owner must comply with the order.
- (c) In instances where a backflow prevention assembly or method cannot be installed, the owner must install approved backflow prevention devices or methods at all cross-connections within the owner's water supply system. The notice and order will give a date by which the owner must comply with the order.

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( Ord. 3 §1, 2016)

### **Sec. 13-3-100. Conflict.**

If a dispute or conflict arises between any plumbing, mechanical, building, electrical, fire or other code adopted by the Town, then the most stringent provisions of each respective code shall prevail.

### **Sec. 13-3-110. Violations and penalties.**

- (a) Any person who violates any of the provisions of this Article shall be fined in accordance with the provisions of Section 1-4-20 of this Code.
- (b) The use of any land, building or structure, which such use or activity is continued, operated or maintained contrary to any provision of this Article shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Article.
- (c) The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

( Ord. 3 §1, 2016)

## **ARTICLE 4 Water Management Plan**

### **Sec. 13-4-10. Intent and purpose.**

It is the intent of this Article to establish long-term policies, goals and directives for the Town in the form of rules and regulations to be updated from time to time as needed concerning management of the Town's water, its water rights and the uses to be made of that water in furtherance of the Town's obligations to its citizens and visitors.

### **Sec. 13-4-20. Content.**

- (a) The Water Management Plan shall consist of the following:
  - (1) A listing of all present rights held by the Town, the priorities of such rights, conflicts and possible challenges to said rights, and a brief description of the physical components which presently are utilized to making use of said rights.
  - (2) A step-by-step plan for increasing the use of present water rights, including the establishment of a capital improvement program, priorities for extension of the present water system, utilization of untreated as well as treated water, and cost estimates which establish the feasibility for any program of development of present water rights.
  - (3) Establishment of a program to increase present water rights to meet future needs to the Town. This portion of the Plan should address issues of annexation, alternatives to present water rights should the present sources become polluted or otherwise unavailable to the Town, and cooperative development of unappropriated or otherwise under-utilized water in the Upper East River Valley.
  - (4) Population and growth projections for the Town and region which utilize various sources of available information, to give the Town alternatives as to population growth, water usage projections and such other future projections which may affect the Town's water and water rights.

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- (b) The Plan should incorporate engineering reports and data concerning the feasibility of expansion of the Town's physical plant and system, cost projections and such other information that engineering concerns may impart to the Town's planning process.
  - (c) The above listing of information to be contained in the Water Management Plan is intended to be used as base information and not as limiting factors.

(Prior code 15-6-3)

#### **Sec. 13-4-30. Adoption.**

The Water Management Plan shall be adopted by the Town Council of the by resolution in the form of rules and regulations. Future amendments and updates to said rules and regulations shall also be passed on by the Town Council by resolution from time to time as the need arises. Said rules and regulations shall be promulgated in a manner to carry out and implement the intent of this Article.

### **ARTICLE 5 Refuse and Sanitation System**

#### **Sec. 13-5-10. Definitions.**

For the purposes of this Article, the following terms shall have the meanings given in this Section:

*Ashes* means the residue from the burning of wood, coal, coke or other fuel.

*Disabled* means to be so permanently incapacitated by injury or illness as to be incapable of engaging in gainful employment.

*Dwelling* means any building or part thereof designed or used for private residential purposes, and includes:

- a. Single-family dwelling, which is a building or mobile home designed or used for occupancy by one (1) family;
- b. Two-family dwelling, which is a building designed or used for occupancy by two (2) families living independently of each other; and
- c. Multiple-family dwelling, which is a building designed or used for occupancy by three (3) or more families living independently of each other.

*Garbage* means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food; provided, however, that *garbage* shall not include human body wastes.

*Recyclable materials* means those materials listed by the Gunnison County Recycling Center, or any other approved recycling entity, which may be collected and conveyed by the Town or its contractors, and which are identified as *recyclable materials* and placed in designated recycling bins.

*Refuse* means all putrescible and nonputrescible wastes, including, among other things, garbage, rubbish, street cleanings, dead animals, solid wastes and recyclable materials; provided, however, that *refuse* shall not include human body wastes, highly inflammable or explosive materials or ashes.

*Rubbish* means nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, including but not limited to paper, cardboard, tin cans, yard clippings, wood, glass crockery, furniture, household items and similar materials.

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### **Sec. 13-5-20. Compulsory refuse collection; opt-out requirements.**

- (a) All refuse and ashes accumulated at or generated by the occupants of any dwelling within the Town shall be collected, conveyed and disposed of by the Town or its contractors. No other person shall collect, convey over any of the streets or alleys of the Town or dispose of any refuse accumulated at or generated by the occupants of any dwelling; provided, however, that this Article shall not prohibit the actual producer of refuse, or the owner or occupant of a dwelling at which refuse has accumulated, from personally collecting, conveying and disposing of bulky refuse of a type not normally collected by the Town or its contractors. All commercial users must dispose of refuse and ashes generated by such use.
  - (b) The occupants of any dwelling unit that meets any of the following qualifications may opt out of the Town's compulsory refuse collection requirements described in Subsection (a) above when:
    - (1) A single building consists of both residential and commercial uses and the entire building is owned by one (1) owner;
    - (2) A single or multiple building property consists of both residential and commercial uses owned by different owners within the same property in which the common elements, as such term is defined under the Colorado Common Interest Ownership Act, Section 38-33.3-101, et seq., C.R.S.
- (CCIOA), are owned and managed by a homeowners' or unit owners' association;
- (3) Four (4) or more multi-family residences within the same building are owned by the same owner; or
  - (4) Four (4) or more multi-family residences are owned by different owners within a single or multiple building property in which the common elements, as such term is defined under the CCIOA, are owned and managed by a homeowners' or unit owners' association.
- (c) For any of the four (4) exemptions described in Subsection (b) above, the owner or association must elect to opt out of the Town's compulsory refuse collection requirements in writing to the Town Manager on forms provided by the Town. Such election shall adequately describe the property subject to the election and must meet the following requirements:
    - (1) Any election for calendar year 2012 by any owner or association must be received by the Town Manager by June 1, 2012. The exemption shall become effective the next succeeding calendar month when the election is received by the Town Manager before the first day of the preceding calendar month. Any election given after the first day of the calendar month shall become effective in the calendar month immediately following the succeeding calendar month.
    - (2) For all calendar years subsequent to 2012, such election by any owner or association must be received by the Town Manager by December 1 of the preceding calendar year.
  - (d) The election by the owner or association will remain in effect until the owner or association otherwise notifies the Town Manager in writing, which shall be given before the first day of the preceding calendar month to be effective in the next succeeding calendar month. Any notice given after the first day of the calendar month shall become effective in the calendar month immediately following the succeeding calendar month.
  - (e) Any property owner or association that has elected out of or is not subject to the Town's compulsory refuse collection requirements as described herein must obtain adequate refuse collection service in order to comply with this Chapter.

(Ord. 23 §1, 2011)

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### **Sec. 13-5-30. Refuse containers.**

- (a) No refuse container shall be placed in the right-of-way for curbside pickup other than between the hours of 6:00 a.m. and 10:00 p.m. of the day for scheduled collection. After pickup, all refuse containers must be removed from the right-of-way.

(Prior code 6-3-5; Ord. 22 §5, 1999; Ord. 10 §§1, 2, 2007; Ord. 9 §§1, 2, 2008; Ord. No. 12 , § 2, 5-21-2018)

### **Sec. 13-5-40. Precollection practices.**

- (a) All refuse containers shall be placed for collection at ground level on the premises of the owner of said containers and not more than ten (10) feet and accessible from the street or alley from which collection is made. Refuse containers shall not be deemed accessible, as required by this Subsection, unless a path through accumulated snow has been made from the street or alley to the refuse containers. Containers may be placed for collection at other than ground level and at a distance of more than ten (10) feet from the point of collection after the alternative location and an additional fee to compensate for the extra collection service are approved, in writing, by the Town.
- (b) All refuse, before being placed in a container, shall be:
  - (1) Drained of all free liquids; and
  - (2) Wrapped in plastic bags, paper or other similar material to prevent contamination of the container.
- (c) Tree trimmings, hedge clippings and other bulky materials need not be placed in containers for collection, but shall be cut in lengths not to exceed four (4) feet and shall be securely tied in bundles not more than two (2) feet thick before being deposited for collection.

(Prior code 6-3-6)

### **Sec. 13-5-50. Compulsory refuse collection fee.**

- (a) The owner of every dwelling within the Town shall pay to the Town each month the amount of fee established by the Town Council. That fee is set forth in Appendix A to this Code.
- (b) If the owner of any dwelling within the Town has an annual income exclusive of health or medical benefits or Social Security benefits less than twelve thousand dollars (\$12,000.00) and is either permanently disabled or over sixty-five (65) years of age, the reduced collection rate shall be four dollars and twenty-five cents (\$4.25) for the dwelling unit within which such owner resides.
- (c) All service charges shall be paid monthly, in advance, on or before the 15th of the month at the office of the Town. In the event of default or tardiness in any payment required by this Article, there shall be added a delinquency charge, plus the reasonable costs of collection, including attorney's fees. Service charges shall be charged against the property owner commencing upon the issuance of a certificate of occupancy or at the time of actual occupancy, whichever occurs first. Any delinquent payment shall constitute a lien against the property served and shall be collectible in the manner of delinquent taxes.

(Prior code 6-3-7; Ord. 14 §3, 1993; Ord. 6 §1, 1997; Ord. 21 §3, 1997; Ord. 16 §3, 1999; Ord. 22 §6, 1999; Ord. 19 §4, 2001; Ord. 28 §1, 2002; Ord. 29 §4, 2003; Ord. 27 §2, 2004; Ord. 4 §1, 2009)

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### **Sec. 13-5-60. Limitation on quantity collected.**

- (a) The basic monthly refuse collection rates set forth in Section 13-5-50 above entitle the owner or occupant of each dwelling within Town to have the Town or its contractors collect, once each week, the following accumulations of refuse and ashes, provided that the refuse and ashes are placed for collection at ground level and not more than ten (10) feet and accessible from the street or alley from which collection is made:
  - (1) Single-family dwellings, three (3) thirty-five-gallon containers or the equivalent thereof;
  - (2) Two-family dwellings, six (6) thirty-five-gallon containers or the equivalent thereof;
  - (3) Multiple-family dwellings, three (3) thirty-five-gallon containers or the equivalent thereof per dwelling unit.
- (b) The basic monthly refuse collection rates set forth in Section 13-5-50 above entitle the owner or occupant of each dwelling within Town to occasionally exceed the accumulations set forth in Subsection (a) above by a reasonable amount.

(Prior code 6-3-8; Ord. 22 §7, 1999; Ord. 4 §1, 2009)

### **Sec. 13-5-70. Nuisances.**

It is hereby declared to be an illegal nuisance:

- (1) To deposit any refuse or ashes in any stream, river or other body of water which flows through Town, whether such refuse is deposited in said stream, river or other body of water upstream from or within Town;
- (2) To burn or permit to be burned any refuse within Town, except in an incinerator or other equipment found by the Sanitation Department to be effective for the purpose of air pollution control;
- (3) To accumulate any refuse within Town for more than one (1) week;
- (4) To deposit any refuse in such manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer or other public place or onto private property within Town; or
- (5) To deposit any refuse in a manner that endangers or tends to endanger the public health within the Town.

### **Sec. 13-5-80. Waste receptacles on public property.**

It is unlawful for any person or business entity to place a waste receptacle of any size on public property except as follows:

- (1) Receptacles placed by, at the direction of or with the written consent of the Town; and
- (2) Receptacles temporarily placed for residential collection, as set forth in Section 13-5-40 above.

### **Sec. 13-5-90. Violation; penalty.**

Any person who violates the provisions of this Article shall be fined in accordance with the provisions of Section 1-4-20 of this Code.

## **CHAPTER 14**

### **Watershed Protection District**

#### **ARTICLE 1 General Provisions**

##### **Sec. 14-1-10. Watershed Protection District established, regulations enacted.**

The Town of Crested Butte Watershed Protection District ("Watershed Protection District") is hereby established and regulations for the Watershed Protection District ("Regulations") are hereby enacted.

##### **Sec. 14-1-20. Purpose and authority.**

- (a) The purpose of the Watershed Protection District is to protect the Town waterworks from injury and the municipal water supply from pollution, and to designate site selection and construction of major new domestic water and wastewater treatment systems and major extensions of existing domestic water and wastewater treatment systems, efficient utilization of municipal and industrial water projects and wildlife habitat areas as matters of state interest within the Watershed Protection District, pursuant to the findings in Article 5 of this Chapter.
- (b) These Regulations are adopted pursuant to the authority granted to municipalities by Section 31-15-707(1)(b), C.R.S., Municipal Utilities; Section 29-20-101, et seq., C.R.S., Local Government Land Use Control Enabling Act; Section 24-65.1-101, et seq., C.R.S., Areas and Activities of State Interest; Colorado Constitution Art. XX, Home Rule Cities and Towns; and other such similar authority that may be granted by the Colorado General Assembly.

(Ord. 4 §1, 2013)

##### **Sec. 14-1-30. Jurisdiction and map.**

The boundaries of the Watershed Protection District encompass the Town waterworks and any source of municipal water supply, including all equipment, drainage structures, dams, reservoirs, streams, trenches, ditches, watercourses, pipelines, wells, pumps, buildings, structures, roads and other facilities used in and necessary for the construction, maintenance and operation of the municipal water supply system and for five (5) miles above the points of diversion of water for use of the Town. This jurisdiction also extends to groundwater underneath lands within the five-mile area. The official map that depicts the Watershed Protection District boundaries is located in the office of the Town Clerk.

##### **Sec. 14-1-40. Applicability.**

- (a) These Regulations shall apply to any development, as that term is defined in Section 14-1-90 of this Article, on public or private land within or partially within the Watershed Protection District.
- (b) Relationship to County land use authority.
  - (1) Nothing in this Article is intended to supersede or abrogate the authority of the County to regulate land use within the unincorporated areas of the Watershed Protection District.

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- (2) Wherever there is a conflict between a County permit requirement and a Town Watershed Permit requirement, the requirement most protective of the Watershed Protection District shall apply.

(Ord. 4 §1, 2013)

### **Sec. 14-1-50. Watershed Permit required.**

No person shall engage in development wholly or partially within the Watershed Protection District without first obtaining a Certificate of Exemption pursuant to Section 14-1-60 below, a Finding of No Significant Impact (FONSI) pursuant to Section 14-2-20 of this Chapter or a Watershed Permit.

### **Sec. 14-1-60. Exemptions from Watershed Permit requirement.**

- (a) The Town Manager may issue a Certificate of Exemption for the following development:
- (1) Residential development that disturbs less than five hundred (500) cubic yards of material for the residence and driveway, provided that the disturbed area complies with the tiered water feature buffer setbacks found in Section 14-4-110 of this Chapter.
  - (2) Reclamation and restoration of the watershed pursuant to state or federal permits or other reclamation or restoration plan approved in writing by the Town Manager.
  - (3) Repair, maintenance or replacement of an existing water diversion structure without change in the point of diversion or place of use of the water.
  - (4) Installation, repair or maintenance of irrigation facilities used for agricultural purposes.
  - (5) Repair, maintenance, improvements and upgrades to existing water and wastewater facilities where there is no expansion of capacity or change in location of the facility.
- (b) Development that is exempt from the requirement for a Watershed Permit pursuant to this Section must be conducted in accordance with Best Management Practices set forth in the BMP Guide attached as Appendix 14-A to this Chapter.

(Ord. 4 §1, 2013)

### **Sec. 14-1-70. United States Forest Service and County activities.**

- (a) These Regulations shall not apply to development or other activities conducted by the United States Forest Service, its employees, agents, contractors or others acting on its behalf on national forest system lands. The Forest Service shall, however, provide the Town with a notice of proposed activities that includes:
- (1) A written description of the activities to be conducted within the Watershed Protection District;
  - (2) A copy of any final agreements, contracts or other arrangements made with any agents, contractors or others acting on behalf of the Forest Service, other than employees of the Forest Service, in performing said activities; and
  - (3) A description of the impacts that the activity will have on the watershed and any mitigation proposed in connection with the activity.
- (b) The County is hereby issued a Watershed Permit for County construction and maintenance activities conducted within the Watershed Protection District in accordance with Best Management Practices set forth in the BMP Guide as Appendix 14-A to this Chapter.

(Ord. 4 §1, 2013)

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## **Sec. 14-1-80. Nonconforming development.**

Development that was legally established before the effective date of these Regulations that does not conform to the regulatory provisions of this Article, and ordinary repairs and maintenance to the development, shall be allowed to continue without a Watershed Permit under the following conditions:

- (1) The legal nonconforming development is not modified to increase its intensity or create new impacts in the Watershed Protection District. Increases in intensity include increased density, increased areas of impervious surface, increased use of processes or materials or increased disturbances that could cause or contribute to pollution of the Watershed Protection District.
- (2) The legal nonconforming development is not abandoned or discontinued for a period of one (1) year or more.

## **Sec. 14-1-90. Definitions.**

The following words and terms used in these Regulations shall have the meanings set forth below unless the context requires otherwise. Defined terms used in the plural shall have the same meaning as the defined terms appearing below in the singular.

*Abandonment (of nonconforming use)* means the intent to not continue the legally established nonconforming development, coupled with a cessation of activities and discontinued use of the land and facilities in connection with the nonconforming development.

*Adverse* means unfavorable, harmful or negative.

*Applicant* means the owner of the lands that are the subject of the proposed development, or an agent acting through written authorization of the owner.

*County* means Gunnison County, State of Colorado.

*Degrade* means lower in grade or desirability.

*Deteriorate* means to make inferior in quality or value.

*Development* means any excavation, filling, grading, surfacing, construction or other activity, other than land preparation for agricultural uses and noncommercial gardening or landscaping, that changes the basic character or increases the intensity of use of land or water.

*Domestic wastewater treatment facility* means any facility or group of units used for the treatment of domestic wastewater or for the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units is discharging into state waters. The term specifically excludes individual sewage disposal systems (ISDS).

*Domestic wastewater treatment works* means a system or facility for treating, neutralizing, stabilizing or disposing of sewage, which system or facility has a designed capacity to receive more than two thousand (2,000) gallons of sewage per day. The term *sewage treatment works* includes appurtenances such as interceptors, collection lines, outfall and outlet sewers, pumping stations and related equipment.

*Domestic water and wastewater treatment system* means a wastewater treatment facility, water distribution system or water treatment facility and any system of pipes, structures and facilities through which wastewater is collected for treatment.

*Efficient use of water* means the employment of methods, procedures, controls and techniques to ensure that the amount of water and the purpose for which water is used will yield the greatest benefit to

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the greatest number of people. Such benefits will include, but are not limited to, economic, social, aesthetic, environmental and recreational.

*Environment* means all natural physical and biological attributes and systems, including the atmosphere, climate, geology, soils, groundwater, surface water, wetlands, vegetation, animal life, physical features, natural hazards, topography and aesthetics.

*Extension, major* means an increase in hydraulic capacity, an upgrade in treatment or transmission capability, an increase in facility size or a replacement of an existing facility in a new or altered location.

*Filling* means the deposition of material brought from another location by other than natural means.

*Floodplain* means an area adjacent to a stream, which is subject to flooding as the result of the occurrence of an intermediate regional flood and which is so adverse to past, current or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes, but is not limited to:

- a. Mainstream floodplains;
- b. Debris-fan floodplains; and
- c. Dry wash channels and dry wash floodplains.

*Geologic hazard* means a geologic phenomenon which is so adverse to past, current or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes, but is not limited to:

- a. Avalanches, landslides, rock falls, mudflows and unstable or potentially unstable slopes;
- b. Seismic effects;
- c. Radioactivity; and
- d. Ground subsidence.

*Grading* means any stripping, excavating, filling, stockpiling or any combination thereof of earthen materials.

*Groundwater* means subsurface waters in a zone of saturation.

*High quality wetlands* means a wetland that:

- a. Performs at least one (1) of the seven (7) functions listed in the wetland functional analysis (Chapter 17, Article 16 of this Code) to a high degree (regardless of certainty);
- b. Is a peatland or is immediately adjacent to (abutting) and/or hydrologically connected to a peatland; or
- c. Supports threatened or endangered species.

*Impact* means any alteration or change to the natural or human environment resulting directly or indirectly from land use and development.

*Impervious surface and materials* means materials that do not readily allow water to infiltrate into the ground. The term *impervious materials* shall include building roof surfaces and overhangs, concrete or asphalt surfaces and compacted gravel.

*Includes or including* means including, without limitation.

*Individual sewage disposal system (ISDS)* means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing or disposing of sewage that is not a part of or connected to a domestic wastewater treatment works.

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*Industrial wastewater treatment facility* means any facility or group of units used for the pretreatment, treatment or handling of industrial waters, wastewater, reuse water and wastes that are discharged into state waters. *Industrial wastewater treatment facility* includes facilities that clean up contaminated groundwater or spills; except that such term does not include facilities designed to operate for less than one (1) year or facilities with in-situ discharge.

*Matter of state interest* means an area of state interest or an activity of state interest or both.

*Mitigation* means an action which will have one (1) or more of the following effects:

- a. Avoiding an impact by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action or its implementation;
- c. Rectifying the impact by repairing, rehabilitating or restoring the impact area, facility or service;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations; and
- e. Compensating for the impact by replacing or providing suitable biological and physical conditions and by replacing or providing suitable services and facilities.

*Municipal and Industrial Water Project* means a system and all components thereof through which a municipality or industry derives its water supply from either surface or subsurface sources, or which otherwise serves municipal or industrial users.

*Non-Point Source (NPS) pollution* means pollution that is caused by or attributable to diffuse sources. Typically, NPS pollution results from land runoff, precipitation, atmospheric deposition or percolation.

*Peatland* means a wetland that has accumulated at least eight (8) inches of organic soil material (partially decomposed plant material). The organic soil material must have an organic carbon content of at least twelve percent (12%) and can include sapric (muck), hemic (mucky peat) and/or fibric (peat) material. All peatlands and wetlands immediately adjacent to (abutting) and/or hydrologically connected to peatlands are considered high-quality wetlands and require a buffer of at least one hundred (100) feet from any changes in use. The most common type of peatland in the Coal Creek watershed is a fen.

*Permittee* means a person issued a permit.

*Person* means any individual, corporation, business trust, estate, trust, partnership, association, governmental entity or any other legal entity.

*Pollution* means the man-made, man-induced or natural degradation of the physical, chemical, biological and/or radiological integrity of water.

*Regulations* means the Watershed Protection District regulations set forth in this Chapter.

*Significant* means deserving to be considered, important, notable; not meaningless, trivial, trifling, paltry and picayune.

*Significantly degrade* means to lower in grade or desirability to a significant, as opposed to trifling, degree.

*Significantly deteriorate* means to make inferior in quality or value to a significant, as opposed to trivial, degree.

*Staff* means the Town's designated staff members.

*Town Council* means the Town Council of the Town of Crested Butte, Colorado.

*Town Manager* means the Town Manager of the Town of Crested Butte, or his or her designee.

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*Wastewater collection system* means a system of pipes, conduits and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility.

*Wastewater treatment facility* means either a domestic wastewater treatment facility or an industrial wastewater treatment facility.

*Water and wastewater facility* means a water treatment facility, wastewater treatment facility, water distribution system or wastewater collection system.

*Water distribution system* means any combination of pipes, tanks, pumps or other facilities that delivers water from a source or treatment facility to the consumer.

*Water feature* means ephemeral, intermittent and perennial streams and rivers, lakes, ponds, irrigation ditches and canals, stormwater ditches, wetlands and any riparian or aquatic habitats.

*Water treatment facility* means the facility or facilities within the water distribution system that can alter the physical, chemical or bacteriological quality of the water.

*Watershed Permit* means a permit issued pursuant to this Chapter.

*Waterworks* means all components of the Town's water supply system, including all equipment, diversion structures, dams, reservoirs, streams, trenches, ditches, watercourses, pipelines, wells, pumps, buildings, structures, roads and other facilities necessary for the construction, maintenance and operation of the municipal water supply system.

*Wetlands* means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Common wetlands in the Watershed Protection District may include wet meadows, shallow marshes, willow stands, wet forested areas associated with high groundwater or snowmelt, peatlands, fens, irrigated lands and other areas along watercourses or where groundwater is near the ground surface. Wetlands that satisfy this definition are protected by these Watershed Protection District regulations, whether or not they are subject to the jurisdiction of the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act.

## **ARTICLE 2 Application and Review Process for Certificate of Exemption, FONSI and Watershed Permit<sup>4</sup>**

### **Sec. 14-2-10. Preapplication conference and materials.**

- (a) Before applying for a Certificate of Exemption, FONSI or Watershed Permit, the applicant shall schedule a preapplication conference with the Town Manager. The Town Manager may include other members of the staff in the conference. Any comments made by staff during the preapplication conference are preliminary in nature and not binding.
- (b) At or before the preapplication conference, the applicant shall provide staff with information that is sufficient for determining the nature of the proposed development and the degree of impacts associated with the proposed development, including:

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<sup>4</sup>This Section identifies the steps required to apply for a Certificate of Exemption, FONSI or Watershed Permit. Staff may retain technical experts and consultants deemed appropriate and necessary to review the application for completeness and evaluate the application for compliance with the Watershed Protection Standards.

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- (1) The applicant's name, address and phone number.
  - (2) Detailed written description of the proposed development, including the number of cubic yards of material expected to be disturbed.
  - (3) Map prepared at an easily readable scale showing the boundaries of the proposed development; relationship of the proposed development to surrounding topographic features, water features and hydrologic features; and existing and proposed roads, structures and infrastructure.
- (c) Following the preapplication conference and any site visits required by the Town Manager, the Town Manager shall issue a Certificate of Exemption for any development that is exempt under Section 14-1-60 of this Chapter from the requirement to obtain a Watershed Permit
  - (d) If the proposed development is not exempt from the requirement to obtain a Watershed Permit, the Town Manager shall notify the applicant whether a FONSI will be issued pursuant to Section 14-2-20 below or whether a Watershed Permit is required.

(Ord. 4 §1, 2013)

### **Sec. 14-2-20. Finding of No Significant Impact (FONSI).**

Staff may issue a FONSI if it determines that the construction or operation of the proposed development, without mitigation, is unlikely to have any significant adverse impact to the Watershed Protection District, taking into account the Watershed Protection Standards in Article 4 of this Chapter.

- (1) Within fourteen (14) calendar days of issuing a FONSI or a decision not to issue a FONSI, the staff shall notify the applicant by mail and shall notify the Town Council, the Town Manager and the Town Attorney by email or memorandum.
- (2) Within thirty (30) calendar days of notice of the issuance of a FONSI, the Town Council may, at its discretion, decide to reconsider the finding at its next regular or special meeting following notice of the decision and uphold the finding or reverse the finding, taking into account the Watershed Protection Standards in Article 4 of this Chapter.
- (3) Within five (5) calendar days of the date of the staff decision not to issue a FONSI, the applicant may file a written request for Town Council to reconsider the decision. The Town Council shall reconsider the decision at its next regular or special meeting following receipt of the request and uphold the decision or reverse the decision.
- (4) Development that receives a FONSI pursuant to this Section must be conducted in accordance with Best Management Practices. Refer to BMP Guide, attached as Appendix 14-A to this Chapter.

### **Sec. 14-2-30. Watershed Permit application required.**

- (a) If the proposed development is not issued a Certificate of Exemption or a FONSI, the applicant shall submit the application materials, including appropriate fees, to the Town Manager. Watershed Permit application materials are described in Article 3 of this Chapter.
- (b) When a Watershed Permit application is received, the Town Manager shall notify the Town Attorney.
- (c) Staff may retain technical experts and consultants deemed necessary to review the application for completeness and evaluate the application for compliance with the Watershed Protection Standards. The cost of such experts and consultants are the responsibility of the applicant and shall be paid pursuant to Section 14-3-10 of this Chapter.

(Ord. 4 §1, 2013)

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(Supp. No. 20)

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### **Sec. 14-2-40. Watershed Permit application completeness determination.**

Within forty-five (45) calendar days of submittal of the application materials, the staff shall determine whether the Watershed Permit application is complete or incomplete based on the application submittal requirements in Article 3 of this Chapter. The Town may extend the time to determine completeness up to an additional thirty (30) calendar days if the staff workload justifies the extension, or such greater time as may be agreed to by the applicant.

- (1) If the application is not complete, the staff shall inform the applicant of the deficiencies in writing.
- (2) If the application is complete, the staff shall certify it as complete and stamp it received upon the date of completeness determination. A determination that an application is complete does not constitute a determination that it complies with the applicable Watershed Protection Standards in Article 4 of this Chapter.

### **Sec. 14-2-50. Schedule public hearing by Town Council on Watershed Permit application.**

Upon determination that the application for Watershed Permit is complete, staff shall schedule the application for public hearing by the Town Council at the next regular meeting for which proper notice can be achieved pursuant to Section 14-2-60 below.

### **Sec. 14-2-60. Notice of public hearing on Watershed Permit application.**

- (a) Not later than thirty (30) days after the application is determined to be complete, the Town shall publish notice of the public hearing on the Watershed Permit application. The notice shall be published in the Town's designated official newspaper not less than thirty (30) calendar days nor more than sixty (60) calendar days before the date of the public hearing.
- (b) The notice of public hearing shall be prepared by staff and shall include the following information:
  - (1) Sufficient information to identify the site where the development is proposed to occur.
  - (2) A narrative description of the proposed development.
  - (3) Date, time and location of the scheduled hearing.
- (c) At least thirty (30) calendar days prior to the date of the public hearing, the applicant shall mail the notice of public hearing to the following owners of public and private real property and water rights. The applicant is responsible for ensuring the accuracy of lists of property owners and owners of water and mineral rights.
  - (1) Owners of real property within five hundred (500) feet of the proposed development site. The list of property owners to whom notice is mailed shall be compiled by the applicant and shall be based upon records available through the County Assessor's office.
  - (2) Owners of water rights and mineral rights underlying the proposed development site where such ownership information is publicly available.

The applicant shall mail the notice of public hearing by certified mail, return receipt requested. The applicant shall submit a list of the property owners and owners of water and mineral rights and proof of mailing to the staff one (1) week prior to the hearing.

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### **Sec. 14-2-70. Staff review of Watershed Permit application.**

- (a) Once the application is determined complete, the Town Manager shall consult and coordinate review of the application with the Town Attorney and other staff members, and outside consultants as necessary, to evaluate the application in light of the Watershed Protection Standards in Article 4 of this Chapter.
- (b) Staff may refer the application to any local, state or federal agency that may have expertise or an interest in impacts that may be associated with the proposed development. The cost of referral agency review is the responsibility of the applicant and shall be paid pursuant to Section 14-3-10 of this Chapter.

(Ord. 4 §1, 2013)

### **Sec. 14-2-80. Staff report.**

Staff and/or consultants shall prepare a staff report which shall be submitted to the applicant, the Town Manager and the Town Council at least five (5) calendar days before the public hearing on the Watershed Permit application. A copy of the staff report shall also be available for public review. The staff report shall include a description of the proposed development and discuss issues including:

- (1) Any application submittal requirements that have been waived.
- (2) Request for waiver of Watershed Protection Standards for operational conflict pursuant to Section 14-4-260 of this Chapter.
- (3) Request for waiver of Watershed Protection Standards for technical infeasibility or environmental protection pursuant to Section 14-4-270 of this Chapter.
- (4) Anticipated impacts of the proposed development.
- (5) Proposed mitigation and whether the proposed mitigation is adequate.
- (6) Whether the proposed development with mitigation is likely to satisfy the Watershed Protection Standards and a recommendation as to whether the Watershed Permit should be approved, denied or approved with conditions.
- (7) Recommended conditions of approval if necessary to ensure that Watershed Protection Standards are likely to be satisfied.

### **Sec. 14-2-90. Public hearing and Town Council decision on Watershed Permit application.**

The Town Council shall consider the Watershed Permit application at a properly noticed public hearing. Based upon all the evidence on the record, the Town Council shall approve, approve with conditions or deny the application based on whether the proposed development complies with the applicable Watershed Protection Standards in Article 4 of this Chapter.

- (1) If the application, together with proposed mitigation, satisfies all of the applicable Watershed Protection Standards, the Town Council shall approve the application.
- (2) If the application fails to satisfy all of the applicable Watershed Protection Standards, the Town Council shall deny the application, or it may approve the application with conditions it determines are necessary for the proposed development to satisfy all of the applicable standards.

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### **Sec. 14-2-100. Issuance of Watershed Permit.**

The date of approval of the Watershed Permit application by the Town Council shall be the date of issuance for the Watershed Permit unless the Town Council establishes a different date at the time of approval. The permittee named on the Watershed Permit may include, at the Town Council's discretion, any parent or affiliated company of the permittee where such entities have the requisite financial capabilities and/or technical experience to conduct the proposed development in accordance with the Watershed Permit approval and/or to the extent one (1) or more of the permittees are foreign entities.

### **Sec. 14-2-110. Financial guaranty of Watershed Permit conditions.**

The permittee shall execute and fund the Security Agreement required in Article 6 of this Chapter prior to beginning any site preparation or development.

### **Sec. 14-2-120. Commencement of development and Watershed Permit duration.**

- (a) Development shall begin within one (1) year of the date of issuance of the Watershed Permit unless the Town Council establishes a different date at the time of approval of the Watershed Permit. The Town Council, at its discretion, may grant a one-time extension of the time for commencement of development if such request for extension is made at least thirty (30) days prior to the deadline to commence development.
- (b) If the Town Council issues the Watershed Permit for a specific period of time, at the end of that period of time the permit shall terminate and be of no force and effect and the land shall be restored in accordance with Watershed Permit requirements.

(Ord. 4 §1, 2013)

### **Sec. 14-2-130. Watershed Permit not a site-specific development plan.**

A Watershed Permit issued under these Regulations is not a site-specific development plan under Section 24-68-101, et seq., C.R.S., and no statutory vested rights shall inure to such permit.

### **Sec. 14-2-140. Transfer of Watershed Permit.**

The Town Manager may approve the transfer of a Watershed Permit to another party as follows:

- (1) The proposed transferee shall submit to the Town Manager a written request for transfer of Watershed Permit. The request shall include the information required in Section 14-3-20 of this Chapter and certification that the proposed transferee can meet the following requirements:
  - a. The proposed transferee can and will comply with all of the requirements, terms and conditions contained in the Watershed Permit approval, including financial security.
  - b. The Watershed Permit requirements, terms and conditions of approval will remain sufficient to protect the quality and quantity of water in the Watershed Protection District and to protect the municipal waterworks from injury.
- (2) Within ten (10) calendar days after receipt of the request for transfer of Watershed Permit, the Town Manager shall provide a written decision on the request. The request for transfer of Watershed Permit shall be approved if the proposed transfer complies with the requirements of Subparagraphs (1)a. and (1)b. above. If the request for transfer of Watershed Permit is denied, the transferee may not conduct any activities unless or until the transferee receives a new Watershed Permit.

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- (3) When transfer of a Watershed Permit is approved by the Town, only the nature and extent of the development described in the Watershed Permit shall be allowed, and the transferee is bound by the terms and conditions of the Watershed Permit.

## **ARTICLE 3 Watershed Permit Application Submittal Requirements <sup>5</sup>**

### **Sec. 14-3-10. Application fees and Watershed Permit application costs and expenses reimbursement agreement.**

The applicant shall be responsible for all of the actual costs and expenses incurred by the Town in the review and processing of the Watershed Permit application, including the cost of technical experts and consultants and review by referral agencies. Any application shall be accompanied by an initial fee deposit, described in Paragraph (1) below, and an executed Watershed Permit Application Costs and Expenses Reimbursement Agreement obligating the applicant to reimburse the Town for all costs and expenses incurred by the Town in connection with review and processing of the application package.

- (1) The application shall be accompanied by an initial fee deposit of twenty thousand dollars (\$20,000.00), unless a different amount is approved by the Town Manager.
- (2) Throughout the application review process, a minimum fee deposit balance of fifteen thousand dollars (\$15,000.00) shall be retained by the Town. The amount of the minimum fee deposit balance may be adjusted upon a determination by staff that the cost to review and process the application is likely to be less than the minimum amount set by these Regulations. If the balance falls below the minimum amount, the Town may suspend review of the application pending receipt of additional funds bringing the balance to at least the minimum amount. Suspension shall toll all deadlines imposed on the Town by these Regulations.
- (3) The Town will deposit that portion of the fee deposit which is not necessary to cover current costs and expenses in an account. The Town shall obligate, encumber or use such funds at its discretion to cover the costs of processing the application.

### **Sec. 14-3-20. Information describing applicant.**

The application shall contain the following information:

- (1) The name, physical and mailing addresses, email address, fax number and business of the applicant and, if different, the owners of the land that is the subject of the proposed development. All owners of land that is the subject of the proposed development shall be identified as applicants on the application. If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by all other owners, or an association or corporation representing all the owners, by which all owners consent to or join in the application.

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<sup>5</sup>The following materials must be submitted for a Watershed Permit application to be complete. Staff may waive one (1) or more of the submittal requirements when the submittal requirement would not be relevant to a determination as to whether the proposed development complies with the applicable Watershed Protection Standards in Article 4 of this Chapter. The Staff shall provide the applicant with written documentation of any waiver and document the waivers in the staff report prepared pursuant to Section 14-2-80 of this Chapter.

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- (2) If the owner is a partnership, joint venture, corporation or other such entity, the name, physical and mailing address, email and fax number of the agent of the owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed.
  - (3) Documentation of the applicant's financial qualifications, technical expertise and capability to construct and operate the proposed development, including a description of the applicant's experience constructing and operating similar developments and using proposed technologies.
  - (4) The names, addresses and qualifications of individuals who are or will be responsible for constructing and operating the proposed development, including areas of expertise and experience with projects directly related or similar to the proposed development.
  - (5) Written qualifications of those individuals preparing reports and providing certifications required by these Regulations.

#### **Sec. 14-3-30. Information describing proposed development.**

The applicant shall provide the following:

- (1) A written description of the proposed development, including:
  - a. Description of any wastewater treatment system proposed to serve the proposed development and plans for operation of the system through the life of the impacts of the project, including any reclamation that is required.
  - b. Description of the source and capacity of the water supply to serve the proposed development, including:
    - 1. Amount and quality of water;
    - 2. The applicant's right to use the water, including adjudicated decrees and applications for decrees;
    - 3. Proposed points of diversion and changes in the points of diversion; and
    - 4. If an augmentation plan for the proposed development has been decreed or an application for such plan has been filed in court, the applicant shall submit a copy of that plan.

For a proposed development involving water storage, the applicant shall be the owner of the applicable water rights and shall provide documentation of ownership.

- c. Schedules for designing, permitting, constructing and operating the proposed development, including the estimated life of the proposed development and reclamation plans, if any.
  - d. Operational details, including the hours of operation, number of employees on site on a daily basis and types of vehicles and equipment.
  - e. Discussion of the alternatives to the proposed development that were considered and rejected by the applicant, including the general degree of feasibility of each alternative and a statement explaining why there is no alternative outside the Watershed Protection District.
  - f. Discussion of the need for the proposed development, including existing and proposed facilities that perform the same or related function, and benefits of the proposed development versus the loss of any natural resources, recreational opportunities or agricultural lands rendered unavailable or less productive as a result of the proposed development.
- (2) Vicinity map. An eight-and-one-half-inch by eleven-inch vicinity map locating the site where the proposed development will occur. The vicinity map shall clearly show the boundaries of the proposed development site and all property within a three-mile radius of the proposed development site.

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- (3) Site plan. A detailed site plan of the proposed development including:
- a. Legal description of the proposed development site.
  - b. Boundary lines, corner pins and dimensions of the proposed development site, including land survey data to identify the site with section corners, distance and bearing to corners, quarter corners, township and range.
  - c. Watershed Protection District boundary lines in relationship to the proposed development site.
  - d. Location of any area designated as a Colorado Natural Area or Potential Conservation Area in relationship to the proposed development site.
  - e. Existing and proposed topographic contours at vertical intervals sufficient to show the topography of the proposed development site and a minimum one-hundred-foot radius beyond the proposed development site as necessary to include all on-site and off-site topographical features that may affect the proposed development and storm drainage.
  - f. Significant on-site and off-site features that influence the proposed development, including:
    1. Natural and artificial drainageways, ditches, water features and hydrologic features on site, including intermittent water features, wetlands and the one-hundred-year floodplain boundaries;
    2. Slopes and areas of subsidence;
    3. Vegetative cover; and
    4. Excavations and mines.
  - g. Existing and proposed roads, railroad tracks, fences and utility lines on or adjacent to the proposed development site, shown by location and dimension.
  - h. Users and grantees of all existing and proposed easements and rights-of-way on or adjacent to the site, shown by location and dimension.
  - i. All existing and proposed structures and appurtenant facilities, shown by location and dimension.
  - j. Existing and proposed parking areas, driveways, sidewalks and paths, shown by location and dimension.
  - k. Wastewater treatment system proposed to serve the proposed development, including location and size of leach field, wastewater service lines and treatment facilities.
  - l. Location and size of wells and/or water lines to serve the proposed development.
  - m. Calculation of the size of existing and proposed impervious surface area.
  - n. Snow storage areas.
  - o. Areas of disturbance and extent of impervious surfaces.
  - p. Additional information that may be reasonably requested by the Town to enable an adequate evaluation of the application.

#### **Sec. 14-3-40. Property rights, permits and other approvals.**

The applicant shall provide the following:

- (1) Description and documentation of property rights, easements and rights-of-way agreements that are necessary for or that will be affected by the proposed development.

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- (2) List of all federal, state and county permits and approvals that have been or will be required for the proposed development.
  - (3) Copies of any federal and state correspondence applicable to the proposed development; a description of all mitigation and financial security required by federal, state and local authorities; and copies of any draft or final environmental assessments or impact statements prepared for the proposed development.

#### **Sec. 14-3-50. Technical and financial feasibility of project.**

The applicant shall provide the following:

- (1) Estimated construction costs and period of construction for each development component and the total mitigation costs for the proposed development.
- (2) Revenues and operating expenses for the proposed development.
- (3) Amount of any proposed debt and the method and estimated cost of debt service.
- (4) Details of any contract or agreement for revenues or services in connection with the proposed development.
- (5) Description of the persons or entities who will pay for or use the proposed development and/or services produced by the proposed development and those who will benefit from any and all revenues generated by it.
- (6) Methods and financial responsibility for continued operation of any treatment or other mitigation facility to prevent pollution from impacts of the proposed development that may go beyond the active life of the proposed development.

#### **Sec. 14-3-60. Land use (not applicable on federal lands).**

The applicant shall provide the following:

- (1) Description of the existing land uses within and adjacent to the site where the proposed development will occur.
- (2) Description of land use policies set forth in comprehensive plans, master plans and intergovernmental agreements that are applicable to the proposed development and an assessment of whether the proposed development will be consistent with or further the objectives of these policies.

#### **Sec. 14-3-70. Town waterworks and municipal water supply.**

- (a) The applicant shall provide a description of equipment, diversion structures, dams, reservoirs, streams, trenches, ditches, watercourses, pipelines, wells, pumps, buildings, structures, roads and other facilities associated with the Town waterworks that will be affected by the proposed development.
- (b) The applicant shall provide a description of the impacts of the proposed development on the Town waterworks and how the impacts will be mitigated.

(Ord. 4 §1, 2013)

#### **Sec. 14-3-80. Surface water quality.**

The applicant shall provide the following:

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- (1) Map and description of all surface waters that will be affected by the proposed development, including applicable state water quality standards, existing water quality, and any Total Daily Maximum Loads for segments that have been listed on the Colorado Water Quality Control Commission 303(d) list.
  - (2) Map and/or description of existing minimum in-stream flows held by the Colorado Water Conservation Board.
  - (3) Map of all springs and seeps.
  - (4) Description of the impacts of the proposed development on the quality of surface water and how the impacts will be mitigated. If a Water Quality Monitoring Plan has been prepared pursuant to Section 14-3-160 of this Article, the applicant may refer to the plan.

### **Sec. 14-3-90. Groundwater quality and quantity.**

The applicant shall provide the following:

- (1) Map and description of all groundwater that will be affected by the proposed development, including:
  - a. Seasonal water levels of the aquifers affected by the proposed development.
  - b. Artesian pressure in aquifers and a description of how the proposed development may affect adjacent communities and users on wells.
  - c. Groundwater flow directions and levels and how that information was determined.
  - d. Existing groundwater quality and classification.
  - e. Location of all water wells and description of their uses.
- (2) Description of the impacts of the proposed development on groundwater quality and quantity and how the impacts will be mitigated.

### **Sec. 14-3-100. Floodplains, wetlands and riparian areas.**

The applicant shall provide the following:

- (1) Map and description of all floodplains, wetlands and riparian areas that will be affected by the proposed development, including a description of each type of wetlands, species composition and biomass. Wetlands within the boundaries of the proposed development and extending at least one hundred (100) feet from the boundaries of the proposed development are presumed to be affected by the proposed development and comprise the Wetlands Study Area.
- (2) Wetlands report. The wetlands in the Wetland Study Area shall be described in a Wetland Delineation Report that includes:
  - a. Introduction - a brief project description and purpose for the report.
  - b. Executive summary - a summary of the whole report including significant findings and recommendations.
  - c. Site description - a summary of the general ecological setting and specific site location.
  - d. Methods - information on literature review, fieldwork, wetland classification, mapping techniques, etc.
  - e. Wetland description - detailed accounts of vegetation, hydrology and soil conditions; justification for wetland boundaries; area and classification of all wetlands; and a summary of the wetland functional analysis. Wetlands will be identified in accordance with the procedures set forth in the

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Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (U.S. Army Corps of Engineers 2008).

- f. Literature cited.
  - g. Wetland delineation data forms.
  - h. Wetland functional analysis data forms.
  - i. Photographs of each wetland.
  - j. Detailed map of the wetlands and other water features at one (1) inch equals two hundred (200) feet scale (or similar).
- (3) Description of the impacts of the proposed development on the floodplains, wetlands and riparian areas and how the impacts to the floodplain and riparian areas will be mitigated.
  - (4) Wetland Mitigation Plan, including both a compensatory plan for those wetlands permanently lost as a result of the project and mitigation measures to avoid and minimize impacts to wetlands.
    - a. The intent of compensatory wetland mitigation is to replace the wetlands' ecological functions that are unavoidably lost because of the proposed development.
    - b. The priority is to (in order of preference) restore, create, enhance or protect wetlands in-kind (of the same wetland type that performs the same wetland functions to the same degree or better) within the Watershed District.

### **Sec. 14-3-110. Terrestrial and aquatic animals and habitat.**

The applicant shall provide the following:

- (1) Description of terrestrial and aquatic animals that will be affected by the proposed development, including the status and relative importance of game and nongame wildlife, livestock and other animals; and a description of threatened or endangered animal species.
- (2) Map and description of wildlife habitat and livestock range that will be affected by the proposed development, including migration routes, movement corridors, feeding areas, nesting areas, calving areas, summer and winter range and spawning beds; and a description of streamflows and lake levels needed to protect the aquatic environment. The map shall include:
  - a. Size and location of each habitat in the proposed development site.
  - b. Size and location of open space areas in the proposed development site.
  - c. Critical connections or relationships with adjoining habitats outside the site of the proposed development.
- (3) Description of the impacts of the proposed development on terrestrial and aquatic animals, habitat and food chain and how the impacts will be mitigated.

### **Sec. 14-3-120. Terrestrial and aquatic plant life.**

The applicant shall provide the following:

- (1) Map and description of terrestrial and aquatic plant life that will be affected by the proposed development, including the type and density and threatened or endangered plant species and habitat.
- (2) Descriptions of the impacts of the proposed development on terrestrial and aquatic plant life and how the impacts will be mitigated.

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### **Sec. 14-3-130. Soil and geologic conditions and natural hazards.**

The applicant shall provide the following:

- (1) Map and description of soil conditions, geologic conditions and natural hazards, including soil types, drainage areas, slopes, avalanche areas, debris fans, mud flows, rock slide areas, faults and fissures, seismic history and wildfire hazard areas.
- (2) Description of the impacts of the proposed development on soil and geologic conditions in the area and how the impacts will be mitigated.
- (3) Description of the risks to the proposed development from soil and geologic conditions and from natural hazards and how the risks will be mitigated.

### **Sec. 14-3-140. Spill Prevention, Storage, Control, Countermeasure and Contingency Plan.**

The applicant shall provide a Spill Prevention, Storage, Control, Countermeasure and Contingency Plan that describes the measures to prevent hazardous materials, pesticides, petroleum products and other substances from entering into, harming, damaging or injuring the Town's waterworks or polluting the Town's water supply, including:

- (1) Location of storage areas for equipment, fuel, lubricants, chemicals and waste during both construction and operation of the proposed development.
- (2) Measures, procedures and protocols for spill prevention, storage and containment.
- (3) Measures, procedures and protocols for reporting spills and storage to Town, county, state and federal officials.
- (4) Measures, procedures and protocols for clean-up and contingency and description of the financial security for these provisions.
- (5) Provisions establishing that the Town, or its designee, may undertake prevention, control, countermeasure, containment and clean-up measures if the permittee fails to comply with its obligations under the Spill Prevention, Storage, Control, Countermeasure and Contingency Plan, and that the permittee will pay all costs incurred by the Town for any such measures.
- (6) Maintenance of material safety data sheets (MSDS).
- (7) Provisions for implementation of Best Management Practices to prevent and reduce pollutants, using the BMP Guide attached as Appendix 14-A to this Chapter.

### **Sec. 14-3-150. Emergency Response Plan.**

The applicant shall provide an Emergency Response Plan that addresses fire protection and other events that could pose a threat to public health, safety and welfare, including the owner's emergency contact information, proposed signage, access and evacuation routes and health care facilities anticipated to be used. The plan shall include a provision for the owner to reimburse the appropriate emergency response service providers for costs incurred in connection with the emergency.

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### **Sec. 14-3-160. Water Quality Monitoring Plan.**

The applicant shall provide a Water Quality Monitoring Plan that establishes a baseline<sup>6</sup> and a process for monitoring changes to the aquatic environment and effectiveness of mitigation. The plan should be complementary to historic monitoring data, any ongoing monitoring by any entity and any monitoring required or conducted by state and federal agencies and shall include:

- (1) Stream segments, water features and groundwater to monitor.
- (2) Locations for and frequency of sampling and monitoring to establish baseline of existing conditions prior to construction and operation of the proposed development, including existing fishery, water quality, aquatic macroinvertebrate and groundwater data.
- (3) Key indicators of water quality, stream health and threshold levels that reflect decline in water quality and health of the aquatic environment.
- (4) Locations for and frequency of sampling and monitoring for key indicators of water quality and stream health, including constituents regulated by the Colorado Water Quality Control Commission and constituents associated with the proposed development.
- (5) Locations for and frequency of sampling and monitoring to measure effectiveness of water quality mitigation during the life of the proposed development and five (5) years after final reclamation of all disturbed areas is complete.
- (6) If monitoring of key indicators reveals degradation, how mitigation will be implemented.
- (7) Estimated costs of monitoring.

### **Sec. 14-3-170. Erosion and Sediment Control Plan.**

The applicant shall provide an Erosion and Sediment Control Plan that includes:

- (1) Methods to minimize on-site erosion and control surface runoff, including:
  - a. Installing erosion and sediment control measures before site grading.
  - b. Stabilizing disturbed areas and soil stockpiles; protection of disturbed areas that will remain exposed and inactive for periods longer than fourteen (14) days.
  - c. Mulching and seeding disturbed areas with native seeds and weed-free mulch within seven (7) calendar days after final grade is reached, weather permitting.
  - d. Keeping temporary measures for soil stability in place, such as mulch or silt fences, until native vegetation has covered at least seventy percent (70%) of the disturbed area.
  - e. On-site limitation or detention of sediment-laden runoff using sediment basins, silt traps, erosion logs or other appropriate control options.
  - f. Controlling the rate and total volume of surface runoff during and after construction so as not exceed the level of runoff that occurred prior to construction; installing energy dissipation measures where overland flows are anticipated in excess of five (5) feet per second.

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<sup>6</sup>The Town encourages applicants to consult Assessment of Riparian and Aquatic Habitat with the Coal Creek Watershed, Gunnison County, Colorado, prepared by Kevin Alexander.

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- g. Controlling surface runoff from the proposed development so as to prevent discharge directly into streams or other water features, including: on-site containment and treatment of surface runoff from areas likely to contain pollutants; allowing surface runoff to infiltrate in vegetated areas if such infiltration will not result in significant degradation of groundwater or surface water quality; and groundwater monitoring, as necessary, to monitor potential subsurface transport of pollutants.
  - h. Diverting off-site run-on around the construction site when practical.
  - i. Inspection and maintenance of all erosion and sediment control devices in a manner to support their effectiveness.
- (2) Construction schedule indicating the anticipated start date and date of completion for site grading, installation and removal of erosion and sediment control measures, and the estimated duration of exposure of each area prior to the completion of temporary erosion and sediment control measures.
  - (3) Plan view drawings of all erosion and sediment control measures showing approximate locations and site drainage patterns for construction phases and final design elements.
  - (4) Estimated total cost of the required temporary soil erosion and sediment control measures (installation and maintenance).
  - (5) Any calculations made for determining rainfall, runoff, sizing any sediment basins, diversions, conveyance or detention/retention facilities.
  - (6) Signature block for the owner or legal agent acknowledging the review and acceptance of responsibility, and a signature and stamped statement by the qualified individual acknowledging responsibility for the preparation of the Erosion and Sediment Control Plan.

### **Sec. 14-3-180. Drainage Plan.**

The applicant shall provide a Drainage Plan or stormwater management plan designed by a licensed professional engineer according to generally accepted storm drainage practices, that includes:

- (1) Provisions to address flows from the area disturbed by the proposed development site.
- (2) Diversion of the expected maximum water flows from any twenty-five-year flood event and any one-hundred-year flood event away from all buildings and other developed areas, adjacent lands and potential sources of water pollution.
- (3) Description of measures to prevent pollution of existing lakes and watercourses by stormwater runoff.
- (4) Locations of existing and proposed drainage structures, culverts, bridges, drainage ditches, channels and easements and natural drainage features affecting site drainage on site and within one hundred (100) feet adjacent to the proposed development site boundary, including drainage channels and other water conveyance structures, and wetlands or other water features receiving storm runoff from the proposed development site.
- (5) Preliminary engineering, design and construction features for drainage structures to be constructed.

### **Sec. 14-3-190. Grading Plan.**

The applicant shall provide a detailed Grading Plan taking into account the soil and geology of the site that includes:

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- (1) Topography, elevations, dimensions, location, extent and slope of all proposed clearing, grading, excavating, filling or surfacing, including building site and driveway grades to occur as a result of the proposed development, and the volume of material to be removed or moved.
  - (2) All natural features on site and potentially affected by the proposed development.
  - (3) Locations of soil stockpiles and snow storage areas.
  - (4) Location of temporary roads designed for use during the construction period.
  - (5) Areas with slope of twenty percent (20%) or greater, identified by location and percentage of slope, for both the existing site conditions and the proposed development. If development is proposed to include slopes of thirty percent (30%) or greater, the plan shall include:
    - a. Documentation that no alternative development site is available on the property with a slope of less than thirty percent (30%).
    - b. Measures to prevent erosion, sloughing and other forms of instability.
    - c. Measures to confine cutting, filling and other grading activities to the minimum area necessary for the proposed development.
  - (6) Description of staging and scheduling of earth-disturbing activities.
  - (7) Description of slope stability.

### **Sec. 14-3-200. Revegetation Plan.<sup>7</sup>**

The applicant shall provide a Revegetation Plan that includes:

- (1) Provisions to protect vegetation on neighboring property from impacts of the proposed development.
- (2) Provisions to preserve tall, overly mature trees and standing dead trees (snags) at the rate of two (2) to five (5) per acre, whenever possible, as nesting and perching habitat.
- (3) Provisions to reestablish vegetation so that:
  - a. Density is adequate to prevent soil erosion and invasion of weeds after one (1) growing season.
  - b. Vegetation cover will be diverse, effective and long-lasting and capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer.
  - c. Vegetation cover will be at least equal in extent of cover to the natural vegetation of the surrounding area.
  - d. Vegetation cover will be capable of stabilizing the soil surface to achieve erosion control equal to predevelopment levels.
  - e. Initial irrigation is adequate to start growth of new vegetation.
- (4) Provisions to prevent, eliminate and dispose of invasive weeds and to manage invasive weeds pursuant to Town, county and U.S. Forest Service noxious weed control operations. In the event of any inconsistency among any of these weed control operations, the strictest operation will apply.

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<sup>7</sup>This Section is not applicable to mining conducted pursuant to a current Mined Land Reclamation Board reclamation plan.

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- (5) Provisions for the applicant to monitor revegetation, including extent, scope and frequency of monitoring.

### **Sec. 14-3-210. Additional submittal requirements for water and wastewater treatment systems.**

The applicant shall provide a description of existing domestic water and wastewater treatment facilities in the vicinity of the proposed development, including their capacity and existing service levels, location of intake and discharge points, treatment methods, service fees and rates, service plan boundaries and reasons for and against hooking onto those facilities.

### **Sec. 14-3-220. Additional submittal requirements for municipal and industrial water projects.**

The applicant shall provide the following:

- (a) Description of water demands that the proposed development expects to meet and basis for projections of that demand.
- (b) Map and description of other municipal and industrial water projects in the vicinity of the proposed development, including their capacity and existing service levels, location of intake and discharge points, treatment methods, service fees and rates, service plan boundaries and reasons for and against hooking on to those facilities.
- (c) Description of efficient water use, recycling and reuse technology the proposed development intends to use.

### **Sec. 14-3-230. Documentation of operational conflict waiver.**

The applicant shall provide documentation of the basis for any waiver of Watershed Protection Standards based on operational conflict that the applicant may request pursuant to Section 14-4-260 of this Chapter.

### **Sec. 14-3-240. Documentation of technical infeasibility or environmental protection waivers.**

The applicant shall provide documentation of the basis for any waiver of Watershed Protection Standards based on technical infeasibility or environmental protection that the applicant may request pursuant to Section 14-4-270 of this Chapter.

### **Sec. 14-3-250. Additional information.**

The staff may request that the applicant supply additional information related to the proposed development as may be necessary to make a determination on whether the proposed development satisfies approval standards.

## **ARTICLE 4 Watershed Protection Standards<sup>8</sup>**

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<sup>8</sup>Approval of a Watershed Permit shall be based on whether the proposed development satisfies the applicable Watershed Protection Standards. The Town shall take into account the impacts of construction, operation, reclamation and cumulative impacts of the proposed development in determining whether the Watershed Protection Standards are satisfied. (Ord. 4 §1, 2013)

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**Sec. 14-4-10. Applicant has necessary expertise and financial capability.**

The applicant shall have the necessary expertise and financial capability to complete and operate the proposed development in compliance with the requirements and conditions of these Regulations.

**Sec. 14-4-20. All property rights and easements will be obtained.**

The applicant will obtain all property rights and easements necessary for the proposed development prior to site disturbance, including surface mineral and water rights.

**Sec. 14-4-30. No impairment of property rights (not applicable on federal lands).**

The proposed development will not impair property rights held by others.

**Sec. 14-4-40. All county, state and federal permits and approvals will be obtained.**

The applicant can or will obtain all county, state and federal permits and approvals prior to commencing development.

**Sec. 14-4-50. Technically and financially feasible.**

The proposed development is technically and financially feasible. Examples of factors the Town may consider in determining technical and financial feasibility include, without limitation:

- (1) Amount of debt associated with the proposed development.
- (2) Debt retirement schedule and sources of funding to retire the debt.
- (3) Estimated construction costs and construction schedule.
- (4) Estimated annual operation, maintenance and monitoring costs.
- (5) Funding sources to undertake the proposed development and the continued compliance with the Watershed Permit and these Regulations.

**Sec. 14-4-60. Consistent with land use and water quality plans (not applicable on federal lands).**

The proposed development is consistent with land use and water quality plans applicable within the Watershed Protection District. Wherever there is a conflict between provisions of plans, the plan most protective to water quality and quantity shall apply.

**Sec. 14-4-70. No significant adverse effect on Town waterworks.**

The proposed development will not have a significant adverse effect on the Town's waterworks.

**Sec. 14-4-80. No significant degradation of surface water quality.**

The proposed development will not significantly degrade surface water quality within the Watershed Protection District. Examples of factors the Town may consider in determining impacts to surface water quality include, without limitation:

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- (1) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water.
  - (2) Changes in point and nonpoint source pollution loads. All nonpoint sources of pollutants caused by or associated with the proposed development will not result in any measurable increase in nonpoint source pollution loads to any water feature affected by the proposed development.
  - (3) Increase in erosion.
  - (4) Changes in sediment loading to water features.
  - (5) Changes in stream channel or shoreline stability.
  - (6) Changes in stormwater runoff flows.
  - (7) Changes in trophic status or in eutrophication rates in lakes and reservoirs.
  - (8) Changes in the capacity or functioning of streams, lakes or reservoirs.
  - (9) Changes in flushing flows necessary to scour streambeds and spawning beds.
  - (10) Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.
  - (11) Approved Water Quality Monitoring Plan prepared pursuant to Section 14-3-160 of this Chapter.

#### **Sec. 14-4-90. Control of erosion, sedimentation and storm runoff.**

Construction and operation of the proposed development will be managed to control erosion and sedimentation and storm runoff in compliance with the approved Erosion and Sediment Control Plan prepared pursuant to Section 14-3-170 of this Chapter, the approved Drainage Plan prepared pursuant to Section 14-3-180, the approved Grading Plan prepared pursuant to Section 14-3-190 or an approved state or federal approval requirement that addresses grading, storm runoff, erosion and sediment control.

#### **Sec. 14-4-100. Minimization of impervious areas.**

The impervious surface of the land disturbed by the proposed development will not exceed twelve percent (12%) of the total acreage affected by the proposed development.

#### **Sec. 14-4-110. Compliance with tiered water feature buffer setbacks.**

- (a) General.
  - (1) Development, other than stream crossings and stream bank reinforcement or repair and water diversion placement or repair, will be setback in accordance with a tiered water feature buffer described herein.
  - (2) Maintenance of vehicles or mobile machinery is prohibited within one hundred (100) horizontal feet of any water feature. Emergency maintenance may be conducted until the vehicle or machinery can be relocated.
  - (3) Storage of pesticides, petroleum products, hazardous substances, hazardous wastes, toxic substances or other substances that have the potential to degrade water quality will not occur within five hundred (500) horizontal feet of any water feature. Use and storage in consumable quantities of everyday consumer products (e.g., laundry detergent, propane, automobile fuels located in an automobile) will be excepted in the ordinary course of consumer conduct.

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- (4) Storage of sand and salt for road deicing and open storage of fertilizers will not occur within five hundred (500) horizontal feet of any water feature.
  - (5) Development in high quality wetlands is prohibited.
- (b) Restrictive inner buffer zone.
- (1) A setback of fifty (50) feet, measured horizontally from the typical and ordinary high water mark in average hydrologic years on each side of a water feature except that a setback of one hundred (100) feet, measured horizontally, is required from High Quality Wetlands.
  - (2) The only development allowed within the restrictive inner buffer zone is irrigation and water diversion facilities, flood control structures, culverts, bridges, stream restoration and structures determined by the Town to be reasonable and necessary to the viability of the proposed development or watershed protection. Development in High Quality Wetlands is prohibited.
- (c) Variable outer buffer zone. Setbacks ranging from zero (0) feet to one hundred (100) horizontal feet beyond the outer edge of the restrictive inner buffer zone (i.e., up to one hundred fifty [150] horizontal feet beyond the high water mark of the water feature during average hydrologic years or the wetland boundary). The width of the variable outer buffer zone may be undulating across the subject property in order to provide protection to site-specific features. Site-specific features that could trigger the need for either a variable outer buffer zone setback, equivalent mitigation or a combination of a variable outer buffer zone setback and mitigation include, without limitation:
- (1) The presence of steep slopes that drain into the water feature.
  - (2) The presence of highly erodible soils.
  - (3) The presence of unstable stream bank conditions.
  - (4) The need to protect trees, shrubs or other natural features that provide for stream bank stability, habitat enhancement for aquatic environments and riparian area protection.
  - (5) The proposed development is within the one-hundred-year floodplain.
  - (6) The need to prevent or minimize flood damage by preserving stormwater and floodwater storage capacity.
  - (7) The need to protect habitat for plant, animal or other wildlife species listed by state or federal agencies as threatened, endangered, rare, species of special concern or species of undetermined status.
  - (8) The need to protect fish spawning, breeding, nursery and feeding grounds.
- (d) Exceptions to setback requirements in the tiered water feature buffer will be allowed if:
- (1) The proposed development is not prohibited.
  - (2) The proposed development cannot possibly be located outside the tiered water feature buffer and will be designed to minimize encroachment into the tiered water feature buffer.
  - (3) The proposed development is water-dependent and is authorized by the appropriate regulatory authority.
  - (4) Denial of the proposed development in the tiered water feature buffer would result in denying the landowner all economically viable use of the subject property.
  - (5) Because of physical features and other restrictions or conditions on the proposed development site, conducting the proposed development outside the tiered water feature buffer would create or substantially contribute to a hazardous condition or cause greater negative impact to the watershed than conducting the proposed development within the tiered water feature buffer.

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(Ord. 4 §1, 2013)

**Sec. 14-4-120. No significant degradation of groundwater.**

The proposed development will not significantly degrade groundwater quality and quantity within the Watershed Protection District. Examples of factors the Town may consider in determining impacts to groundwater include, without limitation:

- (1) Changes in aquifer discharge and recharge rates, groundwater levels and aquifer capacity, including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
- (2) Changes in capacity and function of wells within the Watershed Protection District.
- (3) Changes in quality and quantity of well water and other groundwater within the Watershed Protection District.
- (4) Changes in flow patterns of groundwater.
- (5) Changes to wetland and buffer areas from damage due to wildlife.

**Sec. 14-4-130. No significant adverse effect on designated floodplains.**

The proposed development will not have a significant adverse effect on designated floodplains. Examples of factors the Town may consider in determining impacts to floodplains include, without limitation:

- (1) Changes in function and aerial extent of floodplains.
- (2) Creation of obstructions from the proposed development during times of flooding and vulnerability of the proposed development to flooding.
- (3) Use of flood-protection devices or floodproofing methods.
- (4) Nature or intensity of the proposed development.
- (5) Increases in impervious surface area caused by the proposed development.
- (6) Increases in surface runoff flow rate and amount caused by the proposed development.
- (7) Increases in floodwater flow rate and amount caused by the proposed development.
- (8) Proximity and nature of adjacent or nearby land use.
- (9) Impacts to downstream properties or communities.
- (10) Impacts on shallow wells, waste disposal sites, water supply systems and wastewater disposal or septic systems.

**Sec. 14-4-140. No significant degradation of wetlands and riparian areas.**

The proposed development will not significantly degrade wetlands and riparian areas. Examples of factors the Town may consider in determining impacts to wetlands and riparian areas include, without limitation:

- (1) Changes in the structure and function of wetlands and riparian areas.
- (2) Changes to the filtering and pollutant uptake and storage capacities of wetlands and riparian areas.
- (3) Changes to aerial extent of wetlands and riparian areas.
- (4) Changes in species characteristics and diversity.

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- (5) Transition from wetland to upland species.
  - (6) Changes in function and aerial extent of floodplains.
  - (7) Introduction of exotic, nuisance or invasive species into wetland and riparian areas.

#### **Sec. 14-4-150. No significant adverse effect on aquatic life.**

The proposed development will not have an adverse effect on aquatic life. Examples of factors the Town may consider in determining impacts to aquatic life include, without limitation:

- (1) Changes that result in loss of oxygen for aquatic life.
- (2) Changes in flushing flows.
- (3) Changes in species composition or density, including introduction of invasive aquatic species.
- (4) Changes in number of threatened or endangered species.
- (5) Changes to the aquatic food webs.

#### **Sec. 14-4-160. No significant degradation of wildlife habitat.**

The proposed development will not significantly degrade wildlife habitat. Examples of factors the Town may consider in determining impacts to wildlife habitat include, without limitation:

- (1) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes or any other habitat features necessary for the protection and propagation of any terrestrial animals, taking into account:
  - a. Human-related activities that will disrupt necessary life cycle functions of wildlife.
  - b. Elimination, reduction and/or fragmentation of wildlife habitat.
  - c. Elimination, reduction and/or fragmentation of wildlife habitat that is identified as unique or important to the Town in that it supports wildlife species that do not commonly occur in or outside of the watershed.
  - d. Disruption of necessary migration or movement patterns, preventing wildlife from using their entire habitat.
  - e. Displacement of wildlife species into areas that cannot support or sustain the species over the long term.
  - f. Fragmentation of large areas of native vegetation and habitat by existing and proposed development.
  - g. Protection of rare landscape elements, such as locally rare vegetation, unique rock formations, sheltered draws or drainage ways.
  - h. Maintenance of connections among wildlife habitats and provisions to identify and protect corridors for movement.
  - i. Provisions for access by the Colorado Division of Parks and Wildlife for trapping, tagging, studying or otherwise managing wildlife.
  - j. Restrictions in scheduled construction from December first through March thirty-first if the proposed development is within one-quarter ( $\frac{1}{4}$ ) mile of a severe winter range or winter concentration area. This restriction will also apply to winter range areas if recommended by the

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- Colorado Division of Parks and Wildlife, or other expert acceptable to the Town, due to site-specific circumstances or cumulative habitat loss.
- k. Restrictions in scheduled construction between October fifteenth and November thirtieth or between April fifteenth and May thirtieth if proposed development is in or adjacent to wildlife migration corridors.
  - l. Restrictions in scheduled construction between May fifteenth and June thirtieth if proposed development is in or adjacent to wildlife production areas.
  - m. Changes in threatened or endangered species.
- (2) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.

#### **Sec. 14-4-170. No significant adverse effect on terrestrial plant life or habitat.**

The proposed development will not have an adverse effect on the terrestrial plant life or habitat. Examples of factors the Town may consider in determining impacts to terrestrial plant life or habitat include, without limitation:

- (1) Changes to habitat of threatened or endangered plant species.
- (2) Changes to the structure and function of vegetation, including species composition, diversity, biomass and productivity.
- (3) Changes in advancement or succession of desirable and less desirable species, including noxious weeds.

#### **Sec. 14-4-180. Compliance with wildlife buffer setbacks.**

Structures will comply with the following minimum setbacks for wildlife habitat protection unless (i) the Colorado Division of Parks and Wildlife or appropriate federal agency requires that a different buffer is appropriate due to unusual wildlife factors or other unique features of the land, or (ii) the area in question is too small to accommodate the required buffer, in which case the buffer will be provided to the maximum extent practicable:

- (1) Wildlife migration corridors. A minimum buffer of one-quarter ( $\frac{1}{4}$ ) mile is required between any building or structure and wildlife migration corridors.
- (2) Severe winter range, winter concentration area. A minimum buffer of one-quarter ( $\frac{1}{4}$ ) mile is required between any building or structure and critical habitat, severe winter range and/or winter concentration areas.
- (3) Production areas. If development is approved adjacent to bighorn sheep, mule deer and elk production areas, a minimum buffer of one-quarter ( $\frac{1}{4}$ ) mile is required between any building or structure and production areas.

#### **Sec. 14-4-190. No significant risk from soil conditions and geologic hazards.**

The proposed development is not subject to a significant risk from soil conditions and geologic hazards. Examples of factors the Town may consider in determining risk from soil conditions and geologic hazards include, without limitation:

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- (1) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential and floodplains.
  - (2) Changes to stream sedimentation, geomorphology and channel stability.
  - (3) Changes to lake and reservoir bank stability and sedimentation and safety of existing reservoirs.
  - (4) Changes to avalanche areas, mudflows, debris fans and other unstable and potentially unstable slopes.
  - (5) Exacerbation of seismic concerns and subsidence.

#### **Sec. 14-4-200. No significant risk from natural hazards.**

The proposed development is not subject to a significant risk from natural hazards. Examples of factors the Town may consider in determining risk from natural hazards include, without limitation:

- (1) Faults and fissures.
- (2) Steep slopes.
- (3) Potentially unstable slopes, including landslides and rockslides.
- (4) Expansive or evaporative soils and risk of subsidence.
- (5) Floodplains.
- (6) Wildfire hazard areas.

#### **Sec. 14-4-210. Spill prevention, storage and containment of substances.**

Spill prevention, storage and containment of substances that have potential to degrade water quality shall be in compliance with the approved Spill Prevention, Storage, Control, Countermeasure and Contingency Plan prepared pursuant to Section 14-3-140 of this Chapter.

#### **Sec. 14-4-220. No significant adverse effect on property designated as a Colorado Natural Area.**

The proposed development will not have an adverse effect on property designated as a Natural Area of the Colorado Natural Areas System and on the attributes for which the property is designated.

#### **Sec. 14-4-230. Impediment of flow in watercourses.**

The watercourse within the site of the proposed development will be kept reasonably free of trash, debris, excessive vegetation and other obstacles that pollute, contaminate or significantly retard the flow of water through the watercourse. Structures legally located in or adjacent to the watercourse will be maintained so that the structure will not become a hazard to the use, function or physical integrity of the watercourse.

#### **Sec. 14-4-240. Additional standards applicable to domestic water and wastewater treatment systems.**

In addition to the Watershed Protection Standards set forth in Sections 14-4-10 through 14-4-230 of this Article, the following standards shall apply to site selection and construction of major new domestic water and wastewater treatment systems and major extensions of existing domestic water and wastewater treatment systems:

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- (1) New systems will be constructed in areas which will result in the proper utilization of existing treatment plants and will ensure the orderly development of domestic water and wastewater treatment systems.
  - (2) System extensions will be constructed in areas in which the anticipated growth and development that may occur as a result of the proposed extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development.
  - (3) Proposed system will not compete with existing water and wastewater treatment services or create duplicate services.
  - (4) Existing water and wastewater treatment systems servicing existing and anticipated development are at or near operational capacity.
  - (5) The age of existing domestic water and wastewater treatment systems, operational efficiency, state of repair or level of service is such that replacement is warranted.
  - (6) Existing facilities cannot be upgraded or expanded to meet waste discharge permit conditions of the Colorado Water Quality Control Division.

#### **Sec. 14-4-250. Additional standards applicable to municipal and industrial water projects.**

In addition to the Watershed Protection Standards set forth in Sections 14-4-10 through 14-4-230 of this Article, the project will emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water.

#### **Sec. 14-4-260. Operational conflict waiver of Watershed Protection Standards.**

- (a) The Town Council may waive one (1) or more of the Watershed Protection Standards set forth in Sections 14-4-10 through 14-4-250 of this Article if the application of the standard would result in operational conflict with state or federal requirements as described below:
  - (1) State operational conflict. A state operational conflict exists if the application of the Watershed Protection Standards to the proposed development would:
    - a. Conflict with a state statute, regulation or other requirement; and
    - b. Materially impede or destroy the State's interest in public health, safety and welfare, including protection of the environment and wildlife resources.
  - (2) Federal operational conflict. A federal operational conflict exists if compliance with both the federal statute, regulation or other requirement and the Watershed Protection Standards is a physical impossibility or when the application of the Watershed Protection Standards to the proposed development would stand as an obstacle to the accomplishment of the full purposes and objectives of Congress expressed in the federal statute, regulation or other requirement.
- (b) Request for operational conflict waiver. The applicant may make a written request to staff for an operational conflict waiver in the Watershed Permit application or at any time during the Watershed Permit application review process, but no later than fourteen (14) days following a final decision on the Watershed Permit application by the Town Council.
  - (1) If the applicant makes a request for an operational conflict waiver prior to a final decision by the Town Council on the Watershed Permit application, Town Council shall consider the request during the public hearing on the Watershed Permit application.

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- (2) If the applicant makes a request for an operational conflict waiver following a final decision on a Watershed Permit application, within ten (10) days of receipt of a written request for operational conflict waiver the Town Manager shall schedule a public hearing by the Town Council. Notice of the public hearing shall be published at least fourteen (14) calendar days prior to the public hearing. The applicant shall provide written notice by certified mail to property owners within five hundred (500) feet of the proposed development site and to owners of mineral rights underlying the proposed development site at least fourteen (14) calendar days prior to the date of the public hearing.
  - (c) Decision by Town Council. Based on all the evidence on record, if the Town Council determines that the applicant has demonstrated that application of the Watershed Protection Standards to the proposed development will result in an operational conflict with a state or federal statute, regulation or other requirement, the Town Council may waive the Watershed Protection Standards to the extent necessary to avoid the operational conflict. The Town Council may impose conditions that are necessary to minimize any negative impacts to the watershed that might occur as a result of the waiver.

(Ord. 4 §1, 2013)

#### **Sec. 14-4-270. Waiver of Watershed Protection Standards for technical infeasibility or environmental protection.**

- (a) The Town Council may waive one (1) or more of the Watershed Protection Standards set forth in Sections 14-4-10 through 14-4-250 of this Article on the basis of technical infeasibility or increased environmental protection.
  - (1) Technical infeasibility. Compliance with a standard is technically infeasible if there is no economical technology commercially available to conduct the proposed development in compliance with the standard; and the conduct of the proposed development, if the standard is waived, will be protective of public health, safety, welfare and the environment.
  - (2) Environmental protection. Compliance with a standard may be waived if protection of the watershed will be enhanced by an alternate approach not possible through compliance with the standard.
- (b) The applicant may make a written request to staff for a waiver of Watershed Protection Standards for technical infeasibility or environmental protection in the Watershed Permit application or at any time up to and including the public hearing on the Watershed Permit application. The Town Council shall consider the request during the hearing on the Watershed Permit application. The Town Council may impose conditions on the waiver that are necessary to minimize any negative impacts to the watershed if the waiver is granted.

(Ord. 4 §1, 2013)

### **ARTICLE 5 Designation of Areas and Activities of State Interest in Watershed Protection District**

#### **Sec. 14-5-10. Designation is necessary.**

The Town Council hereby finds that:

- (1) Designation and regulation of certain matters of state interest within the Watershed Protection District is necessary because of the intensity of current and foreseeable development pressures on the Watershed Protection District.

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- (2) Construction and operation of domestic water and wastewater treatment projects and municipal and industrial water projects in an uncontrolled manner could result in detrimental effects to water resources and municipal water supplies.
  - (3) The advantages of conducting such activity in a coordinated manner include:
    - a. To protect the Town's waterworks and the health of the municipal water supply from impacts caused by a reduction or degradation of wildlife habitat that, if unmitigated, would force wildlife to congregate in remaining habitat areas thereby increasing negative impacts by animals to the watershed. Riparian areas vary locally and regionally with unique animal-to-habitat relationships and represent an area of maximum potential conflict among users of timber, grazing, recreation, water and wildlife resources.
    - b. To protect the Town's waterworks and health of the municipal water supply from impacts caused by construction and operation of domestic water and wastewater treatment projects and municipal and industrial water projects and to promote the advantages of conducting such projects in a coordinated manner.

#### **Sec. 14-5-20. Designated matters of state interest.**

Based on the findings in Section 14-5-10 above, the Town Council hereby designates the following areas and activities of state interest in the Watershed Protection District:

- (1) Site selection and construction of major new domestic water and wastewater treatment systems and major extensions of existing domestic water and wastewater treatment systems.
- (2) Efficient utilization of municipal and industrial water projects
- (3) Wildlife habitat areas.

### **ARTICLE 6 Security Agreement<sup>9</sup>**

#### **Sec. 14-6-10. Financial security.**

The Security Agreement will require that the permittee provide the Town with a financial security in the amount and form established by the Town Council at the time of Watershed Permit approval. The amount of financial security shall be based upon the estimated cost of mitigation, restoration and compliance with the Watershed Permit conditions and payable on demand to the Town, except that the financial security shall not be required for reclamation secured by a valid and adequate security instrument held by the Mined Land Reclamation Board.

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<sup>9</sup>The permittee shall enter into a Security Agreement with the Town to guarantee compliance with Watershed Permit requirements. The purpose of the Agreement is to ensure that all mitigation requirements are timely and fully performed, all impacted areas are timely and fully restored and that any conditions connected to the Watershed Permit approval are timely and fully completed. The Agreement shall include provisions for notice by the Town Council of deficiencies if the Town Council determines that the permittee has not complied with any or all terms of the Agreement, and for the Town Council to draw upon the financial security as may be necessary to complete mitigation, restoration and compliance with conditions of the Watershed Permit.

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### **Sec. 14-6-20. Completion and release of financial security.**

The Security Agreement may include requirements for certification of completion, partial releases of the security, hold-over of security to ensure repairs or replacement, demonstrated performance of required facilities, substitution of security and other requirements deemed appropriate by the Town Council.

## **ARTICLE 7 Enforcement and Penalties**

### **Sec. 14-7-10. General.**

- (a) Any person engaging in development in the Watershed Protection District who does not obtain a Watershed Permit, who does not comply with the Watershed Permit requirements or who acts outside the jurisdiction of the Watershed Permit may be enjoined by the Town from engaging in such development and may be subject to such other criminal or civil liability as may be prescribed by law.
- (b) If the Town determines at any time that there are material changes in the construction or operation of the development from that approved by the Town, the Watershed Permit may be immediately suspended and the Town Council will conduct a public hearing to determine whether new conditions are necessary to ensure compliance with the Watershed Protection Standards or if the permit should be revoked.

(Ord. 4 §1, 2013)

### **Sec. 14-7-20. Watershed Permit suspension or revocation.**

- (a) The Town Council may temporarily suspend the Watershed Permit for any violation of the Watershed Permit conditions or these Regulations. Prior to suspension, the permittee will be given written notice of the violation and will have a minimum of fifteen (15) calendar days to correct the violation.
- (b) The Town Council may revoke the Watershed Permit if the permittee fails to correct a violation or the Town Council determines that the development, as constructed or operated, has impacts not disclosed in the application. Prior to revocation, the permittee shall receive written notice and be given an opportunity for a hearing before the Town Council no sooner than thirty (30) calendar days after the date of the written notice. If the Town Council believes that an emergency situation exists, the Town Council may schedule the hearing sooner than thirty (30) calendar days after the date of written notice. The Town Council may revoke the Watershed Permit or may specify a time by which action shall be taken to correct any violations for the permit to be retained.

(Ord. 4 §1, 2013)

### **Sec. 14-7-30. Injunctive relief.**

The Town Council shall have the authority to seek injunctive or other appropriate relief in a court of competent jurisdiction if the permittee fails to correct a violation or to comply with any Watershed Permit condition. The Town Council shall have the authority to seek attorneys' fees and costs for any judicial proceeding to enforce these Regulations.

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## **Sec. 14-7-40. Inspection.**

The Town may enter and inspect any property subject to these Regulations at reasonable hours for the purpose of determining whether the development is in violation of provisions of these Regulations.

## **APPENDIX 14-A Watershed Protection District BMP Guide and Examples**

### Purpose: Construction Site Erosion and Sediment Control

1. Minimize erosion from site:
  - Phase construction  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SM-01%20Construction%20Phasing-Scheduling.pdf>
  - Install BMPs before site grading
  - Stabilize soil  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-06%20Rolled%20Erosion%20Control%20Products.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-04%20Mulching.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-03%20Soil%20Binders.pdf>
  - Install temporary and permanent revegetation  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-02%20Temporary%20and%20Permanent%20Seeding.pdf>
  - Protect swales, ditches and other conveyances  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-13%20Streambank%20Stabilization.pdf>
  - Divert offsite runoff away from construction site  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-10%20Earth%20Dikes%20and%20Drainage%20Swales.pdf>
  - Protect culvert outlets  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-08%20Temporary%20outlet%20Protection.pdf>
  - Check dams  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-12%20Check%20Dam.pdf>
  - Implement surface roughening  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/EC-01%20Surface%20Roughening.pdf>

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- Provide temporary stream crossings  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SM-10%20Temporary%20Stream%20Crossing.pdf>
- 2. Minimize sediment leaving site:
  - Protect site access locations  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SM-04%20Vehicle%20Tracking%20Control.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SM-05%20Stabilized%20Construction%20Roadway.pdf>
  - Protect inlet structures  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-06%20Inlet%20Protection.pdf>
  - Install erosion logs, temporary berms, silt fences  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-01%20Silt%20Fence.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-02%20Sediment%20Control%20Log.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-03%20Straw%20Bale%20Barrier.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-05%20Rock%20Sock.pdf>
  - Detain and treat flows using detention or retention basins  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-07%20Sediment%20Basin.pdf>  
and  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SC-08%20Sediment%20Trap.pdf>
  - Practice good housekeeping  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/MM-3%20Good%20Housekeeping%20Practices.pdf>
- 3. Implement construction de-watering  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%207%20fact%20sheets/SM-09%20Dewatering%20Operations.pdf>
- 4. Inspect and maintain BMPs  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/Chapter%206%20BMP%20Maintenance.pdf>

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Purpose: Post-Construction Stormwater Management

1. Maintain predevelopment runoff volume

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/Chapter%203%20Calculating%20the%20WQCV%20and%20Volume%20Reduction.pdf>

2. Prevent direct discharges to water features and wetlands

3. Install permanent revegetation

4. Install sand filters

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%204%20fact%20sheets/T-06%20Sand%20Filter.pdf>

5. Construct extended detention basins

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%204%20fact%20sheets/T-05%20Extended%20Detention%20Basin.pdf>

6. Install constructed wetland pond

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%204%20fact%20sheets/T-08%20Constructed%20Wetland%20Pond.pdf>

7. Install grass buffer

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%204%20fact%20sheets/T-01%20Grass%20Buffer.pdf>

8. Install underground stormwater treatment

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%204%20fact%20sheets/T-11%20Underground%20BMPs.pdf>

9. Install outlet structures

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%204%20fact%20sheets/T-12%20Outlet%20Structures.pdf>

10. Landscape maintenance

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S-09%20Landscape%20Maintenance.pdf>

Purpose: Minimize and Disconnect Impervious Areas, see:

Reduce and disconnect impervious areas

[http://water.epa.gov/polwaste/nps/urban/upload/2005\\_12\\_08\\_NPS\\_urbanmm\\_urban-ch04.pdf](http://water.epa.gov/polwaste/nps/urban/upload/2005_12_08_NPS_urbanmm_urban-ch04.pdf)

Purpose: Low Impact Development, see:

<http://www.epa.gov/owow/NPS/lid/> (copy and paste URL)

Purpose: Abandoned Mine Remediation, see:

<http://mining.state.co.us/pdfFiles/bmp.pdf>

Purpose: Application, Storage and Handling of Hazardous Materials

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1. Pesticides and herbicides, see:  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S-08%20Use%20of%20Pesticides%20Herbicides%20and%20Fertilizers.pdf>
2. Oil and grease, see:  
[http://danewaters.com/pdf/manual/Appendix\\_1/OilandGreaseSeparator.pdf](http://danewaters.com/pdf/manual/Appendix_1/OilandGreaseSeparator.pdf)
3. Fueling and vehicle maintenance, see:  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S-07%20Vehicle%20Maintenance,%20Fueling%20and%20Storage.pdf>
4. Storage and handling, see:  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S01%20Covering%20Outdoor%20Storage%20and%20Handling%20Areas.pdf>
5. Spill prevention, containment and control, see:  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S-02%20Spill%20Prevention%20Containment%20and%20Control.pdf>
6. Household hazardous waste, see:  
<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S-03%20Disposal%20of%20Household%20Waste.pdf>

Purpose: Snow Storage and Management, see:

<http://www.udfcd.org/downloads/pdf/critmanual/Volume%203%20PDFs/chapter%205%20fact%20sheets/S-10%20Snow%20and%20Ice%20Management.pdf>

## **CHAPTER 15**

## **Annexations**

### **ARTICLE 1 Annexation**

#### **Sec. 15-1-10. Title.**

This Article shall be known and may be cited as the *Town Annexation Ordinance*.

#### **Sec. 15-1-20. Definitions.**

As used in this Article, unless the context otherwise requires, the terms as defined by the Colorado General Assembly pursuant to the Municipal Annexation Act of 1965 codified at Section 31-12-101, et seq., C.R.S., also referred to herein as the "Act," shall apply.

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### **Sec. 15-1-30. Legal requirements.**

The Town may exercise all statutory powers, all powers express and inherent in its Home Rule Charter, all powers as a home rule municipal corporation and all other powers it may lawfully assume. This Article shall be interpreted so as to extend such exercise of powers as is reasonable and necessary for the public welfare. To the extent this Article conflicts with the Act, the provisions hereof shall control.

### **Sec. 15-1-40. Summary of procedures for annexation.**

Annexation to the Town requires a three-step process:

- (1) A concept annexation request to Town staff and review by Town Council.
- (2) A formal annexation petition or annexation election petition to Town Council.
- (3) An annexation hearing by Town Council.

### **Sec. 15-1-50. Concept annexation request.**

The concept annexation stage is designed to allow the applicant to obtain an informal response from the Town to the general elements of a proposed annexation.

- (1) Submission requirements. The applicant shall submit ten (10) copies of the following to the Planning Director. Such submissions shall form the concept annexation request. The concept annexation request shall not be deemed to be part of the formal annexation petition.
  - a. Concept map showing the lands proposed to be annexed and the method for achieving the one-sixth ( $1/6$ ) contiguity required by the Act.
  - b. General description of proposed land uses and densities for the lands proposed to be annexed.
  - c. Description of proposed water, sewer and transportation service to the lands proposed to be annexed.
  - d. Description of proposed roads, sidewalks and pedestrian access and circulation as they relate to the lands proposed to be annexed.
- (2) Processing fee. The applicant shall pay a nonrefundable processing fee established by resolution of the Town Council to defray the initial costs and expenses incurred by the Town in connection with the Town's review of the concept annexation request. Said processing fee shall be paid to the Town by the applicant at the time of the applicant's submission of the concept annexation request. The Town Council may, in its sole discretion, waive the requirement to pay said processing fee.
- (3) Procedure.
  - a. The concept annexation request will first be reviewed by Town staff in cooperation with the applicant.
  - b. Following Town staff review, the concept annexation request will be scheduled for review and comment by the Town Council. Only in the event the Town Council approves the concept annexation request may the applicant proceed to file a formal annexation petition and other necessary submittals required under Section 15-1-60 below. The formal annexation petition and other required submittals described in Section 15-1-60 shall be consistent with any Town Council-approved concept annexation request.

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- (4) Application to petitions in process. Any petition for annexation which has been previously filed with the Town and which has been approved by the Town Council under this Section and Section 15-1-60 below as the same existed prior to the effective date of the annexation ordinance codified herein, shall be considered as having complied with the requirements of this Section.

**Sec. 15-1-60. Submission requirements for formal annexation petition; petition for annexation election.**

- (a) Submission requirements. The applicant shall submit ten (10) copies of the formal annexation petition or petition for annexation election to the Planning Director complete with the following, as applicable:
- (1) A petition for annexation or petition for annexation election, as applicable, containing the allegations and meeting the requirements provided under the Act.
  - (2) An annexation map appropriate for recording in the official land records of the County that shall contain the information required by Section 31-12-107(1)(d) of the Act and the following information:
    - a. The date of preparation, north arrow, graph scale and name of the proposed annexation; and
    - b. The acreage of the lands proposed to be annexed and acreage of each of the parcels or lots comprising said lands proposed to be annexed.
  - (3) A vicinity map showing the relationship of the lands proposed to be annexed to the existing Town municipal limits and surrounding properties. The vicinity map may be combined with the required annexation map.
  - (4) A preliminary master plan for proposed land use and requested zoning of the lands to be annexed, including street layouts, the locations of affordable housing, open lands and public lands required for each housing unit and the general dimensions and with contour intervals of not more than two (2) feet.
  - (5) Name, mailing address and phone number of the applicant and the applicant's legal counsel, land planner and engineer.
  - (6) The scale of all maps shall not be less than one (1) inch equals two hundred (200) feet. All maps shall include true north point, the name of the annexation, township, range, principal meridian, section and quarter section, block and lot numbers. The dimensions of all maps shall be twenty-four (24) inches by thirty-six (36) inches.
  - (7) A complete subdivision sketch plan which complies with the Town's subdivision regulations.
  - (8) The foregoing annexation submittals may need to be modified to reflect changes made during the subdivision review and approval process.
  - (9) At the time of submission of the formal annexation petition and the submittals required hereunder, the applicant shall deliver to the Town an executed annexation cost and expense reimbursement agreement obligating the applicant to reimburse the Town for all costs and expenses whatsoever incurred by the Town in connection with the annexation.
  - (10) The Town Council, in its sole discretion, may waive any submission requirement contained in this Section, other than those at Paragraphs (1), (2) and (6) above.
- (b) Preconditions to setting of annexation hearing. After subdivision sketch plan approval, the following materials shall also be submitted prior to the Town Council setting an annexation hearing pursuant to Section 31-12-108 of the Act and Paragraph 15-1-70(b)(1) below.
- (1) Preliminary subdivision plan. A preliminary subdivision plan shall be submitted which complies with the Town's subdivision regulations.

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- (2) Preliminary subdivision plan report. Concurrently with the applicant's preliminary subdivision plan submittal, the applicant shall submit a written report containing the following information:
- a. A statement indicating how this particular annexation fits within the general development plan of the Town, including appropriateness under the Town Water Management Plan.
  - b. Estimates of current and proposed population within the lands proposed to be annexed.
  - c. The name or names of the special districts providing services that would be affected by the proposed annexation. If the lands to be annexed are part of a special district or county service area whose responsibilities are to be assumed by the Town, a statement shall be required indicating what steps have been taken to ensure a smooth transition in the delivery of services and that the costs to the Town of doing so shall be funded by the applicant.
  - d. At the option of the Town, a statement and plan showing that sufficient water, free of encumbrances, will be given to the Town to offset the potential population and uses of the annexed lands.
  - e. A statement and timetable of how the applicant will develop and finance the extension of roads, utilities and other similar services.
  - f. A statement and description of those lands that will be set aside for public use, what equivalent in money will be paid and what other types of public benefit are to be provided, such as, and not by way of limitation, employee housing, affordable housing, parking and transportation structures, utility zones and/or water rights within a contracted period of time.
  - g. Impact analysis containing the following:
    1. General information:
      - a) Gross acreage of annexation.
      - b) Approximate number and type of units.
      - c) Acreage of parks, streets and parking.
      - d) Acreage and percentage of open space to be created and analyzed as to the amount to be deeded or dedicated to the Town and the amount to be retained in private ownership. Potential maintenance costs to the Town are to be estimated.
      - e) Density ratio: Number of units compared to net acreage (gross acreage less streets, parking and open space).
    2. Population impact:
      - a) Projected addition to the Town's population, both permanent and seasonal.
      - b) Age group composition of the population.
      - c) Projected population by dwelling unit type.
      - d) Impact on school, police and fire districts to be reviewed by the School Board, Marshal's and Fire Departments.
    3. Traffic impacts:
      - a) Projected vehicle trips to enter or depart the site daily and peak hour average.
      - b) Projected community-wide impact.
      - c) Impact related to existing street segment capacities within the zone district.

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- d) Projected maintenance costs on new and existing streets.
  - e) Public transportation ties.

4. Utilities impact:

- a) Projected demand for water: year-round average and seasonal peaks.
- b) Impact on existing water and sewer capacity and the potential need for additional facilities.
- c) Potential electric power demand.
- d) Projected garbage and solid waste generation.

5. Environmental analysis:

- a) Soil capabilities types and bearing capabilities.
- b) Geologic hazard areas.
- c) High groundwater tables.
- d) Steep slopes and potential erosion problems.
- e) Flood-prone areas.
- f) Effects on existing fish, wildlife and vegetation.
- g) Aesthetic consideration.
- h) Wetlands designations.

6. Economic impact analysis:

- a) Expected revenues to be generated by the development (property taxes, sales and use taxes, real estate transfer tax, water and sewer fees and charges and other revenues).
- b) Estimated expenditures, including fire, police, emergency medical services (EMS), water and sewer services, general government services, parks and recreation, public works maintenance and capital improvements.
- c) All data to be estimated on an annual basis for a term of not less than twenty (20) years or full project build-out, whichever is greater.

- (3) Final subdivision plan. Following preliminary subdivision plan approval, the applicant shall submit the final subdivision plan as required by Section 17-5-70 of this Code. Prior to setting an annexation hearing pursuant to Section 31-12-108 of the Act and Paragraph 15-1-70(b)(1) below, the Planning Director must first find that the same is in compliance with Paragraph 17-5-60(3) of this Code and is complete and ready for Town Council and Planning Commission action pursuant to Paragraph 17-5-60(4).
- (4) Annexation agreement. A copy of the proposed annexation agreement with the Town shall be submitted. Said agreement shall include, without limitation, those agreements guaranteeing public benefit to the Town, the applicant's plans for phasing development of the annexation property, agreements concerning streets and trails, water and sewer, drainage, environmental testing, utilities, public lands dedications, zoning, affordable housing and capital expansion recovery fees, and any and all other agreements between the Town and the applicant, including any agreements reached to allow the project to proceed as required in Paragraph 15-1-70(a)(3) below.

(Ord. 3 §1, 2008)

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(Supp. No. 20)

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## **Sec. 15-1-70. Procedure.**

- (a) Review of formal annexation petition by Planning Director. Upon receipt of the complete formal annexation petition and submittals required in Subsection 15-1-60(a) above, the Planning Director shall review the same and determine if they are complete and comply with the requirements of this Article, the proposed underlying zone district(s) as set forth in Chapters 16 and 17 of this Code and the Town's Land Use Plan.
    - (1) If the Planning Director finds that the formal annexation petition and required submittals as required in Subsection 15-1-60(a) above are complete and comply with the foregoing requirements, the petition shall be referred to the Town Clerk.
    - (2) If the Planning Director finds that the formal annexation petition and required submittals in Subsection 15-1-60(a) above are incomplete or do not comply with the foregoing requirements, they shall be returned to the applicant, and no further action shall be taken upon the same until any defects are corrected and the submittals required under Subsection 15-1-60(a) are resubmitted.
    - (3) Notwithstanding the failure of any submitted subdivision sketch plan, preliminary subdivision plan or preliminary master plan to comply with Chapter 17 of this Code, the proposed underlying zone district(s) as set forth in Chapter 16 of this Code and/or the Town's Land Use Plan, the Town Manager may permit the same to be reviewed and processed and allow the formal annexation petition and the other required submittals to proceed through the annexation process by submission of the same to the Town Clerk, provided that:
      - a. The applicant demonstrates the degree to which said subdivision sketch plan, preliminary subdivision plan or preliminary master plan does not comply with the aforesaid requirements;
      - b. The applicant proposes specific alternatives to mitigate or offset such lack of compliance by providing amenities or other items in lieu of those required by the subdivision regulations, the proposed underlying zone district(s) as set forth in Chapter 16 of this Code or the Town's Land Use Plan that are of such a benefit to the Town that the requirements may be varied or waived in exchange for the receipt of such amenities or other items; and
      - c. Such alternatives are incorporated into the annexation agreement required under this Article.
- (b) Action by Town Council on formal annexation petition. Upon receipt of a complete formal annexation petition and other submittal requirements which have been found to be in compliance with the requirements of Subsection 15-1-60(a) above by the Planning Director, or allowed to proceed by the Town Manager as described above, and upon a finding by the Planning Director that the applicant has complied with Subsection 15-1-60(b) above to the extent found to be required by the Town Council at this time, the Town Clerk shall forward the complete formal annexation petition to the Town Council. The Town Council shall thereupon take one (1) of the following actions:
    - (1) Adopt a resolution finding the formal annexation petition to be in substantial compliance with Section 31-12-107(1) or 31-12-107(2) of the Act, as appropriate, and that the applicant has complied with Subsection 15-1-60(a) above or such portions thereof as have not been waived by the Town Council at this time, and has satisfied Subsection 15-1-60(b) above to the extent found to be required by the Town Council, and setting a public hearing thereon pursuant to Section 31-12-108 of the Act;
    - (2) Table the formal annexation petition and adoption of said resolution until the requirements of Subsections 15-1-60(a) and (b) above, as appropriate, have been met or waived by the Town Council; or
    - (3) Adopt a resolution finding the petition to not be in substantial compliance with the requirements of Section 31-12-107(1) or 31-12-107(2) of the Act, as appropriate, and terminating annexation proceedings.

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- (c) Annexation election procedure. The requirements for review of any annexation election petition and annexation election shall be the same as those specified in the Act and in this Article.

(Ord. 3 §1, 2008; Ord. 4 §1, 2009; Ord. 22 §1, 2009)

### **Sec. 15-1-80. Annexation hearing.**

- (a) Resolution setting hearing. At such time as, in the judgment of the Town staff, the annexation agreement and final subdivision plat are in final form and in the event the requirements of Sections 15-1-60 and 15-1-70 above have been satisfied, the Town Council may consider adoption of a resolution of intent to annex, finding substantial compliance and setting an annexation hearing as described in Subsection 15-1-70(b) above. Upon adoption of said resolution, the Town shall cause the following to occur:
- (1) A copy of the resolution, notice and petition shall be sent to the Board of County Commissioners, County Attorney and any and all special districts and school districts serving the lands proposed to be annexed at least twenty-five (25) days prior to the hearing.
  - (2) An annexation impact report as required by Section 31-12-108 of the Act shall be filed with the Board of County Commissioners at least twenty-five (25) days prior to the hearing.
  - (3) At any regular or special meeting, the proposed annexation and zoning ordinances shall be introduced according to the Town Charter and Chapter 16 of this Code.
- (b) Criteria for annexation decision. The following criteria shall be considered before the Town Council may act favorably on any annexation request:
- (1) The final master plan for the use of the lands to be annexed is acceptable.
  - (2) The final subdivision plan for the use of the lands to be annexed complies with Chapter 17 of this Code.
  - (3) The proposed open spaces have a workable program established for maintenance and upkeep and are coordinated with the Town's open space program where possible.
  - (4) The proposed annexation is necessary or desirable and will contribute to the general well-being of the community.
  - (5) The proposed annexation will in no way be detrimental to the health, safety or general welfare of the persons residing within the corporate boundaries of the Town or injurious to property or improvements in the vicinity of the lands proposed to be annexed.
  - (6) The proposal is in harmony with the intent of Town zoning ordinances and policies adopted by the Town.
  - (7) Unless otherwise agreed to by the Town, the extension of services will be financed totally by the applicant.
  - (8) Revenue and/or public benefit to be gained from the Town's portion of increased tax base and other revenue on account of the proposed annexation is equal to or greater than the cost to the Town of the services required.
  - (9) The advantages to the Town materially outweigh the disadvantages.
  - (10) The annexed lands have a logical extension of road systems and of public transportation systems, consistent with the Town's Land Use Plan.
  - (11) The extension of water and sewer lines are feasible in the area.

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- (12) The applicant has agreed to update any geological hazard, floodplain and other applicable mapping for the lands to be annexed. The update work shall be performed by a qualified person of the Town's choosing and shall be paid for by the applicant.
  - (13) The proposal is consistent with the Land Use Plan.
  - (14) To the extent the proposal is not consistent with Chapters 16 and 17 of this Code and the Land Use Plan, such inconsistency is addressed and/or adequately mitigated, to the Town Council's satisfaction, in the final annexation agreement.
- (c) Procedure for annexation hearing.
- (1) The Town Council opens the combined public hearing and takes testimony on:
    - a. Proposed annexation;
    - b. Proposed zoning; and
    - c. Proposed subdivision (also in its capacity as Planning Commission).
  - (2) The Town Council adopts a resolution pursuant to Section 31-12-110 of the Act making findings of fact and approving the final annexation agreement.
  - (3) The Town Council adopts the ordinance annexing the property.
  - (4) The Town Council adopts the ordinance zoning the property.
  - (5) The Town Council approves the subdivision improvements agreement.
  - (6) Convening as the Planning Commission, the Town Council approves the final subdivision plan.

(Ord. 3 §1 2008)

#### **Sec. 15-1-90. Cost reimbursement.**

The applicant shall pay all costs and expenses, whatsoever, incurred by the Town, including, without limitation, all costs and expenses in connection with any legal publications, notices, filings, reproduction of materials, public hearings, recording of documents, engineering services, attorney services, consultant services, time of Town staff, permits and easements, in connection with any annexation.

## **CHAPTER 16**

### **Zoning**

#### **ARTICLE 1 General Provisions**

#### **Sec. 16-1-10. Purpose and intent.**

In accordance with the general plan of the Town, and as authorized by the Constitution and statutes of the State, this Chapter is passed with the purpose and intent of providing the following benefits to the citizens of the Town:

- (1) To promote the general health, safety and welfare of the community;

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- (2) To lessen congestion in the streets and enhance pedestrian and vehicular movement with the least detriment to environmental quality;
  - (3) To secure the safety of the people against fire, hazards, avalanche, unstable slopes, rock fall, mudslides and flood danger;
  - (4) To provide adequate light and open space and avoid undue concentration of population;
  - (5) To provide clean air by protecting the Town's clear air drainage basin through reduction of emission of pollutants into the air;
  - (6) To protect the Town's water resources by maintaining the natural watershed, preventing accelerated erosion, reducing runoff and consequent sedimentation, and eliminating pollutants introduced directly or indirectly into the Town's streams;
  - (7) To prevent the overcrowding of land and avoid transportation and service demands that cannot be satisfied;
  - (8) To facilitate adequate provision of water, sewage, schools, parks, open space, hospitals, recreation, all forms of public utilities and other public and historical buildings;
  - (9) To maintain the natural scenic beauty of the Crested Butte valley;
  - (10) To encourage the development of affordable housing and encourage the development of long-term rental housing;
  - (11) To provide for phased development of governmental services and facilities and aid in realizing the policies, objectives and goals of the Town's plan;
  - (12) To allow for practical uses of old and historic structures, and at the same time allow for diversity of housing types;
  - (13) To encourage innovations in residential development and renovations so that the growing demand for housing may be met by greater variety of type and design of dwellings and by the conservation of more efficient and attractive use of open space;
  - (14) To advance a more effective use of land and a higher quality of site planning reflecting improvements in the principles of land development;
  - (15) To regulate the use of land on the basis of the impact thereof on the community; and
  - (16) To otherwise plan for and regulate the use of land so as to provide a planned and orderly use of land, provide for the protection of the environment to conserve the value of the investments of the people of this community, and encourage the most appropriate use of land throughout the Town.

## **Sec. 16-1-20. Definitions.**

For the purpose of this Article, the use of a plural form shall not necessarily imply that more than the singular is suggested, condoned or allowed, and certain words and phrases shall be defined as follows:

*Accessory building* means a detached subordinate building, the use of which is incidental to that of the principal building or primary dwelling on the same building site. In each of the residential districts located within the Town, the accessory building must remain in common ownership at all times with the primary dwelling or principal building on the same building site. In the event the creation of condominiums or townhouses on the building site results in more than one (1) primary dwelling or principal building, the accessory building must remain in common ownership with at least one (1) primary dwelling or principal building located on the same building site. Building sites within all zone districts, except "R1A" and "R1B" Districts, may have more than one (1) accessory building. Accessory buildings are categorized as one (1) of the following:

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- a. *Accessory building, nonresidential use, not heated or plumbed;*
  - b. *Accessory building, nonresidential use, heated and/or plumbed; or*
  - c. *Accessory dwelling.*

*Accessory building, nonresidential use, heated* means a detached subordinate structure no larger than two hundred fifty (250) square feet containing nonresidential uses incidental and accessory to the primary structure, which is heated. In each of the residential districts located within the Town, the accessory building, nonresidential use, heated, must remain in common ownership at all times with the primary dwelling or principal building on the same building site. In the event the creation of condominiums or townhouses on the building site results in more than one (1) primary dwelling or principal building, the accessory building, nonresidential use, heated, must remain in common ownership with at least one (1) primary dwelling or principal building located on the same building site. Facilities for sleeping, bathing or cooking are prohibited. Acceptable uses include but are not limited to home offices, arts and crafts studios, workshops and home recreation facilities. Unacceptable uses are sleeping, bathing or cooking.

*Accessory building, nonresidential use, not heated or plumbed* means a detached subordinate structure containing nonresidential uses incidental and accessory to the primary structure, excluding plumbing or heat. In each of the residential districts located within the Town, the accessory building, nonresidential use, not heated and/or plumbed, must remain in common ownership at all times with the primary dwelling or principal building on the same building site. In the event the creation of condominiums or townhouses on the building site results in more than one (1) primary dwelling or principal building, the accessory building, nonresidential use, not heated and/or plumbed, must remain in common ownership with at least one (1) primary dwelling or principal building located on the same building site. Facilities for sleeping, bathing or cooking are prohibited. Acceptable uses include but are not limited to sheds, storage sheds and unheated garages. Unacceptable uses are sleeping, bathing or cooking.

*Accessory dwelling* means a detached subordinate structure or portion thereof subordinate to an existing or planned and approved residential structure on the same building site. In each of the residential districts located within the Town, the accessory dwelling must remain in common ownership at all times with the primary dwelling or principal building on the same building site. In the event the creation of condominiums or townhouses on the building site results in more than one (1) primary dwelling or principal building, the accessory dwelling must remain in common ownership with at least one (1) primary dwelling or principal building located on the same building site. Either the accessory dwelling, the primary dwelling, or both, shall be used exclusively as a long-term rental. If more than one (1) accessory dwelling has been approved for a site, then two (2) out of the three (3) dwelling units on the site shall be used exclusively as a long-term rental. The structure designated as the long-term rental must remain in common ownership with another residential use on the same building site, except in the "B3" Business District, where the primary structure may be nonresidential in character. To obtain the conditional use of an accessory dwelling, the applicant shall comply with the terms of Section 16-9-70 respecting the recordation of discretionary approvals.

*Accessory use* means a use naturally and normally incidental to, and devoted exclusively to, the main use of the premises.

*Alley* means a public way permanently reserved and owned by the Town, which acts as a secondary means of access to abutting property.

*Alterations*, as applied to a building or structure, means a change or rearrangement in the structural parts or existing facilities; or an enlargement, whether by extending on a side or increasing the height; or the moving from one (1) location or position to another.

*Area Medium Income (AMI)* means figures published annually for counties by the U.S. Department of Housing and Urban Development (HUD) by household size. When a single figure is referenced, like the

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median income for Gunnison County, it refers to one hundred percent (100%) of the area median income for a four-person family. Housing programs are generally targeted to serve a defined income group. HUD defines income limits for low-income households ( $\leq$  80% AMI). Additional categories are usually used in high-cost mountain communities for various programs and policies.

*Aspect* means a physical characteristic of any building, structure or land not including its use.

*Auto-related services* means any use or activity designed for the servicing, fueling, painting or maintenance of motor vehicles.

*Banner* means a temporary sign or pennant composed of lightweight material.

*Basement* means a story of a building which is at least six (6) feet in height and is partially or wholly underground.

*Bed and breakfast* means a business with no more than five (5) guest rooms, providing a bed, use of bath facilities and one (1) or more meals for tourists for compensation, which business is ancillary to the use of the principal building for residential purposes. A bed and breakfast shall not be contained within an accessory structure.

*Bedroom* means a room used, or intended to be used, primarily for sleeping purposes at any time, and/or where one (1) or more individuals sleep on a regular basis.

*Board* means the Board of Zoning and Architectural Review, established in Article 22 of this Chapter.

*Boarding and rooming house* means a building other than a hotel or lodge where, for compensation, meals or lodging are provided for five (5), but not more than fifteen (15), persons.

*Building* means any structure having a roof supported by columns or walls.

*Building Inspector* means the Building Inspector or Building Official for the Town.

*Building site* means the lot area required or used for the construction or location of buildings.

*Building width* means the distance between the furthest elements of a structure on opposing sides of the structure parallel to the lot line front. For purposes hereof, roof eaves and structures under eighteen (18) inches are not part of the calculation of building width.

*Business, formula* means formula retail business, formula restaurant and formula motel and hotel.

*Business, formula motel and hotel* means a motel and hotel that is required by contractual or other arrangement to maintain and offer a standardized ("formula") array of services that includes two (2) or more of the following systemized features: room plans, lobbies, on-site amenities, façade treatments, décor, color schemes, uniform apparel, signs, servicemarks/trademarks or other standardized features; and that causes it to be substantially identical to seven (7) or more other businesses worldwide regardless of ownership.

*Business, formula restaurant* means a restaurant that is required by contractual or other arrangement to prepare and offer a standardized ("formula") array of food and beverages for sale to the public for consumption on or off premises that includes two or more of the following systemized features: substantially common food and/or drink menus, ingredients, food preparation, façade treatments, décor, color schemes, uniform apparel, signs, servicemarks/trademarks or other standardized features; and that causes it to be substantially identical to seven (7) or more other businesses worldwide, regardless of ownership. Regulated formula restaurants shall not be co-located within an exempt formula business.

*Business, formula retail* means a business that is required by contractual or other arrangement to maintain a standardized ("formula") array of merchandise and/or an array of services that includes two or more of the following systematized features: façade treatments, décor, color schemes, uniform apparel, signs, servicemarks/trademarks or other standardized features; and that causes it to be substantially identical to seven (7) or more other businesses worldwide, regardless of ownership.

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*Catering business* means a business providing food at a location other than that of the business, excluding retail prepared food and excluding the on-site consumption of food.

*Catering business retailing prepared food* means a business providing food at a location other than that of the business, as well as the sale at the business location of retail prepared food, but excluding the on-site consumption of food.

*Changeable copy sign* means a sign on which copy or sign panels may be changed manually in the field, such as boards with changeable letters.

*Charity pantry* means the provision of clothing and housewares available to the public that is free of charge.

*Club* means any membership organization, including a lodge, catering exclusively to private members and their guests and whose facilities are limited to meeting, eating and recreational uses, and whose activities are not conducted principally for monetary gain.

*Conditional use* means a use of land within any particular zoning district which is authorized only when and if a conditional use permit is granted therefor in accordance with procedures and requirements as set forth in this Chapter.

*Condo hotel* means a building, parcel or portion thereof that is condominiumized containing multiple units used for overnight lodging by either the owners thereof on a short-term basis for no fee or by the general public on a short-term basis for a fee. A Condo Hotel is a hybrid between a Hotel or Lodge or Motel and a Timeshare Development Project. Condo Hotels may be with or without kitchens within individual units, with or without meal provided, and shall have common reservation and cleaning services, combined utilities, housekeeping services, on-site meeting room space, on-site maintenance, management and reception services, an on-site lobby with appropriate on-site desk service and, where appropriate, on-site recreational facilities. For those such properties with lock-off units, each key shall constitute a Condo Hotel unit for purposes of this Chapter. Bed and breakfasts, hotels or lodges, motels, resorts and short-term residential accommodations shall not be considered *condo hotels*. The requirements and procedures applicable to the approval of Timeshare Development Projects shall apply to condo hotels as further delineated in Section 16-7-60 of this Chapter. Condo Hotel units shall be available for use by the general public on a short-term basis for a fee at least eighty percent (80%) of the calendar year. For each bedroom, fifteen (15) square feet of meeting space shall be included in the Condo Hotel project, with a minimum of three hundred fifty (350) square feet of meeting space for each Condo Hotel project. Said space shall be capable of being isolated from the rest of the project and may be used for multiple purposes.

*Condominium or condominium project* means a building or buildings consisting of separate fee simple estates to an individual air space unit of a multi-unit property, together with an undivided fee simple interest in common elements, as further defined in the Colorado Common Interest Ownership Act.

*Congregate housing* means a building or part thereof that contains sleeping units where residents share bathroom or kitchen or both.

*Demolition* means the dismantling, tearing down or destruction of twenty-five percent (25%) or more of any building or structure.

*Demolition by neglect* means the destruction of a building or structure through abandonment or lack of maintenance, or the gradual deterioration of a building or structure when routine or major maintenance is not performed.

*Detached building* means two (2) buildings deemed to be detached only if their walls are at least ten (10) feet apart and not connected by any constructed linkage, except for a walking surface no more than eighteen (18) inches above finished grade, except buildings which applied for and received a building permit prior to September 26, 1998, in which case such buildings shall be deemed to be detached if they are not

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connected by an enclosed constructed linkage. An enclosed constructed linkage has walls as well as a ceiling or roof.

*Dormitory* means a building containing sleeping rooms designed to be rented for short-term occupancy, with adequate sanitary facilities, and which may or may not have cooking facilities as an accessory use.

*Drive-through facility* means a facility where patrons conduct business from or near their automobile or other motor vehicle without entering and remaining in an enclosed building during the business transaction.

*Dwelling unit, multi-family* means a building or portion thereof designed exclusively for occupancy by four (4) or more families living independently of each other in separate residential units.

*Dwelling unit, one-family* means a detached building designed exclusively for occupancy by one (1) family, in one (1) residential unit.

*Dwelling unit, rectory* means a building used exclusively for occupancy by clergy with no provisions for long term or short term rental accommodations. The dwelling unit must be ancillary to church or church related facilities on the property.

*Dwelling unit, three-family* means a detached building designed exclusively for occupancy by three (3) families living independently of each other in three (3) residential units.

*Dwelling unit, two-family* means a structure consisting of a single building designed exclusively for occupancy by two (2) families living independently of each other, in two (2) separate residential units contained therein.

*Employee dwelling* means a studio or one-bedroom residential dwelling unit that is a subordinate and incidental use to a mixed use structure or commercial/retail use structure on the same building site. An employee dwelling must always remain in common ownership with a mixed use structure or a commercial/retail use structure on the same building site. Except as provided below, an employee dwelling shall be used exclusively as a long-term rental and shall not be used as a short-term rental. In the event that the owner of an employee dwelling unit for which a conditional use is granted, owns and uses for his or her own use another nonresidential unit as a permitted use or an approved conditional use within the same building, the owner may occupy the employee dwelling unit. Only an owner conducting business himself or herself in his or her nonresidential mixed use or commercial/retail unit may occupy his or her employee dwelling unit. Leasing the nonresidential unit to another person for his or her use is not considered using for his or her own use or conducting business himself or herself under this definition.

*Enclosed structure* means any structure that contains a roof and walls in which the aggregate of all vertical surfaces are hard surfaced or covered by more than thirty percent (30%) with materials that do not allow the atmosphere to freely move through the structure. For purposes hereof, windows and doors shall be deemed to be part of the hard-surfaced structure.

*Erection* means the building or construction of any structure.

*Exterior architectural feature* means the architectural style, design, general arrangement and components of all the outer surfaces of an improvement, as distinguished from the interior surfaces enclosed by said exterior surfaces, including but not limited to the kind, color and texture of the building materials and the type and style of all windows, doors, lights, signs and other fixtures appurtenant to such improvement.

*Fabric structure* means a structure of which the primary exterior material is comprised of fabric, mylar, or other tensile composite materials of a similar nature. No fabric structure shall remain in place for longer than fourteen (14) days, except as otherwise provided for in Section 16-14-180.

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*Family* means an individual, two (2) or more persons related by blood or marriage or between whom there is a legally recognized relationship, or not more than five (5) unrelated persons living together as a single housekeeping unit in a residential unit.

*Farm and garden buildings and uses* means those buildings and structures used to shelter or enclose livestock, poultry, feed, flowers, field equipment or similar items; and those uses of land devoted to raising of crops, poultry or livestock.

*Fence* means a fence, wall, hedge or other structure forming a boundary or enclosing an area.

*Finish grade* means the topography or contour of a building site as it is configured subsequent to alteration occurring during the construction or site preparation process. The proposed finish grade of a site must be submitted to the Board for approval as part of the building permit application if the proposed finish grade will vary from the natural grade on a building site by more than one (1) foot; provided, however, that the finish grade shall not vary by more than three (3) feet from the natural grade.

*Floor area* means the sum of the horizontal areas of all floors and areas in an enclosed structure with the potential to contain more horizontal floors, as set forth in Subparagraph d. below, in principal and accessory buildings on a building site, as measured from the exterior faces of the walls and enclosed porches as measured by the exterior limits thereof. However, those spaces that are above the fourteen-foot and twenty-three-foot heights which occur under a pitched roof of 10:12 or greater that are not suitable for potential living space are excluded for floor area ratio purposes. Such areas must be less than seven (7) feet wide in any dimension or measuring less than seventy (70) square feet. The floor area of basements, as defined by the building code adopted by the Town in Chapter 18 of this Code, shall not be included as floor area. For structures other than enclosed structures, floor area shall be computed as follows and shall be included as additional floor area:

- a. Unroofed porches, decks, balconies and terraces:
  1. If such improvement is more than eighteen (18) inches above grade and occupies less than ten percent (10%) of the area of the building, then zero (0) floor area.
  2. If such improvement is more than eighteen (18) inches above grade and occupies ten percent (10%) or more of the area of the building, then one-half ( $\frac{1}{2}$ ) the actual floor area.
  3. If such improvement is eighteen (18) inches or less above grade, then zero (0) floor area.
- b. Roofed or covered porches, decks, balconies and terraces:
  1. If such improvement occupies less than ten percent (10%) of the area of the building, then one-half ( $\frac{1}{2}$ ) the actual floor area.
  2. If such improvement occupies ten percent (10%) or more of the area of the building, then the actual floor area.
  3. For purposes hereof, such roofed or covered porches, decks, balconies and terraces shall not be enclosed structures, meaning that no more than thirty percent (30%) of the vertical surfaces may be hard surfaced, not allowing the passage of air through the porch, deck, balcony or terrace. When figuring this hard-surface area, up to two (2) walls that compose parts of adjacent enclosed structures shall not be counted.
- c. Any private garage, as that term is herein defined, shall have its floor area calculated and included as additional floor area in an amount equal to one-half ( $\frac{1}{2}$ ) of the first two hundred (200) square feet if it is located within an accessory building or is attached to or part of the principal building; otherwise, its floor area shall be calculated and included as additional floor area in an amount equal to the actual floor area of such garage.
- d. Any part of a building whose interior height is less than fourteen (14) feet is counted once for floor area purposes. Any part of a building whose interior height is fourteen (14) feet or higher is

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counted twice for floor area ratio purposes, except that any part of such building which has an interior height of twenty-three (23) feet or more is counted three (3) times. For floor area ratio purposes, interior heights shall be measured from the lowest floor level above grade to the underside of the roof assembly. In those cases where the lowest floor level is more than eighteen (18) inches above natural grade or the site is sloped in such a manner that the lowest floor intersects the natural grade, the Building Official will determine the floor plane from which measurements will be calculated.

*Floor area ratio* means a fraction, the numerator being the floor area of the buildings on a lot and the denominator being the area of such lot, up to the maximum lot area allowed by right in the zone district.

*Footing* means that portion of the foundation of a structure which spreads and transmits loads directly to the soil.

*Front facade* means the facade of a building facing the street or, in the absence of a street, facing the alley. On a corner lot, only one (1) facade shall be considered the front facade, and that shall be the facade on the shorter street frontage, unless otherwise declared by the Board, as in the case of a front lot line.

*Frontage* means the length of the longest front lot line of the lot; or the length within the lot of a line substantially parallel to the longest front lot line and distant therefrom no greater than the required least front yard depth; whichever line is longer.

*Garage* means any building or structure where motorized vehicles are stored, repaired, painted or equipped for remuneration.

*Garage, private* means any building or structure designed principally for the storage or parking of vehicles, which use is incidental to the primary use of the property, whether attached to or separate from the primary structure, and is at least ten (10) feet by twenty (20) feet and seven (7) feet vertically of clear interior space.

*Gasoline station* means any buildings and/or premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail and where minor servicing and repairs may be made.

*Ground floor* means the first floor of a property above finish grade at the front of said property; except that, for purposes of determining what permitted and conditional uses are allowed in a building where certain uses are restricted by this Chapter, the ground floor shall be deemed to be the floor level that has display windows immediately adjacent to grade at the front elevation of the building. Each building shall have only one (1) ground floor.

*Height of building* means the highest vertical distance measured on any side of the building. Said vertical distance on each side shall be measured from the elevation of the natural grade on each side to the highest point of the roof surface on said side.

*Historic building* means any building or structure that was constructed during the Town's Period of Significance (POS), 1880—1952.

*Historic District* means the Town of Crested Butte, according to the official plat thereof.

*Home occupation* means any commercial use carried on within a dwelling which is:

- a. Customarily conducted entirely within a dwelling unit or an accessory building by the occupants of the dwelling unit;
- b. Incidental and secondary to the use of the subject parcel for residential purposes;
- c. Conducted in such a fashion as not to change the manner or character of use of the dwelling;

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- d. Conducted in such a fashion that the commercial noises and activities do not interfere with the quiet and dignity of the neighborhood; and
  - e. Conducted without the employment of individuals other than the occupants of the dwelling.

*Hotel or lodge* means a building, parcel or portion thereof containing multiple units used for overnight lodging by the general public on a short-term basis for a fee, with or without kitchens within individual units, with or without meals provided, and which has common reservation and cleaning services, combine utilities, housekeeping services, on-site meeting room space, maintenance, management and reception services, and an on-site lobby with appropriate on-site desk service and with appropriate on-site recreational facilities. Units in Hotels or Lodges shall at all times be available for use by the general public on a short-term basis for a fee. For those such units with flexible unit configurations, also known as *lock-off units*, each rentable division, or key, shall constitute a Hotel or Lodge unit for purposes of this Chapter. For each bedroom, fifteen (15) square feet of meeting space shall be included in the Hotel or Lodge project, with a minimum of three hundred fifty (350) square feet of meeting space for each Hotel or Lodge project. Said space shall be capable of being isolated from the rest of the project and may be used for multiple purposes.

*Improvement* means any building, structure or other object constituting a physical betterment of real property or any part of such betterment.

*Individual dry storage unit* means a dry, cold storage unit normally utilized for the temporary storage of nonperishable goods or property. Such units shall not be used as offices or for any sales or operations of a wholesale or retail nature, and shall have no water or sewer services.

*Insubstantial* means any building, addition, alteration, renovation, destruction or reconstruction of any structure which is found to be insignificant enough so that a building permit will be issued without publication and architectural approval, so long as all other conditions of this Code are complied with. Such determination of insignificance shall be made as set forth in Paragraph 16-22-100(a)(9) of this Chapter by the Building Inspector and one (1) designated Board member upon the following criteria:

- a. The visibility of the proposed construction from the streets or other commonly traveled ways;
- b. The extent of the proposed physical change as related to the entire structure; and
- c. The effect of the proposed construction or change in the character of the surrounding neighborhood.

*Junk yard* means a building, structure, parcel of land or portion thereof, used for collecting, storage or sale of used parts, rags, scrap metal or discarded material, or for the collection, storage, salvage or demolition of vehicles, machinery or other materials and including the sale of the whole or parts thereof.

*Kitchen* means a designated space containing at least a device or appliance for heating food, a separate sink with hot and cold running water and a refrigeration appliance.

*Light industrial operation* means an assembly, manufacturing, processing, packaging or other industrial operation which is conducted in such a manner that all resultant cinders, dust, fumes, gases, odors, smoke and vapor are effectively confined to the premises, or disposed of so as to avoid significant air pollution; and conducted so that no noise or lights would be perceptible, noticeable or observable by a person at a distance of three hundred (300) feet or more from the premises.

*Lot* means a parcel of land or tract occupied or designed to be occupied by a main building, structure or use, arranged so as to meet all the requirements of this Chapter, abutting upon a public street, alley or public way.

*Lot area* means the number of square feet included within the boundaries of the lot, and measured on a horizontal plane, exclusive of any area in a public or private street or alley which is open to the public use.

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*Lot line, front* means the property line dividing a lot from the street or, in the absence of a street, from an alley. On a corner lot, only one (1) street shall be considered as a front lot line, and the shorter street frontage shall be considered the front lot line unless permission otherwise is granted by the Board. On a corner lot which is square, the front lot line shall be determined by the Board.

*Lot line, rear* means the line opposite the front lot line.

*Lot line, side* means any lot lines other than front lot lines or rear lot lines.

*Lot width* means the average distance between the side lot lines, measured perpendicularly from one (1) of the sides.

*Maintenance*. See *repair*.

*Marijuana establishment* shall have the meaning ascribed to such term in Section 6-5-40 of this Code.

*Maximum building height* means the maximum vertical height of a structure. That distance shall be measured vertically from each point on the natural grade to the highest point of the structure directly above that same point. The *maximum building height* shall define a plane that is parallel to the natural grade at the specified distance or height. No part of the structure shall penetrate that plane.

*Mechanical lift parking system* means a parking system by which an automobile is parked vertically above another automobile and is lifted and lowered by mechanical means.

*Medical marijuana center* shall have the meaning ascribed to such term in Section 6-5-40 of this Code.

*Medical marijuana-infused product manufacturer* shall have the meaning ascribed to such term in Section 6-5-40 of this Code.

*Micro-distillery* means a business known as a craft or designer distillery that manufactures spirituous liquors on site for distribution on or off site in quantities not to exceed one thousand seven hundred (1,700) cases or fifteen thousand three hundred (15,300) liters (4,041 gallons) of finished product per year. A micro-distillery must be licensed by the appropriate state and federal authorities. A micro-distillery must operate in conjunction with a tasting room, retail outlet and/or restaurant bar use. If a micro-distillery operates in conjunction with a restaurant, then a conditional use for the restaurant must also be granted for the location or reapproved if a restaurant use has previously been granted a conditional use permit for the location.

*Minimum lot street frontage* means the minimum width of the lot or parcel where it fronts on a street or avenue. On lots or parcels that front on more than one (1) street or avenue, this shall apply to that frontage defined as the front yard.

*Mobile home*, also commonly referred to as a *manufactured home*, means a residence designed for human occupancy that is constructed off-site by a licensed manufacturer to the Manufactured Home Construction and Safety Standards as determined by the Department of Housing and Urban Development (HUD). Mobile homes are transported to the site and are equipped with a permanent chassis for purposes of relocation. Mobile homes shall be equipped with a HUD label and shall meet snow and wind load requirements determined by the Building Department. Additions and appended structures, regardless of whether such structures are capable of relocation by transport, may be attached to a mobile home if approved through the Town's building design review process.

*Mobile home accessory building* means a building or room attached to a mobile home, the use of which is incidental to that of the mobile home.

*Mobile home park* means a parcel of land utilized or intended for use for the renting of occupancy spaces for one (1) or more mobile homes, such use being coterminous with the "M" Mobile Home District.

*Mobile home, transient*. See *Transient mobile home*.

*Motel* shall have the same meaning as hotel or lodge.

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*Moving* means any change in the location of a structure, including the relocation of a structure to a new location on the same lot or lots.

*Museum* means a building and/or defined space therein that, as its principal use, is designated and operated for education and/or aesthetic purposes, with the primary function of displaying and interacting with animate and/or inanimate objects, and caring for such objects, exhibited to the general public on a regular basis.

*Natural grade* means the undisturbed contour of a site prior to development or, in the case of a previously disturbed site, as determined by the Building Official. Natural grade shall be measured in elevation above sea level or relative to a benchmark undisturbed on the site or adjacent to the site. Building permit applications shall represent the natural grade by no greater than one-foot contour lines on the site plan on sites that vary more than two (2) vertical feet within the building site or one (1) vertical foot within the building footprint. The natural grade of a site may not be altered without the prior approval of the Building Official. The Building Official may authorize an alteration in natural grade to facilitate access or drainage on a site in the Building Official's reasonable discretion.

*Neighborhood business* means small convenience establishments designed and intended to serve the daily, or frequent, trade or service needs of the surrounding neighborhood. Such establishments include, but are not limited to, food stores, pharmaceuticals, barber shops, beauty shops, shoe repair, shop craft and business and professional offices. Such uses shall be limited to one thousand (1,000) square feet per use.

*Neighborhood context and size* means the size, scale and density of buildings, and the amount of open space, which exist on the average on other lots within two hundred fifty (250) feet of the property.

*Nonconforming use* means the use of a structure or premises, or any portion thereof, legal at the time it was established, but in conflict with the provisions of this Chapter or any amendments thereto; and as further defined by Article 19 of this Chapter.

*Office uses* means the use of a property for the transaction of business or professional services and activities including, without limitation, realtors, timeshare sales, nonprofit organizations, advertising or insurance agents, attorneys, architects, designers, interior designers, engineers, accountants, veterinarians, sales promotions, property management companies or agents and other licensed professionals.

*Open space* means open and unoccupied land which does not include any structure above grade level. Decks less than eighteen (18) inches above grade level shall not be considered *structures* for purposes of this definition.

*Parcel* means any combination of or change in lots or tracts, regardless of location, that is the result of resubdividing land through the use of the minor or major subdivision process. After a resubdivision, each building site will receive a parcel designation such as A, B, C or D, and each parcel will be legally described as part or all of a lot or lots, or part or all of a tract or tracts.

*Parking, off-street* means any parking space not less than nine (9) feet in width, eighteen (18) feet in length and seven (7) feet in height, located wholly within the limits of one (1) or more lots, except as otherwise provided in Section 16-16-30(f) of this Chapter.

*Parking space* means an area, exclusive of drives, turning areas or loading space, devoted to the parking of one (1) vehicle.

*Permitted use* means a use of land within any particular zoning district which is authorized as a matter of right so long as all other requirements of this Chapter are met.

*Person* means a natural person, association, firm, partnership, corporation, joint venture, joint stock company, club, company, business, trust or other organization acting as a group or unit, or the manager, lessee, agent, servant, officer or employee of any of them.

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*Personal services establishments* means businesses offering personal services, including but not limited to travel agents, booking agents, recreation services providers or planners, outfitting companies, massage, yoga, healing arts, chiropractic offices, acupuncture, martial arts and other similar disciplines, dance, alternative health services, spas, salons, barber and beauty shops, stationery and graphics shops, Laundromats (not commercial), shoe repair, sewing and tailoring, nonproduction copying and printing, studios for instruction in the arts, art studios, radio and television broadcasting and catering services.

*Planned Unit Development* means a unified project involving a related group of uses, planned as a single entity and designed to provide variety and diversity through the variance of normal zoning standards while maximizing benefits to the Town, preserving and enhancing unique features of the development site and maintaining harmony with neighborhood context. The details as to eligibility for and approval of a planned unit development are set forth in Article 6, Division 4 of this Chapter.

*Plans* means all plans, specifications, sketches, renditions and other materials depicting and describing a building or structure in sufficient detail and clarity that a determination can be made by the Building Inspector and the Board that said building or structure is in full compliance with all applicable Town, county, state, federal and other governmental codes pertaining to such building, structure or use.

*Primary dwelling* means the only detached dwelling on a site or, if more than one (1) existing or approved dwelling is situated on a lot, then the *primary dwelling* is the dwelling upon a site whose aggregate floor area is the greatest of all detached dwellings on the site.

*Primary residence* means a residence which is the usual place of return for housing as documented by the vested title property owner of record signing an affidavit to that affect and providing at least two of the following: motor vehicle registration, driver's license, Colorado state identification card, voter registration, or tax documents A person can have only one primary residence.

*Principal building* means the building which is the largest structure on a site, unless otherwise determined by the Board, considering the location and use of all the structures on the site.

*Professional office* means offices which are devoted to such professions as doctors, lawyers, dentists, architects and other similar professional activities.

*Public building* means any building open to the general use, participation or enjoyment of the public; and owned by the Town, County, State or federal government or any subdivision thereof.

*Public restrooms* means restrooms which are accessible to the general public, as opposed to patrons, which are accessible to the public between the hours of 9:00 a.m. and 9:00 p.m. daily, and which are appropriately signed so that the public is aware of their location and accessibility.

*Public utility* means any physical facility designed for:

- a. The storage and transportation of electricity, petroleum products and other forms of energy;
- b. The storage and transportation of telephone and other forms of communication; or
- c. The storage and transportation of water and sewage.

Such utilities shall include, but not be limited to, an electric substation or generating plant, a gas regulatory station, a gas storage facility, a telephone exchange, a water or sewer pumping station and a water reservoir.

*Receiving site* means the target real property within the Town upon which a relocated building or structure is proposed for relocation.

*Reconstruction* means the work of rebuilding a structure.

*Redevelopment parcel* means any real property within the Town which is the subject of a demolition or relocation application and a Redevelopment plan.

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*Redevelopment plan* means a set of drawings, plans and specifications for the construction of a building or structure on the same lot or parcel following demolition or relocation; a redevelopment plan shall meet all of the zoning requirements, design standards, recorded easements and covenants for the property upon which the development is to be situated.

*Relocation* means the removal of a building or structure from its foundation or current location and then moving or transporting it to a receiving site; the relocated building or structure shall meet all of the zoning requirements, recorded easements and/or covenants of the property upon which it is to be situated.

*Remodeling* means any act or process which changes one (1) or more of the exterior architectural features of a structure, combination of structures, site or area in the Historic District.

*Rental, long-term* means the rental of any residential property by a person to any natural person who resides in Gunnison County as that person's primary residence for a term of not less than six (6) months, which limitation of term of rental shall be recorded in the real property records of the County pursuant to Section 16-9-70 of this Chapter. Where such property is vacant for a period of three (3) months or more during such six-month period, such property shall not constitute a long-term rental under this definition. Such property may not be rented to any person with greater than ten percent (10%) ownership interest in the property or to any person with greater than ten percent (10%) ownership interest in any entity with ownership of the property. For purposes of this definition, natural person is only any individual and shall not include any association, firm, partnership, corporation or other entity. In order to meet the definition of a long-term rental, such rental must be actively offered for rental, as supported by reasonable evidence of such rental.

*Rental, short-term* means the rental of any residential unit for a term of six (6) months or less, designed for occupancy by a family. *Rental, short-term* shall not include a short-term residential accommodation, Condo Hotel, Hotel or Lodge or Motel.

*Repair* means work done to maintain a structure in good condition.

*Replacement housing* means deed-restricted long-term rental or resident-occupied affordable housing that is required due to demolition or relocation of existing residential buildings or structures.

*Residential unit* means one (1) or more rooms, in addition to separate kitchen and bath facilities, for occupancy by a family, independent of other families, on a long-term basis, as opposed to a short-term basis (i.e., Timeshare Estate; Short-Term Residential Accommodation; Hotel or Lodge; Motel; Condo Hotel; Rental, Short-Term).

*Residential unit, historic accessory structures* means one (1) or more rooms, in addition to a separate bath and closet facility, which is located in a historic accessory building and is intended or designed for occupancy by one (1) or more people on a long-term rental basis.

*Residential unit studio* means a residential unit containing no more than one (1) habitable room.

*Resort* means a group of buildings and/or facilities provided primarily for recreational purposes and used to accommodate individuals on a temporary or term occupancy basis.

*Restaurant* means a place where meals and other foods are served to the public, whether for consumption on or off the premises, and where alcoholic beverages may be served. Food is prepared on-site, utilizing service, dish and food preparation washing facilities. The term includes *restricted food service establishments*, which are subject to different parking and EQR requirements. The term does not include:

- a. Private boarding and rooming houses;
- b. Child care centers;
- c. Establishments existing primarily for purposes other than providing beverages or food and which serve only coffee, tea or other beverages, popcorn, cotton candy, prepackaged nonperishable

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- doughnuts, pastries or other similar goods obtained from sources complying with all relevant state laws;
  - d. Transient merchants or vendors, as defined in Chapter 6, Article 4 of this Code; and
  - e. Churches and noncommercial church-related facilities.

*Restoration* means the work of putting a structure into its near or exact original form, when it has been modified since original construction but deteriorated due to neglect, or when it has been damaged.

*Restricted food service establishments* means food service establishments serving only prepackaged food in individual portions which may be warmed or otherwise handled after selection on site only by the purchaser, or serving ice cream. These establishments do not cook raw food, use waitpersons or mechanical dishwashers or serve alcoholic beverages.

*Retail bakery* means a business offering for sale baked goods and other associated and like food, and may include nonalcoholic beverages, which food and beverages are prepared either on or off the business premises, and are sold to be consumed off the premises of the business. No seating or on-premises consumption of food or beverages is permitted.

*Retail marijuana products manufacturer* shall have the meaning ascribed to such term in Section 6-5-40 of this Code.

*Retail marijuana store* shall have the meaning ascribed to such term in Section 6-5-40 of this Code.

*Retail marijuana testing facility* shall have the meaning ascribed to such term in Section 6-5-40 of this Code.

*Right-to-use estate*, in connections with Timesharing, shall include non-fee interests whereby the owners of said estates have leases or licenses granting said owners a right to occupy property during a specific time period, but not a fee interest (e.g., right-to-use interest, vacation club interest, vacation license, vacation lease, destination club interest).

*School* means a public or private preschool or a public or private elementary, middle, junior high or high school, all for the purpose of educating persons primarily under the age of eighteen (18).

*Service yard* means any yard in which fuel, materials or other supplies are stored.

*Shop craft* means a business establishment devoted solely to the arts and crafts, which conforms to the following requirements:

- a. Sells, produces or makes items that, by their nature, are designed or made by an artist or craftsman by using hand skills;
- b. Is contained within an area not exceeding two thousand five hundred (2,500) square feet;
- c. Employs not more than three (3) persons; and
- d. Is conducted in such a fashion that:
  - 1. No more dust, fumes, gases, odors, smoke or vapors escape from the premises than that which is usual in the neighborhood.
  - 2. All by-products, including waste, are effectively confined to the premises or disposed of off the premises so as to avoid air pollution other than that which is usual in the neighborhood; and
  - 3. No noise or disturbance of adjoining premises takes place other than that which is usual in the neighborhood.

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*Short-term residential accommodation* means a building, parcel or portion thereof that is condominiumized, containing six (6) units or more used for overnight lodging by either the owners thereof on a short-term basis for no fee or by the general public on a short-term basis for a fee. Short-term residential accommodations may be with or without kitchens within individual units, with or without meals provided, and shall have common reservation and cleaning services, combined utilities, housekeeping services, on-site meeting room space, maintenance, management and reception services, an on-site lobby with appropriate on-site desk service and, where appropriate, on-site recreational facilities. For those such properties with lock-off units, each key shall constitute a short-term residential accommodation for purposes of this Chapter. Bed and breakfasts, hotels or lodges, motels, resorts and condo hotels shall not be considered short-term residential accommodations. For each bedroom, fifteen (15) square feet of meeting space shall be included in the project, with a minimum of three hundred fifty (350) square feet of meeting space for each such project. Said space shall be capable of being isolated from the rest of the project and may be used for multiple purposes.

*Sign* means any device, including any letters, figures or pictorial matter displayed for advertising purposes, whether placed on any natural object, upon any structure or building or upon any surface, or is freestanding, which would be visible from any public street, alley or right-of-way.

*Sign area* means the total exterior surface of all faces of any sign.

*Sign, directory* means a sign erected for the purpose of identifying one (1) or more businesses located within one (1) building. Such a sign may contain the name of the building or project, and/or only the individual names of the businesses located therein.

*Sign, freestanding* means a sign erected upon its own support and not attached to a building.

*Sign, projecting* means any sign supported by a building and projecting therefrom.

*Sign, wall* means any sign painted on, incorporated in or affixed to a building wall or window; or any sign consisting of cut-out letters or devices affixed to a building wall or window, with no background defined on the building wall.

*Site amenities* means features built up into a project or property site which benefit the public at large, including but not limited to landscaped open space, display of art, items of historic interest displayed or preserved, public bathrooms, water fountains, kiosks, public benches and other features to be used or appreciated primarily by the public.

*Sleeping unit* means a room or portion thereof used for sleeping.

*Snack bar* means a food service establishment serving beverages and food prepared off premises, which may include ice cream and popcorn. Such previously prepared food maybe warmed or heated on premises. No grill or oven may be used. No food or beverages may be delivered off premises or purchased for consumption off premises. Liquor may be served pursuant to a valid liquor license.

*Special civic event* means an event which is sponsored primarily by a public entity or nonprofit corporation or association, which occurs no more frequently than twice a year.

*Story* means that portion of a building included between the surface of any floor and the surface of the floor next above it. If there is no floor above it, then the space between such floor and the ceiling next above it shall be the story.

*Street* means a public thoroughfare for vehicular traffic, other than an alley.

*Structural alteration* means any change to a structure or subtraction of parts from a structure, including changes to walls, columns, beams, girders, foundations, doors, windows or other similar component parts of a structure.

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*Structure* means anything constructed or erected, which requires location on the ground or attached to something having location on the ground, including storage, transmission or distribution facilities of public utilities. *Structure* shall also include a covering enclosing a space, such as a tent or a fabric structure, located on any lot or parcel in any zone district for a period in excess of fourteen (14) days. The process of locating such a covering or fabric structure on a lot or parcel shall fall within the definition of erected, as that term is used in Subsection 18-13-40(a) of this Code.

*Subordinate and incidental use* means a use, which must be separately approved by the Board of Zoning and Architectural Review, and which is subordinate and incidental to another approved use at the same premises and location. The approval for such subordinate and incidental use is contingent upon the continued primary use with which the subordinate and incidental use is associated and approved. In the event the primary use for the location and premises ceases to operate, then the approval for the subordinate and incidental use shall also be withdrawn, and such subordinate and incidental use shall no longer operate.

*Substantial* means material, considerable in importance, value, degree, amount or extent, as determined by the Board.

*Tasting/sales room micro-distillery* means a micro-distillery tasting or sales room that distributes and sells spirits produced from its associated state-licensed micro-distillery production facility. If it is not associated with a micro-distillery production facility on site, then it shall be considered a retail use. If it is associated on the same site with its production facility, then it can be approved with the conditional use approval for the micro-distillery.

*Timeshare development or timeshare development project* means the development of real property in a manner that involves the creation of timeshare estates.

*Timeshare estate* shall include, for purposes of this Chapter, those rights and interests referred to in Section 38-33-110, C.R.S., where the annually recurring exclusive right to possession and occupancy is defined by a schedule, formula or other similar mechanism, except that timeshare estates shall not include right-to-use estates. The term *timeshare estate* shall apply to such rights and interests regardless of the applicant's terminology, such as, and not for purposes of limitation, interval estates, interval ownership, time-span estates, fractional interests, fractional fees and fee-simple timeshare estates. *Timeshare estates* are sometimes referred to in this Chapter as *timeshare interests*.

*Timesharing* or *timeshare* refers to the use of real property where the owner holds a timeshare estate. Timesharing is only permitted under short-term residential accommodation uses.

*Townhouse* or *townhouse project* means a building or buildings consisting of fee simple estates to individual units having common vertical walls, together with fee simple title to the land on which such unit is built and any yard and parking space appurtenant to said unit; and any easements for ingress and egress and for installation, replacement, repair and maintenance of utilities appurtenant to a unit. No townhouse or townhouse projects shall have common horizontal walls.

*Transient merchant* means any person who engages in vending activity on a temporary basis not exceeding forty-five (45) days in any calendar year.

*Transientmobile home*, also commonly referred to as *travel camper*, *camper*, *camp trailer*, *travel trailer* or *motor home*, means a living unit designed for temporary occupancy as moved from place to place, often a recreational abode or vehicle, with or without sanitary facilities, and equipped or constructed for repeated travel by wheels upon highways or roads; or which is a bus, truck, car or other motor vehicle converted for sleeping or overnight habitation.

*Use* means the purpose for which any land, building or structure is designed, maintained or occupied. Multiples of uses are prohibited unless expressly allowed.

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*Vacation rental* means (i) the rental or lease of a property for a period of 29 or less consecutive nights or less; or (ii) the rental or lease of no more than two sleeping units within a property for a period of 29 or less consecutive nights where the owner or agent is present during occupancy. Vacation rental use is not a residential use.

*Variance* means any deviation from the requirements of this Chapter with respect to width, yard size, distance, slope and excessive slope review, but not characteristics associated with uses as set forth in Article 9 of this Code.

*Veterinary clinic or hospital* means a veterinary establishment that provides routine on-site veterinary services, grooming facilities, surgeries, and necessary hospitalization for small, non-hoofed domestic animals including: treatment rooms, surgical rooms, and indoor kennels for overnight boarding of patients recovering from surgery, serious illnesses, or wound treatment. Board of animals is not allowed when not associated with veterinary care requirements for patient recovery.

*Wholesale business* means a business which sells items to persons other than the ultimate consumer.

*Yard* means a space on the same lot with a building which is open, unoccupied and unobstructed by buildings or structures from the ground upward, except for fences or as otherwise provided herein.

*Yard, front* means a yard extending across the full width of the lot between the front lot line and the nearest line or point of a building.

*Yard, minimum*, when used in conjunction with "front," "rear" or "side," refers to the required distance, and the land resulting therefrom, between any adjacent lot line and the closest possible line of the conforming structure. Overhanging eaves are included in the closest possible line. Ground level decks, less than eighteen (18) inches above grade, are not included in the closest possible line, unless such decks are fenced or covered. The construction and use of any such deck within a front, rear or side yard setback must meet the criteria required for approval of a nonconforming aspect as set forth in Section 16-19-90 of this Chapter.

*Yard, rear* means a yard extending across the full width of the lot between the rear lot line and the nearest line or point of a building.

*Yard, side* means a yard extending from the front yard to the rear yard between the side lot. (Prior code 15-2-3; Ord. 8 §1, 1988; Ord. 3 §§1, 2, 1989; Ord. 4 §§1, 2, 1990; Ord. 29 §§2, 14, 1990; Ord. 4 §6, 1991; Ord. 16 §2, 1992; Ord. 18 §1, 1992; Ord. 22 §§3, 8, 10, 11, 12, 1993; Ord. 11 §4, 1993; Ord. 3 §§4, 5, 6, 15, 29, 1994; Ord. 3 §1, 1995; Ord. 5 §§1, 4, 5, 13, 1995; Ord. 23 §1, 1995; Ord. 40 §1, 1995; Ord. 41 §2, 1995; Ord. 7 §§3, 4, 1997; Ord. 12, 1997; Ord. 8 §1, 1998; Ord. 17 §1, 1998; Ord. 12 §1, 1999; Ord. 18 §1, 1999; Ord. 5 §§12—15, 2000; Ord. 10, 2000; Ord. 14 §2, 2000; Ord. 11 §§1, 2, 2001; Ord. 2 §1, 2002; Ord. 6 §11, 2002; Ord. 23 §§1, 2, 4, 2002; Ord. 7 §1, 2003; Ord. 24 §2, 2003; Ord. 21 §§4, 5, 6, 8, 2004; Ord. 2 §1, 2006; Ord. 10 §1, 2006; Ord. 11 §§2, 3, 2006; Ord. 17 §1, 2007; Ord. 8 §1, 2008; Ord. 21 §1, 2008; Ord. 3 §1, 2009; Ord. 4 §1, 2009; Ord. 15 §1, 2009; Ord. 17 §3, 2009; Ord. 5 §1, 2010; Ord. 7 §§1, 2, 2011; Ord. 9 §3, 2011; Ord. 20 §§1, 3, 2011; Ord. 19 §1, 2011; Ord. 10 §1, 2012; Ord. 16 §1, 2013; Ord. 19 §2, 2013; Ord. 9, §3, 2015 ; Ord. 12 §2, 2016; Ord. No. 3 , § 1, 3-6-2017; Ord. No. 6 , § 1, 6-5-2017; Ord. No. 16 , § 1, 7-10-2017; Ord. No. 30 , § 1, 1-7-2019; Ord. No. 34 , § 1, 9-16-2019; Ord. No. 19 , § 1, 7-20-2020; Ord. 13, § 1, 2021; Ord. No. 21 , § 1, 10-18-21; Ord. No. 17 , § 1, 9-6-2022; Ord. No. 2 , § 2, 3-6-2023)

## **ARTICLE 2 Historic Preservation and Architectural Control Historic District**

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## **Sec. 16-2-10. Purpose and intent.**

Portions of the Town were designated a National Register Historic District in 1974. This Division's purpose and intent is to:

- (1) Prevent excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior appearance of buildings and structures throughout the Town from:
  - a. Adversely affecting the desirability of the immediate area, neighboring areas and/or the entire Town, for residential and business purposes or other uses;
  - b. Impairing the benefits of occupancy of existing property in such areas;
  - c. Impairing the stability and value of both improved and unimproved real property in such areas;
  - d. Preventing the most appropriate development of such areas; and
  - e. Producing degeneration of property in such areas, with attendant deterioration of conditions affecting the health, safety, comfort and general welfare of the inhabitants thereof.
- (2) Protect and enhance the Town's attractions for residents, visitors, tourists and the support and stimulus to business thereby provided;
- (3) Protect the unique character of the Town;
- (4) Safeguard the Town's historic, aesthetic and cultural heritage;
- (5) Foster civic pride in the beauty and accomplishments of the past;
- (6) Strengthen the economy of the Town;
- (7) Promote the use of the historic district for the education, pleasure and welfare of the people of the Town; and
- (8) Ensure compatible and orderly growth.

(Prior code 15-2-22; Ord. 3 §31, 1994; Ord. 2 §§2—4, 2001; Ord. 4 §1, 2009)

## **Sec. 16-2-20. Restrictions.**

Unless otherwise specifically provided in this Article, any erection, moving, demolition, reconstruction, restoration, improvement or alteration of any structure shall be prohibited unless the Board first reviews the plans and issues a Certificate of Architectural Appropriateness for said change in the structure. No building permit shall be issued unless the Board first issues a Certificate of Architectural Appropriateness for the proposed structure, except in the case when the Board deems said structure or structural change to be "insubstantial." (Prior code 15-2-22; Ord. 3 §31, 1994; Ord. 2 §5, 2001; Ord. 4 §1, 2009; Ord. No. 17 , § 1, 7-20-20)

## **Sec. 16-2-30. Review criteria.**

When reviewing the plans for the proposed structure or structural changes, the Board shall consider the following historic and architectural criteria:

- (1) Excessive similarity. If the proposed new construction, demolition, addition or alteration to an existing structure would be detrimental to the desirability, property values or development of the surrounding area and/or to the Town, so as to involve one (1) or more of the harmful effects set forth in Section 16-2-10 above or otherwise fail to enhance the Town's historic, aesthetic or cultural heritage, by reason of excessive similarity to another structure, the Board shall deny approval of a building permit for the

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structure. Excessive similarity shall be determined by a review of all structures of like use, existing or approved, and of any other structure included in the same permit application, within the same zoning classification and within two hundred fifty (250) feet of the proposed site. The review shall be accomplished to prevent similarity to one (1) or more of the following features of exterior design and appearance:

- a. Apparently identical facade;
  - b. Substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the facade facing the street, including reverse arrangements;
  - c. Substantially identical massing of patterns, scale, building footprint or materials, as seen from the street; or
  - d. Other significant identical features of design.
- (2) Excessive dissimilarity or inappropriateness. If the proposed new construction, demolition, addition or alteration to an existing structure would be detrimental to the desirability, property values or development of the surrounding area and/or to the Town, so as to involve one (1) of the harmful effects set forth in Section 16-2-10 above, or otherwise fail to enhance the Town's historic, aesthetic or cultural heritage, by reason of excessive dissimilarity or other inappropriateness to the Town's historic design, the Board shall deny approval of a building permit for the structure. Excessive dissimilarity or other inappropriateness shall be determined by reviewing the duly adopted Design Guidelines - Town, as well as by a comparison of all structures of like use, existing or approved, and of any other structure included in the same permit application, within the same zoning classification, to determine if one (1) or more of the following features of exterior design and appearance exist:
- a. Dissimilarity or inappropriateness as to cubical content or gross floor area;
  - b. Dissimilarity or inappropriateness as to height of building or height of roof;
  - c. Dissimilarity or inappropriateness as to historic architectural design; or
  - d. Dissimilarity or inappropriateness as to other significant design features such as material, quality or architectural design.
- (3) Design Standards and Guidelines. The Town has adopted the Design Standards and Guidelines as amended from time to time by Ordinance. A copy of the Design Standards and Guidelines is available in the Town Clerk's Office. The Design Standards and Guidelines apply to the Board's review and approval of requests for a Certificate of Architectural Appropriateness as set forth in Sections 16-2-20 and 16-2-30. The Design Standards and Guidelines also apply to the review and approval of Major Subdivisions under Chapter 17, Article 5; subdivision Tract and Lot Design in Chapter 17, Article 7; and Subdivision Landscaping in Chapter 17, Article 13.
- a. An applicant seeking a Certificate of Architectural Appropriateness under Section 16-2-20 shall demonstrate that the proposed construction, demolition, addition or alteration to an existing structure complies with the applicable Design Standards and Guidelines.
  - b. If the Board determines that the proposed construction, demolition, addition or alteration to an existing structure does not satisfy the applicable Design Guidelines and Standards, the Board shall deny the request for a Certificate of Architectural Appropriateness, or impose such conditions of approval on the Certificate of Architectural Appropriateness it deems necessary for the proposal to comply with the Design Standards and Guidelines and Review Criteria.

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**Sec. 16-2-40. Reserved.**

Ord. No. 34 , § 2, adopted September 16, 2019, repealed § 16-2-40, which pertained to ordinary maintenance and repair and derived from Prior code 15-2-22.

**Sec. 16-2-50. Reserved.**

Ord. No. 34 , § 2, adopted September 16, 2019, repealed § 16-2-50, which pertained to dangerous conditions and derived from Prior code 15-2-22; Ord. 3, §§ 22, 31, 1994.

**Sec. 16-2-60. Reserved.**

Ord. No. 34 , § 2, adopted September 16, 2019, repealed § 16-2-60, which pertained to demolition of historic structures and derived from Ord. 26 § 1, 2008; Ord. 4 § 1, 2009; Ord. 6 § 3, 2010.

## **ARTICLE 3 Zoning Districts**

**Sec. 16-3-10. Establishment of districts.**

In order to carry out the intent and purposes of this Article, the Town is hereby divided into the following twenty (20) zoning districts:

- "R1" Residential
- "R1A" Residential
- "R1B" Residential
- "R1C" Core Residential
- "R1D" Residential
- "R1E" Residential
- "R2" Residential/Multi-Family
- "R2A" Residential
- "R2C" Core Residential/Multi-Family
- "R3C" Core Residential/Business
- "R4" Residential/Multi-Family
- "T" Tourist
- "B1" Business Core
- "B2" Business/Highway Related
- "B3" Business/Historic Residential
- "B4" West End Business/Historic Residential
- "C" Commercial
- "M" Mobile Home

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"P" Public

"A-O" Agriculture-Open District

(Prior code 15-2-4; Ord. 3 §8, 1994; Ord. 39 §1, 1995; Ord. 14 §1, 2000; Ord. 15 §1, 2002; Ord. 3 §7, 2009)

### **Sec. 16-3-20. Determination of uses.**

If a question arises as to whether a specific use falls within any of the above-delineated use categories, any person may apply to the Board for a determination as to whether a specified use is expressly or conditionally permitted. Such determination shall be made on an analysis of the intention of the district and the compatibility of the proposed use with specified permitted and conditional uses. All permitted and conditional uses within any district are subject to the additional regulations as contained in this Chapter and any ordinance or regulations adopted by the Town or other governmental entity with proper jurisdiction.

### **Sec. 16-3-30. Zoning district map and interpretation.**

- (a) The location and boundaries of the zoning districts herein established, along with the height line and stream margin review line, are set forth on the zoning district map of the Town, a copy of which is available for inspection in the Planning Department of the Town, and which, with all notations, references and other information shown thereon, is incorporated herein as part of this Chapter.
- (b) Regardless of the existence of purported copies of the official zoning district map which from time to time may be made or published, the official map, which shall be available for public inspection upon request, shall be the final authority as to the current zoning district status of the Town.
- (c) All legal changes made in accordance with the provisions of this Chapter shall be promptly entered on the official zoning map.
- (d) When any contradiction or conflict exists in interpreting the zoning district map, the Building Inspector shall interpret said map upon the request of any person, and any person aggrieved by such interpretation may appeal the same to the Board, whose interpretation shall be final. Unless otherwise indicated on said map, the district boundaries shall be construed to be the centerlines of streets or alleys, or helot lines of property divided into lots and blocks.

(Prior code 15-2-4; Ord. 4 §1, 2009; Ord. 3 §7, 2009)

### **Sec. 16-3-40. Uses.**

Except as herein provided, no building, structure or property shall hereafter be used, and no building or other structure shall be erected, reconstructed, altered or moved into or within the Town, except in conformance with the regulations of the zoning district in which such building, structure or property is located.

### **Sec. 16-3-50. Permitted, conditional and nonconforming uses.**

Within any particular zoning district, there are four (4) types of uses. These are:

- (1) Permitted uses, which are uses allowed as a matter of right without special authorization.
- (2) Conditional uses, which are uses allowed only when authorized by the Board through the granting of a conditional use permit. The procedures for granting of conditional use permits are set forth elsewhere in this Chapter.

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- (3) Nonconforming uses, which are uses specifically not included within the district regulations but which already existed at the time of the enactment of this Article.
  - (4) Timesharing uses, which are uses available to the community as a new development technique that, under controlled conditions and in certain circumstances, may be of economic benefit through increased investment and greater utilization of facilities. Such uses are allowed only when authorized by the Board through the granting of a conditional use permit.

For purposes of ascertaining the use classification of a business, the business will be classified based upon the primary activity of the business, as measured by the square footage allocated to such use as a percentage of the overall use. Only uses which are permitted or have been approved as a conditional use are allowed.

## **ARTICLE 4 Residential Districts**

### ***Division 1 "R1" Residential District***

#### **Sec. 16-4-10. Intent of district.**

The purpose for which this District is created is the provision of areas for low-density residential development along with customary accessory uses. Recreational and institutional uses customarily found in proximity to such residential uses are included as conditional uses. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site.

#### **Sec. 16-4-20. Permitted uses.**

The following uses shall be permitted uses in the "R1" District:

- (1) One-family dwelling units.
- (2) Accessory buildings, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal permitted uses.

#### **Sec. 16-4-30. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R1" District:

- (1) Accessory dwellings.
- (2) Two-family dwelling units.
- (3) Public playgrounds and public recreation areas.
- (4) Churches and church schools.
- (5) Nonprofit libraries and museums.
- (6) Farm and garden buildings.
- (7) Public and private schools.
- (8) Shop crafts.

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- (9) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
  - (10) Parking areas.
  - (11) Accessory buildings, nonresidential use, heated.

#### **Sec. 16-4-40. Lot measurements.**

The following shall be lot measurements for property located in the "R1" District:

- (1) Minimum lot area: five thousand (5,000) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: fifty (50) feet.
- (4) Minimum front yard: twenty (20) feet.
- (5) Minimum side yard: seven and one-half (7½) feet for single-story and flat-roofed buildings and as much as eleven and one-half (11½) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

#### **Sec. 16-4-50. Floor areas.**

The following shall be measurements for floor areas for property located in the "R1" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit; provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure, shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
  - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
  - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
- (2) Maximum floor area:
  - a. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling: one thousand (1,000) square feet of floor area or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:

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- a. Principal building: 0.3 as a matter of right, up to 0.4, depending on neighborhood context and lot size; provided that no principal building shall exceed two thousand eight hundred (2,800) square feet.
  - b. All buildings: 0.5, provided that all buildings shall not be larger than three thousand eight hundred (3,800) square feet in the aggregate.

### **Sec. 16-4-60. Building measurements.**

The following shall regulate measurements for buildings located in the "R1" District:

- (1) Maximum building height:
  - a. Principal building: thirty (30) feet.
  - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: thirty-five (35) feet as a matter of right, up to fifty (50) feet, depending upon the location and proximity of adjacent structures, subject to minimum side yard requirements.

### **Sec. 16-4-70. Additional provisions.**

- (a) Open space required: Fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height: seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level: six (6) feet.
- (d) Slope of roof: a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.
- (e) Stream margin review: all uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.

(Prior code 15-2-6; Ord. 4 §5, 1990; Ord. 4 §16, 1991; Ord. 3 §§10, 32, 1994; Ord. 4 §1, 2009)

## ***Division 2 "R1D" Residential District***

### **Sec. 16-4-100. Intent of district.**

The purpose for which this District is created is the provision of areas for low-density residential development along with customary accessory uses. The larger lots in this District provide a transition between the Town and the still larger residential lots outside of Town. Recreational and institutional uses customarily found in proximity to such residential uses are included as conditional uses. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site.

### **Sec. 16-4-110. Permitted uses.**

The following uses shall be permitted in the "R1D" District:

- (1) One-family dwelling units.

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- (2) Accessory buildings, nonresidential use, not heated or plumbed.
  - (3) Home occupations.
  - (4) Private garages as accessory buildings to the principal permitted uses.

#### **Sec. 16-4-120. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R1D" District:

- (1) Accessory dwellings in conjunction with a one-family dwelling unit.
- (2) Two-family dwelling units.
- (3) Public playgrounds and public recreation areas.
- (4) Churches and church schools.
- (5) Nonprofit libraries and museums.
- (6) Farm and garden buildings.
- (7) Public and private schools.
- (8) Shop crafts.
- (9) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
- (10) Parking areas.
- (11) Accessory buildings, nonresidential use, heated.

#### **Sec. 16-4-130. Lot measurements.**

The following shall be lot measurements for property located in the "R1D" District:

- (1) Minimum lot area: nine thousand three hundred seventy-six (9,376) square feet.
- (2) Maximum lot area: eleven thousand four hundred (11,400) square feet.
- (3) Minimum lot width: fifty (50) feet.
- (4) Minimum front yard: twenty (20) feet.
- (5) Minimum side yard: At least seven and one-half (7½) feet, and up to eleven and one-half (11½) feet, dependent upon snow storage and snow shed guidelines.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

#### **Sec. 16-4-140. Floor areas.**

The following shall regulate measurements for floor areas located in the "R1D" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit.
- (2) Maximum floor area:

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- a. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling: one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
- a. The principal building shall not exceed two thousand eight hundred (2,800) square feet.
  - b. All buildings shall not be larger than three thousand eight hundred (3,800) square feet in the aggregate.

### **Sec. 16-4-150. Building measurements.**

The following shall regulate measurements for buildings located in the "R1D" District:

- (1) Maximum building height:
  - a. Principal building: thirty (30) feet.
  - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: thirty-five (35) feet.

### **Sec. 16-4-160. Additional provisions.**

- (a) Open space required: fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12.
- (e) Stream margin review: all uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.

(Prior code 15-2-6.1; Ord. 14 §1, 2000; Ord. 4 §1, 2009)

## ***Division 3 "R1E" Residential District***

### **Sec. 16-4-190. Intent.**

The purpose for which this District is created is the provision of areas for low-density residential development along with customary accessory uses. Recreational and institutional uses customarily found in proximity to such residential uses are included as conditional uses. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site. This District also provides for lots which shall have restrictions placed upon them for the purpose of creating a supply of lots costing less than the market value. These lots will, under certain conditions, permit two-family dwellings.

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### **Sec. 16-4-200. Permitted uses.**

The following uses shall be permitted in the "R1E" District:

- (1) One-family dwelling units.
- (2) Accessory buildings, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal permitted uses.
- (5) Two-family dwelling units, each of which must be occupied by the owner, in the following locations: Block 66, lot 2; Block 66, lot 5; Block 67, lot 2; Block 67, lot 8; Block 68, lot 2; Block 68, lot 9; Block 72, lot 4; Block 73, lot 2; and on the first four (4) lots in this District for which Board approval of a dwelling has been obtained and construction has commenced. In the event of a lapse of the vested property right which resulted from Board approval, then the right to construct a two-family dwelling unit on that particular lot will also lapse, and the right to construct a two-family dwelling unit shall go to the next lot for which the Board approval is obtained. That right shall also lapse if there is a lapse of the vested property right that resulted from Board approval.

### **Sec. 16-4-210. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R1E" District:

- (1) Accessory dwellings, in conjunction with a one-family dwelling unit.
- (2) Two-family dwelling units, in locations other than those permitted in Section 16-4-200 above.
- (3) Public playgrounds and public recreation areas.
- (4) Churches and church schools.
- (5) Nonprofit libraries and museums.
- (6) Farm and garden buildings.
- (7) Public and private schools.
- (8) Shop crafts.
- (9) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
- (10) Parking areas.
- (11) Accessory buildings, nonresidential use, heated.

### **Sec. 16-4-220. Lot measurements.**

The following shall be lot measurements for property located in the "R1E" District:

- (1) Minimum lot area: five thousand (5,000) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: forty-five (45) feet.
- (4) Minimum front yard: twenty (20) feet.

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- (5) Minimum side yard: at least seven and one-half (7½) feet, and up to eleven and one-half (11½) feet, dependent upon snow storage and snow shed guidelines.
  - (6) Minimum rear yard:
    - a. Principal building: ten (10) feet.
    - b. Accessory building: five (5) feet.

#### **Sec. 16-4-230. Floor areas.**

The following shall regulate measurements for floor areas located in the "R1E" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit.
- (2) Maximum floor area:
  - a. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling: one thousand (1,000) square feet of floor area or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
  - a. Principal building: 0.3 as a matter of right, up to 0.4, depending on neighborhood context and lot size, provided that no principal building shall exceed two thousand eight hundred (2,800) square feet.
  - b. All buildings: 0.5, provided that all buildings shall not be larger than three thousand eight hundred (3,800) square feet in the aggregate.

#### **Sec. 16-4-240. Building measurements.**

The following shall regulate measurements for buildings located in the "R1E" District:

- (1) Maximum building height:
  - a. Principal building: thirty (30) feet.
  - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: thirty-five (35) feet.

#### **Sec. 16-4-250. Additional provisions.**

- (a) Open space required: fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12.
- (e) Stream margin review: All uses within twenty (20) feet of a designated water course shall meet the requirement of Section 16-11-10 of this Chapter.

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(Prior code 15-2-6.2; Ord. 14 §1, 2000; Ord. 4 §1, 2009)

## ***Division 4 "R1A" Residential District***

### **Sec. 16-4-280. Intent.**

The purpose for which this District is created is the provision of a residential buffer zone between more intensive residential development and open space lands surrounding the Town. Low-density residential development is allowed, along with customary accessory uses, while preserving visual corridors and substantial open space along the Town's perimeter. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site.

### **Sec. 16-4-290. Permitted uses.**

The following uses shall be permitted in the "R1A" District:

- (1) One-family dwelling units.
- (2) Accessory buildings, nonresidential use, not heated or plumbed.
- (3) Home occupations.

### **Sec. 16-4-300. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R1A" District:

- (1) Accessory dwellings.
- (2) Two-family dwelling units.
- (3) Public playgrounds and public recreation areas.
- (4) Farm and garden buildings.
- (5) Shop crafts.
- (6) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1A" District as set forth in Subsection 16-14-90(c) of this Chapter.
- (7) Public and private schools.
- (8) Parking areas.
- (9) Accessory buildings, nonresidential use, heated.

### **Sec. 16-4-310. Lot measurements.**

The following shall be lot measurements for property located in the "R1A" District:

- (1) Minimum lot area: forty-three thousand five hundred sixty (43,560) square feet.
- (2) Maximum lot area: eighty-seven thousand one hundred twenty (87,120) square feet.
- (3) Minimum lot width: two hundred (200) feet.
- (4) Maximum lot width: four hundred (400) feet.

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- (5) Minimum front yard: fifty (50) feet.
  - (6) Minimum side yard: fifty (50) feet.
  - (7) Minimum rear yard: fifty (50) feet.

### **Sec. 16-4-320. Floor areas.**

The following shall regulate measurements for floor areas located in the "R1A" District:

- (1) Minimum floor area:
  - a. Principal building: one thousand (1,000) square feet.
  - b. Accessory building: four hundred (400) square feet.
- (2) Maximum floor area:
  - a. Principal building, including attached garage if any: four thousand (4,000) square feet.
  - b. Accessory building: one thousand two hundred (1,200) square feet.
  - c. Accessory dwelling: one thousand (1,200) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.

### **Sec. 16-4-330. Building measurements.**

The following shall regulate measurements for buildings located in the "R1A" District:

- (1) Maximum building height:
  - a. Principle building: thirty (30) feet.
  - b. Accessory building: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: fifty (50) feet.

### **Sec. 16-4-340. Additional provisions.**

- (a) Open space required: eighty-eight percent (88%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.
- (e) Stream margin review: All uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.
- (f) Irrigated lawns and gardens: not more than one thousand (1,000) square feet may be irrigated for lawns or gardens.
- (g) Fencing: barbed wire fences are prohibited within fifty (50) feet of Town rights-of-way unless approved by the Board.

(Prior code 15-2-6.5; Ord. 11 §1, 1990; Ord. 3 §§10, 32, 1994; Ord. 4 §1, 2009)

## ***Division 5 "R1B" Residential District***

### **Sec. 16-4-370. Intent.**

This District is created for unique properties situated at higher elevations where lots will be designed to reduce the number of building sites by allowing larger sites as a transition between the Town and still larger residential lots outside of the Town. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site.

### **Sec. 16-4-380. Permitted uses.**

The following uses shall be permitted in the "R1B" District:

- (1) One-family dwelling units.
- (2) Home occupations.

### **Sec. 16-4-390. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R1B" District:

- (1) Accessory buildings having nonresidential uses customarily incidental to one-family dwelling units.
- (2) Accessory dwellings.
- (3) Parking areas.

### **Sec. 16-4-400. Lot measurements.**

The following shall be lot measurements for property located in the "R1B" District:

- (1) Minimum lot area: nine thousand three hundred (9,300) square feet.
- (2) Maximum lot area: fourteen thousand (14,000) square feet.
- (3) Minimum lot width: seventy (70) feet.
- (4) Maximum lot width: one hundred twenty-five (125) feet.
- (5) Minimum front yard: ten (10) feet.
- (6) Minimum side yard: seven and one-half (7½) feet for single-story and flat-roofed buildings and as much as eleven and one-half (11½) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
- (7) Minimum rear yard: twenty (20) feet.

### **Sec. 16-4-410. Floor areas.**

The following shall regulate measurements for floor areas located in the "R1B" District:

- (1) Minimum floor area:

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- a. Principal building: one thousand (1,000) square feet.
  - b. Accessory dwelling: four hundred (400) square feet.
- (2) Maximum floor area:
- a. Principal building: three thousand seven hundred fifty (3,750) square feet.
  - b. Accessory dwelling: one thousand (1,000) square feet or two-thirds (%) of the floor area of the principal building, whichever is smaller.
  - c. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds (%) of the floor area of the principal building, whichever is smaller.

### **Sec. 16-4-420. Building measurements.**

The following shall regulate measurements for buildings located in the "R1B" District:

- (1) Maximum building height:
  - a. Principal building: thirty (30) feet or the height of the principal building, whichever is less.
  - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: forty-five (45) feet as a matter of right up to fifty-five (55) feet, depending upon the location and proximity of adjacent structures.

### **Sec. 16-4-430. Additional provisions.**

- (a) Open space required: forty-six percent (46%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.
- (e) Stream margin review: all uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.
- (f) Excessive slope review: structures that are twenty (20) feet away from the crest or toe of a fifteen-degree or more slope shall be deemed to be outside the excessive slope review area unless a soils report confirms that either the geology or the soils or both the geology and soils of the site are unstable more than twenty (20) feet from the slope crest or toe of such slope. All structures should be a minimum of twenty (20) feet from any geology or soils demonstrated to be unstable.

(Prior code 15-2-6.6; Ord. 29 §1, 1990; Ord. 3 §§10, 32, 1994; Ord. 14 §1, 2000; Ord. 4 §1, 2009)

### ***Division 6 "R1C" Core Residential District***

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### **Sec. 16-4-460. Intent.**

The purpose for which this District is created is the provision of areas for low-density residential development along with customary accessory uses in the older residential areas of the Town, where particular attention to the characteristics, size and scale of existing historic buildings is required. Recreational and institutional uses customarily found in proximity to such residential uses are included as conditional uses. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site.

### **Sec. 16-4-470. Permitted uses.**

The following uses shall be permitted in the "R1C" District:

- (1) One-family dwelling units.
- (2) Accessory building, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal permitted uses.

### **Sec. 16-4-480. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R1C" District:

- (1) Accessory dwellings.
- (2) Two-family dwelling units.
- (3) Historic primary dwelling redesignated as accessory dwelling, of a size not to exceed one thousand (1,000) square feet of floor area, under the conditions as are set forth in Section 16-8-70 of this Chapter.
- (4) Public playgrounds and public recreation areas.
- (5) Churches and church schools.
- (6) Nonprofit libraries and museums.
- (7) Farm and garden buildings.
- (8) Public and private schools.
- (9) Shop crafts.
- (10) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
- (11) Parking areas.
- (12) Accessory building, nonresidential use, heated.

### **Sec. 16-4-490. Lot measurements.**

The following shall be lot measurements for property located in the "R1C" District:

- (1) Minimum lot area: three thousand seven hundred fifty (3,750) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.

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- (3) Minimum lot width: thirty-one and one-quarter (31 $\frac{1}{4}$ ) feet.
  - (4) Minimum front yard: twenty (20) feet.
  - (5) Minimum side yard: seven and one-half (7 $\frac{1}{2}$ ) feet for single-story and flat-roofed buildings, and as much as eleven and one-half (11 $\frac{1}{2}$ ) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
  - (6) Minimum rear yard:
    - a. Principal building: ten (10) feet.
    - b. Accessory building: five (5) feet.

### **Sec. 16-4-500. Floor areas.**

The following shall regulate measurements for floor areas located in the "R1C" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit; provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
  - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
  - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
- (2) Maximum floor area:
  - a. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling: one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
  - a. Principal building: 0.3 as a matter of right up to 0.32, depending on neighborhood context and lot size, provided that no principal building shall be larger than two thousand five hundred (2,500) square feet.
  - b. All buildings: 0.48, provided that all buildings shall not be larger than three thousand five hundred (3,500) square feet in the aggregate.

### **Sec. 16-4-510. Building measurements.**

The following shall regulate measurements for buildings located in the "R1C" District:

- (1) Maximum building height:
  - a. Principal building: twenty-eight (28) feet.

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- b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: thirty-five (35) feet.

**Sec. 16-4-520. Additional provisions.**

- (a) Open space required: fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.
- (e) Stream margin review: all uses within twenty (20) feet of a designated water source shall meet the requirements of Section 16-11-10 of this Chapter.
- (f) Minimum lot street frontage shall be thirty-one and one-quarter (31 $\frac{1}{4}$ ) feet.

(Prior code 15-2-6.7; Ord. 11 §1, 1993; Ord. 3 §§10, 11, 32, 1994; Ord. 5 §3, 2000; Ord. 4 §1, 2009)

***Division 7 "R2C" Core Residential District***

**Sec. 16-4-550. Intent.**

The purpose for which this District is created is the provision of areas for more intensive residential development than allowed in the "R1" District, along with customary accessory use, but to carefully monitor such development so that it blends into its neighborhood context and the scale and fabric of the Town, paying particular attention to the characteristics, size and scale of existing historic buildings. Recreation and institutional uses customarily found in proximity to such residential uses are included as conditional uses.

**Sec. 16-4-560. Permitted uses.**

The following uses shall be permitted in the "R2C" District:

- (1) One-family and two-family dwelling units.
- (2) Accessory building, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal uses.

**Sec. 16-4-570. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R2C" District:

- (1) Three-family and multi-family dwelling units.
- (2) Accessory dwellings, not to exceed one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.

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- (3) Historic primary dwellings redesignated as accessory dwellings, of a size not to exceed one thousand (1,000) square feet of floor area, under the conditions as are set forth in Sections 16-8-70 and 16-11-10 of this Chapter.
  - (4) Public playgrounds and public recreation areas.
  - (5) Second accessory dwellings, on lots of sizes greater than six thousand two hundred fifty (6,250) square feet, not to exceed one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the historic primary structure, whichever is smaller, under the conditions as are set forth in Section 16-8-60 of this Chapter.
  - (6) Churches and church schools.
  - (7) Nonprofit libraries and museums.
  - (8) Farm and garden buildings.
  - (9) Public and private schools.
  - (10) Shop crafts.
  - (11) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
  - (12) Parking areas.
  - (13) Accessory building, nonresidential use, heated.

#### **Sec. 16-4-580. Lot measurements.**

The following shall be lot measurements for property located in the "R2C" District:

- (1) Minimum lot area: three thousand seven hundred fifty (3,750) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: thirty-one and one-quarter (31 $\frac{1}{4}$ ) feet.
- (4) Minimum front yard: twenty (20) feet.
- (5) Minimum side yard: seven and one-half (7 $\frac{1}{2}$ ) feet for single-story and flat-roofed buildings and as much as eleven and one-half (11 $\frac{1}{2}$ ) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

#### **Sec. 16-4-590. Floor areas.**

The following shall regulate measurements for floor areas located in the "R2C" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit; provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:

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- a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
  - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
- (2) Maximum floor area:
- a. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling: one thousand (1,000) square feet.
- (3) Maximum floor area ratio:
- a. Principal building: 0.3 as a matter of right up to 0.375, depending upon neighborhood context and lot size for a one-family dwelling unit, provided that no principal building shall be larger than two thousand eight hundred (2,800) square feet. 0.3 as a matter of right up to 0.4, depending on neighborhood context and lot size for dwelling units other than one-family, provided that no building shall be larger than three thousand five hundred (3,500) square feet.
  - b. All buildings: 0.5, provided that all buildings shall not be larger than three thousand five hundred (3,500) square feet in the aggregate.

### **Sec. 16-4-600. Building measurements.**

The following shall regulate measurements for buildings located in the "R2C" District:

- (1) Maximum building height:
  - a. Principal building: twenty-eight (28) feet.
  - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: thirty-five (35) feet.

### **Sec. 16-4-610. Additional provisions.**

- (a) Open space required: Fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12.
- (e) Stream margin review: All uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.
- (f) Minimum lot street frontage shall be thirty-one and one-quarter (31 $\frac{1}{4}$ ) feet.

(Prior code 15-2-6.8; Ord. 11 §2, 1993; Ord. 3 §10, 1994; Ord. 5 §6, 2000; Ord. 4 §1, 2009)

## ***Division 8 "R3C" Core Residential District***

### **Sec. 16-4-640. Intent.**

The purposes for which this District is created are to allow greater flexibility in preserving significant historic buildings, permitting new buildings of a substantially similar scale and size as those they replace; and to allow a business corridor and activity centers adjacent to the central business district of Town, paying particular attention to the characteristics, size and scale of existing historic buildings.

### **Sec. 16-4-650. Permitted uses.**

The following uses shall be permitted in the "R3C" District:

- (1) One-family dwelling units.
- (2) Accessory buildings, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal uses.

### **Sec. 16-4-660. Conditional uses.**

- (a) The following uses shall be permitted as conditional uses in the "R3C" District:
  - (1) Accessory dwellings.
  - (2) Two-family dwelling units.
  - (3) Historic primary dwellings redesignated as accessory dwellings, of a size not to exceed one thousand (1,000) square feet of floor area, under the conditions as are set forth in Section 16-8-70 of this Chapter.
  - (4) Public playgrounds and public recreation areas.
  - (5) Churches and church schools.
  - (6) Nonprofit libraries and museums.
  - (7) Public and private schools.
  - (8) Shop crafts.
  - (9) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
  - (10) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety shops.
  - (11) Office uses.
  - (12) Financial institutions.

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- (13) Personal services establishments.
  - (14) Restaurants, cocktail lounges or places serving food or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles.
  - (15) Medical and dental clinics.
  - (16) Open-use recreation sites, recreation clubs, theatres, assembly halls, hospitals, public buildings and governmental offices.
  - (17) Rental, repair and wholesaling facilities in conjunction with any of the above uses, provided that all such activity is clearly incidental and accessory to the permitted use and is conducted within a building.
  - (18) Newspaper publishing offices.
  - (19) Printing offices.
  - (20) Hotels, lodges, motels and resorts.
  - (21) Clubs.
  - (22) Noncommercial nurseries and greenhouses.
  - (23) Fraternities and sororities.
  - (24) Funeral parlors and mortuaries.
  - (25) Parking areas.
  - (26) Accessory buildings, nonresidential use, heated.
- (b) Any of the above conditional uses may be acceptable so long as the use does not create an unusual traffic hazard or any significant noise, dust, vapor, fumes, odor, smoke, vibration, glare or waste disposal problems.
- (Prior code 15-2-6.9; Ord. 11 §3, 1993; Ord. 3 §3, 1994; Ord. 5 §10, 2000; Ord. 10, 2000; Ord. 17 §§ 3—5, 2007; Ord. 4 §1, 2009; Ord. No. 2 , § 3(Exh. A), 3-6-2023)

### **Sec. 16-4-670. Lot measurements.**

The following shall be lot measurements for property located in the "R3C" District:

- (1) Minimum lot area: five thousand (5,000) square feet.
- (2) Maximum lot area: seven thousand two hundred fifty (7,250) square feet.
- (3) Minimum lot width: fifty (50) feet.
- (4) Minimum front yard: any distance conditionally approved.
- (5) Minimum side yard: seven and one-half (7½) feet for single-story and flat-roofed buildings and as much as eleven and one-half (11½) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

### **Sec. 16-4-680. Building measurements.**

The following shall regulate measurements for buildings located in the "R3C" District:

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- (1) Minimum floor area: four hundred (400) square feet for each residential unit; provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
    - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
    - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
    - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
    - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
  - (2) Maximum floor area:
    - a. Accessory building, including an accessory dwelling, if any, one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
    - b. Accessory dwelling, one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - (3) Maximum floor area ratio:
    - a. Principal building: 0.3 as a matter of right, up to 0.32, depending on neighborhood context and lot size, except that no principal building shall exceed two thousand five hundred (2,500) square feet.
    - b. All buildings: 0.48, provided that all buildings shall not be larger than three thousand five hundred (3,500) square feet in the aggregate.
  - (4) Maximum building width: thirty-five (35) feet.
  - (5) Maximum building height: twenty-eight (28) feet.

#### **Sec. 16-4-690. Additional provisions.**

- (a) Open space required: Twenty-five percent (25%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.
- (e) Stream margin review: All uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.

(Prior code 15-2-6.9; Ord. 11 §3, 1993; Ord. 3 §10, 1994; Ord. 4 §1, 2009)

#### ***Division 9 "R2" Residential District***

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### **Sec. 16-4-720. Intent.**

The purpose for which this District is created is the provision of areas for more intensive residential development than allowed in the "R1" District, along with customary accessory use, but to carefully monitor such development so that it blends into its neighborhood context and the scale and fabric of the Town.

### **Sec. 16-4-730. Permitted uses.**

The following uses shall be permitted in the "R2" District:

- (1) One-family and two-family dwelling units.
- (2) Accessory buildings nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal uses.

### **Sec. 16-4-740. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R2" District:

- (1) Three-family and multi-family dwelling units.
- (2) Accessory dwellings.
- (3) Public playgrounds and public recreation areas.
- (4) Churches and church schools.
- (5) Nonprofit libraries and museums.
- (6) Farm and garden buildings.
- (7) Public and private schools.
- (8) Shop crafts.
- (9) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
- (10) Parking areas.
- (11) Accessory buildings, nonresidential use, heated.

### **Sec. 16-4-750. Lot measurements.**

The following shall be lot measurements for property located in the "R2" District:

- (1) Minimum lot area: five thousand (5,000) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: fifty (50) feet.
- (4) Minimum front yard: twenty (20) feet.

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- (5) Minimum side yard: seven and one-half (7½) feet for single-story and flat-roofed buildings, and as much as eleven and one-half (11½) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
  - (6) Minimum rear yard:
    - a. Principal building: ten (10) feet.
    - b. Accessory building: five (5) feet.

## **Sec. 16-4-760. Building measurements.**

The following shall regulate measurements for buildings located in the "R2" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit; provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
  - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
  - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Subsection 16-14-90(c) of this Chapter.
- (2) Maximum floor area:
  - a. Accessory building, including an accessory dwelling, if any, one thousand (1,000) square feet or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling, one thousand (1,000) square feet of floor area or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
  - a. Principal building: 0.3 as a matter of right up to 0.4, depending on neighborhood context and lot size for one-family dwelling units, provided that no one-family structure shall be larger than two thousand eight hundred (2,800) square feet; 0.3 as a matter of right up to 0.5. depending on neighborhood context and lot size for dwelling units other than one-family, provided that no primary structure shall be larger than three thousand five hundred (3,500) square feet.
  - b. All buildings: 0.5, provided that all buildings shall not be larger than three thousand eight hundred (3,800) square feet in the aggregate.
- (4) Maximum building height:
  - a. Principal building: thirty (30) feet.
  - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
- (5) Maximum building width: thirty-five (35) feet as a matter of right, up to fifty (50) feet, depending upon the location and proximity of adjacent structures, subject to minimum side yard requirements.

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### **Sec. 16-4-770. Additional provisions.**

- (a) Open space required: fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12.
- (e) Stream margin review: all uses within twenty (20) feet of a designated watercourse shall meet the requirements of Section 16-11-10 of this Chapter.

(Prior code 15-2-7; Ord. 3 §10, 1994; Ord. 4 §1, 2009)

## ***Division 10 "R2A" Residential District***

### **Sec. 16-4-800. Intent.**

This District is created to provide for a mix of residential units. A large portion of the units in the District are deed-restricted in order to provide housing for people who work and live in the immediate area. A mix of rental units and owner-occupied units are anticipated, as well as a mixture of different sizes and densities of units and sites. There should be a range of types of housing from single-family to multi-family units and customary accessory uses. Care should be taken to create a mix of housing and architecture that fits into the context of the Town. The mix should benefit the Town and the neighborhood. Individual sites may have specific deed restrictions affecting how they are permitted to be developed.

### **Sec. 16-4-810. Permitted uses.**

The following uses shall be permitted in the "R2A" District:

- (1) One-family and two-family dwelling units.
- (2) Three-family and multi-family dwelling units if designated as such on the original or amended subdivision plat.
- (3) Accessory buildings, nonresidential use, not heated or plumbed.
- (4) Home occupations.
- (5) Private garages as accessory buildings to the principal uses.

### **Sec. 16-4-820. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R2A" District:

- (1) Three-family and multi-family dwelling units.
- (2) Accessory dwellings.
- (3) Churches and church schools.
- (4) Public playground and recreation areas.
- (5) Nonprofit libraries and museums.

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- (6) Public and private schools.
  - (7) Shop crafts.
  - (8) Bed and breakfasts establishments.
  - (9) Accessory buildings, nonresidential use, heated.

### **Sec. 16-4-830. Lot measurements.**

The following shall be lot measurements for property located in the "R2A" District:

- (1) Minimum lot area: two thousand seven hundred fifty (2,750) square feet.
- (2) Maximum lot area: eight thousand two hundred (8,200) square feet.
- (3) Minimum lot width: forty (40) feet.
- (4) Minimum front yard: ten (10) feet.
- (5) Maximum front yard: twenty (20) feet.
- (6) Minimum side yard: seven and one-half ( $7\frac{1}{2}$ ) feet for single-story and as much as eleven and one-half ( $11\frac{1}{2}$ ) feet for two-story buildings, dependent on snow storage guidelines. Snow shed and snow storage easements, where available on adjacent lots, may be utilized to fulfill a portion of the required side yard setback. Where a snow shed or snow storage easement is utilized to reduce a side yard setback, the distance that the side yard is reduced must be added to the side yard on the opposite side of the structure. Accordingly, the width of a structure may not be increased by use of a reduced setback.
- (7) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

### **Sec. 16-4-840. Building measurements.**

The following shall regulate measurements for buildings located in the "R2A" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit.
- (2) Maximum floor area:
  - a. Accessory building without accessory dwelling: nine hundred (900) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling or accessory building including an accessory dwelling: one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
  - a. Principal building: 0.3 as a matter of right up to 0.4 depending, on neighborhood context and lot size for one-family dwelling units, provided that no one-family structure shall be larger than two thousand eight hundred (2,800) square feet. 0.3 as a matter of right up to 0.5, depending on neighborhood context and lot size for dwelling units other than one-family, provided that no primary structure shall be larger than three thousand five hundred (3,500) square feet.
  - b. All buildings: 0.5, provided that all buildings shall not be larger than three thousand eight hundred (3,800) square feet in the aggregate.

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- (4) Maximum building height:
    - a. Principal building: thirty (30) feet; on lots less than three thousand one hundred twenty-six (3,126) square feet maximum building height twenty-four (24) feet.
    - b. Accessory building: twenty (20) feet or the height of the principal building, whichever is less.
    - c. Accessory dwelling: twenty-four (24) feet or the height of the principal building, whichever is less.
  - (5) Maximum building width: thirty-five (35) feet as a matter of right, up to fifty (50) feet, depending upon the location and proximity of adjacent structures, subject to minimum side yard requirements.

#### **Sec. 16-4-850. Additional provisions.**

- (a) Open space required: fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum exterior wall height shall be seven (7) feet.
- (c) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) Slope of roof shall be a minimum of 4:12.
- (e) Fences: Fences greater than forty-two (42) inches in height may not be constructed in snow shed/storage easements.

(Prior code 15-2-7.1; Ord. 15 §2, 2002; Ord. 4 §1, 2009)

### ***Division 11 "R4" Residential District***

#### **Sec. 16-4-880. Intent.**

The purpose for which this District is created is to provide areas for more intensive residential development than allowed in the "R1" or "R2" Districts, along with customary accessory use, but to carefully monitor such development so that it blends into its neighborhood context.

#### **Sec. 16-4-890. Permitted uses.**

The following uses shall be permitted in the "R4" District:

- (1) One-family, two-family and three-family dwelling units.
- (2) Accessory buildings, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal uses.
- (5) Accessory dwellings.
- (6) Public playgrounds and public recreation areas.
- (7) Shop crafts.
- (8) Bed and breakfast establishments, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.

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### **Sec. 16-4-900. Conditional uses.**

The following uses shall be permitted as conditional uses in the "R4" District:

- (1) Multi-family dwelling units.
- (2) Parking areas.
- (3) Churches and church schools.
- (4) Nonprofit libraries and museums.
- (5) Public and private schools.
- (6) Accessory buildings, nonresidential use, heated.

### **Sec. 16-4-910. Lot measurements.**

The following shall be lot measurements for property located in the "R4" District:

- (1) Minimum lot area: five thousand (5,000) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: fifty (50) feet.
- (4) Minimum front yard: twenty (20) feet.
- (5) Minimum side yard: seven and one-half (7½) feet for single-story and flat-roofed buildings, and as much as eleven and one-half (11½) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

### **Sec. 16-4-920. Floor areas.**

The following shall regulate measurements for floor areas located in the "R4" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit; provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
  - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
  - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
- (2) Maximum floor area:

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- a. Accessory building, including an accessory dwelling, if any, one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling, one thousand (1,000) square feet of the floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
- a. One-family dwelling unit: 0.3 as a matter of right up to 0.4, depending on neighborhood context and lot size. All buildings on a one-family residential lot: 0.5.
  - b. Two-family dwelling unit: 0.3 as a matter of right up to 0.5, depending on neighborhood context and lot size. All buildings on the lot: 0.5.
  - c. Three-family and multi-family dwelling units: 0.6 as a matter of right up to 1.0, depending on neighborhood context and lot size, provided that, for lots exceeding seven thousand five hundred (7,500) square feet, maximum floor area ratio shall not be more than 0.75 for each foot over seven thousand five hundred (7,500) square feet.
  - d. All other uses: 1.0 for lots not exceeding seven thousand five hundred (7,500) square feet; 0.75 for each foot over seven thousand five hundred (7,500) square feet.

### **Sec. 16-4-930. Building measurements.**

The following shall regulate measurements for buildings located in the "R4" District:

- (1) Maximum building height: thirty (30) feet.
- (2) Minimum exterior wall height: seven (7) feet.

### **Sec. 16-4-940. Additional provisions.**

- (a) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (b) Slope of roof shall be a minimum of 4:12. A portion of flat roof may be considered for multi-family dwellings with five (5) or more units.
- (c) Stream margin review: all uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.

(Prior code 15-2-8; Ord. 3 §10, 1994; Ord. No. 22 , § 1, 11-1-2021)

## ***Division 12 "R1F" Residential District***

### **Sec. 16-4-1000. Intent of district.**

The purpose for which this District is created is to provide areas for low-density residential development along with customary accessory uses. The lots in this District provide a transition between the Town and the still larger residential lots outside of Town. Accessory uses naturally and normally incidental to, and exclusively devoted to such primary residential uses are included as conditional uses. It is intended that no more than two (2) units, designed or used for dwelling by a family, shall be allowed on a site.

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### **Sec. 16-4-1010. Permitted uses.**

The following uses shall be permitted in the "RIF" District:

- (1) One-family dwelling units.
- (2) Accessory buildings, incidental nonresidential uses, not heated or plumbed.
- (3) Home occupations.
- (4) Attached garages.
- (5) Detached garages as accessory buildings to the principal permitted uses.

### **Sec. 16-4-1020. Conditional uses.**

The following uses shall be permitted as conditional uses in the "RIF" District:

- (1) Accessory dwellings in conjunction with a one-family dwelling unit.
- (2) Two-family dwelling units.
- (3) Parking areas.
- (4) Accessory buildings, incidental nonresidential uses, heated.

### **Sec. 16-4-1030. Lot measurements.**

The following shall be lot measurements for property located in the "R1F" District:

- (1) Minimum lot area: Five thousand (5,000) square feet.
- (2) Maximum lot area: Eleven thousand four hundred (11,400) square feet.
- (3) Minimum frontage: Fifty (50) feet.
- (4) Minimum front yard:
  - a. Public street: Twenty (20) feet.
  - b. Private access road: Ten (10) feet.
- (5) Minimum side yard: At least seven and one-half (7½) feet, and up to eleven and one-half (11½) feet, dependent upon snow storage and snow shed guidelines.
- (6) Minimum rear yard:
  - a. Principal building: Ten (10) feet.
  - b. Accessory building: Five (5) feet.
  - c. Wetland setback: Seven and one-half (7½) feet.

### **Sec. 16-4-1040. Floor areas.**

The following shall regulate measurements for floor areas located in the "R1F" District:

- (1) Minimum floor area: Four hundred (400) square feet for each residential unit.
- (2) Maximum floor area:

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- a. Accessory building, including an accessory dwelling, if any: one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwelling: one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
- a. The principal building shall not exceed two thousand eight hundred (2,800) square feet.
  - b. All buildings shall not be larger than three thousand eight hundred (3,800) square feet in the aggregate.

### **Sec. 16-4-1050. Building measurements.**

The following shall regulate measurements for buildings located in the "RIF" District:

- (1) Maximum building height:
  - a. Principal building: Thirty (30) feet.
  - b. Accessory building: Twenty (20) feet or the height of the principal building, whichever is less.
  - c. Accessory dwelling: Twenty-four (24) feet or the height of the principal building, whichever is less.
- (2) Maximum building width: Thirty-five (35) feet.

### **Sec. 16-4-1060. Additional provisions.**

- (a) Primary and accessory residential buildings shall be oriented on a north-south or east-west axis.
- (b) Open space required: Fifty percent (50%) of the lot area shall be open, unencumbered and free of any building or structure.
- (c) Minimum exterior wall height shall be seven (7) feet.
- (d) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (e) Slope of roof shall be a minimum of 4:12.

( Ord. No. 8 , § 2, 5-18-2020)

## **ARTICLE 5 Business and Commercial Districts**

### ***Division 1 "T" Tourist District***

#### **Sec. 16-5-10. Intent.**

The purpose for which this District is created is to provide areas for the establishment of (a) tourist-oriented lodging accommodations and accessory uses and museums, and (b) residential units as long term rentals. Careful attention shall be accorded the scale at which such facilities and uses are built.

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## **Sec. 16-5-20. Permitted uses.**

Permitted uses for the "T" District are: hotels, lodges, motels and resorts.

## **Sec. 16-5-30. Conditional uses.**

The following uses shall be permitted as conditional uses in the "T" District:

- (1) Residential units; provided, however, that such uses shall not exceed fifty percent (50%) of the total floor area of any buildings. Such residential unit may only be used as a long-term rental unit or, under the circumstances set forth herein, as an owner-occupied unit. In the event that a conditional use for a residential unit is granted, that use may not in the future revert to any other use. The unit thereafter shall be restricted to such use. In the event that an owner of a unit, for which a conditional use for a residential unit is granted, owns and uses for his or her own use another nonresidential unit as a permitted use or an approved conditional use within the same building, the owner may occupy the residential unit. Only an owner conducting business himself or herself in his or her nonresidential unit may occupy his or her residential unit. Leasing the nonresidential unit to another person or entity for their use is not considered *using for his or her own use or conducting business himself or herself* under this Subsection.
- (2) Residential units up to one hundred percent (100%) of the total floor area of any multifamily building where such units are deed restricted to long term rental housing that serve households that earn eighty percent (80%) or less of the Area Median Income (AMI).
- (3) Clubs.
- (4) Restaurants, cocktail lounges or other places serving food and/or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles; provided, however, that such use must be incidental to a hotel, lodge, motel or resort.
- (5) Nurseries and greenhouses.
- (6) Dormitories.
- (7) Insurance and real estate offices.
- (8) Funeral parlors and mortuaries.
- (9) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, arts supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, liquor stores, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.
- (10) Office uses.
- (11) Financial institutions.
- (12) Personal services establishments.
- (13) Medical and dental clinics.
- (14) Open use recreation sites, recreation clubs, theatres, assembly halls, schools, churches, hospitals, public buildings and governmental offices.
- (15) Shop crafts.
- (16) Rental, repair and wholesaling facilities in conjunction with any of the above uses, provided that all such activity is clearly incidental and accessory to the permitted use and conducted within a building.

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- (17) Short-term residential accommodations.
  - (18) Hotels or lodges.
  - (19) Motels.
  - (20) Resorts.
  - (21) Condo hotels.
  - (22) Newspaper publishing offices.
  - (23) Parking areas.
  - (24) Museums.
  - (25) Formula motel and hotel businesses.
  - (26) Formula restaurant businesses.
  - (27) Employee dwellings.
  - (28) Congregate housing for the purposes of affordable or workforce housing.

#### **Sec. 16-5-40. Lot measurements.**

The following shall be lot measurements for property located in the "T" District:

- (1) Minimum lot area: five thousand (5,000) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: fifty (50) feet.
- (4) Minimum front yard: none.
- (5) Minimum side yard: seven and one-half ( $7\frac{1}{2}$ ) feet for single-story and flat-roofed buildings, and as much as eleven and one-half ( $11\frac{1}{2}$ ) feet for sloped-roofed buildings, dependent upon snow storage guidelines.
- (6) Minimum rear yard: fifteen (15) feet.

#### **Sec. 16-5-50. Floor areas.**

The following shall regulate measurements for floor areas located in the "T" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit.
- (2) Maximum floor area ratio: 0.66 as a matter of right; provided, however, that the Board in its discretion may allow a maximum floor area ratio of up to 1.0 depending upon the provision of site amenities.

#### **Sec. 16-5-60. Building measurements.**

The following shall regulate measurements for buildings located in the "T" District:

- (1) Maximum building height: thirty-five (35) feet.
- (2) Minimum exterior wall height: seven (7) feet.

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### **Sec. 16-5-70. Additional provisions.**

- (a) Open space required: twenty-five percent (25%) of the lot area shall be open, unencumbered and free of any building or structure.
- (b) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (c) Slope of roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.

(Prior code 15-2-9; Ord. 3 §10, 1994; Ord. 4 §1, 2009)

## ***Division 2 "B1" Business District***

### **Sec. 16-5-110. Intent.**

The purpose for which this District is created is to allow the use of land for retail, service, commercial, recreational and institutional purposes, with customary accessory uses, in order to enhance the business and service character in the central core of Town. Sales tax-generating uses are encouraged. Accommodations and residential uses are limited to accessory status, except that service housing is encouraged as part of a business structure, and historical residential uses may be maintained under certain circumstances.

### **Sec. 16-5-120. Permitted uses.**

The following uses shall be permitted in the "B1" District:

- (1) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.
- (2) Office uses, except for in buildings that front onto Elk Avenue, in which case office uses are prohibited in such buildings on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.
- (3) Financial institutions (excluding automatic teller machines, which are permitted on any building level), except for in buildings that front onto Elk Avenue, in which case financial institutions are prohibited in such buildings on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.
- (4) Medical and dental offices and clinics, except for in buildings that front onto Elk Avenue, in which case medical and dental offices and clinics are prohibited in such buildings on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.
- (5) Personal services establishments.
- (6) Open use recreation sites, recreation clubs, theaters, assembly halls, schools, churches, hospitals, public buildings and governmental offices.
- (7) Shop crafts.

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- (8) Rental, repair and wholesaling facilities in conjunction with any of the above uses, provided that all such activity is clearly incidental and accessory to the permitted use and conducted within a building.
  - (9) Museums.

### **Sec. 16-5-130. Conditional uses.**

The following uses shall be permitted as conditional uses in the "B1" District:

- (1) Newspaper publishing businesses, except for in buildings that front onto Elk Avenue, in which case newspaper publishing businesses are prohibited in such buildings on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.
- (2) Residential units comprising up to one-half ( $\frac{1}{2}$ ) of the total floor area of any building. Residential units located in historic buildings existing prior to May 15, 1994, shall not be limited by the above size restrictions. Such residential unit may only be used as a long-term rental or, under the circumstances set forth herein, as an owner-occupied unit. In the event that a conditional use for a residential unit is granted, that use may not in the future revert to any other use. The unit thereafter shall be restricted to such use. Residential units are prohibited in buildings that front onto Elk Avenue on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line of the property upon which such use is located. However, residential uses in place in buildings that front onto Elk Avenue as of July 9, 2007, may revert to such use regardless of subsequent changes in use or building level. In the event that the owner of a unit, for which a conditional use for a residential unit is granted, owns and uses for his or her own use another nonresidential unit as a permitted use or an approved conditional use within the same building, the owner may occupy the residential unit. Only owners conducting business themselves in their nonresidential unit may occupy their residential unit. Leasing the nonresidential unit to another person or entity for his or her use is not considered using for his or her own use or conducting business himself or herself under this Section.
- (3) Residential units that: (i) are historical buildings; (ii) have historically been used as primary, single-family residences; (iii) are located on parcels of no more than four thousand eight hundred fifty (4,850) square feet; and (iv) have a F.A.R. for the primary structure of no greater than .85, notwithstanding the requirements of Paragraph (2) above. The conditional use permit granted for such residential unit shall be conditioned upon the recording of a restrictive covenant in the official real property records of the County encumbering the affected property that shall restrict the F.A.R. for said primary structure in perpetuity to .85.
- (4) Hotels, lodges, motels and resorts.
- (5) Clubs.
- (6) Noncommercial nurseries and greenhouses.
- (7) Fraternities and sororities.
- (8) Funeral parlors and mortuaries.
- (9) Parking areas.
- (10) Restaurants, cocktail lounges or other places serving food and/or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles.

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- (11) Accessory buildings, nonresidential use, heated.
  - (12) Accessory buildings, nonresidential use, not heated or plumbed.
  - (13) Micro-distillery.
  - (14) Employee dwellings.

#### **Sec. 16-5-140. Lot measurements.**

The following shall be lot measurements for property located in the "B1" District:

- (1) Minimum lot area: one thousand two hundred fifty (1,250) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: twelve and one-half (12½) feet.
- (4) Minimum front yard: none.
- (5) Minimum side yard: from none to as much as seven and one-half (7½) feet for flat-roof buildings and from seven and one-half (7½) feet to as much as eleven and one-half (11½) feet for sloped-roof buildings, dependent upon snow storage guidelines and proximity of adjacent structures, as determined by the Board. Any setback between zero (0) feet and seven and one-half (7½) feet must meet the criteria required for approval of a nonconforming aspect as set forth in Section 16-19-90 of this Chapter; provided, however, that, before allowing less than a three-foot setback on a side lot line where the abutting owner's sloped roof building is within four and one-half (4½) feet of the lot line and sheds snow toward the lot line, the proponent must present the Board with an agreement allowing the desired side yard setback properly executed by all affected property owners, as determined by the Board, which agreement shall run with the land and be recorded in the real property records of the County.
- (6) Minimum rear yard: all buildings, ten (10) feet.

#### **Sec. 16-5-150. Floor area.**

The following shall regulate measurements for floor areas located in the "B1" District:

- (1) Minimum floor area:
  - a. Four hundred (400) square feet for each residential unit.
  - b. Two hundred fifty (250) square feet for each structure.
- (2) Maximum floor area ratio:
  - a. For a lot area not exceeding three thousand one hundred twenty-five (3,125) square feet, 1.55 as matter of right if a Dumpster space is provided on site or is otherwise provided. F.A.R. may be as high as 1.74 if that part of the building creating a F.A.R. in excess of 1.55 is used exclusively for residential units and adequate parking for the residential units is provided on site, in addition to an on-site or otherwise approved Dumpster space. Residential parking shall not be required for any residential building or portion thereof constructed prior to May 26, 1990, which continues to be used as a residence.
  - b. For a lot area of more than three thousand one hundred twenty-five (3,125) square feet but not exceeding six thousand two hundred fifty (6,250) square feet, 1.25 as matter of right up to 1.55, dependent upon provision of site amenities. F.A.R. may be as high as 1.87 if that part of the building creating a F.A.R. in excess of 1.55 is used exclusively for residential units and adequate

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- parking for the residential units is provided on site, in addition to an on-site or otherwise approved Dumpster space. Residential parking shall not be required for any residential building or portion thereof constructed prior to May 26, 1990, which continues to be used as a residence.
- c. For a lot area of more than six thousand two hundred fifty (6,250) square feet, 1.0 as matter of right up to 1.55, dependent upon provision of site amenities. F.A.R. may be as high as 1.9 if that part of the building creating a F.A.R. in excess of 1.55 is used exclusively for residential units and adequate parking for the residential units is provided on site, in addition to an on-site or otherwise approved Dumpster space. Residential parking shall not be required for any residential building or portion thereof constructed prior to May 26, 1990, which continues to be used as a residence.
- (3) Maximum floor area: accessory building, one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.

### **Sec. 16-5-160. Additional provisions.**

- (a) Maximum building height shall be thirty-five (35) feet.
- (b) No open space is required.
- (c) Minimum exterior wall height shall be seven (7) feet.
- (d) Minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (e) Slope of roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.
- (f) Stream margin review: All uses within twenty (20) feet of a designated water course shall meet the requirements of Section 16-11-10 of this Chapter.

(Prior code 15-2-10; Ord. 3 §10, 1994; Ord. 4 §1, 2009)

## ***Division 3 "B2" Business District***

### **Sec. 16-5-210. Intent.**

The purpose for which this District is created is to provide for orderly business development along Highway 135 and the Ski Area Road, and to do so in a way compatible with safe traffic flow and the aesthetics of the Town.

### **Sec. 16-5-220. Permitted uses.**

The following uses shall be permitted in the "B2" District:

- (1) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.
- (2) Office uses.
- (3) Financial institutions.
- (4) Personal services establishments.
- (5) Medical and dental clinics.

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- (6) Shop crafts.
  - (7) Rental, repair and wholesaling facilities in conjunction with any of the above uses, provided that all such activity is clearly incidental and accessory to the permitted use and conducted within a building.
  - (8) Newspaper publishing offices.

### **Sec. 16-5-230. Conditional uses.**

The following uses shall be permitted as conditional uses in the "B2" District:

- (1) Printing offices.
- (2) Residential units comprising up to one-half (½) of the total floor area of any building. Such residential unit may only be used as a long-term rental unit or, under the circumstances set forth herein, as an owner-occupied unit. In the event that a conditional use for a residential unit is granted, that use may not in the future revert to any other use. The unit thereafter shall be restricted to such use. In the event that an owner of a unit, for which a conditional use for a residential unit is granted, owns and uses for his or her own use another nonresidential unit as a permitted use or an approved conditional use within the same building, the owner may occupy the residential unit. Only an owner conducting business himself or herself in his or her nonresidential unit may occupy his or her residential unit. Leasing the nonresidential unit to another person for his or her use is not considered *using for his or her own use or conducting business himself or herself* under this Section.

Notwithstanding the foregoing, owner-occupied units may be allowed if they are deed-restricted to resident-occupied affordable housing units as defined in this Land Use Code.

- (3) Hotels, lodges, motels and resorts.
- (4) Clubs.
- (5) Noncommercial nurseries and greenhouses.
- (6) Fraternities and sororities.
- (7) Funeral parlors and mortuaries.
- (8) Motor vehicle, snowmobiles and recreational vehicle leasing and rentals, provided that the following requirements are met:
  - a. The property upon which such activity is conducted shall be contiguous to Colorado Highway 135 or the Gothic County Road.
  - b. No more than two (2) of the permittee's motor vehicles, two (2) of the permittee's snowmobiles or two (2) of the permittee's recreational vehicles shall be parked on the premises at any time, but no combination of more than two (2) of the above.
  - c. No vehicle repairs or maintenance of any kind shall be performed upon the premises.
  - d. *Recreational vehicle* means a self-propelled wheeled vehicle primarily designed to be operated for recreational purposes on roads and highways for which registration as a motor vehicle is required or permitted under state law.
  - e. The size, weight and type of vehicle to be parked on the premises shall be considered in issuing any permit for a conditional use pursuant to this Code. The standard of review shall be based on the appropriateness of the vehicle to the premises and adjoining uses.
- (9) The auto-related uses of fueling and vehicle washing which are provided as a service incidental to a retail store, provided that the following conditions are met:

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- a. The minimum lot area shall be fifteen thousand six hundred twenty-five (15,625) square feet.
  - b. The same conditional use has not been granted for other property located within five hundred (500) feet of the parcel (property) for which the conditional use permit is sought.
  - c. The fuel-dispensing units accommodate no more than eight (8) vehicles at any given time.
  - d. The lot for which the permit is sought shall access directly onto both Highway 135/Ski Area Road and a Town street.
- (10) Open space recreation sites, recreation clubs, theatres, assembly halls, schools, churches, hospitals, public buildings and governmental offices. Such uses may be allowed conditionally, provided that the required off-street parking is provided.
- (11) Parking areas.
- (12) Restaurants, cocktail lounges or other places serving food and/or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles.
- (13) Short-term residential accommodations.
- (14) Condo hotels.
- (15) Micro-distillery.
- (16) Retail marijuana store.
- (17) Medical marijuana center.
- (18) Employee dwellings.

### **Sec. 16-5-240. Lot measurements.**

The following shall be lot measurements for property located in the "B2" District:

- (1) Minimum lot area: six thousand two hundred fifty (6,250) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: twenty-five (25) feet.
- (4) Minimum front yard: five (5) feet.
- (5) Minimum side yard: seven and one-half (7½) feet for flat-roof buildings and from seven and one-half (7½) feet to as much as eleven and one-half (11½) feet for sloped-roof buildings, dependent upon snow storage requirements and guidelines and the proximity of adjacent structures as determined by the Board. However, in Block 25, the setback shall be from zero (0) to as much as seven and one-half (7½) feet for flat-roof buildings if it meets the criteria required for a conditional waiver of a nonconforming aspect, as set forth in Section 16-19-80 of this Chapter. In addition, before allowing less than a three-foot setback on a side lot line where the abutting owner's sloped-roof building is within four and one-half (4½) feet of the lot line and sheds snow toward the lot line, the proponent must present the Board with an agreement allowing the desired side yard setback properly executed by all affected property owners, as determined by the Board, which agreement shall run with the land and be recorded in the real property records of the County.
- (6) Minimum rear yard: fifteen (15) feet.

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### **Sec. 16-5-250. Floor areas.**

The following shall regulate measurements for floor areas located in the "B2" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit.
- (2) Maximum floor area ratio: 0.5 as a matter of right; provided, however, that the Board in its discretion may allow a maximum floor area ratio of up to 0.64 depending upon the provision of site amenities, an appropriate trash storage/Dumpster location and access thereto, and adequate snow storage. Notwithstanding the foregoing, an additional 0.36 may be added to the floor area ratio as an underground parking credit, provided that the provisions of Article 16 of this Chapter are met.

### **Sec. 16-5-260. Building measurements.**

The following shall regulate measurements for buildings located in the "B2" District:

- (1) Maximum building height: thirty-five (35) feet.
- (2) Minimum exterior wall height: seven (7) feet.
- (3) Minimum vertical distance from eave line of roof to the finished grade level: six (6) feet.
- (4) Slope of roof: a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.

## ***Division 4 "B3" Business District***

### **Sec. 16-5-310. Intent.**

The purpose for which this District is created is to encourage the preservation of the historic and architecturally interesting structures found in this District, by allowing them to remain in residential use, or by converting them to business uses as long as essentially the same structures are retained.

### **Sec. 16-5-320. Permitted uses.**

The following uses shall be permitted in the "B3" District:

- (1) One-family dwelling units; or a residential unit in combination with any of the other permitted or conditional uses in this Division.
- (2) Accessory buildings, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal uses.
- (5) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.
- (6) Office uses, except for in buildings that front onto Elk Avenue, in which case office uses are prohibited in such buildings on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

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- (7) Financial institutions (excluding automatic teller machines, which are permitted on any building level), except for in buildings that front onto Elk Avenue, in which case financial institutions are prohibited in such buildings on the ground floor. The prohibition against such uses on the ground floor fronting Elk Avenue (if the ground floor level has display windows fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.
  - (8) Personal services establishments.
  - (9) Medical and dental clinics.
  - (10) Open use recreation sites, recreation clubs, theaters, assembly halls, schools, churches, hospitals, public buildings and governmental offices.
  - (11) Shop crafts.
  - (12) Newspaper publishing businesses.
  - (13) Rental, repair and wholesaling facilities in conjunction with any of the above uses, provided that all such activity is clearly incidental and accessory to the permitted use and conducted within a building.
  - (14) Motor vehicles, snowmobiles and recreational vehicle leasing and rentals, provided that the following requirements are met:
    - a. The property upon which such activity is conducted shall be contiguous to Colorado Highway 135 or the Gothic County Road.
    - b. No more than two (2) of the permittee's motor vehicles, two (2) of the permittee's snowmobiles or two (2) of the permittee's recreational vehicles shall be parked on the premises at any time, but no combination of more than two (2) of the above.
    - c. No vehicle repairs or maintenance of any kind shall be performed upon the premises.
    - d. *Recreational vehicle* means a self-propelled wheeled vehicle primarily designed to be operated for recreational purposes on the roads and highways, for which registration as a motor vehicle is required or permitted under state law.
    - e. The size, weight and type of vehicle to be parked on the premises shall be considered in issuing any permit for a conditional use pursuant to this Chapter. The standard for review shall be based on the appropriateness of the vehicle to the premises and adjoining uses.

### **Sec. 16-5-330. Conditional uses.**

The following uses shall be permitted as conditional uses in the "B3" District:

- (1) Accessory dwellings.
- (2) Parking areas.
- (3) Restaurants, cocktail lounges or other places serving food and/or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles.
- (4) Accessory buildings, nonresidential use, heated.
- (5) Bed and breakfast, provided that the granting of such conditional use shall be subject to the requirements for short-term rentals in the "R1" District as set forth in Subsection 16-14-90(c) of this Chapter.
- (6) Employee dwellings.

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### **Sec. 16-5-340. Lot measurements.**

The following shall be lot measurements for property located in the "B3" District:

- (1) Minimum lot area: three thousand (3,000) square feet, except as follows: two thousand five hundred (2,500) square feet for Lots 22, 23, 24, 25, 26, 27 and 28, Block 24; and two thousand five hundred (2,500) square feet for Lot 21, Block 24 and Lot 12, Block 25 if either of such lots is less than three thousand (3,000) square feet.
- (2) Maximum lot area: six thousand two hundred fifty (6,250) square feet.
- (3) Minimum lot width: twenty-five (25) feet.
- (4) Minimum front yard: any distance conditionally approved.
- (5) Minimum side yard: from three (3) feet to as much as seven and one-half (7½) feet for flat-roof buildings and from seven and one-half (7½) feet to as much as eleven and one-half (11½) feet for sloped-roof buildings, dependent upon snow storage requirements and guidelines and the proximity of adjacent structures, as determined by the Board. However, any setback between three (3) feet and seven and one-half (7½) feet must meet the criteria required for approval of a nonconforming aspect as set forth in Section 16-19-90 of this Chapter.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

### **Sec. 16-5-350. Floor areas.**

The following shall regulate measurements for floor areas located in the "B3" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit. However, the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
  - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;
  - b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
- (2) Maximum floor area:
  - a. Accessory buildings, including an accessory dwelling, if any, one thousand (1,000) square feet or two-thirds (⅔) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwellings, one thousand (1,000) square feet or two-thirds (⅔) the floor area of the principal building, whichever is less.

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- (3) Maximum floor area ratio: all buildings, 0.4 as a matter of right, up to 0.5, dependent upon provision of site amenities.

**Sec. 16-5-360. Additional provisions.**

- (a) The maximum building height shall be thirty (30) feet.
- (b) The minimum exterior wall height shall be seven (7) feet.
- (c) The minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) The slope of the roof shall be a minimum of 4:12. A flat roof must contain a parapet on the side facing the street, and as otherwise required by the Board.

(Prior code 15-2-12; Ord. 23 §9, 1992; Ord. 3 §10, 1994; Ord. 4 §1, 2009)

***Division 5 "B4" West End Business/Residential Historic District***

**Sec. 16-5-410. Intent.**

The purpose for which this District is created is to encourage the preservation of the historic and architecturally interesting structures found in this District, by allowing them to remain in residential use, or by converting them to business uses as long as essentially the same structures are retained. This District is characterized by reduced pedestrian and vehicular traffic.

**Sec. 16-5-420. Permitted uses.**

The following uses shall be permitted in the "B4" District:

- (1) One-family dwelling units; or a residential unit in combination with any of the other permitted or conditional uses in this Division.
- (2) Accessory building, nonresidential use, not heated or plumbed.
- (3) Home occupations.
- (4) Private garages as accessory buildings to the principal uses.
- (5) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationary and variety stores.
- (6) Office uses.
- (7) Financial institutions.
- (8) Personal services establishments.
- (9) Medical and dental clinics.
- (10) Open use recreation sites, recreation clubs, theaters, assembly halls, schools, churches, hospitals, public buildings and governmental offices.
- (11) Shop crafts.
- (12) Newspaper publishing businesses.

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- (13) Rental repair and wholesaling facilities in conjunction with any of the above uses, provided all such activity is clearly incidental and accessory to the permitted use and conducted within a building.

The size, weight and type of vehicle to be parked on the premises shall be considered in issuing any permit for a conditional use pursuant to this Code. The standard for review shall be based on the appropriateness of the vehicle to the premises and adjoining uses.

#### **Sec. 16-5-430. Conditional uses.**

The following uses shall be permitted as conditional uses in the "B4" District:

- (1) Accessory dwellings.
- (2) Parking areas.
- (3) Restaurants, cocktail lounges or other places serving food and/or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles.
- (4) Accessory buildings, nonresidential use, heated.
- (5) Employee dwellings.

#### **Sec. 16-5-440. Lot measurements.**

The following shall be lot measurements for property located in the "B4" District:

- (1) Minimum lot area: three thousand (3,000) square feet.
- (2) Maximum lot area: six thousand two hundred fifty (6,250) square feet.
- (3) Minimum lot width: twenty-five (25) feet.
- (4) Minimum front yard: any distance conditionally approved.
- (5) Minimum side yard: from three (3) feet to as much as seven and one-half (7½) feet for flat-roof buildings and from seven and one-half (7½) feet to as much as eleven and one-half (11½) feet for sloped-roof buildings, dependent upon snow storage requirements and guidelines and the proximity of adjacent structures, as determined by the Board. However, any setback between three (3) feet and seven and one-half (7½) feet must meet the criteria required for approval of a nonconforming aspect as set forth in Section 16-19-90 of this Chapter.
- (6) Minimum rear yard:
  - a. Principal building: ten (10) feet.
  - b. Accessory building: five (5) feet.

#### **Sec. 16-5-450. Floor areas.**

The following shall regulate measurements for floor areas located in the "B4" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit. However, the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a residential unit, historic accessory structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:
  - a. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;

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- b. The occupants of the dwelling must have been residents of the County for three (3) consecutive years of the preceding seven (7) years;
  - c. At least fifty-one percent (51%) of the occupants' income must be earned from work for an employer situated within the County or from work actually performed in the County; and
  - d. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 16-9-70 of this Chapter.
- (2) Maximum floor area:
- a. Accessory building, including an accessory dwelling, if any, one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
  - b. Accessory dwellings, one thousand (1,000) square feet or two-thirds ( $\frac{2}{3}$ ) the floor area of the principal building, whichever is less.
- (3) Maximum floor area ratio: all buildings, 0.4 as a matter of right up to 0.5, dependent upon provision of site amenities.

**Sec. 16-5-460. Additional provisions.**

- (a) The maximum building height shall be thirty (30) feet.
- (b) The minimum exterior wall height shall be seven (7) feet.
- (c) The minimum vertical distance from eave line of roof to the finished grade level shall be six (6) feet.
- (d) The slope of the roof shall be a minimum of 4:12. A flat roof must contain a parapet on the sides facing the street, and as otherwise required by the Board.
- (e) The trash storage in an open and unoccupied area at least twelve (12) feet by twelve (12) feet in size, which is accessible at all times, shall be provided on site for an appropriate trash storage/Dumpster location.

(Ord. 3 §8, 2009; Ord. 4 §1, 2009)

***Division 6 "C" Commercial District***

**Sec. 16-5-510. Intent.**

The purpose for which this District is created is to allow the use of land for limited commercial purposes and limited industrial purposes, with customary accessory and institutional uses. Employer or service housing is included as a conditional use in this District, if it is incidental to the primary use.

**Sec. 16-5-520. Permitted uses.**

- (a) The following uses shall be permitted in the "C" District:
  - (1) Amusement and recreation businesses.
  - (2) Builder's supply yards and lumber yards, except concrete and asphalt manufacturing plants.
  - (3) Contractors, including general, electrical and plumbing contractors, and their related storage yards.
  - (4) Garages.
  - (5) Government offices and buildings.

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- (6) Laundry and dry-cleaning establishments.
  - (7) Light industrial operations, including assembly, manufacturing, processing and packaging.
  - (8) Printing and publishing operations.
  - (9) Public utilities and offices.
  - (10) Storage warehouses and wholesaling businesses.
  - (11) Shop craft industries.
  - (12) Auto storage facilities.
  - (13) Office uses.
  - (14) Individual dry storage units.
  - (15) Catering businesses.
  - (16) Personal service establishments.
  - (17) Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.
- (b) Any of the above permitted uses shall be acceptable so long as the use does not create an unusual traffic hazard or any significant noise, dust, vapor, fumes, odor, smoke, vibration, glare or industrial waste disposal problems.

(Prior code 15-2-13; Ord. 22 §14, 1992; Ord. 5 §7, 1995; Ord. 23 §2, 1995; Ord. 11 §3, 2001; Ord. 17 §14, 2007; Ord. 4 §1, 2009; Ord. 7 §2, 2010)

### **Sec. 16-5-530. Conditional uses.**

The following uses shall be permitted as conditional uses in the "C" District:

- (1) No more than three (3) residential units not to exceed six hundred (600) square feet each. Such residential unit may only be used as a long-term rental unit or, under the circumstances set forth herein, as an owner-occupied unit. No residential unit shall exist on the first floor of the building. The total square footage of all residential units in the structure shall not exceed fifty percent (50%) of the total building square footage. In the event that a conditional use for a residential unit is granted, that use may not in the future change to any other use except where a conditional use for congregate housing may otherwise be granted and provided that there shall not in any case be a net reduction in bedrooms. The unit thereafter shall be restricted to such use. In the event that the owner of a unit, for which a conditional use for a residential unit is granted, owns and uses for his or her own use another nonresidential unit as a permitted use or an approved conditional use within the same building, the owner may occupy the residential unit. Only an owner conducting business himself or herself in his or her nonresidential unit may occupy his or her residential unit. Leasing the nonresidential unit to another person for his or her use is not considered *using for his or her own use or conducting business himself or herself* under this Section. Payment in lieu of providing parking is not allowed for parking required for residential uses.
- (2) Financial institutions.
- (3) Shop crafts.

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- (4) Rental, repair and wholesaling facilities in conjunction with any permitted or conditional use, provided that all such activity is clearly incidental and accessory to the permitted use and conducted within a building.
  - (5) Commercial nurseries and greenhouses; except that such uses shall not include marijuana growing or cultivation operations.
  - (6) Funeral parlors and mortuaries.
  - (7) Any use that may create unusual traffic hazards, noise, dust, fumes, odors, smoke vapor, vibration, glare or industrial waste disposal problems in accordance with the requirements of Section 16-8-50 of this Chapter.
  - (8) Parking areas.
  - (9) Accessory buildings.
  - (10) Dealerships and other motor vehicle sale or rental businesses.
  - (11) Auto-related services.
  - (12) Catering business retailing prepared food.
  - (13) Snack bars as a subordinate and incidental use to an otherwise approved amusement and recreation use. The snack bar use, which is subordinate and incidental to an otherwise approved amusement and recreation use, is limited to a maximum of five hundred (500) square feet or twenty-five percent (25%) of the square footage of the amusement and recreation use approved for the site, whichever is less. Such size limitation applies to that area of the snack bar use which includes food and beverage preparation, storage, serving and seating area directly associated with the snack bar use. Seating reasonably associated with the amusement and recreation use will not be counted in the snack bar use size limitation. The Building Official shall make the determinations as to the allocation of the square footage with respect to the amusement and recreation use and the snack bar use.
  - (14) Medical marijuana centers.
  - (15) Congregate housing. Such use may only be used as a long-term rental unit. Congregate housing may not be maintained on the ground or first floor of the subject property and shall comprise no more than fifty percent (50%) of the building. The aggregate square footage of congregate housing in a building shall be no less than one thousand two hundred (1,200) and no greater than two thousand (2,000) square feet. All congregate housing uses shall be accessory to the underlying commercial use of the real property and shall be limited to use by nonprofit organization owners only. A congregate housing use may not be converted to any other conditional use except a residential use as described in Paragraph (1) of this Section. The unit thereafter shall be restricted to such residential use. Payment in lieu of providing parking is not allowed for congregate housing uses.
  - (16) Medical marijuana-infused product manufacturer.
  - (17) Retail marijuana store.
  - (18) Retail marijuana products manufacturer.
  - (19) Retail marijuana testing facility.
  - (20) Formula retail businesses.
  - (21) Veterinary clinic or hospital.
  - (22) Employee dwellings.

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### **Sec. 16-5-540. Lot measurements.**

The following shall be lot measurements for property located in the "C" District:

- (1) Minimum lot area: two thousand five hundred (2,500) square feet.
- (2) Maximum lot area: nine thousand three hundred seventy-five (9,375) square feet.
- (3) Minimum lot width: twenty-five (25) feet.
- (4) Minimum front yard: twenty (20) feet.
- (5) Minimum side yard:
  - a. None for structures with flat roofs.
  - b. As much as eleven and one-half (11½) feet for all other structures, dependent upon snow storage guidelines.
- (6) Minimum rear yard: ten (10) feet.

### **Sec. 16-5-550. Floor area.**

The following shall regulate measurements for floor areas located in the "C" District:

- (1) Minimum floor area: four hundred (400) square feet for each residential unit.
- (2) Maximum floor area: accessory building, one thousand (1,000) square feet of floor area or two-thirds ( $\frac{2}{3}$ ) of the floor area of the principal building, whichever is smaller.
- (3) Maximum floor area ratio:
  - a. For a lot area not exceeding three thousand one hundred twenty-five (3,125) square feet, 1.55 as matter of right if a Dumpster space is provided on site or is otherwise approved. F.A.R. may be as high as 1.7 if that part of the building creating a F.A.R. in excess of 1.55 is used exclusively for residential units and if adequate parking for the residential units is provided on site, in addition to an on-site or otherwise approved Dumpster space. Residential parking shall not be required for any residential building or portion thereof, constructed prior to May 26, 1990, which continues to be used as a residence.
  - b. For a lot area of more than three thousand one hundred twenty-five (3,125) square feet but not exceeding six thousand two hundred fifty (6,250) square feet, 1.25 as matter of right up to 1.55, dependent upon the provision of site amenities. F.A.R. may be as high as 1.7 if that part of the building creating a F.A.R. in excess of 1.55 is used exclusively for residential units and adequate parking for the residential units is provided on site, in addition to an on-site or otherwise approved Dumpster space. Residential parking shall not be required for any residential building or portion thereof, constructed prior to May 26, 1990, which continues to be used as a residence.
  - c. For a lot area of more than six thousand two hundred fifty (6,250) square feet, 1.0 as matter of right up to 1.55, dependent upon the provision of site amenities. F.A.R. may be as high as 1.9 if that part of the building creating a F.A.R. in excess of 1.55 is used exclusively for residential units and adequate parking for the residential units is provided on site, in addition to an on-site or otherwise approved Dumpster space. Residential parking shall not be required for any residential building or portion thereof, constructed prior to May 26, 1990, which continues to be used as a residence.

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### **Sec. 16-5-560. Building measurements.**

The following shall regulate measurements for buildings located in the "C" District:

- (1) Maximum building height: thirty-five (35) feet.
- (2) Minimum exterior wall height: seven (7) feet.
- (3) Minimum vertical distance from eave line of roof to the finished grade level: six (6) feet.
- (4) Slope of roof: a minimum of 4:12. A flat roof must contain a parapet on the side facing a street, and as otherwise required by the Board.

### **Sec. 16-5-570. Additional provisions.**

- (a) Service yards fences: All service yards shall be screened by a solid fence of six (6) feet in height or of sufficient height to screen from view any objects located therein.
- (b) Hazardous activities:
  - (1) *Hazardous activity* means any use or activity which results in a significant risk of fire or explosion as determined by the Chief of the Crested Butte Fire Protection District under the terms of any commonly accepted fire code.
  - (2) No hazardous activity shall be permitted in those portions of the "C" Commercial District lying within Blocks 38, 39 and 40 unless the Chief of the Crested Butte Fire Protection District approves such use or activity in such location. Such approval shall be based upon meeting the terms of the fire code as adopted by the Town.

(Prior code 15-2-13; Ord. 3 §16, 1994; Ord. 4 §1, 2009)

## **ARTICLE 6 Miscellaneous Districts**

### ***Division 1 "M" Mobile Home District***

#### **Sec. 16-6-10. Intent.**

The purpose for which this District is created is to accommodate the continued availability of land within the Town for the location of mobile homes, while at the same time encouraging the location, movement or realignment of mobile homes in such fashion as will maximize public safety and aesthetic considerations.

#### **Sec. 16-6-20. Permitted uses.**

The following uses shall be permitted in the "M" District:

- (1) Mobile home parks;
- (2) Individual mobile homes; and
- (3) Mobile home accessory buildings.

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## **Sec. 16-6-30. Conditional uses.**

The following uses shall be permitted as a conditional uses in the "M" District: parking areas.

## **Sec. 16-6-40. Use restrictions.**

The following use restrictions shall apply in the "M" District:

- (1) A single mobile home shall be subject to the restrictions of a single-family dwelling unit, as contained in the "R1" Residential District.
- (2) All mobile homes shall be located upon well-drained and properly graded lots, so as to prevent the accumulation of surface water and to ensure proper drainage.
- (3) Mobile home lots shall consist of a minimum of three thousand one hundred twenty-five (3,125) square feet and shall be not less than twenty-five (25) feet in width.
- (4) The "M" District shall be designed, constructed and laid out so that there shall be a minimum of eleven (11) feet in distance between mobile homes.
- (5) No mobile home shall be located closer than ten (10) feet from the boundaries of the "M" District.
- (6) Each space for a mobile home shall be clearly and distinctly marked and numbered.
- (7) Water and sewer lines in accordance with this Code must be installed in the "M" District by September 1, 1992. The electrical and gas system within the District must conform to all provisions of this Code and all governmental codes pertaining to the same, and all gas and electrical service lines shall be installed underground.
- (8) The "M" District shall at all times be maintained in a clean and orderly condition with adequate trash and garbage containers provided.
- (9) A storage building may be provided on each mobile home lot containing a minimum storage capacity of ten (10) cubic yards per mobile home lot. Such building may be placed to the rear of each mobile home, shall not be larger in width than the mobile home and shall not exceed ten (10) feet in length.
- (10) Off-street parking for two (2) motor vehicles for each mobile home shall be provided and maintained on a year-round basis. A garage may be allowed as a conditional accessory use on any lot so long as it is placed to the rear of any mobile home on the same lot, is used for vehicular storage and meets all of the height and set back requirements of this District.
- (11) The five-and-one-half-foot side lot setback requirement and the eleven-foot distance between mobile homes are intended to provide a minimum unencumbered corridor for fire protection purposes. The corridor shall run parallel to the mobile home's longest dimension and shall run the full length of the property on which the mobile home is located. For purposes of this Paragraph, an encumbrance shall include any object which may obstruct fire protection personnel or equipment. No variance for any encroachment into said corridor shall be allowed. An uncovered and unenclosed porch or landing for a mobile home door which opens into such area may be allowed so long as such porch or landing is approved by the Building Inspector and does not include a porch or landing in excess of twenty (20) square feet. Further, such porch or landing may not extend more than four (4) feet, including railings, from the mobile home to which it is attached. The dimensional limitation of the four (4) feet in width and twenty-square-foot maximum may be varied by approval of the Board if the lot is wider than twenty-five (25) feet in the vicinity of the deck and an eleven-foot unobstructed corridor between mobile homes is maintained for fire protection purposes.

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### **Sec. 16-6-50. Lot measurements.**

The following shall be lot measurements for property located in the "M" District:

- (1) Minimum lot area: three thousand one hundred twenty-five (3,125) square feet.
- (2) Minimum lot width: twenty-five (25) feet.
- (3) Minimum front yard: twenty (20) feet.
- (4) Minimum side yard: five and one-half (5½) feet.
- (5) Minimum rear yard: five (5) feet.

### **Sec. 16-6-60. Floor areas.**

The minimum floor area for a mobile home in the "M" District shall be none, except that no mobile home may contain more than one (1) residential unit.

### **Sec. 16-6-70. Additional provisions.**

- (a) The maximum building height shall be sixteen (16) feet.
- (b) The minimum exterior wall height shall be seven (7) feet.
- (c) The minimum vertical distance from the eave line of the roof to the finished grade level shall be six (6) feet.
- (d) The slope of the roof shall be a minimum of 4:12; provided, however, that a mobile home may have a flat roof.

(Prior code 15-2-14; Ord. 3 §3, 1989; Ord. 4 §1, 2009)

## ***Division 2 "P" Public District***

### **Sec. 16-6-110. Intent.**

The purpose for which this District is created is to ensure adequate land for recreation and for governmental and quasi-governmental purposes.

### **Sec. 16-6-120. Permitted uses.**

The following uses shall be permitted in the "P" District:

- (1) Open use recreational facilities, parks or playfields;
- (2) Libraries or museums;
- (3) Essential governmental and public utility uses;
- (4) Public transit facilities;
- (5) Community recreation facilities;
- (6) Parking areas;
- (7) Art centers; and

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- (8) Schools.

#### **Sec. 16-6-130. Conditional uses.**

The following uses shall be permitted as conditional uses in the "P" District:

- (1) Publicly owned housing;
- (2) Agricultural structures; and
- (3) Retail commercial establishments, office uses, financial institutions and personal services establishments in buildings owned by or property leased by the Town.

### ***Division 3 "A-O" Agriculture-Open District***

#### **Sec. 16-6-210. Intent.**

The purpose for which this District is created is to maintain and preserve the rural character of lands proximate to development which are suitable for open space conservation or recreation use by preserving the agricultural use, wildlife habitat and scenic quality of such lands.

#### **Sec. 16-6-220. Permitted uses.**

The following uses shall be permitted in the "A-O" District:

- (1) The grazing of livestock and horses, excluding feed lots, provided that offensive odors and dust are confined to the zone district;
- (2) Hay growing and harvesting;
- (3) Public recreation trails;
- (4) Publicly owned recreational facilities;
- (5) Wildlife habitat; and
- (6) Open space or land.

#### **Sec. 16-6-230. Conditional uses.**

The following uses shall be permitted as conditional uses in the "A-O" District:

- (1) Ponds;
- (2) Crops, other than hay;
- (3) Erosion- or hazard-protection structures;
- (4) Underground public utility mains and lines, and appropriate and necessary underground and aboveground appurtenances connected therewith; and
- (5) Structures, excluding residential structures, roads and fences which are necessary and accessory to permitted and conditional uses.

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**Sec. 16-6-240. Use restrictions.**

The placement and size of aboveground structures shall be minimized. Further, outdoor storage of refuse or any other abandoned material or object shall not be allowed.

**Sec. 16-6-250. Lot measurements.**

The following shall be lot measurements for property located in the "A-O" District:

- (1) Minimum lot area: ten (10) acres.
- (2) Minimum yard setbacks: any distance conditionally approved.

**Sec. 16-6-260. Additional provisions.**

- (a) The maximum floor area shall be four thousand five hundred (4,500) square feet in the aggregate.
- (b) The maximum building height shall be twenty-eight (28) feet.
- (c) The maximum number of animals shall be thirteen and three-tenths (13.3) animal unit months (AUM) per ten (10) acres or portion thereof, provided that no significant increase in erosion occurs (established as of the date such use is allowed by the Town).

(Prior code 15-2-15.1; Ord. 4 §1, 2009)

## ***Division 4 Planned Unit Developments***

**Sec. 16-6-310. Intent.**

The Planned Unit Development is an overlay district that allows the development of a unified project which may involve a related group of uses and variances from the strict adherence to the area, setback, bulk and other requirements of the underlying zone district regulations not related to use. Specific purposes for a Planned Unit Development (hereafter "P.U.D.") include:

- (1) Promoting flexibility in the type, design and siting of structures to preserve and take advantage of the site's unique or natural features.
- (2) Encouraging more efficient use of land, streets, alleys, utilities and governmental services.
- (3) Preserving open space for the benefit of residents and users of developments, as well as the Town in general.
- (4) Achieving a compatible land use relationship with surrounding areas.
- (5) Promoting greater variety, within the context of existing architecture and neighborhood context and size, in the type, design and siting of buildings and thereby improving the character and quality of new development.
- (6) Allowing the development of larger parcels incorporating many Town lots in a fashion which promotes more variety and diversity than would be possible in the individual development of each Town lot.
- (7) Ensuring that the flexibility in the type, design and siting of structures and variations from Town zoning district requirements result in public benefits to the community that go beyond those required by the Town zoning district requirements and other development standards in the Town Code.

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## **Sec. 16-6-320. Applicability.**

A request for a P.U.D. overlay may be submitted for any of the following types of development:

- (1) Any four (4) or more contiguous town lots, under the ownership of one (1) person, located in the "C" Commercial District; any five (5) or more contiguous town lots, under the ownership of one (1) person, in both the "T" Tourist District and the "B2" Business District; any six (6) or more contiguous town lots, under the ownership of one (1) person, in the "B3" Business District, the "B4" Business District and the "R4" Residential District; and any five (5) or more contiguous town lots, under the ownership of one (1) person or entity, located in the "B2" District. Any P.U.D. overlay in the "B2" District shall provide for a mix of building shapes relative to others existing in the entire "B2" District.
- (2) Any sixteen (16) or more contiguous lots, whether or not divided by any alley and/or street under the ownership of any one (1) person or entity, located anywhere within the Town.
- (3) Any parcel at least eighteen thousand seven hundred fifty (18,750) square feet in size, which is located in the "M" District and utilized exclusively for affordable or low-income housing.
- (4) Between four (4) and eight (8) contiguous Town lots, whether or not divided by an alley, in the "RIC" District which will be used primarily as public playgrounds and public recreation area churches and church-related facilities including only reception halls, class rooms, child care areas and required parking; nonprofit libraries and museums; and public and private schools.

Ord. No. 18 , § 2, adopted July 20, 2020, amended § 16-6-320 in its entirety to read as herein set out. Former § 16-6-320, pertained to location of P.U.D. Overlay, and derived from Prior code 15-2-15.2; Ord. 23 §7, 1992; Ord. 1 §1, 1993; Ord. 4 §2, 1994; Ord. 23 §1, 1996; Ord. 9 §1, 2006; Ord. 1 §1, 2008; Ord. 3 §9, 2009; Ord. 4 §1, 2009; Ord. No. 16 , § 2, 7-10-2017.

## **Sec. 16-6-330. Permitted variations.**

In order to achieve the above-stated intentions of the P.U.D. Overlay, the following zone district requirements and regulations may be varied at the discretion of the Board:

- (1) Minimum lot area.
- (2) Maximum lot area.
- (3) Minimum lot width.
- (4) Minimum front yard.
- (5) Minimum side yard.
- (6) Minimum rear yard.
- (7) Maximum building width.
- (8) Minimum exterior wall height.
- (9) Minimum vertical distance from eave line of roof to the finished grade level.
- (10) Slope of roof.

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### **Sec. 16-6-340. Calculation of floor area ratio.**

The floor area ratio for a P.U.D. overlay will be governed by the ratio allowed, considering use and/or lot size, in the zone district comprising the largest part of the P.U.D. The total site size, not the maximum lot size in the applicable zone district, will constitute the denominator in the floor area ratio calculation.

### **Sec. 16-6-350. Overview of P.U.D. overlay procedure.**

- (1) General plan application, public hearing, and Board decision pursuant to Sections 16-6-360 through 16-6-380.
- (2) Upon the Board's approval of the general plan, the applicant applies for a zoning amendment to be decided in a public hearing by Town Council decision pursuant to Sections 16-23-30, 16-23-60 and 16-23-90.
- (3) Upon the Town Council's approval of the P.U.D. overlay zoning amendment, the applicant may proceed with Architectural Review by the Board pursuant to Section 16-6-390.
- (4) Following approval by the Board under Section 16-6-390, applicant will obtain all applicable permits and approvals prior to commencing development.

( Ord. No. 18 , § 4, 7-20-2020)

Ord. No. 18 , § 4, adopted July 20, 2020, amended § 16-6-350 in its entirety to read as herein set out. Former § 16-6-350, pertained to application procedure, and derived from Prior code 15-2-15.2; Ord. 4 §1, 2009.

### **Sec. 16-6-360. Compliance with subdivision regulations.**

Any application for a P.U.D. which contains more than twenty-five thousand (25,000) square feet of land shall also be accompanied with a subdivision final plat which shall be subject to the requirements set forth in the Town's Major Subdivision Regulations, and reviewed for approval as a subdivision under said regulations; except that lands platted and zoned within the Town prior to July 20, 2007, shall be reviewed for approval as a P.U.D. only under the Town's P.U.D. requirements. The submission of multiple P.U.D. applications to circumvent this requirement is prohibited. When there are conflicts between the procedures or requirements of this Section and said Subdivision Regulations, the Subdivision Regulations shall prevail.

### **Sec. 16-6-370. Concept plan.**

Any applicant for a P.U.D. overlay may submit a concept plan of the proposed P.U.D., in whatever detail the applicant deems appropriate, to the Building Inspector. The Building Inspector shall review the plan and make such informal recommendations to the potential applicant as he or she deems relevant. Thereafter, the concept plan shall be referred to the Board for its review and comment at a regularly scheduled public meeting. The submission and review of a concept plan shall be for informational purposes only, and no binding decision or representations shall be made or allowed. It is the intent of this concept plan stage to allow general conceptual review of a proposed P.U.D. by the Board in order to give the applicant information regarding feasibility and potential problems that should be addressed in any general plan application.

### **Sec. 16-6-380. General plan.**

- (a) Application. Following the Board's review and discussion of the concept plan, an applicant for a P.U.D. overlay may submit a general plan application to the Building Inspector. This general plan application shall include:

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- (1) A legal description of the lots or parcel subject to the P.U.D.
  - (2) A deed for the property establishing title.
  - (3) The signature of the owner of the property or some other person with the written legal authority of the owner, if that person has the written legal authority to make such application.
  - (4) The existing topographic character of the land at a contour interval of two (2) feet if the slope is less than ten percent (10%) (spot elevations may be required if land is too flat for contours), and five (5) feet where the slope is greater than ten percent (10%).
  - (5) A site plan of the P.U.D. parcel, drawn to a scale of not less than one (1) inch equals twenty (20) feet, indicating:
    - The dimensions of the parcel;
    - The location and size of all proposed buildings, structures, utilities, easements, and other improvements;
    - All walls and fences with their location and heights;
    - The off-street parking areas, snow storage areas, service areas including trash areas, loading areas and provision for bicycle trails and bicycle storage;
    - Notation as to any mature landscaping proposed to be removed or relocated;
    - The areas to be dedicated to the Town or reserved as common areas;
    - The 100-year floodplain and floodway, if applicable;
  - (6) Project narrative describing the proposed land uses along with a tabular summary of the proposed project.
    - Development Program of Project by use, unit, square feet of development, and density;
    - Development Program of building(s) by use, unit, square feet of development, and building heights;
    - Areas dedicated to the Town;
  - (7) At least two (2) three-dimensional perspective, drawn to scale, showing the relationship of the proposed building or project to nearby buildings, if requested by the Chair of the Board or the Building Inspector.
  - (8) Plans showing the heights and four elevations of the building(s) or structure(s), and the exterior walls and roof thereof, with a general schematic drawing of the exterior design of the building drawn to one-quarter-inch or one-eighth-inch to the foot scale.
  - (9) A front elevation, drawn to scale, showing the width and height of the street elevation (alley elevation in the case of an alley structure) of the proposed building, any other buildings on the proposed building site and the buildings on the parcels abutting the proposed building site, all on one (1) drawing.
  - (10) A cross-section of each building section which varies in floor-to-ceiling height from any other section in the building.
  - (11) If the natural grade of a building site varies more than two (2) vertical feet between any two (2) points on the site or one (1) vertical foot within the building footprint, the natural contour of the site shall be graphically depicted on the site plan with no greater than one-foot contour lines and depicted on the submitted elevations of the proposed structure. If the finish grade of the site is proposed to be different from the natural grade of the site by more than one (1) vertical foot, both finish and natural grade shall be clearly depicted and labeled as such on the site plan and on the submitted elevations of the structure.

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- (12) A general landscape plan at the time of submission to be followed by a detailed landscaping plan once the plan has been approved showing the spacing, sizes and specific types of landscaping material, including parking areas.
    - Include notation as to any mature landscaping proposed to be removed or relocated on the site.
  - (13) A development schedule setting forth timing for construction of the development.
  - (14) Copies of any special agreements, conveyances, restrictions, or covenants which will govern the use, maintenance and continued protection of the planned unit and any of its common park areas must accompany the final development plan.
  - (15) The applicant may submit any other information or exhibits he deems pertinent in evaluating his proposed planned unit development, and the Board may request additional information which it deems necessary for adequate review and evaluation.
  - (16) A statement setting forth the required variances from normal zoning requirements and any required conditional uses, together with the justification for such variances and conditional uses.
  - (17) A plot plan of the P.U.D. parcel, drawn to a scale of one-eighth ( $\frac{1}{8}$ ) inch to one (1) foot or to a scale appropriate to the project as determined by the Building Inspector, showing the dimensions of the parcel and the size and location of the buildings or structures to be erected thereon, together with all other buildings or structures on the parcel, as well as parking and landscaping features.
  - (18) The signature of the owner or a person with the written legal authority of the owner. A statement setting forth the required variances from normal zoning requirements and any required conditional uses, together with the justification for such variances and conditional uses.
  - (19) At least two (2) three-dimensional perspectives, drawn to scale, showing the relationship of the project to nearby buildings and uses.
  - (20) A statement setting forth the impact of the project on the neighborhood, together with the applicant's plans to incorporate features designed to mitigate adverse impacts related to parking, visual impacts, access, noise and provision of services.
  - (21) Any other plans or representations required by the Building Inspector or Board.
- (b) Notice and Board hearing. Upon receipt of the general plan and following proper notice of at least ten (10) days, the Board will review the general plan in a public hearing for compliance with the criteria set forth in Section 16-6-400. The Board may approve the general plan application if the evidence on the record demonstrates that the proposed general plan satisfies the criteria in Section 16-6-400. If the Board finds that the proposal does not satisfy the criteria in Section 16-6-400, the Board shall approve the proposal with conditions that ensure compliance with all such criteria, or deny the proposal.
- (c) Zoning Amendment application. Following the Board's approval of the general plan, the applicant shall seek approval by Town Council of a zoning amendment for the P.U.D. overlay pursuant to the zoning amendment procedures in Article 23. Approval by the Board of the general plan shall constitute the formal recommendation to Town Council for the P.U.D. overlay zoning amendment under Section 16-23-40, and no application for such P.U.D. overlay zoning amendment shall be scheduled with Town Council unless or until the Board approves the general plan.
- (1) In addition to the application materials required in Section 16-23-30, the P.U.D. zoning amendment application shall include the general plan approved by the Board, and include a narrative description of how the P.U.D. overlay satisfies the standards in Section 16-6-380(2).
  - (2) The P.U.D. overlay shall:
    - a. Enhance the efficient use of land, streets, alleys, utilities and governmental services.

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- b. Preserve open space in excess of the requirements of the underlying zone district(s).
  - c. Be compatible with surrounding uses and the natural environment.
- (3) Following the Town Council's public hearing on the zoning amendment pursuant to Section 16-23-60, the Council shall approve the zoning amendment application for the P.U.D. overlay if the application satisfies the standards of Section 16-6-380(c)(2). If Council determines that the application does not satisfy such standards, Council shall deny the application and remand the application to the Board with written findings as to why the application was denied.

(Prior code 15-2-15.2; Ord. 4 §4, 1991; Ord. 4 §1, 2009; Ord. No. 18 , § 6, 7-20-2020)

### **Sec. 16-6-390. Architectural review.**

- (a) Review procedure. Upon Council's approval of the P.U.D. overlay zoning amendment, the applicant may submit detailed plans as are required Chapter 18 of this Code for the consideration of a building permit and architectural appropriateness. These detailed plans shall also include:
  - (1) A statement regarding the completion and maintenance of common elements and/or common open space.
  - (2) A landscape plan.
  - (3) The development and/or construction schedule.
  - (4) A plan for traffic and parking.
- (b) Review by Board. The Board shall review the building permit plans and representations for architectural appropriateness as set forth in Article 2 of this Chapter and shall review the plans for common elements, landscaping and development schedule under the criteria set forth in Section 16-6-400, below.

( Ord. No. 18 , § 6, 7-20-2020)

Ord. No. 18 , § 6, adopted July 20, 2020, amended § 16-6-390 in its entirety to read as herein set out. Former § 16-6-390, pertained to building permit review, and derived from Prior code 15-2-15.2; Ord. 13 §5, 1991; Ord. 4 §1, 2009.

### **Sec. 16-6-400. Criteria for Board decision.**

The Board shall not approve the general plan unless the Board finds that the general plan complies with all of the criteria set forth in this Section 16-6-400. If the general plan does not comply with all of the criteria, the proposal shall be approved with conditions that ensure compliance with all such criteria, continued to a date certain, or it shall be denied by motion of the Board. If a continued request is not rescheduled by the proponent for discussion to occur on or before the date to which the request is continued, the request is deemed to be denied without further action by the Board. Approval of the general plan by the Board shall constitute a recommendation to the Town Council to approve the P.U.D. overlay rezoning application. The general plan criteria are:

- (a) The general plan is consistent with the objectives and purposes of this Chapter and the underlying zoning district.
- (b) The general plan is compatible with neighborhood context and size, and will provide positive benefits to the Town beyond the minimum required by the Town Code. In making this determination the Board shall consider:
  - (1) Scale of proposed structures.

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- (2) Density of proposed structures.
  - (3) Amount of open space that may be provided in excess of requirements of the underlying zoning district.
  - (4) Protection of view corridors.
  - (5) Landscaping improvements in excess of standards of the underlying zoning district.
  - (6) Adequacy and location of parking.
  - (7) Relationship to adjacent land uses.
  - (8) Impact to the availability of housing units for long term occupancy.
  - (9) Public benefits beyond the requirements of the Town Code.
- (c) The general plan shall not cause nuisances including without limitation:
    - (1) Congestion, automotive or pedestrian safety problems, or traffic hazards.
    - (2) Significant noise, dust, vapor, fumes, odor, smoke, vibration, glare, trash or waste disposal issues, or other impacts that interfere with the use and enjoyment of neighboring property.
- (d) The general plan shall avoid adverse impacts on adjacent property or public facilities, rights-of-way or utilities by providing adequate:
    - (1) Snow storage.
    - (2) Protection from snow shedding.
    - (3) Snow removal.
    - (4) Solar access.
    - (5) Fire access.
- (e) The general plan shall include:
    - (1) An on-site, open and unoccupied area at least twelve (12) feet by twelve (12) feet in size, which is accessible at all times for an appropriate trash storage/dumpster location for each use or group of related uses within the P.U.D., as determined by the Board.
    - (2) In addition to the required off-street parking, an area equal in size to at least thirty-three percent (33%) of the off-street parking area (including the driving area within any parking lot and driveways), pedestrian access, trash removal or open space amenities shall be dedicated to snow storage. In lieu of providing said snow storage area, a snow melt system complying with the Town's Energy Code may be utilized in the areas where snow is removed therefrom, or the snow may be removed therefrom and stored on private property so long as an easement, license or ownership in perpetuity is demonstrated, unless there is public land available which is dedicated for such snow storage.
    - (3) Required number of properly sized handicapped accessible parking spaces for nonresidential buildings as determined by the Town.
    - (4) Adequate off-street parking. If a P.U.D. general plan is located in a "T" District, payment in lieu of the required off-street parking is not allowed.

## **ARTICLE 7 Timeshares**

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### **Sec. 16-7-10. Purpose and intent.**

The purpose of this Article is to establish the procedures and standards by which Timeshare Development may be permitted in the Town. This Article is referred to as the "Timeshare Development Guidelines." It is the Town's intent to establish Timeshare Development regulations that provide for the protection of the character of Crested Butte as a national historic district and a residential community, and that help to promote increased tourism and vitality within the Town by promoting further lodging opportunities for visitors. Specifically, the Town intends that new Timeshare Development projects will foster the goals of the Crested Butte Area Plan and will help to achieve and promote the following public purposes:

- (1) Increased vitality. Timeshare Development Projects can provide an opportunity for increased tourism within the Town, add to the level of community vitality and help to create a more sustainable local economy. These results can be accomplished by expanding the number and variety of beds available for use by visitors through a central reservation system, raising occupancy levels in the accommodations sector and attracting new trials to the Town by persons who have not previously visited the community.
- (2) Enhance and improve lodging inventory. Crested Butte's tourist accommodations inventory has traditionally included only a small number of traditional Hotels or Lodges, Motels and Bed and Breakfasts. The community would like to preserve, enhance and increase its lodging inventory by allowing Timeshare Development projects that look and operate in a manner similar to traditional Hotels or Lodges. These Timeshare Development Guidelines have been designed to accomplish this purpose by establishing standards for the physical and operational features of Timeshare Development Projects and to ensure that new and conversion Timeshare Development Projects promote traditional lodging goals and values.
- (3) Upgrade quality of accommodations. It is important to the Town's tourist economy that its accommodations are kept up to date. Timeshare Development offers the opportunity to infuse capital into the short-term accommodations inventory, thus permitting more frequent facility modernization. It is equally important to ensure that, once facilities are upgraded and modernized, said facilities are managed to provide a quality visitor experience over time. These Timeshare Development Guidelines are intended to ensure that Timeshare Development Projects are properly maintained over the life of the Project.
- (4) Maintain community character. Crested Butte has a valued reputation as a residential community. The Town intends to regulate Timeshare Development marketing and sales practices to ensure that the method in which Timeshare Estates are marketed and sold is consistent with the character of the community and to minimize the potential for practices that would create an inappropriate image of the Town. The Town also desires to protect its long-term residential neighborhoods to ensure that the impacts of Timeshare Development do not adversely affect the character and composition of these residential areas by limiting Timesharing to those zone districts where Short-Term Residential Accommodations are permitted.

### **Sec. 16-7-20. Definitions.**

The following capitalized terms shall have the meanings ascribed to such terms below. Defined terms used in the plural throughout these Timeshare Development Guidelines shall have the same meaning as defined terms below in the singular.

*Applicant* means the applicant or developer for any Timeshare Development Project.

*Application* refers to an application for Timeshare Development as described in Section 16-7-70 below.

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*Association* means the condominium homeowners' association in any Timeshare Development Project.

*Board* means the Board of Zoning and Architectural Review.

*Budget* refers to the budget for the Association as further described in Paragraph 16-7-70(8) of this Article.

*CC&Rs* means the declaration of real covenants, conditions and restrictions encumbering the property that is the subject of a Timeshare Development Project as described in Paragraph 16-7-70(12) of this Article.

*Code* means the Town of Crested Butte Municipal Code of 2009, as amended and modified from time to time.

*Commission* means the Colorado Real Estate Commission established under Section 12-61-105, C.R.S.

*Director* means the Building and Zoning Director, Building Official or Building Inspector, as such terms are used in this Chapter.

*Fiscal Impact Study* refers to the fiscal impact study as described in Paragraph 16-7-70(5) of this Article.

*Management and Maintenance Plan* refers to the management and maintenance plan as described in Paragraph 16-7-70(6) of this Article.

*Marketing and Sales Plan* refers to the marketing and sales plan as described in Paragraph 16-7-70(7) of this Article.

*Plat* means, as applicable to a Timeshare Development Project, the condominium plat which shall meet the requirements of Article 12 of this Chapter or, if applicable, the subdivision plat requirements described in Appendix I to this Code.

*Project* means a Timeshare Development Project.

*Timeshare Disclosure Statement* refers to the Timeshare disclosure statement as described in Paragraph 16-7-70(4) of this Article.

*Timeshare instruments* means the CC&Rs, the Use Plan Regulations and the Plat.

*Timeshare Use Plan* refers to the Timeshare use plan as described in Paragraph 16-7-70(3) of this Article.

*Upgrading Plan* refers to the upgrading plan as described in Paragraph 16-7-70(9) of this Article.

*Use Plan Regulations* shall mean, to the extent not set forth in the CC&Rs, those regulations and rules adopted by the Association governing the use, occupancy, reservation and exchange of the physical units divided into Timeshare interests in the Project.

## **Sec. 16-7-30. Properties where Timesharing is permitted and not permitted.**

Timesharing shall be permitted only on those properties located in those zone districts where Short-Term Residential Accommodation uses are permitted. Notwithstanding the foregoing, residential units located within zone districts permitting Short-Term Residential Accommodation uses may not be timeshared under these Timeshare Development Guidelines and shall operate like Residential Units only and not a Short-Term Residential Accommodation, Condo Hotel, Hotel or Lodge, Motel or Resort.

## **Sec. 16-7-40. Right-to-Use Estates prohibited.**

Right-to-Use Estates are considered inappropriate in the Town and are not permitted as such interests are inconsistent with the character of the Town as a residential community. The creation, operation or sale of a Right-

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to-Use Estate or any other Timeshare concept which is not specifically allowed and approved pursuant to the requirements of these Timeshare Development Guidelines is unlawful.

### **Sec. 16-7-50. Requirements for Timeshare Development Projects.**

No Timeshare Estate shall be created with respect to any property unless the Applicant has complied with the requirements of these Timeshare Development Guidelines. Timeshare Development requires the issuance of a conditional use permit in the districts identified in the Zoning and Land Use Ordinance where Short-Term Residential Accommodations are a conditional use. Any person intending to Timeshare an existing structure or new construction must obtain approval of the Project through the conditional use permit approval process specified in Article 8 and Article 22 of this Chapter. Any attempt to circumvent the terms of these Timeshare Development Guidelines shall be a violation hereof. A conditional use permit may be issued for a Timeshare Development Project only where the Project meets the requirements of these Timeshare Development Guidelines and complies with the procedures and requirements set forth in Article 8 and Article 22.

### **Sec. 16-7-60. Applicability of Timeshare Development Guidelines to Condo Hotels.**

Condo Hotels are considered a hybrid between Short-Term Residential Accommodations uses and Timesharing, and Hotel or Lodge and Motel uses. Because of their similar attributes (e.g., ownership patterns, management and maintenance, marketing and sales, upgrading of conversions, fiscal impacts, etc.), they operate not unlike Timeshare Development Projects. Accordingly, the requirements for Timeshare Development Projects contained in these Timeshare Development Guidelines shall apply to Condo Hotels. Defined terms in these Timeshare Development Guidelines applicable to Timeshare Development Projects shall similarly apply to Condo Hotels, with changes in points of reference. No Condo Hotel shall be created with respect to any property unless said Project has first obtained a conditional use for a Timeshare Development Project and otherwise complied with the requirements of these Timeshare Development Guidelines. Where there is a requirement or submittal applicable to the approval of a Timeshare Development Project under these Timeshare Development Guidelines that the Director determines is not otherwise relevant or important to the review and approval of a Condo Hotel project as a conditional use under these Timeshare Development Guidelines, the Director may elect to not require such requirement or submittal.

### **Sec. 16-7-70. Timeshare Development application.**

In order to create a Timeshare Development Project, the Applicant thereof shall submit an Application for Timeshare Development to the Director complete with the following submittals:

- (1) Timesharing Reimbursement Agreement. At the time of submission of the Application for Timeshare Development, the Applicant shall deliver to the Director an executed Town-approved Timeshare Development Project costs and expenses reimbursement agreement obligating the Applicant to reimburse the Town for any and all costs and expenses reasonably incurred by the Town in connection with the Town's review, processing, prosecution and approval of the Application and associated submissions and the conditional use approval for Timeshare Development.
- (2) Timeshare Development Application deposit. At the time of submission of the Application for Timeshare Development, the Applicant shall deliver to the Director a deposit in the amount of five thousand dollars (\$5,000.00) to defray the costs and expenses reasonably incurred by the Town in reviewing, processing, prosecuting and approving the Application and associated submittals and the conditional use approval for the Timeshare Development Project, which amount shall be paid by the Applicant to the Town as further delineated in the Timeshare Development costs and expenses reimbursement agreement. The deposit may be drawn upon as provided in the costs and expenses reimbursement agreement.

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- (3) Timeshare Use Plan. The Timeshare Use Plan shall be complete with a detailed description of the Timeshare Development Project, including, without limitation, the occupancy of the physical units divided into Timeshare interests within the proposed Project. The Timeshare Use Plan shall, without limitation, describe the number of Timeshare Estates being created in each physical unit, the total number of Timeshare Estates to be created in the Project, whether the purchaser thereof is buying an estate for years, whether a purchaser thereof is buying a specific physical unit for a specific time or for a floating time, the reservation procedures to be followed, if any, to secure use and occupancy of a physical unit, and other elements of the use, occupancy, reservation and exchange of the Timeshare interests and the units, as the case may be. The Timeshare Use Plan shall include a description of the number of physical units, including the number of lock-outs, keys and bedrooms and any phasing of the Project that may impact the same. It shall also describe whether the owners thereof will be eligible to participate in an internal or external exchange program and, if so, in which program they will be eligible to participate and whether participation in such program is a mandatory condition of owning a Timeshare Estate. Other requirements for the content to the Timeshare Use Plan are contained in Paragraph 16-7-80(3) below.
  - (4) Timeshare Disclosure Statement. The Applicant shall provide the Director with a Timeshare Disclosure Statement containing sufficient detail and information to verify any disclosures required therein. Other requirements for the content to the Timeshare Disclosure Statement are contained in Paragraph 16-7-80(2) below.
  - (5) Fiscal Impact Study. For Projects that include a conversion of an existing property into a Timeshare Development Project, the Applicant shall provide a detailed Fiscal Impact Study that satisfies the requirements set forth in Paragraph 16-7-80(3) below.
  - (6) Management and Maintenance Plan; Taxes.
    - a. A detailed plan for the management and maintenance of the Project describing whether the Applicant or the Association will manage and maintain the Project or if it will be managed and maintained by a third party management and maintenance company, a bonded company or other entity, as the case may be, and describing how the Project will be operated, maintained and managed. Other requirements for the content in the Maintenance and Management Plan, and in the Maintenance and Management Agreement, if any, are contained in Paragraph 16-7-80(4) below.
    - b. The Management and Maintenance Plan shall include provisions that require that the occupancy of any physical unit by anyone who pays a rental fee or other payment for lodging services related to such unit shall be subject to the Town's sales tax in the same manner as if such occupancy were of a Hotel or Lodge or Motel Unit.
  - (7) Marketing and sales plan. The marketing and sales plan for the Project, including, without limitation, information on proposed sales techniques (e.g., description of gifts, premiums, promotions), sales packaging and whether a sales office will be established on-site or off-site. Other requirements for the content of the marketing and sales plan are contained in Paragraph 16-7-80(5) below.
  - (8) Budget. A complete, detailed and itemized budget for the proposed Association, including, without limitation, an estimate of the costs and expenses for the management and maintenance of the Project.
  - (9) Upgrading Plan. For any existing structure that is proposed to be converted to a Timeshare Development Project, the applicant shall submit a detailed and itemized plan of how the Project will be physically upgraded and modernized to comply with these Timeshare Development Guidelines and the conditional use approval applicable thereto. Other requirements for the content to the Upgrading Plan are contained in Paragraph 16-7-80(6) below.

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- (10) Taxes. A statement from the Applicant indicating the manner in which land transfer excise taxes, property taxes and sales taxes will be collected.
  - (11) Developer's registration. A copy of the Developer's registration with the Commission as required pursuant to Section 12-61-401, et seq., C.R.S.
  - (12) CC&Rs. The draft CC&Rs affecting the property that is the subject of a Timeshare Development Project.
  - (13) Use Plan regulations. The draft rules, regulations or procedures to be adopted by the Association for the use, reservation, exchange and occupancy of any unit in the Project divided into Timeshare interests. The Use Plan regulations may be included in the CC&Rs.
  - (14) Condominium plat. A draft of the proposed condominium plat, if applicable.

### **Sec. 16-7-80. Review criteria for application submittals.**

The application submittals shall demonstrate compliance with the following requirements and review criteria. The Director shall review the Application submittals to determine their compliance herewith.

- (1) Timeshare Use Plan.
  - a. The Timeshare Use Plan shall demonstrate that the negative impacts caused by the Project through the life thereof upon, without limitation, the Town's infrastructure, revenue sources, transportation system, roadway system, recreational amenities, municipal programs and other facilities, utilities and related structures, and programs and facilities of special districts providing services to the Town, will be satisfactorily mitigated.
  - b. The plat shall demonstrate that the Project will include all necessary physical accommodations to assure satisfactory use as a Short-Term Residential Accommodation. All Projects shall maintain such physical accommodations throughout the life of the Project. The Applicant shall provide assurances in the CC&Rs or the plat that such requirement shall be met for the life of the Project, unless amended earlier as permitted hereunder, and shall submit the Project to periodic inspections, compliance reviews and/or reporting programs.
  - c. The Timeshare Use Plan shall describe how the Applicant will pay, with respect to the Applicant's unsold Timeshare interests, assessments, taxes excepting the applicable land transfer excise tax, and fees equal to those assessed or levied on sold Timeshare interests. The CC&Rs shall explain how the applicant will pay said assessments, taxes, maintenance costs and expenses and fees through the life of the Project and shall contain assurances that the requirements set forth herein shall be complied with for such period, unless amended earlier as permitted hereunder. The Project shall be subject to periodic inspections, compliance reviews and/or reporting programs to assure compliance with these provisions.
  - d. If the Timeshare Use Plan contemplates that owners are to be permitted or required to become members of or to participate in any program for the exchange of occupancy rights among themselves or for the Timeshare owners of other Timeshare interests, or both, the applicant shall, at a minimum, obligate itself in the Use Plan regulations to provide prospective purchasers with a full and accurate disclosure required by Commission regulations.
  - e. The Timeshare Use Plan shall describe how the Project will have a staffed, on-site front desk located within a lobby that is sized to meet the needs of the Project. Said desk service shall be managed to provide consolidated registration and reservation services for owners, occupants and public walk-ins at the Project, including provision for late check-ins and for other off-hour guest needs. Subject only to availability, desk service shall accommodate walk-in, public rentals. The

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applicant shall provide assurances in the CC&Rs that such requirements shall be complied with for the life of the Project, unless amended earlier as permitted hereunder.

- f. The Timeshare Use Plan shall demonstrate that the Project contains an appropriate level of recreational facilities (e.g., exercise equipment, pool, spa, other similar facilities), meeting space as required by this Code and other appropriate amenities (e.g., restaurants and other similar facilities) to serve the owners and occupants in all seasons. The extent of the facilities and amenities provided shall be proportional to the size of the Project. The types of facilities and amenities shall be consistent with the planned method and style of operating the Project. Other than for the priority use of the owners of Timeshare Estates, their guests and persons occupying under an exchange program, all such facilities and amenities, including, without limitation, meeting spaces, shall be available for use by the general public for a fee on a space-available basis. The Project may, however, include locker room and equipment storage facilities available only to the owners of Timeshare Estates, their guests and persons occupying under an exchange program. The Applicant shall describe in the Timeshare Use Plan whether such facilities and amenities will be owned by a commercial unit owner or owned by the Association (or by the owners in common). The Applicant shall provide assurances in the CC&Rs that such requirements shall be complied with for the life of the Project, unless amended earlier as permitted hereunder.
- g. The Timeshare Use Plan shall mandate that all physical units in the Project are available for public rental when they are not being occupied by the owner, the owners' personal guests or persons occupying the units under an exchange program. The Timeshare Use Plan shall demonstrate the following:
  1. Units shall be made available for short-term rental by the public when a unit is not in use by the owner, the owner's personal guests or persons occupying the unit under an exchange program. Units that are available for rental shall be listed in the Crested Butte central reservation system and, at the Timeshare Estate owner's election, through the central reservation system of the company that will manage the Timeshare Estate if that is desired.
  2. The CC&Rs shall permit the walk-in rental of units. The Association shall not limit the rental of units to such arrangements as only weekly rentals or Saturday-to-Saturday rentals; rather the CC&Rs shall permit shorter stays, split-week rentals and similar flexible rental arrangements.
  3. Owners of Timeshare Estates shall be required to reserve their unit sufficiently far enough in advance to enable the general public to obtain access to those units that are not so reserved. Any reservations that are granted as a matter-of-right to Timeshare interest owners, their guests and exchange participants must be made at least eight (8) weeks prior to the associated stay. Any units not reserved by owners, their guests or exchange participants at least eight (8) weeks prior to the associated stay shall be made available to the public for rental. Any reservations made less than eight (8) weeks in advance are subject to being on a space-available basis only. Each owner of a Timeshare interest and exchange participant may only have one (1) space-available reservation on a unit at any given time.
  4. Units that remain in the Applicant's inventory shall be made available for rental to the public while Timeshare Estates are being sold, except for one (1) model of each style of unit that are reasonably needed for marketing or promotional purposes by the Applicant.
  5. No owner of a Timeshare interest, his or her guests or any exchange program participant shall have the right to occupy a Timeshare Development project unit for more than fourteen (14) consecutive days or thirty (30) days within any calendar year, regardless of

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the form of Timeshare Estate, provided that such thirty-day limitation may be exceeded where such use of a unit is available on a space-available basis only (i.e., as opposed to a matter of right).

6. The Applicant shall demonstrate that the owners are prohibited from personalizing the unit in which they have purchased a Timeshare interest.

The Applicant shall provide assurances in the CC&Rs that such requirements shall be complied with for the life of the Project, unless amended earlier as permitted hereunder, and shall submit the Project to periodic inspections, compliance reviews and/or reporting programs.

- h. No Timeshare unit may contain less than six (6) or more than twelve (12) Timeshare interests. The Applicant shall provide assurances in the CC&Rs that such requirements shall be complied with for the life of the Project, unless amended earlier as permitted hereunder.
  - i. The Timeshare Use Plan shall require that any proposal to convert an existing hotel or lodge, bed and breakfast, motel, resort or condo hotel property to a Timeshare Development shall, at a minimum, replace the existing number of physical units on the property in the Project with the same number of like units so that there is no net loss of units on the subject property and no net loss of public availability of short-term accommodations. The Applicant shall provide assurances in the CC&Rs that such requirements shall be complied with for the life of the Project, unless amended earlier as permitted hereunder.
- (2) Timeshare Disclosure Statement. The Timeshare Disclosure Statement shall be the same disclosure statement used by the applicant in its Marketing and Sales Plan and shall contain, and fully and accurately disclose, the following at a minimum. The Timeshare Disclosure Statement is required for the benefit of prospective purchasers of any Timeshare Estate from the Applicant. The Town accepts no responsibilities for the accuracy and veracity of the Timeshare Disclosure Statement. The Applicant shall provide three (3) copies of all the submittals delivered to the Commission. Such submittals shall become part of the Application, and may be specifically referenced in the Timeshare Disclosure Statements as described herein.
- a. A summary of the Applicant's and, if different the developer's, business experience, including, without limitation, all background and experience in the development of Timeshare Development Projects and the Applicant's present financial condition.
  - b. Information regarding the identity of the management and maintenance company for the Project, and a description of the responsibilities, powers, duties, authority and business experience of the same. All information on the management and maintenance company's background and experience specifically related to Timeshare Development Projects shall be provided.
  - c. Information regarding the marketing entity and the listing broker and a statement of whether there are any disputes pending or investigations that have been undertaken against the marketing entity or listing broker and, if so, a description of the status or disposition of said disputes or investigations. A summary of the marketing entity's business experience, including, without limitation, all background and experience related to Timeshare Development Projects.
  - d. A description of the Developer's schedule for completion of all components of the Project with dates of availability for occupancy.
  - e. Any restraints on the transfer of the purchaser's interest in its Timeshare interest held by the Applicant.

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- f. Notice of any liens, title defects or encumbrances on or affecting the title to the Timeshare Estates or any other part of the Project and, if there are encumbrances or liens, a statement as to whether, when and how they will be removed.
  - g. Notice of any pending or anticipated legal actions that are material to the Timeshare Estates or any other part of the Project of which the Applicant has, or should have, knowledge.
  - h. The total financial obligation of the purchaser which shall include, without limitation, the initial price and any additional charges to which the purchaser may be subject in purchasing the Timeshare Estate and the potential obligations resulting from the seller's nonpayment of applicable land transfer excise taxes.
  - i. An estimate of the dues, maintenance and management fees, real property taxes, sales taxes, land transfer excise taxes and similar periodic expenses and the method or formula by which they are derived and apportioned, which shall include whether management and maintenance fees are determined by Timeshare interest, unit, time of year or prorated share of the overall management and maintenance costs, or any other means utilized to compute management and maintenance fees.
  - j. Notice that all sales are subject to the Town's land transfer excise tax, that the purchaser and seller are jointly and severally obligated to pay the same and that, upon nonpayment, such tax becomes a lien on the purchaser's property.
  - k. A statement demonstrating the manner in which management, maintenance and assessment fees will be managed and administered.
  - l. A description of any financing offered by the Applicant, if any.
  - m. A statement as to any current or expected fees or charges to be paid by Timeshare Estate owners for the use of any facilities related to the Project.
  - n. The terms and conditions relative to any warranties provided, including, without limitation, statutory warranties and limitations on the enforcement thereof or on damages.
  - o. A statement that the proposed Project and the Applicant have complied with all applicable requirements of Section 12-61-401, et seq., C.R.S., and such rules and regulations promulgated by the Commission applicable to Timeshare Development Projects as contemplated under these Timeshare Development Guidelines.
  - p. The extent to which a Timeshare unit may become subject to a tax or other lien arising out of claims against other Timeshare owners of the same Timeshare unit.
  - q. The minimum percentage of Timeshare Estates the Applicant will require to be sold before the Applicant will proceed with the completion of the Project.
  - r. A description of the management and maintenance to be supplied to the Project, including how and when such services will be provided and the time periods during each calendar year which will be set aside for only maintenance and no occupancy.
  - s. How the Project will deal with the problem of a unit not being available to an owner because of a prior occupant holding over and not yielding possession of the unit; and, in the case of a holdover problem, what means are available to discourage and penalize persons who do hold over.
  - t. A description of the amenities and recreational facilities that are available for use by the Timeshare Estates owners on a deeded or contractual basis, and whether such amenities and facilities are available on-site or off-site and owned by the Association (or the owners in common) or by a commercial owner. If there are any off-site amenities or facilities that are related to the Project or owned by a commercial owner, these shall also be described, including a

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- summary of any fees that Timeshare interest owners will be required to pay to use those off-site amenities or facilities or amenities or facilities not owned by the Association.
- u. A statement describing the number of persons who can occupy a unit at any one (1) time and what those limitations are for each unit in the Project. Said requirement must meet the State's occupancy requirements.
  - v. For any Timeshare Development that is a conversion of an existing property, a statement shall be provided by the Applicant, based on a report prepared by an independent architect or engineer licensed by the State, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the Project and the differences between said conditions and their compliance with current life-safety standards or requirements contained in the most currently adopted building, fire, health and safety codes upon completion of the conversion of the Project. The statement shall also provide a list of any outstanding notices of uncured violations of building codes or other municipal regulations, together with the estimated cost of curing those violations.
  - w. A statement by the Applicant of the expected useful life of each item reported in Subparagraph v. above.

To the extent that these Timeshare Development Guidelines require that the Timeshare Disclosure Statement contain a disclosure that is duplicative of a disclosure required by the Commission, the Applicant may reference such disclosure to the Commission in the Timeshare Disclosure Statement by referring to the applicable provisions thereof, it being the Town's intent to not require the Applicant to submit duplicative disclosures to the Town and the Commission. Notwithstanding the foregoing, the burden of proof shall be on the Applicant to demonstrate to the satisfaction of the Town that a disclosure required in the Timeshare Disclosure Statement is duplicative of a Commission-required disclosure.

- (3) **Fiscal Impact Study.** In the case of a conversion of an existing property into a Timeshare Development Project, the Project shall be required to demonstrate that the proposed conversion will not have a negative tax consequence to the Town. In order to demonstrate the tax consequences of the Project, the Applicant shall prepare a detailed Fiscal Impact Study thereof. The Fiscal Impact Study shall contain at least the following comparisons between the existing operation and the proposed converted Project:
  - a. A summary of the sales taxes paid to the Town for the rental of units during the prior five (5) years of its operation. If the subject property stopped renting rooms prior to the time of submission of the Application, then the summary shall reflect the final five (5) years that the subject property was in operation. The summary of past taxes paid shall be compared to a projection of the sales taxes the proposed Project will pay to the Town over the first five (5) years of its operation. As part of this projection, the Applicant shall specify the number of nights that the Applicant anticipates each unit will be available for daily rental to visitors (that is, the annual number of nights when the unit will not be occupied by the owner or the owner's guests), the expected visitor occupancy rate for these units, the expected average daily cost to rent the unit and the resulting amount of sales tax that will be paid to the Town.
  - b. An estimation of the land transfer excise taxes that will be paid to the Town for Timeshare Estates as they are sold. If an actual sale of a Timeshare Estate has occurred within the last twelve (12) months, then the real estate taxes paid for that sale thereof shall be used. This estimation shall be compared to a projection of the land transfer excise taxes the proposed Project will pay to the Town over the first five (5) years of its operation. This projection shall include a statement of the expected sales prices for the Timeshare Estates and the applicable tax rate that will be applied to each sale.

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- c. A summary of the Town portion of the property taxes paid for the property for the prior five (5) years of its operation and a projection of the property taxes the proposed Project will pay to the Town over the first five (5) years of its operation. This projection shall include a statement of the expected value that will be assigned to the property and the Timeshare interests by the Tax Assessor and the applicable tax rate.
  - d. Such other information that the Applicant believes is relevant to the Town understanding the tax consequences of the proposed Project. For example, the Applicant may provide information demonstrating there will be secondary or indirect tax benefits to the Town from the occupancy of the units in terms of increased retail sales and other economic activity in the community as compared to the existing uses of the property. The Applicant shall be expected to prove definitively why the Timeshare units would cause such economic advantages that would not be achieved by a traditional Hotel or Lodge or Motel. Any such additional information provided shall compare the taxes paid during the prior five (5) years of the property's operation to the first five (5) years of the proposed Project's operation.
  - e. If the Fiscal Impact Study demonstrates there will be an annual tax loss to the Town from the conversion of an existing property to a Timeshare Development in any of the specific tax categories (e.g., property tax, sales tax, land transfer excise tax), then the Applicant shall be required to propose a mitigation program that offsets the negative consequences. Analysis of the Fiscal Impact Study shall compare existing tax revenues for a lodging property with anticipated tax revenues. The accepted mitigation program shall be documented in the CC&Rs and shall be complied with for the life of the Project, unless amended earlier as permitted hereunder.
- (4) Management and Maintenance Plan; taxes. The Management and Maintenance Plan shall demonstrate how the Project will be appropriately managed and maintained in a manner that will be both stable and continuous for the life of the Project. This shall include an identification of when and how maintenance will be provided and shall also address, at a minimum, the following requirements:
- a. A fair procedure shall be established for the Timeshare Estate owners to review and approve any fee increases which may be made throughout the life of the Project to provide assurance and protection to Timeshare Estate owners that all fees will be applied and used appropriately.
  - b. The Applicant shall also demonstrate that there will be a reserve fund of not less than three (3) months of the costs and expenses associated with the management and maintenance of the Project to provide funds to properly manage and maintain the Project by the Association throughout its lifetime.
  - c. The management and maintenance agent responsible for the Project shall acquire a business license, and each such designated agent shall provide the Town with said agent's name, address and phone number. Said agent and the Association shall be responsible to keep all information in the Management and Maintenance Plan, the management and maintenance agreement and any other records or other matters addressed in Sections 16-7-150 and 16-7-160 of this Article current and up to date. Each designated management agent shall have a local business office within the Town.
  - d. A reasonable amount of time shall be allocated periodically to the performance of routine maintenance to the Project.
  - e. The management and maintenance agreement shall contain the following, at a minimum:
    1. The Association shall designate a managing agent or officer;
    2. An up-to-date copy of said agreement shall be kept on file at the Project and shall be available for review by the Town during normal business hours;

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- 3. In the event the managing agent is terminated, a new managing agent shall be designated as soon as possible by the Association without interruption in services to the owners;
  - 4. The Association shall notify the Town of any change in its managing agent or the management and maintenance agreement within thirty (30) days of such change and provide a copy of any changes of the maintenance and management agreement on file with the Town; and
  - 5. The management and maintenance agreement shall specify the managing agent's duties and responsibilities to manage and maintain the Project.
- f. Regarding the payment of sales and transfer excise taxes:
- 1. The Association shall acquire and maintain a Town sales tax license. The Association shall use best efforts to collect Town sales tax, and in connection with such collection efforts, shall prepare and file sales tax returns and remit to the Town of sales taxes, for rentals or lodging services of the physical units in the Project, irrespective of how such units are rented and by whom. The Association shall keep and maintain suitable records of rentals or lodging services relative to the use of the units. Such records shall be available for audit by the Town during normal business hours in accordance with Chapter 4, Article 2 of this Code.
  - 2. Regardless of the Association's responsibilities relative to the remittance of sales taxes as described in Subparagraph 1. above, each owner of a Timeshare Estate shall ultimately be responsible to the Town for the timely payment of sales tax to the Town on rentals and lodging services provided in connection with his or her unit, including, without limitation, those provided on a private basis or otherwise separate from the Project's managing agent and/or reservation system. The Association shall require that each owner keep and maintain suitable records of rentals or lodging services relative to the use of his or her unit on such a basis and shall require that the owner provide such records to the Association no less frequently than annually.
  - 3. Before the Association will recognize a purchaser of a Timeshare Estate as a member in good standing with the Association, the new member must provide proof of payment of the Town's land transfer excise tax (such as a tax report made to the Town Manager, collection report of the transfer closing agent or notation by the County Clerk and Recorder) or proof of the Town's approval of a certificate of exemption. The Association will maintain all proof of payment or certificates of exemption for at least three (3) years after the transfer date and shall make such records available for the Town's inspection during normal business hours upon reasonable request.

The CC&Rs shall contain assurances that the terms and conditions of this Paragraph shall be complied with for the life of the Project, unless earlier amended as provided hereunder. In connection therewith, the management and maintenance company and the Association shall submit to periodic inspections, compliance reviews and reporting programs.

- (5) Marketing and Sales Plan. The marketing and sale of Timeshare Estates shall be governed by the provisions of Section 12-61-401, et seq., C.R.S. The marketing and sales plan for the Project shall demonstrate compliance therewith, as well as the following:
- a. The following marketing and sales practices for a Timeshare Development Project shall not be permitted:
    - 1. The solicitation of prospective purchasers of Timeshare interests on any street, mall or other public property or facility; and

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2. Any unethical sales and marketing practices that tend to mislead potential purchasers.
  - b. Giving of gifts to encourage potential purchasers to attend a sales presentation or to visit a Project is permitted, provided that the gift or otherwise is reflective of the local Crested Butte economy. For example, and not by way of limitation, gifts for travel to or accommodations in Crested Butte, restaurants in Crested Butte and local attractions (e.g., area ski passes, local concert tickets, regional rafting trips, etc.) are permitted. Gifts that have no relationship to the local Crested Butte area or economy are not permitted. The following gifts are also not permitted:
    1. Any gift for which an accurate description relative to the Project is not given;
    2. Any gift package for which notice is not given to the prospective purchaser that the purchaser will be required to attend a sales presentation as a condition of receiving the gifts; or
    3. Any gift package for which the printed announcement or the requirement to attend a sales presentation is in smaller type face than the information on the gift being offered.
  - c. Before transfer of a Timeshare Estate to a perspective purchaser, the Applicant or any other seller of a Timeshare Estate shall provide the intended transferee with a copy of the Timeshare Disclosure Statement and any amendments thereto. Conveyance of a Timeshare Estate shall be subject to the Timeshare Instruments.
  - d. Without limiting any other right or remedy the Town may have at law or in equity, upon deviation from an approved Marketing and Sales Plan, the Town shall have the right to enjoin the sales and marketing techniques thereof.

The Applicant shall submit the Project to periodic compliance reviews to ensure the Project's compliance with the foregoing requirements.

- (6) Upgrading Plan.
  - a. In the case of a conversion of an existing property into a Timeshare Development Project, the Upgrading Plan shall demonstrate that the existing property that is proposed to be converted to a Timeshare Development Project shall be physically upgraded and modernized in a manner that creates a Timeshare Development Project and that embodies the standards for acceptable Timeshare Development Projects under these Timeshare Development Guidelines. Further, the Upgrading Plan shall establish that the project will conform with all current life safety standards or requirements contained in the most currently adopted building, fire, health and safety codes. The extent of the upgrading shall be determined as part of the conditional use permit approval considering the condition of the existing facilities, with the goal of making the Project compatible in character with surrounding properties and to extend the useful life of the existing structures. No sale of any Timeshare Estate shall be closed until a certificate of occupancy has been issued for the subject property.
  - b. The Applicant shall demonstrate in the Upgrading Plan that the existing declaration of real covenants, conditions and restrictions encumbering the property that is the subject of a conversion to a Timeshare Development Project permit Timesharing and that one hundred percent (100%) of the owners of the condominiums therein have approved Timesharing of the subject property.
- (7) CC&Rs.
  - a. The CC&Rs shall comply with Section 38-33.3-101, et seq., C.R.S., and Article 12 of this Chapter.

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- b. The CC&Rs shall include provisions addressing those assurances and requirements mandated as part of the Timeshare Use Plan, Fiscal Impact Study, Management and Maintenance Plan and such other requirements as specified by the Town to be included in the CC&Rs in the conditional use approval for Timeshare Development and by these Timeshare Development Guidelines. Such provisions shall encumber the Timeshare Development Project for the life of the Project unless and until amended or modified as permitted under Section 16-7-150 of this Article and shall run with the land. The CC&Rs shall further include a statement to the effect that any amendment or modification of the foregoing sections shall require prior approval of the Town as provided in these Timeshare Development Guidelines.
  - c. The CC&Rs shall include the following:
    - 1. Any restrictions on the use, occupancy, alteration or alienation of Timeshare Estates;
    - 2. The ultimate responsibility for management and maintenance of the Project shall reside with the Association; and
    - 3. Any other matters that the Applicant or the Town deems reasonably necessary or relevant to the Timeshare Development Project and the granting of the conditional use in connection therewith.
  - d. The CC&Rs shall contain requirements that:
    - 1. The rental or provision of lodging services in any unit in the Project shall be subject to the Town's sales tax;
    - 2. The Association shall collect Town sales tax, prepare and file sales tax returns and remit to the Town sales tax payments for rentals or lodging services of the physical units in the Project, and, in this regard, the Association shall keep and maintain suitable records of rentals or lodging services relative to the use of the units irrespective of how such units are rented and by whom; and
    - 3. Regardless of the Association's responsibilities relative to the remittance of sales taxes as described in the preceding Subparagraph, each owner of a Timeshare Estate shall be responsible to the Town for the timely payment of sales tax to the Town on rentals and lodging services provided in connection with his or her unit on a private basis or otherwise separate from the Project's managing agent and/or reservation system, and, in this regard, each owner shall keep and maintain suitable records of rentals or lodging services relative to the use of his or her unit on such a basis.
  - e. The CC&Rs shall contain adequate assurances that the transferor of a Timeshare Estate shall provide to the Association proof of payment or exemption from payment of all land transfer excise taxes to the Town upon the transfer of a Timeshare Estate. In connection therewith, the CC&Rs shall contain a provision that makes the purchaser of a Timeshare interest obligated to pay all unpaid land transfer excise taxes and that, upon nonpayment, such tax becomes a lien on the subject property.
  - f. The CC&Rs shall contain provisions permitting Timesharing.
  - g. The CC&Rs shall contain a provision relative to the service of process in connection with any unit that complies with the requirements of Paragraph 16-12-60(4) of this Chapter.
  - h. Where the Town has required that certain provisions be included in the CC&Rs and, where proper, such provisions would more appropriately, in the opinion of the Director, be included in the conditional use approval for Timeshare Development instead, such provisions may be included in said conditional use approval in lieu upon the request of the applicant and approval of the Director.

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- (8) Use Plan Regulations. A draft of the Use Plan Regulations governing, without limitation, the reservation, use, exchange and occupancy of the physical units divided into Timeshare interests in the Timeshare Development Project. The Use Plan Regulations may be incorporated in the CC&Rs at the Applicant's election, but in all cases shall be consistent with the Timeshare Use Plan on file with the Town and shall be recorded in the office of the County Clerk and Recorder as one (1) of the Timeshare instruments.
  - (9) Condominium Plat. A draft of the plat.

### **Sec. 16-7-90. Parking, tap fee requirements.**

- (a) The parking requirements for Timeshare Development Projects shall be calculated by applying the parking standards for Hotel or Lodge uses. The parking requirements shall be calculated based on the maximum number of proposed lock-out rooms or keys in the Project.
- (b) The owner of a Timeshare Estate shall be prohibited from storing a vehicle in a parking space on-site when said owner is not using a unit. The CC&Rs shall contain adequate assurances that this requirement shall be complied with for the life of the Project, unless amended earlier as permitted hereunder.
- (c) To the extent that a Project includes one (1) or more uses, the parking requirements shall be calculated by applying the parking requirements applicable to said uses as further delineated in this Chapter and Chapter 17 of this Code.
- (d) The Applicant shall pay tap fees under the Code at a rate that is the greater of that applicable to Residential Units or Hotel or Lodge Units.

(Ord. 8 §4, 2008)

### **Sec. 16-7-100. Miscellaneous requirements.**

In addition to the application and the associated submittals demonstrating compliance with the review criteria set forth in Section 16-7-70 of this Article, the Project must also satisfy the following requirements, if applicable:

- (1) If the Project requires approval by the Board of one (1) or more Planned Unit Developments, the Project must comply with the requirements applicable to Planned Unit Developments set forth in Article 6, Division 4 of this Chapter.
- (2) If the Project requires Board approval of one (1) or more conditional uses (i.e., in addition to the conditional use approval required for a Timeshare Development Project), the Project must comply with the conditional use requirements applicable thereto set forth in Articles 8 and 22 of this Chapter.
- (3) Where any other use is combined with Timeshare Development, such use shall comply separately with the requirements of the underlying zone district contained in this Chapter and Chapter 17 of this Code.
- (4) The Applicant for a Timeshare Development Project shall pay the established fees for any conditional use permits. Such fees shall be in addition to all costs and expenses reasonably incurred by the Town in connection with the review, approval and prosecution of the Application for Timeshare Development by the Town.

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### **Sec. 16-7-110. Director approval, disapproval of application.**

- (a) Upon submission of the Application to the Director, the Director shall review the Application and associated submittals within sixty (60) days of their submission and determine if the same are complete and comply with these Timeshare Development Guidelines.
- (b) If the Director has determined that the Application is complete and meets the requirements of these Timeshare Development Guidelines, the Director shall refer the Application to the Board for its review and approval pursuant to Articles 8 and 22 of this Chapter within sixty (60) days of the Application's submission, subject to Section 16-7-120 of this Article. As part of the Director's referral of the Application, the Director shall provide a staff report which shall include, without limitation, feedback and recommendations as to the feasibility of the Project and any potential issues that the Director determines are important or relevant to the Project and its approval or disapproval as a conditional use. The application shall be placed on the Board's agenda for its review in accordance with Articles 8 and 22.
- (c) In the event that the Director finds that the Application is incomplete or fails to meet the requirements of these Timeshare Development Guidelines, the Director shall return the Application to the Applicant, along with a written response outlining in reasonable detail the reasons for his or her findings, within sixty (60) days of the Application's submission. Upon correction of those issues identified by the Director, the Applicant may resubmit the Application incorporating such corrections. The Applicant shall pay all costs and expenses of the Town in connection with the Town's review and approval of the resubmitted Application. Upon resubmission, the process described in this Section shall again be applied to the amended application's review and approval or disapproval.
- (d) The Director's incompleteness determination shall not be subject to appeal by the Board pursuant to Article 22 of this Chapter.

(Ord. 8 §4, 2008; Ord. 4 §1, 2009)

### **Sec. 16-7-120. Concurrent review of conditional use and Planned Unit Development approvals with review of Application.**

The Application may be submitted by the Applicant for compliance review by the Director concurrently with review of any other application for a conditional use or Planned Unit Development by the Board. The Director may find the Application to be complete before such other conditional use or Planned Unit Development approvals have been granted by the Board; however, the Director may not refer the Application to the Board for approval of the conditional use for Timeshare Development until such time as the Board has approved such other conditional uses or Planned Unit Developments, as applicable; or, at the Director's discretion, the Director may refer the Application for approval of the conditional use Timeshare Development conditional upon the approval of such other conditional use or Planned Unit Developments.

### **Sec. 16-7-130. Condominium plat, CC&Rs approval by Town Council.**

Once the Board has granted the conditional use for Timeshare Development and the Director has issued a temporary certificate of occupancy, the final, executable version of the plat and the CC&Rs shall be submitted by the applicant to the Director and the Town Attorney for review and approval by the Town Council in accordance with Article 12 of this Chapter.

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### **Sec. 16-7-140. Recordation of Timeshare Instruments.**

Upon approval of the conditional use for Timeshare Development by the Board and execution of the same by the Town Council, and upon approval by the Town Council of the final plat and CC&Rs executed by the Applicant, the Town Council, having executed the plat and the conditional use for Timeshare Development, shall authorize the Applicant's delivery and recordation of the final Timeshare Instruments with the Office of the County Clerk and Recorder. The Applicant thereafter shall record the same within five (5) business days, failing which the Town Council's conditional use approval shall be null and void. The Town Council shall order the Town Clerk to concurrently cause the conditional use approval for Timeshare Development to be recorded along with the Timeshare Development Instruments.

### **Sec. 16-7-150. Continuing obligation regarding updating and filing.**

The Association shall have a continuing obligation to update the Application, any submittals delivered in connection therewith and any final, recorded Timeshare instruments and to timely file with the Director (filing with the Office of the County Clerk and Recorder not being deemed sufficient for this filing requirement with the Town) all amendments to the same. Such amendments shall comply with the following requirements:

- (1) The Association and not the individual Timeshare Estate owners shall have the continuing responsibility to submit to the Director any amendments to the Timeshare instruments and any other components of the Application and associated submittals that would alter any condition imposed by the Town or materially alter any prior representation made by the Applicant in the application and associated submittals to obtain approval of the Project. Once the Association has been formed, the Town shall not accept any amendments for review without prior approval thereof by the Association.
- (2) No amendment that materially alters any component of the Application or associated submittals or the Timeshare instruments shall be effective unless approved and accepted in advance by the Director, such unapproved and unaccepted amendments hereby being made null and void.
- (3) All amendments shall be initially submitted for review by the Director, who shall have authority to either approve a proposed amendment that makes a material change to any component of or submittal under the application or Timeshare Instrument as in compliance with these Timeshare Development Guidelines or disapprove such amendment as not in compliance herewith. The Director shall review and render a decision on such proposed amendment within sixty (60) days of its submission thereto.
- (4) Any such amendment may be referred by the Director to the Board if the Director determines that the amendment proposes changes to the Project that, on balance, had they been submitted at the time of the initial approval of the Timeshare Development conditional use, might have caused the Board to impose additional conditions or might have been grounds for a denial of the conditional use for Timeshare Development. The Board's review of such amendment shall be in accordance with Articles 8 and 22 of this Chapter.
- (5) Within fifteen (15) days after the Director's decision on a proposed amendment, the Applicant or the Association, as the case may be, may request a reconsideration by the Board of said Director's decision. The Board shall reconsider the Director's decision in accordance with Articles 8 and 22 of this Chapter.

### **Sec. 16-7-160. Reporting requirements; compliance reviews; inspections.**

- (a) Without limiting the requirements of Section 16-7-150 above, the Association shall submit to the Director, on an annual basis no later than March 1 of each calendar year, a report detailing the following:

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- (1) Monthly occupancy rates delineating the amount of use of the Project by owners, their guests and exchange participants, and the amount of use by the general public or rental guests;
  - (2) Sales tax generated by Timeshare Estate and unit and other transactions in the Project, including a description of the source of generation of such taxes;
  - (3) Average room rates charged, broken down by month;
  - (4) The management and maintenance agreement, unless the manager is engaged as an employee of the Association;
  - (5) The Association's managing and maintenance entity for the Project;
  - (6) All managing entities involved in the Project and the specific physical units divided into Timeshare Interests that said entities manage;
  - (7) Transfers of ownership of Timeshare Estates, including the dates of such transfers;
  - (8) Timeshare Estates owned by the Applicant;
  - (9) Reserve balances for management and maintenance;
  - (10) Annual Budget;
  - (11) A statement that all sales taxes required to be paid for the Project have been collected and paid to the Town in connection with the Project for the preceding year;
  - (12) Improvements, upgrades and alterations made to the Project; and
  - (13) Changes and amendments to the Application and any associated submittals and the Timeshare Instruments.
- (b) After the conclusion of the fifth year following the conditional use approval for a Timeshare Development Project (inclusive of any material amendments thereto), the Association may apply to the Director for a waiver or one (1) or more the foregoing reporting requirements/ submittals. The Director may waive the requested reporting requirements/submittals only for good cause shown, the burden of proof of which shall be on the Association.
  - (c) In addition to the reporting requirements herein set forth, the Association and the Applicant may be required to submit to periodic compliance reviews conducted by the Town to confirm the Association and the Applicant's ongoing compliance with these Timeshare Development Guidelines and the Timesharing conditional use approval for the Project. Such compliance reviews may be conducted no more often than annually, upon reasonable advanced notice and during normal business hours.
  - (d) The Association and the Applicant may be required to submit the Project to periodic physical inspections conducted by the Town to confirm the Project's ongoing compliance with these Timeshare Development Guidelines and the conditional use approvals for the Project. Such inspections may be conducted no more than twice annually, upon reasonable advanced notice and during normal business hours.

(Ord. 8 §4, 2008)

### **Sec. 16-7-170. Protection of certain records.**

Pursuant to Section 24-72-204(3)(a)(IV), C.R.S., the Town shall use reasonable efforts to protect the reporting records submitted to the Town pursuant to Paragraphs 16-7-160(a)(1), (3), (4), (7) and (8) above. If a request for inspection of any of said records is filed with the Town under the Colorado Open Records Law, codified at Section 24-72-201, et seq., C.R.S., or under any like federal law, the Town shall deny the request and notify the Association and/or the Applicant, as the case may be, of its having been made. If an action is filed against the Town in any

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court to compel inspection or disclosure of any of such records, the Town shall notify the Association and/or the Applicant and shall permit the same to participate in such action to protect the contents of said records from inspection or disclosure at the sole cost and expense of the Association and/or the Applicant. Notwithstanding anything contained herein or in Section 24-72-201, et seq., C.R.S., to the contrary, the Town shall have no obligation or liability to expend its funds or resources to defend against such action, and shall have no liability hereunder for complying with any final, nonappealable order of the court entered in such action. Nothing contained herein is intended to or shall limit the tax information confidentiality requirements set forth in Section 4-2-230 of this Code.

### **Sec. 16-7-180. Prohibited uses and practices.**

It shall be unlawful for any person to engage in any of the following practices in connection with any Timeshare Development Project:

- (1) Intentional misrepresentation of any matter contained in the Application or associated submittals for Timeshare Development, whether to the Town or to any third party;
- (2) Violating any requirement of these Timeshare Development Guidelines;
- (3) The act of operating any Timeshare Development Project in the Town without first obtaining a business license in accordance with the Town's standard business licensing procedures; and/or
- (4) Acting in any manner to intentionally circumvent the terms, conditions and requirements of these Timeshare Development Guidelines.

### **Sec. 16-7-190. Remedies for noncompliance.**

In addition to any and all remedies provided by law, the Town shall have the following remedies for noncompliance with these Timeshare Development Guidelines:

- (1) The Town may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent or enjoin a use, occupancy or conveyance relating to a Timeshare Development Project or any portion thereof or to enjoin any property owner or Applicant from selling, agreeing to sell, offering to sell or otherwise conveying a Timeshare Estate without full compliance with these Timeshare Development Guidelines and receipt of all approvals required herein.
- (2) The Board may withdraw any approval of a Project or require certain corrective measures be taken following the determination that information provided by the Applicant, or by anyone on his or her behalf, on which a decision in granting the Timeshare Development conditional use was based, was materially false or inaccurate. The Town's rights and remedies in connection with such materially false or inaccurate information shall be only as against the Applicant and his or her respective assignees, and shall not apply to individuals who have purchased units from the Applicant, unless such individuals actively participated in providing such false or inaccurate information or had actual knowledge thereof. The Town Manager shall cause written notice to be served on the Applicant and his or her respective assignees, setting out a clear and concise statement of the alleged false or inaccurate information provided by the Applicant, or anyone on his or her behalf, directing the Applicant to appear at a time certain for a hearing before the Board not less than ten (10) days or more than thirty (30) days after the date of service of notice. The Board shall determine at the hearing the nature and extent of the alleged false or inaccurate information and shall have power, on good cause being shown, to withdraw any conditional use approval or require that certain corrective measures be taken in the event it finds that the allegedly false or inaccurate information is indeed materially false or inaccurate in any regard and, had the correct information been supplied at the time of initial approval, the outcome could have been different. Withdrawal of approval or imposition of corrective requirements shall not, however, be

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an exclusive remedy, and any and all remedies provided by law and in equity may be exercised by the Town cumulatively and concurrently.

- (3) Nothing contained herein is intended to or shall limit, restrict or otherwise abrogate the Town's ability to pursue all rights and remedies of the Town at law and in equity to collect any unpaid land transfer excise tax from the seller and/or the purchaser of a Timeshare interest.
- (4) In addition to any rights and remedies provided for specifically in these Timeshare Development Guidelines, the Town shall have all rights and remedies available at law and in equity to enforce the terms, conditions and provisions of hereof, the same being cumulative and concurrent.
- (5) In the event that any person creates, operates, sells or otherwise deals in a Timeshare Development Project, or any interest therein, in violation of the requirements of these Timeshare Development Guidelines and Article 8 of this Chapter, said offending party and its offense shall be subject to the violation and penalty provisions set forth in Section 16-24-20 of this Chapter.

## **ARTICLE 8 Conditional Uses**

### **Sec. 16-8-10. Permit required.**

Whenever a use has been designated a conditional use, a permit allowing such use shall be issued only upon approval by the Board in conformance with this Article and the requirements of Section 16-9-70 of this Chapter.

### **Sec. 16-8-20. Application for conditional use permit.**

All applications for approval of a conditional use permit shall be processed by making a direct application to the Board. In the event approval for any change to the exterior of any structure is being requested in connection with the conditional use application, architectural approval by the Board of such change or alteration shall be a criterion for approval of the conditional use application. The Board shall then follow its standard procedures, as outlined in this Article for setting a public hearing. In making its decision, it shall follow the intent of this Article and the criteria listed below.

### **Sec. 16-8-30. Criteria for decision.**

- (a) No conditional use shall be approved unless architectural approval for any exterior change associated with such use has also been approved, and the Board finds that the use complies with all of the criteria contained in this Section. If the use does not comply with all of such criteria, or if architectural approval for the exterior changes associated with such use has not been obtained, the use shall either be approved with conditions that ensure compliance with all such criteria and the requirements of the Board for architectural approval, be continued to a date certain or be denied by a motion of the Board. If a continued request is not rescheduled by the proponent for discussion to occur on or before the date to which the request is continued, the request is deemed to be denied without further action by the Board.
- (b) The use must:
  - (1) Be compatible with the neighborhood context and size. When determining compatibility with the neighborhood, the Board shall consider at least the following:
    - a. Size.
    - b. Density of buildings.
    - c. Amount of open space.

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- d. Scale.
  - e. Snow storage.
  - f. Snow removal.
  - g. Landscaping.
  - h. Similar land uses.
- (2) Be consistent with the objectives and purposes of this Chapter and the applicable zoning district.
  - (3) Not create congestion, automotive or pedestrian safety problems or other traffic hazards.
  - (4) Not create any significant noise, dust, vapor, fumes, odor, smoke, vibration, glare, light, trash removal or waste disposal problems.
  - (5) Not create significant adverse effects to public facilities, rights-of-way or utilities.
  - (6) Not create significant adverse impacts on the uses of adjacent property.
  - (7) Allow for adequate parking for the use or make payment in lieu if allowed in the zone district.
- (c) In addition, the net effect of any proposed use on the number of long-term housing units should be considered.

(Prior code 15-2-16; Ord. 13 §2, 1991; Ord. 13 §2, 2006; Ord. 4 §1, 2009)

#### **Sec. 16-8-40. Change in conditional use.**

No approved conditional use may be modified, structurally enlarged or expanded in square footage unless such modification, enlargement or expansion receives the prior approval of the Board, which approval shall be obtained by repetition of the granting procedures herein provided.

#### **Sec. 16-8-50. Conditional uses in "C" District.**

- (a) Whenever a use in the "C" District is conditional because it may create unusual traffic hazards, noise, dust, fumes, odors, smoke, vapor, vibration, glare or industrial waste disposal problems, such use shall not be approved without the following limitations:
  - (1) All such uses shall be operated within an enclosed structure.
  - (2) Noise, dust, fumes, odors, smoke, vapor, vibration, glare or waste shall be confined to the lot on which the use is permitted.
  - (3) Outdoor storage, equipment and refuse areas shall be concealed from the view of abutting residential districts and public rights-of-way.
- (b) A commercial use shall be considered conditional under this Article when the Building Inspector or the Board determines that unusual problems, as stated above, exist.

(Prior code 15-2-16; Ord. 4 §1, 2009)

#### **Sec. 16-8-60. Conditional use of second accessory dwellings.**

Whenever a conditional use is requested in the "R2C" District on lots of sizes greater than six thousand two hundred fifty (6,250) square feet, the Board shall make the following findings prior to granting approval of such use:

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- (1) The mass of the proposed second accessory dwelling will be substantially screened from the street by historic structures and/or by landscaping.
  - (2) The applicant has agreed to a deed restriction which will limit any addition to the historic primary structure to two-thirds ( $\frac{2}{3}$ ) the size of the historic primary structure as it existed on April 3, 2000.
  - (3) The applicant has agreed to a deed restriction that will require that the historic primary structure remain the historic primary structure.
  - (4) The size of the accessory dwellings on the property shall be limited to two-thirds ( $\frac{2}{3}$ ) the size of the historic primary structure as the historic primary structure existed on April 3, 2000.

### **Sec. 16-8-70. Conditional use of redesignation of historic primary dwelling.**

Whenever the conditional use of redesignating a historic primary dwelling to accessory dwelling status in connection with an application for the proposed construction of a new primary dwelling is requested in the "R1C," "R2C" and "R3C" Districts, the Board shall make the following findings prior to granting approval of such use:

- (1) The existing historic primary dwelling has not been or will be altered to fit within the size restrictions of accessory dwellings, nor moved from its historic location on the lot after April 3, 2000.
- (2) The minimum distance between the historic primary dwelling on the site and the new primary structure on the site is twelve and one-half (12.5) feet adjacent to that portion of the new structure that does not shed snow towards the historic primary dwelling from the new structure. Otherwise, the minimum distance between the structures must be fifteen (15) feet.
- (3) The minimum distance between the historic and new buildings is maintained as a clear corridor, without structures, from the front lot line to the rear lot line.
- (4) The applicant has agreed to a deed restriction providing that the former historic primary dwelling shall continue to be treated as the primary structure for architectural review purposes.
- (5) The height of the new, proposed primary structure does not exceed the average height of historic primary dwellings in the neighborhood, except that the module closest to the front street frontage may exceed this height by twenty percent (20%), so long as the average height of the entire structure does not exceed the average height of historic primary dwellings in the neighborhood. The Building Official shall determine the average height and compliance therewith by measuring the length of primary ridges on gable roofs, the length of the highest point of shed roofs and the average between the length of the highest point and eave lengths on conical or hip roofs.
- (6) The new, proposed primary dwelling fronts on a street or avenue and relates to the street in a manner consistent with other primary dwellings on the street.
- (7) The size of the new primary structure shall not exceed that permitted by matter-of-right on the parcel.

### **Sec. 16-8-80. Criteria for Board decisions relative to Timeshare Development Projects.**

- (a) No conditional use shall be approved for a Timeshare Development Project unless the Board finds that the Project complies with the following criteria for a Timeshare Development Project. If the Project does not comply with all of the following criteria, the Project may be approved with conditions that ensure adequate compliance with all of such criteria or it shall be denied by motion of the Board. The Project shall:
  - (1) Be consistent with the purpose, intent, goals and objectives of Article 7 of this Chapter;
  - (2) Shall demonstrate that the negative impacts caused by the Project through the life thereof upon, without limitation, the Town's image as a historic residential community, infrastructure and other

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- structures, revenue sources, transportation systems, amenities, programs and facilities, programs and facilities of special districts providing services to the Town will be satisfactorily mitigated; and
- (3) Any other matter of consideration that the Board deems to be relevant in upholding the purposes, intents, goals and objectives of Article 7.
- (b) The conditional use approval for Timeshare Development shall meet the criteria established under Section 16-8-20 of this Article.
- (c) In granting the conditional use approval for Timesharing, the Board shall also consider the effect of the Project on the availability of short-term rentals available to the general public on a year-round basis.

(Ord. 8 §5, 2008; Ord. 4 §1, 2009)

### **Sec. 16-8-85. Criteria for Board decision relative to marijuana establishments.**

No conditional use permit for a marijuana establishment shall be given unless the following criteria are first met:

- (1) None of the following marijuana establishments shall be allowed except in accordance with the following location requirements and restrictions:
- a. No marijuana establishment shall be located within five hundred (500) feet of any licensed child care facility at the time of establishment of such business.
- b. No marijuana establishment shall be located within five hundred (500) feet of any school at the time of establishment of such business.
- c. No marijuana establishment shall be located within one hundred seventy-five (175) feet of any public park or playground at the time of establishment of such business.
- d. No marijuana establishment shall be located adjacent, as defined in Section 6-5-40 of this Code, to a residential dwelling at the time of establishment of such business.
- e. No marijuana establishment shall be located in a movable or mobile structure.
- f. No marijuana establishment shall be located in a residential unit of any kind.
- g. Marijuana establishments may not serve as home occupations as defined in Section 16-1-20 of this Chapter.
- h. Marijuana establishments must have unique physical addresses.
- i. Medical marijuana centers and retail marijuana stores must be accessible from public rights-of-way.
- (2) In addition to the conditional use criteria set forth in this Article, the Board shall consider whether the issuance of a conditional use permit for a marijuana establishment would result in or cause an undue concentration of such businesses within the Town.
- (3) A conditional use permit for a marijuana establishment may not be issued for premises used in conjunction with a conditional use for a restaurant or other use that serves and/or prepares foodstuffs.
- (4) A conditional use for any medical marijuana-infused product manufacturer or retail marijuana products manufacturer may be granted only where the production of such products is demonstrated to be in compliance with state requirements regarding the production of foodstuffs.
- (5) Before a conditional use permit for a marijuana establishment may be issued, the applicant therefor must demonstrate that electrical service satisfactory to the Building Official will be utilized at the

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premises and moisture, dust, vapors, fumes and odors being created at the premises will be adequately confined and mitigated to the satisfaction of the Building Official so that no nuisance could exist to nearby properties and the public.

- (6) Only five (5) conditional use permits total for the following uses shall be allowed at any given time:
  - a. Medical marijuana centers, retail marijuana stores and dual medical marijuana centers and retail marijuana stores; and
  - b. Medical marijuana-infused product manufacturers and retail marijuana product manufacturers.

Only two (2) conditional use permits for retail marijuana testing facilities shall be allowed at any given time. Dual uses for (i) medical marijuana centers and retail marijuana stores, and (ii) medical marijuana-infused product manufacturers and retail marijuana product manufacturers shall be allowed under one (1) conditional use permit.

- (7) Section 6-5-210 of this Code shall have been complied with prior to the issuance of the conditional use permit for a marijuana establishment.
- (8) It is contemplated that the applicant for a conditional use permit for a marijuana establishment may apply for such conditional use while the State Licensing Authority is processing the application for the subject marijuana establishment to the extent permitted under the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, and the regulations thereunder.
- (9) The conditional use permit for a marijuana establishment shall at all times be conditioned upon the continued existence of the license for such marijuana establishment as described in Chapter 6, Article 5 of this Code. Where such license expires or is otherwise terminated or revoked, the corresponding conditional use permit shall similarly expire or otherwise be terminated or revoked without further action of the Town. For purposes hereof, the transfer and reissuance of a license for a marijuana establishment pursuant to Section 6-5-220 of this Code shall not be deemed to be a termination of said license and the related conditional use permit. Such condition and the requirements of Chapter 6, Article 5 shall be incorporated into the conditional use permit by reference.

### **Sec. 16-8-90. Lapse of conditional use permit.**

The granting of a conditional use permit becomes part of the building permit applied for, and said conditional use permit shall lapse when and if the building permit lapses under the terms of this Article. Whenever a nonresidential conditional use has been discontinued or abandoned for a period of one (1) year or more, or there has been an intervening different use, such conditional use shall not thereafter be reestablished without the prior approval of the Board, which approval shall be obtained by repetition of the granting procedures herein provided.

### **Sec. 16-8-100. Conditional use to run with land.**

- (a) Any conditional use granted shall run with the land, with the conditions placed upon the use being covenants granted by the owner for the benefit of the Town. Such conditional uses shall be recorded as required in Section 16-9-70 below.
- (b) Notwithstanding Subsection (a) above, a conditional use permit for a marijuana establishment shall automatically terminate upon the expiration, termination or revocation of the license for such business issued pursuant to Chapter 6, Article 5 of this Code. For purposes hereof, the transfer and reissuance of a license for a marijuana establishment pursuant to Section 6-5-220 of this Code shall not be deemed to be a termination of said license and the related conditional use permit. In the case of such a transfer, the license may be reissued in the name of the transferee and the related conditional use permit shall continue to remain in effect under the same conditions and requirements set forth therein, except where changes to the

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conditional use permit are necessitated under the Code, including, without limitation, on account of any physical change, modification or alteration to the licensed premises as described in Subsection 6-5-100(g) of this Code.

(Prior code 15-2-16; Ord. 15 §6, 2009; Ord. 20 §6, 2011; Ord. 19 §6, 2013)

### **Sec. 16-8-120. Accessory dwelling units—Additional requirements.**

- (a) The "Notice of Agreement for Land Use Conditions and Restrictive Covenants" described in Section 16-9-70 relative to conditional accessory dwelling units to be used for Rental, long-term uses shall include such additional terms relative to, without limitation, reporting, investigation and enforcement as shall be approved by the Town Attorney.
- (b) Penalties for non-compliance with the Agreement relative to conditional accessory dwelling units to be used for Rental, long-term uses shall be adopted annually by the Town Council pursuant to its fee schedule adoption process.
- (c) All amounts due and owing the Town in connection with any violation of the Agreement or this Chapter shall constitute a first priority lien on the subject property and may be collected by any means including by way of those matters addressed in Section 4-8-10 of the Code.

(Ord. 9, § 1, 2015)

### **Sec. 16-8-130. Formula businesses—Additional requirements.**

- (a) Intent. The purpose of these formula business requirements is to maintain and protect Crested Butte's authentic historic character and small town ambience; ensure the vitality and diversity of the Town's commercial districts; and enhance the quality of life of residents and visitors.
- (b) Applicability. These regulations shall apply to formula businesses.
- (c) Related definitions. For purposes of this section, the following definitions apply:
  - (1) *Color scheme* means the selection of colors used throughout the business, such as on the walls, furnishings, permanent fixtures or on the building façade.
  - (2) *Décor* means the interior design and furnishings that may include style of furnishings, shelving, display shelving/racks, wall coverings or other permanent fixtures.
  - (3) *Façade* means the principal exterior face or front of a building including awnings, overhangs, porte-cochères that is oriented towards a street, alley or open space.
  - (4) *Servicemark* means a word, phrase, symbol or design or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.
  - (5) *Signage* means a sign as defined under Section 16-1-20.
  - (6) *Standardized array of merchandize* means fifty percent (50%) or more of the in-stock merchandise is from a single manufacturer or distributor bearing uniform markings.
  - (7) *Standardized array of services* means a substantially similar set of services or food and beverage menus that are priced, prepared and performed in a consistent manner.
  - (8) *Trademark* means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs legally registered or established by use that distinguishes the source of the product from one party from those of others.

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- (9) *Uniform apparel* means standardized items of clothing including but not limited to standardized aprons, pants, shirts, vests, smocks or dresses, hat and pins (other than name tags) with standardized colors and fabrics.
- (d) Exemptions. The following formula businesses are exempt from these formula business requirements:
- (1) Lumberyards, hardware, automotive, gas stations, grocers, banks/ATMs, financial services, health care, insurance, real estate, medical marijuana centers and retail marijuana stores.
  - (2) Formula businesses for which a business license was issued prior to the effective date of these regulations.
  - (3) Construction work on a pre-existing, approved or exempt formula business that is required to comply with fire and/or life safety standards.
  - (4) Disability access improvements to a pre-existing, approved or exempt formula business.
- (e) Formula business location requirements.
- (1) Formula motels and hotels, and formula restaurants may be permitted as conditional uses in the T-Tourist District.
  - (2) Formula retail businesses may be permitted as conditional uses in the C-Commercial District.
  - (3) Formula businesses that are legally in existence as of February 6, 2019 [the effective date of these Regulations] may remain in their current location as a non-conforming use. The same or substantially similar type of use may be transferrable upon sale or transfer of the commercial space or ownership of the business and/or building.
  - (4) Formula businesses that are legally in existence as of February 6, 2019 [the effective date of these Regulations] may be renovated and/or expanded up to fifteen percent (15%) of the existing gross floor area or a maximum of one thousand five hundred (1,500) square feet, whichever is less.
  - (5) Formula business shall comply with all applicable standards of the underlying zone district and the applicable regulations of the Municipal Code including but not limited to Section 16-8-30 Criteria for decision and the Crested Butte Town Design Guidelines.
- (f) Formula business additional criteria. No conditional use permit for a formula business shall be approved unless the following criteria are met:
- (1) The formula business complements existing businesses and promotes quality, diversity and variety to assure a balanced mix of commercial uses and range of local, regional and national goods and services for residents and visitors.
  - (2) The formula business has submitted plans, drawings, renderings, visual simulations or other examples that illustrate how it will be consistent with the historic and authentic character of Crested Butte including but not limited to exterior design treatments to appropriately minimize the appearance of "formula" architecture, signage and other treatments to enhance Crested Butte's authentic historic visual appearance and unique, small town shopping, dining and lodging experiences.
  - (3) The location and amenities of the formula business are compatible with the Town's pedestrian, bicycle and transit-oriented environment.
  - (4) The formula business does not include any drive-through facilities.

( Ord. No. 30 , § 3, 1-7-2019)

## ARTICLE 9 Variances

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(Supp. No. 20)

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## **Sec. 16-9-10. Application for variance.**

All applications for a variance from the requirements of this Chapter shall be processed by making a direct application to the Board. The Board shall then follow its standard procedures, as outlined in this Chapter, for setting a public hearing. In making its decision, the Board shall follow the intent of this Chapter and the requirements and criteria listed below.

## **Sec. 16-9-20. Variance types.**

The Board may vary terms of this Chapter with respect to width, yard size, distance, slope and excessive slope review, but not characteristics associated with the use or uses or any provisions of the stream margin review requirements. The Board may not vary the permitted or conditional uses set forth in this Chapter.

## **Sec. 16-9-30. Criteria for Board decision.**

- (a) When considering whether to approve a variance, the Board must find that the proposal complies with all of the criteria contained in this Section. A variance applies to the following:
  - (1) Changes that violate this Chapter to a greater degree than currently exists, such as:
    - a. Additions that encroach further into the setback; and
    - b. Additions that exceed the width limit.
  - (2) Proposals that propose to violate this Chapter, such as:
    - a. Proposals that encroach into the setback;
    - b. Proposals that exceed the width limit; and
    - c. Proposals that are less than the minimum for roof pitch or side wall height.
- (b) Variances shall not be allowed with respect to floor area, floor area ratio, height, open space or parking.
- (c) If the proposal does not comply with the criteria listed below, the proposal shall be approved with conditions that ensure compliance with all such criteria, continued to a date certain or denied by motion of the Board. If a continued request is not rescheduled by the proponent for discussion to occur on or before the date to which the request is continued, the request is deemed to be denied without further action by the Board. The Board must find that:
  - (1) The particular physical surroundings, shape or topographical condition of the subject property cause a particular hardship to the owner, as distinguished from a mere inconvenience, if this Chapter is strictly enforced.
  - (2) The conditions upon which the variance is requested would not be applicable, generally, to other properties within the same zoning classification.
  - (3) The alleged difficulty or hardship has not been created by any person presently or previously having an interest in the property.
  - (4) The proposal is consistent with the objectives and purposes of this Chapter and the applicable zoning district.
  - (5) The proposal is compatible with the neighborhood context and size. When determining compatibility with the neighborhood, the Board shall consider the following:
    - a. Size.

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- b. Density of building.
  - c. Amount of open space.
  - d. Scale.
  - e. Maintenance of view corridors and provision of similar or improved landscaping.
- (6) The variance shall not create significant adverse impacts on adjacent property owners, including but not limited to the following:
- a. Snow storage.
  - b. Snow shedding.
  - c. Snow removal.
  - d. Solar access.
  - e. Other significant design features.
  - f. Fire access.
- (7) The variance shall not create congestion, automotive or pedestrian safety problems or other traffic hazards.

(Prior code 15-2-16.5; Ord. 13 §4, 1991; Ord. 4 §1, 2009)

#### **Sec. 16-9-40. Variances for historic structures.**

- (a) The Board may vary terms of this Chapter with respect to minimum setbacks, building width, wall heights, open space and roof slope when an addition is requested to a contributing or restorable historic structure that is below its matter of right floor area ratio. In order to grant such variance, the Board must find that:
- (1) The addition requested would not cause the floor area ratio to exceed that allowed as a matter of right.
  - (2) Approval of the addition to the historic structure would not cause the historic structure to violate the Design Guidelines in Chapter 17 of this Code or detrimentally affect the historic structure or other historic structures on the site.
  - (3) The granting of the application and variance would not significantly detrimentally affect the historic resource.
  - (4) The granting of the variance would not create significant adverse impacts on adjacent property owners, including but not limited to the following:
- a. Snow storage.
  - b. Snow shedding.
  - c. Snow removal.
  - d. Solar access.
  - e. Other significant design features.
  - f. Fire access.
  - g. View corridors.

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- (5) The granting of the variance would not create congestion, automotive or pedestrian safety problems or other traffic hazards.
  - (6) The owner agrees to limit future expansion to the matter of right floor area ratio. Said agreement shall be entered into and recorded in the manner set forth in Section 16-9-70 of this Chapter.
  - (7) The owner agrees that any subsequent expansion to the structure or on the property may not use the granting of this variance as grounds for a conditional waiver.
- (b) For variances requested for historic structures meeting all the following conditions, the criteria listed in Paragraphs (a)(1), (2) and (3) above may be waived if the other criteria in that Paragraph are met:
- (1) A historic structure located on its own parcel will be expanded;
  - (2) The parcel where the building is located was created prior to 1971 and is smaller than the minimum lot size allowed in that zoning district;
  - (3) The primary orientation of the structure is to an alley or the structure is adjacent to an alley;
  - (4) There will be not more than a ten-percent, but not to exceed a seventy-five-square foot, increase to the total floor area of the structure; and
  - (5) The building will not exceed the maximum building size for an accessory building.

(Prior code 15-2-16.5; Ord. 13 §4, 1991; Ord. 8 §1, 2002; Ord. 4 §1, 2009)

### **Sec. 16-9-50. Lapse of variance approval.**

The granting of a variance becomes part of the building permit applied for, and said variance shall lapse when and if the building permit lapses under the terms of this Code.

### **Sec. 16-9-60. Additional conditions.**

In granting a variance, the Board may require the applicant to comply with any conditions it may deem to be in the best interests of the Town. Such conditions shall be entered into and recorded in the manner set forth in Section 16-9-70 below.

### **Sec. 16-9-70. Recordation of discretionary approvals.**

Whenever the Board under the terms of this Code requires an applicant to agree to comply with certain conditions as to use or occupancy, or to restrict such use or occupancy in any manner, such conditions or representations shall be recorded by the Board and become part of the building permit. Further, the applicant shall execute a "Notice of Agreement for Land Use Conditions and Restrictive Covenants", in the form attached to this Code as Appendix F, which the Town shall record in the real property records of the County. A violation of any such restrictive covenant, condition or representation shall constitute an offense under Section 16-24-20 of this Chapter and subject the violator to the penalties and the Town's remedies as set forth therein. In addition, a certificate of occupancy may be withheld or revoked unless or until such conditions are met. The Board may require that such notice contain a time deadline for compliance with all conditions and covenants, which deadline shall not be more than three (3) years from the date of approval of the application by the Board. Such conditions or covenants shall be deemed to run with the land, and shall be binding on the applicant and his or her successors and assigns. These same procedures shall apply to any legislative action changing a zoning classification or approving a subdivision proposal which is based upon representations by an applicant or conditioned upon certain uses and/or performances by the applicant. In the event that such representations or conditions of rezoning or subdivision are not met, the subject property shall automatically revert to its prior zoning or unzoned classification

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and its prior subdivision of land and use. No construction or repair shall occur except in strict compliance with such conditions or covenants and until the documentation of the same is provided to the satisfaction of the Town. The Board or Town Council may also require such performance bond or financial performance guarantee as it deems appropriate to ensure that conditions or representations are met by the applicant.

### **Sec. 16-9-80. Information respecting use or occupancy of property.**

At such times as are requested by the Town, which shall not be requested more than one (1) time per year, the owner of property upon which there are imposed certain conditions as to use or occupancy, or which restrict such use or occupancy in any manner as described in Section 16-9-70 above, shall complete a form provided by the Town. Such form shall require the owner to provide information to the Town, under penalty of perjury, with respect to such use and occupancy. The failure to return the form, properly and fully completed and signed by the owner, attesting to its contents under penalty of perjury, within thirty (30) days of the date of the form, shall be a violation of this Chapter and shall be punishable as provided in Section 16-24-20 of this Chapter.

## **ARTICLE 10 Special Development Permits**

### **Sec. 16-10-10. Purpose.**

Certain areas located within the Town are deemed to be of such ecological, environmental and/or scenic significance that all development within these areas shall conform with the general requirements of this Chapter, as well as the additional review requirements set forth in this Article.

### **Sec. 16-10-20. Excessive slope review.**

- (a) Intent. It is the intent of this Article to provide for review of all development located above the "Excessive Slope Line" designated on the Official Zoning Map of the Town in order to ensure that all development is compatible with the prevailing slopes; to provide the least disturbance to the terrain and other natural land features of the area; to guarantee availability of utilities and adequate access; to reduce the impact of development on surface runoff, natural watershed and air pollution; and to avoid losses due to such development.
- (b) Review criteria. Whenever reviewing the development plan, the Board shall consider all of the following:
  - (1) Whether there exists sufficient water pressure and other utilities to service the intended developments;
  - (2) The existence of adequate roads to ensure fire protection, snow removal and road maintenance;
  - (3) The suitability of the site for development, considering the slope, ground instability and possibility of mud flow, rock falls and avalanche dangers;
  - (4) The effects of the development on the natural watershed, runoff, drainage, soil erosion and consequent effects on water pollution;
  - (5) The design and location of any proposed structure, roads, driveways or trails and their compatibility with the terrain;
  - (6) Whether proposed grading will result in least disturbance to the terrain, vegetation and natural land features;
  - (7) The placement of structures so as to minimize roads, cutting and grading, increase open space and preserve the hill as a scenic resource; and

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- (8) The reduction of building height and bulk to maintain the open character of the hillside.
  - (c) The Board shall be as flexible as possible in allowing innovative land uses above the "Excessive Slope Line" so as not to deprive landowners a reasonable use of their land, and at the same time to preserve the environmental and aesthetic values that this area represents.

(Prior code 15-2-18)

## **ARTICLE 11 Floodplain Regulations**

### ***Division 1 General Provisions***

#### **Sec. 16-11-10. Statutory authorization.**

The Legislature of the State has, in Title 29, Article 20 of the Colorado Revised Statutes, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Town Council does hereby adopt the following floodplain management regulations.

#### **Sec. 16-11-20. Findings of fact.**

- (a) The flood hazard areas of the Town are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.
- (b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

(Ord. 9 §1, 2013)

#### **Sec. 16-11-30. Statement of purpose.**

It is the purpose of these regulations to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to critical facilities, infrastructure and other public facilities, such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Ensure that potential buyers are notified that property is located in a flood hazard area.

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## **Sec. 16-11-40. Methods of reducing flood losses.**

In order to accomplish its purposes, these regulations use the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

## **Sec. 16-11-50. Definitions.**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to give them the meaning they have in common usage and to give these regulations their most reasonable application. The following defined terms, both capitalized and uncapitalized in these regulations, shall have the meanings ascribed to such terms for purposes of this Article only.

*100-year flood* means a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (one-percent-chance annual flood). The terms *one-hundred-year flood* and *one-percent-chance flood* are synonymous with the term *100-year flood*. The term does not imply that the flood will necessarily happen once every one hundred (100) years.

*100-year floodplain* means the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

*500-year flood* means a flood having a recurrence interval that has a two-tenths-percent chance of being equaled or exceeded during any given year (two-tenths-percent-annual-chance flood). The term does not imply that the flood will necessarily happen once every five hundred (500) years.

*500-year floodplain* means the area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

*Addition* means any activity that expands the enclosed footprint or increases the square footage of an existing structure.

*Area of shallow flooding* means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Base flood elevation (BFE)* means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, AI—A30, AR, AR/A, AR/AE, AR/AI—A30, AR/AH, AR/AO, V1—V30 and VE that indicates the water surface elevation resulting from a flood that has a one-percent chance of equaling or exceeding that level in any given year.

*Basement* means any area of a building having its floor subgrade (below ground level) on all sides.

*Channel* means the physical confine of a stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

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*Channelization* means the artificial creation, enlargement or realignment of a stream channel.

*Code of Federal Regulations (CFR)* means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. CFR is divided into fifty (50) titles that represent broad areas subject to federal regulation.

*Community* means any political subdivision in the State that has authority to adopt and enforce floodplain management regulations through zoning, including but not limited to cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

*Conditional Letter of Map Revision (CLOMR)* means FEMA's comment on a proposed project that does not revise an effective floodplain map which would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

*Critical facility* means a structure or related infrastructure, but not the land on which it is situated, as specified in Section 16-11-260 of this Article which, if flooded, may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

*Development* means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*DFIRM database* means a database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

*Digital Flood Insurance Rate Map (DFIRM)* means a FEMA digital floodplain map. These digital maps serve as "regulatory floodplain maps" for insurance and floodplain management purposes.

*Elevated building* means a nonbasement building: (i) built, in the case of a building in Zones A1—A30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1—A30, AE, A, A99, AO, AH, B, C, X and D, *elevated building* also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

*Existing manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

*Expansion to an existing manufactured home park or subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

*Federal Register* means the official daily publication for rules, proposed rules and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

*FEMA* means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

*Flood or flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from: (i) the overflow of water from channels and reservoir spillways; (ii) the unusual

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and rapid accumulation or runoff of surface waters from any source; or (iii) mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

*Flood control structure* means a physical structure designed and built expressly or partially for the purpose of reducing, redirecting or guiding flood flows along a particular waterway. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

*Flood Insurance Rate Map (FIRM)* means an official map of a community on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

*Flood Insurance Study (FIS)* mean the official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map, as well as flood profiles for studied flooding sources that can be used to determine base flood elevations for some areas.

*Floodplain* or *flood-prone area* means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

*Floodplain Administrator* means the community official designated by title to administer and enforce the floodplain management regulations, or his or her designee.

*Floodplain development permit* means a permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this Article.

*Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

*Floodplain management regulations* means the zoning regulations, subdivision regulations, building codes, health regulations, special purpose regulations (such as a floodplain, grading and erosion control regulations) and other applications of police power. The term describes such state or local regulations, or any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

*Floodproofing* means any combination of structural and/or nonstructural additions, changes or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Floodway regulations (regulatory floodway)* means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The statewide standard for the designated height to be used for all newly studied reaches shall be six (6) inches. Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

*Freeboard* means the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood, such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

*Functionally dependent use* means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are

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necessary for the loading and unloading of cargo or passengers and ship building and ship repair facilities but does not include long-term storage or related manufacturing facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure* means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (a) by an approved state program as determined by the Secretary of the Interior; or (b) directly by the Secretary of the Interior in states without approved programs.

*Letter of Map Revision (LOMR)* means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs) or the Special Flood Hazard Area (SFHA).

*Letter of Map Revision Based on Fill (LOMR-F)* means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

*Levee* means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

*Levee system* means a flood protection system that consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The *lowest floor* is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood-resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area, is not considered a building's *lowest floor*; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

*Manufactured home* means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include a recreational vehicle.

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*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

*Material Safety Data Sheet (MSDS)* means a form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment and spill-handling procedures.

*National Flood Insurance Program (NFIP)* means FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

*New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

*No-rise certification* means a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A no-rise certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

*Normal stream bank* means the line where the horizontal plane of the lands meet the slope of a creek or river bed.

*Physical Map Revision (PMR)* means FEMA's action whereby one (1) or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations and/or planimetric features.

*Recreational vehicle* means a vehicle that is: (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Special flood hazard area* means the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

*Start of construction* means the date the building permit was issued, including substantial improvements, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. *Permanent construction* does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as

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garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Stream margin* means the area between the normal stream bank of Coal Creek or within twenty (20) feet of the tops of the normal stream banks of Coal Creek.

*Structure* means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure just prior to when the damage occurred.

*Substantial improvement* means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (i) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or (ii) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Threshold Planning Quantity (TPQ)* means a quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

*Variance* means a grant of relief to a person from the requirement of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Article.

*Violation* means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in Section 44 CFR Chapter 1 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

## **Sec. 16-11-60. Lands to which regulations apply.**

These regulations shall apply to all special flood hazard areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the Town.

## **Sec. 16-11-70. Basis for establishing special flood hazard area.**

The special flood hazard areas identified by the Federal Emergency Management Agency in a scientific and engineering report, entitled "The Flood Insurance Study for Gunnison County and Incorporated Areas," dated May 16, 2013, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto, are hereby adopted by reference and declared to be a part of these regulations. These special flood hazard areas identified by the FIS and attendant mapping are the minimum area of applicability

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of this Article and may be supplemented by studies designated and approved by the Town Council. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and/or FBFMs on file and available for public inspection.

### **Sec. 16-11-80. Establishment of floodplain development permit.**

A floodplain development permit shall be required to ensure conformance with the provisions of these regulations.

### **Sec. 16-11-90. Compliance.**

- (a) No structure or land shall hereafter be located, altered or have its use changed within the special flood hazard area without full compliance with the terms of these regulations and other applicable law and regulations.
- (b) No structure shall be erected within the stream margin of Coal Creek, and no vegetation shall be removed, other than for flood control or public purposes, within said stream margin. However, structures may be erected no closer than twelve (12) feet of the normal stream banks of Coal Creek, provided that a retaining wall is properly constructed by the proponent prior to constructing other structures in accordance with engineered specifications approved by the Town Engineer. Any such wall shall be designed:
  - (1) To be hydraulically capable of conveying the one-hundred-year event stormwater through the proponent's property;
  - (2) To ensure that the stream channel between the existing stream banks at the time of construction does not become narrower; and
  - (3) To avoid creating any adverse effects to downstream or adjacent property owners.

The Town Engineer will review the proposed retaining wall design and indicate that: (1) there is no exception taken; (2) that the design should be revised as noted; or (3) that the design is rejected. Any irrigation diversion structure must be designed and constructed to conform to the requirements of Paragraphs (2) and (3) above which relate to the design of retaining walls. The proponent shall timely reimburse the Town for any expenses incurred by the Town for services provided by the Town Engineer, and the proponent shall be liable for any damages caused to others as a result of the existence of the retaining wall. Structures erected outside of the normal stream banks of Coal Creek and within the area of special flood hazard must be engineered to minimize the potential for flood damage and their design approved by the Town Engineer. The proponent shall timely reimburse the Town for these engineering expenses.

- (c) Nothing herein shall prevent the Town Council from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

(Ord. 9 §1, 2013)

### **Sec. 16-11-100. Abrogation and greater restrictions.**

These regulations are not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations and any other regulation, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

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### **Sec. 16-11-110. Interpretation.**

In the interpretation and application of these regulations, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the Town; and (3) deemed neither to limit nor repeal any other powers granted under state statutes.

### **Sec. 16-11-120. Warning and disclaimer of liability.**

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the special flood hazard area or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

### **Sec. 16-11-130. Severability.**

These regulations and the various parts thereof are hereby declared to be severable. Should any section of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of these regulations as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

## ***Division 2 Administration***

### **Sec. 16-11-210. Designation of Floodplain Administrator.**

The Town Manager is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this Article and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

### **Sec. 16-11-220. Duties and responsibilities of Floodplain Administrator.**

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of these regulations, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by Section 16-11-230 below.
- (2) Review, approve or deny all applications for floodplain development permits required by adoption of these regulations.
- (3) Review floodplain development permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

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- (5) Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of these regulations, including proper elevation of the structure.
  - (6) Where interpretation is needed as to the exact location of the boundaries of the special flood hazard area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
  - (7) When base flood elevation data has not been provided in accordance with Section 16-11-70 of this Article, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source in order to administer the provisions of Division 3 of this Article.
  - (8) For waterways with base flood elevations for which a regulatory floodway has not been designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1—A30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half ( $\frac{1}{2}$ ) foot at any point within the community.
  - (9) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1—A30, AE and AH on the community's FIRM which increases the water surface elevation of the base flood by more than one-half ( $\frac{1}{2}$ ) foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
  - (10) Notify, in riverine situations, adjacent communities and the state coordinating agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
  - (11) Ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

### **Sec. 16-11-230. Permit procedures.**

Application for a floodplain development permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to special flood hazard area. Additionally, the following information is required:

- (1) Elevation in relation to mean sea level of the lowest floor (including basement) of all new and substantially improved structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
- (3) A certificate from a registered Colorado Professional Engineer or architect that the nonresidential flood proofed structure shall meet the floodproofing criteria of Section 16-11-320 of this Article;
- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
- (5) Maintain a record of all such information in accordance with Section 16-11-220 above.

Approval or denial of a floodplain development permit by the Floodplain Administrator shall be based on all of the provisions of these regulations and the following relevant factors: (1) the danger to life and property due to

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flooding or erosion damage; (2) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner; (3) the danger that materials may be swept onto other lands to the injury of others; (4) the compatibility of the proposed use with existing and anticipated development; (5) the safety of access to the property in times of flood for ordinary and emergency vehicles; (6) the costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges and public utilities and facilities, such as sewer, gas, electrical and water systems; (7) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; (8) the necessity to the facility of a waterfront location, where applicable; (9) the availability of alternative locations not subject to flooding or erosion damage, for the proposed use; and (10) the relationship of the proposed use to the comprehensive plan for that area.

### **Sec. 16-11-240. Variance procedures.**

- (a) The Board shall hear and render judgment on requests for variances from the requirements of these regulations. In addition, the Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of these regulations. Any person or persons aggrieved by the decision of the Board may appeal such decision to the Town Council as provided in this Chapter. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (b) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of these regulations. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ( $\frac{1}{2}$ ) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the relevant factors in Section 16-11-230 above have been fully considered. As the lot size increases beyond the one-half ( $\frac{1}{2}$ ) acre, the technical justification required for issuing the variance increases.
- (c) Upon consideration of the factors noted above and the intent of these regulations, the Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of these regulations.
- (d) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (e) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (f) Prerequisites for granting variances:
  - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (2) Variances shall only be issued upon: (a) showing a good and sufficient cause; (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
  - (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost

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of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- (g) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
- (1) The criteria outlined in Subsections (a) through (e) of this Section are met.
  - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. 9 §1, 2013)

### **Sec. 16-11-250. Penalties for noncompliance.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of these regulations and other applicable regulations. Violation of the provisions of these regulations by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be punishable in accordance with Article 24 of this Chapter. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

## ***Division 3 Standards***

### **Sec. 16-11-310. General standards.**

- (a) In all special flood hazard areas, the following provisions are required for all new construction and substantial improvements:
- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
  - (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
  - (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - (5) All manufactured homes shall be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
  - (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

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- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
  - (8) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (b) In addition to the flood prevention review standards set forth above, the Board shall review any development proposal located within twenty (20) feet of the normal bank of Coal Creek to determine that the following requirements are met prior to the issuance of a building permit:
- (1) Trails should be provided along the stream where the stream access is an important element of an adopted open space plan;
  - (2) Vegetation should not be removed, and no slope or grade changes shall be made, that will produce erosion of the stream bank or area adjacent to the stream;
  - (3) Pollution of the stream should not occur;
  - (4) Development should not interfere with important natural changes to the stream which are occurring; and
  - (5) Development or building should not span or be constructed over or onto the natural stream course so as to preserve the historic, aesthetic heritage and character of the Town.

(Ord. 9 §1, 2013)

### **Sec. 16-11-320. Specific standards.**

In all special flood hazard areas where base flood elevation data has been provided as set forth in Section 16-11-70, Paragraph 16-11-220(7) or Section 16-11-370 of this Article, the following provisions are required:

- (1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated to one (1) foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect or land surveyor. Such certification shall be submitted to the Floodplain Administrator.
- (2) Nonresidential construction. With the exception of critical facilities outlined in Section 16-11-380 of this Division, new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated to one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that, at one (1) foot above the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered Colorado Professional Engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Paragraph. Such certification shall be maintained by the Floodplain Administrator as proposed in Section 16-11-230 of this Article.
- (3) Enclosures.
  - a. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other

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than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

- b. Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:
  1. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
  2. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured homes.

- a. All manufactured homes that are placed or substantially improved within Zones A1—A30, AH and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision or (iv) in an existing manufactured home park or subdivision on which manufactured homes have incurred substantial damage as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) are elevated to one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- b. All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1—A30, AH and AE on the community's FIRM that are not subject to the provisions of the above Subparagraph shall be elevated so that either:
  1. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) are one (1) foot above the base flood elevation; or
  2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(5) Recreational vehicles.

- a. All recreational vehicles placed on sites within Zones A1—A30, AH and AE on the community's FIRM either: (i) be on the site for fewer than one hundred eighty (180) consecutive days and be fully licensed and ready for highway use; or (ii) meet the permit requirements of Section 16-11-230 of this Article and the elevation and anchoring requirements for manufactured homes in Paragraph (4) above.
- b. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect-type utilities and security devices and has no permanently attached additions.

(6) Prior approved activities. Any activity for which a floodplain development permit was issued by the Town or a CLOMR was issued by FEMA prior to the effective date of these regulations may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this Article if it meets such standards.

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### **Sec. 16-11-330. Standards for areas of shallow flooding (AO/AH Zones).**

Located within the special flood hazard area established in Section 16-11-240 of this Article are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) Residential construction. All new construction and substantial improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the community's FIRM (at least three [3] feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect or land surveyor. Such certification shall be submitted to the Floodplain Administrator.
- (2) Nonresidential construction. With the exception of critical facilities outlined in Section 16-11-380 of this Division, all new construction and substantial improvements of non-residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the community's FIRM (at least three [3] feet if no depth number is specified) or, together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one (1) foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. A registered Colorado Professional Engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 16-11-230 this Article, are satisfied. Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide floodwaters around and away from proposed structures.

### **Sec. 16-11-340. Floodways.**

Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State has adopted floodway standards that are more stringent than the FEMA minimum standard. Located within the special flood hazard area established in Section 16-11-70 of this Article are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway, unless it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (requires a no-rise certification) in flood levels within the community during the occurrence of the base flood discharge.
- (2) If Paragraph (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Division.

Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a CLOMR and floodway revision through FEMA.

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## **Sec. 16-11-350. Alteration of watercourse.**

For all proposed developments that alter a watercourse within a special flood hazard area, the following standards apply:

- (1) Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
- (2) Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
- (3) Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable federal, state and local floodplain rules, regulations and ordinances.
- (4) Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
- (5) All activities within the regulatory floodplain shall meet all applicable federal, state and Town floodplain requirements and regulations.
- (6) Within the regulatory floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions floodway resulting from the project, otherwise known as a no-rise certification, unless the community first applies for a CLOMR and floodway revision in accordance with Section 16-11-340 above.
- (7) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

## **Sec. 16-11-360. Properties removed from floodplain by fill.**

A floodplain development permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

- (1) Residential construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) must be elevated to one (1) foot above the base flood elevation that existed prior to the placement of fill.
- (2) Nonresidential construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) must be elevated to one (1) foot above the base flood elevation that existed prior to the placement of fill or, together with attendant utility and sanitary facilities, be designed so that the structure or addition is watertight to at least one (1) foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

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### **Sec. 16-11-370. Standards for subdivision proposals.**

- (a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.
- (b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet floodplain development permit requirements of Section 16-11-80 and Section 16-11-230 of this Article and the provisions of this Division.
- (c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is less, if not otherwise provided pursuant to Section 16-11-80 and Section 16-11-230 of this Article.
- (d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. 9 §1, 2013)

### **Sec. 16-11-380. Standards for critical facilities.**

A critical facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado that, if flooded, may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

- (1) Classification of critical facilities. It is the responsibility of the Town to identify and confirm that specific structures in their community meet the following criteria. Critical facilities are classified under the following categories: (a) essential services; (b) hazardous materials; (c) at-risk populations; and (d) vital to restoring normal services.
  - a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities and transportation lifelines. These facilities consist of:
    - 1. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage and emergency operation centers);
    - 2. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions and nonambulatory surgical structures, but excluding clinics, doctors' offices and nonurgent care medical structures that do not provide these functions);
    - 3. Designated emergency shelters;
    - 4. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio and other emergency warning systems, but excluding towers, poles, lines, cables and conduits);

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5. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines and service lines); and
  6. Air transportation lifelines, airports (municipal and larger), helicopter pads and structures serving emergency functions and associated infrastructure (aviation control towers, air traffic control centers and emergency equipment aircraft hangars).

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems and hydroelectric power generating plants and related appurtenances. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Board that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood.

Evidence of ongoing redundancy shall be provided to the Board on an as-needed basis upon request.

- b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. These facilities may include:
  1. Hazardous waste storage and disposal sites; and
  2. Aboveground gasoline or propane storage or sales centers.

Facilities shall be determined to be critical facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place and the chemical is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a critical facility. The TPQ for these chemicals is: either five hundred (500) pounds or the TPQ listed (whichever is lower) for the three hundred fifty-six (356) chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or ten thousand (10,000) pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Public Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation of these regulations, but exclude later amendments to or editions of the regulations. Specific exemptions to this category include:

1. Finished consumer products within retail centers and households containing hazardous materials intended for household use and agricultural products intended for agricultural use;
2. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public; and
3. Pharmaceutical sales, use, storage and distribution centers that do not manufacture pharmaceutical products.

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These exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Division.

- c. At-risk population facilities include medical care, congregate care and schools. These facilities consist of: (i) elder care (nursing homes); (ii) congregate care serving twelve (12) or more individuals (day care and assisted living); and (iii) public and private schools (pre-schools, K-12 schools, before-school and after-school care serving twelve [12] or more children);
- d. Facilities vital to restoring normal services including government operations. These facilities consist of:
  - 1. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers); and
  - 2. Essential structures for public colleges and universities (dormitories, offices and classrooms only).

These facilities may be exempted if it is demonstrated to the Board that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this Article and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Board on an as-needed basis upon request.

- (2) Protection for critical facilities. All new and substantially improved critical facilities and new additions to critical facilities located within the special flood hazard area shall be regulated to a higher standard than structures not determined to be critical facilities. For purposes of this Article, *protection* shall include one (1) of the following:
  - a. Location outside the special flood hazard area; or
  - b. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two (2) feet above the base flood elevation.
- (3) Ingress and egress for new critical facilities. New critical facilities shall, when practicable as determined by the Board, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

## **ARTICLE 12 Reserved<sup>10</sup>**

**Secs. 16-12-10—16-12-100. Reserved.**

## **ARTICLE 13 Transient Mobile Home Regulations**

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<sup>10</sup>Ord. No. 13 , § 1, adopted April 1, 2019, repealed the former Art. 12, §§ 16-12-10—16-12-100, and enacted new provisions to replace § 17-3-40. The former Art. 12 pertained to condominiums and townhouses and derived from Prior code 15-2-18.5; Ord. 5 § 2, 1993; Ord. 22 § 4, 1993; Ord. 3 § 19, 1994; Ord. 17 § 1, 2003; Ord. 5 § 1, 2004; Ord. 2 § 1, 2005; Ord. 4 § 1, 2009; Ord. No. 5 , §§ 1—3, 4-3-2017.

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### **Sec. 16-13-10. Storage.**

A transient mobile home may be parked on private property in any zone district for storage purposes, so long as the same is not used at any time for occupancy and complies with all set back requirements of that district, as is required for the principal building or use.

### **Sec. 16-13-20. Temporary visits.**

A transient mobile home may be parked on private property in any zone district in any location thereon, whether occupied or not, for a period not to exceed fourteen (14) days. The presence of a parked transient mobile home on any lot or parcel after fourteen (14) days from first being parked on said lot or parcel shall be considered in storage and subject to the provisions of Section 16-13-10 above.

### **Sec. 16-13-30. Occupancy.**

Transient mobile homes shall not be occupied overnight upon any street, alley or other public way or public property within the Town. Transient mobile homes may be temporarily occupied by visitors or guests of the occupant of any lot or parcel, upon such lot or parcel, for a period not in excess of fourteen (14) consecutive days or fourteen (14) total nonconsecutive days in any sixty-day period. The temporary parking or occupancy of any transient motor home in exchange for payment or rent shall be prohibited unless expressly permitted by any zone district regulation.

## **ARTICLE 14 Supplemental Regulations**

### **Sec. 16-14-10. Application.**

The requirements and regulations set forth in this Article shall apply in all zoning districts, except as otherwise indicated.

### **Sec. 16-14-20. Minimum yard.**

No part of a yard required of any building for the purpose of complying with the provisions of this Chapter shall be included as a yard for another building, and all yards shall be open and unobstructed except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard or the depth of a front or rear yard, the minimum horizontal distance between the lot line and the nearest point on the principal building, including steps, eaves, balconies and similar structures, shall be used.

### **Sec. 16-14-30. Fences.**

- (a) Except as herein required for service yards and screening, fences may not exceed forty-two (42) inches in height in front yards (from the front plane of the primary structure forward or, in the absence of a structure, from the front yard setback forward), and seventy-two (72) inches in height in the rear yard, from the front plane of a structure (or front setback if no structure) backward. However, on any portion of lots within thirty (30) feet of the intersection of two (2) or more streets, no fence may exceed thirty-six (36) inches in height. Fences may not be solid and must have the finished side face away from the interior of the property being fenced.
- (b) Notwithstanding any other provision of this Code, no fence of any height shall be erected within the five-foot rear yard setbacks on lots whose rear yards abut an alley within the following blocks: 20, 21, 22, 27, 28 and

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29. No fences utilizing barbed wire or electric current shall be allowed except in the "R1A" District, the "A-O" District or the "P" District as permitted by the Town Manager for livestock confinement.

(Prior code 15-2-19; Ord. 8 §3, 1988; Ord. 22 §9, 1992; Ord. 7, 2000; Ord. 4 §1, 2001; Ord. 4 §1, 2009)

### **Sec. 16-14-40. Required fencing.**

Screening by a solid fence and/or landscaping, at the discretion of the Board, of sufficient height to screen or largely obscure objects located inside, shall be required for:

- (1) Service yards;
- (2) Fuel tanks;
- (3) Trash containers in excess of one hundred twenty (120) gallons; and
- (4) Satellite dishes in excess of twenty-four (24) inches in diameter.

### **Sec. 16-14-50. Floor area of residential units.**

No residential unit shall be occupied and used for residential purposes which does not conform to the requirements set forth in the definitions of *residential unit* or *residential unit, historic accessory structures*, in Section 16-1-20 of this Chapter.

### **Sec. 16-14-60. Minimum front yard.**

Where lots comprising fifty percent (50%) or more of the frontage on one (1) side of a street between intersecting streets have been improved with buildings at a time of the adoption of the initial ordinance codified herein, said buildings having an average front yard depth with a variation of not more than six (6) feet, the average front yard of such building shall be the minimum front yard required for all new buildings constructed or erected on that side of the street, with the business districts excepted.

### **Sec. 16-14-70. Unkempt conditions.**

No property owner shall allow the development of any unkempt conditions of buildings or grounds which will substantially decrease the beauty of the neighborhood as a whole or in a specific area.

### **Sec. 16-14-80. Height restrictions.**

The following exceptions to the stated height restrictions in each district shall apply:

- (1) Flag poles;
- (2) Chimneys, as may be permitted by the Board;
- (3) Radio or TV antennae, excluding satellite dishes, for private noncommercial use located on the roof or in the rear yard of a building; and
- (4) Radio, TV or other communication towers or structures, excluding satellite dishes, for public or private broadcasting relay purposes or commercial uses upon permits issued by the Board.

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### **Sec. 16-14-90. Limitation on vacation rentals.**

- (a) Intent. The use of property as a vacation rental has impacts on the neighborhoods not unlike that of bed and breakfasts, hotel or lodges and motels. The impacts of vacation rentals on neighboring uses can be significant when the vacation rental property is occupied by multiple tenants in consecutive tenancies throughout the year. The commercial aspects of vacation rentals can have detrimental effects on the quiet, dignity and neighborliness of adjacent residential uses and therefore should be regulated to protect the health, safety and welfare of Crested Butte.
- (b) Limitations. There shall be imposed limitations on vacation rentals as follows:
  - (1) Vacation rentals are not allowed in bed and breakfasts, condo hotels, hotels or lodges, motels or short-term residential accommodations uses as defined in the Code, as amended.
  - (2) Vacation rentals which have been issued an unlimited license pursuant to Section 6-6 are permitted in the "R1," "R1A," "R1C," "R1D," "R1E," "R2," "R2C," "R3C," "B3" and "B4" Districts.
  - (3) Vacation rentals which have been issued a Primary Occupant license are permitted in any zone district.
  - (4) In no case shall any vacation rentals be operated without a valid license issued pursuant to Section 6-6.

( Ord. No. 6 , § 2, 6-5-2017; Ord. No. 21 , § 3(Exh. B), 11-21-2022)

Ord. No. 6 , § 2, adopted June 5, 2017, repealed the former § 16-14-90, and enacted a new § 16-14-90 as set out herein. The former § 16-14-90 pertained to limitation on leasing and derived from prior code 15-2-19; Ord. 11 §3, 1990; Ord. 3 §31, 1994; Ord. 5 §2, 1995; Ord. 8 §6, 2008; Ord. 4 §1, 2009.

### **Sec. 16-14-100. Conduct of home occupations.**

No home occupation shall be conducted in the Town which does not conform to the requirements set forth in the definition of *home occupation* in Section 16-1-20 of this Chapter.

### **Sec. 16-14-110. Conduct of light industrial operations.**

No light industrial operation shall be conducted in the Town which does not conform to the requirements set forth in the definition of *light industrial operation* in Section 16-1-20 of this Chapter.

### **Sec. 16-14-120. Conduct of shop crafts.**

No shop craft operation shall be conducted in the Town which does not conform to the requirements set forth in the definition of *shop craft* in Section 16-1-20 of this Chapter.

### **Sec. 16-14-130. Satellite dishes.**

No satellite dish or other antennae in excess of twenty-four (24) inches in diameter designed to receive communication signals from satellites shall be erected within the Town unless a permit therefor is granted by the Board. No such permit shall be granted by the Board:

- (1) For a satellite dish or antenna larger than sixteen (16) feet in diameter or sixteen (16) feet across its widest dimension;
- (2) For a satellite dish or antenna on a rooftop;

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- (3) Unless such satellite dish or antenna dislocated within applicable setback restrictions of the zone district; and
  - (4) Unless, the visibility of the satellite dish or antenna is reduced by required fencing or landscaping, nonreflecting color or other special conditions required by the Board.

### **Sec. 16-14-140. Drive-through facilities.**

Drive-through facilities used by automobiles or any other vehicles, such as by restaurants, liquor stores, banks or drugstores, are prohibited within the Town, except that drive-through facilities directly related to auto-related services are not prohibited.

### **Sec. 16-14-150. Basement construction.**

The construction of basements is prohibited unless the proponent complies with Section 18-16-10.

### **Sec. 16-14-160. Approval required for alteration of natural grade of building site.**

The natural grade of a building site may not be altered without the prior approval of the Building Official. A written application to alter the natural grade of a building site must be submitted to the Building Official prior to the alteration of the natural grade on a building site. The application must depict the existing natural grade for the site and the proposed grade change to the site. The Building Official may authorize an alteration in natural grade to facilitate access or drainage on a site in the Building Official's reasonable discretion.

### **Sec. 16-14-170. Approval of alteration to building site finish grade.**

The proposed finish grade of a site must be submitted to the Board for approval as part of the building permit application if the proposed finish grade will vary from the natural grade on a building site by more than one (1) foot. However, the Board shall not approve a finish grade on a site which varies by more than three (3) feet from natural grade. In determining whether or not to approve a finish grade on a site varying from the natural grade by more than one (1) foot, the Board shall take into consideration the following factors:

- (1) The impact of the proposed grade alteration on adjacent sites with respect to issues, including drainage, solar access and view corridors;
- (2) Whether or not the proposed alteration is excessively dissimilar to the topography of adjacent sites; and
- (3) Whether or not the proposed alteration excessively masks the natural contour of the site.

### **Sec. 16-14-180. Fabric structures.**

Fabric structures are not permitted to remain continuously in place for a period in excess of fourteen (14) days, with the following exceptions:

- (1) Fabric structures are permitted for restaurant uses where they are used to cover an approved outdoor seating location; and
- (2) Where fabric structures are approved by the Board under 5-145a. of the Town's Design Guidelines, which permits the erection of a temporary structure for less than six (6) months in any one (1) calendar year, where the structure is found to be of unique function in serving the public benefit, in that it provides musical or cultural opportunities or other public amenities to Town residents and visitors.

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- (3) Where fabric structures are approved by the building official for large scale commercial and/or municipal projects that are greater than five thousand (5,000) square feet, where these structures are located only on the lot under construction, adhere to all setbacks for the zone district, and only in place for the duration of the issuance of a building permit through the issuance of a Certificate of Occupancy.

**Sec. 16-14-190. Demolition or relocation of historic and non-historic buildings or structures.**

- (1) Applicability.
- a. No person shall demolish or relocate any historic building or structure built within the Period of Significance (POS), 1880—1952, unless the Town deems it unsafe and/or dangerous in accordance with Subsection (3), Dangerous conditions.
  - b. No person shall demolish or relocate any building or structure built outside the Period of Significance ("POS") unless:
    - (i) The Board has approved such demolition or relocation following proper notice and public hearing in accordance with this Section;
    - (ii) The Board has approved a redevelopment plan as defined in Section 16-1-20; and
    - (iii) The Building Inspector has issued building permits pursuant to Section 18-13-40 for such demolition or relocation and construction of the replacement building or structure.
  - c. No person shall demolish or relocate any building or structure for the purpose of selling or conveying vacant lots for future development.
- (2) Ordinary maintenance and repair. Nothing in this Section shall be construed to prevent ordinary maintenance or repair of any historic building or structure. The Building Official may order any person in charge of or having control of the historic building or structure to perform maintenance when the Building Official in their reasonable judgment deems that such maintenance is necessary to prevent significant deterioration of the building or structure.
- (3) Dangerous conditions. A building or structure that is deemed by the Building Official to be unsafe or dangerous creating a substantial risk of injury or damage to property is a public nuisance and is subject to Chapter 7, Article 1, Administration and Abatement of Nuisances. Approval by the Board prior to compliance with an order issued by the Building Official to abate any nuisance is not required. As soon as practicable, the officer shall notify the Board of the proposed or actual issuance of any order.
- (4) Demolition by neglect. The Building Official may, at any time, order any person in charge of or having control and supervision of the property where a historic building or structure is located, to maintain and keep up a historic building or structure where it appears in the Building Official's reasonable judgement that without maintenance the building or structure will deteriorate to the point where demolition becomes the only option.
- (5) Exemptions. The following activities are exempt from the requirements of this Section, except that a building permit issued pursuant to Section 18-13-40 is required prior to commencing any of these activities:
- a. Demolition of less than twenty-five percent (25%) of floor area of a non-historic building or structure.
  - b. Minor demolition and/or relocation activities that include but are not limited to chimneys, decks, porches, steps, small accessory buildings or other similar design features.
  - c. Removal of partial roof components to allow for vertical expansion such as dormers or skylights on structures.
  - d. Demolition or relocation of mobile homes and mobile home accessory buildings in the M-Mobile Home district.

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- (6) Application requirements. An applicant seeking approval for demolition or relocation of a non-historic building or structure must submit a complete demolition or relocation permit application to the Community Development Department that includes the following contents:
- a. Payment of applicable fees and delivery of the following information: 1) a legal description of the property involved; 2) proof of ownership or a deed for the property establishing title; 3) signature of the owner of the property or some other authorized person with the written legal authority of the owner to make such application; and 4) a plot plan of the lot or parcel, drawn preferably at a one-eighth inch to one-foot scale, showing the dimensions of the lot or parcel and the size and location of the existing buildings or structures and other site improvements.
  - b. A written narrative that describes: 1) the reason(s) for requesting demolition or relocation of the existing building or structure; 2) the architectural style/era and any distinguishing characteristics or features of the existing building or structure; and 3) whether there is an existing deed-restricted housing unit contained on the property.
  - c. Existing floor plans, elevations, photographs and/or other materials that enable a thorough understanding of the existing building or structure and the character of the neighborhood context.
  - d. A condition assessment report for the existing building or structure prepared by a licensed architect, building systems engineer, building contractor, building inspector or other qualified person that addresses the following:
    1. Site and grounds: the condition of the existing site and grounds including site drainage, pavement, walkways, patios, decks, walls, fencing/railings, landscaping and exterior amenities.
    2. Structural systems: the type and condition of the existing foundations and structural framing of walls, columns, intermediate floors and roofs; a summary of any cracks in the foundation and/or walls; and evidence of leakage or water damage. If relocation is proposed, a determination should be made as to whether the building or structure can withstand the physical impacts of being removed from its current location, transported and relocated upon a new foundation at a receiving site.
    3. Building envelope: the type and condition of existing roofing systems, exterior finishes, insulation, stairs and steps, exterior doors and windows; and whether they need to be replaced.
    4. Mechanical systems: the type of electrical, heating, ventilation, plumbing and conveyance systems, including the condition of each system, its estimated efficiency, and its estimated remaining lifespan.
    5. Interior building components: the type of interior finishes, fireplaces/heating stoves, appliances and fixtures; their estimated efficiency, and their estimated remaining lifespan.
    6. Environmental issues: any evidence of disease-causing organisms, mold, lead, asbestos, chemicals, biological substances and/or radioactive material, including the existence of any hazardous or dangerous conditions or materials.
    7. Regulatory compliance: any issues or concerns regarding zoning (setbacks, height, floor area, parking, etc.), life safety, fire or other building code matters.
    8. Final summary: a summary that recommends whether the structure should be demolished or relocated; or whether the estimated lifespan of the building's systems and elements can be reasonably upgraded, remodeled, renovated and/or expanded to be more functional, energy-efficient, livable and code compliant.

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- e. If demolition is proposed, a written response that details how the applicant intends to comply with the requirements of Chapter 18, Article 15 Deconstruction and recycle plan, and an estimate of cubic yards of demolition material that will be permanently disposed.
  - f. If relocation is proposed, a relocation plan that describes and/or shows the transport route, identifies any structural and/or physical constraints, identifies methods of resolving those constraints, and includes a proposed site plan with the subject building or structure located on the receiving site in conformance with the specific zoning requirements, easements and covenants or neighborhood context.
  - g. A written response that describes how the applicant intends to satisfy the Replacement Housing requirements in Section 16-14-200.
- (7) Review standards for demolition of non-historic buildings or structures. The Board may approve an application for demolition of any non-historic building or structure if the Board determines that all of the following standards have been met:
- a. The existing building or structure is not compatible with the POS; do not conform to the Town's Design Guidelines; and the massing, scale, form and materials do not substantially or materially contribute the character and quality of the neighborhood context.
  - b. The existing building or structure cannot meet current zoning, building and energy code requirements, and/or health and safety standards by utilizing reasonable and economically viable construction methods in order to achieve a beneficial use of the property.
  - c. If demolition is proposed, the deconstruction and recycle plan meets the requirements of Chapter 18, Article 15 of this Code.
  - d. If relocation is proposed, the relocation plan meets the requirements set forth in Subsection 16-14-190(6)f.
  - e. The redevelopment plan satisfies the Replacement Housing requirements in Section 16-14-200.
- (8) Review standards for relocation of non-historic buildings or structures. The Board may approve an application for relocation of any non-historic building or structure if the Board determines that all of the following standards have been met:
- a. The building or structure can withstand the physical impacts of being removed from the current location, transported, and relocated upon a new foundation at a receiving site.
  - b. The building or structure can be located on a receiving site in conformance with the zone district standards, easements and covenants, or neighborhood context.
  - c. The relocated building or structure may or may not be in compliance with the Town Design Guidelines.
- (9) Staff review and report. Prior to the Board public hearing, staff shall review the application and prepare a report summarizing the application, identifying whether the application appears to satisfy the standards in Section 16-14-190(5), and recommending conditions of approval that may be required to satisfy the standards.
- (10) Board review and decision. The Board shall review the demolition or relocation application at the duly noticed public hearing pursuant to Section 16-22-110.
- a. If the Board approves the demolition or relocation application, the applicant shall, within two (2) years of date of approval, prepare and submit a Redevelopment Plan as defined in Section 16-1-20, otherwise the approval will expire.
  - b. For relocation within the Town, if it is demonstrated that the existing building or structure conforms to the zone district standards, covenants, and site conditions of the receiving site, and the receiving site is

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currently available for development, the existing building or structure may be relocated to the receiving site prior to submittal and approval of the Redevelopment Plan.

- c. If the Board denies the demolition or relocation application, the applicant may prepare plans for the maintenance, renovation, modification or expansion of the existing building or structure in accordance with the zone district standards and Town Design Guidelines; or
  - d. If the Board denies the demolition or relocation application, the applicant may appeal the decision to Town Council pursuant to Section 16-22-150, Appeal.
  - e. Approval of the demolition or relocation application does not constitute a site specific development plan under Chapter 16, Article 20.
- (11) Expiration of approval. The Board's approval of the demolition or relocation application shall expire within two (2) years of the Board's decision if a building permit has not been issued for the associated redevelopment plan.
- (12) Compliance or general penalty for violation. Any person in violation of this Section shall be subject to the provisions of Chapter 1, Article 4 and the following provisions:
- a. Where a violation of this Section has occurred, the Building Official shall be authorized to impose up to a ten-year moratorium on the issuance of any permit and/or certificate of occupancy in connection with the subject property, except as otherwise described in Subsection b. below. The Building Official shall consider the following factors in deciding whether to impose such a moratorium:
    1. The impact of the demolition or relocation of the building or structure upon the historical integrity and architectural character of the Town;
    2. The factual circumstances concerning the cause of the demolition or relocation of the building or structure, as may be identified after reasonable investigation by the Building Official; and
    3. Whether the demolition or relocation of the building or structure may have been approved by the Board had an application for the same been submitted.
  - b. During the pendency of prosecution described in Subsection a. above, the Building Official may impose a temporary moratorium on the issuance of any permit and/or certificate of occupancy in connection with the subject property. In electing to impose such a temporary moratorium, the Building Official shall consider the same factors as described in the Subsection above. Such temporary moratorium shall remain in effect for the duration of the prosecution and any appeal therefrom.
  - c. Notice of the imposition and duration of any moratorium imposed pursuant to this Section shall be recorded in the official real property records of the office of the County Clerk and Recorder.
  - d. A moratorium on the property under this Section does not prevent the Building Official from issuing a building permit for rehabilitation or repair of any building or structure on the property that is the subject of the moratorium or any improvement, bracing or other construction activity intended to protect, keep up, save and/or maintain any such building or structure on the subject property.

(Ord. 6 § 1, 2010; Ord. No. 34 , § 3, 9-16-2019)

### **Sec. 16-14-200. Replacement housing due to demolition.**

- (1) Applicability. These replacement housing standards, in addition to Section 16-14-190, shall apply to the demolition or relocation of existing residential buildings and the proposed redevelopment of a redevelopment parcel.

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- (2) Submittal requirements. A replacement housing application shall be submitted with the proposed redevelopment plan and shall include the following information:
- a. A brief narrative that describes the existing conditions; the proposed redevelopment plan; and details how the replacement housing standards are being met. If there is an existing deed-restricted unit on the redevelopment parcel, the application shall include a copy of the recorded deed-restriction.
  - b. Existing and proposed: site plans, building floor plans, floor area (FAR) calculations, exterior building elevations and unit summary that includes the unit square footages, number of bedrooms and bathrooms and on-site parking spaces.
- (3) Replacement housing standards. The replacement housing standards that shall apply to the demolition and redevelopment of the following residential building types are:
- a. General standards for replacement housing that apply to the demolition and redevelopment of all residential buildings:
    1. For properties with existing deed-restricted housing, there shall be no net loss in the number of deed-restricted units, bedrooms and amount of floor area due to demolition or relocation.
    2. All replacement housing units shall be deed-restricted as long-term rental or resident-occupied, affordable replacement housing units. The restrictive covenant for all long-term rental or resident-occupied affordable replacement housing units shall be recorded in the office of the Gunnison County Clerk.
    3. Deed-restricted replacement housing units shall be constructed on the redevelopment parcel; or if the relocated residential building or structure is relocated in town, the relocated building or structure shall be deed-restricted to satisfy the replacement housing requirement. Purchasing and deed-restricting existing off-site residential units in order to meet the replacement housing requirements is not permitted.
    4. Deed-restricted replacement housing units may be smaller than the minimum floor area requirements as set forth in Section 16-21-60, Standards for resident-occupied, affordable housing units.
    5. Deed-restricted replacement housing units shall be available for occupancy at the same time as the new free-market residential units constructed on the redevelopment parcel.
  - b. Replacement housing standards that apply to the demolition and redevelopment of single-family, duplex and tri-plex buildings:
    1. Minimum floor area redevelopment standards: New residential buildings or structures shall not exceed the floor area of the existing building to be demolished or the minimum floor area ratio (FAR) allowed in the zoning district, whichever is less, with the following conditions:
      - (a) The new residential building or structure shall be designed within the general orientation, footprint and mass/scale of the existing buildings or structures that are to be demolished and shall comply with the zone district standards.
      - (b) The new residential building or structure may incorporate certain distinguishing architectural features, materials and/or details that were characteristic of the style/era of the demolished building or structure and which may or may not fully conform to the Town's Design Guidelines.
      - (c) The full Resident-Occupied Affordable Housing (ROAH) fee pursuant to Section 16-21-50(6) shall be paid with no credit given for the existing floor area (FAR) of the building or structure that was demolished.

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2. Maximum floor area redevelopment standards: New residential buildings or structures shall not exceed the maximum floor area allowed in the zone district with the following conditions:
    - (a) The new residential building or structure may have a different orientation, footprint and mass/scale from the demolished structure; and shall comply with the zone district standards.
    - (b) The new residential building or structure may incorporate certain distinguishing architectural features, materials and/or details that were characteristic of the style/era of the demolished building or structure and which may or may not fully conform to the Town's Design Guidelines.
    - (c) The new single-family development shall be required to construct an on-site detached, accessory dwelling unit, as defined in Section 16-1-20 and pursuant to Section 16-9-70.
    - (d) The new duplex development shall be required to maintain or construct one (1) of the residential units as a replacement housing unit that is deed-restricted as a long-term rental or resident-occupied affordable housing unit.
    - (e) The new tri-plex development shall be required to maintain or construct one (1) of the residential units as a replacement housing unit that is deed-restricted as a long-term rental or resident-occupied affordable housing unit.
  - c. Replacement housing standards that apply to the demolition and redevelopment of multi-family buildings with four (4) or more residential units:
    1. The new multi-family building or structure may have generally the same or different orientation, footprint and mass/scale, and they shall meet the zone district standards and Town Design Guidelines.
    2. A minimum of fifty percent (50%) of the total existing number of units demolished shall be maintained or construct replacement housing that is deed-restricted as long-term rental or resident-occupied affordable housing units; when applying this standard results in a fraction of a required unit, a payment-in-lieu for only that fractional unit may be made to the Town or a full deed-restricted unit may be provided.
    3. A minimum of twenty-five percent (25%) of the total existing number of bedrooms demolished shall be provided as replacement housing that is deed-restricted as long-term rental or resident-occupied, affordable housing; for purposes of this section, a studio shall equate to three-quarters ( $\frac{3}{4}$ ) of a bedroom.
  - d. For residential buildings or structures that are relocated in town:
    1. The relocated building or structure shall comply with the zone district standards of the "receiving site" and the relocated building or structure may or may not fully conform to the Town Design Guidelines due to their architectural style and/or era of construction.
    2. The relocated building or structure shall contain the same number, type and size of residential units as existed on the redevelopment parcel.
    3. The owner/applicant shall be responsible for all relocation costs of the relocated building or structure, including the new foundation at the receiving site, if the building or structure is to be deed-restricted as long-term rental or resident-occupied affordable housing.
      - (a) If there is a recorded restrictive covenant for the relocated building or structure, no other replacement housing and/or ROAH fee shall be required for the new buildings or structures to be constructed on the redevelopment parcel. Town reserves the right to accept or

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- refuse the relocated building or structure as deed-restricted long-term rental or resident-occupied housing.
- (b) If the relocated building or structure is not deed-restricted as long-term rental or resident-occupied affordable housing or it is relocated outside of town, the applicable replacement housing requirements and/or ROAH fees shall be required.
4. No replacement housing credits shall be given to buildings or structures relocated outside of Town.

( Ord. No. 34 , § 4, 9-16-2019)

### **Sec. 16-14-210. Bathing facilities.**

Bathing facilities associated with commercial uses are limited to showers only and shall be located in a space with direct access to a common hallway with public access.

## **ARTICLE 15 Landscaping<sup>11</sup>**

### **Sec. 16-15-10. Terms and provisions.**

The terms and provisions of this Article shall apply to all real property presently situated in or subsequently annexed to the corporate limits of the Town. The term "tree" for the purposes of this Article shall include all coniferous and deciduous trees having a trunk diameter of two (2) inches or more when measured at four (4) feet six (6) inches from ground level

( Ord. No. 16 , § 1, 6-18-2018)

### **Sec. 16-15-20. Intent.**

Landscaping and trees in particular provide important environmental, aesthetic, and health benefits to the residents and guests of the Town of Crested Butte. Landscaping enhances the quality of life and real estate values of property upon which it exists and other neighboring properties. Large trees are a resource that cannot be fully replaced if they become dead, diseased, damaged or removed. The intent of this Article is to maintain, to the fullest extent practicable, the number of existing Trees and the maximum diversity of tree species in the Town by encouraging proper care and maintenance, and minimizing property management, development and construction activities that may result in the damage or loss of large trees.

( Ord. No. 16 , § 1, 6-18-2018)

### **Sec. 16-15-30. Landscaping and site development.**

- (a) Landscaping subject to regulation. Landscaping shall conform to the landscape plan submitted pursuant to Section 18-13-20(a) of this Code and guaranteed to be completed and maintained in a healthy living

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<sup>11</sup>Ord. No. 16 , § 1, adopted June 18, 2018, repealed the former Art. 15, §§ 16-15-10—16-15-90, and enacted a new Art. 15 as set out herein. The former Art. 15 pertained to similar subject matter. See Disposition of Ordinances Table for complete derivation.

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condition. The Design Guidelines Town of Crested Butte shall guide the property owner on all topics that are not included in this Article. *Ref: Sec. 17-13-40(a).*

- (b) Existing trees and shrubs. The landscape plan shall demonstrate that a reasonable effort has been made to preserve all existing healthy trees and shrubs. *Ref: Sec. 17-13-40(b).*
- (c) Appropriate vegetation. The landscaping plan shall provide for planting of indigenous plant materials or such other vegetation recommended by the BOZAR Guideline Plant List of Trees and Shrubs in the Design Guidelines Town of Crested Butte. All exposed ground surfaces shall be revegetated. *Ref: Sec. 17-13-40(c).*
- (d) Obstruction of signs and fire hydrants. Vegetation shall not be located so as to interfere with the ability of motor vehicle operators to have unobstructed views of traffic signs, street signs and intersecting streets. Fire hydrants shall not be obstructed by landscaping. *Ref: Sec. 17-13-40(d).*
- (e) Protection of landscaping. Installation of vegetation protection devices shall be required during any excavation or construction activities. *Ref: Sec. 17-13-40(e).*
- (f) Landscaping installation. All landscaping and site development of a property shall be installed in accordance with the plans submitted pursuant to Subsection 18-13-20(a) of this Code and completed not later than the end of the first planting season following the issuance of the temporary certificate of occupancy for any building on the site; or in accordance with a Board-approved phased plan that shall as a minimum establish a vegetative ground cover in the first growing season.
- (g) Landscaping guarantee. All landscaping, including relocated trees, planted in accordance with this Article shall live for a minimum of two (2) years after the installation. All landscaping shall be properly maintained in a healthy living condition by the owner of the property. Any landscaping that dies within the initial two-year period shall be replaced to the original specifications during the next available planting season and shall be required to live for a minimum of two (2) years from the time it is replanted. *Ref: Sec. 17-13-40(f)*

( Ord. No. 16 , § 1, 6-18-2018)

### **Sec. 16-15-40. Trees and landscaping on public property.**

- (a) Any trees, shrubs and other landscaping planted in the public right-of-way and sidewalk area or other public property shall be approved prior to installation as to location and type by the Town Manager or designee(s).
- (b) No person, other than a Town employee under the direction of the Town Manager or designee(s), shall plant, trim, prune, transplant or remove trees situated upon Town property, streets or other public rights-of-way.
- (c) No person using Town park property shall damage, cut, carve, transplant or remove any tree or plant; or injure the bark of trees or pick flowers or seeds of any plant; attach any rope, wire or other contrivance to any tree; dig or otherwise disturb planter or grass areas; or in any other way harm or impair the usefulness or natural beauty of any public area. *Ref: Sec. 11-3-209(b)*

( Ord. No. 16 , § 1, 6-18-2018)

### **Sec. 16-15-50. Removal of trees on public and private property; permit required.**

- (a) No person, without first obtaining a permit for tree removal as herein provided, shall remove, cause to be removed or effectively remove through damaging any tree.
- (b) No person, without first obtaining a permit from the Town Manager or designee(s), shall remove or cause to be removed any tree. Said tree removal application shall contain such information as the Town Manager or designee(s) may require to enable them to adequately enforce the provisions of this Article. A request to

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remove trees or other landscaping that is part of a site development plan shall be reviewed by the Board as part of the building application process in conformance with Paragraph 18-13-20(a)(11) of this Code.

- (c) No person, without first obtaining a permit, shall top, damage, girdle, limb up, or poison any living tree. "Topping" is defined as the removal of more than five percent (5%) of the height from the top of any deciduous tree or the removal of the terminal bud from a coniferous tree. The "terminal bud" of a coniferous tree is defined as the highest bud on the tree. "Limb-up" is defined as the removal of more than one-third ( $\frac{1}{3}$ ) of the live crown or branches of a tree within one growing season.
- (d) The Town may request, when necessary, to adequately evaluate the intended tree removal proposal, a site plan drawn to scale showing the following:
  - (1) The location of the driveway, parking areas, all paving, walkways, trash or dumpster locations and other structures on the site.
  - (2) The location of all trees shall be identified as to type, species and size of trunk diameter measured at four (4) feet six (6) inches from ground level.
  - (3) The identification of all diseased trees and any trees damaging or threatening to damage any buildings, structures, roadways, sidewalks, paved surfaces or utility service lines.
  - (4) The identification of any trees to be relocated and/or removed, trees to be retained and areas which will remain undisturbed.
  - (5) The identification of any proposed grade changes which might adversely affect or endanger any trees on the site, with details and specifications as to how the trees will be protected and preserved.
- (e) After the application for a tree removal permit is filed, the Town Manager or designee shall review the application (and site plan if required) and determine what effect the intended removal of the tree(s) will have upon the natural resources, aesthetic qualities and safety of the area. The following factors shall be considered in determining whether a tree removal permit shall be granted or denied:
  - (1) Whether removal of the tree(s) is necessary to protect human safety, buildings, structures, utilities and other improvements.
  - (2) Whether removal of the tree(s) will increase the potential for flooding, snowslides, landslides or other natural hazards.
  - (3) Whether removal of the tree(s) will increase excess soil erosion, water runoff or otherwise negatively impact the watershed.
  - (4) Whether the removal of the tree(s) will increase the potential of wind erosion, create dust during winds, or otherwise adversely affect air quality.
  - (5) Whether the removal of the tree(s) is necessary due to insect infestation or disease.
  - (6) Whether the removal of the tree(s) will substantially decrease the quantity of species and diversity of trees in the immediate neighborhood, detract from the aesthetic qualities of the area, or adversely affect the reasonable use and enjoyment of property in the area.
  - (7) Whether the removal of the tree(s) is necessary in order to construct proposed improvements and to allow reasonable use and enjoyment of the property.
  - (8) Whether the removal of the tree(s) will result in the implementation of good forestry practices, including consideration to the number and types of healthy trees that the subject site can support.
  - (9) Whether the removal or relocation of the tree(s) upholds the intent of the original landscape plan as approved by the Board; and whether the methods proposed to be used for the removal or relocation of any tree is adequate.

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- (f) No person shall remove a totally dead tree without providing prior notice to the Town Manager or designee and obtaining a tree removal permit. Following such removal, the owner shall replace the dead tree with a comparable substitute(s), as defined in Subsection 16-15-60(c) below.
  - (g) Any person, in the event of an emergency caused by a tree being in a hazardous or dangerous condition and posing an immediate threat to person or property, may remove such tree without adhering to the procedures described herein. The Crested Butte Marshal must be notified prior to the removal of a hazard tree. Following such removal, the owner shall notify the Town Manager or designee within twenty-four (24) hours and submit a tree replacement plan identifying comparable substitute(s) as defined below in Subsection 16-15-60(c).

( Ord. No. 16 , § 1, 6-18-2018)

### **Sec. 16-15-60. Maintenance of trees.**

- (a) Within residential zone districts, unless necessary to allow reasonable use and enjoyment of the property, all healthy living trees at least five (5) feet in height planted within the front yard setback shall remain, whether the subject setback is ten (10) feet or twenty (20) feet. When such setback is "any distance conditionally approved," all such trees shall remain in the ten (10) feet closest to the street, whether or not in the setback.
- (b) In the business zone districts, unless necessary to allow reasonable use and enjoyment of the property, all healthy living trees of any size planted in the front yard setback shall remain.
- (c) Where construction of structures or improvements on any property necessitates the removal of any tree the Town Manager or designee, as a condition of approval for removal, may require that the owner either relocate or replace the trees with a comparable substitute elsewhere within the building site. Comparable substitute is defined as a tree with a canopy at maturity being comparable to the canopy at maturity of the removed tree with no replacement deciduous tree being less than two (2) inches in diameter measured at the root collar, and no evergreen tree being less than four (4) feet in height.
- (d) In the business zone districts, if any tree located within the building site totaling at least six (6) inches in diameter when measured at four (4) feet six (6) inches from ground level are preserved, upon approval of the Board, one (1) required parking space may not have to be provided. Trees having a diameter of less than two (2) inches when measured at four (4) feet six (6) inches from ground level shall not be included in the above computation.
- (e) In the business zone districts, in the event a suitable location for a tree replacement is not available on the site, the property owner may either plant a comparable substitute on another property owned by the applicant in a business zone district of Town, or plant a comparable substitute tree on Town property in a location to be determined by the Town Manager or designee. Any tree planted on Town property must be warrantied to the Town guaranteeing survival for one (1) year after the time of planting. Substitute tree(s) must be planted by a professional tree-planting service provider.

( Ord. No. 16 , § 1, 6-18-2018)

### **Sec. 16-15-70. Preservation during construction.**

- (a) No person, without first obtaining a permit, shall be allowed to dig, excavate, turn, compact, or till the soil within the dripline of any tree in such a manner as to cause material damage to the root system of the tree. Dripline is defined as a cylinder having a radius equal to the length of the longest branch of the tree, with the center of the cylinder located at the center of the trunk of the tree and extending from grade level down to a depth of ten (10) feet below grade.

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- (b) No person, while constructing any structure or other improvement, shall be allowed to place material, machinery, temporary soil or rock deposits, or any other material within the dripline of any tree. During construction, the Town Manager or designee may require the erection of suitable barriers around any such trees to be preserved and to protect existing natural resources as necessary. In addition, during construction, no attachments or wires other than protective guy wires shall be attached to any such tree.

( Ord. No. 16 , § 1, 6-18-2018)

#### **Sec. 16-15-80. Relocation of trees on public and private property; permit required.**

- (a) No person, without first obtaining a tree relocation permit as herein provided, shall relocate any tree on public or private property. Such application may contain such information as needed by the Town Manager or designee to enable adequate review and enforcement of this section.
- (b) All relocated trees shall be maintained in a healthy living condition, and any relocated tree that is severely injured, damaged or dies within two (2) years of relocation, shall be replaced with a tree of the same type, species and size during the next available planting season after its demise.

( Ord. No. 16 , § 1, 6-18-2018)

#### **Sec. 16-15-90. Subdivision approval for relocation and removal.**

If a subdivision plat shows each tree proposed to be relocated or removed is approved by the Town pursuant to Chapter 17 of this Code, such approval by the Town shall constitute a permit to relocate and remove the trees designated and no application pursuant to this Article shall be required.

( Ord. No. 16 , § 1, 6-18-2018)

## **ARTICLE 16 Parking**

#### **Sec. 16-16-10. Off-street parking characteristics.**

- (a) Each off-street parking space shall consist of an open area measuring nine (9) feet wide by eighteen (18) feet long and seven (7) feet high, and shall have a legal, unobstructed area for access to a street or alley where permitted by the Board. Off-street parking spaces must be maintained in a usable condition at all times. Required parking spaces shall not be used for long-term vehicle storage. Responsibility for complying with these requirements rests with the owner of the property.
- (b) Such spaces shall be graded for proper drainage and shall be provided with entrances and exits so located as to minimize traffic congestion and hazards.
- (c) Lighting facilities, if provided, shall be arranged so that lights neither unreasonably disturb occupants of adjacent residential properties nor interfere with driver vision.
- (d) Stacked parking, providing access to a designated parking space across another designated parking space, is permitted only for parking spaces serving the same residential unit. Stacked parking is prohibited for parking spaces serving commercial or business uses or serving more than one (1) residential unit.
- (e) When calculating the total number of parking spaces required for a structure with three (3) or more residential units, the total number shall be rounded up to the nearest whole number.

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- (f) When subdividing any parcel of land within the Town, the vehicular access to and from parking for any principal building on a parcel shall be from a street, except as provided in Subsection 16-16-30(a) below, and no extraordinary measures shall be utilized to provide said access or parking.
  - (g) When required by the Americans with Disabilities Act, the Town may require properly sized, handicapped accessible spaces for parking.

(Prior code 15-2-20; Ord. 4 §10, 1991; Ord. 3 §§1, 31, 1994)

## **Sec. 16-16-20. Off-street parking requirements.**

Requirements for off-street parking are established as follows:

- (1) One-family dwelling units: two (2) spaces for four (4) bedrooms or less; one (1) additional space for a fifth bedroom; and an additional space for each two (2) bedrooms more than five (5).
- (2) Two-family dwelling units: four (4) spaces for four (4) bedrooms or less; five (5) spaces for a fifth bedroom; and an additional space for each two (2) bedrooms more than five (5).
- (3) Three-family and multi-family dwelling units: one and one-half (1½) spaces for each residential unit; provided, however, that one (1) additional parking space shall be provided for each bedroom in excess of two (2) per residential unit.
- (4) Accessory dwellings and employee dwellings: one (1) space for a residential unit studio or a one-bedroom unit; two (2) spaces for a unit having two (2) or three (3) bedrooms; three (3) spaces for a unit having four (4) bedrooms; and an additional space for each two (2) bedrooms more than four (4).
- (5) Bed and breakfast establishments: one (1) space for each rental bedroom; provided, however, that two (2) spaces for the owner's quarters and one (1) additional space shall be provided for every two (2) beds in excess of two (2) beds per bedroom.
- (6) Hotel, lodges, motels and resorts: one (1) space for each bedroom; provided, however, that one (1) additional parking space shall be provided for every two (2) beds in excess of two (2) beds per unit, and two (2) spaces each shall be provided for the owner's and/or manager's quarters.
- (7) Restaurants, clubs, retail bakeries, tasting/sales room micro-distilleries and premises licensed for consumption of alcoholic beverages, except those licensed for special events only: one (1) space for each five hundred (500) square feet of usable square footage or a portion thereof if the total usable square footage is between zero (0) and one thousand (1,000) square feet; one (1) space for each two hundred fifty (250) square feet of usable square footage or portion thereof from one thousand one (1,001) to two thousand (2,000) square feet; and one (1) space for each one hundred (100) square feet of usable square footage or portion thereof for usable square footage greater than two thousand (2,000) square feet. Outside usable square footage used for seating shall be counted as part of the total usable square footage by a factor of one-quarter (0.25). The above parking shall not be required if the restaurant is located within a hotel, lodge, motel or resort which serves only registered guests who contemporaneously stay at least one (1) night in the facility.
- (8) Restricted food service establishments: one (1) space for each five hundred (500) square feet of usable square footage or portion thereof if the total usable square footage is between zero (0) and one thousand (1,000) square feet; one (1) additional space for each five hundred (500) square feet of usable square footage or portion thereof above one thousand (1,000) square feet for establishments with no on-site patron seating; and for establishments with on-site patron seating, one (1) additional space for each two hundred fifty (250) square feet of usable square footage or portion thereof from one thousand one (1,001) to two thousand (2,000) square feet, and one (1) space for each one hundred (100) square feet of usable square footage or portion thereof above two thousand (2,000)

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square feet. Outside usable square footage used for seating shall be counted as part of the total usable square footage by a factor of one-half ( $\frac{1}{2}$ ). The above parking shall not be required if the restricted food service establishment is located within a hotel, lodge, motel or resort which serves only registered guests who contemporaneously stay at least one (1) night in the facility.

- (9) Auto-related services: one (1) space for each one hundred (100) square feet of usable square footage or portion thereof.
- (10) Mobile homes: two (2) spaces for each mobile home.
- (11) Theaters, auditoriums and other uses having fixed seats, except churches: one (1) space for every four (4) seats.
- (12) Museums: one (1) space for every one thousand (1,000) square feet of usable square footage or portion thereof.
- (13) Individual dry storage units: one (1) space for every two thousand (2,000) square feet of storage building space or portion thereof.
- (14) Churches: one (1) space for every eight (8) sanctuary seats, and one (1) space for every five hundred (500) square feet of usable square footage or portion thereof used for other purposes outside the sanctuary.
- (15) Other uses: one (1) space for every five hundred (500) square feet of usable square footage or portion thereof. For these purposes, the square footage for fee calculation defined in Section 13-1-40 of the Code shall be used except that any space that is a common access space for multiple tenants such as stairwells, elevators and common corridors shall not be counted for purposes hereof.
- (16) Congregate housing: one (1) space per bedroom.
- (17) Deed restricted residential units: one (1) space for a residential unit studio or a one-bedroom unit; two (2) spaces for a unit having two (2) or three (3) bedrooms; three (3) spaces for a unit having four (4) bedrooms; and an additional space for each two (2) bedrooms more than four (4).

### **Sec. 16-16-30. Special off-street parking requirements.**

- (a) In the "B1" and "B3" Business Districts, any off-street parking along the front of any lot abutting upon a street may be required to be screened from view in a fashion acceptable to the Board. No access shall be allowed from Elk Avenue directly to any off-street parking; however, said access may be allowed from an alley upon approval by the Board, which must review the request using the criteria set forth in Article 8 of this Chapter for conditional use procedures.
- (b) In the "B2" Business District:
  - (1) All parking must be on site and located on the rear of the parcel, with the exception of Block 24, whereon parking may be provided in the front of the parcel.
  - (2) There shall be no individual parking spaces abutting the Town's streets or within thirty (30) feet of an intersection on the Town's avenues. Parking adjacent to Town avenues may be allowed only if landscaping is provided that screens the parking from Sixth Street.
  - (3) Parking areas may be accessed from alleys that are one-way from Sixth Street, but no access shall be allowed from parking areas to Sixth Street via an alley. There shall be no access to parking from Sixth Street over lots abutting Sixth Street.
  - (4) Underground parking is allowed, provided that such parking is not accessed directly from Sixth Street. The usable square footage ratio for the site may be increased by two hundred seventy (270) square feet per underground parking space, provided that the maximum usable square footage ratio for the

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site does not exceed one (1.0), excluding any affordable housing usable square footage ratio credit. Parking must be designed with adequate access aisles and in conformance with other requirements of this Code and other applicable codes.

- (c) In all districts where development causes the snow removal of uncovered areas in excess of one thousand two hundred ninety-six (1,296) square feet in order to accommodate year-round usage of parking, pedestrian access, trash removal or open space amenities, an area equal to at least thirty-three percent (33%) of said snow removal area shall be dedicated to snow storage. In lieu of providing said snow storage area, a snow melt system complying with the Town's Energy Code may be utilized in the areas where snow is removed therefrom, or the snow may be removed therefrom and stored on private property, so long as an easement, license or ownership in perpetuity is demonstrated.
- (d) In the "T" Tourist District, parking provided along the front of any site abutting upon a street may be required to be screened from view in a fashion acceptable to the Board.
- (e) In the "B3" Business District, off-street parking shall not be required for any residential building or portion thereof constructed prior to May 26, 1990, which continues to be used as a residence. Where, however, any change is made to the use of such residential building or portion thereof, parking for such bed and breakfast use must be onsite and not accessible from Elk Avenue.
- (f) In the "B3" Business District and "T" Tourist District, off-street parking requirements may be satisfied in part by allowing a person to give the Town a revocable easement to land which is adjacent to a public right-of-way which is not Elk Avenue and which is used for public parking, if the easement property can be used to change the configuration of the public parking such that there is a net gain of public parking spaces and the following conditions are met:
  - (1) The person gives the Town a revocable easement to property adjacent to the public right-of-way, with the only cause for revocation being agreement of the parties;
  - (2) The off-street parking credit given to the person conveying the easement is based upon the square footage of the property upon which the easement exists, with the number of spaces for which credit shall be given being equal to the square footage of the easement property divided by one hundred sixty-two (162);
  - (3) The snow storage required pursuant to Subsection (c) above shall be provided;
  - (4) A person may satisfy their residential off-street parking requirements under the following terms and conditions:
    - a. The building(s) including all residential units shall be located on the same lot under the same ownership and further subdivision and/or condominiumization of the residential units is not permitted.
    - b. A restrictive covenant shall be recorded to ensure that the residential units are restricted to use as affordable and/or long-term rentals.
    - c. A parking management plan shall be prepared to address, at a minimum, the following issues: paving, striping of parking spaces, signage for resident parking only, parking/use restrictions, snow plowing/snow storage procedures that alleviate the need for residents to move their vehicles, monitoring/enforcement, maintenance and repair.
  - (5) The easement agreement, and the terms for satisfying the required off-street parking under this Subsection in each particular case, shall be recorded as set forth in Section 16-9-70 of this Chapter.
  - (6) The Board and Town Council have reviewed and approved the request for satisfying off-street parking requirements under this Article.
- (g) In the "C" Commercial District:

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- (1) The primary street frontage of a property may not be utilized for residential parking.
  - (2) Signage designating all residential parking spaces shall be posted.

(Prior code 15-2-20; Ord. 3 §1, 1994; Ord. 17 §3, 1996; Ord. 12, 1997; Ord. 18 §1, 2001; Ord. 1 §§3, 5, 2008; Ord. 17 §2, 2009; Ord. 8 §2, 2011; Ord. 16 §5, 2013; Ord. No. 3 , § 2, 3-6-2017; Ord. No. 6 , § 1, 3-19-2018)

### **Sec. 16-16-40. Location of off-street parking.**

Unless given conditional approval by the Board, all off-street parking must be located on the same or adjacent lot under the same ownership as the lot occupied by the principal user. If any portion of a parcel is so designated for off-site parking, such portion shall not thereafter be utilized for any other permitted or conditional use, including but not limited to FAR calculation, open space requirement, required setbacks, minimum lot size or snow storage for the remaining portion of the parcel, unless such parking use is thereafter terminated pursuant to Section 16-16-60 below.

### **Sec. 16-16-50. Payment in lieu of providing off-street parking.**

- (a) Whenever off-street parking is required, the Board is authorized to accept payment to the Town in lieu of providing the off-street parking, utilizing the following criteria:
  - (1) Whether more than normal impacts would be created by requiring vehicles to park on-site;
  - (2) The unlikelihood that on-site parking would be used on a regular basis;
  - (3) The unavailability of public parking in the site vicinity; and
  - (4) Impacts on the neighborhood.
- (b) Such payments shall be acceptable in cash, by the conveyance of land to the Town free and clear of all liens and encumbrances and/or by the conveyance to the Town of an easement, in the amount of three hundred (300) square feet per each off-street parking space otherwise required to be provided. An easement to the Town in lieu of providing required off-street parking shall be accepted by the Board only after consideration by the Board of the type, location and strategic importance of the proposed easement in light of the neighborhood context, and after consideration of the value to the Town of the proposed easement, including whether additional easements on adjacent properties will be required to make the easement useful. If the Board, after considering the above factors, determines that a proposed easement is not of sufficient value to the Town, so as to further Town goals of providing for alternative or public transportation options or other options which have the effect of reducing the demand for vehicular traffic and parking, and mitigation of the parking impacts caused by new development, then the Board may refuse to accept such proposed easement as payment in lieu of providing required off-street parking. The amount of such payment per required space shall be recommended by the Board and approved by the Town Council, by motion, at any regularly scheduled Town Council meeting after hearing staff and Board recommendations. The amount charged for said payments shall be reviewed at least annually prior to January 1. Notwithstanding any other provision of this Article to the contrary, no payment in lieu of providing off-street parking shall be allowed for residential uses in any district, or in the "B2" District with the exception of those portions of the "B2" District that occur within Blocks 24 and 25. Any such payment in lieu of off-street parking shall be applied to the following purposes only:
  - (1) The creation and development of a long-term fund for acquisition of land and facilities for public parking purposes;
  - (2) The provision of extra parking spaces upon land already owned by the Town by means of constructing improvements or improving maintenance procedures; or

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- (3) Any other program reasonably designed to provide additional parking spaces or reduce the demand for existing parking spaces.
  - (c) If, and only if, the following criteria exist, payment in lieu of providing required off-street parking may be made for the months of November through April of each year, in the amount of one-half ( $\frac{1}{2}$ ) of the payment per required space as set forth above, provided that off-street parking is provided on site for the months of May through October of each year:
    - (1) The area within which the use is located is primarily residential;
    - (2) Subsection 16-16-30(a) above allows access to parking on the subject parcel to be from an alley only;
    - (3) The only alley access to the subject parcel is very narrow, on a significant incline, immediately adjacent to residential structures and uses and has a significant potential to be dangerous if used during the winter; and
    - (4) Such access should not be used during the winter.

(Prior code 15-2-20; Ord. 7 §1, 1989; Ord. 22 §13, 1992; Ord. 3 §1, 1994; Ord. 17 §2, 1996; Ord. 8 §1, 1999; Ord. 26 §1, 2000)

### **Sec. 16-16-60. Off-street parking policy.**

The requirements of this Article relative to off-street parking are set forth in order to permanently mitigate the parking impacts caused by new development. Any such off-street parking required and made a condition of any building permit approval shall be provided permanently. The failure, at any time in the future, to provide agreed-upon and required off-street parking shall be a violation of this Article and shall subject the owner to the penalty set forth in Section 16-24-20 of this Chapter and shall subject the building or use in question to revocation of its certificate of occupancy. The details of any such off-street parking arrangement shall be set forth with particularity in the "Notice of Agreement for Land Use Conditions and Restrictive Covenants" provided for in Section 16-9-70 of this Chapter. However, the Board may allow a change or modification in the means of satisfying the previously established off-street parking requirements so long as the number of required spaces are still provided and/or payment in lieu for these required spaces is approved and provided.

### **Sec. 16-16-70. Applicability of requirements.**

The parking requirements set forth in this Article shall apply to any change or expansion in use. Parking requirements may be decreased because of changes in use for all or part of the subject building; provided, however, that no payment made in lieu of parking shall be refunded; and further provided that any subsequent changes in use may require additional parking as then required for the new use.

### **Sec. 16-16-80. Alternate payments.**

An owner may satisfy his or her payment in lieu of parking requirements by making installment payments under the following terms and conditions:

- (1) The owner shall execute an instrument prepared by the Town Attorney that imposes a lien in favor of the Town upon the real property for the amount outstanding. The lien shall be recorded in the real property records of the County and shall be executed at the time the first installment is due.
- (2) The lien shall be prior to all other liens except general taxes and prior special assessments.
- (3) The lien document shall provide for the imposition of late fees in an amount established by resolution of the Town Council in the event payment is not made within ten (10) days of the due date.

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- (4) The lien document shall provide that interest in the amount of ten percent (10%) per annum shall be imposed upon each late payment.
  - (5) The lien document shall provide that, in the event the payment is not made within thirty (30) days of the due date, the Town may immediately thereafter collect and recover on the entire lien amount in the same manner as real property taxes against the property, including, without limitation, as provided for in Chapter 4, Article 8 of this Code.
  - (6) In the event the Town undertakes an action to recover the unpaid amount, the lien shall be amended to include all costs and expenses associated with such action, including attorneys' fees, charges, late charges, costs and interest.
  - (7) The installment payments shall be made in equal payments over a five-year period after the payment of the first installment, except that an owner may prepay any part of the obligation at any time without penalty.
  - (8) The first payment shall be due at the time an owner obtains a building permit.
  - (9) Subsequent payments shall be due on each anniversary of the date upon which the initial payment was made.
  - (10) Payments shall be deemed not timely if they are made more than ten (10) days past the due date.
  - (11) In the event the use reverts to a different use within the installment payment period elected by the owner of the property, the obligation to pay the original parking requirement shall remain in place.
  - (12) Payments shall bear interest at the rate of five percent (5%) or the Prime Rate as listed in the Wall Street Journal plus three percent (3%) per annum, whichever is greater.
  - (13) Upon the transfer of the property where all payments in lieu of parking in connection with the property have not been fully satisfied, the obligation respecting such outstanding payments in lieu of parking shall become accelerated and automatically due on transfer. For purposes hereof, *transfer* shall mean any grant or conveyance of the ownership of the property, or any part thereof, that is evidenced by any deed, instrument, writing or other form of conveyance wherein or whereby title to the property, or any part thereof, is granted or conveyed or where other indicia of the passage of ownership to the property exists, except that where the transferor continues, after the conveyance of ownership of the property or any part thereof, to retain control over the transferee. For purposes herein, *control* shall mean the ability of the transferor to substantially direct the policies of the transferee with respect to the property, whether directly or indirectly, and whether such influence exists by right, economic compulsion or otherwise.

### **Sec. 16-16-90. Restaurant uses.**

- (a) Restaurant uses existing on May 14, 1994, shall be deemed to have satisfied all provisions of parking requirements for such uses and then-existing square footage.
- (b) In the event a conditional use permit is sought for a restaurant use in the same location that is of the same footprint and general configuration and of the same square footage amount as a restaurant use existed on May 14, 1994, no additional parking shall be required for such restaurant use.
- (c) In the event that a conditional use permit is sought for a restaurant use that is in the same location but not of the same footprint and general configuration as previously used on May 14, 1994, the provision of parking for such different space shall be required, and the parking requirement for such different space shall be calculated as an increment to the square footage of the original restaurant use.

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- (d) In the event a conditional use permit sought is for a restaurant use with a square footage amount greater than the restaurant use as it existed on May 14, 1994, the provision of additional parking shall be required for any such additional square footage, which shall be calculated as an increment to the square footage of the original restaurant use.
  - (e) No parking payment will be refunded in the event a lesser square footage use is sought.
  - (f) A list of restaurant uses and the estimated square footage thereof, as they existed on May 14, 1994, is attached as Appendix G to this Code. This list shall be referenced by the Building Official in the event a conditional use permit is sought for a restaurant use.
  - (g) Any conditional use permit applicant or the Town may submit such documentation as he or she may have to establish a different use or square footage than that set forth in said Appendix G; however, the final decision as to the use and square footage shall be finally determined by the Building Official.
  - (h) Restaurants (and all buildings) for which their owners have made payments in lieu of providing off-street parking shall be permanently credited with those payments.

(Ord. 10 §1, 2005; Ord. 4 §1, 2009)

### **Sec. 16-16-100. Mechanical lift parking system requirements.**

- (1) Mechanical lift parking systems may be approved at the discretion of the Board if it finds the following conditions are met:
  - (a) The system is only associated with a hotel, lodge, motel or short-term residential accommodation use.
  - (b) The system is managed and operated by trained persons.
  - (c) The system is manufactured and maintained by licensed and certified vendors.
  - (d) The system is housed inside an enclosed space and the Board has approved the architectural appropriateness of any structure associated with the enclosure if said structure is located above ground.
  - (e) The system will provide the required parking supplied by the system over the life of the use it is associated with.
  - (f) The Board must find that the system complies with the criteria for conditional uses found in Section 16-8-30.
- (2) If the mechanical lift parking system is provide parking for in excess of twenty (20) vehicles, the Board at its discretion, may allow the dimensions outlined in Section 16-16-10(a) to be reduced to a minimum of eight (8) feet in width, sixteen (16) feet in length and six (6) feet in height for stacked units in excess of the twenty (20) spaces.
- (3) The Board may waive the requirements of Section 16-16-10(d) for mechanical lift parking systems associated with the approved uses operated by valets.

( Ord. No. 3 , § 3, 3-6-2017)

## **ARTICLE 17 Lighting**

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## **Sec. 16-17-10. Intent and purpose.**

It is the intent of this Article to establish rules, regulations and penalties for the violation of such rules and regulations, for the reduction and restriction of unnecessary and excessive stray light as given off by exterior lighting sources on commercial and residential buildings during the night time hours. The excessive stray light emitted from exterior lighting sources within the Town constitutes a form of visual pollution that interferes with the enjoyment of the nighttime visual environment for persons in and out of the boundaries of the Town.

## **Sec. 16-17-20. Definitions.**

For the purpose of this Article, the use of a plural form shall not necessarily imply that more than the singular is suggested, condoned or allowed, and certain words and phrases shall be defined as follows:

*Architectural element lighting* means exterior lighting that accents certain horizontal features of a building or other structure, such as parapets, belly bands or eaves.

*Color Rendering Index (CRI)* means a method for describing the effect of a light source on the color appearance of objects being illuminated, with one hundred (100) representing the reference condition and is the CRI of natural outdoor light or a one-hundred-watt incandescent bulb. In general, a lower CRI indicates that some colors may appear unnatural when illuminated by a lamp.

*Correlated Color Temperature (CCT)* means a description of the color appearance of a light source in terms of warmth or coolness, as measured on the Kelvin scale (K). As the temperature rises, the color appearance shifts from yellow to blue. Lamps with a low CCT (three thousand [3,000] K or less) have a yellow-white color appearance and are generally described as "warm." Lamps with a high CCT (four thousand [4,000] K and higher) have a blue-white color appearance and are described as "cool."

*Exterior dining lighting* means lighting that illuminates bistro or outside seating areas and access to such.

*Full cut-off light fixture* means a light fixture so designed that no light rays are directly emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test report. As a practical matter, the light source cannot be seen when viewed on a plane horizontal with the bottom of the shade or shield.

*High Intensity Discharge (HID) lamp* means a lamp or light source characterized by an arc tube which encloses various gases and metal salts operating at relatively high pressures and temperatures. Common HID lamps are mercury vapor, metal halide and high-pressure sodium.

*Light Emitting Diode (L.E.D.)* means a light source where light is produced by passing an electric current through a semi-conductor diode. Intensity and color may change as a function of the energy level and type of semi-conductor material used.

*Lumens* means a measurement of the total amount of visible light emitted by a source.

*Temporary ornamental lighting* means exterior holiday-type lighting. Such lighting shall be deemed temporary in nature only if it does not contain permanent electrical wiring as would be deemed permanent under any applicable electrical code enforceable within the Town.

## **Sec. 16-17-30. General lighting regulations.**

- (a) The following regulations shall apply to all lighting within the Town, unless otherwise indicated:
  - (1) No building, structure or vegetation within the Town shall be lighted or illuminated in any fashion without the prior approval, on record, of the Board.

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- (2) No high intensity discharge lights may be utilized in any exterior application within the Town.
  - (3) No lights or lamps with a correlated color temperature of higher than three thousand four hundred (3,400) K or a Color Rendering Index of lower than seventy (70) may be utilized on any exterior within the Town.
- (b) Street lighting shall be provided only in locations as required by the Town for safety purposes, and poles and fixtures shall be compatible with those used in the Town as determined by the Town.

(Prior code 15-3-7, 15-7-4; Ord. 7 §1, 2005; Ord. 4 §1, 2009)

### **Sec. 16-17-40. Residential lighting regulations.**

The following residential lighting regulations apply to all residential property owned or rented, single-family or multi-family, within the Town, regardless of zone district:

- (1) All exterior lighting, including motion-sensitive lighting, will be provided by full cut-off fixtures that by design have a cut-off angle of not more than ninety (90) degrees, properly installed so as to maintain the full cut-off angle of ninety (90) degrees. Fixtures which are shielded by a structural element so as to meet the intent of a full cut-off fixture shall be considered to be in compliance.
- (2) Lights that blink, flash, rotate, move or change in intensity or color and "wall washer" lights are prohibited with or without cut-off design.
- (3) Exterior lighting fixtures will be mounted no higher than ten (10) feet above the flooring, deck, walkway, driveway or other occupied area, or highest grade point of the ground surface immediately adjacent to the lighting fixture. The height of the fixture shall be the vertical distance from the surface directly below the centerline of the fixture to the lowest direct light emitting part of the fixture.
- (4) Temporary, ornamental lighting shall be allowed from November 15 to January 15, and in all other times for periods not to exceed seventy-two (72) hours. Such lighting shall be deemed temporary if it is not of such permanent electrical wiring as would be deemed permanent under any applicable electrical code enforceable within the Town.

### **Sec. 16-17-50. Commercial lighting regulations.**

The following commercial lighting regulations apply to all property located within the "C" Commercial District, the "B1" Business District, the "B2" Business District, the "B3" Business District, the "B4" Business District, the "T" Tourist District and the "P" Public District. All such lighting shall be approved by the Board with the exception of temporary ornamental lighting.

- (1) All exterior lighting shall be provided by full cut-off fixtures that by design have a cut-off angle of not more than ninety (90) degrees properly installed so as to maintain the full cut-off angle of ninety (90) degrees. Fixtures which are shielded by a structural element so as to meet the intent of a full cut-off fixture shall be considered to be in compliance.
- (2) Lights which blink, flash, rotate, move or change in color or intensity are prohibited.
- (3) Exterior lighting fixtures will be mounted no higher than twelve (12) feet above the flooring, deck, walkway, driveway, parking area or other occupied area, or the highest grade point of the ground surface immediately adjacent to the light fixture. The height of the fixture shall be the vertical distance from the surface directly below the centerline of the fixture to the lowest direct light-emitting part of the fixture.

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- (4) Temporary ornamental lighting shall be permitted from November 15 to April 15 only. The installation of temporary ornamental lighting shall not require prior approval of the Board. The owner of the property affected by any such temporary ornamental lighting shall cause such lighting to be reasonably maintained such that such lighting is safe and tasteful, with any burned out bulbs being replaced reasonably promptly. Temporary ornamental lighting may not be located on public property. Temporary ornamental lighting shall not be utilized within five (5) feet of the interior of transparent windows and doors outside of the permitted dates.
  - (5) Rope lights or L.E.D. lights that do not conform to Paragraph 16-17-40(1) above are prohibited, unless they are temporary ornamental lighting otherwise permitted hereunder.
  - (6) The illumination of signs shall comply with Article 18 of this Chapter.
  - (7) Architectural element lighting shall be clear or white in nature and shall not flash or strobe. Such lighting shall be uniform in spacing with lights no less than twelve (12) inches apart. Architectural element lighting may only be placed horizontally on one (1) horizontal street-side architectural element of a building or structure, must consist of only one (1) strand of lights and may not be placed vertically on corners or on windows or doors. Buildings that are located at the intersection of two (2) streets or a street and an alley may have a string of lights on each street frontage. Each light source or lamp may not exceed three hundred (300) lumens. All subject to the foregoing, all architectural element lighting in place as of December 17, 2012 need not obtain the approval of the Board. The owner of the property affected by any such architectural element lighting shall cause any such lighting to be reasonably maintained such that such lighting is safe and tasteful, with any burned-out bulbs being replaced in a timely fashion.
  - (8) Exterior dining lighting shall be installed in compliance with this Code, including, without limitation, the National Electric Code (NEC) as adopted by the Town. All such lighting shall be operated only during business hours and those days when exterior dining is being utilized. Solar and battery powered exterior dining table light fixtures shall not be subject to the NEC. Exterior dining lighting may not be located on public property and may only illuminate dining areas and access to the same. Such lighting must comply with Paragraphs (1)—(3) above. Each light source may not exceed one thousand six hundred (1600) lumens.

### **Sec. 16-17-60. Street, parking and security lighting.**

The requirements for street, parking and security lighting set forth in this Section, except where specifically exempted, apply to all zoning districts within the Town.

- (1) All street, parking and security lights will utilize full cut-off fixtures that by design have a cut-off angle of not more than ninety (90) degrees, properly installed so as to maintain the full cut-off angle of ninety (90) degrees. Fixtures which are shielded by a structural element so as to meet the intent of a full cut-off fixture shall be considered to be in compliance.
- (2) Lighting fixtures shall be mounted no higher than twenty-five (25) feet above a parking or street surface.

### **Sec. 16-17-70. Light pollution.**

All exterior lighting or illumination shall be designed, located, placed and shielded to be architecturally and aesthetically in keeping with the buildings and surroundings, should create minimum visual pollution or impact on any other lot, tract or parcel in the Town, shall not directly illuminate adjoining lots, tracts, parcels or rights-of-way, including alleys, and shall comply with this Article.

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## **Sec. 16-17-80. Exemptions and nonconforming fixtures.**

The following exterior light fixtures shall be exempt from the regulations contained in this Article:

- (1) Publicly provided street lighting installed or planned by the Town or previously approved lighting that has been approved for parking lot lighting of a type specifically designed to comport with the historic character of the street or area.
- (2) Illumination of the United States flag, provided that such lighting does not interfere with the vision of drivers or pedestrians, or otherwise create an unsafe condition for the public. No more than two (2) lights per pole are allowed.
- (3) Fixtures which are a part of an official traffic control device.
- (4) Lights and lighting devices which are a part of a Town event or public gathering, so long as the event or gathering is of a temporary nature and licensed or permitted under other provisions of this Code.
- (5) Lights which highlight theatre marquees, if approved for appropriateness by the Board.
- (6) Historic light fixtures which are part of a historic property and add to the historic character of the property. Such determination shall be made by the Building Official.
- (7) Lights which illuminate public outdoor recreation facilities. Such lighting shall be designed to minimize light pollution.
- (8) Other fixtures which, by their nature, use and design, present a compelling argument for the promotion of public health, safety and welfare as determined by the Building Official and the Town Marshal.

## **Sec. 16-17-90. Effective dates of compliance.**

Exterior light fixtures not otherwise exempted which do not comply with the regulations set forth in this Article shall be replaced or otherwise brought into compliance as follows:

- (1) All new construction shall be designed and constructed with full cut-off fixtures which shall be reflected in the designs presented to the Board, and subject to the provisions of the Town's building permitting and inspection process. The Board may request such cut sheets and specifications as are necessary to determine compliance. Approval of plans does not constitute approval of nonconforming fixtures.
- (2) Construction on existing structures, both commercial and residential, in the form of remodel, rehabilitation and restoration, such that a building permit is required, shall replace or install full cut-off exterior lighting fixtures so as to comply with the regulations herein.
- (3) Existing commercial buildings not undergoing a permitted construction project that fully addresses exterior lighting standards and compliance shall replace noncompliant exterior fixtures with full cut-off fixtures and otherwise comply with the regulations herein by July 31, 2010. The burden of replacement and compliance shall fall to the building owner.
- (4) Existing residential buildings and associated units within buildings, not undergoing a permitted construction project that fully addresses exterior lighting standards and compliance, shall replace noncompliant exterior lighting fixtures with full cut-off fixtures and otherwise comply with the outdoor lighting regulations herein by July 31, 2010. The burden of replacement and compliance shall fall to the property owner.
- (5) Any other structure bearing noncompliant exterior lighting fixtures shall either be brought into compliance by the replacement of noncompliant fixtures with full cut-off fixtures, or brought into

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compliance through the removal or deactivation of noncompliant fixtures by July 31, 2010. The burden of replacement, removal or deactivation shall fall to the owner of the structure in question.

- (6) The regulations set forth above regarding restrictions on the use of temporary, ornamental lighting shall be effective as of the effective date of the ordinance codified herein.

### **Sec. 16-17-100. Enforcement and penalty.**

The violation of any of the regulations contained herein shall be deemed by the Town as a public nuisance under Chapter 7 of this Code, and such nuisances may be abated or prosecuted in accordance with the procedures established therein.

## **ARTICLE 18 Signs**

### **Sec. 16-18-10. Permit required.**

- (a) No sign shall be erected, constructed, altered, remodeled or changed until a permit therefor has been issued by the Building Inspector and the Board. No permit shall be granted until after the prescribed fee has been paid and an application has been filed with the Building Inspector and the Board showing the plans and specifications, including dimensions, materials and details of construction of the proposed sign and supporting structure, which application shall be reviewed and approved or denied by the Building Inspector and the Board. There shall be charged as a fee for such application a sum as established by resolution of the Town Council, plus an additional charge of an amount per square foot above ten (10) square feet of surface area of any sign, as established by resolution of the Town Council.
- (b) Signs designating or explaining historic structures, historical markers in the form of historic signs placed on historic buildings for at least forty (40) consecutive years as of July 31, 2012, and that convey only the historic use of the building, residential identification signs, signs advertising the sale or rental of real property, signs advertising the construction or remodeling of a building, institutional identification signs and signs advertising the sale of goods, merchandise, food or services by transient merchants shall not require a permit, nor shall such signs be considered as one (1) of the allowable signs described in Subsection 16-18-20(c) below, provided that such signs otherwise comply with the provisions of this Article.

(Prior code 15-2-23; Ord. 18 §2, 1992; Ord. 6 §§1—3, 2005; Ord. 8 §2, 2012)

### **Sec. 16-18-20. General limitations.**

No signs of any nature shall be allowed, constructed, erected or maintained, except as herein specifically provided:

- (1) Traffic signs and other signs required under appropriate governmental regulations shall be exempt from this Article.
- (2) All signs shall conform to the setback requirements of the zone district in which they are located, unless otherwise provided for herein. A sign may advertise the product or activity of the business or establishment on the lot or parcel upon which the sign is located, provided that the product or activity lettering is no larger than three-quarters ( $\frac{3}{4}$ ) the size of the lettering of the business name.
  - a. Each business may have one (1) open/closed sign not to exceed two (2) square feet, for which no permit is required.

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- b. Each business may have one (1) business hours sign, not to exceed two (2) square feet, for which no permit is required.
  - c. Each business may have two (2) additional signs for which a permit is required.
    - 1. A single wooden framed box with glass doors no larger than four (4) square feet, within which advertising and information may be placed. The box may be internally lit with white incandescent light, which light must be shielded in accordance with Town lighting regulations.
    - 2. Any other sign which otherwise conforms with the provisions set forth in this Article.
    - 3. Theaters and publicly owned buildings may utilize a single changeable copy sign that conforms to the requirements of this Article.
  - d. Each building in which retailers (as that term is defined in Title 39, Article 26, C.R.S.) and restaurants are located may additionally utilize a single, two-sided freestanding or a one-sided wall-mounted changeable copy sign. Two-sided freestanding signs may be placed so that both sides are visible when placed at a right angle to the public right-of-way. Said changeable copy signs must consist of either green or black panels used for writing upon only with chalk. Said signs may not be larger than five (5) square feet of flat surface whether chalk board or border. Two-sided signs may have five (5) square feet on each side. Changeable copy signs may not be wider than two (2) feet or taller than five (5) feet above the adjacent natural grade. In the case of freestanding signs, the sign and holder or support mechanism may not exceed two (2) feet in width and five (5) feet in height. Freestanding signs may only be placed on private property and may not be located in the public right-of-way or sidewalk. Any wall-mounted sign must be attached to the building in which the business it is advertising is located. Each such sign shall be included in the allowable sign area for the building in which the retailer or restaurant is located.
  - e. Each business may have a third additional sign, for which a permit is required. Said sign shall be for the sole purpose of identifying said business from the alley side by delivery trucks and the like. The additional sign shall meet the following qualifications:
    - 1. It shall be no more than six (6) square feet in size;
    - 2. It shall be a flat, wall-mounted sign and shall not project or be freestanding;
    - 3. It shall not have lighting independent from the building's general structure lighting;
    - 4. It shall not be visible from any numbered street; and
    - 5. The applicant must obtain a permit for the sign and pay all necessary fees associated therewith.
- (3) No sign shall be located so that it shall interfere with or detract from orderly traffic movement; obscure or impair the vision of the driver of any motor vehicle; or be a hazard to traffic.
- (4) The color or format of a sign shall not resemble or conflict with traffic signs or signals, nor shall the color or consistency of any sign or lights be luminous, neon, phosphorescent or other illuminated gas tube lighting, or create undue visual distraction or glare to motor vehicle traffic or passers-by.
- (5) All signs shall be constructed in a good and workmanlike manner, shall at all times be properly maintained and kept in good repair and condition, and shall be of safe and permanent construction.
- (6) No flashing or animated signs, or signs with moving parts of intermittent lighting to create the visual effect of movement, shall be permitted.
- (7) No banners, streamers or pennants will be permitted, except as otherwise provided in this Article.

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- (8) No sign or awning may contain any illumination of any kind. Signs may be externally illuminated from a source which is outside of and not a part of the sign itself, so long as the separate source of illumination will not create undue visual distraction or glare to motor vehicle traffic, passers-by or affected neighbors.
  - (9) Nothing in this Article shall be construed to prevent the erection of banners advertising a special civic event, provided that permission for such is obtained from the Town Manager. Such banners must be placed at the locations provided by the Town for such purposes, may be erected no more than one (1) week prior to the opening of the event and shall be removed no more than two (2) days after the event is over; but, in any event, shall be in place for no more than one (1) week. Banners advertising a special civic event may, at the discretion of the Town Manager, be erected in those areas in which an activity which is part of a special civic event occurs during the time that the activity is taking place.
  - (10) Nothing in this Article shall be construed to prevent the erection of banners recognizing the sponsorship of Town youth recreational programs. Said banners must be approved and erected by the Parks and Recreation Department in recognition of sponsors of Town youth recreation programs and must be in compliance with the standards contained in this Section. Banners may only be in place during the duration of the event or season and must be placed at the location where the sporting or other event takes place and specifically in a location directed in writing by the Parks and Recreation Director.
  - (11) All banners must be approved as provided for in this Section and must comply with the following requirements. All banners must be made of a durable, water-resistant material. Banners must be equipped with vent holes and with grommets to allow secure attachment of the banner. No banner may exceed thirty (30) square feet in size.
  - (12) No signs shall be erected, maintained or permitted to remain publicly displayed which are of a misleading, fraudulent, obscene, immoral, indecent or unsightly character.
  - (13) No sign may contain any radio, phonograph, whistle, bell or other sound, noise-making or transmitting device or instrument.
  - (14) No sign of a nonpermanent nature nor any sign in excess of ten (10) square feet shall be affixed or displayed on any vehicle for advertising purposes. This Paragraph shall not apply to commercial vehicles making deliveries within the Town or vehicles used by transient merchants for the purpose of displaying and selling goods, merchandise, food or services.
  - (15) No bills, posters or pamphlets of any kind shall be displayed on any building unless the Board approves the location as appropriate for such display.
  - (16) Notwithstanding any other provision of this Article, signs, pictures or posters on or within five (5) feet of the inside of windows are not subject to the permit requirements of Section 16-18-10 above, provided that the following types of signs, pictures or posters on or within five (5) feet of the inside of windows are not allowed:
    - a. Internally lit, neon or other illuminated gas tube lighting signs;
    - b. Signs with moving parts;
    - c. Signs with "Day-Glo" or fluorescent colors;
    - d. Signs that flash or otherwise display varying intensity of light; or
    - e. Signs that are redundant as to subject matter.
  - (17) Advertising by means of printed lettering on awnings shall be allowed. The dimensions of the area covered by the characters and the spaces between them on an awning shall be included in the allowable sign area for the building on which the awning is located.

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- (18) The following signs shall not be allowed:
- a. Internally lit, neon or other illuminated gas tube lighting signs, except that wooden framed boxes with glass doors, referenced in Subparagraph (2)c.1. above may be internally lit with white incandescent light;
  - b. Signs with moving parts;
  - c. Signs with "Day-Glo" or fluorescent colors;
  - d. Signs that flash or otherwise display varying intensity of light; or
  - e. Signs that are redundant as to subject matter.
- (19) No sign shall be painted upon any roof or constructed or placed upon any primary roof or higher than a secondary roof on the first floor level.
- (20) Transient merchants who wish to have signs within the Town do not need to obtain a sign permit, but must comply with the following:
- a. There shall be no more than two (2) signs for each transient merchant, and the aggregate size of the signs shall be no greater than twenty-four (24) square feet;
  - b. No sign shall be larger than sixteen (16) square feet in size;
  - c. No sign shall contain letters larger than twelve (12) inches in height;
  - d. No sign shall be placed further than ten (10) feet from the conveyance from which the transient merchant is selling; and
  - e. The signs shall otherwise conform to the provisions of this Section other than the requirement that they be permanently constructed.
- (21) Notwithstanding any provision of this Section to the contrary, real estate open house signs for single property sales shall be permitted, other than as already permitted on the subject property subject to the provisions of this Section, on the shoulder of the public right-of-way or on public sidewalks, provided that such signs shall not interfere in any way with pedestrian or vehicular traffic or obstruct the sight line of any public or private signage. Said open house signs shall also meet the following requirements and criteria:
- a. No open house sign may be placed on publicly zoned property or at the intersection of Elk Avenue and Sixth Street;
  - b. Open house signs may only be placed in such locations for four (4) hours or less on Tuesdays and Sundays between the hours of 10:00 a.m. and 4:00 p.m.;
  - c. All open house signs shall be no more than four (4) square feet, inclusive of any support structure, and may have writing on both sides;
  - d. No property that is the subject of such an open house sign may hold an open house more than once per month while utilizing said signage;
  - e. The subject property may utilize only two (2) directional open house signs not located on the subject property;
  - f. Only one (1) of such open house signs shall be permitted at any sign location or intersection; and
  - g. Any owner of the subject property, listing broker or other real estate broker or their respective agents that place signage in violation of these requirements shall be deemed a *person* pursuant to Section 16-24-20 of this Chapter.

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- (22) Notwithstanding any provision of this Section to the contrary, directional signs for certain special events shall be permitted on the shoulder of public rights-of-way, provided that such signs shall not interfere in any manner with pedestrian or vehicular traffic or obstruct the sight line of any public or private signage. Said directional signs shall also meet the following requirements and criteria:
- a. No such directional sign may be placed on publicly zoned property;
  - b. Such directional signs may only be placed in such locations the day of the subject event;
  - c. All such directional signs shall be no more than four (4) square feet, inclusive of any support structure, and may have writing on both sides;
  - d. The subject special event may utilize only three (3) directional signs per event;
  - e. Only one (1) of such directional signs shall be permitted at any sign location or intersection; and
  - f. The subject special event permittee, or its agent, that places any signage in violation of these requirements shall be deemed a "person" pursuant to Section 16-24-20 of this Chapter.
- (23) Notwithstanding any provision of this Section to the contrary, late-night food trucks, as described in Chapter 6, Article 4 of this Code, do not need to obtain a signage permit, but must, however, at all times comply with the following requirements relative to signage therefor:
- a. No more than two (2) signs with a combined dimension of eighteen (18) square feet shall be permitted for any late-night food truck;
  - b. No single sign may exceed ten (10) square feet in dimension;
  - c. Banners, flags, pennants and the like are not permitted; and
  - d. Menu box and changeable copy signs consisting of either green or black panels used for writing upon only with chalk are permitted like, and subject to the requirements applicable to, any restaurant use; provided that such menu box and changeable copy signs must not be freestanding and must at all times remain attached to the late-night food truck.
- (24) Subject to the requirements of this Section where not otherwise in conflict with this Subsection, signs located off of the property of the business that the sign relates to shall be permitted only where such signs comply with the requirements of this Subsection. For purposes hereof, a sign located off of the property of the business that the sign relates to shall be referred to as an "off-site sign."
- a. Off-site signs shall only be permitted adjacent to Elk Avenue in Blocks 19-23 and 26-30 of the B-1, B-3 and B-4 Business Zone Districts.
  - b. Off-site signs may be located only on private property and may only reference businesses that do not have Elk Avenue frontage and that are no further than two hundred sixty-six (266) linear feet to the north or two hundred sixty-six (266) linear feet to the south, off of the Elk Avenue public right-of-way.
  - c. A business' placement of an off-site sign in accordance with this Subsection shall be permitted only where the business desiring to place such off-site sign delivers to the Town an instrument acceptable to the Town, given by the owner of the property that will be the location of the subject off-site sign, evidencing the real property or personal right of such business to locate its off-site sign on the subject property.
  - d. Off-site signs shall only be permitted for restaurant, personal services establishments and retail commercial uses.

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- e. For purposes of Subparagraph (2)c. above, an off-site sign shall be considered a sign as respects the property where the business that the off-site sign is advertising is located and not the property where the off-site sign is physically located.
  - f. For purposes of Section 16-18-50 below, the square footage of an off-site sign shall be applied to the property where the business that the off-site sign is advertising is located and not the property where the off-site sign is physically located.
  - g. Off-site signs may be wall-mounted, projecting or hanging. Projecting and hanging off-site signs may not be placed less than eight (8) feet above pedestrian and traffic ways.
  - h. All off-site signs shall be of uniform dimensions as follows: (i) wall-mounted, projecting or hanging off-site signs shall be eight (8) inches tall and twenty-four (24) inches long; and (ii) freestanding directory off-site signs shall be six (6) inches tall and twenty-four (24) inches long.
- (25) Signs for governmental services shall be allowed on public property. All signs for governmental services shall meet the requirements of the Manual on Uniform Traffic Control Devices (MUTCD), 2009 Edition, as may be amended and replaced from time to time.

### **Sec. 16-18-30. Nonconforming and existing signs.**

- (a) A sign that exists and was approved pursuant to the terms of this Article prior to November 1, 1992, but does not conform to the provisions hereof after said date, shall be removed whenever the sign is altered or enlarged. This shall not be construed so as to prevent necessary maintenance of the sign to keep it in good repair.
- (b) Notwithstanding any other provision of this Article to the contrary, any off-site sign which was approved pursuant to the terms of this Article prior to October 15, 1992, shall be removed whenever the sign is altered or enlarged; provided, however, that any off-site directory signs shall not be required to be removed upon any change in ownership or alteration of lettering. Such off-site directory signs shall not be enlarged after November 1, 1992.

(Prior code 15-2-23; Ord. 18 §2, 1992; Ord. 6 §§1—3, 2005)

### **Sec. 16-18-40. Structural characteristics.**

- (a) No lettering on any sign, including cut-out letter signs, may exceed an average letter height of fourteen (14) inches, and the tallest letter of the sign may not exceed eighteen (18) inches in height.
- (b) Freestanding signs shall be limited to one (1) sign per building, or parcel if more than one (1) building exists on the same parcel; shall not be higher than the building, but in any event no higher than twelve (12) feet above grade as defined by the Building Inspector; and shall be contained completely within the setback requirements of the property lines upon which the principal building is located. Freestanding signs may contain the same information on both sides, and both sides shall be counted toward the allowable sign area. Directory signs may be freestanding signs.
- (c) Projecting signs shall be permitted provided that the following conditions are satisfied:
  - (1) Projecting signs are placed immediately above or adjacent to a door or staircase entrance that services the business to which it refers.
  - (2) Only one projecting sign location is permitted per business.
  - (3) No other projecting sign location is permitted within fifteen (15) feet of another projecting sign location on the same property.

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- (4) No projecting sign shall obscure the visibility of another projecting sign.

The top of all projecting signs, in the case of directory signs, shall not be higher than the ridge line or parapet wall of the building to which it is attached but in any event no higher than twelve (12) feet above grade. The bottom of all projecting sign shall be a minimum of eight (8) feet above grade when located adjacent to or projecting over a pedestrian way. Projecting signs shall not extend more than four (4) feet from a building wall or the plane of a building wall. No sign shall project into any portion of a street or alley used for vehicular traffic, nor shall any overhead sign project from any building beyond the dividing line of a sidewalk and vehicular portion of a street. Projecting signs may contain the same information on both sides, and both sides shall be counted against allowable square footage calculations.

- (d) Wall signs shall not be higher than the roof or top of the cornice wall of the building; and no sign part, including cut-out letters, shall project more than six (6) inches from the building wall.

(Prior code 15-2-23; Ord. 18 §2, 1992; Ord. 5 §1, 2001; Ord. 6 §§1—3, 2005; Ord. 7 §§1, 2, 2008; Ord. 4 §1, 2009; Ord. 8 §1, 2012; Ord. No. 2 , § 1, 2-21-2017)

#### **Sec. 16-18-50. Sign measurement.**

- (a) For buildings with a front facade of eight hundred (800) or more square feet, the maximum permitted total area of all signs in the aggregate shall be one hundred (100) square feet.
- (b) For buildings with a front facade of less than eight hundred (800) square feet, the maximum total permitted area of all signs in the aggregate shall be one-eighth ( $\frac{1}{8}$ ) of the total area of the front facade.
- (c) No individual sign shall be larger than thirty-two (32) square feet;
- (d) Cut-out letter signs shall be considered wall signs if attached to a building, and the dimension of the area covered by the characters and the spaces between them shall be included in the allowable sign area at one-half ( $\frac{1}{2}$ ) of the measured area.
- (e) Variances shall not be allowed for sign measurements.

(Prior code 15-2-23; Ord. 18 §2, 1992; Ord. 6 §§1—3, 2005; Ord. 1 §2, 2007)

#### **Sec. 16-18-60. Signs permitted in districts.**

- (a) Signs listed below shall be permitted in the following districts: "R1" District; "R1C" District; "R2" District; "R2C" District; "R3C" District; "R4" District; and "M" District:
  - (1) One (1) residential identification sign per living unit, being a freestanding sign, a wall sign or a projecting sign, to identify the occupants thereof or any home occupation pursued therein, not exceeding two (2) square feet;
  - (2) One (1) sign advertising the sale or rent of a property, not lighted or illuminated and not exceeding six (6) square feet;
  - (3) One (1) sign announcing the construction or remodeling of a building, not illuminated or lighted and not exceeding six (6) square feet; and
  - (4) An institutional identification sign, projecting, wall or freestanding, for any school, church or public building, not to exceed six (6) square feet of sign area.
- (b) Signs listed below shall be permitted in the following districts:"T" District; "B1" District; "B2" District; "B3" District; and "C" District:

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- (1) All signs allowed under this Article; and
  - (2) A directory sign plan for buildings containing more than one (1) principal business use or commercial use, which may be required by the Board for architectural appropriateness prior to the approval of a building permit application.

(Prior code 15-2-23; Ord. 8 §7, 1988; Ord. 4 §8, 1991; Ord. 18 §2, 1992; Ord. 6 §§1—3, 2005; Ord. 4 §1, 2009)

### **Sec. 16-18-70. Approval of signs.**

The Board may issue the sign permit required in Section 16-18-10 above, concurrent with considerations and approval of the architectural appropriateness of a proposed building, without the filing of a separate application for a sign permit, so long as all information required by this Article is provided with the application for a building permit, and so long as all other requirements of this Article are met. If an applicant seeks a sign permit along with his or her application for a building permit and said sign is considered by the Board at the same time as it considers the architectural appropriateness of the proposed building or structure, then no additional sign permit fee shall be paid by the applicant.

### **Sec. 16-18-80. Waiver of sign permit fee.**

The Board may, for good cause shown and/or for the purpose of promoting substantial justice, waive all or part of any fees required in Section 16-18-10 above.

### **Sec. 16-18-90. Signs on public property.**

Signs not specifically exempt in subsections 16-18-20 (1), (21), (22) and (25) that are located on public property or in a public right-of-way are subject to the following regulations:

- (1) Permitting and approval of signs are subject to Section 16-18-10 and Section 16-18-100. Conditions may be applied to the placement of a sign on public property including but not limited to the duration of the use, the maximum size, height and the lighting.
- (2) Sign content should be instructional or informative for the benefit of the general public.
- (3) No signs on public property may be used for the purpose of advertising a particular business or organization at an alternative location. Logos of organizations may be permitted for identification purposes as long as they are minimal in size and not the primary message being conveyed by the sign.
- (4) Signs shall be primarily constructed with wood or metal components. The use of synthetic materials is permitted for attached boards, maps, or messages.
- (5) Signs shall use earth tone color schemes.
- (6) Changeable content of the sign shall be reviewed and approved by the Building Official or his designee.
- (7) Signs may be approved by the Board [in] accordance with Section 16-18-70 with the consideration of the architectural appropriateness of a proposed structure.
- (8) If a lease or other property right is required for the sign post or location it shall be approved first by the Town Council.

( Ord. No. 11, § 1, 2014 )

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### **Sec. 16-18-100. Insubstantial determination.**

If the Building Inspector and the Chair of the Board determine that a complete sign permit application has been filed; the proposed sign complies with all requirements of this Article; and the proposed sign will have little, if any, physical or visible impact on the surrounding neighborhood; then they may designate such application as insubstantial. Such designation as insubstantial shall be deemed to constitute a waiver of the requirements that such application be approved by the Board, it being the express purpose of this Section to delegate to the Building Inspector and Chair of the Board the power to approve an insubstantial sign permit application. It shall be the duty of the Building Inspector to report all such insubstantial designations to the Board at the next meeting following such designation.

Ord. No. 11, § 1, adopted Sept. 2, 2014 , renumbered former § 16-18-90 as § 16-18-100.

## **ARTICLE 19 Nonconforming Uses**

### **Sec. 16-19-10. Present use or aspect.**

Except as otherwise provided in this Article, the lawful use or aspect of any building, structure or land existing at the time of the enactment of the initial ordinance codified herein or any pertinent amendment hereto, may be continued even though it does not conform to the requirements of this Article. If the nonconforming use or aspect is in a building or structure which has been determined and designated a "historical building or monument" by appropriate action of the Town, county, state or federal government, such building or structure shall be exempt from the provisions of Sections 16-19-20 and 16-19-30 below, so long as said building is maintained in a safe and proper condition.

### **Sec. 16-19-20. Repairs and maintenance.**

Ordinary repairs and maintenance of a nonconforming building or structure shall be permitted; provided, however, that no structural alteration or improvement may be made.

### **Sec. 16-19-30. Restoration.**

- (a) If a nonconforming building is damaged or destroyed by any cause to the extent of more than fifty percent (50%) of its fair market value, it shall not be restored except as a reasonable facsimile of such damaged or destroyed building or in full conformity with the restrictions of the zoning district in which it is situate.
- (b) If such a nonconforming structure is within the twenty-foot stream bank setback set forth in Subsection 16-11-50(b) of this Chapter, it may not be so restored as a reasonable facsimile within the setback unless a retaining wall is designed and constructed as set forth in said Subsection.

(Prior code 15-2-24; Ord. 2 §2, 1993)

### **Sec. 16-19-40. Abandonment.**

Whenever a nonconforming nonresidential use or aspect has been discontinued or abandoned for a period of six (6) consecutive months or more, such use or aspect shall not thereafter be reestablished, and any future use of the building, structure or land shall be in conformance with this Article; except: (i) that such restriction shall not apply to hotel or lodge, motel, restaurant or resort nonconforming uses where (a) there has been no intervening different use or aspect, and (b) all water and sewer charges for said nonconforming use have been timely paid

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during the period of discontinued use or abandonment; and (ii) for nonconforming aspects approved by the Board as part of a reasonable facsimile of a historic building previously existing on the historic site, as *historic building* is defined in this Chapter. In making its decision, the Board shall utilize the Criteria for Board Decision and the requirements therein which are set forth in Section 16-19-80 below. The Board shall have the discretion to:

- (1) Impose such conditions upon the modifications to the proposed building as the Board deems appropriate to satisfy such Criteria for Board Decision; and
- (2) Require elimination of any nonconforming aspect which is not practically difficult to avoid.

#### **Sec. 16-19-50. Change in use or aspect.**

Whenever a nonconforming use or aspect of a building, structure or land has been changed to a more restrictive or conforming use or aspect, such use or aspect shall not thereafter be changed to a less restrictive use or aspect.

#### **Sec. 16-19-60. Enlargement.**

The nonconforming use or aspect of a building, structure or land shall not be enlarged. Any proposal to allow the enlargement of a nonconforming accessory dwelling must also be reviewed under the conditional use procedures set forth in Article 8 of this Chapter, but need not conform to the requirement that it be deed-restricted only as a long-term rental unit.

#### **Sec. 16-19-70. Prohibition against establishing new nonconforming use or aspect.**

No lot or parcel of land, nor any interest therein, shall be transferred, conveyed, sold, subdivided or acquired, either in whole or in part, so as to create a new nonconforming use or new nonconforming aspect, building or structure, or to avoid, circumvent or subvert any provision of this Article. No building permit shall be issued for any lot or parcel of land which has been transferred, conveyed, sold, subdivided or acquired in violation of this Section, without knowledge of such violation; and any subsequent transferee shall have the right to rescind and/or receive damages from any transferor who violates the provisions of this Section.

#### **Sec. 16-19-80. Conditional waivers.**

- (a) The Board, in its discretion and based on the following criteria, may override Sections 16-19-30, 16-19-40, 16-19-50 and 16-19-60 of this Article. Conditional waivers to increase the size of buildings that have nonconforming aspects apply to the following:
  - (1) Additions in the setback;
  - (2) Additions on nonconforming parcels which are too small, too large, too narrow or too wide; and
  - (3) Additions to structures that are too high or too wide and that will add more structure that is too high or too wide.
- (b) No conditional waiver shall be granted which allows any fence or other structure to be erected within the largest rear yard setbacks on lots within Blocks 20, 21, 22, 27, 28 and 29. No conditional waiver shall be granted for an increase in floor area ratio beyond that which is allowed in the applicable zoning district. No conditional waiver shall be granted for a nonconforming aspect if such nonconforming aspect was created by the grant of a variance. No conditional waiver shall be granted to allow any further encroachment by a building or other structure into the twenty-foot or twelve-foot setback from the normal stream banks of Coal Creek as set forth in Subsection 16-11-50(b) of this Chapter.

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- (c) Any proposal to enlarge a nonconforming aspect or to enlarge a structure on a nonconforming lot must be reviewed under the criteria set forth in Section 16-19-90 below to ensure that the proposal does not exacerbate potential problems caused by the existing nonconforming aspect.

(Prior code 15-2-24; Ord. 13 §3, 1991; Ord. 17 §3, 1991; Ord. 11 §3, 1992; Ord. 2 §3, 1993; Ord. 4 §1, 2009)

**Sec. 16-19-90. Criteria for Board decision.**

- (a) A nonconforming aspect shall not be approved unless the Board finds that the proposal complies with all the criteria set forth below. If the proposal does not comply with all of said criteria, the proposal shall either be approved with conditions that ensure compliance with all such criteria, continued to a date certain or denied by motion of the Board. If a continued request is not rescheduled by the proponent for discussion to occur on or before the date to which the request is continued, the request is deemed to be denied without further action by the Board.
- (b) The enlargement must:
- (1) Be consistent with the objectives and purposes of this Chapter and the applicable zoning district.
  - (2) Be compatible with the neighborhood context and size. When determining compatibility with the neighborhood, the Board shall consider at least the following:
    - a. Size;
    - b. Density of buildings;
    - c. Amount of open space;
    - d. Scale;
    - e. Maintenance of view corridors; and
    - f. Provisions of similar or improved landscaping.
  - (3) Not create significant adverse impacts on adjacent property owners, including but not limited to the following:
    - a. Snow storage;
    - b. Snow shedding;
    - c. Snow removal;
    - d. Solar access;
    - e. Other significant design features; and
    - f. Fire access.
  - (4) Not create congestion, automotive or pedestrian safety problems or other traffic hazards.
- (c) Such waivers and the applicant's assertions shall be set forth in a written agreement as set forth in Section 16-9-70 of this Chapter.

(Prior code 15-2-24; Ord. 13 §3, 1991; Ord. 4 §1, 2009)

**ARTICLE 20 Vested Property Rights**

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## **Sec. 16-20-10. Purpose.**

The purpose of this Article is to provide procedures and standards for review and approval of vested property rights, as mandated by the adopting legislation in Article 68 of Title 24, C.R.S.

## **Sec. 16-20-20. Definitions.**

- (a) As used in this Article, unless the context otherwise requires, the term *site specific development plan* means a final plat or final land use plan that constitutes the last or final stage of approval issued by the Town Council, the Board, the Planning Commission or the Building Official for development. A site specific development plan shall not include any application, plat or plan denoted as a sketch or preliminary plan or an application for zoning or rezoning.
- (b) Site specific development plans shall not consist of final architectural plans, final construction drawings and related documents specifying materials and methods for construction of improvements, variances, building permits or public utility filings. However, the submittal and approval of such documents, or any one (1) thereof, may be required subsequent to the site specific development plan approval, if such submittal and approval are otherwise required by Town regulations.

(Prior code 15-2-25.1; Ord. 20 §1, 1999; Ord. 4 §1, 2009)

## **Sec. 16-20-30. Vested rights.**

- (a) Approval of a site specific development plan pursuant to these provisions shall be deemed to create a vested right in the subdivided property which shall be subject to the provisions and limitations of Subsections 24-68-103(1)(b) and (c) and Sections 24-68-104 and 24-68-105, C.R.S.
- (b) The provisions of all duly adopted zoning ordinances and regulations and comprehensive plans and updates thereof shall apply in accordance with their terms, except to the extent otherwise provided in the adopting legislation found in Article 68 of Title 24, C.R.S.

(Prior code 15-2-25.1; Ord. 20 §1, 1999)

## **Sec. 16-20-40. Notice of hearing.**

No site specific development plan shall be approved until after the public hearings required by the appropriate provisions of this Chapter are held. The notice of such public hearing shall state that the hearing may result in the granting of a vested property right. At such hearing, the owners of the property described in the site specific development plan, their representatives and citizens shall have the opportunity to be heard.

## **Sec. 16-20-50. Application for approval of a site specific development plan.**

- (a) Only a landowner or his or her designated representative is permitted to apply for approval of a site specific development plan for the purpose of vesting property rights.
- (b) A landowner seeking approval of a site specific development plan shall complete and submit the "Vested Rights Option Form" Option #1 in the form attached as Appendix H to this Code, together with an application fee in an amount established by resolution of the Town Council. The application must include all information and supporting documentation otherwise required in accordance with this Chapter.

(Prior code 15-2-25.1; Ord. 20 §1, 1999; Ord. 4 §1, 2009)

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## **Sec. 16-20-60. Approval.**

A site specific development plan shall be deemed approved after the appropriate time period for appealing the approval has run, or after the final determination of a properly filed appeal has been made which upholds the Board's, Planning Commission's or Town Council's decision, whichever occurs last. In the event amendments to a site specific development plan are proposed and approved, the effective date of such amendments for purposes of duration of a vested property right shall be the date of the approval of the original site specific development plan.

## **Sec. 16-20-70. Notice of approval.**

Each map, plat, site plan or development plan shall contain the following language: "Approval of this plan and/or document creates a vested property right pursuant to Section 24-68-103, C.R.S."

## **Sec. 16-20-80. Termination of vested property right.**

The vested property right shall automatically terminate three (3) years after the date upon which the site specific development plan has been deemed approved, unless otherwise permitted by written agreement with the Town.

## **Sec. 16-20-90. Other provisions unaffected.**

Approval of a site specific development plan shall not constitute an exemption from or waiver of any other building or construction code of general application within the Town or exemption from the requirements of Section 18-13-60 of this Code.

## **Sec. 16-20-100. Waiver and revocation.**

- (a) As a part of any application for new or revised land use or development approval pursuant to this Chapter, the applicant shall waive any and all preexisting vested property rights pertaining to the property which is the subject of the application, whether such preexisting vested property rights arose under this Code, state statute or the common law. Such waiver shall be effective only if vested property rights are created as a result of final approval concerning the submitted application. As a further part of such application, the applicant shall complete and submit the "Vested Rights Option Form and/or Waiver" in the form attached as Appendix H to this Code.
- (b) Failure of the property owner to submit a "Vested Rights Option Form" Option #1 shall constitute a waiver, and no vested right shall be deemed to have been created.
- (c) Approval of a site specific development plan may be revoked by the Town Council following notice and hearing upon breach of any condition of approval of the plan or the various components thereof.

(Prior code 15-2-25.1; Ord. 20 §1, 1999; Ord. 4 §1, 2009)

## **Sec. 16-20-110. Limitations.**

Nothing in this Article is intended to create any vested property right beyond the requirements of Article 68 of Title 24, C.R.S. In the event of the repeal of said Article, this Article shall be deemed to be repealed and the provisions hereof no longer effective.

# **ARTICLE 21 Resident-Occupied Affordable Housing Regulations**

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## **Sec. 16-21-10. Intent.**

The intent of this Article is to facilitate the creation and preservation of affordable housing in response to increased housing demand caused by jobs generated by new residential, nonresidential and lodging development in furtherance of the Housing chapter of the Crested Butte Land Use Plan.

## **Sec. 16-21-20. Definitions.**

For purposes of this Article, the following defined terms shall have the meanings ascribed to such terms herein below.

*Administrative procedures* means the Crested Butte Resident-Occupied Affordable Housing Administrative Procedures, as amended from time to time, utilized by the Town in implementing this Article.

*AMI* means the Area Median Income figures published annually for counties by the U.S. Department of Housing and Urban Development (HUD) by household size. When a single figure is referenced, such as the median income for Gunnison County, it refers to one hundred percent (100%) of the area median income for a four-person household.

*Approved entity* is an entity approved by the Town Council which has a purpose of providing or administering affordable housing, or any person who would own a ROAH rental unit for the purpose of housing employees therein, provided that the *approved entity* agrees to comply with and be responsible for compliance with the requirements of this Article and the requirements in the Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town.

*CPI* means Consumer Price Index and shall have the meaning ascribed to such term in the Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town.

*Fair market value* means the market value of real property as determined by a third-party appraiser.

*Guidelines* means the Affordable Housing Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte, as amended, which contain the rules and requirements for the sale, ownership and rental of resident-occupied affordable housing. Such Guidelines are attached as an Appendix to this Code.

*Job generation rate* or *JGR* is the number of jobs created:

- a. per one thousand (1,000) square feet of net leasable nonresidential space;
- b. per lodging unit; or
- c. per residential unit, as residential unit size changes.

*Lodging* includes *hotel* or *lodge*, *condohotel* and *short-term residential accommodations* as defined in Section 16-1-20 of this Chapter.

*Lodging unit* means *hotel* or *lodge unit* as defined in *hotel* or *lodge* in Section 16-1-20.

*LUPAH* means the Housing chapter of the Crested Butte Land Use Plan and the Housing chapter appendices.

*Mitigation rate* is the percentage of housing demand generated by certain new residential, nonresidential and lodging development that must be satisfied by development that is subject to this Article.

*Nonresidential* includes all uses in a building except lodging and residential uses. Stand-alone warehouses, parking structures, storage units and home occupations are not considered nonresidential uses.

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*Qualified renter* is a person meeting the eligibility qualifications for Qualified Renters set forth in the Guidelines.

*Residential* means the uses in a building for dwelling purposes.

*Resident-occupied affordable housing* or *ROAH* means housing that satisfies the standards contained in Section 16-21-60 of this Article.

*ROAH certificate* is a document approved by resolution of the Town Council and issued by the Town Manager that quantifies the number and type of ROAH credits that may be allocated to a development.

*ROAH credit* is a substitute for ROAH units that a developer of a project subject to the requirements of this Article may draw upon to satisfy the requirements of this Article in lieu of the provision of ROAH units. One (1) ROAH credit is equal to one (1) ROAH unit.

*Unit* has the same definition as *residential unit* as defined in Section 16-1-20 and shall include *bed and breakfasts*, also defined in Section 16-1-20.

### **Sec. 16-21-30. Applicability of Resident-Occupied Affordable Housing requirements to certain development types.**

- (a) No building permit shall be issued for any development type listed below unless the developer demonstrates that it has complied with this Article. The ROAH requirements set forth in this Article must be satisfied by the developer of any of the following development types:
  - (1) New residential units that are not deed-restricted for affordable housing excluding the portion of a new residential unit that is replacing an existing residential unit on the same property;
  - (2) Additional floor area for existing residential units that are not deed-restricted for affordable housing;
  - (3) New or additional floor area for nonresidential uses excluding the portion of a new nonresidential space that is replacing an existing nonresidential space on the same site;
  - (4) New or additional lodging units excluding the portion of lodging units that is replacing existing lodging units on the same site; and
  - (5) Conversions of floor area from residential uses to nonresidential uses.
- (b) The following development types are not subject to the requirements contained in this Article:
  - (1) Residential units, or addition of floor space to residential units, that are permanently deed-restricted to be affordable housing;
  - (2) Expansion or new construction of Town-owned buildings;
  - (3) Renovations or remodels that do not add additional floor area;
  - (4) Changes of use, except changes of use from residential to nonresidential or lodging; and
  - (5) Residential accessory buildings that are not heated or plumbed.
  - (6) Floor areas for drive aisles, access ramps and parking spaces in approved underground parking areas for nonresidential or lodging uses.

(Ord. 19 §2, 2011; Ord. No. 3 , § 4, 3-6-2017)

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### Sec. 16-21-40. Resident-Occupied Affordable Housing requirements.

- (a) Residential. The formula in Table 16-A sets forth the number of ROAH units that will be required for residential development as the size of the development changes. Unit size for a primary dwelling includes heated and plumbed accessory buildings on the property, if any. The number of ROAH units required is the same for all residential buildings in each unit range and is based on the whole finished size of the unit, not the size of an expansion.

**Table 16-A**  
**Residential ROAH Formula for Whole Finished Residential Units**  
**With Each Job Generation Rate and Associated Mitigation Rates**

<b>Unit Range</b>	<b>Size of Unit (Square Feet)</b>		<b>Job Generation Rate</b>	$\div$ <b>Employees per Household</b>	$\times$ <b>Mitigation Rate</b>	$=$ <b>ROAH Units Required</b>
	<b>Minimum</b>	<b>Maximum</b>				
A	1	499	0.096	1.71	3%	0.0017
B	500	999	0.112	1.71	11%	0.0072
C	1,000	1,499	0.130	1.71	17%	0.0129
D	1,500	1,999	0.151	1.71	23%	0.0203
E	2,000	2,499	0.175	1.71	29%	0.0297
F	2,500	2,999	0.204	1.71	35%	0.0418
G	3,000	3,499	0.237	1.71	41%	0.0568
H	3,500	3,999	0.275	1.71	47%	0.0756
I	4,000	4,499	0.320	1.71	53%	0.0992
J	4,500 or more		0.371	1.71	58%	0.1258

- (b) Nonresidential.

- (1) The formula in Table 16-B sets forth the number of ROAH units that will be required for nonresidential development. The first five hundred (500) square feet of floor area shall not be required to provide a ROAH unit. The ROAH requirement shall be based on the amount of new square footage and not the square footage of the building as a whole, unless the entire building is newly constructed. The mitigation rate shall be ten percent (10%) from June 2012 through June 2014, fifteen percent (15%) from July 2014 through June 2016, and twenty percent (20%) beginning in July 2016 and all years thereafter.

**Table 16-B**  
**Nonresidential Development ROAH Formula**

<b>Year</b>	<b>Size of New Commercial Development or Addition Minus 500 (sq. ft.)</b>	$\div$ <b>1,000 sq. ft.</b>	$\times$ <b>Job Generation Rate (4 employees per 1,000 sq. ft.) (4)</b>	$\div$ <b>Jobs per Employee (1.28)</b>	$\div$ <b>Employees per Household (1.71)</b>	$\times$ <b>Mitigation Rate (varies)</b>	$=$ <b># ROAH Units Required</b>

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6/2012 through 6/2014	3,500—500	1,000	4	1.28	1.71	10%	0.548 units
7/2014 through 6/2016	3,500—500	1,000	4	1.28	1.71	15%	0.822 units
7/2016 & thereafter	3,500—500	1,000	4	1.28	1.71	20%	1.096 units

- (2) The mitigation rate for outdoor seating, including roof-top seating in nonresidential structures, shall be twenty-five percent (25%) of the mitigation rate for nonresidential development.
- (3) Residential floor area that is converted to nonresidential use shall provide ROAH units in compliance with Paragraphs 16-21-40(b)(1) and (2).
- (4) As an incentive to provide ROAH units on the same property as the development that is subject to this Article, the average size of all Category 2 ROAH units required, as described in Subsection 16-21-60(a), may be reduced by one hundred (100) square feet, from nine hundred (900) square feet to eight hundred (800) square feet, if all whole required ROAH units are provided on such property. If less than all whole required ROAH units are provided on such property, the reduction in the size of the units shall be lowered proportionately as described in the Administrative Procedures. At least one (1) ROAH unit must be provided on such property before this incentive may be used.
- (5) Developers of nonresidential development, where such development can be demonstrated to present unique circumstances, may apply for a reduction in the job generation rate if, based on an independent calculation provided by a qualified third party with experience in affordable housing, as determined by the Town, the developer can demonstrate to the Town that the number of employees that will be generated by the subject development is less than the documented amount in the LUPAH and shown in the formulas set forth in Table 16-B. Where such lesser number of employees can be demonstrated, the Town Council, in its sole discretion, may evaluate the information provided and make any appropriate modifications to the job generation rate for the unique circumstances. The Town Council shall consider the following applicable factors, at a minimum, when making modifications to the job generation rate for a particular development and may either approve, approve with conditions or deny the request for a lower job generation rate:
  - a. The number and type of employees expected to be generated by the proposed development considering the employment generation pattern of the building, or of a similar building within the Town or within a municipality where the character of the community is, on balance, similar to the Town;
  - b. Data and records, including but not limited to an independent payroll audit supporting employment generation for the proposed use;
  - c. Any unique employment characteristics of the use that would result in a lower job generation rate;
  - d. The extent to which employees of various uses within a mixed-use development, or of a related off-site development, will overlap or serve multiple functions;
  - e. A proposed restriction, acceptable to the Town Council, requiring employee generation mitigation in accordance with this Article, upon abandonment of the type of use which was granted a different job generation rate;
  - f. Future changes in use for the development permitted by the underlying zoning; and
  - g. Whether approval would be consistent with the intents and purposes of this Article and the LUPAH.

- (6) The Town may employ, at the developer's expense, consultants of the Town's choice to evaluate the application to reduce the job generation rate. Any acceptance of an independent calculation shall be site and use specific, nontransferable and shall be memorialized in an agreement between the property owner and the Town. Such agreement shall be approved by the Town Attorney and executed prior to the issuance of a building permit. Where such application is denied by the Town Council, the job generation rate in Table 16-B and in the LUPAH shall be applied to the proposed development. An application for a reduction in the job generation rate shall be submitted to the Town simultaneously with an application for architectural appropriateness and zoning approvals of the development that is subject to the requirements of this Article.
- (c) Lodging.
- (1) The formula in Table 16-C sets forth the number of ROAH units that will be required for lodging unit development. The first two (2) lodging units shall not be required to provide a ROAH unit. The mitigation rate shall be ten percent (10%) from June 2012 through June 2014; fifteen percent (15%) from July 2014 through June 2016; and twenty percent (20%) beginning in July 2016 and all years thereafter.

**Table 16-C  
Lodging Unit ROAH Formula**

<b>Year</b>	<b># Lodging Units Minus Two</b>	<b>x Job Generation Rate(0.475)</b>	<b>÷ Jobs per Employee (1.28)</b>	<b>÷ Employees per Household</b>	<b>x Mitigation Rate (varies)</b>	<b>= # ROAH Units Required</b>
6/2012 through 6/2014	26-2	0.475	1.28	1.71	10%	0.52
7/2014 through 6/2016	26-2	0.475	1.28	1.71	15%	0.78
7/2016 & thereafter	26-2	0.475	1.28	1.71	20%	1.04

- (2) When part or all of a residential development is converted to lodging units, that portion of the floor area converted to lodging units shall provide ROAH units in compliance with Paragraph 16-21-40(c)(1) above.

### **Sec. 16-21-50. Methods for complying with requirements.**

Developers of property subject to this Article shall satisfy the ROAH requirements listed in Section 16-21-40 above by any one (1) or a combination of the following methods, provided that no compliance shall be permitted to occur outside the Town limits and provided that the Town Council's approval is first obtained as described below, if applicable. Prior to issuance of a building permit for the development subject to this Article, the developer shall demonstrate that it has complied with this Article.

- (1) Construction of new ROAH units.
- a. New ROAH units may be constructed. If new ROAH units are proposed to be constructed off-site (not on the same property as the development that is subject to this Article), the property where such ROAH units are to be constructed shall be fully developed and ready for construction with

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- completed streets, water supply, sewage disposal and other basic services, as determined by the Town.
- b. The building permit for the ROAH units shall be issued contemporaneously with the building permit for the new development that is subject to the requirements of this Article. The Town will not issue a certificate of occupancy for development subject to the requirements of this Article until it has issued a certificate of occupancy for all ROAH units required by this Article. Only ROAH units required for each phase of a development subject to the requirements of this Article shall be required to be provided when such phase of the development is built.
- (2) Construction of New ROAH Units on Town-owned property. Construction of new ROAH units on Town-owned property that is zoned for residential use may be allowed at the sole discretion of the Town Council but only when all of the following minimum requirements are met:
- a. The Town-owned property where such ROAH units are constructed shall be fully developed and ready for construction with completed streets, water supply, sewage disposal and other basic services, as determined by the Town.
- b. The building permit for the ROAH units shall be issued contemporaneously with the building permit for the new development that is subject to the requirements of this Article. The Town will not issue a certificate of occupancy for development subject to the requirements of this Article until it has issued a certificate of occupancy for all ROAH units required by this Article. Only ROAH units required for each phase of a development subject to the requirements of this Article shall be required to be provided when such phase of the development is built.
- c. The developer will convey the ROAH units to the Town or pay the Town fair market value for the Town-owned property as further described in the Administrative Procedures.
- d. Prior to a developer's development on Town-owned property, the use of such Town-owned property shall be memorialized in an agreement between the developer and the Town. Such agreement shall be approved by the Town Attorney and executed prior to issuance of a building permit for the new development that is subject to the requirements of this Article.
- (3) Conveyance of land in lieu of providing ROAH units. The conveyance to the Town of a fee simple interest in land in lieu of providing ROAH units may be allowed at the sole discretion of the Town Council, but only when all of the following minimum requirements are met:
- a. Land proposed in lieu of providing ROAH units must be located within the Town limits, in a residential zone district and shall be fully developed and ready for construction with completed streets, water supply, sewage disposal and other basic services, as determined by the Town.
- b. The fair market value of such land-in-lieu must be at least equal to the equivalent payment-in-lieu, as calculated pursuant to Paragraph (6) below.
- c. Land in lieu of constructing required ROAH units must be conveyed to the Town at the time a building permit is issued for the development that is subject to the requirements of this Article.
- (4) Accessory dwellings.
- a. An accessory or primary dwelling may fulfill the ROAH unit requirement for up to two (2) primary residential units located on the same property as the development that is subject to this Article. When the dwelling unit subject to the requirements of this Article and the accessory dwelling unit are constructed at the same time, the building permits for the dwelling unit subject to the requirements of this Article and the accessory dwelling unit shall be issued contemporaneously. A certificate of occupancy will not be issued for the development subject to the requirements of this Article until a certificate of occupancy is issued for the accessory dwelling unit built to comply

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- with this Article. A restrictive covenant for the accessory dwelling unit shall, at minimum, restrict the accessory dwelling unit to a long-term rental.
- b. If an accessory dwelling is built with no restrictive covenant and later a primary dwelling is built on the same property, a certificate of occupancy will not be issued for the primary dwelling until a restrictive covenant is recorded for one (1) of the units. Such restrictive covenant shall, at minimum, restrict one (1) of the units to a long-term rental.
  - c. A new accessory dwelling, or an accessory building converted to an accessory dwelling, may satisfy the nonresidential development ROAH requirements for up to one (1) ROAH unit as required in Paragraphs 16-21-40(b)(1) and (2) above. A restrictive covenant shall be placed on such accessory dwelling unit limiting its uses to all requirements of Subsection 16-21-60(a) below, and requiring the use of the accessory dwelling to comply with the Guidelines. The building permit for the development subject to the requirements of this Article and a new accessory dwelling unit, or a building permit for the conversion of an accessory building to an accessory dwelling, shall be issued contemporaneously. The Town will not issue a certificate of occupancy for development subject to the requirements of this Article until it has issued a certificate of occupancy for all ROAH units required by this Article. Only ROAH units required for each phase of a development subject to the requirements of this Article shall be required to be provided when such phase of the development is built.
  - d. When a restrictive covenant is placed on an accessory dwelling to comply with the requirements of Subparagraph (4)c. above, the accessory dwelling need not comply with the requirements for minimum size of an ROAH unit.
- (5) Placing a restrictive covenant on existing residential units. If a developer desires to satisfy the requirements of Section 16-21-40 above by acquiring existing units and restricting the use of such existing units prior to re-selling them, the developer shall record a restrictive covenant for the number of ROAH units approved by the Town Council prior to the issuance of the building permit for the development subject to this Article. The restrictive covenant shall restrict the use of the existing units to satisfy the requirements as set forth in Subsection 16-21-60(a) below. Existing units may be used to satisfy the ROAH requirements under the following circumstances:
- a. The subject existing units may not already be restricted to affordable housing;
  - b. The size of the existing units may vary from the standards of Subsection 16-21-60(a) if the subject existing units are located in the "C" Commercial Zone District as further described in Subsection 16-21-60(e);
  - c. The subject existing units shall meet current building code standards in effect at the time of the imposition of the restrictive covenant, unless the Town Council, in its sole discretion, allows a waiver from such building code standards as described in the Administrative Procedures; and
  - d. The long-term affordability of the subject existing units must be adequately protected. Guidance regarding the long-term affordability of ROAH units can be found in the Administrative Procedures.
- (6) Payment in lieu of constructing ROAH units.
- a. When application of the requirements of Section 16-21-40 above applied to a particular development would result in a fraction of an ROAH unit being required, the owner/developer may either provide a ROAH unit or may make a payment in lieu of providing the fraction of an ROAH unit to the Town.

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- b. When whole ROAH units are required, every effort shall be made to provide the units rather than making a payment-in-lieu for whole units. Nothing contained in this Article shall obligate the Town to accept a payment-in-lieu for whole units.
  - c. Payment in lieu of providing whole ROAH units shall be considered on a case-by-case basis by the Town Council and may be approved when the Town Council, in its sole discretion, approves payment-in-lieu for whole units based on the following criteria:
    - 1. Payment-in-lieu will further affordable housing opportunities in the Town to an equal or greater extent than compliance with the express requirements of Section 16-21-40 above;
    - 2. Payment-in-lieu will result in the near-term production of affordable housing units; and
    - 3. The developer has made a good faith effort in pursuit of providing the required ROAH units off-site through construction of new dwelling units or the deed restriction of existing dwelling units to ROAH housing status; and

The Town Council must also make a finding that:

- 4. The provision of affordable housing on the same property as the development subject to this Article is impractical given the physical or legal parameters of the development; or
  - 5. Provision of ROAH units on the same property as the development subject to this Article would be incompatible with the proposed uses anticipated in the project that is being developed.
  - d. For residential and nonresidential development, the payment in lieu of providing a ROAH unit is assessed on each square foot of added floor area. For lodging development, the payment-in-lieu is assessed on each added lodging unit. The amount of payment-in-lieu is based on the LUPAH and the mitigation rates set forth in Section 16-21-40 above. The amount of payment-in-lieu for residential, nonresidential and lodging development is set forth in Appendix A to this Code.
  - e. Payment in lieu of providing ROAH units shall be made at the time the building permit is issued for development subject to this Article.
- (7) Every fifth ROAH unit. For every five (5) ROAH units required, one (1) unit shall not need a restrictive covenant imposed thereon regarding AMI limits; provided, however, that all ROAH units must comply with the remaining applicable requirements of Subsection 16-21-60(a) below.
- (8) Reserved.
- (9) ROAH certificates and ROAH credits.
- a. ROAH credits to be applied against the ROAH requirements contained in this Article shall be established by the issuance of an ROAH certificate.
  - b. ROAH certificates shall be approved by resolution of the Town Council. Such ROAH certificates shall state the number of ROAH credits and the category of ROAH unit established by approval of such resolution. The ROAH credits may be used to comply with the requirements of Section 16-21-40 above.
  - c. An ROAH certificate may be approved by the Town Council if all of the following criteria are met. To qualify for ROAH credits, the Town Council must find that the new housing units proposed for ROAH credits:
    - 1. Were built subsequent to the adoption of this Article;
    - 2. Have recently been issued a certificate of occupancy;
    - 3. Result in additional housing units;

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- 4. Comply with the standards in Section 16-21-60 below;
  - 5. Have not been built to satisfy the mitigation requirements of this Article for a particular residential, nonresidential or lodging development or any other affordable housing requirements;
  - 6. Are located within the Town limits; and
  - 7. Have not already been restricted to be affordable housing.
- d. Once an ROAH certificate has been approved by resolution of the Town Council, and after a restrictive covenant has been recorded for the dwelling units requiring their use and occupancy to comply with this Article and the Guidelines, a physical ROAH certificate shall be issued by the Town Manager as described in the Administrative Procedures. The form and substance of an ROAH certificate, as well as the procedures respecting the administration of ROAH certificates, shall be set forth in the Administrative Procedures.
  - e. ROAH certificates are fully transferrable. Transfer of title of ROAH certificates shall be evidenced by an assignment of ownership on the actual ROAH certificate. Upon the Town's verification of the validity of the transfer, the new owner of such ROAH certificate shall request in writing that the Town Manager re-issue the subject ROAH certificate acknowledging the new owner's interest therein.
  - f. The monetary value of ROAH credits is not guaranteed by the Town and is expressly disclaimed hereby.
  - g. Upon approval of an application for a land use development permit by the Town utilizing the ROAH credits, the physical ROAH certificate shall be submitted to the Town and all credits utilized will be acknowledged in the building permit. There shall be no building permit issued until the developer demonstrates that it has complied with this Article. Upon acknowledgement of credits utilized in the building permit, the Town Manager shall terminate all or part of the subject ROAH credits and a new ROAH certificate for any remaining ROAH credits shall be issued to the owner thereof. ROAH credits shall be terminated in no less than one-quarter (.25) ROAH unit increments.
  - h. An applicant aggrieved by any determination of the Town Manager respecting ROAH credits may appeal such determination to the Town Council. Any grievance must be presented in writing, set forth the issues and positions in reasonable detail, and shall be addressed to the Town Council and delivered to the Town Clerk. Upon receipt of such grievance, the Town Clerk shall schedule a hearing within twenty (20) days of receipt thereof, unless otherwise waived by the aggrieved party. Each party shall have the right to be represented by legal counsel during the proceedings. All costs and expenses incurred by the aggrieved party in prosecuting any grievance shall be the aggrieved party's sole responsibility and not the responsibility of the Town, irrespective of the outcome of the proceedings. Based on the record of the proceedings, the Town Council will provide a written decision which shall include the reasons for its determination. The decision of the Town Council shall be binding on the aggrieved party and the Town. No appeals beyond the Town Council shall be permitted, any such appeal rights under law or equity being expressly waived by the aggrieved party.
- (10) Approved entity ownership of ROAH rental units. Approved entities which would like to own ROAH rental units and rent them to Qualified Renters may be approved by the Town Council as described in the Guidelines. Such owners shall only rent ROAH units to people who meet the standards set forth in Paragraphs 16-21-60(a)(1) and (2) below and who meet the rental eligibility qualifications of the Guidelines.

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- (11) Restrictive covenants. All ROAH units shall have a restrictive covenant recorded against the subject property that complies with Subsection 16-21-60(a) below. Such restrictive covenant shall require that the occupants of such units must comply with the standards set forth in Paragraphs 16-21-60(a)(1) and (2) and with the Guidelines. Such restrictive covenant shall also require that appreciation of the ROAH units shall be limited as described in Paragraph 16-21-60(a)(3) and the Guidelines. The restrictive covenant shall run with the land and shall be approved by the Town Attorney prior to recording. The restrictive covenant shall be recorded prior to issuance of the certificate of occupancy for the ROAH unit and prior to the issuance of a certificate of occupancy for the development subject to this Article.
  - (12) Subordination agreement. A consent and subordination agreement executed by all lien holders of the property that is subject to the restrictive covenant for ROAH units shall be provided to the Town. Such consent and subordination agreement shall provide that the lien of any deed of trust or other lien against the subject property is subordinate to the restrictive covenant on the ROAH unit. Such consent and subordination agreement shall be approved by the Town Attorney prior to recording in the real property records of the County.
  - (13) Administrative procedures.
    - a. The implementation of the requirements of this Article shall be described in the Administrative Procedures.
    - b. The Administrative Procedures may be amended by the Town Manager following the Town Manager's delivery of a Staff Report to the Town Council outlining the material amendments to the Administrative Procedures proposed by the Town Manager. Provided that the Town Council does not have any revisions to the Town Manager's proposed amendments, such amendments shall become part of the Administrative Procedures without further action by the Town Council. Any material change to the Town Manager's proposed amendments to the Administrative Procedures must be approved by the Town Council.
  - (14) Guidelines. Rules and requirements for the sale, ownership and rental of ROAH units and the eligibility qualifications of occupants are set forth in the Guidelines.
  - (15) Conflicts between documents. In the event of any conflict between this Article, the Administrative Procedures and/or the Guidelines, such conflict shall be resolved in the following order of precedence:
    - a. This Article;
    - b. The Guidelines; and then
    - c. The Administrative Procedures.
  - (16) Payment in lieu of providing resident occupied affordable housing units shall be updated annually to reflect the most recent median cost per square foot paid for free market residential units in the Town and any change in the Area Median Income (AMI). Such updates shall be approved by duly adopted resolutions of the Town Council.

## **Sec. 16-21-60. Standards for Resident-Occupied Affordable Housing units.**

- (a) Covenant restrictions for ROAH units. ROAH units shall be limited to dwelling units which satisfy all of the following requirements unless a deviation has been expressly permitted in this Article:
  - (1) The combined income of all people in the household, including dependents, shall be within one (1) of the following categories:

Category 1	Low income	≤ 80% of the AMI
Category 2	Moderate income	81% to 120% of the AMI

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Category 3	Upper-middle income	121% to 160% of the AMI
Category 4	Upper income	161% to 200% of the AMI

- (2) At least one (1) person in the occupant household must earn at least eighty percent (80%) of his/her total household income in Gunnison County until at least one (1) occupant reaches the age of fifty-nine and one-half (59 ½) years.
- (3) Appreciation of owner-occupied ROAH units shall be limited to three percent (3%) per year or the change in the CPI, whichever is less. The formulas to be used when calculating appreciation are set forth in the Guidelines.
- (4) The minimum floor area of a ROAH unit shall vary by income category as follows:

Category 1	Low income	500 sq. ft.
Category 2	Moderate income	750 sq. ft.
Category 3	Upper-middle income	1,100 sq. ft.
Category 4	Upper income	1,400 sq. ft.

- (5) The average floor area of all ROAH units, when two (2) or more units are required, shall vary by income category as follows:

Category 1	Low income	800 sq. ft.
Category 2	Moderate income	900 sq. ft.
Category 3	Upper-middle income	1,200 sq. ft.
Category 4	Upper income	1,500 sq. ft.

- (6) The monthly housing costs of Category 1 units shall be affordable for households with incomes of forty percent (40%) of the AMI.
- (7) The monthly housing costs of Category 2 units shall be affordable for households with incomes of one hundred percent (100%) of the AMI.
- (8) The maximum sale price of ROAH units shall be calculated using no more than thirty percent (30%) of gross household income for housing payments. Procedures for the calculation of maximum sale price and certain assumptions for calculating maximum sale price of ROAH units in Categories 1 and 2 are set forth in the Administrative Procedures. The initial maximum sale price of ROAH units is set forth by Category and household size in Table 1-B of the Administrative Procedures. Formulas for the subsequent calculation of maximum sale price are located in the Guidelines.
- (b) Measuring square footage. Square footage shall be measured using the same method used for Equivalent Residential Use (EQR) calculations, not the method used for calculating floor area ratio (FAR) with the following clarifications:
  - (1) The portion of the floor area in a building that is not used for residential or lodging uses shall be counted as nonresidential floor area; provided, however, that front desk, lobby and swimming pool floor areas, when these floor areas are used exclusively by overnight guests, shall not be included in the nonresidential floor area and shall be exempt from the requirements of this Article.
  - (2) Hallways, loading areas and common areas, such as public bathrooms which are used by multiple employers, shall not be included in nonresidential floor area.
  - (3) Stand-alone warehouses, parking structures, storage units and home occupations shall not be included in nonresidential floor area.

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- (4) The first five hundred (500) square feet of nonresidential floor area shall not be required to provide a ROAH unit.
  - (5) The first two (2) lodging units shall not be required to provide a ROAH unit.
  - (6) A developer of nonresidential space and lodging units shall be eligible for an exemption of the first five hundred (500) square feet of nonresidential space or an exemption of the first two (2) lodging units, but not both.
  - (7) Unit size for a primary residential dwelling includes heated and plumbed accessory buildings on the property subject to this Article, if any.
- (c) Category 1 and 2 households.
    - (1) ROAH units provided to comply with the requirements of Subsection 16-21-40(a) above shall be targeted for Category 1 households. Up to fifty percent (50%) of the required units may serve Category 2 households.
    - (2) ROAH units provided to comply with the requirements of Subsections 16-21-40(b) and (c) shall be targeted for Category 2 households.
  - (d) ROAH housing types. When more than one (1) ROAH unit is required, such units shall include a variety of housing types and sizes to accommodate targeted populations.
  - (e) ROAH unit size requirements. Except as provided in this Section, when one (1) ROAH unit is required, it shall comply with the minimum unit size requirements as described in Subsection (a) above. When more than one (1) ROAH unit is required, the average size of such units shall meet the average size requirements described in Subsection (a) above. ROAH units provided on the property that is subject to the ROAH requirements in the Commercial "C" Zone District shall not be less than the minimum residential floor area required in Section 16-5-550 of this Chapter and shall not be larger than the maximum residential unit size described in Section 16-5-530 of this Chapter.
  - (f) Congregate housing may not be used to satisfy the ROAH requirements set forth in Section 16-21-40 above.
  - (g) ROAH units may not at any time be released from the restrictive covenant and deed restriction requiring such ROAH units comply with the requirements of this Article.

(Ord. 19, §2, 2011; Ord. 10 §6, 2012)

### **Sec. 16-21-70. Enforcement.**

Failure to comply with the requirements set forth in this Article shall subject the owner of the subject property to the provisions of Section 16-24-20 of this Chapter. In addition, the Town shall have all rights and remedies available at law and in equity, inclusive of injunctive relief. In the event that the Town incurs any fees and costs, including attorneys' fees, in enforcing the requirements of this Article, the owner of the subject property shall be responsible to pay the Town the same.

## **ARTICLE 22 Board of Zoning and Architectural Review**

### **Sec. 16-22-10. Establishment.**

The Board of Zoning and Architectural Review (the "Board") is hereby created and established pursuant to Section 8.1b of the Home Rule Charter. It shall consist of one (1) Chair and six (6) regular members, to be appointed by the Town Council. Ex officio members shall include the Building Inspector and the Town Manager.

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The Board members shall be residents of the Town for one (1) year, shall hold no other office of the Town and shall serve without compensation unless the Town Council shall, by ordinance, fix compensation for service on the Board.

**Sec. 16-22-20. Balance of interest.**

In appointing members to the Board, the Town Council shall give due consideration to maintaining a balance of interest and skills of the individuals on the Board and to the individual qualifications of any member.

**Sec. 16-22-30. Officers.**

The Board, at its first regular meeting of each year, shall appoint a Chair and Vice Chair.

**Sec. 16-22-40. Removal of members.**

- (a) No member of the Board shall be removed from office by the Town Council except for just cause shown after notice and hearings. Just cause includes, but is not limited to:
  - (1) Frequent nonattendance at Board meetings;
  - (2) Failure to disclose conflicts of interest; and
  - (3) Violation of the terms of this Article.
- (b) After a motion to remove a Board member is made and duly seconded, the Board member sought to be removed shall be given ten (10) days' written notice of the hearing at which the motion shall be considered, and shall be afforded an opportunity to appear. The notice shall specify the grounds upon which the removal motion is based. If, at said hearing, a majority of the entire membership of the Board votes in favor of removal, the matter shall be referred to the Town Council, which shall finally determine, by a majority of those attending its next public meeting, whether or not just cause for removal exists.

(Prior code 15-2-26; Ord. 22 §1, 2000; Ord. 4 §1, 2009)

**Sec. 16-22-50. Meetings.**

The Board shall establish a regular meeting date not less than once a month, at a time and place to be established by the Board. Special meetings shall be held at the call of the Chair or any two (2) members of the Board. All meetings shall be open to the public.

**Sec. 16-22-60. Rules of procedure.**

The Board shall adopt rules of procedure and keep a record of any and all proceedings of the Board, pursuant to the records retention schedule adopted by the Town.

**Sec. 16-22-70. Quorum.**

A quorum of the Board shall consist of four (4) members.

**Sec. 16-22-80. Voting.**

The concurring vote of a majority of Board members in attendance shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector or to decide in favor of the applicant regarding

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any matter upon which it is required to pass under this Article. A concurring vote of three (3) members shall be required to overturn any joint decision of the Building Inspector and Chair of the Board.

### **Sec. 16-22-90. Design Review Committee.**

- (a) Establishment. The Board shall establish a Design Review Committee (DRC) that shall review all applications requesting approval for architectural appropriateness. The DRC shall be charged with advising both applicants and the Board on the appropriateness of proposals with regard to the Design Guidelines. The DRC shall make recommendations to the Board to approve or deny applications (or submit a "no recommendation" comment). All applicants requesting architectural approval must attend at least one (1) meeting of the DRC. Proponents may choose to attend as many DRC meetings as they elect, provided that they waive their right to a decision within sixty (60) days after receipt by the Building Department of a complete application, after the second DRC meeting. However, at any time after an application has been reviewed by the DRC at two (2) meetings of the DRC, the DRC may forward the application to the Board with a recommendation (or a "no recommendation" comment). If an applicant desires review before the DRC for more than two (2) meetings, and the application has not been forwarded to the Board, then the applicant shall pay an administrative fee set by the Building Official per DRC meeting for each meeting in excess of the two (2) permitted. Applicants may also request review by the full Board after the initial DRC meeting.
- (b) Members. The DRC shall consist of two (2) members of the Board of Zoning and Architectural Review and one (1) member of the Town staff. The members of the DRC shall be appointed by the Board and shall serve three-month terms. The Town staff member shall be appointed by the Building Official, who shall determine the term of said appointment.
- (c) Meetings. The DRC shall meet a minimum of once per month, unless there are no applications scheduled for review. All meetings of the DRC shall be open to the public. The Board meetings on applications shall continue to constitute the public hearing process.
- (d) Powers. The DRC shall make recommendations to the Board. In order to make a recommendation, the DRC must agree unanimously. Less than unanimous agreement will cause the project to be forwarded to the Board with a "no recommendation" comment and written text outlining the reasons for the lack of recommendation. All recommendations made by the DRC are advisory in nature and nonbinding upon the Board. However, the determinations of the DRC are binding with respect to a finding of in substantialness, if said request for an insubstantial determination is referred to the DRC by the Board Chair. The DRC may consult with proponents on an informal and nonbinding basis in the absence of a complete or formal application.

(Prior code 15-2-26; Ord. 22 §6, 2000; Ord. 4 §1, 2009)

### **Sec. 16-22-100. Powers.**

- (a) The Board shall have the following powers:
  - (1) To hear and decide appeals from and review any order, requirement, decision or determination made by the Building Inspector under this Article.
  - (2) To hear and decide, or make recommendations on, all matters referred to it in accordance with the provisions of this Article.
  - (3) To authorize, in specific cases, a variance, conditional use permit, PUD, special development permit or conditional waiver of the application of this Article as provided for in this Article.
  - (4) To issue special development permits as provided in this Article.

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- (5) To review and decide on the appropriateness, both architecturally and historically, of any building permit pertaining to the erection, demolition, moving, reconstruction, restoration, improvement or alteration of any structure in the Town.
  - (6) To make such recommendations to the Town Council that would benefit the Town in an aesthetic, historic and architectural way.
  - (7) To review and decide on the appropriateness of a site plan, including but not limited to landscape, parking, trash storage and removal, setbacks, lighting and signage.
  - (8) To promulgate guidelines and regulations and to provide such information to owners, developers or builders that would help them meet the requirements of this Article.
  - (9) To suggest to the Town Council particular planning studies which should be undertaken.
  - (10) To waive the requirement for an application going before the Board and the consequent publication, if all of the following conditions are met:
    - a. The application includes all the required plans;
    - b. The application does not require a conditional use, conditional waiver or variance; and
    - c. The restoration, improvement, alteration or construction as a whole is judged by the Building Inspector and one (1) member of the Board designated by the Board to be *insubstantial* as defined in Section 16-1-20 of this Chapter and totally in keeping with all applicable ordinances, codes and policies of the Board. The determination by the Building Inspector and a designated Board member that a restoration, improvement, alteration or construction is insubstantial shall be deemed to constitute the waiver by the Board as a whole of the requirement for an application going before the Board, it being the express purpose of this Section to delegate to the Building Inspector and a designated Board member the power to waive the requirement of going before the Board. However, it shall be the duty of the Building Inspector to report any and all such insubstantial waivers to the Board as a whole at the first Board meeting following said determination that a project is insubstantial.
  - (11) To recommend changes to the Town Council affecting this Chapter, Chapter 17 of this Code and the Design Guidelines, and to interpret and implement these regulations consistent with the stated goals and intent of the Town.
- (b) In exercising its powers and duties under this Chapter, the Board shall, at all times, act so that the spirit of the Chapter shall be observed and that public safety and welfare are secured and substantial justice done.

(Prior code 15-2-26; Ord. 5 §14, 1995; Ord. 22 §9, 2000; Ord. 4 §1, 2009)

### **Sec. 16-22-110. Meetings, hearings, notice and special review classification.**

- (a) A decision on each phase of an application for a P.U.D. shall be rendered within ninety (90) days of receipt of a complete application for each phase. Upon referral from the Building Inspector of any complete application for a building permit, consideration of architectural appropriateness, consideration of appropriateness of site plan, conditional use, conditional waiver, variance or special development permit, the Board shall hold a public hearing on the application and render a decision within ninety (90) days. This ninety-day limit on a decision shall be waived if the applicant alters his or her plans or representations, or agrees to a continuance of the public hearing. The failure of the Board to render such decision within the time limits herein set forth shall be deemed and considered affirmative action on any appeal from the Building Inspector or in granting any requested action.

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- (b) An application shall be classified as special review if the building permit is in a "B1", "B2" or "B3" Business District or if the Building Inspector and Board Chair determine that the size and scale of the proposal, intensity of proposed use, anticipated traffic and parking problems, requested conditional uses and variances or similar development factors are significant as compared to existing neighborhood context.
  - (c) Notice of any public hearing shall be given at least ten (10) days in advance of the public hearing by publication in the official newspaper of the Town and by posting the notice of said public hearing on the subject lot or building, which posted notice shall be of a size of at least twelve (12) inches by twenty-four (24) inches. Notice of all building permit applications for new principal buildings and, as determined by the Building Inspector and Board Chair, new accessory buildings and major additions to or renovations of existing structures, shall include publication of a general schematic drawing (elevation) showing the front facade or other relevant facade of the structure as proposed. Notice of all special review applications shall include publication of a three-dimensional perspective drawing of such building or structure showing its facade and relationship to neighboring structures, and a street map showing the location of the proposed building or structure. These notice requirements shall not apply to sign permit applications and matters deemed insubstantial pursuant to Paragraph 16-22-100(a)(10) of this Article.

(Prior code 15-2-26; Ord. 4 §14, 1991; Ord. 22 §§10, 11, 2000; Ord. 7 §1, 2004; Ord. 4 §1, 2009)

### **Sec. 16-22-120. Additional requirements for building permit applicants.**

- (a) Prior to the public hearing on any building permit application, the applicant shall file with the Building Inspector an interior layout plan showing the dimensions and interior configurations of the building or structure.
- (b) Prior to receiving a building permit, the applicant shall file with the Building Inspector plans and specifications of sufficient clarity and detail so that a determination can be made that said building or structure is in full conformity with this Code and all applicable Town, county, state, federal and any other governmental codes pertaining to such building, structure or use.

(Prior code 15-2-26)

### **Sec. 16-22-130. Public hearing.**

At any public hearing, the applicant and any resident or taxpayer of the Town who desires to advocate or oppose the application may appear in person or by his or her agent or attorney.

### **Sec. 16-22-140. Decision.**

The Board shall render its decision within ninety (90) days of receipt of a complete application for a building permit, conditional use, conditional waiver, variance, P.U.D. or special development permit.

### **Sec. 16-22-150. Appeal.**

Any decision by the Board may be appealed to the Town Council upon receipt by the Town Clerk of a written request filed within seven (7) days of the Board's decision by: the applicant; a current payer of property taxes in the Town or an individual who is currently registered to vote in the Town who appeared personally or who participated in the hearing in writing before the Board; or the Town Council upon passage of a motion at a regular or special Town Council meeting requesting such appeal. Any person filing an appeal which is determined by the Town Council to be frivolous or groundless may be required to pay the attorneys' fees incurred by the prevailing party and the Town to resolve the appeal. Upon receipt of such appeal, the Town Council shall schedule a public

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hearing to consider the appeal. Notice of said hearing shall be published once in the Town's official newspaper, at least ten (10) days prior to said hearing. At said appeal hearing, the Town Council shall consider the application and render a decision based upon the requirements and considerations of this Article. Unless the Town Council adopts a motion to overrule the Board, the Board's decision shall stand.

### **Sec. 16-22-160. Judicial review.**

The decision of the Town Council shall be final, subject only to judicial review as provided by state statutes. No judicial review of a decision of the Board may be taken unless such appeal or judicial review is filed in the proper court within sixty (60) days following the date of the decision of the Town Council on the appeal to that body.

### **Sec. 16-22-170. Compensation of Chair.**

The Chair of the Board shall receive as compensation for his or her services the amount established by motion of the Town Council at any regularly scheduled Town Council meeting, payable by the Town in such installments during the year as shall be designated by the Town Manager.

### **Sec. 16-22-180. Compensation of Board members.**

Each member of the Board, other than the Chair, shall receive as compensation for his or her services for each regular meeting, DRC meeting or special meeting of the Board which he or she attends in such capacity as to count toward the quorum of said Board for the purpose of carrying on its business, the sum established by motion of the Town Council at any regularly scheduled Town Council meeting, payable by the Town in such installments during the year as shall be designated by the Town Manager.

## **ARTICLE 23 Amendments**

### **Sec. 16-23-10. Procedure.**

This Chapter may be amended, supplemented, changed, modified or repealed by the Town Council in accordance with the procedures set forth hereafter.

### **Sec. 16-23-20. Initiation.**

Any person or group of persons, the Board of Zoning and Architectural Review or the Town Council may initiate such procedure. When initiated by any person, such requests shall be accompanied by a nonrefundable filing fee as established by resolution of the Town Council, together with an additional amount as established by resolution of the Town Council to cover administrative costs, including costs of publication.

### **Sec. 16-23-30. Application.**

- (a) Any application for an amendment, supplement, change, modification or repeal of this Chapter by any person or the Board to the Town Council shall contain the following information:
  - (1) A legal description of any land to be rezoned, together with a diagram drawn to scale showing the boundaries of the area requested to be rezoned;
  - (2) A statement of the present zoning and the requested new zoning;

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- (3) A statement of justification for such action, including facts concerning any change of conditions, an error in the original zoning or the unusual or peculiar suitability of a lot to a certain use;
  - (4) A description of the land and uses thereof within two hundred (200) feet of the boundary lines of the proposed area of change, in all directions; and
  - (5) A statement as to the effect that the new zoning or changes would have on adjacent areas or uses.
- (b) Any application to create or amend the zoning of a parcel of land containing more than fifty thousand (50,000) square feet of land shall be subject to the requirements set forth in Chapter 17 of this Code and reviewed for approval as a subdivision under said regulations.

(Prior code 15-2-27; Ord. 33 §4, 1995; Ord. 4 §1, 2009)

#### **Sec. 16-23-40. Review.**

Upon any application for a proposed amendment, supplement, change, modification or repeal of any part of this Chapter being presented to the Town Council, the Town Council shall consider the same at any regular or special meeting. Upon such consideration, the Town Council may, by majority vote, refuse to further consider the proposed amendment, supplement, change, modification or repeal. If the Town Council votes to further consider the proposal, it shall be referred to the Board of Zoning and Architectural Review, for its study and recommendation. If such referral is made, the Board shall submit its recommendations thereon to the Town Council within forty-five (45) days after receipt of the referral.

#### **Sec. 16-23-50. Increase in residential densities.**

- (a) Notwithstanding any other provision of this Article, any application for the following shall be required to comply with the requirements for preservation of open lands in accordance with Section Chapter 17, Article 9 of this Code and to otherwise conform and comply with the provisions of Chapter 17:
  - (1) An application to zone lands within the Town which are not zoned and for which zoning for a nonagricultural or nonpublic use is requested; and
  - (2) An application to rezone lands within the Town if the new zoning will allow a higher density of residential units. In such cases, the applicant must state the maximum number of residential units which will be built on the rezoned lands, and the determination of whether a higher residential density will result will be made by comparing the potential maximum number of residential units which will be built on the rezoned lands.
- (b) This Section shall not apply to the zoning or rezoning of property where the rezoning would be exclusively to permit or provide for affordable or other special housing needs, school sites or public facilities, as determined by the Town, or publicly owned property where the rezoning would permit or provide for such uses.
- (c) Any requirements mandated by this Section shall be determined only in reference to the additional units allowed.

(Prior code 15-2-27; Ord. 6 §2, 1996; Ord. 4 §1, 2009)

#### **Sec. 16-23-60. Public hearing.**

The Town Council shall hold a public hearing on the proposed amendment, supplement, change, modification or repeal of all or part of this Chapter. Said hearing shall be held after the Town Council receives the recommendation, if requested, of the Board. Notice of the time, place and purpose of the public hearing shall be

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published in the official Town newspaper at least ten (10) days prior to the date set for the public hearing. The Building Inspector shall cause notices of the proposed zoning change to be posted on the subject property, or representative parcels if the proposed change will affect a zone district or the Town at large.

### **Sec. 16-23-70. Protests.**

If the Town Clerk is presented with a petition not less than ten (10) days before the public hearing on any proposed amendment, supplement, change, modification or repeal, signed by twenty percent (20%) or more of the property owners, either of the area of the lots included in such proposal, or of those in any zone immediately adjacent to the area included in such proposal extending one hundred (100) feet outside the affected area under discussion in any direction; THEN the Town Council must pass such proposal by the affirmative vote of five (5) members of the Town Council; however, in the event that two (2) or more members of the Town Council are disqualified from voting due to substantial personal or financial interest, an ordinance, resolution or motion made pursuant to this Section shall require the affirmative vote of four (4) members of the Town Council for final passage.

### **Sec. 16-23-80. Recording of change.**

Any amendment, supplement, change, modification or repeal of any part of this Chapter shall be recorded, when applicable, on the Official Zoning Map.

### **Sec. 16-23-90. Standards for zoning and rezoning.**

- (a) No application for initial zoning or rezoning shall be approved unless it is demonstrated to the Town Council that:
  - (1) The proposed zoning classification promotes the health, safety and welfare of the inhabitants of the Town and promotes the purposes of this Code.
  - (2) At least one (1) of the following factors exists:
    - a. The proposed zoning classification is consistent with the goals and policies of the Town's Land Use Plan;
    - b. There has been a substantial and material change in the character of the neighborhood or in the Town generally such that the proposed rezoning would be in the public interest and would be consistent with the change in character; or
    - c. The property to be rezoned was previously zoned in error.
  - (3) Each of the following criteria is satisfied:
    - a. The proposed use of the rezoned or zoned property is compatible with the surrounding uses; or
    - b. In the case of proposed redevelopment of property, the proposal for the use of the rezoned or zoned property is an improvement to the neighborhood and to the Town.
- (b) The requirements of Subparagraph (a)(2)b. above shall not apply to any initial zoning of property that is either within or annexed to the Town.
- (c) The Town Council may impose reasonable conditions upon the future use of the rezoned or zoned property to ensure conformance with the standards of this Article.

(Prior code 15-2-27; Ord. 39 §3, 1995; Ord. 4 §1, 2009)

## ARTICLE 24 Enforcement

### **Sec. 16-24-10. Interpretation.**

The provisions of this Chapter shall be held to be the minimum requirements adopted for the promotion and protection of the public health, safety and welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other code, rules, regulation or ordinance adopted by the Town, the more restrictive or that imposing the higher standards shall govern.

### **Sec. 16-24-20. Violation and penalty.**

- (a) Offense. Any person who violates any of the provisions of this Chapter shall be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.
- (b) Actions. The erection, construction, alteration, enlargement, conversion, moving or maintenance of any building, and the use of any land, building or structure, which activity or use is continued, operated or maintained contrary to any provision of this Chapter, shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Article.
- (c) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Prior code 15-2-29; Ord. 22 §23, 1992)

### **Sec. 16-24-30. Additional procedures—Agreements for land use conditions and restrictive covenants.**

- (a) Without limiting any other rights that the Town may have under this Chapter, the same to continue in full force and effect, whenever the Building and Zoning Director determines that a property owner is in violation of any term or condition of any Agreement for Land Use Conditions and Restrictive Covenants as described in Section 16-9-70, it shall notify the property owner of the violation in writing and shall order the necessary cure for such violation to be completed within the time period prescribed in the agreement, if any. The issuance of such an order shall in no way or manner be deemed a prerequisite to the institution of enforcement proceedings as described in the agreement or elsewhere in this Chapter. Compliance with such order shall not be deemed to be a defense to any alleged violation of this or other applicable regulations in any court action instituted seeking full compliance therewith.
- (b) Any aggrieved person subject to a notice of violation, order or decision issued by the Building and Zoning Director pursuant to the Director's powers and duties as provided for in this Chapter may appeal such notice of violation, order or decision to the Town Manager within ten (10) days from the date of the action complained of.
  1. A notice of appeal shall be filed with the Town Manager and shall describe with reasonable certainty the action of the Building and Zoning Director complained of along with the appellant's name, address and telephone number. The notice of appeal shall be accompanied by any fee required.

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2. Upon receipt of a notice of appeal the Town Manager or its designee shall convene a public meeting on the matter within fourteen (14) days, or as soon thereafter as can be reasonably be accommodated.
  3. The proper and timely filing of a notice of appeal will temporarily stay the subject notice of violation, order or decision of the Building and Zoning Director pending the outcome of the appeal before the Town Manager unless the Director verifies in writing to the Town Manager that a stay will pose an immediate threat to the safety of persons or property or defeat the purpose of the notice of violation, order or decision in the first instance, in which event a stay shall not enter.
  4. The Town Manager or its designee shall hear an appeal at a public meeting with prior written notice to the appellant. The burden shall be on the appellant to demonstrate that the action of the Building and Zoning Director was in error, unjustified, or otherwise not in accordance with the terms of the Agreement and this Chapter. An unexcused failure on the part of the appellant to appear at the appeal hearing shall result in the affirmance of the Director's action.
  5. The Town Manager shall enter a written decision on all appeals no later than thirty (30) days from the conclusion of the appeal hearing. The Town Manager may reverse, affirm or modify the notice of violation, order or decision of the Building and Zoning Director and shall have all powers as vested in the Director to impose reasonable conditions to be complied with by the appellant as part of its decision. A copy of the Town Manager's decision shall be hand-delivered or sent by certified mail to the appellant.
  6. Decisions of the Town Manager shall be final, subject only to judicial review by a court of competent jurisdiction in accordance with the Colorado Rules of Civil Procedure.

( Ord. 9, § 2, 2015 )

## **CHAPTER 17**

### **Subdivisions**

#### **ARTICLE 1 General Provisions**

##### **Sec. 17-1-10. Authority.**

The Town Council hereby finds, determines and declares that it has the power to adopt these subdivision regulations pursuant to Sections 29-20-104, 31-23-213 and 31-23-214, C.R.S., and the powers granted to home rule municipalities in Colorado by Article XX of the Colorado Constitution.

##### **Sec. 17-1-20. Purpose.**

These subdivision regulations are intended and designed to protect the health, safety and welfare of the citizens of the Town by:

- (1) Helping to ensure the orderly and efficient development of the Town;
- (2) Establishing minimum standards for the design of land subdivisions to ensure that all public and private facilities are provided while also protecting the land form, streams, wildlife and vegetation from the effects of development, such as erosion, pollution, loss of wetlands and open spaces, and other forms of environmental deterioration;

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- (3) Apportioning the costs of public services and facilities serving subdivision residents through the payment of fees, provision of facilities and dedication of land and rights-of-way to the Town in order to assure that new development pays its way and does not burden the Town's fiscal resources;
  - (4) Requiring disclosure to purchasers of known, suspected or potential hazards;
  - (5) Assuring future buyers of land that the subdivider owns the land proposed to be sold, provides access to each building site and constructs and provides for the maintenance of improvements, utilities and amenities;
  - (6) Obtaining accurate surveying and a permanent public record of the separate interests created by subdivision; and
  - (7) Implementing the Crested Butte Land Use Plan, including the Crested Butte Three-Mile Plan.

### **Sec. 17-1-30. Compliance required; jurisdiction.**

- (a) From and after the effective date of these regulations, it shall be unlawful for any person to subdivide or develop real property, sell any real property or transfer any interest in real property, including a condominium interest, which is part of a subdivision of a larger tract of land which has not been approved by the Town for subdivision if applicable, nor shall any person offer for recording any deed conveying such land, or any interests therein in the Town, unless there shall be on file with the County Clerk and Recorder a final plat of said subdivision, having the endorsement thereon of the appropriate Town authority.
- (b) These subdivision regulations shall apply to any lands annexed to the Town; to any lands within the Town that are not subdivided and will be subdivided, or are subdivided and will be resubdivided; to any lands within the Town that have no publicly dedicated streets providing access to each subdivided lot, tract or parcel; to any lands within the Town which are not zoned and for which zoning for a nonagricultural use is requested; and to a P.U.D. application for more than eight (8) lots, tracts or parcels.
- (c) No interest in land shall be transferred, conveyed, sold, subdivided or acquired to create or extend a nonconformity, or to avoid or circumvent any provision of these subdivision regulations.
- (d) No construction of major subdivision improvements shall be started until:
  - (1) The final plan, including the subdivision improvement agreement, has been approved by the Town in accordance with these subdivision regulations; and
  - (2) The final plat has been approved by the Town and recorded.

After the improvement plans have been filed as part of the final plan, and the approval of the Town has been obtained, the subdivider shall construct the required improvements according to the approved or properly amended improvement plans.

- (e) A written agreement to sell or lease an interest in land which is expressly conditioned upon full compliance by the seller with these subdivision regulations within a specified period of time, and which expressly recites that the seller's failure to satisfy such condition within said period of time may terminate the agreement and entitle the buyer to the prompt return of all consideration paid by the buyer, at the buyer's option, shall not constitute a violation of these subdivision regulations.
- (f) No building permits of any kind for the construction of any building or other improvements upon any land to which these regulations apply shall be issued by the Building Official or any other administrative officer of the Town, unless and until all requirements of these subdivision regulations have been met, including demonstrating that the building site has access to a public street.
- (g) No subdivision plat shall be filed or recorded for the territory within three (3) miles of the Town limits, except the area on the Mt. Crested Butte side of a line equally distant from the respective municipal limits of

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the Town and Mt. Crested Butte, until it has been approved by the Planning Commission as provided in Sections 31-23-212, 31-23-213 and 31-23-214, C.R.S.

(Prior code 15-3-1; Ord. 4 §1, 2009)

### **Sec. 17-1-40. Interpretation.**

- (a) Existing subdivision agreements and covenants. This Article shall not apply to final plats recorded prior to the effective date of the initial ordinance codifying these subdivision regulations unless all or any portion of lands within the property depicted on the final plat is proposed for resubdivision in such manner as to fall within the definition of a subdivision under these subdivision regulations. In the instance of areas of land contained within a recorded subdivision of the original Town Plat which are proposed for resubdivision into new parcels, the resubdivision shall comply with all provisions of these subdivision regulations except for those which, in the opinion of the Planning Commission, have substantially complied with the requirements of these subdivision regulations prior to the original filing. These subdivision regulations are not intended to repeal, abrogate, annul or in any way impair or interfere with existing provisions of private agreements or restrictive covenants running with land to which the Town is a party. Where these subdivision regulations impose a greater restriction than that imposed by an existing easement, covenant or other private agreement, the provisions of these subdivision regulations shall govern.
- (b) Public provisions. This Article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law not specifically repealed in the initial ordinance codifying these subdivision regulations. Where any provision of these subdivision regulations impose a restriction or standard different from those imposed by any other ordinance, rule, regulation or other provision of law, the more restrictive or the higher standard shall control.

(Prior code 15-3-1; Ord. 4 §1, 2009)

### **Sec. 17-1-50. Compliance with zoning and simultaneous applications.**

It is the intent of these subdivision regulations that they be carried out simultaneously with provisions of this Chapter and other applicable regulations, ordinances, codes and rules. All final plats and plans submitted must be in a form which satisfies provisions of this Chapter and other applicable ordinances.

### **Sec. 17-1-60. Severability.**

- (a) It is hereby declared to be the legislative intent of the Town Council that the multiple provisions of these subdivision regulations shall be severable as set forth in the ordinance codifying these subdivision regulations.
- (b) If the application of these subdivision regulations is declared to be invalid by a decision of any court of competent jurisdiction, then:
  - (1) The effect of such decision shall be limited to that area of land immediately involved in the controversy, action or proceeding in which the judgment or decree of invalidity was rendered; and
  - (2) Such decision shall not affect, impair or nullify these subdivision regulations as a whole or the application of any provision thereof to any other lands.

(Prior code 15-3-1)

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## **Sec. 17-1-70. Save harmless; disclaimer of liability.**

- (a) As a condition of subdivision approval, the landowner shall agree to save the Town, its officers, employees and agents harmless from any and all costs, including reasonable attorneys' fees, damages and liabilities which may occur by reason of any work performed upon any subdivision platted under these regulations. This condition shall be contained in the subdivision improvements agreement executed by the landowner as part of the subdivision of land.
- (b) These subdivision regulations shall not be construed as imposing upon the Town, or any official or employee of the Town, any liability or responsibility for damages of any kind to any person or property by reason of these subdivision regulations.

(Prior code 15-3-1)

## **Sec. 17-1-80. Amendments.**

The procedures, standards and criteria contained in these regulations may from time to time be supplemented, changed, modified or repealed, and any such amendment shall be promulgated by using the same procedures set forth in Chapter 16, Article 23 of this Code, by any person, group or agency.

## **Sec. 17-1-90. Presumption of validity.**

All provisions of these subdivision regulations are presumed to be valid and enforceable. In any challenge to the validity of any provision hereof, the burden of proof shall rest with the person bringing the challenge.

## **Sec. 17-1-100. Definitions.**

The following words and phrases shall have the meaning indicated. Terms and phrases not defined herein shall have the meanings indicated by Chapter 16 of this Code. Where terms or phrases are not defined, the commonly understood meanings shall apply.

*Affordable housing* means resident-occupied, deed-restricted affordable housing limited to specific segments of the market by deed restriction. The intended beneficiaries for such housing are people who qualify for affordable housing in major subdivisions and who cannot afford unrestricted market sale or rental prices for housing. Such housing is designed to rent or sell for amounts that are commensurate with Upper East River Valley incomes. Part IV of the *Affordable Housing Guidelines for Major Subdivisions in Crested Butte* describes in detail the requirements and limitations of affordable housing and those who qualify for affordable housing in major subdivisions.

*Alternate transportation facilities* means any structures, land areas or other infrastructure designed to facilitate transportation that does not use, or is not dependent upon, automobiles.

*Area Plan* means the Crested Butte Area Plan, a part of the Crested Butte Land Use Plan.

*Board* means the Town's Board of Zoning and Architectural Review.

*Building Official* means the Town's Building Official or his or her designee.

*Building site* means the lot, tract or parcel area required or used for the construction or location of buildings. This is a generic term for land that may be conveyed to individuals for construction of improvements. Because the Town was originally platted into lots that are three thousand one hundred twenty-five (3,125) square feet, and because these lots are smaller than the minimum residential building site in the Town, the following terms shall apply to areas of land used for building sites depending upon their location or the process used to create them:

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- a. Lot: All land in Blocks 1 through 65 and Lots 17 through 32 in Block 66, will be legally described as the historical Blocks and lots defined on the original Town Plat prior to resubdivision.
  - b. Tract: All land within the Town and outside of the above-described area shall be legally described as Blocks and tracts prior to the resubdivision.
  - c. Parcel: Any combination of or change in lots or tracts, regardless of location, that is the result of resubdividing land through the use of the minor or major subdivision process. After a resubdivision, each building site will receive a parcel designation such as A, B, C or D, and each parcel will be legally described as part or all of a lot or lots, or part or all of a tract or tracts.

*Cluster* means to place all the development on a smaller portion of the property, leaving a larger percentage of the property open and unencumbered with buildings, streets or other development. Clustered is not dispersed.

*Condominium or condominium project* means a building or buildings consisting of separate fee simple estates to an individual air space unit of a multi-unit property, together with an undivided fee simple interest in common elements, as further defined in the Colorado Common Interest Ownership Act (CCIOA).

*Critical facility*, for floodplain purposes, means a structure or related infrastructure, but not the land on which it is situated, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. For examples of such facilities, see Rule 6 of the Standards for Delineation of Regulatory Floodplains, in the Colorado Department of Natural Resources, Colorado Water Conservation Board, Rules and Regulations for Regulatory Floodplains in Colorado, November 17, 2010, effective date January 14, 2011, or as amended.

*Dwelling unit, multi-family* means a building or portion thereof designed exclusively for occupancy by four (4) or more families living independently of each other in separate residential units.

*Dwelling unit, one-family* means a detached building designed exclusively for occupancy by one (1) family, in one (1) residential unit.

*Dwelling unit, two-family* means a structure consisting of a single building designed exclusively for occupancy by two (2) families living independently of each other, in two (2) separate residential units contained therein.

*Easement* means a right granted by the property owner, generally established in a real estate deed or on a recorded plat, to permit the use of land by the public, a public agency, a utility, a business entity or particular persons for a specified purpose or use.

*Excessive slope review area.* See Section 16-10-20 of this Code.

*FAR or floor area ratio.* See Section 16-1-20 of this Code.

*Fen* means a peat-containing wetland (or peatland) that is mainly supported by groundwater discharge. All fens are considered high quality wetlands and require a buffer of at least one hundred (100) feet.

*Final decision* means a written decision on a specific application for subdivision which has been rendered by the Planning Commission or Town Council, as the case may be.

*Front tract or parcel line* means the property line dividing a tract or parcel from the street or, in the absence of a street, from an alley. On a corner tract or parcel, only one (1) street shall be considered as a *front tract or parcel line*, and the shorter street frontage shall be considered the *front tract or parcel line* unless permission otherwise is granted by the Board. On a corner lot which is square, the *front tract or parcel line* shall be determined by the Board.

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*Ghosting* means and refers to a technique for drawing which lightly places objects or lines on a drawing for reference purposes with the proposed development. Usually objects or other lines that are shown by *ghosting* are drawn lightly with dashed lines.

*Groundwater study* means a scientific study that may or may not include a modeling effort which attempts to show groundwater levels in the proposed subdivision and how groundwater would be affected by the proposed project. In lieu of providing a modeling effort, hydrographs and groundwater/ground surface profiles using real elevations of groundwater and water table may be sufficient to describe the groundwater. The study must be adequate to determine compliance with the standards listed in Section 17-8-50 of this Chapter.

*Groundwater study report* means a report that summarizes the groundwater study and explains the study methods, resulting data from the groundwater study, provides an interpretation of these data and discusses how groundwater could be affected by the proposed project. It includes the following sections: introduction, executive summary, methods, results and conclusion.

*Growing season* means the portion of the year when plants are growing. It may vary from year to year and is determined through onsite observations. It has begun when two (2) or more different non-evergreen vascular plant species exhibit one (1) or more of the following indicators of biological activity:

- a. Emergence of herbaceous plants from the ground;
- b. Appearance of new growth from vegetative crowns;
- c. Emergence of coleoptile/cotyledon from seed (e.g., "seed leaves" are visible sprouting from seeds);
- d. Bud burst on woody plants (e.g., some green foliage is visible between spreading bud scales);
- e. Emergence or elongation of leaves of woody plants; and
- f. Emergence or opening of flowers.

The end of the growing season is indicated when woody deciduous plants lose their leaves and/or the last herbaceous plants cease flowering and their leaves become dry or brown.

*Hazardous areas* means and includes floodplains, avalanche areas, rock fall, landslide and debris flow areas, wildfire areas labeled B, C or X on the wildfire map in the Area Plan, thirty-percent or greater slopes and other areas posing a risk to public health or safety.

*High quality wetland* means a wetland that:

- a. Performs at least one (1) of the seven (7) functions listed in the wetland functional analysis (Article 16 of this Chapter) to a high degree (regardless of certainty);
- b. Is a peatland or is immediately adjacent to (abutting) and/or hydrologically connected to a peatland; or
- c. Supports threatened or endangered species (TES).

All high quality wetlands require a buffer of at least one hundred (100) feet from a change in land use. Functions performed by wetlands in the vicinity of the Town provide critical environmental benefits for the Slate River Valley. The Planning Commission is the body that makes the final determination about whether a wetland is high quality based on the wetland delineation report and the recommendations of the Town's wetland consultant.

*Hydrologicgradients* means the elevation differences between the water table in different portions of a wetland study area.

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*Hydrologic study* means a scientific study that attempts to differentiate wetlands from nonwetlands using the protocol outlined in the Technical Standard for Water-Table Monitoring of Potential Wetland Sites (U.S. Army Corps of Engineers 2005).

*Hydrologic study report* means a report that provides a summary of the hydrologic study. It includes an executive summary, a discussion of methods, a summary of the hydrologic data collected in the field, a conclusion and graphs showing depths to groundwater over time.

*Improvement plans* means the plans submitted by the subdivider that describe how the subdivision will be built. They include but are not limited to the following: site plans, landscaping plans, grading plans, utility plans, revegetation plans and dust abatement plans.

*Irrigated wetlands* means those lands that meet the definition of a wetland but that have experienced a modified hydrologic regime as a result of the application of water associated with agricultural (including ranching) or landscaping activities. Irrigated wetlands are identified and regulated the same as wetlands, unless a hydrologic study can unequivocally show that the land is nonwetland.

*Land Use Plan* means the Crested Butte Land Use Plan. This is a master plan for the physical development of the Town, adopted by the Planning Commission, including any areas outside of the Town's boundaries, subject to Sections 31-23-206 and 31-12-105(1)(e), C.R.S., which in the Planning Commission's judgment bear relation to the planning of the Town. Such plan, with the accompanying maps, plats, charts and descriptive matter, shall show the Planning Commission's recommendations for the development of said territory. The Area Plan is a part of the Land Use Plan. As the work of making the whole Land Use Plan progresses, the Planning Commission may from time to time adopt and publish parts thereof. The Planning Commission may amend, extend, delete or add to the Land Use Plan from time to time.

*Local housing* means permanently deed-restricted housing. The intended beneficiaries for Local Housing are people who cannot afford unrestricted sale or rental housing prices. At a minimum, the occupants of Local Housing are a variety of mixed income people who earn at least eighty percent (80%) of their income in Gunnison County. "Earned Income" is defined by the Internal Revenue Service.

*Lot. See building site.*

*Low Impact Development (LID)* means a storm water management strategy that emphasizes the use of natural site features along with small-scale engineered facilities which are distributed in a manner that attempts to replicate natural hydrologic patterns.

*Lower quality wetlands* means wetlands that are not high quality. Evidence of low quality may include, but is not limited to, low diversity of vegetation, stream widening, loss of riparian vegetation or lowered water tables.

*Major subdivision* means a subdivision having the characteristics set forth in Section 17-3-30 of this Chapter.

*Minor subdivision* means a subdivision having the characteristics set forth in Section 17-3-20 of this Chapter.

*Noxious weed* means a plant species defined by the State and the Town as a species that is not indigenous to the State and meets one (1) or more of the following criteria:

- a. Is listed by the Colorado Department of Agriculture as a noxious weed;
- b. Aggressively invades or is detrimental to economic crops or native plant communities;
- c. Is poisonous to livestock;
- d. Is a carrier of detrimental insects, diseases or parasites; and/or
- e. Is detrimental to the environmentally sound management of natural or agricultural ecosystems.

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*Noxious weed management plan* means a report that provides detailed information regarding the presence and management of noxious weeds. It includes the following sections: introduction, executive summary, methods, results of the literature search and an inventory of noxious weeds, proposed weed management actions, conclusion and literature cited. It also includes detailed noxious weed maps and photos.

*One-hundred-year flood* means a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any year (one-percent-chance exceedance probability). The terms *one-hundred-year flood* and *one-percent-chance flood* are synonymous with the term *one-hundred-year flood*. The term does not imply that the flood will necessarily happen once every one hundred (100) years.

*One-hundred-year floodplain* means the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

*Open lands* means lands preserved in perpetuity by the subdivider to be open and free of all buildings or structures or other impediments to being preserved as an open area. Some structures may be allowed such as agricultural barns, but only as agreed to by the Town. *Open lands* typically include but are not limited to the following: unique and/or fragile areas, steep slopes, critical or significant wildlife habitat, historically significant structures and sites, and areas which have historically provided, or are reasonably identified as desirable for, open space or public access to public lands.

*Open space* means areas of land that are free of structures or other buildings. Some open space may be preserved in perpetuity by a landowner to remain open space. Other open space is open but may not be preserved in perpetuity.

*Other water feature* includes ephemeral, intermittent and perennial streams and rivers; lakes; ponds; irrigation ditches and canals; storm water ditches; or any aquatic habitat other than wetlands.

*Parcel*. See *building site*.

*Peatland* means a wetland that has accumulated at least eight (8) inches of organic soil material (partially decomposed plant material). The organic soil material must have an organic carbon content of at least twelve percent (12%) and can include sapric (muck), hemic (mucky peat) and/or fibric (peat) material. All peatlands and wetlands immediately adjacent to (abutting) and/or hydrologically connected to peatlands are considered high quality wetlands and require a buffer of at least one hundred (100) feet from any changes in use. The most common type of peatland in the Crested Butte area is a fen.

*Planning Commission* means the Crested Butte Town Council acting as the Town Planning Commission, pursuant to Ordinance No. 12, Series 1993, and Colorado law.

*Potential high quality wetland* means a naturally occurring wetland whose functions have been impaired or degraded by changes in hydrology (e.g., ditching, diversions or irrigation), removal or other changes in vegetation, metal pollution, stream bed degradation or other factors. In many cases, these impacts can be removed or reversed and the site can be restored to a high quality wetland. All potential high quality wetlands require a buffer of at least one hundred (100) feet from any development.

*Potential threatened and endangered species (TES) habitat* means land that may be occupied or otherwise used by TES (including plants) for reproduction, nesting, denning, hibernating, foraging, migration or other purposes.

*Property*. When Property is capitalized, it means the real property being subdivided and all contiguous land owned or under option by the same owner or entity.

*Proposed subdivision* means the area of land proposed for subdivision.

*Public notice for a public hearing*, unless otherwise provided by this Article, means all of the following:

- 
- a. Notice by the Town. The Town shall publish notice of the date, time, place, reviewing entity and purpose of the hearing, the location of the development, using a commonly known description, and the type of approval requested, in the Town's newspaper of record. Notices shall be published at least two (2) times: at least thirty (30) but not more than thirty-seven (37) days, and a second at least ten (10) days but not more than seventeen (17) days prior to the date of the public hearing. Notice shall also be posted in the Town's official posting place.
  - b. Notice by the subdivider.
    - 1. The subdivider shall post the proposed subdivision at least thirty (30) days prior to the public hearing. The signs posting the lands to be subdivided shall be located on all sides of the proposed subdivision and shall be spaced no more than two hundred sixty-six (266) feet apart on public streets and roads along the perimeter of the proposed subdivision. The public notice shall describe the date, time, place, reviewing entity and purpose of the hearing, the location of the development, using a commonly known description, and the type of approval requested. The signs shall be provided by the Town.
    - 2. The subdivider shall send notification to tenants of the lands to be subdivided and landowners within three hundred (300) feet of the proposed subdivision, by first class mail, at least thirty (30) but not more than thirty-seven (37) days prior to the public hearing to discuss the proposed subdivision. The notice shall state the date, time, place and purpose of the public hearing, the location of the development, using a commonly known description, the type of approval requested and that any questions or comments may be directed to the Planning Department or to the Planning Commission when it meets to discuss the proposed subdivision.
    - 3. An affidavit stating that the subdivider has posted the lands to be subdivided and has notified the proposed subdivision tenants and abutting land owners, in accordance with this Section, shall be submitted to the Planning Director prior to the public hearing. Such affidavit shall be made a part of the record related to the approval or denial of the subdivision plat.

*Public right-of-way* means public property upon which the following may exist:

- a. Streets and alleys as defined in Section 16-1-20 of this Code;
- b. Sidewalks, bridges, pedestrian and other trails, and other related public improvements; or
- c. Other unimproved lands reserved for the uses listed above.

*Raw land* means land that has not previously been subdivided and recorded.

*Recognized environmental conditions* means presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

*Record or recorded* means submission and acceptance of documentation as a public record by the County Clerk and Recorder.

*Residential unit* means one (1) or more rooms, in addition to separate kitchen and bath facilities, intended or designed for occupancy by a family, independent of other families, on a long-term basis.

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*Resource areas* means lands that generally have the following characteristics. They are areas determined by the Town to be valuable to the residents of the community because they preserve important resources in the vicinity of the Town. They include wildlife areas, wetlands and visual resources. The general locations of these areas are mapped on maps that are one (1) inch equals one thousand (1,000) feet and located in the Planning Office. Reduced copies are included in the Crested Butte Area Plan. The maps are titled:

- a. Wetlands Crested Butte Area Plan.
- b. Visual Resources Crested Butte Area Plan.
- c. View Shed Crested Butte Area Plan.

The location of *resource areas* may be clarified during the subdivision review process with more refined information as discussed in the Crested Butte Area Plan.

*Resubdivision* means the proposed subdivision of land depicted within an existing subdivision plat or the original Town Plat.

*Ridgeline* means the crest or brow of a hillside located at the top of a hillside. When traveling up a hillside, the ridgeline is the point where one reaches the top of the hillside and where, if movement is continued in the same direction, one begins to descend down the other side.

*Significant* means important and of consequence. The Planning Commission is the body that determines the issue of significance.

*Special flood hazard area.* See Section 16-1-20 of this Code under *Area of special flood hazard*.

*Stratigraphy*, as used in these subdivision regulations means and refers to profiles of soil. *Stratigraphy* is a geological term. In these subdivision regulations it refers to how the soils are changing across the site. This information is necessary because soils can vary significantly in short distances, which will affect designs for roads, utilities and buildings.

*Street.* See Section 16-1-20 of this Code. For purposes of this Chapter, a *street* shall include avenues, which run in an east-west direction. Streets are local streets unless otherwise stated.

*Street, arterial* means an interregional road conveying traffic between neighborhoods or zone districts. Efficient movement of higher volumes of traffic is the primary function of *arterial streets*. Private access and frontage onto arterial streets should be limited or avoided. An *arterial street* may also accommodate public transit such as buses.

*Street, collector*, as the principal collecting street within residential or commercial areas, carries relatively high traffic volumes and conveys traffic from arterial streets to lower volume streets. Its function is to promote the free flow of traffic. The collector's secondary function is to serve abutting land uses. A *collector street* may also accommodate public transit such as buses.

*Structures.* See Section 16-1-20 of this Code.

*Subdivider* means the applicant for subdivision approval or his or her successor. The *subdivider* shall be the owner of the Property or the authorized representative of the owner.

*Subdivision* means any area of land within the Town, or proposed for annexation into the Town, which is divided into two (2) or more lots, tracts, parcels or separate interests, and any lots, tracts, parcels or separate interests of land which are combined with other lots, tracts or parcels by vacating the existing lot, tract or parcel lines or changing the legal description of the existing lot, tract or parcel, unless such lot, tract, parcel or separate interests are created by the acquisition of an interest in land, without changing the legal description of the existing lot, tract or parcel as a joint tenant or tenant in common. *Subdivision* includes the division of residential or nonresidential zoned land, whether by deed, metes and bounds description, devise, intestacy, lease, map, plat or other recorded instrument. *Subdivision* includes resubdivision, which is the

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division or consolidation of existing recorded lots, tracts or parcels of land into two (2) or more parcels or other divisions of land for the purpose, whether immediate or future, of sale or for development.

*Subdivision cost and expense reimbursement agreement* means an agreement obligating the subdivider to reimburse the Town for all costs and expenses whatsoever incurred by the Town in connection with the subdivision, and annexation if appropriate. A subdivision cost and expense reimbursement agreement shall substantially follow the model subdivision cost and expense reimbursement agreement located in Appendix Q to the Code.

*Subdivision improvements* means all improvements within a subdivision required by the Town or proposed by the subdivider or owner.

*Substantial* means material, considerable in importance, value, degree, amount or extent. The Planning Commission is the body that determines the issue of substantiality.

*Threatened or endangered species (TES)* means plants, plant communities and animal species listed as:

- a. Critically imperiled or imperiled by Colorado Natural Heritage Program;
- b. Endangered, threatened, proposed threatened or candidate for listing by the U.S. Fish and Wildlife Service;
- c. "Sensitive" by the U.S. Forest Service or Bureau of Land Management as defined by the U.S. Forest Service or Bureau of Land Management; or
- d. Threatened, endangered or special concern by the Colorado Division of Wildlife.

*Threatened or endangered species (TES) survey* means a scientific presence/absence survey conducted in areas that contain potential TES habitat. The surveys must be completed during the appropriate season (when the TES species could be expected to occur) and be conducted per the protocol used and/or accepted by the listing agency or agencies.

*Threatened or endangered species (TES) survey report* means a report that summarizes the results of a presence/absence survey conducted in areas with potential TES habitat. The report must include an introduction, executive summary, methods, results and conclusion sections, and be in accordance with the requirements of the listing agency or agencies.

*Town* means the Town of Crested Butte, Colorado.

*Town Council* means the Town Council of the Town of Crested Butte.

*Townhouse or townhouse project* means a building or buildings consisting of fee simple estates to individual units having common vertical walls, together with fee simple title to the land on which each unit is built and any yard and parking space appurtenant to said unit; and any easements for ingress and egress and for installation, replacement, repair and maintenance of utilities appurtenant to a unit. No townhouse or townhouse project shall have common horizontal walls.

*Town Plat* means the official Town Plat of the Town of Crested Butte, dated September 7, 1964.

*Tract. See building site.*

*Turnaround* means a wide area usually found in a dead-end road used to allow emergency and other vehicles to turn around. Turnarounds are usually as wide as cul-de-sacs.

*Wetland delineation report* means a report that provides a detailed description of the wetlands identified in the wetland study area. It also includes an executive summary, project description, the purpose of the report, methods, literature cited, wetland delineation data forms, wetland functional analysis data forms, photographs of the wetlands, and maps of wetlands and other water features.

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*Wetland functional analysis* means a method or protocol used to identify the ecological services provided by or the ecological condition of a wetland. The method used to comply with Town regulations can be found in Article 16 of this Chapter.

*Wetland mitigation plan* means a report that provides a detailed approach to compensating for permanent wetland impacts, as well as a list of specific measures to be employed before, during and after construction, to minimize overall wetland impacts as a result of a project.

*Wetland study area* includes the lands within the proposed subdivision and within one hundred (100) feet of the proposed subdivision. This is the area where wetlands are identified and assessed.

*Wetlands* means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Common wetlands in and around Crested Butte include wet meadows, shallow marshes, willow stands, wet forested areas associated with high groundwater or snowmelt, peatlands, irrigated lands and other areas along water courses or where groundwater is near the ground surface. The procedures used to identify wetlands are those described in the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (U.S. Army Corps of Engineers 2008). All wetlands identified using this methodology are regulated by the Town, regardless of whether they are regulated by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. Also see *high quality wetlands, potential high quality wetlands, peatlands, fen and irrigated wetlands*.

*Zoning map* means the Official Zoning District Map for the Town of Crested Butte, Colorado.

## **ARTICLE 2 Administrative Provisions**

### **Sec. 17-2-10. Subdivision by owner or agent.**

No person other than the owner of land may subdivide land or make application to subdivide land without first having obtained a properly acknowledged power of attorney, granting the power and authority to subdivide such land on behalf of the owner thereof. If the subdivider is not the sole owner of the property, a properly notarized letter shall be submitted, signed by the other owners or an association representing the owners, consenting to or joining in the subdivision application. The letter shall state the representative's name, address and telephone number. If a professional planner or other agent represents the owners at meetings with the Town, or draws the plans, all applications will be signed by the owners.

### **Sec. 17-2-20. Prerequisites for subdivision review and approval.**

- (a) Prior to review of any subdivision, the Property must:
  - (1) Be within the Town limits; or
  - (2) Be the subject of an annexation application.
- (b) No Property shall be subdivided unless it is first zoned.

(Prior code 15-3-3)

### **Sec. 17-2-30. Fees.**

The subdivider shall pay the following fees as a requirement of subdivision approval. Failure to pay any fee, cost or expense required by this Article shall require denial of any application.

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- (1) Review fees.
    - a. Minor subdivision: A fee as established by resolution of the Town Council.
    - b. Major subdivision: In consideration for the Town processing, reviewing and prosecuting the subdivision application, the subdivider shall pay the Town as set forth in a subdivision cost and expense reimbursement agreement obligating the subdivider to reimburse the Town for all costs and expenses whatsoever incurred by the Town in connection with the subdivision review. A subdivision cost and expense reimbursement agreement shall substantially follow the model subdivision cost and expense reimbursement agreement located in Appendix Q to the Code.
      - 1. Sketch plan: A fee as established by resolution of the Town Council plus a fee as established by resolution of the Town Council per proposed residential unit and a fee in an amount established by resolution of the Town Council per two thousand five hundred (2,500) square feet of land to be subdivided for the proposed business, commercial or other use.
      - 2. Preliminary plan: A fee as established by resolution by the Town Council plus a fee as established by resolution of the Town Council per proposed residential unit. A fee in an amount established by resolution by the Town Council plus a fee established by resolution of the Town Council per two thousand five hundred (2,500) square feet of land to be subdivided for the proposed business, commercial or other use.
      - 3. Final plan: A fee as established by resolution of the Town Council.
  - (2) Publication fee. The subdivider shall pay the cost of publication for each publication required prior to submission of all publications to the official newspaper of the Town. If republication is necessary due only to Town error, the Town will pay the republication charge.
  - (3) Mailing fee. The subdivider shall notify land owners within three hundred (300) feet of the proposed subdivision and tenants of the Property as required in the sketch, preliminary and final plan stages. All other mailing expenses incurred by the Town shall be reimbursed by the subdivider within fifteen (15) days of submission of an invoice for costs from the Town.
  - (4) Other fees. The subdivider will also be required to pay for actual, reasonable costs incurred by the Town, for services of the Town Attorney, other professional services, consultants or review agencies which charge for their review, during the review and consideration of the proposed subdivision under these regulations. The Town will send invoices to the subdivider for expenses incurred as the Town is billed. Such invoices sent prior to the next formal decision by the Town must be paid prior to that decision. Invoices not paid prior to the decision shall be cause to deny the application or table the decision until the fees are paid.

### **Sec. 17-2-40. Adequacy of applications.**

- (a) All materials and information, as required by applicable sections of these regulations, including applications, fees, sketches, maps, plats and reports, must be submitted to the Planning Director, complete in every detail.
- (b) Any item or application which is not complete or which is not otherwise in compliance with these regulations shall be placed on a meeting agenda of the Board, Planning Commission or the Town Council. The Planning Director shall determine the compliance of each application and shall be the authority for placing any application or item on an agenda.

(Prior code 15-3-3)

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### **Sec. 17-2-50. Penalty for knowing misrepresentation.**

A subdivider's knowing presentation, submission or representation to the Town of incorrect or false information or data associated with any subdivision application shall be a violation of this Code and shall be punishable as provided in Section 16-24-20 of this Code.

### **Sec. 17-2-60. Changes and erasures on final plat.**

No changes, erasures, modifications or revisions shall be made on the final plat after approval by the Board or Planning Commission, as appropriate, without specific approval, in writing, by the Board or Planning Commission, as appropriate. Any such revisions shall be indicated on the final plat.

## **ARTICLE 3 Major and Minor Subdivisions Generally**

### **Sec. 17-3-10. Types of subdivisions.**

Subdivision types are characterized as minor subdivisions under Section 17-3-20 or major subdivisions under Section 17-3-30. Condominiumization and townhouse subdivisions are subject to Section 17-3-40; and activities that are exempt from these subdivision regulations are subject to Section 17-3-50.

( Ord. No. 13 , § 3, 4-1-2019)

Ord. No. 13 , § 3, adopted April 1, 2019, repealed the former Section 17-3-10, and enacted a new Section 17-3-10 as set out herein. The former Section 17-3-10 pertained to descriptions and derived from Prior code 15-3-4; Ord. 24 § 1, 1998.

### **Sec. 17-3-20. Minor subdivisions.**

(a) A minor subdivision is any one (1) or more of the following activities:

- (1) A re-subdivision creating eight (8) or less parcels from lots that include a building and/or structure, if the following conditions are met:
  - a. The property is zoned;
  - b. Each new re-platted parcel (lot) meets all requirements for the zoning district in which the land is located;
  - c. Each new re-platted parcel (lot) has access to an existing dedicated public street; and
  - d. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat.
- (2) A re-subdivision creating four (4) or less parcels from tracts that include a building and/or structure, if the following conditions are met:
  - a. The property is zoned;
  - b. Each new re-platted parcel (lot) meets all requirements for the zoning district in which the land is located;
  - c. Each new re-platted parcel (lot) has access to an existing dedicated public street; and
  - d. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat.

( Ord. No. 13 , § 4, 4-1-2019)

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(Supp. No. 20)

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Ord. No. 13 , § 4, adopted April 1, 2019, repealed the former Section 17-3-20, and enacted a new Section 17-3-20 as set out herein. The former Section 17-3-20 pertained to characteristics of minor subdivisions and derived from Prior code 15-3-4; Ord. 6 § 2, 1996.

### **Sec. 17-3-30. Characteristics of major subdivisions.**

- (a) A major subdivision is a subdivision or resubdivision which meets one (1) or more of the following criteria:
  - (1) A resubdivision creating more than eight (8) parcels from lots.
  - (2) A resubdivision creating more than four (4) parcels from tracts.
  - (3) A subdivision creating any number of tracts from raw or unimproved land.
  - (4) A resubdivision in the business, commercial or tourist zone districts that:
    - a. Does not conform to all dimensional requirements in the applicable zone district;
    - b. Creates more than the existing number of nonconforming parcels; or
    - c. Creates more than four (4) parcels.
  - (5) A subdivision which is not otherwise a minor subdivision.
- (b) Any application for a P.U.D. which contains more than twenty-five thousand (25,000) square feet of land shall be required to comply with the procedures and requirements of a major subdivision, whether or not a subdivision is actually proposed. This requirement shall not, however, apply to lands platted and zoned within the Town prior to July 20, 2007, which shall be reviewed for approval as a P.U.D. only under the Town's P.U.D. requirements.

(Prior code 15-3-4; Ord. 15 §2, 2007)

### **Sec. 17-3-40. Condominiumization and townhouse subdivisions.**

- (a) Applicability. These regulations set forth requirements for the creation of condominiums and townhouses including the new condominiums or townhouses, changes to existing condominiums or townhouses, and requirements for consolidation of residential condominiums and townhouses.
- (b) Plat requirements. Any condominium or townhouse plat shall conform to the following requirements:
  - (1) Mylars. There shall be at least one (1) mylar and two (2) full sets of blue line prints, the size to be twenty-four (24) inches by thirty-six (36) inches, with a one-half-inch border on the top, bottom and right-hand side, and a one-and-one-half-inch border on the left-hand side. As many sheets as may be necessary may be submitted for a single plat or filing.
  - (2) Cover sheet. The cover sheet shall contain the full name of the condominium or townhouse project.
  - (3) Legal opinion. The cover sheet shall contain a legal opinion, executed by an attorney licensed to practice in the State, evidencing title of the property being dedicated to be in the owner, and showing all exceptions to the title, if any. Such opinion shall be substantially in the following form:

#### Attorney's Opinion

I, (printed name of attorney), being an attorney duly licensed to practice before courts of record in the State of Colorado, do hereby certify that I have examined the title to all lands herein dedicated and shown upon this plat and that title to such lands is in the dedicator free and clear of all liens, taxes and encumbrances, except as follows:

(herein list all exceptions)

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. ;sz=8q;Attorney at Law

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Supreme Court Reg. No.\_\_\_\_

- (4) Dedication. The cover sheet shall contain a notarized dedication of the full legal description of the parcel being dedicated, executed by the owner, as such owner is identified in the legal opinion. Such dedication shall be substantially in the following form:

(FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION  
IN CAPITAL LETTERS)

KNOW ALL PEOPLE BY THESE PRESENTS: That (Full name of Owner), being the owner of the following described real property, hereby declares and executes this Condominium or Townhouse Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), Town of Crested Butte, County of Gunnison, State of Colorado, as follows:

- a. DESCRIPTION. The property description of the real property laid out and platted as (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) shown on this Plat is:

PROPERTY DESCRIPTION

(Full Legal Description)

- b. CONDOMINIUM DECLARATION OR PARTY WALL AGREEMENT. The real property laid out as (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), Town of Crested Butte, Gunnison County, Colorado, is platted and dedicated pursuant to the terms and conditions of the Condominium Declaration or Party Wall Agreement for (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) dated \_\_\_\_\_, 20\_\_\_ and recorded \_\_\_\_\_, 20\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of Gunnison County, Colorado.

IN WITNESS WHEREOF, (Full Name of Owner), executed this dedication this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

(Full Name of Owner)

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

ATTEST: ;sz=8q;(Notary Public)

- (5) Survey certificate. The cover sheet shall contain a certificate prepared by a person licensed in the State as a land surveyor, to the effect that he project is completed as shown on the plat. Such certificate shall be in substantially the following form:

LAND SURVEYOR'S CERTIFICATE

I, (Full name of Land Surveyor), being a registered land surveyor in the State of Colorado, do hereby certify that this Condominium or Townhouse Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS) was made by me and under my supervision and is accurate to the best of my knowledge, that the improvements as constructed conform substantially to this plat, and that this plat fully and accurately depicts the layout, measurements and location of all of the improvements on the real property, the Condominium or Townhouse unit designations, the dimensions of such units and the elevations of the unfinished floors and ceilings (if a Condominium Project).

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. ;sz=8q;Full Name and Address of Land Surveyor with Colorado Registration No. \_\_\_\_\_

(Seal)

- (6) Government approval form. The cover sheet shall contain printed provisions for the acceptance and approval of the plat by the Town Manager or designee and by the County Clerk and Recorder, in substantially the following form:

TOWN OF CRESTED BUTTE APPROVAL

The within Plat of (FULL NAME OF CONDOMINIUM PROJECT OR TOWNHOUSE SUBDIVISION IN CAPITAL LETTERS), is approved for filing this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. By ;sz=8q;Town Manager or designee

ATTEST: ;sz=8q;Town Clerk

(Seal)

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(Supp. No. 20)

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GUNNISON COUNTY CLERK AND

RECORDER'S ACCEPTANCE

(To be placed in the lower right-hand corner of the cover sheet)

This Plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

Book No. \_\_\_\_\_ Page No. \_\_\_\_\_.

Reception No. \_\_\_\_\_ Time: \_\_\_\_\_ Date: \_\_\_\_\_ ;sz=8q;County Clerk

- (7) Lienholder consent. Lienholder consent to the plat as reflected in a title commitment for the property shall be included thereon.
- (8) Scale. All buildings and improvements shall be drawn to scale, and the scale, both written and graphic, is to be identified on each sheet.
- (9) Location map. The plat shall contain a location map, identifying a sufficient part of the surrounding land and streets so as to easily determine the location of the subject parcel within the Town.
- (10) Site plan. The site plan, at a minimum, shall depict with accurate dimensions the following:
  - a. Exterior boundaries of the entire site, with all courses and distances noted thereon, which must conform to the requirements of the zone district or approved general P.U.D. plan within which the project is located;
  - b. Boundaries between townhouse units, the unit designation for each unit and all courses and distances;
  - c. Outline or building footprint for all buildings, structures and improvements located on the property, with the linear measurements of all exterior walls of each building;
  - d. Shortest distances between all buildings and between the buildings and the nearest project perimeter property line, which must conform to the setback requirements for the zone district or approved P.U.D. plan within which the project is located;
  - e. All parking spaces, including properly sized required handicapped accessible spaces, if any, as determined by the Town;
  - f. Ingress and egress to the property and to the buildings located thereon, and from each townhouse unit to the off-street parking spaces appurtenant to that unit, with easements to the same townhouses, where applicable;
  - g. Location and linear measurements of any overhanging features, exterior stairs, and decks on any buildings;
  - h. If a centralized trash storage or dumpster area will serve the project, the location of an on-site, open and unoccupied area at least twelve (12) feet by twelve (12) feet in size, which is accessible at all times;
  - i. If common off-street parking areas are to be utilized for the project, the location of an adjacent area equal in size to at least thirty-three percent (33%) of the off-street parking area, including the driving area within the parking lot and driveways, for snow storage;
  - j. Location of all utility easements; and
  - k. Location and extent of possible future development on the site.
- (11) Designation of direction. Both the location map and site plan shall have north arrows indicated thereon (designating true and magnetic north).

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- (12) Improvements. In addition to the other required on the plat, additional sheets shall be provided portraying the floor plans of all buildings, structures or other improvements located upon the property, depicting at a minimum the following:
- a. All exterior walls, bearing walls and/or party walls, long with the thickness of such walls;
  - b. All exterior doors, windows and sliding or French doors;
  - c. Identification of each individual condominium unit and general and limited common elements appurtenant to each condominium unit; or the appropriate identification of each individual townhouse lot and unit;
  - d. Location of all walls enclosing any condominium or townhouse unit, and any other enclosure, such as a manager's unit, employee unit or amenities;
  - e. Cross-sections of all condominium units, showing the elevation above sea level of each floor as finished; cross-sections and the elevation of each floor for townhouses shall not be required;
  - f. Minimum exterior wall height, minimum vertical distance from the eave line of the roof to the finished grade level and the maximum building height as finished, all of which must conform to the requirements of the zone district or approved general P.U.D. plan within which the project is located;
  - g. The linear measurements of all of the above;
  - h. Location of water and sewer tap-ins to the Town's main lines and of water shut-off valves, all of which shall be readily accessible by the Town; townhouse units must each have separate water shut-offs, sewer cleanouts and electrical meters, which shut-offs and cleanouts shall be readily accessible by the Town, and the location of which shall be approved by the Town; and
  - i. Landscaped areas and the location of any retaining walls.
- (c) Condominiumization within "M" Mobile Home District. The plats of properties being condominiumized within the "M" District, because of the unique character of mobile homes, are exempt from all requirements contained within this Article that otherwise require the depiction of all buildings and improvements located on the property being condominiumized.
- (d) Declaration requirements. The owner of the property being dedicated shall execute and cause to be properly acknowledged a declaration (or party wall agreement for townhouses), prepared in compliance with the purpose, intent and requirements of the Colorado Common Interest Ownership Act (CCIOA), which declaration or party wall agreement shall also contain the following:
- (1) A provision for the ultimate obligation by the condominium association to pay all water and sewer charges for all individual units within the project, and any common element charges in accordance with the rules and regulations of the Town.
  - (2) A clear definition and description of the rights, duties and liabilities of unit owners with respect to the general common elements and the limited common elements, and easements.
  - (3) In the event the condominium or townhouse units are expandable, appropriate provisions relating to the phasing of the project, along with the identification, by legal description, of the property onto which the units and/or project will be expanded, identification of the total maximum number of units and/or maximum floor area which could be constructed within the entire expanded project, and identification of the interest each unit owner will have, by percentages, after the expansion.
  - (4) A provision that, in the event, any unit is owned by more than one (1) person or by a partnership, joint venture, corporation or other such entity, the owners thereof shall designate in writing to the homeowner's association, the name and address of the agent of the owner to whom all legal or official

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assessments, liens, levies or other such notices may be properly and lawfully mailed, and that, upon failure to so designate an agent, the association shall be deemed to be the agent for receipt of notices to such owners.

- (5) Where there is additional square footage permitted on the project or units according to the applicable zone district provisions, a provision for the allocation of such square footage between and among the units.
- (e) Submittal review and approval of plats, declarations and party wall agreements for townhouses or condominiums.
  - (1) All plats, declarations and party wall agreements shall be filed with the Community Development Department for initial review by the Building Department and Town Attorney as to compliance of the document with the Town Code and other applicable law.
  - (2) All fees as established by resolution of the Town Council must be paid before the Town will review the submittals.
  - (3) The Town Manager or designee shall forward the documents to the Town Attorney for review. If the Town Attorney finds that the documents comply with the Town Code and other applicable law, the Town Attorney shall forward to the Town Manager or designee, in writing, a recommendation of approval of such documents. If the documents do not comply with the Town Code and other applicable law, the Town Attorney will notify the applicant with a copy to the Town Manager or designee, of modifications to the documents that are necessary to bring them into compliance. The applicant may then resubmit the amended documents to the Community Development Department after the modifications have been made.
  - (4) If the Town Attorney determines that the documents should be approved except for minor revisions, the Town Attorney may conditionally approve them and notify the applicant with a copy to the Town Manager or designee of the minor revisions. The applicant may then submit the revised documents to the Community Development Department after the revisions have been made.
- (f) Town Manager or designee approval.
  - (1) Upon receipt of a recommendation by the Town Attorney, the Town Manager or designee will review the subject plat and declaration or party wall agreement and either approve the same and execute the plat, or disapprove the plat if the materials fail to satisfy Code requirements. The Town Manager or designee may waive minor differences, considered to be negligible, under the same criteria in as set forth in Subsection 17-3-40(e) above relating to the Town Attorney's recommendation.
  - (2) Upon obtaining all necessary signatures on the final plat and declaration or party wall agreement, the owner or his or her agent shall immediately cause the plat and declaration or party wall agreement to be recorded with the County Clerk and Recorder, and shall forthwith thereafter return one (1) full set of mylars, two (2) full sets of blue line prints and one (1) complete copy of the declaration or party wall agreement to the Town, bearing the recording information thereon.
- (g) Waivers of setbacks. If there are minor differences in dimensions between the setback distances of buildings or structures from lot lines or distances between buildings and those required by the Town Code, the Town Manager or designee may waive the requirements if in his or her discretion deems the differences to be negligible and the applicant has otherwise complied with the intent of the Code.
- (h) Consolidation of residential units. Properties with condominiums and townhouses approved by the Town may be consolidated by following the same process as creating condominiums and townhouses, subject to the Town Manager's or designee's determination that the following requirements are met:
  - (1) Consolidation shall not result in any fewer residential units or reduction in square footages for any existing unit.

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- (2) Consolidation is reflected in a vacation plat approved in the same manner as the plat creating the condominium or townhouse on the subject property.
  - (3) Consolidation does not reduce the number of parking spaces required by any land use approval or the Code.
  - (4) Tap fees previously paid are not reimbursable if the number of taps are reduced.

( Ord. No. 13 , § 5, 4-1-2019)

Ord. No. 13 , § 5, adopted April 1, 2019, repealed the former Section 17-3-40, and enacted a new Section 17-3-40 as set out herein. The former Section 17-3-40 pertained to exemptions and derived from Prior code 15-3-4; Ord. 7 § 1, 2014.

### **Sec. 17-3-50. Exemptions from subdivision regulations.**

- (a) The following applications shall be exempt from these subdivision regulations:
  - (1) Lot-line adjustments. Adjustment of lot lines between previously platted contiguous lots necessary to correct a survey or engineering error, to allow a boundary change between adjacent lots or parcels to relieve a hardship or practical necessity, or to allow transfer of land from a larger conforming lot to a smaller non-conforming lot in order to make both lots conforming. The lot lines between contiguous lots that are under single or separate ownership may be adjusted if the following conditions are met:
    - a. The property owners whose lot lines are being adjusted shall provide written consent to the submittal of the subdivision exemption application.
    - b. The lot line adjustment shall not create the opportunity for further subdivision of either lot to create another new lot for sale or development.
    - c. Each of the adjusted lots shall meet the standards of this Chapter. If either of the lots or structures thereon are non-conforming prior to the proposed adjustment, no lot line adjustment shall be allowed that increases the non-conformity of the lot or structure.
  - (2) Lot combinations. Combinations or mergers of not more than two (2) conforming, previously platted contiguous lots, or two (2) or more non-conforming, previously platted contiguous lots within the same zone district. The lots may be combined or merged if the following conditions are met:
    - a. The lots to be consolidated or merged shall be under single ownership.
    - b. The resulting combined or merged lot shall meet the standards of this Chapter and other applicable ordinances.
  - (3) Vacations. A vacation of a building site, lot, parcel or tract line.
  - (4) Re-plats. A re-platting creating eight (8) or less parcels from vacant lots; and a re-platting creating four (4) or less parcels from vacant tracts, if the following conditions are met:
    - a. All of the new re-platted parcels (lots) meet all requirements for the zoning district in which the land is located;
    - b. All of the new re-platted parcels (lots) will have access to an existing dedicated public street;
    - c. Any utility, drainage, snow storage, parking or other necessary easements are shown on the plat; and
    - d. No subdivision improvements agreement need be prepared or entered into between the applicant and the Town unless the Town Manager or designee determines such an agreement is necessary.

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- (b) Subdivision exemption standards. The Town Manager or designee shall approve an application for a subdivision exemption if it complies with these standards:
    - (1) Compliance with Code. The exemption shall comply with the zone district standards for that specific location and all applicable requirements of the Code.
    - (2) Exemptions shall not create or increase a non-conforming use, structure or lot.
    - (3) No increase in total allowable floor area. The exemption shall not increase the total allowable floor area for the lot or lots greater than the total floor area allowed without the exemption. Any change in allowable floor area permitted by the exemption within these floor area totals shall be consistent with the adjacent properties.
    - (4) No subdivision agreement need be prepared or entered into between the applicant and the Town unless the Town Manager or designee determines such an agreement is necessary.
    - (5) Limitations. A maximum of one (1) subdivision exemption application may be submitted and approved for a specific lot, parcel or subdivision; multiple subdivision exemption applications or successive individual subdivision exemption applications for a specific lot, parcel or subdivision are not permitted.
  - (c) Application contents. An application for a subdivision exemption shall contain the following minimum contents:
    - (1) The required application fee.
    - (2) A narrative statement explaining how the subdivision exemption complies with the zoning district standards and the subdivision exemption standards.
    - (3) A legal description of the property, proof of ownership acceptable to the Town and properly notarized letter signed by the property owner(s) along with the designation, if any, of the owner representative's name, address and telephone number.
    - (4) An improvement location certificate (ILC) survey drawn to scale, dimensioned and wet stamped by a Colorado licensed surveyor.
    - (5) Floor plans of any existing or proposed structures drawn to scale and dimensioned sufficient to allow the Building Official to calculate the floor area ratio.
    - (6) A proposed exemption plat drawn to scale and dimensioned in general accordance with Appendix I Required Wording on Minor Subdivision Final Plat with a certificate showing approval of the plat by the Town Manager or designee.
    - (7) Any other information, documents or certificates reasonably deemed necessary by the Town Manager or designee.
  - (d) Application, review and approval procedure. Subdivision exemptions shall be approved in accordance with the following procedures:
    - (1) Pre-application conference. A pre-application conference with Community Development staff is recommended, but optional, prior to submission of the application.
    - (2) Submission of application. Applicant shall submit an application that contains those materials specified above in Section 17-3-50(c) to the Community Development Department.
    - (3) Review and approval. The Community Development Department and Town Attorney shall review the application and all relevant materials to determine whether the application complies with the review conditions and standards of this Section and the Town Manager or designee shall issue a written approval, approval with conditions or denial of the application based on compliance with the requirements of this Section 17-5-50.

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- (4) Recording of exemption plat. Within ninety (90) days from the date of the subdivision exemption approval, applicant shall submit two (2) mylar copies of the exemption plat, suitable for recording, to the Community Development Department. The Town Manager or designee shall review the exemption plat to ensure that it complies with the terms and conditions of the approval and then shall obtain signatures for all of the certificates on the plat. The signed exemption plat shall be recorded, at applicant's expense, in the records of the Gunnison County Clerk and Recorder.

( Ord. No. 13 , § 6, 4-1-2019)

## **ARTICLE 4 Minor Subdivisions**

### **Sec. 17-4-10. Application for Building Official review.**

All minor subdivision applications must be reviewed for approval by the Building Official or the Board as set forth in Sections 17-4-20 and 17-4-30 below. All applications for approval of a minor subdivision shall be processed by making an application to the Building Official. The application shall include the following minimum information:

- (1) The required application fee.
- (2) The legal description of the Property and proof of ownership of the Property acceptable to the Town.
- (3) Location Improvement Certificate certified by a Colorado licensed surveyor.
- (4) Floor plan of any existing structures sufficient to allow the Building Official to calculate the Floor Area Ratio (FAR).
- (5) A map of the proposed subdivision parcels sufficient to determine the size and area of each proposed parcel, and describing each such parcel as a portion of a lot, tract or parcel, or lots, tracts or parcels on the Town Plat. The map shall also identify the location of all public rights-of-way, the location and size of the vehicular access to each parcel and to each structure, and the location of all utilities and all public facilities.
- (6) A narrative statement describing the following:
  - a. How fire protection will be provided;
  - b. Whether there is any potential for damage to public or private property by fire, flood erosion or snow slides and what mitigation measures will be undertaken to minimize such damage;
  - c. How emergency access will be provided;
  - d. How flood protection will be provided; and
  - e. A description of the proposed access to each proposed parcel.
- (7) A copy of the restrictive covenants that have been recorded and affecting the lots, tracts or parcels that are the subject of the resubdivision.
- (8) Any other information or documents requested by the Town that are necessary to render a decision under the criteria of Sections 17-4-20 or 17-4-50 below, as applicable.

### **Sec. 17-4-20. Procedure for Building Official approval.**

- (a) The Building Official may approve the resubdivision if he or she determines from the above information that:

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- (1) All such proposed parcels are divided by, or parallel to and the same length as, the original lot, tract or parcel lines on the Town Plat.
  - (2) All of the developed proposed parcels have the maximum yard setbacks which can be required for the existing structures.
  - (3) All structures on proposed parcels do not exceed the FAR allowed "as a matter of right" in the subject zone district;
  - (4) All of the proposed area parcels conform with the dimensional characteristics of lots or tracts in the applicable zone district of Chapter 16 of this Code.
  - (5) The minor subdivision application creates no more than two (2) parcels.
  - (6) None of the proposed parcels violates Section 17-4-50 below or Sections 16-11-160 or 16-19-70 of this Code.
- (b) The Building Official's decision shall be in writing, shall list the reasons for the decision and shall be sent to the subdivider no more than thirty (30) days after receipt of a complete and conforming application.

(Prior code 15-3-5; Ord. 24 §3, 1998)

### **Sec. 17-4-30. Application for Board review.**

- (a) If the Building Official determines that any of the above criteria has not been met, or if the above required minimum information is deemed by the Building Official to be insufficient to make the required determinations, the Building Official shall refer the matter to the Board for consideration. In such case, the applicant shall provide to the Town the information and documentation contained in Subsection (b) below.
- (b) A final plat of the resubdivision proposal shall be provided. The final plat shall be prepared by a Colorado licensed surveyor on twenty-four-inch-by-thirty-six-inch sheet size and shall contain the following:
  - (1) Scale no less than one (1) inch to thirty (30) feet;
  - (2) A legal description of the existing lots or tracts and proposed parcels within the resubdivision, identifying the proposed parcels as parts of lots or tracts and blocks on the Town Plat;
  - (3) All Town boundary (if applicable), lot, tract and parcel lines, easements and rights-of-way;
  - (4) All such lines with exact lengths and land bearings, which shall close within the limits of one (1) in ten thousand (10,000);
  - (5) The location of any existing and proposed public rights-of-way, having their width, curves, radii and other dimensions clearly shown;
  - (6) The existing and proposed names of streets within the resubdivision;
  - (7) The location of any existing and proposed snow storage areas;
  - (8) The proposed use of parcels within the resubdivision; and
  - (9) The name of the subdivision or the original Town Plat, within which the property lies and the wording required in Appendix I to this Code.

(Prior code 15-3-5; Ord. 11 §3, 1997; Ord. 4 §1, 2009)

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### **Sec. 17-4-40. Procedure for Board review.**

- (a) Referral to Board. Upon a determination by the Building Official that an application is complete, the Building Official will refer the proposal to the Board for determination and cause the required notice to be published.
- (b) Public hearing. The Board shall hold a public hearing on the proposed resubdivision to receive written or oral comment. Notice of the time, place and purpose of the public hearing shall be published in the official Town newspaper at least ten (10) days prior to the date set for the public hearing. The notice shall describe the resubdivision location by lots or tracts and blocks, and street address, if possible. The Building Official shall cause notices of the proposed resubdivision to be posted on the subject property for the same ten-day period.
- (c) Approval by Board. No minor subdivision shall be approved unless the Board finds that it complies with all of the criteria in Section 17-4-50 below. If the resubdivision does not comply with all of the above-referenced criteria, it shall either be approved with conditions which assure compliance with all such criteria, continued to a date certain or denied.
- (d) Recording final approval. If a final plat has been required to be provided pursuant to Section 17-4-30 above, the finally approved final plat must be certified by the Board and Town Council as being in compliance with the requirements hereof and recorded in the real property records of the County. For all other final minor subdivisions approvals, the Building Official may require the applicant to record a document in the real property records of the County which sets forth the previous legal description of the subject Property, and the new legal description to be used following said final approval.

(Prior code 15-3-5; Ord. 6 §2, 1998; Ord. 24 §3, 1998; Ord. 4 §1, 2009)

### **Sec. 17-4-50. Criteria for review and approval of minor subdivision.**

- (a) No minor subdivision shall be approved unless the Board finds that it complies with all of the following criteria. The resubdivision must:
  - (1) Comply with all applicable zoning requirements of the zone district in which the resubdivision is located.
  - (2) Have a front parcel line on a street only, and such parcel access shall have the following characteristics:
    - a. Said front parcel line must be at least twenty-five (25) feet long or the minimum lot width for the applicable zone district, whichever is shorter;
    - b. The vehicular access and parking to any primary structure on a parcel shall be from a street, and no extraordinary measures shall be utilized to provide said access;
    - c. Any such access must be from a street, must be a minimum of twenty-five (25) feet wide along its entire length, and must be owned in fee simple by the owner of the parcel being accessed;
    - d. The only exception to this requirement for access from a street is on Elk Avenue, where Section 16-16-30 of this Chapter states that no vehicular access shall be allowed from Elk Avenue directly to any off-street parking;
    - e. Notwithstanding the foregoing, the Board may permit such vehicular access to structures existing on January 1, 1992, to be not less than sixteen (16) feet wide when serving one-family dwelling units, and twenty-two (22) feet wide when serving multi-family dwelling units, provided that such access shall not exceed one hundred fifty (150) feet in length, if the Board determines that the twenty-five (25) foot minimum access requirement would be unreasonable based upon the structure and lot configuration;

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- f. Vehicular access to a primary structure from an alley, including the access required pursuant to this Paragraph (2), may be approved by the Board only if either one (1) of the following conditions exists:
1. The primary vehicular access existed from an alley prior to January 1, 1992; or
  2. The division between resubdivision parcels is a stream or similar physical barrier preventing vehicular access from the street. In such case, the applicant shall provide additional land to create an alley at least twenty (20) feet wide from the subject parcel to the nearest Town street and upgrade the alley to Town standards or, in the absence thereof, to the approval of the Public Works Director;
- (3) Provide for underground utilities to each building site.
- (4) Provide for adequate fire and flood protection and emergency access.
- (5) Not increase the potential for breach of the public safety, or damage to public or private property by fire, flood, erosion or snow slides.
- (6) Not create congestion, automotive or pedestrian safety problems or other traffic hazards.
- (7) Not use easements across another lot, tract or parcel for private primary vehicular access.
- (8) Be designed in a manner that directs the placement of roads, utilities and structures away from any unstable soils, or mitigates the effect of unstable soils, geologic hazards and other site conditions so as to minimize the potential for breach of the public safety or damage to public or private property.
- (9) Not create significant adverse effects to public facilities, rights-of-way or utilities.
- (10) Not create significant adverse impacts on the use of adjacent property.
- (11) Provide vehicular access easements onto Town streets for use by those lots, tracts or parcels which do not abut an avenue if within the B2 Business District.
- (12) Otherwise be consistent and comply with the objectives, purposes, conditions and requirements of these subdivision regulations and Chapter 16 of this Code.
- (13) Execute a subdivision improvements agreement memorializing the subdivider's or owner's obligation and agreement to construct, at the subdivider's or owner's cost and expense, all public and private utility and street improvements in accordance with the Town's utility and street standards. The subdivision improvements agreement shall be in substantial conformance with the subdivision improvements agreement attached as Appendix J to this Code, and shall be approved as to form by the Town Attorney.
- (b) Any of the requirements of these subdivision regulations may be varied or waived, upon a referral by the Board of Zoning and Architectural Review to the Planning Commission, and a finding by the Planning Commission that the subdivider will be providing amenities to the Town over and above those already required by these regulations, that are of such benefit to the Town that requirements of these regulations may be varied or waived in return for the receipt of such amenities.

(Prior code 15-3-5; Ord. 1 §1, 2002; Ord. 4 §1, 2009)

## **ARTICLE 5 Major Subdivisions**

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### **Sec. 17-5-10. Preapplication conference procedure.**

- (a) Preapplication conference. A conference between the subdivider and appropriate Town staff shall take place prior to the submission of any application for subdivision review. The purpose of the conference is to acquaint the Town with the subdivider's intentions concerning the proposed subdivision, to acquaint the subdivider with the substantive and procedural requirements of these subdivision regulations and to identify policies which create opportunities or pose constraints for the proposed subdivision.
- (b) Preapplication submittals. The subdivider shall provide a scale drawing of the Property indicating the following for review at the preapplication conference:
  - (1) Proposed lot, tract or parcel and block configurations;
  - (2) The proposed density, number of units and population;
  - (3) On-site and off-site traffic circulation;
  - (4) Proposed land uses;
  - (5) The one-hundred-year floodplain as described on the Federal Emergency Management Agency or its successor agency maps;
  - (6) Any wetlands on the property as described in *Wetlands of the Crested Butte Region, 1993*, or as otherwise identified if not within the study area of that publication;
  - (7) Known, potential or suspected hazardous conditions; and
  - (8) Other information pertinent to the issues under consideration.
- (c) Second preapplication conference. Following the initial preapplication conference and, at the discretion of the Planning Director, a second preapplication conference may be held where referral agencies as described in Subsection 17-5-40(c) below are asked by the Planning Director to attend to discuss issues that may be substantial during review of the subdivision proposal.
- (d) Comments are preliminary. Any comments made by any member of the staff during the preapplication conferences are only preliminary in nature. Formal comments will not be made by the Town until after the sketch plan application is submitted and abutting property owners and referral agencies have had an opportunity to formally respond.

(Prior code 15-3-6)

### **Sec. 17-5-20. Sketch plan procedure.**

A subdivider seeking approval of a sketch plan shall follow the steps outlined below.

- (1) Submit sketch plan. The subdivider shall submit a complete sketch plan application to the Planning Director containing those materials listed in Section 17-5-30 below.
- (2) Staff review and referral. The Planning Director shall review the application to determine whether it is complete and complies with the requirements of the existing or proposed underlying zone districts, these subdivision regulations and the Town's Land Use Plan.
  - a. If the Planning Director finds the application is complete and so complies, the application shall be assigned an agenda date and referred to other appropriate departments for their comment.
  - b. If the application is incomplete or does not comply, it shall be returned to the subdivider and not be assigned an agenda date; and no further action shall be taken until its defects are remedied.

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The Planning Director shall provide written comments to the subdivider detailing the reasons why the application is incomplete.

- (3) Public notice. Unless otherwise provided by this Article, public notice shall be provided prior to all public hearings required by this Article, as defined in Section 17-1-100 of this Chapter.
- (4) Staff referral. Prior to completing the staff report to the Planning Commission, the Planning Director shall refer the sketch plan to the Board of Zoning and Architectural Review (Board) and/or any of the following referral agencies for thirty (30) days for their review, comments and recommendations concerning said sketch plan:
  - a. Gunnison County Board of County Commissioners;
  - b. Gunnison County Planning Commission;
  - c. Mountain Express;
  - d. Town of Mt. Crested Butte;
  - e. Colorado Division of Wildlife;
  - f. Gunnison County Trails Commission;
  - g. RE1J School District;
  - h. Crested Butte Fire Protection District;
  - i. Colorado Geologic Survey;
  - j. U.S. Army Corps of Engineers; and/or
  - k. Other relevant agencies or entities.
- (5) Staff report. Prior to the public hearing to consider the application, and after the Board and referral agencies have submitted comments about the proposed subdivision, after the thirty-day review period, the Planning Director shall prepare and forward a report to the Planning Commission summarizing whether the plan is in general conformance with:
  - a. These subdivision regulations;
  - b. The existing or proposed underlying zone districts;
  - c. The Town's Land Use Plan;
  - d. The Town's Transportation Plan;
  - e. The Town's Noxious Weed Management Plan;
  - f. The Town's Energy Action Plan;
  - g. The Town of Crested Butte Parks and Recreation Regional Master Plan;
  - h. The Town's Design Guidelines, and
  - i. The Gunnison County Trails Master Plan.

The Planning Director shall have at least thirty (30) days to complete the review of specific recommendations by the Board and/or referral agencies before submitting the staff report to the Planning Commission.

- (6) Public action by Planning Commission.
  - a. The sketch plan public hearing will be reasonably scheduled with the Planning Commission so as to allow adequate time for the staff to prepare and distribute the staff report as determined by the Planning Director.

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- b. Information concerning any aspect of the proposed subdivision may be discussed at the sketch plan review.
  - c. Prior to any comments by the Planning Commission, or as a result of discussions with the subdivider, the Planning Commission may, at its discretion, request that the sketch plan be reviewed by the Board and any of the following referral agencies to address questions of the Planning Commission and for specific recommendations concerning said questions and the sketch plan:
    - 1. Gunnison County Board of County Commissioners;
    - 2. Gunnison County Planning Commission;
    - 3. Mountain Express;
    - 4. Town of Mt. Crested Butte;
    - 5. Colorado Division of Wildlife;
    - 6. Gunnison Trails Commission;
    - 7. RE1J School District;
    - 8. Crested Butte Fire Protection District;
    - 9. Colorado Geologic Survey;
    - 10. U.S. Army Corps of Engineers; and/or
    - 11. Other relevant agencies or entities.
  - d. In the event of such a referral by the Planning Commission, the Planning Commission shall, at its discretion, table further discussion about the sketch plan to a date certain, or continue discussing parts of the sketch plan that have not been sent to the Board or a referral agency for specific recommendations. The Town shall have at least thirty (30) days to complete the review of specific recommendations by the Board or a referral agency before assigning a referred item to an agenda date for further consideration by the Planning Commission.
  - e. The Planning Commission shall conduct a public hearing to review the conformance of the sketch plan with all applicable:
    - 1. Dedication requirements in Section 17-5-90 below;
    - 2. Proposed capital expansion recovery system fees to comply with Section 17-5-100;
    - 3. General and specific design and improvement standards set forth in Articles 6 through 13 of this Chapter;
    - 4. The existing or proposed underlying zone districts;
    - 5. The Town's Land Use Plan;
    - 6. The Town's Transportation Plan;
    - 7. The Town's Noxious Weed Management Plan;
    - 8. The Town's Energy Action Plan;
    - 9. The Town of Crested Butte Parks and Recreation Regional Master Plan;
    - 10. The Town's Design Guidelines; and
    - 11. The Gunnison County Trails Master Plan.

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The Planning Commission is authorized to take action on the sketch plan and may either approve, approve with conditions or deny the sketch plan, based on specific findings of fact concerning substantial compliance of the proposed subdivision with this Article. The Planning Commission is also authorized, at its discretion or upon request by the subdivider, to table the proposed sketch plan to a date certain, so that the subdivider may make modifications or provide additional information before the Planning Commission takes action. If the subdivider submits such modifications or additional information for approval, the Town shall have at least twenty-one (21) days to complete the review of this material before assigning an agenda date for further consideration by the Planning Commission.

- (7) Effect of sketch plan approval. Approval of the sketch plan, with or without conditions, shall constitute authorization for the subdivider to prepare and submit a preliminary plan in accordance with any conditions included in the sketch plan approval. Sketch plan approval shall be effective for a maximum of twelve (12) months unless, upon application for good cause, the Planning Commission grants an extension of time. Submittal of a complete preliminary plan application, even if for less than the entire area covered by the sketch plan, shall extend the duration of the sketch plan approval to a date six (6) months following the date of submittal of the preliminary plan. Approval of the sketch plan shall not be deemed to provide the subdivider with the right to begin conveying real property interests or to begin any subdivision improvements.
- (8) If sketch plan review is suspended, for any reason, for more than six (6) months, the subdivider shall, at the Town's election, submit a new sketch plan application with a current date for review, and the sketch plan procedure shall begin again at Paragraph (1) above after the Town confirms that all subdivision cost and expense reimbursement agreement balances have been paid and any other expenses incurred by the Town during the original sketch plan review have been paid.

### **Sec. 17-5-30. Sketch plan submittals.**

A sketch subdivision plan submittal shall contain, at a minimum, the following:

- (1) Application. The application shall consist of the Subdivision Application Form, attached as Appendix K to this Code.
- (2) Legal description. The sketch plan shall contain the legal description of the property and the legal description of the proposed subdivision.
- (3) Site plan. The sketch plan site plan shall consist of the following:
  - a. The name of the proposed subdivision (the subdivision name shall be followed by the term "sketch plan"):
    - 1. The name shall consist of alphabetic characters only.
    - 2. If the land to be subdivided is part of an existing subdivision, the name shall include the name of the existing subdivision.
    - 3. The name of the proposed subdivision shall not be the same or similar to any name used in a recorded plat in the County, unless the subdivision is part of an existing subdivision.
  - b. Date of preparation, written and graphic scale, and north arrow designated as true north (each revised drawing shall have a new date).
  - c. Contour lines related to an established benchmark or other datum approved by the Town Engineer and having contour intervals as follows:
    - 1. For slopes less than ten percent (10%), one-foot contours.
    - 2. For slopes ten percent (10%) or greater, five-foot contours.

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- d. Schematic representation of the proposed subdivision, including:
    - 1. General location, type, and number of all residential and commercial units.
    - 2. Existing or proposed zoning.
    - 3. Location, shape, and size of all:
      - a) Residential and commercial tracts or parcels;
      - b) Recreation areas;
      - c) Open lands;
      - d) Off street parking;
      - e) Schools;
      - f) Trails;
      - g) Snow storage areas;
      - h) Other public land; and
      - i) Sidewalks.
    - 4. Proposed landscaping of public lands or street rights-of-way or utility corridors.
  - e. The proposed internal vehicular, public transportation and pedestrian access schemes and the existing surrounding vehicular, public transportation and pedestrian access schemes which provide access to the Property.
  - f. All recorded easements and rights-of-way which are within the proposed subdivision, within one hundred (100) feet of the proposed subdivision or which could affect the proposed subdivision.
  - g. All existing structures, utilities and other physical features which could affect the proposed subdivision.
  - h. Significant natural, human-made and topographic features, including but not limited to:
    - 1. Rock outcroppings or other prominent geologic features.
    - 2. Drainage ways and ditches.
    - 3. Agricultural ditches.
    - 4. Bodies of water and other water features.
    - 5. The location and direction of all water courses and the location of all areas subject to the one-hundred-year floodplain, using the procedures described in Rule 7, Standards for Delineation of Regulatory Floodplains, in the Colorado Department of Natural Resources, Colorado Water Conservation Board, Rules and Regulations for Regulatory Floodplains in Colorado, November, 17, 2010, effective date January 14, 2011, or as amended, within the Property or within one hundred (100) feet of the Property, and the estimated flow rate used in determining the one-hundred-year floodplain location.
    - 6. Natural hazards.
    - 7. A preliminary analysis of the site concerning any existing or potential hazardous conditions, including but not limited to soils, mine tailings, mine drainages, petroleum residue, landfills, underground tanks, etc.

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8. Wildlife habitat areas, including TES habitat. If the proposed subdivision contains potential habitat for TES, the subdivider shall conduct a TES survey. The survey shall be completed during the appropriate seasons (when the TES species could be expected to occur) and be conducted per the protocols used and/or accepted by the listing agency or agencies. The results of the survey must be described in a TES survey report that includes the following sections: introduction, executive summary, methods, results and conclusion.
  9. The location, size and type of existing vegetation, including:
    - a) The location of willows and other shrubs at least three (3) feet in diameter measured at the widest point of the canopy or crown;
    - b) Trees with a trunk diameter of six (6) inches or more measured four and one-half (4.5) feet above the ground;
    - c) An indication of which trees and shrubs are proposed to be removed. In areas where large groves are to remain undisturbed, single shrubs or trees need not be located;
    - d) The proposed limits of any excavation and/or regrading in the proposed subdivision; and
    - e) Noxious weeds within the proposed subdivision and within at least one hundred (100) feet of the proposed subdivision. The locations should be shown on a map at one (1) inch equals two hundred (200) feet (or similar) scale.
  10. Wetlands.
    - a) Wetlands within the proposed subdivision and within at least one hundred (100) feet of the proposed subdivision are hereafter referred to as the wetland study area. Wetlands must be identified using the procedures described in the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (U.S. Army Corps of Engineers 2008).
    - b) The wetlands in the wetland study area must be described in a wetland delineation report which includes:
      - 1) Introduction - a brief project description and purpose for the report;
      - 2) Executive summary - a summary of the whole report including significant findings and recommendations;
      - 3) Site description - a summary of the general ecological setting and specific site location;
      - 4) Methods - information on literature review, fieldwork, wetland classification, mapping techniques, etc.;
      - 5) Wetland description - detailed accounts of vegetation, hydrology and soil conditions; justification for wetland boundaries; area and classification of all wetlands; and a summary of the wetland functional analysis;
      - 6) Literature cited;
      - 7) Wetland delineation data forms;
      - 8) Wetland functional analysis data forms;
      - 9) Photographs of each wetland; and

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- 10) Detailed map of the wetlands and other water features at one (1) inch equals two hundred (200) feet scale (or similar).

If irrigated wetlands are present in the wetland study area and the subdivider would like to attempt to show that the wetlands are non-wetlands, then a hydrologic study will be required. The study must include the installation and monitoring of shallow groundwater wells using the protocol described in the Technical Standard for Water-Table Monitoring of Potential Wetland Sites (U.S. Army Corps of Engineers 2005). If the site does not have at least fourteen (14) consecutive days of flooding, ponding or a water table within twelve (12) inches of the ground surface during the growing season in a normal year, with the source of irrigation turned off, then it does not meet the wetland hydrology criterion and may be considered non-wetland. Multiple years of monitoring may be necessary to make a determination. At the end of the monitoring period, the subdivider must prepare and submit a hydrologic study report that includes a discussion of the methods used to install and monitor the wells, a summary of the well data with graphs showing the depth to groundwater over time and a conclusion. The duration of monitoring and final wetland determination will be made by the Planning Commission.

11. Groundwater. If wetlands are present within the proposed subdivision or within one hundred (100) feet, a groundwater study that provides details of how groundwater flows through the proposed subdivision is required. It must be adequate to determine compliance with the standards listed in Section 17-8-50 below. The results of the groundwater study must be provided in a groundwater study report that includes an introduction, methods, results, and conclusion (see Definitions).

- (4) Sketch plan facility plan. The sketch plan facility plan shall show the general location of the following:
- a. Water supply lines, treatment facilities and storage;
  - b. Waste water disposal lines and treatment facilities;
  - c. Irrigation ditch system and storage;
  - d. Other utilities;
  - e. Drainage;
  - f. Fire protection facilities;
  - g. Storm water facilities;
  - h. Other public facilities;
  - i. An estimate by the subdivider of the number of gallons per day required of the water system (see Section 17-11-370 of this Chapter); and
  - j. An estimate by the subdivider of the number of gallons per day required of the waste water system.
- (5) Soils report.
- a. The sketch plan shall include evidence establishing soil suitability, in the form of a report prepared by a registered professional engineer specializing in geotechnical engineering, in accordance with the "Soil Survey of Gunnison Area, Colorado" by the United States Department of Agriculture, Soil Conservation Service "Soil Survey," which shall minimally include a description of the subdivision site soil, including:
    1. Types.

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2. Locations.
  3. Characteristics supported by:
    - a) Soil maps; and
    - b) Soil logs.
  4. Data from the "Soil Survey" and other information needed to determine:
    - a) Soils suitability for proposed development; and
    - b) Constraints on development based on the findings.
  5. Analysis and evaluation of such descriptive information.
  6. The structural characteristics of the soil as they relate to the proposed uses and development.
    - b. Test borings should be sufficient in number to identify the different soils types within the proposed subdivision. The soils information should establish in reasonable detail the stratigraphy, together with a basic knowledge of the engineering properties of the overburden and bedrock formations which will be affected by or will have an effect upon the new structures, roads, utilities and other facilities in the proposed subdivision. A nontechnical discussion shall be provided to describe what to do about the identified soils that may pose problems during construction of the subdivision infrastructure or private structures.
- (6) Vicinity map. The sketch plan shall include a vicinity map indicating the location of:
- a. The Property and the proposed subdivision within it;
  - b. Commonly known landmarks;
  - c. Roads;
  - d. Abutting land uses; and
  - e. Existing zone districts in which the proposed subdivision and adjacent properties are located.
- (7) Narrative. The sketch plan shall include a narrative description which provides:
- a. A conceptual description of the proposed land uses and densities for the Property;
  - b. A conceptual description of the proposed number of residential and commercial units on each proposed tract or parcel;
  - c. A conceptual description of the proposed zoning, landscaping and road and utility plans for the proposed subdivision;
  - d. A written report setting forth the findings of the floodplain study, if applicable;
  - e. The name and address of the owner of any mineral estates, including mineral leases, if any, underlying the proposed subdivision;
  - f. The names and addresses of all property owners within three hundred (300) feet of the proposed subdivision;
  - g. The wetland delineation report, if applicable;
  - h. The hydrologic study report, if applicable;
  - i. The TES survey report, if applicable; and
  - j. The groundwater study report, if applicable.

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- (8) An executed subdivision cost and expense reimbursement agreement.
  - (9) Number of copies. Four (4) copies of the above maps, plans and narrative information shall be submitted to the Town. Additional copies shall be provided by the subdivider, as determined by the Planning Director, for submittal to other agencies or if additional copies are needed for the Planning Commission. The subdivider shall provide at least three (3) copies for the Planning Commission and the public at all public meetings. All copies shall be provided by the subdivider.

#### **Sec. 17-5-40. Preliminary plan procedure.**

- (a) Presubmittal meeting. The subdivider may request a presubmittal conference with the Planning Director, prior to submission of a preliminary subdivision plan. The purpose of the meeting is to acquaint the subdivider with the substantive and procedural requirements of these subdivision regulations for the preliminary plan procedure and to make recommendations to the subdivider concerning issues deemed important by the Planning Director at this stage, including identification of significant views and natural vistas.
- (b) Submittal of preliminary plan. The subdivider shall submit a complete preliminary plan application to the Planning Department containing those materials listed in Section 17-5-50 below.
- (c) Staff review and referral.
  - (1) If the Planning Director finds that the application is complete, the application shall be assigned a Planning Commission agenda date and shall be referred to the following departments and agencies for their review, comments and recommendations unless the Planning Director finds that the proposed subdivision is not related to the issues addressed by a particular referral agency listed. The subdivider will be required to provide one (1) copy of the preliminary plan application for each referral:
    - a. Public Works Department;
    - b. Building Department;
    - c. Mountain Express;
    - d. Mt. Crested Butte;
    - e. Colorado Division of Wildlife;
    - f. Gunnison Trails Commission;
    - g. RE1J School District;
    - h. Crested Butte Fire Protection District;
    - i. Gunnison County Planning Commission;
    - j. Colorado Geologic Survey;
    - k. U.S. Army Corps of Engineers; and
    - l. Any other agency or entity as determined by the Town.
  - (2) The Planning Director may, as appropriate, also distribute copies of the submittals to the following agencies that may be concerned with a matter or area of local interest which could be affected by the subdivision, for comment:
    - a. Colorado Department of Transportation, when the proposed subdivision is adjacent to or in sufficient proximity to affect or may require a state right-of-way, accel/ decel lane or other State approval or highway facility;

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- b. United States Forest Service;
  - c. Colorado State Forest Service;
  - d. Bureau of Land Management;
  - e. Soil Conservation District;
  - f. Colorado Water Conservation Board for designation and approval of any one-hundred-year floodplain; or
  - g. The appropriate housing authority.
- (3) The Planning Director shall instruct each of the departments and agencies to which the preliminary plans are distributed that all comments and recommendations must be submitted to the Planning Department within thirty (30) days after receipt of such referral materials, or the plan will be deemed to have been approved by the referral department or agency as proposed by the subdivider.
- (d) Meeting with review departments and/or agencies. If the Planning Director determines that the impacts of a proposed subdivision are of such magnitude as to require a meeting of the subdivider with any of the referral departments or agencies, the Planning Director shall call a meeting to discuss the proposed subdivision with the affected parties.
- (e) Incomplete application. If the application is incomplete and therefore does not comply with the requirements of these subdivision regulations, it shall be returned to the subdivider and shall not be assigned an agenda date; and no further action shall be taken until its defects are remedied.
- (f) Engineering review. If the Planning Director refers the submittals to other Town departments, the departments shall provide a written report to the Planning Commission assessing substantial compliance of the preliminary plan with the appropriate street and utility standards, making recommendations for compliance and reporting on any other areas of engineering concern. The Town, at its discretion and as deemed necessary, may solicit additional engineering services to be performed by the Town Engineer.
- (1) At the time the preliminary plan is submitted to the Town for review, the Town will estimate the costs of additional engineering review. The subdivider shall pay these costs in accordance with Section 17-2-20 of this Chapter. No preliminary plan shall be placed on an agenda for consideration by the Planning Commission until such estimated costs are paid.
  - (2) If the actual costs of engineering review are less than the estimated costs, any excess funds paid to the Town account shall be returned to the subdivider. If the actual costs exceed the estimated costs, the subdivider shall pay the additional costs within fifteen (15) days of submission of a bill for costs by the Town.
- (g) Staff report. Prior to the public hearing to consider the preliminary plan application, the Planning Director shall prepare and forward a written report to the Planning Commission summarizing any review agency comments received and evaluating the proposed preliminary plan's compliance with the standards contained in these subdivision regulations, the existing or proposed underlying zone districts and the policies of the Town's Land Use Plan.
- (h) Public notice. Unless otherwise provided by this Section, public notice shall be provided prior to all public hearings required by this Section as defined in Section 17-1-100 of this Chapter.
- (i) Review period. The Planning Commission hearing will be scheduled by the Planning Director no sooner than forty-five (45) days after preliminary plan submittal by the subdivider to allow for department and agency review and comment, for planning staff review of those comments and the preliminary plan, and for adequate preparation of staff reports for the Planning Commission and review of such reports by the Planning Commission.

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(j) Planning Commission review and public action.

(1) The Planning Commission shall evaluate all of the following in its deliberations:

- a. Conformance of the preliminary plan with all applicable provisions of these subdivision regulations, the existing or proposed underlying zone district and the Town's Land Use Plan;
- b. Whether the proposed plan represents good planning practices; and
- c. Whether the proposed plan adequately safeguards against known and suspected hazards and adequately protects known resources. In its deliberations, the Planning Commission shall review reports on file, together with other reports available pertaining to avalanche, geologic, toxic waste, wildfire and flood hazards, mineral resource areas, significant wildlife areas, wetlands and visual resources, and shall consider the guidelines and recommendations as prepared by the appropriate referral agency to mitigate hazards and to protect resources (if the Planning Commission finds the reports on file to be inadequate or none exist, it may have such reports prepared addressing specific issues and the subdivider shall pay the costs for such reports).

(2) The Planning Commission may, at its discretion, require that the preliminary plan be reviewed by the Board for specific recommendations.

(3) The Planning Commission shall conduct a public hearing to review the conformance of the preliminary plan with the requirements of these subdivision regulations.

- a. The Planning Commission is authorized to take action on the preliminary plan and may either approve, approve with conditions or deny the preliminary plan, based on specific findings of fact concerning substantial compliance of the proposed subdivision with the provisions of these subdivision regulations, including the following major topics:

1. Conformance with the Town's Land Use Plan;
2. Payment of fees due at this time;
3. The standards in Articles 6 through 12 of this Chapter;
4. The applicable provisions of the existing or proposed underlying zone district;
5. The subdivision improvements agreement;
6. The publication requirements; and
7. All other requirements of these subdivision regulations.

- b. The Planning Commission is also authorized, at its discretion or upon request by the subdivider, to continue the public hearing to a date certain, so the subdivider may make modifications or provide additional information before the Planning Commission takes final action. If new material or revisions are to be submitted for approval, the Town and the referral agencies shall have at least twenty-one (21) days to complete the review of this material, before assigning an agenda date for further consideration by the Planning Commission.

(k) Actions following approval.

(1) Effect of preliminary plan approval. Preliminary plan approval shall constitute only authorization to proceed with an application for final plan and final plat approval in accordance with the representations made by the subdivider and conditions imposed onto the proposed subdivision. Approval of a preliminary plan shall not constitute final approval of the subdivision or permission for development to occur.

(2) Expiration. If an application for final plat approval is not submitted to the Town within one (1) year of the date of approval of the preliminary plan, the preliminary plan approval shall expire.

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- (3) Extension:
- a. A subdivider may request one (1) automatic extension of the submission deadline for the final plat of up to ninety (90) days by submitting a written request to the Planning Director prior to the expiration date. The Planning Director shall be authorized to extend the approval for a period of up to ninety (90) days.
  - b. A subdivider may request an additional extension of the submission deadline for the final plat by submitting a written request to the Planning Director prior to the expiration date, for consideration by the Planning Commission, which request shall demonstrate good cause for granting the extension. The approval shall be deemed extended until the Planning Commission has acted on the request for extension. The Planning Commission shall be authorized to extend the approval for a period of up to one (1) year and to impose additional conditions if necessary.

(Prior code 15-3-6; Ord. 4 §1, 2009)

### **Sec. 17-5-50. Preliminary plan submittals.**

A preliminary subdivision plan shall contain, at a minimum, the following:

- (1) Costs and expenses. Payment, by the subdivider, of all outstanding balances incurred as a result of signing the subdivision cost and expense reimbursement agreement.
- (2) Subdivision name. The name of the proposed subdivision. The subdivision name shall be followed by the term "preliminary plan" and shall comply with the requirements of Subparagraph 17-5-30(3)a. above.
- (3) Ownership and encumbrances. A statement of ownership and encumbrance of the proposed subdivision listing the names of all owners of the property and all mortgages, judgments, liens, easements, contracts, agreements and other encumbrances affecting the Property. The statement of ownership and encumbrance may be in the form of the following:
  - a. A commitment from a title insurance company that is not older than thirty (30) days;
  - b. Ownership and encumbrance report prepared by a title insurance company; or
  - c. Other documentation acceptable to the Town Attorney.

The statement of ownership and encumbrance, with the required power of attorney, if applicable, shall demonstrate to the satisfaction of the Town Attorney that the subdivider has the right to submit the development application.

- (4) Legal description. The subdivider shall submit the legal description of the proposed subdivision and of the proposed open land which will be permanently preserved in compliance with Article 9 of this Chapter. Open land shall be adequate to comply with said Article for all units approved in the preliminary plan, and a conceptual plan will also be presented for any remaining required open lands for units in the approved sketch plan that are not included in the preliminary plan.
- (5) Names of preparers. The names, addresses and telephone numbers of the surveyor, engineer, land planner and/or designer, and the hydrologist, when applicable (who must be licensed in the State).
- (6) Vicinity map. A vicinity map at a scale of one (1) inch equals two thousand (2,000) feet, or other appropriate scale, indicating the location of the Town and showing the location of the property and the proposed subdivision within it, commonly known landmarks, streets, paths and utilities, and the zone district of the proposed subdivision and adjacent properties. This map, or accompanying map at an appropriate scale, should include a sketch of the general layout of the proposed subdivision.

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- (7) Site analysis information. Site analysis information must include:
- a. A boundary survey indicating the location and dimensions of: the exterior boundary of the proposed subdivision, all existing public rights-of-way, streets and alleys, all existing easements, all public and private utilities above and below the surface of the ground, section lines, property corners, Town boundary lines, monuments and other significant man-made, ground level features within or adjacent to the proposed subdivision.
  - b. Existing uses on the Property, including the location of all existing structures and fences.
  - c. The location of all existing or historical pedestrian and bicycle paths on site, and any easements relating to these facilities.
  - d. Contour lines related to an established benchmark or other datum approved by the Town Engineer and having contour intervals as follows:
    1. For slopes less than ten percent (10%), one-foot contours; and
    2. For slopes ten percent (10%) or greater, five-foot contours.
  - e. The location and direction of all water courses and the location, within the Property and within one hundred (100) feet of the Property, of all areas subject to the twenty-five-year floodplain and the one-hundred-year floodplain, as provided in the sketch plan.
  - f. Significant natural features, including but not limited to:
    1. Rock outcroppings or other prominent geologic features.
    2. Drainage ways.
    3. Agricultural or drainage ditches.
    4. Bodies of water and other water features.
    5. Wetlands. If the proposed subdivision boundaries are unchanged, and therefore the wetland study area is unchanged since the sketch plan submittal, no additional information other than that listed below is required. If the wetland study area has been revised, then a revised wetland delineation report must be submitted. The revised report must include the information listed below and updates to all the information listed for the sketch plan submittal.
      - a) Wetland mitigation plan, including a compensatory plan for those wetlands permanently lost as a result of the project, as well as mitigation measures to be employed before, during, and after construction to minimize overall wetland impacts. The intent of compensatory wetland mitigation is to replace the ecological functions lost in the watershed as a result of the project. The Town must approve the final mitigation plan before it is implemented.
      - b) The wetland mitigation plan must include:
        - 1) Introduction - a brief project description, reason for the mitigation and project location;
        - 2) Executive summary - a summary of the whole report, including significant findings and recommendations;
        - 3) Summary of the impacted wetlands - vegetation communities, functions, water source, etc.;

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- 4) Summary of the proposed mitigation site - size and location, how and why the site was selected, general description of existing habitats and their functions (including presence of any noxious weeds and TES habitat), ownership status, current land uses, and other relevant information;
  - 5) Goals and objectives;
  - 6) Work plan - qualifications of the people who will monitor construction of the proposed mitigation; construction schedule and methods; grading plan (earthwork); erosion control measures; soil treatments; water source, delivery and distribution; methods for planting, seeding and mulching, including a list of all plant species to be used and their quantities; noxious weed treatment; and any other information relevant to the successful implementation of the mitigation plan;
  - 7) Maintenance plan - a description and schedule of maintenance requirements to ensure success of the site;
  - 8) Performance standards - ecologically based standards that will be used to determine whether the site is achieving its goals and objectives (e.g., cover of native wetland plants, survival rates for woody plantings, size of wetland to be restored/created, etc.);
  - 9) Monitoring requirements - detailed description of the parameters to be monitored in order to determine if the site is on track to meet the performance standards, including the party responsible for the site, data to be collected/ reported, methods to be used for data collection (must be quantitative), format for reporting and monitoring schedule;
  - 10) Long-term management plan - description of how the site will be managed after the performance standards have been achieved, including long-term financing mechanisms and responsible parties;
  - 11) Adaptive management plan - description of how unforeseen changes in the site that may affect its overall success will be managed, including the party responsible for implementing the plan; and
  - 12) Financial assurances - description of financial assurances that will be provided and how they are sufficient to ensure success of the site. See Subsection 17-8-50(i).
- g. The location, size and type of existing vegetation. If there is no change in the extent of the proposed subdivision since the sketch plan submittal, no additional information other than that listed below is required. If the extent of the subdivision has been modified, then the previously submitted information must be revised to include the information listed below and updates to all the information listed for the sketch plan submittal.
1. Noxious weed management plan that includes:
    - a) Introduction - a brief project description, general site description and list of noxious weeds considered;
    - b) Executive summary - a summary of the whole report, including significant findings and recommendations;
    - c) Methods - an explanation of the literature review and field methods employed;

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- d) Results —a detailed discussion of the literature review and field survey results;
  - e) Weed management - a discussion of goals, objectives and priorities for weed management;
  - f) Weed management actions - detailed accounts of how specific weeds will be controlled;
  - g) Conclusion;
  - h) Literature cited; and
  - i) Maps and photos - include detailed maps of noxious weed occurrences at one (1) inch equals two hundred (200) feet (or similar) within the proposed subdivision and within one hundred (100) feet of the proposed subdivision.
- h. Groundwater. If wetlands are present within the proposed subdivision or within one hundred (100) feet, the groundwater study report prepared for the sketch plan submittal must be revised to include the details on how groundwater flow would be affected by the proposed project, including the installation of foundations, utilities and other below-ground infrastructure. The study must be adequate to determine compliance with the standards listed in Section 17-8-50.
  - i. The designation of all areas that constitute natural hazard areas, including but not limited to avalanche, mudslide, rockslide and wildfire.
  - j. The location of all existing or historical wildlife movement corridors, flyways, breeding grounds or other significant wildlife habitat, including TES habitat. If there is no change in the extent of the proposed subdivision since the sketch plan submittal, no additional information regarding wildlife habitat is required except the TES mitigation plan discussed below. If the extent of the proposed subdivision has been revised, then the previously submitted information must be revised to include updates to all the information listed for the sketch plan submittal.
    - 1. *TES mitigation plan* is a plan designed to compensate for the loss of TES habitat, including plans developed with the appropriate state or federal agency, including Colorado Natural Heritage Program, the Colorado Division of Wildlife and the Town.
  - k. Ghosting in the existing lot or tract lines, streets or other subdivision features which are proposed to be changed or removed.
  - l. Ghosting in structures existing or approved by the Town, the County or Mt. Crested Butte located within the proposed subdivision, and within three hundred (300) feet of the proposed subdivision.
  - m. The names of adjacent subdivisions and the zoning, if applicable.
  - n. A map indicating the "Priority Views That Should Be Preserved" in the proposed subdivision, which are identified in the Area Plan.
  - o. A preliminary plan addressing any existing or potential hazardous conditions, including but not limited to soils, mine tailings, mine drainages, petroleum residue, landfills, underground tanks, etc.
  - p. Evidence establishing soil suitability in the form of a report prepared by a registered professional engineer specializing in geotechnical engineering, using the "Soil Survey of Gunnison Area, Colorado," by the United States Department of Agriculture, Soil Conservation Service, which shall minimally include a description of site soil:
    - 1. Types.

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2. Locations.
  3. Characteristics supported by:
    - a) Soil maps; and
    - b) Soil logs.
  4. Data from the "Soil Survey" and other information needed to determine:
    - a) Soils suitability for proposed development; and
    - b) Constraints on development based on the findings.
  5. Analysis and evaluation of such descriptive information, together with sufficient soils engineering data, with recommendations regarding:
    - a) Structural and facility constraints;
    - b) Foundation design considerations;
    - c) Erosion control; and
    - d) The adequacy of the structural characteristics of the soil as they relate to the proposed uses and development.

The soils information should establish, in reasonable detail, the stratigraphy, together with a basic knowledge of the engineering properties of the overburden and bedrock formations which will be affected by or will have an effect upon the new structures, roads and utilities. Because this information will be used to design the roads and utilities, the road soils test holes for investigation shall be a minimum of four (4) feet deep from the proposed road grade, or as recommended by the geotechnical engineer, and the spacing shall be no more than four hundred (400) feet or one (1) test hole for each soil type, whichever is closer. Test holes for utilities shall be sufficiently deep to identify the soil conditions that may influence the performance of the utility. The spacing of test holes for structures such as buildings shall be a minimum of one (1) per two (2) single-family residential, mobile home or commercial tracts or parcels and one (1) per ten thousand (10,000) square feet of multi-family residential development, but no more than one (1) per one hundred (100) feet, provided that fewer or additional test holes may be required as determined by the engineer. Test holes for structures shall be sufficiently deep to identify the soil conditions that may influence the performance of foundations. Other tests or data may be required depending upon specific site conditions and proposed uses.

- (8) Preliminary site plan scale. A graphic conceptual site plan of the proposed development and surrounding area shall be legibly drawn on a sheet of paper that is twenty-four (24) inches by thirty-six (36) inches in size, using a map scale large enough for effective public presentations, but generally no smaller than one (1) inch equals one hundred (100) feet. The scale may be increased or decreased if necessary to fit the paper, but in all cases the scale used shall be in multiples of ten (10). Sheets for presentations may be larger for effective public presentations.
- (9) Preliminary site plan labeling information. The preliminary site plan shall be labeled as follows:
  - a. The proposed name of the subdivision.
  - b. The date of preparation (each revised drawing shall have a new date).
  - c. A true north arrow.
  - d. Written and graphic scale of drawing.

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- e. The location of the subdivision by section, township and range sufficient to define the location and boundaries of the proposed subdivision.
  - (10) Preliminary site plan map. The preliminary site plan shall include the following information relating to the proposed subdivision:
    - a. Existing and proposed zoning districts.
    - b. A road plan showing the location, width, name and approximate grade and radii of new streets and street curves and the relationship of proposed subdivision streets to any existing streets, or proposed streets as shown in map or written form in the Town Land Use Plan, and drawn with the following information:
      1. Centerline profiles of streets and roads shall be plotted with sufficient accuracy to ensure that street designs will conform with the prescribed standards of the Town Engineer; and
      2. All centerline profiles shall be drawn to a scale of ten (10) feet vertical and fifty (50) feet horizontal to the inch, or five (5) feet vertical and fifty (50) feet horizontal to the inch, as required by the Town.
    - c. The location, width and approximate grades of all proposed pedestrian and bicycle trails, and their relationship to any existing trails or proposed trails as shown in map or written form in the Area Plan, the Crested Butte Parks and Recreation Regional Master Plan or the planning documents of the Gunnison County Trails Commission.
    - d. The location, width and purpose of any proposed easements.
    - e. The location, approximate dimensions and acreage of each:
      1. Single-family residential tract or parcel;
      2. Multi-family residential tract or parcel;
      3. Business or commercial tract or parcel;
      4. Mobile home tract or parcel;
      5. Recreation area;
      6. Open land area;
      7. School land;
      8. Snow storage area;
      9. Other land for Town public facilities;
      10. Sidewalk; and
      11. Trail that is not included in the proposed easements discussed above.
    - f. The location of all off-street parking areas and off-street snow storage areas.
    - g. An outline of the areas proposed for phased development, if applicable.
    - h. A utility plan, prepared by a registered professional engineer licensed in the State, which shall include the following at a minimum:
      1. The location and size of all existing utilities and all existing easements on the proposed subdivision;
      2. The proposed location and size of water supply lines and related water service facilities and where any proposed system will connect with existing systems;

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- 3. The proposed location and size of waste water lines and waste water service facilities and where any proposed system will connect with existing systems;
  - 4. The location and size of drainage facilities, including all: low impact development strategies, culverts, storm water drainage, drainage detention ponds and water quality measures, including profiles where appropriate;
  - 5. Utility upgrades required to serve the subdivision if required by the Town Engineer;
  - 6. The proposed location of all other applicable utilities, including, without limitation, telephone, electrical service, television cable, fiber optic lines and gas, and the location of the proposed connections with existing systems;
  - 7. Statements of approval signed by a representative of each utility provider for the electric, gas, telecommunications, cable television, telephone companies and such other utilities as appropriate, which shall be in a manner as found in Appendix L attached to this Code (a similar letter shall also be provided from the Crested Butte Fire Protection District and the School District indicating that adequate facilities exist or that the subdivider has agreed to mitigate the impacts of the new subdivision on the district); and
  - 8. Report evaluating the relationship between the available capacity of existing utility systems, including water and waste water treatment facilities, and the projected demand of the subdivided property at full build-out. The evaluation of available utility capacity shall consider and include projected demand by all properties that have previously paid either a system development fee or availability of service fee regardless of whether or not such properties currently require water or waste water services. In the event that the report identifies that service to the subdivision shall result in exceeding eighty percent (80%) of the total available capacity of either the water distribution or treatment system or the waste water collection or treatment system, then the report shall identify and recommend alternatives to address and mitigate the shortage of service capacity resulting from the proposed subdivision.
- i. Any revised contour lines related to an established benchmark or other datum approved by the Town Engineer and having contour intervals as follows:
    - 1. For slopes less than ten percent (10%), one-foot contours; and
    - 2. For slopes ten percent (10%) or greater, five-foot contours.
  - j. Where the proposed subdivision covers only a part of the Property, a conceptual plan for the entire Property shall be submitted, and the proposed streets, utilities, easements and other improvements of the proposed subdivision shall be considered with reference to proposed development of the other portions of the Property (the Planning Commission will reasonably decide the level of detail needed on the conceptual plan to judge the proposed subdivision in light of the maximum number and type of units on the Property and the surrounding areas).
  - k. Subdivisions adjacent to lands used for agriculture shall submit the following information:
    - 1. The location, size and decreed capacity of any agricultural ditch crossing or adjoining the proposed subdivision;
    - 2. The location of historical easements utilized for any purpose, including gaining access to headgates, ditches and fences for maintenance or operation purposes;
    - 3. The location of any established stock drive crossing or adjoining the proposed subdivision and the location of any new fences or other obstacles proposed to be built across such stock drive; and

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- 4. The location of any proposed or existing fences which will continue to exist after subdivision of the Property.
    - I. Such other information as may be required by the Planning Commission or other reviewing agency to aid in the evaluation of the proposed subdivision and to assure that the subdivision is capable of construction without undue adverse effect upon the surrounding area.
  - (11) Landscaping plan. A landscaping plan containing the following information shall be provided:
    - a. The landscaping plan shall be overprinted on the preliminary plan, prepared by a licensed architect or a professional landscape architect familiar with the ecology of the East River Valley, and shall show:
      - 1. Location.
      - 2. Size.
      - 3. Type of proposed landscape features accompanied by a written statement setting forth the types of vegetation.
      - 4. Other landscaping improvements, including steps which will be taken to revegetate all exposed land surfaces.
      - 5. The estimated cost to accomplish the plan.
    - b. To ensure the preservation of existing vegetation in the developed area, an existing vegetation map shall be provided, locating all existing trees and willows and all shrubbery meeting the minimum sizes described in Subparagraph (7)g. above, vegetation to be removed and vegetation to be added to the developed area.
    - c. A description of the proposed program to maintain the landscaping after it has been installed.
    - d. A snow storage plan.
    - e. All landscaping proposed to be completed by the subdivider for proposed developed parks, trails and all public areas.
  - (12) Soil erosion control plan. A soil erosion control plan, including revegetation and water quality monitoring, meeting the standards set forth in applicable provisions of Section 17-6-50 of this Chapter shall be provided.
    - a. A description and location of all soil erosion control features shall be provided.
    - b. Pollution avoidance plan which proposes measures to avoid degradation of waterways, water bodies or wetlands.
  - (13) Grading plan. At the request of the Planning Director, the subdivider shall submit a grading plan which illustrates the extent and limits of the land disturbance which is to occur on the proposed subdivision. The grading plan shall illustrate existing site features and estimated amounts of cut-and-fill, and shall depict existing and proposed contours, using a contour interval of one (1) foot.
  - (14) Drainage study. A drainage study for the proposed subdivision shall be prepared and the site's drainage system shall be designed by a registered professional engineer according to generally accepted storm drainage practices. The drainage study shall describe how the expected maximum water flows from any twenty-five-year flood event and any one-hundred-year flood event shall be directed away from all buildings, other developed areas of the proposed subdivision and adjacent lands. The drainage study should anticipate flows from existing developed property, the proposed subdivision and other likely, future potential development. The drainage study shall show all existing lakes, water courses and limits of tributary flows and, where practical, computation of expected tributary flows and the results

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indicated. The limits of the one-hundred-year floodplain shall be studied and plotted. Location and sizes of all culverts and other drainage structures shall be provided, and all bridges, drainage ditches, channels and easements shall be shown. A description of how runoff will avoid polluting existing lakes and watercourses shall be included.

- (15) Narrative. The preliminary plan shall be accompanied by written statements containing the following information:
- a. Tabular summary of the development proposal which identifies the total proposed subdivision in acres, and the number of acres and percentages devoted to the following.
    1. Residential development with subtotals for:
      - a) One-family dwelling units;
      - b) Two-family dwelling units;
      - c) Multi-family dwelling units; and
      - d) Mobile homes.
    2. Commercial and business development with subtotals for:
      - a) Commercial; and
      - b) Business development.
    3. Developed parks dedicated to the Town.
    4. Other municipal land to be dedicated to the Town.
    5. Open lands.
    6. Roads, streets, sidewalks and trails.
    7. Land for schools.
  - b. The total number of proposed residential dwelling units and their type, including one-family dwelling units, two-family dwelling units, multi-family dwelling units and mobile home units.
  - c. A tabular summary of the development proposal which demonstrates that the preliminary plan conforms with all applicable off-street parking and snow storage requirements for the following land uses:
    1. Multi-family dwelling units;
    2. Commercial and business development; and
    3. Street snow storage.
  - d. A preliminary estimate of the cost of all required public improvements and a description of proposed methods of financing, the tentative development schedule for public improvements with development phases identified, and proposed performance guarantees.
  - e. Any agreements with agricultural ditch owners, when appropriate. Any agreement with adjacent agricultural land owners about fence maintenance and/or the movement of any boundary line fences.
  - f. A preliminary draft of any protective covenants or deed restrictions desired by the subdivider or these subdivision regulations.
  - g. A description of the function, ownership and manner of maintenance of public parks and other facilities, and open land areas to be preserved by the subdivider.

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- h. A preliminary draft of any conservation easement or other document acceptable to the Town, permanently preserving open land as required in Article 9 of this Chapter.
  - i. A traffic analysis, prepared by a person engaged or employed in the field of traffic engineering, together with maps and diagrams where appropriate, addressing the following:
    1. The estimated traffic flow on existing streets, roads or highways that will serve or convey traffic to and from the proposed subdivision;
    2. The estimated increase in traffic flow on existing streets resulting from the proposed subdivision;
    3. Visibility at existing and proposed intersections;
    4. The total number of proposed off-street parking spaces, excluding parking associated with single-family, duplex or mobile home residential tracts or parcels;
    5. A description of the alternate transportation facilities proposed to be a part of the subdivision;
    6. An evaluation of the need for road improvements to be made to existing streets based on the impacts of the proposed subdivision; and
    7. The expected effects of traffic upon the existing community and upon arterial roads serving Crested Butte.
  - j. If any natural hazards or hazardous conditions as described in Subparagraph (7)o. of this Section, identified on the land to be subdivided, a report shall be submitted by a professional, as described below, providing evidence to show that all areas of the proposed subdivision which involve natural hazard areas or hazardous conditions or require special precaution, treatment or development have been identified by the subdivider, and that the proposed uses of these areas are compatible with such conditions. The following hazards shall be addressed in reports by the following types of expert:
    1. Avalanche, by a professional avalanche control engineer;
    2. Mudslide, rockslide or other geologic hazard, by a professional engineering geologist;
    3. Wildfire, by a professional range scientist or graduate forester;
    4. Floodplain, by a licensed professional engineer; and
    5. Hazardous soils, mine tailings, mine drainage and petroleum residual by a professional engineer and water quality expert.
  - k. A plan for revegetation of disturbed areas, including a list of plant species to be used.
  - l. A plan for dust abatement during and, as applicable, after construction.
  - m. A description of the steps that have been taken to protect and enhance the use of solar energy in the proposed subdivision.
  - n. Water supply requirements. In accordance with Section 29-20-301, et seq., C.R.S., and other concerns of the Town, the subdivider shall submit the following information to the Town in order for the Town to make a determination of the adequacy of the domestic and irrigation water supply.
    1. A report by a registered professional engineer or water supply expert acceptable to the Town which includes the minimum elements below:

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- a) Estimate of the water supply requirements for the development through build out.
  - b) Description of the physical source of water supply.
  - c) Estimate of the amount of water yield projected from the proposed water supply under various hydrologic conditions.
  - d) Proposed water conservation measures, if any.
  - e) Proposed water demand management measures, if any.
  - f) Water quality of the proposed source.
2. If requested by the Town, a letter from the State Engineer commenting on the documentation required pursuant to this Paragraph and Section 17-11-370 of this Chapter.
  3. Any other information deemed relevant by the Town to determine, in its sole discretion, whether the water supply for the proposed development is adequate.
- o. Revised wetland delineation report, if applicable.
  - p. Wetland mitigation plan, if applicable.
  - q. Noxious weed management plan.
  - r. Revised groundwater study report, if applicable.
  - s. Revised TES Survey Report, if applicable.
  - t. TES Mitigation Plan, if applicable.
- (16) Subdivision improvement agreement. The proposed subdivision improvements agreement, in the form set forth in Appendix J attached to this Code, shall be submitted to the Town. If the subdivider objects to any provisions of the form, those objections shall be set forth in a statement to the Town.
- (17) Impact analysis. In addition to the foregoing, the preliminary plan submittals shall include an impact analysis containing, at a minimum, the annexation impact analysis requirements of Subparagraph 15-1-60(b)(2)g. of this Code and other requirements listed below. If the property to be subdivided is also proposed to be annexed, the information provided for the submittals for this Section and for Subparagraph 15-1-60(b)(2)g. shall be the same, and the other analysis information listed below shall also be submitted. The following shall be included in the impact analysis that is submitted with a subdivision preliminary plan:
- a. All subdivision submittals shall contain a carbon footprint and sustainability analysis that assesses how the subdivision will minimize its carbon footprint impacts on the environment and maximize sustainability of the development. A carbon footprint and sustainability analysis shall address, at a minimum, the following topics, including topics addressed below in the Area Plan, whether or not the subdivision is also proposed for annexation:
    1. Inherent values and features of the site that will contribute to a sustainable subdivision such as natural drainages, that will continue to be used, floodplains where development will be avoided, solar orientation, etc.;
    2. Drainage and the associated water pollution, including but not limited to water pollution from fertilizers, construction sites, oil-based roofs and roads or sediment from drainage of the proposed development site in any water body;
    3. Storm water integration with natural drainages, and accommodation of large snow loads and high volume spring melts;

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- 4. Integration of the subdivision with the existing hydrologic capacity of the site;
  - 5. Conservation of natural areas through compact site design;
  - 6. Impacts to wetlands, streams and water.
  - 7. An analysis of how the proposed subdivision compares with the existing Town, including density, ability of people to move about, surrounding open space and trails;
  - 8. Impacts to indigenous vegetation and what was done in the subdivision design to limit impacts to indigenous vegetation;
  - 9. Space for subdivision occupants to grow food on residential sites.
  - 10. An analysis of how the proposed subdivision complies with the policies in the Transportation chapter in the Area Plan;
  - 11. An analysis of how the proposed subdivision complies with the Solar Access and Energy policies in the Residential Site Design chapter of the Area Plan;
  - 12. An analysis of how the use of treated irrigation water will be minimized;
  - 13. The location and amount of open space preserved for each proposed dwelling unit;
  - 14. How greenways along rivers and streams will be preserved and used by occupants and how wildlife users of greenways will be affected by the subdivision.
  - 15. Whether adequate land for public facilities, parks and schools will be provided and how such existing facilities will be affected by the subdivision;
  - 16. How much energy will need to be generated on, or off, site to serve the proposed subdivision; and
  - 17. Where employees who work within the subdivision will live and the percentages of units expected to be full-time occupied and part-time occupied.
- (18) Number of copies. A minimum of twelve (12) copies of all of the above maps, plans and information shall be submitted to the Town. Additional copies may be required if submittal to other agencies is required by the Planning Director or if additional copies are needed for the Planning Commission. All copies are to be provided by the subdivider, at the subdivider's expense.

### **Sec. 17-5-60. Final plan procedure.**

A subdivider seeking approval of a final subdivision plan shall follow the steps outlined below:

- (1) Preapplication conference. The subdivider may request a preapplication conference with the Planning Director, prior to submission of a final plan for final subdivision approval.
- (2) Submit final plan. The subdivider shall make a complete final plan submittal to the Planning Director, containing those materials listed in Section 17-5-70 below.
- (3) Final plan distribution.
  - a. The Planning Director may transmit copies of the final plan application to those persons and agencies to whom distribution of the preliminary plan was made, if additional comment is deemed necessary due to greater detail being provided or substantial modifications to the plan. Recommendations or conditions required by other departments or review agencies may be made conditions of the final plan and final plat approval. The agencies to whom referrals are made shall make recommendations within thirty (30) days after mailing by the Town of such plans, unless a

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- necessary extension of not more than thirty (30) days has been consented to by the subdivider and the Town.
- b. The subdivider shall respond in writing to all issues raised during the referral process within thirty (30) days after receiving the final department and/or agency comments. Such responses shall be made part of the application and will be used in conjunction with the original submittal as a basis for final Planning Director recommendations to the Planning Commission.
  - c. If the subdivider is unable to supply responses within the thirty (30) days allowed, then the subdivider, in writing, may request a delay of up to ninety (90) days stating the reason for the request. The Planning Director may grant an extension of no more than ninety (90) days. If the subdivider fails to supply responses within the specified time, then the Planning Director shall base the recommendations on the material in the file as it exists and proceed toward a Planning Commission public hearing.
  - d. If, in the reasonable judgment of the Planning Director, the responses from the subdivider result in a substantial change in the proposal, then the Planning Director may refer the amended application and supporting materials to those referral departments and agencies to whom distribution of the preliminary plan was made, and the processing schedule will be amended to conform to this Section.
  - e. The Planning Director may forego the requirements of Subparagraphs a., b. and c. above if he or she finds that further materials from the subdivider and further comments by the referral departments and agencies are not necessary to fully evaluate the final plan.
- (4) Staff review and agenda date. The Planning Director shall review the final plan to determine whether it is complete.
- a. If the Planning Director finds that the final plan is complete, then a Town Council meeting date shall be set to consider the subdivision improvements agreement and any required land dedications. The date shall be set to allow sufficient time for the referrals to occur and comments to be received, as described in Paragraph (3) above, if appropriate.
  - b. If the application is incomplete or does not comply, it shall be returned to the subdivider and shall not be assigned a meeting date. The Planning Director shall list, in writing, the deficiencies and provide that list to the subdivider, and no further action will be taken until its defects are remedied.
- (5) Review by Town Council. The subdivision improvements agreement and any required land dedications shall be reviewed by the Town Council. The Town Council review shall occur at a properly noticed public hearing. Public notice shall be provided as defined in Section 17-1-100 of this Chapter. The Town Council may approve, approve with conditions or reject the subdivision improvements agreement. The Town Council may accept, accept with conditions or reject the land dedications. Any approval of the subdivision improvements agreement and acceptance of land dedications shall be contingent upon final plat approval by the Planning Commission.
- (6) Approval and execution of the final plan and final plat. After the subdivision improvements agreement has been accepted by the Town Council, the Planning Commission shall meet to review the final plan and final plat. The Planning Commission review shall occur at a properly noticed public hearing. Unless otherwise provided by this Section, public notice shall be provided prior to all public hearings required by this Section as defined in Section 17-1-100 of this Chapter.
- a. The Planning Commission shall approve or approve with conditions the final plan and final plat upon a finding by the Planning Commission that:
    1. The following have been submitted:

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- a) The final plat,
    - b) All required documents as described in Section 17-5-70 below; and
    - c) The subdivision improvements agreement approved by the Town Council;
  - 2. The final plat complies with the following:
    - a) The approved preliminary plan and fulfillment of all the conditions of preliminary plan approval,
    - b) The subdivision improvements agreement, approved by the Town Council,
    - c) Any land dedication accepted by the Town Council; and
    - d) The requirements of these subdivision regulations;
  - 3. The final plat is consistent with the final plan documents submitted to comply with Section 17-5-70 below; and
  - 4. With the exception of Subsections 17-6-10(c), (d) and (g); Sections 17-6-30; 17-6-50; 17-10-200 and 17-13-30; Article 8 of this Chapter; Article 11, Divisions 2, 3 and 4 of this Chapter, any of the requirements of these subdivision regulations may be varied from or waived, upon a finding by the Planning Commission that the subdivider will be providing amenities to the Town, over and above those already required by these regulations, that are of such benefit to the Town that requirements of these regulations may be varied from or waived in return for the receipt of such amenities.
- b. The Planning Commission shall deny the final plan and final plat unless new technical or other information has been made available upon a finding by the Planning Commission that:
- 1. Any of the following has not been submitted:
    - a) The final plat.
    - b) All required documents as described in Section 17-5-70 below.
    - c) The subdivision improvements agreement approved by the Town Council.
  - 2. The final plat does not comply with one (1) or more of the following:
    - a) The approved preliminary plan and fulfillment of all the conditions of preliminary plan approval.
    - b) The subdivision improvements agreement approved by the Town Council.
    - c) Any land dedication accepted by the Town Council.
    - d) The requirements of these subdivision regulations.
  - 3. The final plan is not consistent with the final plan documents submitted to comply with Section 17-5-70 below.
- A Planning Commission denial shall contain a listing of the reasons for such action.
- c. If new technical or other information has been made available, the Planning Commission may approve, or approve with conditions, the final plan and final plat if it finds that:
- 1. The new information alters previous findings of the Planning Commission concerning the preliminary plan approval;
  - 2. The final plat conforms with the requirements of these subdivision regulations;

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3. The final plan submittals conform with the requirements of these subdivision regulations; and
  4. The subdivision improvements agreement as approved, and dedications as accepted, by the Town Council still apply to the final plat.

The Planning Commission is also authorized, at its discretion or upon request by the subdivider, to reasonably continue consideration of the proposed final plan and final plat review for ninety (90) days or less, to a date certain, to provide the Planning Commission, subdivider or staff more time to review new technical or other information that has been made available at the final plat public hearing, or so the subdivider may make modifications or provide additional information before the Planning Commission takes final action.

- d. After the Planning Commission has reviewed and approved the final plan and final plat, the owner, notary public, owner's attorney, land surveyor and any lender, if applicable, shall sign one (1) Mylar copy of the approved final plat. After the owner and the above listed representatives of the owner have signed the final plat, the Planning Commission Chairperson shall sign the same Mylar copy of the approved final plat indicating approval by the Planning Commission. After the Planning Commission Chairperson signs the final plat, the Mayor shall sign the same Mylar copy of the approved final plat, indicating approval by the Town Council of the subdivision improvements agreement and acceptance of the dedications; and the Town Clerk shall attest the Mayor's signature.

(7) Filing.

- a. The following actions shall occur after approval of the final plan and final plat by the Planning Commission and prior to recording the final plat and associated documents.
  1. The subdivider shall provide the Planning Director with all of the original documents and fees required below:
    - a) Corrected, modified and amended final plat in accordance with the approval and no other changes;
    - b) All signatures necessary for execution of the appropriate documents;
    - c) Final itemized estimates for the cost of required improvements that reflect the final plan and final plat as approved or conditionally approved;
    - d) The fully executed subdivision improvement agreement approved by the Town Council;
    - e) A final letter of credit or other financial guarantee for the construction of all public subdivision improvements satisfactory to the Town Council from the lending institution in accordance with the subdivision improvements agreement;
    - f) A certification from the County Treasurer's office that all ad valorem taxes on the proposed subdivision, for the years prior to the year in which recording of the plat is to occur, have been paid;
    - g) One (1) electronic copy of all approved drawings. The electronic copy of all approved drawings shall be compatible with the information set forth in Paragraph 17-5-80(g)(5) of this Article;
    - h) Payment of all required fees in lieu of land dedications if appropriate;

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- i) A signed and acknowledged conservation easement or other document acceptable to the Town permanently preserving the required open land;
  - j) Final protective covenants, if applicable;
  - k) Payment of any required capital expansion recovery system fees; and
  - l) Prepayment to the Town of all of the County Clerk's recording fees.
2. The Planning Director shall sign the face of the final plat authorizing the final plat to be filed for recording upon a finding that:
- a) All approved corrections have been made to the final plat and other documents;
  - b) The subdivision improvements agreement has been finalized;
  - c) The final plat and subdivision improvements agreement have been properly executed by all other appropriate persons;
  - d) All payments and improvements guarantees have been received and equal one hundred twenty-five percent (125%) of the estimated improvement costs;
  - e) All ad valorem taxes on the proposed subdivision, for the years prior to the year in which recordation of the plat is to occur, have been paid;
  - f) All appropriate subdivision improvements have been dedicated to the Town;
  - g) All appropriate subdivision land dedications have been dedicated to the Town, or fees in lieu of dedications have been paid;
  - h) All conservation easements and other approved documents have been received for recording or have been recorded which permanently preserve at least the required open land for the number of approved units in accordance with Article 9 of this Chapter.
  - i) All the documents are in the proper order, executed and ready for recordation; and
  - j) The subdivider has paid the Town all appropriate fees and prepaid to the Town all of the County Clerk's recording fee.
- b. The Planning Director shall cause to be recorded the executed final plat, together with any required subdivision improvements agreement, conservation easements and other documents, in the office of the County Clerk and Recorder.
- c. The subdivider shall cause to be recorded any protective covenants associated with the subdivision.
- d. Unless there is compliance with all the requirements of this Section, the final approving action is withdrawn.
- (8) After final plat approval and approval of the subdivision improvements agreement and any required land dedications, the subdivider shall submit complete engineering plans and specifications for all improvements to be installed in the subdivision, including but not limited to water, sewer and all other utilities, streets and related improvements, trails, bridges, excavations, landscaping and storm drainage. The plans and specifications must comply with the Subdivision Design and Improvement Standards set forth in Articles 6 through 12 of this Chapter, with all plan and design specifications previously approved with respect to the proposed new or revised land use or development, and with all other applicable codes and standards.

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- a. If the Town Manager determines that the proposed plans did not comply with the applicable standards, the Town Manager shall so notify the subdivider in writing, stating that the proposed plans are not in compliance, giving the reasons therefor and informing the subdivider of his or her right to be heard before the Planning Commission within thirty (30) days from the date of notification. The Planning Commission shall conduct a public hearing to review the conformance of the proposed plans with the appropriate requirements.
  - b. The Planning Commission shall make a finding as to whether the plans and specifications submitted comply with the applicable standards. If the plans do not comply with the applicable standards, they shall either be approved with conditions that ensure compliance with all such standards, continued to a date certain or denied, and permission to commence construction shall be denied.
- (9) Enforcement. Failure by the subdivider to meet any applicable condition of the subdivision approval or the stipulations of the approved subdivision improvements agreement, including but not limited to completing construction of improvements within the time agreed to in the subdivision improvements agreement, which shall be grounds for the Town to issue a stop work order.
- (10) Time for completion and extension. Part of the final plat approval proceedings shall include a determination by the Town Council of a reasonable time by which the subdivision improvements should be completed. Extensions of such time limits may be obtained from the Town Council for good cause shown, upon request by the subdivider.
- (11) Notation of completion date on final plat. All final plats given approval by the Town shall contain a notation indicating the above time by which subdivision improvements are to be completed. This notation shall be prima facie evidence of a reasonable time by which the subdivision improvements should have been completed.
- (12) Obtaining a building permit and sale of tracts or parcels. The subdivider may construct the subdivision improvements after the final plat, subdivision improvements agreement and other documents to be recorded have been approved, duly executed and filed of record. No tract, parcel or any interest in them shall be transferred, conveyed or sold to or accepted by another party, and no building permit shall be issued, until all applicable conditions of the subdivision improvements agreement are met, the final plat, subdivision improvements agreement and other documents are recorded, the subdivision improvements are constructed and the Town has preliminarily accepted them in accordance with Subsection 17-5-80(g) below.
- (13) Amendments subsequent to approval. A final plat, including any provision, stipulation, restriction or covenant which is subject to Town regulation, filed and recorded as part of the final plat shall not be altered subsequent to final plat approval by the Town, unless said change is first referred to and approved by the Planning Commission. Such changes may be referred to the Board by the Planning Commission for recommendations to the Planning Commission. Any proposed changes, other than corrections of errors, to the final plat or final plan shall be considered for approval as a resubdivision request under these subdivision regulations and shall follow the process described in the minor subdivision process unless the number of tracts or parcels affected exceeds the number of tracts or parcels for a minor subdivision, or unless the proposed changes would otherwise be a major subdivision as described in Section 17-3-30 of this Chapter. In such a case, the resubdivision and review by the Planning Commission shall begin with the sketch plan stage of the major subdivision process.

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## **Sec. 17-5-70. Final plan submittals.**

Unless otherwise specified, the application for approval of a final plan shall contain four (4) copies of the following information. If referrals are to be made, the subdivider shall provide the additional number of final plan submittals, adequate for all referrals.

- (1) Final plan fee and publication fee. The final plan fee and publication fee as required in Section 17-2-30 of this Chapter.
- (2) Title report. A title report prepared by a licensed title or abstract company containing the legal description of the proposed subdivision and identifying, listing and certifying the following:
  - a. A list of all owners of record of the proposed subdivision;
  - b. A list of all liens and encumbrances against the proposed Property, together with the book and page and reception number of each encumbrance as recorded in the office of the County Clerk and Recorder; and
  - c. All owners of any surface, subsurface or above-surface estates, rights or interests in the proposed subdivision, the nature of and description of such estate, right or interests, and the addresses of all such owners.

If the above information is contained in the submittal required in Paragraph 17-5-50(3) above, an endorsement or certificate that no changes in ownership, encumbrances or liens has occurred may be submitted.

- (3) Final plat. The final plat shall:
  - a. Provide a permanent and accurate record of the exact size, shape, location and authorized use of the tracts or parcels, blocks, streets, easements, improvements, monuments, common areas and other parcels of land within the proposed subdivision;
  - b. Provide adequate space for construction of public improvements;
  - c. Dedicate public lands and space for improvements, parks and any other land to be dedicated to the Town or other appropriate public entity, including without limitation the RE1J School District and the Crested Butte Fire Protection District, in a manner that complies with the language in Appendix M attached to this Code; and
  - d. Be prepared by, or under the supervision of, a registered land surveyor licensed within the State.
- (4) The final plat shall contain the following information and conform to the following specifications:
  - a. One (1) reproducible Mylar original and four (4) prints of the final plat.
  - b. Sheet size shall be twenty-four (24) inches by thirty-six (36) inches, with a one-half-inch border on the top, bottom and right-hand side and a one-and-one-half-inch border on the left side. As many sheets as necessary may be submitted.
  - c. All final plat map titles, road names, statements, certificates, notes and sheet numbers shall be oriented, to the greatest extent practicable, to the bottom (thirty-six-inch dimension) of each sheet.
  - d. Each sheet of the final plat shall display the particular number of the sheet and the total number of sheets, and shall clearly show the location relationship of land areas depicted on the overlay sheet by use of a small key sketch.
  - e. The final plat map scale shall be drafted in a scale that best conveys the detailed survey, engineering and design of the proposed subdivision and confines drafting error to less than one

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percent (1%). Acceptable scales are one (1) inch equals fifty (50) feet to one (1) inch equals one hundred (100) feet, but the scale shall be such as to clearly convey the necessary information listed in this Section. The scale may be increased or decreased if necessary to fit the paper, but in all cases the scale used shall be in multiples of ten (10).

- f. Each sheet of the final plat shall display, in a prominent location and with prominent lettering, the subdivision name, generalized legal description and total acreage of the land to be subdivided. An example of the acceptable form is as follows:

FINAL PLAT of  
SUBDIVISION NAME  
A SUBDIVISION OF A PART OF THE N ½ OF THE NE ¼ OF  
SECTION 3, T 14 S, R 86 W OF THE 6TH P.M.  
CRESTED BUTTE, GUNNISON COUNTY, COLORADO  
AREA = 78.183 ACRES

- g. Each sheet shall show a written and graphic scale, north point (designated true north) and the date of the survey.
- h. The locations and exact dimensions of all easements, including those shown on the preliminary plan, and a grant thereof to the public use or the specific entity which will use the easement, whether dedicated to a specific agency, individual or body, and the purpose of each easement.
- i. Location of the proposed subdivision by reference to permanent survey monuments, with a tie to a section corner or a one-quarter (¼) section corner.
- j. Bearings and dimensions to the nearest one-hundredth (.01) of a foot of tract or parcel lines and street centerlines.
- k. All blocks and tracts or parcels shall be numbered in consecutive order for ease of identification (when blocks and tracts or parcels continue the Town grid, blocks shall be numbered beginning with the number next to the last block and tract, or parcel numbers shall begin in the northeast corner of the block and end in the southeast corner of the block).
- l. The area of each tract or parcel in acres or in square feet shall be indicated.
- m. Proposed ownership and use of open land shall be indicated.
- n. All thoroughfares shall be named as follows:
  1. North/south streets shall be numbered;
  2. East/west avenues shall be named after mountains in the Elk Mountains; and
  3. Streets and avenues in alignment with existing streets and avenues shall be named according to the streets or avenues with which they correspond.
- o. The names of abutting subdivisions shall be indicated with dotted lines for abutting lots, tracts or parcels and, if adjacent land is unplatted, it shall be shown as such.
- p. All section, range and township lines shall be shown and must close within the limits of one (1) in ten thousand (10,000). All tract or parcel lines must close within the limits of one (1) in ten thousand (10,000).
- q. All curve data shall be shown in chart form on the face of the plat.
- r. Radii, angles, points of curvature and length of all arcs shall be indicated.
- s. Information and measurements complying with all monumentation, plat and survey requirements of Articles 50 and 51 of Title 38, C.R.S.

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- t. An identification of the streets, alleys, parks, trails and other public areas or facilities as shown on the preliminary plan, a dedication thereof to public use and identification of areas reserved for future public use.
  - u. A written legal description of the proposed subdivision, including the total acreage to the nearest one-thousandth (.001) of an acre.
  - v. A statement by the land surveyor explaining how bearings, if used, were determined.
  - w. Approved certificate language as set forth in Appendix M attached to this Code.
  - x. The following certificates are required on the final plat:
    1. A certificate by the registered land surveyor as to the accuracy of the survey and plat and that the survey was performed by him or her;
    2. A certificate of a title guarantor, title insurance company or attorney that the person dedicating to the public the public rights-of-way, areas or facilities as shown thereon are the owners thereof in fee simple, free and clear of all liens and encumbrances except those listed;
    3. A certificate showing approval of the plat by the Planning Commission and the Planning Director;
    4. A certificate showing acceptance of dedications and easements by the Town Council, with the signature by the Mayor and attestation of the Town Clerk;
    5. A certificate of ownership and dedication;
    6. A certificate of mortgage and approval by any mortgagee, if applicable; and
    7. A certificate of recordation of the County Clerk and Recorder, including the date and time, a space for the reception number and the recorder's signature, but no book and page numbers.
  - y. Any other information reasonably required by the Planning Commission.
- (5) Preliminary and proposed engineering designs and estimated costs for all improvements to be installed in the subdivision, including but not limited to water, sewer and all other utilities, streets and related improvements, trails, bridges, excavations, landscaping and storm drainage.
- (6) A landscape plan showing location, size and type of proposed landscape features, where such features are located on common or dedicated areas.
- (7) A final plan to address any existing or potential hazardous conditions, including but not limited to soils, mine tailings, mine drainages, petroleum residue, landfills, underground tanks, etc. which has been approved by all applicable state and federal agencies as adequate for the proposed uses.
- (8) Copies of any monument records required of the land surveyor in accordance with state statutes.
- (9) A certified statement by the subdivider stating that all supplemental information furnished with the preliminary plan is embodied in the final plan and final plat; or, if this is not the case, revised supplemental date of the same scope and format as required for the preliminary plan shall be furnished with the final plan and final plat.
- (10) Three (3) copies of all draft protective covenants or restrictions placed on the proposed subdivision, one (1) of which shall be properly executed, acknowledged and filed with the final plat, following consultation with the Town and insertion of any amendments reasonably required. Such covenants shall not conflict with the existing or proposed zone district minimum or maximum dimensional or use standards, or the Crested Butte Design Guidelines.

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- (11) Two (2) copies of the draft conservation easements or other documents acceptable to the Town, permanently preserving open land for the proposed number of units as set forth in Article 9 of this Chapter.
  - (12) Upon request of the Town, the final plan application shall include an unexecuted warranty deed conveying to the Town all lands dedicated to the Town, other than streets, alleys and rights-of-way as shown on the final plat.
  - (13) A subdivision improvements agreement in the form substantially as set forth in Appendix J attached to this Code.
  - (14) Financial security for public improvements to be built by the subdivider as required in Subsection 17-5-80(c) below.
  - (15) A statement that the subdivider covenants that all information presented for the final plan is accurate and acknowledging that the Town is being asked to make a decision to approve or disapprove the proposed subdivision based on the information presented to it by the subdivider.
  - (16) Any other documents, certificates or information reasonably deemed necessary by the Planning Commission.

### **Sec. 17-5-80. Subdivision improvements agreement.**

- (a) Purpose. The subdivision improvements agreement is a contract between the Town and the owner of the proposed subdivision. It describes the improvements to be constructed by the subdivider and sets forth directly, or by reference, the construction specifications for these improvements. It provides a date for completion of the improvements and sets forth other terms and conditions, including without limitation, warranties, remedies for default by the owner and acceptance of the improvements by the Town.
- (b) Agreement required. No final plat shall be executed by the Mayor, Town Clerk, Planning Commission Chairperson or Planning Director until the subdivider has submitted and the Town Council has approved, a subdivision improvements agreement (only if improvements are required), committing to timely construct those improvements which have been required pursuant to these subdivision regulations and according to specifications. The subdivision improvements agreement shall be in a form substantially as set forth in Appendix J attached to this Code.
- (c) Collateral required.
  - (1) Suitable collateral to ensure completion of the public improvements according to design and time specifications in an amount stipulated in the Subdivision Improvements Agreement, but no less than one hundred twenty-five percent (125%) of the estimated costs, including landscaping, noxious weed eradication and wetland mitigation, as agreed upon by the subdivider and the Town, shall accompany the signed final plat submission for filing. The collateral shall be in the form of a certificate of deposit, letter of credit or other such legal assurance as may be deemed appropriate by the Town Council.
  - (2) Should a subdivider not provide collateral to ensure completion of the required public improvements, work on the improvements shall not be commenced, and the final plat shall not be executed by the Mayor, Town Clerk, Planning Commission Chairperson or Planning Director.
- (d) Release of collateral. The subdivider may apply in writing to the Town Council for a partial or full release of collateral as the required public improvements in a subdivision are completed.
  - (1) Upon receipt of such application, the Town Manager shall cause the public improvements which have been completed to be inspected.

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- (2) If the Town Manager determines from such inspection that the improvements have been made in accordance with the final plan, the final plat and the subdivision improvements agreement, a portion of the collateral may be released upon authorizing resolution by the Town Council; however, collateral sufficient to cover at least one hundred twenty-five percent (125%) of the estimated cost of any incomplete improvements shall be retained.
  - (3) No partial releases of collateral will be granted in amounts less than twenty percent (20%) of the total original collateral.
  - (4) The last twenty percent (20%) of the original collateral will not be released until all the improvements have been accepted and any applicable warranty periods have expired.
- (e) Use of collateral by Town. If the Town Manager determines that reasonable grounds for insecurity exist with respect to the performance of the subdivider, the Town Manager shall so notify the subdivider in writing, stating that the Town intends to withdraw funds from the collateral for the purpose of correcting, repairing or completing the improvements, giving the reasons therefor and informing the subdivider of his or her right to be heard before the Town Council within thirty (30) days from the date of notification. After the earlier of a hearing thereon or said thirty (30) days, if the Town Council determines that the subdivider will not or cannot construct the public improvements in accordance with the subdivision improvements agreement, the Town may withdraw funds from the collateral and expend such funds as may be necessary to correct, repair or construct the agreed-upon public improvements, to include covering such costs, including reasonable attorneys' fees, as are necessary for the Town to administer the construction and correct, repair or complete the improvements.
  - (f) Phased inspections and correction of defects.
    - (1) Upon completion of each phase of public improvements construction, as set forth in the subdivision improvements agreement, the subdivider shall notify the Town Manager and request inspection. The Town Manager shall cause the completed public improvements to be inspected and shall within five (5) days notify the subdivider, in writing, whether or not any unsatisfactory conditions were found.
    - (2) Upon notification of unsatisfactory conditions, the subdivider shall take necessary corrective measures and shall again request inspection. Such process shall continue until the subdivider receives notification that no unsatisfactory conditions exist.
    - (3) If the Town Manager determines that the subdivider is not constructing any or all of the improvements in accordance with the subdivision improvements agreement and specifications, the Town Manager shall notify the subdivider of noncompliance, and shall have the power to stop construction work on the subdivision improvements until a schedule and agreement on compliance have been reached.
    - (4) If it is necessary for the Town, as determined by the Town, to hire an engineer for inspection of the improvements, the subdivider shall reimburse the Town for expenses incurred by the Town for an engineering consultant prior to final acceptance by the Town.
  - (g) Preliminary acceptance.
    - (1) Upon completion of public improvements construction, the subdivider shall notify the Town Manager and request inspection. The Town Manager shall cause all public improvements to be inspected and shall notify the subdivider within five (5) days in writing of nonacceptance or preliminary acceptance. If the public improvements are not acceptable, the reasons for nonacceptance shall be stated, and corrective measures shall be outlined.
    - (2) Upon preliminary acceptance, the Town will assume responsibility for snow removal and other normal routine maintenance, but the subdivider shall remain responsible for all other maintenance and repairs pending final acceptance. After preliminary acceptance of the improvements, the Town may issue building permits for structures on the lots or tracts in the subdivision. Upon application, the Town may

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then release up to eighty percent (80%) of the collateral required for all public improvements. At the Town's option, it may elect not to plow the streets until there is development on individual lots or tracts that warrant access.

- (3) The Town shall not be required to make inspections during any period when climatic conditions interfere with making a thorough inspection, as determined by the inspecting person.
  - (4) Prior to Town acceptance of any public improvement located within an irrigation ditch easement, the subdivider shall provide the Town with an affidavit confirming that the ditch is presently located in compliance with state law and that the placement and use of the improvements within the ditch easement do not violate Section 37-86-104, et seq., C.R.S., or other applicable state law.
  - (5) As-built drawings.
    - a. As a condition for preliminary acceptance of the improvements, the subdivider shall submit one (1) digital copy of all "as-built" drawings for all improvements, including private utility lines, to the Town on either compact disk or DVD.
    - b. The digital copy shall be compatible with the Town's geographic information system software.
    - c. Image data must be submitted in a format compatible with the Town's software.
    - d. Data submitted becomes the property of the Town. A brief summary of the source of the data, including but not limited to company name, address, date, map number, date of last revision, scale and any applicable source data used in compiling or obtaining the data shall be included.
  - (6) Upon preliminary acceptance of all the subdivision improvements by the Town, the subdivision may begin closing sales of the tracts or parcels, and building permits may be issued by the Town.
- (h) Final acceptance and release of collateral.
- (1) Twenty-four (24) months following preliminary acceptance, the Town shall inspect all public improvements for final acceptance, except that landscaping shall be inspected only in the months of July and August and at least twenty-four (24) months after preliminary acceptance. The Town Manager shall notify the subdivider in writing of nonacceptance or final acceptance. If the improvements are not acceptable, the reason for nonacceptance shall be stated in writing, and corrective measures shall be agreed upon by the Town and subdivider and timely completed by the subdivider.
  - (2) Upon final acceptance by a resolution of the Town Council, the Town shall release the remaining collateral and assume all future maintenance and repair responsibilities for the public improvements.

(Prior code 15-3-6, Ord. 16 §15, 2011)

### **Sec. 17-5-90. Subdivision dedication requirements.**

- (a) Purpose. New subdivisions require services provided through municipal facilities which are provided, in part, through the dedication of land necessary to construct the facilities. If there is no land dedication by new subdivisions, sufficient land may not be made available at the time of subdivision to provide necessary services to new residents. In order to provide public services, the Town requires certain dedications of land or, in the appropriate circumstances, payment of fees in lieu of dedication. It is the intent of this Section and these subdivision regulations that new development pay its proportionate or pro-rata share of the costs attributable to the new growth, thereby relieving the public generally from subsidizing the cost of improvements and facilities attributable to new development. It is the further intent of this Section that the system be understandable and easy to apply, and that policies and fees be subject to revision as conditions change.

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- (b) Applicability and time of dedication. Each major subdivision of land within the Town shall dedicate land or, where appropriate, pay a fee in lieu of dedication, for parks, streets, municipal land, schools, fire services and trails in accordance with this Section. Unless another means of dedication or conveyance is approved by the Town, each required dedication shall be made on the final plat. Where a payment in lieu of dedication is permitted and approved by the Town, such payment shall be made a condition of subdivision approval and shall be made prior to the recordation of the final plat. All property held by a governmental entity for public use shall be exempted from the dedication requirements imposed by this Section.
  - (c) Interest in land to be dedicated. Unless otherwise provided by this Section or approved by the Town Attorney, all dedications shall be made in fee simple and lands dedicated shall be free and clear of liens and encumbrances.
  - (d) Street dedication requirement. All roads, streets, alleys or other public traffic ways located within the proposed subdivision and those that are necessary to serve the proposed subdivision shall be dedicated as public rights-of-way on the final plat for the subdivision.
  - (e) Park, public land and school land dedication requirement.
    - (1) The following minimum land acreage shall be dedicated to the Town for public park purposes, as recommended in the Crested Butte Land Use Plan, Park Land section of the Public Lands chapter, and in the Area Plan, Part 1, Section III, Land Use, Residential Site Design, Public Lands:
      - a. For each single-family residential unit, including mobile home units, and accessory dwellings and assuming at least eighteen percent (18%) of the single-family home tracts will have accessory dwellings on them as the Town Census found in 2009, .0263 acres (1,146 square feet) of developable land;
      - b. For each multi-family residential unit, including duplex units, residential units in commercial buildings and bed and breakfast units, .03 acres (1,307 square feet) of developable land; and
      - c. For every one hundred (100) proposed residential dwelling units, at least 2.42 acres of contiguous flat developable land shall be provided in a shape and having topography suitable for ball fields and other park facilities.
    - (2) The following minimum land acreage shall be dedicated to the Town for Town public facility purposes to be used for, for example and not by way of limitation: a public meeting hall, a fire hall, energy generation, equipment maintenance and storage, water and waste water treatment facilities, snow storage or other public purposes, as recommended in the Crested Butte Land Use Plan, Land for Town Public Facilities section of the Public Lands chapter, and in the Area Plan, Part 1, Section III, Land Use, Residential Site Design, Public Lands, for each commercial unit and for each residential unit, including single-family units, mobile home units, multi-family units and accessory dwellings (assume eighteen percent [18%] of the single-family home tracts will also have accessory dwellings), and each residential unit in a commercial building .0356 acre (1,552 square feet) of developable land.
    - (3) The following minimum land acreage shall be dedicated to the Town for schools supported with public funds, as recommended in the Crested Butte Area Plan in Section III, Land Use, Residential Site Design, Public Lands, Policy 25 for each residential unit, including mobile home units, .0034 acres (146 square feet) of developable land.
    - (4) Land dedicated for public park, public or school purposes for a subdivision may include historic or natural features and shall:
      - a. Lend itself to utilization: (a) for active recreational use (such as play areas, picnic areas, trails, ball fields or recreational structures); (b) for public uses to be used for the location of, for example, public meeting halls, equipment maintenance and storage sites, water and sewer treatment facilities or for other public purposes; and (c) for schools.

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(To achieve these uses, park sites, public use sites and school sites shall, at a minimum, not be located in any type of wetland, be dry, be accessible from a street or trail if approved by the Town, and shall include a minimum of ninety percent (90%) of the land with a slope of five percent (5%) or less);

- b. Include the dedication of water rights adequate to irrigate all land dedicated for park use, public use or school use;
  - c. Not mix uses so that, for instance, land dedicated for school use does not interrupt continuous public use of a park;
  - d. Not include steep slopes, hazardous geologic formations, hazardous waste sites, adverse topography or other features that may be harmful to the health, safety or welfare of the public or may restrict the reasonable public use thereof;
  - e. Not be less than three thousand (3,000) square feet in size unless approved by the Town;
  - f. Be located to create large public spaces rather than many small public spaces at the minimum size, unless approved by the Town;
  - g. Be located so as to preserve air quality, the natural environment and community integrity in the most practicable, attractive manner possible;
  - h. Be designed to link open lands, trails and other major components of the Town's recreational system;
  - i. Not include land developed for stormwater control unless the design of any recreational amenities is clearly safe from hazards caused by use of the land as a stormwater control area; and
  - j. Be located within or in the vicinity of the proposed subdivision so that the park land, public uses and schools benefit residents of the subdivision.
- (5) Where the required park, public facility or school lands dedication per unit within the proposed subdivision would not meet or exceed the minimum size defined in Paragraph (4) above because of the small size of the subdivision, the subdivider shall make a payment of a fee-in-lieu equivalent to the costs of dedicating the required acreage of park, Town public facility land or school land as further described in Subsection (i) below.
- (f) Trail dedication.
- (1) Trail dedications shall be made within each subdivision in accordance with Article 10, Division 2 of this Chapter. Such dedications shall be made in the form of public easement or right-of-way as determined by the Town. For each proposed residential unit, including mobile homes, sixty-one (61) lineal feet of trail right-of-way or easement shall be provided.
  - (2) Where the required trail dedication within a proposed subdivision is minimal because of the small size of the proposed subdivision and the number of lineal feet of trail required is not practical to create a usable or functional trail, the subdivider shall make a payment of a fee-in-lieu equivalent to the cost of dedicating the required lineal feet of trail less the lineal feet of trail actually dedicated to the Town within the subdivision.
  - (3) Land intended for dedication as a trail right-of-way or easement shall be designed and located in such a manner as to protect the safety of trail users, and shall be at least fifteen (15) feet in width, but in all cases the width shall be adequate to safely provide for the proposed and projected users and uses of the trail. Such lands shall be located to provide direct and convenient access to the public trail system for residents within the subdivision. Trails may overlap with other easements or rights-of-way,

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provided that such overlapping does not compromise the functional use of the subject easement or any other easement or right-of-way for the purposes intended.

- (4) The location, purpose and design considerations when planning trails shall comply with the requirements of Sections 17-10-340 and 17-10-350 of this Chapter.
- (5) When the trail dedication required would result in more trails than practically viable for the site, or if the Planning Commission determines trails located in areas outside the subdivision may be more appropriate, a payment in lieu of the dedication, or an alternate trail dedication, may be made by the subdivider if the payment or the alternate trail location complies with one (1) of the following:
  - a. The payment-in-lieu shall be equivalent to the requirements of Subsection (i) below; provided, however, that nothing herein shall obligate the Town to accept such substitute payment-in-lieu;
  - b. The subdivider may provide trails at another location; provided, however, that nothing herein shall obligate the Town to accept such substitute dedication; or
  - c. The subdivider may pay to construct or rehabilitate a trail within three (3) miles of the Town; provided, however, that nothing herein shall obligate the Town to accept such substitute payment-in-lieu. The Planning Commission shall determine whether the payment to construct a trail is adequate, when compared to the amount of trail not included in the subdivision.
  - d. The Town encourages subdividers to offer substitute trails within three (3) miles from the Town boundary existing at the time of subdivision, but the Town may consider other trail locations.
- (6) Subdividers shall provide easements for trails proposed outside the proposed subdivision. Trails within the proposed subdivision shall be constructed by the subdivider to the trail standards described in the Crested Butte Parks and Recreation Regional Master Plan, Appendix D, Crested Butte Trail System Design Standards (Trail Design Standards) and shall be located on easements at least fifteen (15) feet wide, as described in Paragraph 17-5-90(f)(3) above, and in the trails policies of the Area Plan. The Trail Design Standards describe design standards for types of trails including: paved shared use trails, street-side share use trails, natural surface trails, boardwalks and decks, and on-street bike routes and sidewalks. For each segment of trail in the subdivision, the Planning Commission shall determine the type of trail to be built. The Town Engineer and the Parks and Recreation Director will provide further information regarding construction materials, etc., during the subdivision review process.

(g) Fire protection facility site dedication.

(Reserved.)

- (h) Substitute land dedication. As an alternative means of satisfying the required dedication of land within a proposed subdivision as provided by this Section, a subdivider may offer to the Town a substitute dedication of land of equivalent size owned by the subdivider that is located outside of the proposed subdivision; provided, however, that nothing herein shall obligate the Town to accept such substitute dedication. The Town shall not accept any substitute dedication located more than three (3) miles from the Town boundary existing at the time of subdivision.
- (i) Payment in lieu of dedication.
  - (1) In lieu of any dedication of land required by this Section, the Town may request and, if requested, the subdivider shall make, a payment to the Town if:
    - a. The Town determines that the amount or quality of the land to be dedicated by the subdivider pursuant to this Section would not be of adequate size to achieve the purpose of the dedication;
    - b. The Town reasonably determines that the dedication of the land would not serve the health, safety or welfare of the public;

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- c. The Town makes a finding that it would be more beneficial to the Town for the subdivider to pay the payment in lieu of land for trails, rather than providing the required land for trails; or
    - d. The Town makes a finding that the trail dedication required would result in more trails than practically viable for the proposed subdivision.
  - (2) The amount of the payment in lieu of any land dedication requirement, except land for trails, shall be determined as follows:
    - a. Fair market per square foot value of the entire property proposed for subdivision after the proposed subdivision has received all subdivision approvals;
    - b. Multiplied by the total square footage of land that is required for the dedication; and
    - c. Minus the value of any dedications made toward the required dedication at the fair market value as described above.
  - (3) The amount of the payment in lieu of any land dedication requirement for trails shall be determined as follows:
    - a. Fair market per square foot value of the entire property proposed for subdivision after it has received all subdivision approvals;
    - b. Multiplied by the total lineal footage of trail required after applying the standard in Paragraph (f)(1) of this Section times fifteen (15) feet wide; and
    - c. Minus the value of any dedications made toward the required dedication at the fair market value as described above.
  - (4) The fair market square foot value of land for purposes of determining the amount of a payment in lieu of land dedication shall be determined by an independent real estate appraisal obtained by the Town at the subdivider's cost. Such appraisal shall be performed by an appraiser acceptable to both the Town and the subdivider. The value determined by the appraisal shall be the value of the Property proposed to be subdivided after all approvals have been obtained, and shall be binding upon the subdivider and the Town.
  - (j) Payment in lieu of water rights for public park requirements. Where payment in lieu of public park land is made in accordance with this Section, the subdivider shall also either dedicate sufficient water to irrigate park land in the Town equivalent in size to the land that otherwise would have been required for dedication, or shall make an additional payment in lieu of water rights sufficient to irrigate land equivalent in size to the land that otherwise would have been required for dedication, including any costs necessary to deliver the water to the public park land. In determining the amount of payment in lieu of such water rights, the Town shall obtain an appraisal from a qualified person acceptable to the Town and the subdivider, at the subdivider's cost.
  - (k) Waiver of requirements. The Town may waive a required dedication of land or the payment in lieu of dedication required by this Section in the following cases:
    - (1) When the project has already been fully developed and the subdivision of land is necessary to bring the land into conformance with the as-built or as-constructed development;
    - (2) When the development does not result in any increase in demand for park, trail, fire or school facilities; or
    - (3) When the subdivider has provided more dedications than required for other purposes or other contributions and the Town Council finds it to be in the best interests of the health, safety and welfare of the Town to waive such requirements.

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- (I) Domestic water. Domestic water rights dedications shall be made to meet the supply needs of the proposed residential units and the proposed business and commercial uses, in accordance with Section 17-11-370. The water quality of the domestic water provided by this dedication shall meet or exceed the Colorado Department of Public Health and Environment water quality standards of Segment 11 of Coal Creek. Water rights shall be sufficiently senior to all other potential water diverters in the Middle Slate River Valley, as described in the Area Plan, to the satisfaction of the Town, or a water augmentation plan may be required.

(Ord. 16 §3, 2006; Ord. 26, 2007; Ord. 16 §§16—23, 2011)

### **Sec. 17-5-100. Capital expansion recovery system.**

- (a) Intent.
- (1) It is the intent of this Section to adopt a rational system for identifying growth-related costs incurred by the Town in providing for new and expanded capital facilities made necessary by expanded population levels; to develop a fee structure therefor directly related to such costs; and to provide a method for collection of such fees.
  - (2) It is the further intent of this Section that such fees accurately reflect actual growth-related capital costs; that once such costs are paid, ongoing operating charges will be similar to charges imposed in other areas of the Town prior to such development; that the system will be understandable and easy to apply; and that policies and fees shall be subject to revision as conditions change.
- (b) Fees imposed.
- (1) There are hereby imposed capital expansion recovery system fees upon every additional residential unit and upon additional structural square footage for business, commercial and tourist uses in new subdivisions as set forth in Table 17-A-1 entitled "Capital Expansion Recovery System Fees for Properties Which Historically Have Been Subject to Payment of the Crested Butte Land Transfer Excise Tax"; and Table 17-A-2 entitled "Capital Expansion Recovery System Fees for Properties Which Historically Have Not Been Subject to Payment of the Crested Butte Land Transfer Excise Tax."

**Table 17-A-1**  
**Capital Expansion Recovery System Fees for Properties Which Historically  
Have Been Subject to Payment of the Crested Butte Land Transfer Excise Tax**

<b>Function</b>	<b>Each Single-Family Residential Unit</b>	<b>Each Multi-Family Residential Unit</b>	<b>Each Commercial Residential Unit</b>	<b>Each Square Foot of Business/Commercial Tourist</b>
Municipal Buildings	Reserved	Reserved	Reserved	Reserved
Fire	\$ 388.79	\$ 388.79	Reserved	\$00.138
Marshal	Reserved	Reserved	Reserved	Reserved
Library	Reserved	Reserved	Reserved	Reserved
Park & Recreation Improvements	\$2,510.20	\$2,382.95	\$2,070.62	Reserved
Trails	Reserved	Reserved	Reserved	Reserved
<b>Total</b>	<b>\$2,898.99</b>	<b>\$2,771.74</b>	<b>\$2,070.62</b>	<b>\$00.138</b>

**Table 17-A-2**

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**Capital Expansion Recovery System Fees for Properties Which Historically  
Have Not Been Subject to Payment of the Crested Butte Land Transfer Excise Tax**

<b>Function</b>	<b>Each Single-Family Residential Unit</b>	<b>Each Multi-Family Residential Unit</b>	<b>Each Commercial Residential Unit</b>	<b>Each Square Foot of Business/Commercial/Tourist</b>
Municipal Buildings	Reserved	Reserved	Reserved	Reserved
Fire	\$ 388.79	\$ 388.79	Reserved	\$00.138
Marshal	Reserved	Reserved	Reserved	Reserved
Library	Reserved	Reserved	Reserved	Reserved Park & Recreation
Improvements	\$2,540.41	\$2,411.63	\$2,095.55	Reserved
Trails	Reserved	Reserved	Reserved	Reserved
Total	\$2,929.20	\$2,800.42	\$2,095.55	\$00.138

- (2) There is hereby imposed a capital expansion fee per square foot of right-of-way for snow plow equipment upon every additional square foot of street right-of-way in new subdivisions and every additional square foot of area to be plowed by the Town. The fee for each square foot of right-of-way and area to be plowed is \$0.586 cents.
- (3) Capital expansion recovery system fees shall be due and payable prior to recording the final plat.
- (c) Exemption from fee. The Town Council, in its sole discretion, may by resolution grant an exemption for all or any part of the capital expansion recovery system fee imposed upon a new subdivision upon a finding that such waiver is in the best interests of the public by virtue of the fact that the subdivider will provide specific public facilities which directly enhance the recreational, social, economic or cultural facilities of the community and that such subdivider-provided public facilities are approximately equivalent in value to the otherwise required capital expansion recovery system fee.
- (d) Disposition of fees. All fees collected pursuant to this Section shall be deposited in an account identified for each function in Tables 17-A-1 and 17-A-2 above, to be created by resolution of the Town Council, and to be used for the capital needs therein identified. Such resolution shall be adopted to comply with the provisions of Section 31-15-302(1)(f)(I), C.R.S.
- (e) Review. The fees imposed by this Section, and moneys expended from the accounts created as required, shall be reviewed annually. The Town Manager shall report to the Town Council, as part of the presentation of the annual proposed budget, the actual and proposed expenditures and projects accomplished and to be accomplished from the accounts.
- (f) Refunds. Subdividers may request a refund of their fees if they are not spent within seven (7) years from the date they were paid. Fees are deemed to be spent in the order in which they are collected. If it is determined that the fees or a part thereof have not been spent within the above seven-year period, the fees shall be refunded to the owners of the subdivision.

(Prior code 15-3-6; Ord. 13 §§1, 11, 1996; Ord. 11 §§1, 6, 1997; Ord. 13 §1, 2004; Ord. 4 §1, 2009; Ord. 3 §1, 2013)

## **ARTICLE 6 Major Subdivision Design Standards**

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## **Sec. 17-6-10. General requirements.**

(a) Criteria for review of subdivision. No proposed major subdivision shall be approved unless the Planning Commission finds that it complies with the applicable general and specific design and improvement standards set forth below. If the proposed subdivision does not comply with the design and improvement standards, it shall either be approved with conditions which assure compliance with all such standards, continued to a date certain or denied.

(b) All subdivisions in the Town shall comply with the following general requirements. They shall:

(1) Conform to:

- a. These subdivision regulations;
- b. The existing or proposed underlying zone districts;
- c. The Town's Land Use Plan (including the Area Plan);
- d. The Town's Transportation Plan;
- e. The Town's Noxious Weed Management Plan;
- f. The Town's Energy Action Plan;
- g. The Town of Crested Butte Parks and Recreation Regional Master Plan;
- h. The Town's Design Guidelines; and
- i. The Gunnison County Trails Master Plan.

If there are discrepancies between these subdivision regulations and recommendations of the Crested Butte Land Use Plan, or other applicable Town plans listed above, the more rigorous standard of performance shall be met.

- (2) Provide an overall public benefit to the Town.
- (3) Provide adequate access for fire protection and emergencies.
- (4) Result in no significant unmitigated adverse impacts on public facilities, rights-of-way or utilities.
- (5) Result in no significant unmitigated adverse effects on the use of adjacent property, or adversely affect the future development of surrounding areas.
- (6) Result in leaving existing lots or the creation of tracts or parcels which are capable of being built upon in conformance with these subdivision regulations, the final plat conditions, existing zone districts, the currently adopted edition of the Building Code and other adopted plans and regulations.
- (7) Take into account the character of the land to be subdivided, the surrounding area and the climate.
- (8) Result in no additional financial burden on current residents and property owners within the Town for services to residential and commercial uses in the new subdivision.
- (9) Be similar in design and density to the remainder of the Town and, once built out, the difference between the appearance of the existing town and the new subdivision will be negligible except for reduced carbon footprint considerations in the proposed subdivision.

(c) Subdivisions to be based on site analysis.

- (1) To the maximum extent practicable, subdivision development shall be located to preserve the natural features of the property, to avoid areas of environmental sensitivity and to minimize negative impacts and alteration of natural features. The subdivision design shall preserve sensitive natural features, even

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- if at the expense of maintaining the traditional Town grid pattern discussed in Section 17-7-30 of this Chapter.
- (2) Land subject to natural hazards such as flooding, falling rock, landslides, mudslides, soil creep, snow avalanches, snow slides, wildfire or other natural hazards or conditions shall not:
- a. Be platted for any use which might endanger the health, safety or welfare of the inhabitants; or
  - b. Contain public rights-of-way or utilities, unless the subject hazard can not be adequately avoided as determined by the Town.
- (3) The design and development of subdivisions shall preserve, to the maximum extent possible, the natural terrain, bodies of water, marshes, wetlands, drainage, existing topsoil and vegetation, including tree masses, large individual trees, willow masses and large individual willow bushes.
- (4) Subdivisions shall be designed to:
- a. Avoid adverse impacts on groundwater and aquifer recharge areas;
  - b. Minimize cut and fill;
  - c. Avoid unnecessary impervious cover;
  - d. Avoid increasing the potential for damage due to flooding;
  - e. Avoid or mitigate adverse effects of noise, odor and traffic; and
  - f. Minimize development that would negatively affect sensitive natural features.
- (5) Subdivision design shall, to the maximum extent possible, preserve:
- a. Existing and historical trails;
  - b. Existing and historical wildlife movement corridors, flyways, breeding grounds or other significant wildlife habitat;
  - c. Existing historic structures; and
  - d. Wetlands, other water features and buffers from wetlands and water features (as required in Sections 17-8-50 and 17-8-90 of this Chapter).
- (d) Improvements at subdivider's expense. Unless otherwise provided, all improvements shall be made at the subdivider's expense, according to the specifications described herein.
- (e) Efficiency. Subdivision design shall provide for efficiency in the installation and maintenance of all public and private facilities and services.
- (f) Patterns of development. The proposed subdivision shall not be designed to create development patterns that cause inefficiencies, duplication or premature extension of public facilities, or unnecessary public costs.
- (g) Unanticipated field conditions. Where field conditions require changed or additional construction techniques, such as the need for curtain drains to intercept a previously unknown drainage problem which will interfere with a subdivision improvement, the Town may require reasonable additional measures to be taken. Failure to take required corrective action may result in the Town not accepting the improvements and, therefore, not allowing sales of tracts or parcels or issuing building permits or certificates of occupancy within the subdivision.

(Prior code 15-3-7; Ord. 4 §1, 2009) (Prior code 15-3-7; Ord. 4 §1, 2009; Ord. 16 §§24—26, 2011)

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### **Sec. 17-6-20. Adoption of standards.**

- (a) The following publications are adopted by reference as provided in this Chapter, and their adoption is intended to make them Town standards, unless standards in this Chapter specifically contradict the standards in these publications:
  - (1) State of Colorado *State Highway Access Code*, Volume 2, Code of Colorado Regulations, 601-1, March 2002, as amended, which describes how access should be made to state highways;
  - (2) Walter M. Kulash, *Residential Streets* (American Society of Civil Engineers, National Association of Home Builders, Institute of Transportation Engineers, ULI) (the Urban Land Institute), Third Edition, Washington D.C., ULI - the Urban Land Institute, 2001, which describes how residential streets should be designed;
  - (3) Standards and Guidelines policy published by the Crested Butte Fire Protection District, P. O. Box 1009, Crested Butte, Colorado, 81224, revised December, 2010, as amended, which describes fire protection standards for subdivisions; and
  - (4) *Public Works Criteria for Design and Construction: Earthwork, Sewer, and Water*, March 2009, as amended which is design criteria of the Town and can be found in the office of the Director of Public Works and at the Town's World Wide Web site.
- (b) No less than one (1) certified copy of each of the manuals identified in Subsection (a) above are presently available for public inspection in the office of the Town Clerk. Upon adoption of the manuals by reference, at least one (1) copy of each publication shall be available in either the office of the Town Clerk or the office of the Chief Enforcement Officer.
- (c) Where a conflict exists between the manuals adopted in this Section and the terms and provisions of the remainder of this Chapter, the terms and provisions of the remainder of this Chapter shall control.

(Ord. 2 §§1—3, 1996; Ord. 4 §1, 2009; Ord. 16 §27, 2011)

### **Sec. 17-6-30. Hazardous areas standards.**

- (a) Development in hazardous areas shall be prohibited unless a subdivider can demonstrate, using an appropriate professional in the field, that the areas proposed for development are not in hazardous areas. Hazardous areas are mapped in the Crested Butte Area Plan. They have the following titles:
  - (1) Avalanche hazard;
  - (2) Flood hazards;
  - (3) Geologic hazards;
  - (4) Wild fire hazards; and
  - (5) Slopes thirty percent (30%) and greater.

If all of the land owned by a person is in a hazardous area, then the density transfers described in Section 17-13-50 of this Chapter may be applicable to allow some economic beneficial use of the property in addition to grazing.

- (b) Development in the one-hundred-year floodplain shall be prohibited except for arterial streets which cross Coal Creek or the Slate River, or trails approved by the Town and the exemptions applicable to the restrictive inner buffer listed in Subsection 17-8-90(b). Critical facilities that must be located within the one-hundred-year floodplain, such as pumping stations for water, power and gas, shall be protected using one (1) or more of the following methods:

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- (1) Location outside the one-hundred-year floodplain; or
  - (2) Elevation or flood proofing of the structure so that the lowest floor elevation is elevated or protected to one (1) foot above the one-hundred-year flood elevation.

New critical facilities and expansions of critical facilities shall, when practicable, as determined by the Town, have continuous noninundated access (ingress and egress) during a one-hundred-year flood event.

- (c) A twenty-five-foot strip of land measured horizontally from the one-hundred-year floodplain designation on each side of any stream or other water feature located within the boundaries of the subdivision, and of any stream or other water feature located on land adjacent to the subdivision Property, shall be protected in its natural state and shall be available for emergency access during periods of high water flow, with the exception that the exemptions applicable to the wetland and other water feature buffer listed in Subsection 17-8-90(b) of this Chapter may be constructed or conducted thereon. Underground utilities may be located in such protected areas, provided that there is no practical alternative location for such utilities, that the plans are approved by the Planning Commission and that all construction scars are revegetated and the natural flow of water is not constricted. The setback resulting in the largest distance from the stream or other water feature as discussed in this Subsection or Article 8 of this Chapter shall be maintained.
- (d) Proposed cut-and-fill slopes for roads, building excavations and other earthwork must be based upon evaluations by a qualified soils engineer or engineering geologist.
- (e) Development shall not occur on slopes greater than thirty percent (30%). In general, such steep land, unstable land and land with inadequate drainage shall not be platted unless a part of each tract or parcel, sufficient to accommodate a building unit, is deemed buildable by a qualified engineer approved by the Town, without the use of precautions such as cribbing or retaining walls, other than retaining walls less than four (4) feet high and less than twenty-five (25) feet long, unless otherwise approved by the Town. In steep areas, particular attention must be paid to geologic and soil conditions, road grades, cut-and-fill slopes and revegetation.
- (f) Because hazardous areas may include other areas posing a risk to public health or safety, a Phase 1 Environmental Audit or a Phase 1 Environmental Assessment (Environmental Audit) shall be conducted on all properties proposed for subdivision. All recognized environmental conditions shall be reported by the subdivider to the Town and County and the applicable state and federal agencies. The subdivider shall address any such recognized environmental conditions in accordance with applicable law. If the environmental audit identifies mine tailings, other hazardous wastes or other environmental hazards, the use of such land shall be limited by the amount of cleanup proposed by the subdivider and agreed to by the Town and the applicable agency. Prior to Final Subdivision Plan approval of the proposed uses, the applicable county, state or federal agency must approve a cleanup plan that the agency determines will be adequate for the proposed uses. The Town will withhold building permits for the site until the applicable county, state or federal agency determines the cleanup has been performed according to the approved cleanup plan.

(Prior code 15-3-7; Ord. 16 §8, 2006; Ord. 16 §§28, 29, 2011)

## **Sec. 17-6-40. Sustainability and provisions to minimize carbon footprint.**

Subdivision design shall incorporate provisions to minimize the carbon footprint of the subdivision and maximize sustainability of the development. Guiding principles for these topics are listed below and titles of Area Plan policies, where more discussion and ideas are located, are listed next to each topic below. Guiding principles for minimizing the carbon footprint are not limited to the recommendations of the Area Plan or the list below:

- (1) Sustainability topics, guiding principles for minimizing carbon footprint and topics discussed in the Area Plan include the following, but are not limited to the following:

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- a. Drainage, runoff and water pollution - utilities policies;
  - b. Utilizing the inherent features of the site - residential site design policies;
  - c. An integrated intermodal transportation system - transportation policies;
  - d. Low impact development strategies to address storm water, integrate natural drainages and accommodate large snow loads and high volume spring melts - utilities policies;
  - e. Dense development, where walking and bicycling are encouraged, similar to the existing Town, surrounded by open space and trails - residential site design policies;
  - f. Incorporation of existing indigenous vegetation - residential site design policies;
  - g. Commercial services, such as corner stores and mixed uses and onsite employment, where appropriate, to minimize the need for motor vehicles - transportation policies;
  - h. Solar access and energy production - residential site design policies;
  - i. Infrastructure designed to utilize non-treated water for irrigation water - utilities policies;
  - j. Open space preserved for each proposed dwelling unit - general policies for land use policies;
  - k. Greenways - residential site design policies;
  - l. Provision of public lands for public facilities - general policies for land use policies;
  - m. Sustainable energy communities - residential site design policies;
  - n. On-site and off-site energy production to serve the proposed subdivision - residential site design policies; and
  - o. Deed-restricted affordable housing - housing policies.
- (2) Other guiding principles to reduce a subdivision's carbon footprint:
- a. Community gardens and composting on residential tracts or parcels, especially if significant numbers of multi-family housing are proposed; and
  - b. The recommendations found in the Energy Action Plan for the Town.

### **Sec. 17-6-50. Soil erosion control.**

Permanent erosion and sediment control measures shall be installed and maintained during all stages of construction. At a minimum, soil erosion control shall meet the following criteria:

- (1) All erosion control features shall be consistent with the drainage standards set forth in Article 11, Division 2 of this Chapter.
- (2) Erosion control features such as berms and ditches shall be implemented prior to initiating construction activities for the subdivision, and dust suppression techniques shall be implemented during construction.
- (3) Cut-and-fill shall be kept to a minimum.
- (4) Graded or filled slopes shall be kept to a 3:1 slope or less and all slopes in excess of thirty percent (30%) shall be left undisturbed. Slope stabilization techniques shall be implemented where soil conditions warrant and approved by the Town Engineer.
- (5) Berms and ditches shall be constructed around graded areas to contain sediment-laden runoff.

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- (6) Grading and earth moving activities shall be carried out in July or late fall to avoid runoff periods and the rainy season when large amounts of sediment could be transported off the site by the runoff.
  - (7) All natural vegetation shrubbery in excess of two (2) feet in diameter and all trees with a trunk diameter of six (6) inches or more measured four and one-half (4½) feet above the ground shall be preserved unless the Town allows individual plants to be removed.
  - (8) Impervious surfaces shall be as small as possible, and runoff for impervious surfaces shall be collected in ditches or trenches in conformance with the drainage plan.
  - (9) Runoff velocity shall not exceed presubdivision levels.
  - (10) Degradation of water quality by the subdivision in waterways, water bodies and wetlands shall not occur.

## **ARTICLE 7 Tract and Block Design Standards**

### **Sec. 17-7-10. Application of requirements.**

All subdivisions shall comply with the site requirements set forth in Sections 17-7-20 through 17-6-140 below.(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-7-20. Building site sizes.**

Remaining lots and new tracts or parcels (building sites) must comply with the minimum and maximum size, width, setback and frontage requirements, and all other applicable dimensional limitations of the proposed or existing zone district. The size of neighborhood parks and snow storage areas may vary from this requirement.

### **Sec. 17-7-30. Block and building site patterns.**

- (a) Residential blocks and building sites shall be shaped to reflect the traditional grid pattern of the Town. Where the topography or natural features of the site, such as rivers or high quality wetlands, require different shapes, blocks and tracts or parcels (building sites), shall be shaped so as to:
  - (1) Accommodate lawful dwelling units, within the setbacks required by the applicable zone district; and
  - (2) Accommodate buildings that can comply with the Design Guidelines, Town of Crested Butte.
- (b) When the topography or natural features of the site suggest shapes other than the traditional grid pattern of the Town due to features such as hills, high quality wetlands, or rivers, tracts or parcels shall utilize natural dividers as their boundaries.

(Ord. 16 §35, 2011)

### **Sec. 17-7-40. Parking.**

Tracts or parcels shall be designed with off-street parking adequate to accommodate the requirements of the existing or proposed underlying zone districts and proposed use for each tract or parcel.

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### **Sec. 17-7-50. Configuration of each building site.**

- (a) The configuration of each tract or parcel (building site) shall be laid out generally to approximate a rectangular shape to allow for easy identification of boundaries by future owners and neighbors.
- (b) Side tract or parcel lines shall be substantially at right angles or arranged like radii, to street lines.
- (c) No tract or parcel shall be laid out so as to be located in two (2) governmental jurisdictions, including special districts, providing the same services.
- (d) Each tract or parcel shall have safe access to a public street. Driveways shall not exceed an eight-percent grade. The preferred intersection angle is ninety (90) degrees; the minimum angle is forty-five (45) degrees. Primary vehicular access to tracts or parcels shall not use easements across adjacent lots, tracts or parcels. Access to lots, tracts and parcels shall not cross steep slopes or other areas of natural hazard or open land, unless no other access is reasonably available and such access is approved by the Town. Access and roadways through open lands is strongly discouraged unless no other access is available due to topographic or other natural features.
- (e) Each tract or parcel shall be provided with at least twenty-five (25) feet of frontage on an approved public street or avenue or the minimum lot width in the existing or proposed zone district, whichever is less.
- (f) Tracts or parcels with double frontage, except corner tracts or parcels, shall be avoided, except where necessary to provide separation from incompatible land uses or because of the slope of the site.
- (g) Tracts or parcels with unusual configurations, other than rectangles, will be discouraged, unless topography or other physical limitations of the Property suggest otherwise.
- (h) The depth and width of tracts or parcels laid out for business or commercial purposes shall be adequate to provide for the off-street parking, loading facilities, snow storage and trash receptacles required or necessary for the type of use contemplated.
- (i) Residential tracts or parcels in blocks that are four hundred (400) by two hundred sixty-six (266) feet shall be one hundred twenty (120) feet deep, thereby creating twenty-six-foot-wide alleys to allow minimal space for snow storage and utility equipment use in the alleys.
- (j) If tracts or parcels are in a grid pattern, they shall be oriented so their longer dimension is on the north-south axis.

(Prior code 15-3-7)

### **Sec. 17-7-60. Major highways.**

- (a) No tract or parcel shall front on nor shall any private driveway obtain access to or from arterial roads such as the Gothic Road or State Highway 135. Access to all tracts or parcels shall be from a public subdivision street or frontage road or the Slate River Road because the buildable area along the Slate River Road is minimal.
  - (1) The right-of-way for Gothic Road shall be a minimum of one hundred (100) feet wide. There shall be a minimum of fifty (50) feet from the centerline of the Gothic Road to each tract or parcel. The Town may require screening or a buffer between tracts or parcels and arterial roads such as the Gothic Road.
  - (2) Within three (3) miles of the Town, on parcels of land that extend more than one-quarter ( $\frac{1}{4}$ ) mile from State Highway 135, residential and commercial development shall be located at least one-quarter ( $\frac{1}{4}$ ) mile from the State Highway to help preserve the views from the State Highway unless:
    - a. Development more than one-quarter ( $\frac{1}{4}$ ) mile from the State Highway right-of-way would be more visible than development within one-quarter ( $\frac{1}{4}$ ) mile, such as development on a hillside;

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- b. Buildings are proposed on a site adjacent to existing buildings;
  - c. Development can be screened by existing topography or trees so that only roof tops are visible from the State Highway;
  - d. light industrial development is proposed adjacent to Riverland Industrial Park, on the west side of the State Highway;
  - e. The entire parcel of land is within the one-quarter-mile buffer; or
  - f. Agricultural buildings or operations are proposed. The location of riding arenas exceeding eight thousand (8,000) square feet shall also be at least one-quarter ( $\frac{1}{4}$ ) mile from the State Highway.
- (b) The requirements of this Section are recommended in the Crested Butte Area Plan in Section V, Natural Resources, Visual Resources, Scenic Corridors, Policy 24.

(Ord. 16 §6, 2006)

### **Sec. 17-7-70. Snow storage.**

- (a) All snow storage necessary for the subdivision shall be provided within the subdivision.
- (b) The following snow storage requirements shall be complied with in each subdivision:
  - (1) One (1) square foot of snow storage space is generally necessary for each three (3) square feet of public or private land to be cleared except streets;
  - (2) For every four hundred (400) feet of public right-of-way on avenues and streets, one (1) space at least fifty (50) by one hundred twenty (120) feet shall be provided within each block for snow storage unless otherwise agreed to by the Town. Drainage from such snow storage areas shall be directed away from adjacent lots;
  - (3) The preferred location for snow storage is approximately mid-block. Alternative snow storage areas will be located so that all snow is pushable to snow storage areas; provided, however, that nothing herein shall obligate the Town to accept such substitute snow storage areas. *Pushable* means pushing snow no more than four hundred (400) feet which is the length of a typical block;
  - (4) Land provided for snow storage shall be counted as part of the required public facility land as required in Paragraph 17-5-90(e)(2), of this Chapter but shall not exceed thirty-three percent (33%) of the public facility land dedication.
  - (5) No subdivision will be approved if snow hauling off the site will be required.
- (c) Such snow storage areas should be graded so drainage for these areas drains away from adjacent residential building sites.
- (d) Subdivisions should not be designed so that snow storage will be solved by hauling snow from streets.
- (e) Snow storage should not interfere with intersection views, traffic or signage.
- (f) Required snow storage areas shall not be located in wetlands or within wetland buffer areas, unless agreed to by the Town.

(Prior code 15-3-7; Ord. 16 §36, 2011)

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### **Sec. 17-7-80. Service access.**

Multi-family, business and commercial developments shall provide adequate garbage collection facilities, access to such facilities, suitable service access and other facilities reasonably deemed desirable by the Town. Sites for aboveground utility installations should be provided outside of right-of-way dedications. Attempts should be made to service more than one (1) tract or parcel from these locations.

### **Sec. 17-7-90. Excavations and fills.**

Excavations and fills shall be minimized to the extent reasonably possible, designed in a manner compatible with adjacent properties, revegetated with native vegetation and maintained by the subdivider or his or her successors if necessary.

### **Sec. 17-7-100. Existing structures.**

Existing structures shall be located on sites which comply with the applicable zone district requirements unless one (1) or more of the dimensions of the existing structure exceeds the maximum building site width or length. In such cases, the subject lot shall be designed to conform to the established setback requirements of the existing or proposed zone district.

### **Sec. 17-7-110. Block lengths.**

Block lengths shall be four hundred (400) feet and shall conform to existing Town patterns unless another length is necessitated by topography or other physical limitations of the Property.

### **Sec. 17-7-120. Block widths.**

Block widths shall be two hundred sixty-six (266) feet, and shall conform to existing Town patterns unless another width is necessitated by topography or other physical limitations of the Property.

### **Sec. 17-7-130. Pedestrian walkways.**

Mid-block snow storage discussed in Section 17-7-70 of this Article should be designed for use as summer pedestrian walkways connecting the avenues. Such walkways may count toward the trail requirements in Subsection 17-5-90(f) of this Chapter after the trails indicated on the Crested Butte Trail Plan in the Crested Butte Land Use Plan that are located in the subdivision are provided.

### **Sec. 17-7-140. Buffers.**

A buffer shall be required where a subdivision is adjacent to an intensive use, such as a highway or recreational facility, from which the subdivision should be protected; or a natural feature, such as a lake, wetland or other water feature, which should be protected from the impacts of the subdivision. If adverse impacts are suspected or buffers or screening deemed appropriate, the Town may require plantings, berms, screening, the retention of existing vegetation, fencing or other reasonable measures to substantially reduce adverse impacts. Acceptable screening shall include trees and berms and may include fences if approved by the Town. No improvements shall be constructed in a manner that would create adverse impacts to the buffered area.

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### **Sec. 17-7-150. Park size and access.**

- (a) The minimum park size shall be three thousand (3,000) square feet.
- (b) Neighborhood pocket parks should be located occasionally throughout a subdivision, but most required park acreage should be combined to create areas large enough for ball fields and other organized sports.
- (c) Parks shall be easily accessible from rights-of-way or, if approved by the Town, from trails.
- (d) Parks should be dispersed throughout the subdivision.

(Prior code 15-3-7)

### **Sec. 17-7-160. Solar access standards.**

Because subdivision layouts can affect the future orientation of buildings and consequently determine the natural access to sunlight and because solar access is important, subdivision plans shall comply with the following solar access issues:

- (1) All tract design shall allow for at least seventy percent (70%) of the glazing on the south-facing wall to be completely unshaded at noon on December 21st;
- (2) Avenue orientation. Avenues should be oriented in the east-west direction so that most tracts or parcels can be on a north-south axis, to minimize the risk of solar shading. Tracts at the east and west ends of blocks should have an east/west orientation with the intention of maximizing the amount of south-facing facades on those tracts;
- (3) Setbacks. Where appropriate, the subdivider shall establish setbacks, easements or building envelopes which protect solar access to adjacent tracts or parcels;
- (4) Buffers. Space may be required to create a buffer between zone districts which permit buildings with different heights to protect a small building from the shadow cast by an adjacent higher building of another zone district;
- (5) Solar easements. Protection of both existing solar easements and dedication of new solar easements may be required by the Town. Solar easements shall be described and enforced as provided by Article 32.5 of Title 38, C.R.S; and
- (6) Use of deciduous trees is encouraged on the north side of avenues to enhance solar access during winter months for housing on the north side of the avenue.

### **Sec. 17-7-170. Exterior lighting.**

All exterior lighting or illumination shall be designed, located, placed and shielded to be architecturally and aesthetically in compliance with Chapter 16, Article 17 of this Code.

## **ARTICLE 8 Compatibility With Natural Features**

### **Sec. 17-8-10. Preservation of resource areas.**

Subdividers shall preserve resource areas, including the following:

- (1) Existing waterways and other water features and a twenty-five-foot buffer;

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- (2) Wetlands as described in Sections 17-1-100 and 17-8-50 of this Chapter;
  - (3) Mature tree cover (all trees six [6] inches or more in diameter measured four and one-half [4½] feet above the ground);
  - (4) Willows and shrubs three (3) feet in diameter or larger, measured at the widest part of the canopy or crown;
  - (5) Wildlife movement corridors, flyways, breeding grounds and other significant wildlife habitat, including TES habitat;
  - (6) Rock formations;
  - (7) Significant existing views and natural vistas reasonably designated by the Planning Commission across the proposed subdivision from adjacent properties and from public areas and out of the proposed subdivision; and
  - (8) Other environmentally sensitive resources identified by the Planning Commission.

#### **Sec. 17-8-20. In character with land.**

Subdivisions shall be designed to preserve the natural character of the land. The design of every subdivision shall be compatible with the existing topography, drainage patterns and other natural features of the Property. Deep or extensive excavations and fills scar the landscape and shall be avoided. The practice of terracing hillsides in order to provide additional or larger building sites shall not be allowed.

#### **Sec. 17-8-30. Clustering.**

- (a) All subdivisions shall be designed so the developed area is limited to a small portion of the site and avoids sensitive areas. Open lands or other open spaces shall be separate from the developed area and shall occupy the remainder of the Property or other lands as approved by the Town. Clustered design is best defined by what it is not. It is not dispersed.
- (b) Subdivisions shall be clustered on the flatter, less fragile portions of the Property when development is not designed as typical blocks and lots.
- (c) Clustered development should be designed to protect the most scenic and less stable portions of the site by avoiding them.
- (d) Pockets of visual density or clustered development on hillsides, which are related to the natural contours of the land, are preferable to even dispersal of development.

Note: The density for residential units shall not exceed the maximum density of the zone district. Higher density zones districts for parts of the Property may be appropriate for those areas where development is proposed if the sensitive areas described above will not be developed.

#### **Sec. 17-8-40. Long-term maintenance costs.**

The design of the subdivision should, wherever reasonably possible, lower all infrastructure maintenance costs by a self-maintainable ecological system, which will conserve materials, land and environmental values.

#### **Sec. 17-8-50. Wetlands and threatened or endangered species.**

- (a) No development, including, without limitation, platting of tracts or parcels, streets, sewer lines or other utilities, developed parks, dredging or filling, shall occur within any wetlands, including high quality wetlands,

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potential high quality wetlands, irrigated wetlands for which no hydrologic study has been completed, and within a buffer zone of at least twenty-five (25) feet from the boundary of any wetland or one hundred (100) feet from the boundary of any high quality wetlands or potential high quality wetlands.

(See Section 17-8-90).

- (b) Development shall not result in modifications of surface or groundwater flows in areas that are hydrologically connected to high quality wetlands.
- (c) Wetlands shall not be fragmented so that the interconnected functions of the wetlands are diminished or eliminated.
- (d) Fill material shall not be placed in any wetlands without the required federal and other applicable permits. Whether or not a federal or other permit is required, said work shall occur in such a manner as to avoid and minimize impacts to wetlands. If federal and other requirements conflict with Town requirements, the standards that offer more protection for wetlands shall be used.
- (e) Provisions for wetland functional analysis are contained in Article 16 of this Chapter.
- (f) All unavoidable impacts to wetlands shall be compensated for by replacing, in the Middle Slate River Valley, the ecological functions lost as a result of the project. Compensatory mitigation may be performed using restoration, enhancement, creation and, in some circumstances, preservation. Restoration is generally considered the preferred approach. If restoration is not practical, then protection of existing wetlands may be most appropriate. In-lieu fee programs, creation of wetlands and use of wetland mitigation banks will be considered, but there is no obligation of the Town to accept those mitigations. Too often enhancement of existing wetlands results in proposals which are not well thought out and may damage the function of a wetland that previously functioned well. Therefore, enhancement should only be used as a last resort and there is no obligation of the Town to accept enhancement as a mitigation strategy for the loss of wetlands. A combination of mitigation approaches may be appropriate. The Town must approve the final mitigation plan before it is implemented. The Area Plan defines the Middle Slate River Valley as the land within three (3) miles of Crested Butte. If the order of priority in this Subsection is different than the order of priority in the Area Plan, the order of priority in the subdivision regulations shall be used.
- (g) The goal of wetland mitigation will be no net loss of wetland area, values or functions. The ratio of the area of wetlands lost to development compared to mitigation area may result in more new wetlands to compensate for the difference in wetland functions or the time it will take for a created wetland to perform the functions the Town agrees must be performed in order to provide satisfactory mitigation measures.
- (h) Payments in lieu of preserving wetlands may be used when there is no reasonable alternative other than to destroy wetlands for development and creation of new wetlands is not feasible, as determined by the Town. The payments should be used to acquire and preserve wetlands with the same functions as the wetlands that will be lost, or to help restore degraded wetlands, rather than trying to create new wetlands, at the option of the Town. Payments-in-lieu shall be calculated based on the area of wetlands that will be lost and the average per-square-foot value of the entire Property proposed for subdivision after the subdivision is approved by the Town. In other words, if one-half (0.5) acre of wetlands will be filled, and the average appraised value of all land in the subdivision is determined to be eighty-three dollars and thirty-three cents (\$83.33) per square foot, (five hundred thousand dollars [\$500,000.00] per six-thousand-square-foot tract) then the payment should be one million eight hundred fourteen thousand nine hundred twenty-seven dollars (\$1,814,927) for the loss of one-half (0.5) acre of wetlands.

(21,780 sq. ft. x \$83.33 = \$1,814,927).

- (i) A restoration stewardship fund shall be created for each restoration project to ensure noxious weeds do not invade and to otherwise pay for management of the wetland. The stewardship fund should be at least five thousand dollars (\$5,000.00) per acre of mitigation wetlands, or as otherwise recommended by the Town's

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consultant, when consideration is made for the wetland functions to be restored, the amount of restoration being attempted and other issues at the particular site, and as resolved and stated in the Subdivision Improvements Agreement. Fee ownership by the Town or a conservation easement that allows Town access to the mitigation site should accompany the fee.

- (j) The subdivider will be responsible for monitoring the wetland mitigation site for at least ten (10) years, or as determined by the Town, to ensure the proposed functions and values of the mitigation site are being achieved. If they are not, the subdivider will address issues of the mitigation site and, if necessary, meet with the Town to determine what to do about the site not achieving the goals. Solutions may include, but are not limited to, re-performing the mitigation strategies or payment-in-lieu to the Town. Thereafter, the stewardship fund will be used to help the Town monitor and manage the mitigation site. A portion of the performance guarantee in the Subdivision Improvements Agreement (Appendix J to this Code) will include monitoring the mitigation site for ten (10) years to ensure that, if the developer fails to monitor the wetland mitigation site, funds will be available to do so. That portion of the performance guarantee shall not be returned to the developer until the ten-year period has ended.
- (k) Although the U.S. Fish and Wildlife Service will have final authority about species it listed as threatened or endangered, other species of concern to the Town are listed by other agencies such as the U.S. Forest Service or Bureau of Land Management. Those agencies only have authority on land managed by them. The Colorado Natural Heritage Program (CNHP) also lists species of concern and the CNHP has no authority to protect. Threatened, endangered or species of special concern are also listed by Colorado Division of Wildlife. Therefore, the Town will use the following general guidelines to help protect threatened or endangered species, unless other governmental agencies have overriding authority.
  - (1) All unavoidable impacts to TES habitat shall be compensated for by replacing the ecological functions lost in the Slate River watershed as a result of the project. Compensatory mitigation may be performed using restoration, enhancement or preservation of other potential TES habitat, and/or payments-in-lieu. Restoration and enhancement of potential TES habitat is generally considered the preferred approach, but preservation and in-lieu fee programs will be considered. A combination of mitigation approaches may be appropriate and development of the mitigation plan shall be done in coordination with the listing agency or agencies (e.g., Colorado Natural Heritage Program, U.S. Forest Service, etc). The Town must approve the final mitigation plan before it is implemented.
  - (2) The ratio of the area of TES habitat lost to development compared to the mitigation area shall be at least 2:1 (two [2] acres of land used for mitigation for each one [1] acre of TES habitat lost to development) in order to compensate for the difference in ecological functions, and/or the time it will take for the mitigation site to perform the functions the Town agrees must be performed in order to provide satisfactory mitigation. The Town encourages the listing agency and other appropriate state and federal agencies to participate in determining the mitigation ratio. However, the Town will be the final decision maker regarding the location and amount of land used for compensatory mitigation, unless the listing agency has legal authority (such as the U.S. Fish and Wildlife Service under the Endangered Species Act.).
  - (3) Payments-in-lieu may be used when there is no other reasonable mitigation alternative, as determined by the Town. The payments should be used to acquire potential TES habitat for the same species or suite of species that will be affected by the project. Payments-in-lieu shall be for an area that is at least twice the area of TES habitat that will be lost and the dollar amount shall equal or exceed twice the average cost per acre of such habitat that the Town (or other entities) has participated in preserving in the last five (5) years from the date the preliminary plan is submitted because the cost of land is on an upward trend.

(Ord. 16 §40, 2011)

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(Supp. No. 20)

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## **Sec. 17-8-60. Wildlife habitat.**

Subdivision design shall avoid development in important wildlife habitat areas as identified in the Area Plan and in or near significant wildlife habitat as identified below.

- (1) Areas of particular concern include, but are not limited to:
  - a. Nesting areas for ducks, teal and geese;
  - b. Rookeries for great blue herons;
  - c. Migration corridors, calving grounds (elk production areas mapped in the Area Plan) and winter range for elk;
  - d. Migration corridors and fawning areas for deer;
  - e. Streams for trout production;
  - f. Nesting sites for raptors such as red tailed hawks, owls and northern goshawks;
  - g. Habitat for boreal toads;
  - h. Habitat for TES species;
  - i. Tiger salamander habitat;
  - j. Denning sites for fox and black bears;
  - k. Blue grouse staging areas;
  - l. Migratory bird flyways; and
  - m. Any high quality or potential high quality wetlands.
- (2) Buffer zones similar to wetland buffers shall be provided and maintained between wildlife habitat areas and the developed area.
- (3) Noxious weeds shall be identified and managed before, during and after project construction to stop the continued spread of these species. Control of noxious weeds shall be the responsibility of the subdivider for at least five (5) years after the subdivision improvements have been accepted by the Town.

## **Sec. 17-8-70. Ridgelines.**

The top or roof line of any structures shall be at least forty (40) feet, as measured vertically, below the top of any ridgeline mapped in the Crested Butte Area Plan.

## **Sec. 17-8-80. Soils.**

The location of all tracts and parcels and the construction of all infrastructure improvements shall be based on geotechnical investigations of the soils in the area and, within practicable limits, the stratigraphy and physical properties of the soils underlying the site. The strength of and deformation characteristics of the soil strata shall particularly be the basis of improvements designs, so that an appropriate soil and foundation relationship is established for the proposed construction, as determined by registered engineers practicing geotechnical engineering and structural engineering in the State of Colorado.

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## **Sec. 17-8-90. Wetland and other water feature buffers.**

- (a) Distance. A setback of at least twenty-five (25) feet shall be maintained from wetlands and other water features, unless a one-hundred-foot setback from high quality or potential high quality wetlands is appropriate as discussed in Section 17-8-50 of this Article. The setback shall be measured horizontally from the ordinary high water mark in average hydrologic years on each side of the water feature or from the wetland boundary identified using the wetland identification procedures discussed for the Sketch Plan Submittal. This setback is referred to as the "water feature buffer." The following activities shall not be allowed in the water feature buffer:
  - (1) Construction, installation or placement of any obstruction or the erection of a structure.
  - (2) Placement of material, including but not limited to soil, sand, gravel, mineral, aggregate, organic material or snow plowed from roadways and parking areas.
  - (3) Removal, excavation or dredging of solid material, including soil, sand, gravel, mineral, aggregate or organic material.
  - (4) Removal of any existing vegetation or conduct of any activity that will cause any loss of vegetation, unless it involves the approved removal of noxious weeds, nonnative species or dead or diseased trees.
  - (5) Lowering of the water level or water table by any means except as allowed by the Colorado Division of Water Resources.
  - (6) Use of equipment within the buffer, except for the construction of roads, bridges or trails across wetlands or other water features.
  - (7) Disturbance of existing natural surface drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics by any means, including but not limited to grading and alteration of existing topography. Measures taken to restore existing topography, to improve drainage flow patterns or flood control shall be approved by the Town prior to taking the measures.
  - (8) Any landscaping activities, unless they are for the purpose of restoring or enhancing degraded areas to their native vegetation communities. Restoration and/or enhancement actions shall only involve the use of plants native to the site and shall be approved by the Town prior to taking action.
  - (9) Placement or location of any portion of any residential or commercial tracts.
- (b) Exemptions from wetland and other water feature buffer. The following structures, improvements and activities are exempt from the wetland and other water feature buffer:
  - (1) Structures for decreed water rights, docks, piers, watercraft launches and ramps.
  - (2) Activities and structures in wetlands resulting from agricultural operations.
  - (3) Projects primarily for water protection that have received required state or federal permits, such as those projects designed for the enhancement, protection and/or restoration of wetlands or other water features.
  - (4) Emergency flood control measure.
  - (5) Maintenance, repair or replacement of roads, roads that approach bridges and bridges existing as of the effective date of the Area Plan.
  - (6) Single-track dirt trails may be constructed outside, but adjacent to, the water feature buffer if measures are taken to protect and preserve the adjacent wetlands or water feature and if the Planning Commission agrees the proposed trails will not negatively impact the adjacent wetland or water feature.

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- (7) Stream habitat enhancement.
  - (8) Bank stabilization.
- (c) Variable outer buffer. A variable outer buffer shall also be maintained. The width of the variable outer buffer need not be uniform across a parcel. Specific features or activities proposed within one hundred (100) feet of the closest border of a wetland or other water feature should define the width of the variable outer buffer on a site-specific basis and should be based on the presence of or the proposal of:
- (1) Slopes steeper than fifteen percent (15%) and draining into a wetland or other water feature.
  - (2) Highly erodible soils.
  - (3) The area is needed to protect trees, shrubs or other natural features that provide for stream bank stability, habitat enhancement for aquatic environments, riparian area protection, or to maintain predevelopment riparian plant or animal communities.
  - (4) The area is within the one-hundred-year floodplain.
  - (5) The area is needed to prevent or minimize flood damage by preserving storm water and floodwater storage capacity.
  - (6) An activity that presents a special hazard to water quality shall have the maximum setback (e.g., storage or handling of hazardous or toxic materials).
- (d) Maximum buffer size. A variable outer buffer shall not be required to extend more than one hundred (100) feet beyond the outer boundary of the water feature buffer unless, when considering the functions and values of the wetland and the proposed adjacent uses, the Planning Commission determines a larger buffer should be maintained.
- (e) Prohibited activities in and exemptions from variable outer buffer. The activities listed in Subsection (a) above shall not be allowed in the variable outer buffer, and the exemptions in Subsection (b) above shall also be exempt in the variable outer buffer.

(Ord. 16 §42, 2011)

## **ARTICLE 9 Open Land**

### **Sec. 17-9-10. Application of requirements.**

Every subdivision shall satisfy the open land preservation requirements set forth in this Article.(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-9-20. Amount required.**

- (a) For subdivisions within the Town. The subdivider shall provide for the preservation of at least two and fifty-six one-hundredths (2.56) acres of open lands for each residential unit proposed within the subdivision, based upon the number of residential units in the Town and the number of acres of open lands, or open space, in which the Town had participated in preserving as of 2010 within three (3) miles of Town.
- (b) For subdivisions of land annexed into the Town. The subdivider shall provide at least five (5) acres of open lands, or open space, for each additional residential unit and for each five thousand (5,000) square feet of commercial development. As an incentive, if land within three (3) miles of the Town is preserved in "Priority Preservation Areas" (as shown on the Preservation Priorities maps in the Area Plan), or if the Planning Commission determines lands proposed by the subdivider comply with the definition of Priority Open Lands

in Section 17-9-60, less open space shall be required as a way to preserve the more important open spaces. As another incentive, if local housing or affordable housing units are proposed, less open space is required. The requirements for the preservation of open lands or open space contained in this Subsection are recommended in the Area Plan in Section III, Land Use, General Policies for Land Use, Density and Density Transfers. Table 17-C below sets forth the required amount of open space per additional residential unit and for each five thousand (5,000) square feet of commercial development.

**Table 17-C**  
**Number of Acres Required for Preservation**

<i>Type of Development</i>	<i>Type of Land Preserved</i>	
	<i>Hazard Areas, Developable Land or Land Beyond End of Plowed Roads</i>	<i>Priority Preservation Areas (Resource Areas)</i>
Each free market dwelling unit	5 acres	3 acres
Each local housing or affordable housing unit	1 acre	1 acre
Each 5,000 sq. ft. of commercial development	5 acres	3 acres

(Ord. 16 §43, 2011)

### **Sec. 17-9-30. Eligible lands.**

- (a) All lands shown on the Preservation Priorities #1 map and on the Preservation Priorities #2 map and labeled "Priority Preservation Areas" or "Other Preservation" in the map legend, in the Area Plan, and all private land in the Coal Creek watershed as mapped for the official Town of Crested Butte Municipal Watershed map depicting the Watershed District Boundary and filed in the office of the Town Clerk and also mapped as the Coal Creek Watershed on the Preservation Priorities maps in the Area Plan shall be eligible for preservation as open lands (open space) under this Subsection; provided, however, that land with the following characteristics shall not be eligible:
  - (1) Lands from which the subsurface mineral interests have been severed and are available for location and mining of minerals, and the mineral interests are not conveyed or appropriately restricted concurrently with the surface interests; and
  - (2) Lands that are presently subdivided or platted under a recorded plat unless such subdivision approval or plat is revoked or rescinded and such revocation or rescission is placed on public record, except a lot in a subdivision that is thirty-five (35) acres or more may be preserved if no structures exist on the lot or will be allowed on the lot.
- (b) A percentage of land in the proposed subdivision shall be preserved as open lands (open space). The percentage of land in the subdivision that shall be preserved as open lands shall be the same as the percentage of open lands currently in the Town limits, compared to the total amount of land in the Town. In 2011, there were two hundred twenty and nine-tenths (220.9) acres open space in Town and the total area of the Town was five hundred thirty-nine and one-half (539.5) acres. Therefore, forty and nine-tenths percent (40.9%) of the land in the Town limits was open lands in 2011 and forty and nine-tenths percent (40.9%) of a subdivision site in 2011 should be preserved as open lands.

(Ord. 16 §44, 2011)

(Supp. No. 20)

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## **Sec. 17-9-40. Methods.**

Any or all of the following methods of open lands preservation, singly or in combination, may be employed to preserve open lands pursuant to the requirements of Article 9 of this Chapter, subject to approval by the Town Council:

- (1) Conveyance of a fee interest in the land to the Town.
- (2) Conveyance of a fee interest in the land to an organization which is a "qualified conservation organization" as defined by the Internal Revenue Code, having in present force and effect an exemption from taxation under Section 501(c)(3) of the Internal Revenue Code, or any successor section on the same subject.
- (3) Conveyance of a conservation easement on the land conveyed either to the Town or to an organization described above.
- (4) Imposition and recordation of a restrictive covenant running with the land, which is enforceable by the Town and which precludes its development for all uses in perpetuity; provided that nonresidential agricultural, park land, wildlife or wetland conservation or enhancement uses may be permitted. The allowance for nonresidential agricultural uses shall not be interpreted to allow feed lots or other noxious agricultural activity on open lands in the vicinity of the Town.
- (5) Any other conveyance or restriction of the title to the land which has the effect of restricting, in perpetuity, the development of the land for other than nonresidential agricultural, park land, wildlife or wetland conservation purposes which includes adequate enforcement provisions to ensure such preservation as approved by the Town.

## **Sec. 17-9-50. Procedure for preservation.**

Prior to the Town's acceptance of any lands as eligible and as qualifying for preservation under this Article, and prior to or simultaneous with final plat approval, the subdivider shall provide to the Town evidence of title to any encumbrances upon such lands, accompanied by the proposed means of conveyance or title restriction. Such open lands may include open lands that were previously preserved by the subdivider as open lands or open space prior to the submission of the present subdivision application, provided that the Town must approve such open lands as Priority Preservation Areas or Other Preservation Areas and therefore deem such open lands or open space acceptable for preservation, and that the open lands have not previously been used to satisfy open lands or open space requirements of the Town, the County of Gunnison or Mt. Crested Butte.

## **Sec. 17-9-60. Priority Open Lands.**

- (a) The following lands are encouraged to be preserved as undeveloped open lands and are Priority Open Lands for Table 17-C:
  - (1) All lands shown on the Preservation Priorities #1 map and on the Preservation Priorities #2 map and labeled "Priority Preservation Areas" in the map legend in the Area Plan.
  - (2) Unique and/or fragile areas, including but not limited to geologic formations, forested areas, critical view sheds, ridgelines, bodies of water, streams and rivers, and wetlands and their one-hundred-foot buffer as defined in this Chapter and verified by field inspection.
  - (3) Critical wildlife winter range and significant wildlife habitat as identified in Section 17-8-60 of this Chapter and by the Colorado Division of Wildlife.

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- (4) Historically significant structures and sites, as listed on federal or state lists of historical places, or as reasonably determined by the Town.
  - (5) Areas which have historically provided, or are reasonably identified as desirable, for public access to public lands.
  - (6) All private land in the Coal Creek Watershed as mapped for the official Town of Crested Butte Municipal Watershed map depicting the Watershed Protection District boundaries and filed in the office of the Town Clerk and also mapped as the Coal Creek Watershed on the Preservation Priorities maps in the Area Plan.
  - (7) All irrigated agricultural land in the upper East River Valley, located north of Round Mountain.
- (b) The following lands are also encouraged to be preserved as undeveloped lands to avoid development in potentially dangerous or otherwise inappropriate areas and to preserve sensitive and unique lands but are not Priority Open Lands for Table 17-C, unless they also exhibit characteristics found in the list in Subsection 17-9-60(a) above. Only the portion of the land exhibiting characteristics found in the list in Subsection 17-9-60(a) will be considered "Priority Open Lands":
- (1) Land within a one-hundred-year floodplain.
  - (2) Steep slopes in excess of thirty percent (30%) as measured over a ten-foot interval.
  - (3) Rock fall areas and other geologic hazards.
  - (4) Land meeting Extreme Hazard or High Hazard wildfire criteria as defined by the Colorado State Forest Service.
  - (5) Other land, including land suitable for development.
- (c) All land determined by the Planning Commission to meet the descriptions in Subsection 17-9-60(b) above shall be considered "Hazard Areas, Developable Land, or Land Beyond End of Plowed Roads" land for Table 17-C "Number of Acres Required for Preservation".

(Ord. 16 §45, 2011)

### **Sec. 17-9-70. Uses of open lands.**

- (a) Public open lands shall generally be accessible, subject to restrictions imposed by the Town, such as allowing hunting or not.
- (b) Private open lands may be used for private purposes, such as agriculture or wildlife habitat. At the option of the owner, access to such lands may be restricted such as to those involved in agricultural or wildlife preservation activities.
- (c) Road rights-of-way crossing open lands shall not be counted as open lands, and open lands shall not be occupied by buildings or other structures unless approved by the Town, nor shall they be used as the yards of single-family or multi-family dwellings, or for parking areas.

(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-9-80. Size of open lands.**

- (a) The size of each area of open lands which is designed to provide for recreational use as well as preservation shall be of such minimum dimensions as to be functionally usable for those purposes.

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- (b) Open lands should be large areas that can be easily identified rather than many small pieces that may be difficult to identify.

(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-9-90. Location of open lands.**

Open lands should be located to link designated open lands or open space areas and conservation easements to other open lands or open spaces, particularly when stream corridors, contiguous wetlands and/or trails are incorporated within the open lands and open space.

### **Sec. 17-9-100. Maintenance of open lands.**

- (a) Any lands identified for use as open lands shall have conservation easements or deed restrictions ensuring that:
  - (1) No residential, commercial or industrial buildings will be built on the open lands; and
  - (2) The use of the land as open land shall continue in perpetuity.
- (b) The subdivision improvements agreement shall include the necessary language stating that a stewardship fund, which can be used in the future to resolve boundary disputes or for other appropriate reasons, will be provided for all open lands, and subdividers are encouraged to agree in the subdivision improvements agreement to maintain open lands in their natural state, including but not limited to:
  - (1) Requirements for removal of litter;
  - (2) Maintenance of natural and artificial watercourses as free-flowing and devoid of debris;
  - (3) Allowing adequate space for stream channels to change as they naturally do over time; and
  - (4) The use of the land as open land in perpetuity shall be defended by the grantee of the conservation easement or other appropriate instrument.

None of the above provisions shall be construed or enforced so as to prevent wetlands or wildlife habitat enhancement.

### **Sec. 17-9-110. Public lands.**

All property held by a governmental entity for public use shall be exempted from the dedication requirements imposed by this Section.

### **Sec. 17-9-120. Exemption from open lands requirement.**

The Town Council, in its sole discretion, may by resolution grant an exemption for all or any part of the open lands preservation requirement when:

- (1) The subdivider has previously, permanently and irrevocably preserved property within three (3) miles of the Town boundary for open space prior to subdivision;
- (2) The subdivider has donated or otherwise conveyed property to the Town for park use and public access, in excess of any park requirements in these subdivision regulations; or
- (3) The subdivider has provided more dedications than required for other purposes or other contributions and the Town Council finds it to be in the best interests of the health, safety and welfare of the Town to waive such requirements.

## ARTICLE 10 Street and Sidewalk Standards

### *Division 1 Street Standards*

#### **Sec. 17-10-10. Street patterns.**

- (a) Roads shall be designed and located with regard for natural features such as topography, creeks and wooded areas to enhance the natural features of the Property and protect the existing natural resources.
- (b) The street pattern in the subdivision shall conform with the most appropriate development of adjoining areas.
- (c) Streets and avenues shall be continued at equal width and in similar alignment as existing or proposed streets and avenues in the Town or adjacent platted subdivisions unless the evaluation required in the preliminary plan submittals indicates that road improvements are needed to existing streets based on the impacts expected due to the proposed subdivision, in which case both the proposed subdivision streets and the existing streets may be required by the Town to be enlarged to accommodate the identified impacts.
- (d) Intersections shall approximate right angles and have a minimum tangent length of fifty (50) feet on each leg. The subdivision design shall minimize the number of local streets that intersect Gothic Road, Slate River Road and State Highway 135. Intersections of more than two (2) streets at the same location shall be avoided.
- (e) Where a street will eventually extend beyond the development but is temporarily dead-ended, the Town may require an interim cul-de-sac to facilitate emergency vehicular movements.
- (f) Proposed streets shall be extended to the boundary lines of the land to be subdivided, unless prevented by topography or other physical conditions or unless, in the opinion of the Planning Commission, such extension is not necessary for connection of the subdivision with the existing street layout or the probable future layout of adjacent tracts.
- (g) Dead-end streets with or without cul-de-sacs, except for those temporary cul-de-sacs discussed above, shall be prohibited unless the Planning Commission determines that the topography or other physical constrain demands such a street pattern.
- (h) Permanent dead-end streets shall be provided with cul-de-sacs and include areas for storage of plowed snow as required in Section 17-7-70 above.
- (i) Right-turn lanes and left-turn lanes shall be required at the intersection of arterial streets or the intersection of an arterial street with a subdivision street if traffic conditions indicate they are needed. Sufficient right-of-way shall be dedicated to accommodate such lanes when they are needed. Generally, such lanes are required when the trips per hour exceed the trips described in the Draft of Proposed Revisions to the 1985 Colorado State Highway Access Code, Colorado Code of Regulations, 2 CCR 601-1, including proposed revisions through July, 1995.
  - (1) Acceleration and deceleration lanes shall comply with the applicable provisions of the Draft of Proposed Revisions to the 1985 Colorado State Highway Access Code, Colorado Code of Regulations, 2 CCR 601-1, including revisions through July, 1995. Applicable provisions include:
    - a. Section 1.5 4, Definitions;
    - b. Section 1.7, References; and

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- c. Section 4.1, et seq., Design Standards and Specifications.
  - (2) Due to the high amounts of snow and the limited sight distances throughout the winter at intersections, the lowest traffic volumes that trigger the need for extra lanes shall be used. Criteria 4.7(1)(d) shall receive special attention when subdivisions are reviewed in the Town. It states:

"When public safety so requires, due to site specific conditions such as limited site distance, a turn lane may be required even though the criteria in subsection 4.7 are not met."
  - (j) The creation of new arterial streets to serve a subdivision or within a subdivision is strongly discouraged.
  - (k) Subdivisions shall be designed so as to provide two (2) or more accesses for all parts of each subdivision.
  - (l) Private streets serving new subdivisions are prohibited within the Town.
  - (m) No subdivision shall be approved unless all tracts and parcels have access to a public street. *Access to a public street* shall mean that all tracts and parcels within the subdivision:
    - (1) Have frontage on an existing public street built to the standards required by this Section; or
    - (2) Have frontage on a public street shown on a subdivision plat that meets all requirements of this Section, and which is offered for dedication and is eligible for acceptance by the Town in accordance with this Section.
  - (n) Based on the findings of the traffic analysis requirements in Subparagraph 17-5-50(15)i. of this Chapter and its evaluation by the Planning Commission, the subdivider shall propose mitigating measures to make substantial reductions in the adverse effects of the subdivision.

(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-10-20. Street conformance with Fire District standards.**

All streets shall conform to the Crested Butte Fire Protection District Guidelines and Standards adopted March 15, 1989, as amended, with the following modifications and exceptions:

- (1) Grades of streets should conform as closely as possible to the original topography, but in no case shall road grades exceed seven percent (7%), and combinations of steep grades and curves should be avoided.
- (2) Turn-arounds shall not be allowed.
- (3) Streets ending at cul-de-sacs shall not exceed four hundred (400) feet in length from the nearest intersection to the far side of the cul-de-sac.
- (4) The paved portion of a cul-de-sac shall not exceed sixty (60) feet in diameter if a fire hydrant is provided half-way between the nearest intersection and the end of the cul-de-sac and if the right-of-way for the cul-de-sac is at least one hundred (100) feet in diameter.
- (5) Private circulation drives, except those serving a condominium or apartment complex on one (1) tract or parcel, shall not be used.

### **Sec. 17-10-30. Relationship to existing Town bearings.**

Streets, avenues and alleys shall be laid out to be parallel with existing streets, avenues and alleys unless unusual planning considerations suggest otherwise.

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### **Sec. 17-10-40. Street construction.**

Streets shall be constructed by the subdivider to conform to the standards described in the Colorado Department of Transportation, Division of Highways, State of Colorado, Standard Specifications for Road and Bridge Construction, 2005. When there are conflicts between the standards set forth herein and the Colorado Department of Transportation, Division of Highways, State of Colorado, Standard Specifications for Road and Bridge Construction, 2005, the standards set forth herein shall prevail.

### **Sec. 17-10-50. Street layout.**

- (a) Street layout shall be designed to conform to the standards described in *Residential Streets*, Second Edition, published by the American Society of Civil Engineers, National Association of Home Builders and the Urban Land Institute in 1990. Copies are available in the Planning Department. When there are conflicts between the standards set forth herein and *Residential Streets*, the standards set forth herein shall prevail.
- (b) Street layout shall conform to the Master Street Plan in the Crested Butte Land Use Plan.

(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-10-60. Safety.**

Streets shall be designed to avoid or minimize congestion, automotive or pedestrian safety problems and other traffic hazards.

### **Sec. 17-10-70. Coordination with transit.**

Street location and design shall be coordinated with the Town's and area's overall transportation systems.

### **Sec. 17-10-80. Access across rivers.**

Vehicular or pedestrian access across rivers or creeks must be approved by the Town, shall conform to other governmental requirements regarding bridges across waterways and shall be carefully limited.

### **Sec. 17-10-90. Physically challenged access.**

Where sidewalks are proposed, a ramp for wheelchair and other physically challenged users shall be installed at the end of each block.

### **Sec. 17-10-100. Alleys.**

Alleys, open at both ends, shall be required in all blocks and shall be surfaced with road base at least four (4) inches thick. Alleys shall be a minimum of twenty-six (26) feet wide.

### **Sec. 17-10-110. Street signs, names and traffic control.**

Street and avenue names shall be shown on the final plat. The subdivider shall pay for and erect signs at each intersection of streets and avenues setting forth the names of streets, avenues, roads and highways. Such signs will be consistent in size and design with the existing street and avenue signs throughout the Town and shall utilize reflective materials. Avenues shall be named after mountains in the Elk Mountains. No street or avenue names shall be used which duplicate or may be confused with the names of existing streets or roads in the Town or the

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upper East River Valley. The subdivider shall pay for and erect all traffic control and parking signs necessary to serve the proposed subdivision. The size, design and materials of signs shall be approved by the Town Council. The Town Council may accept recommended names for streets from the subdivider or choose other names it finds more appropriate.

### **Sec. 17-10-120. Right-of-way widths.**

Rights-of-way shall be provided at the following minimum widths:

<b>Street Type</b>	<b>R.O.W. Width</b>
Avenues	64 feet
Extensions of Elk Avenue	74 feet
Ninth Street and every third north/south street	80 feet
Other streets	60 feet

When, due to topography, hazards or other design constraints, additional road width is necessary to provide for the public safety, then dedication of right-of-way in excess of the minimum standards set forth above shall be required.

### **Sec. 17-10-130. Pavement width.**

Hard surfacing in accordance with Town requirements is required for all streets and avenues. Pavement widths will not exceed the following distances between curbs:

<b>Street Types</b>	<b>Pavement Width</b>
Avenues and streets	24 feet
Collector streets	40 feet

(Prior code 15-3-7; Ord. 4 §1, 2009)

### **Sec. 17-10-140. Curbs and gutters.**

Mountable curbs and gutters shall be provided for all streets.

### **Sec. 17-10-150. Half-street dedications.**

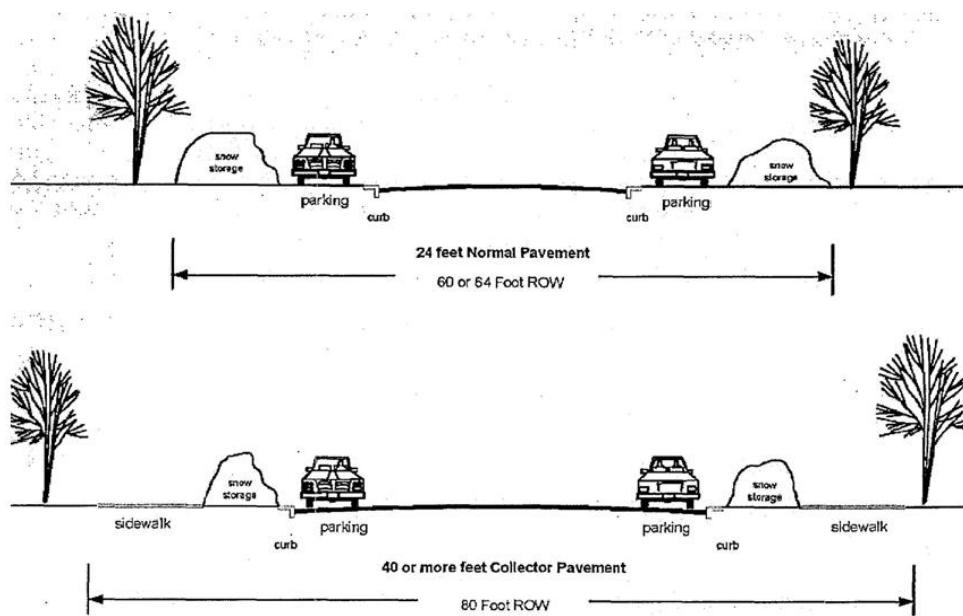
Half-street dedications shall be prohibited unless they are for the purpose of increasing the width of an inadequate existing right-of-way. No perimeter half-streets shall be permitted in new subdivisions.

### **Sec. 17-10-160. Curves.**

Reverse curves on collector and bypass streets shall be joined by a tangent of at least one-hundred (100) feet in length.

### **Sec. 17-10-170. Street parking, sidewalks and trees.**

- (a) Parking on streets will be outside the curbs, except that the width of collector streets (which generally have eighty-foot rights-of-way or wider) is designed to allow for parking between the curbs.



- (b) Sidewalks will be located outside travel ways and parallel parking areas along major streets.
- (c) Existing sidewalks, such as the sidewalks along Sixth Street and Eight Street, will be extended into subdivisions.
- (d) The right of way along major streets and avenues shall be 80 feet wide, to allow space for travel ways, parking, sidewalks and snow storage.
- (e) Street and avenue rights-of-way are used for snow storage. Trees shall not be located in street and avenue rights-of-way.

(Ord. 16 §46, 2011)

### **Sec. 17-10-180. Transit.**

- (a) Whenever a proposed subdivision embraces any part of an existing or planned street or transit alignment designated on an adopted plan, easements shall be provided to accommodate the plan within the subdivision.
- (b) Bus stops for circulator busses and other appropriate busses, as identified by the Town, shall be provided to serve new subdivisions.

(Ord. 16 §47, 2011)

### **Sec. 17-10-190. Street dedication and acceptance requirements.**

Prior to and as a condition of the Town's acceptance of any street or other right-of-way for public use, the following conditions shall be satisfied by the dedicator of such street or right-of-way:

- (1) All of the above street standards shall be met as applicable;
- (2) The Property served by the street or right-of-way shall have received land development approval by the Town pursuant to this Chapter for the ultimate intended use of the Property so served;

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- (3) The Property served by the street or right-of-way to be dedicated shall have received subdivision approval from the Town pursuant to these subdivision regulations;
  - (4) The street or right-of-way shall have been constructed in accordance with required specifications and approved by the Town Engineer; and
  - (5) The street or right-of-way shall be located in conformance with the Town's Master Street Plan contained in the Crested Butte Land Use Plan.

### **Sec. 17-10-200. Bridge standards.**

- (a) Bridges shall be designed by a registered engineer, be designed to prevent obstruction to a one-hundred-year flood, be designed so people may float the river in a raft during high water and pass safely under the bridge, and bridge design shall be subject to approval by the Town Engineer. The required federal and state permits shall be obtained for all bridges prior to construction. There shall be no culverts used as bridges over the Slate River or Coal Creek.
- (b) Vehicular bridges shall be provided with pedestrian facilities, including trail walkways, bikeways and handrails.
- (c) Bridges shall include adequate channeling, drainage and wingwalls to protect approach roadway fill.
- (d) Bridges shall be designed so that the river bottom under the bridge does not step down at the bridge, thereby creating unnecessary erosion as the river bottom is eaten by the river trying to even out the step. Bridges shall not unnecessarily constrict flows and thereby create dams or change stream or flood characteristics.

(Prior code 15-3-7; Ord. 4 §1, 2009; Ord. 16 §48, 2011)

### **Sec. 17-10-210. Traffic impacts.**

The anticipated traffic from a proposed subdivision shall not cause significant:

- (1) Negative environmental impacts;
- (2) Negative noise;
- (3) Traffic delays; or
- (4) Negative increases in traffic volume on existing portions of Town streets or on major arterial roads.

## ***Division 2 Standards for Trails***

### **Sec. 17-10-310. Trail requirements.**

It is the policy of the Town to require bicycle and pedestrian trails to be dedicated to the Town as a component of the Town's alternative transportation network and to provide recreational opportunities. Subdivision proposals shall include, as a component of the required public improvements, a pedestrian and bicycle trail system designed to integrate with existing trails within three (3) miles of the Town limits, integrate with existing improvements and provide service appropriate to the character of trails within three (3) miles of the Town limits.

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### **Sec. 17-10-320. Compliance with trail plans.**

The subdivider shall dedicate to the Town those portions of the trails, if any, shown on the Crested Butte Trail Plan which is located at the end of the Transportation Policies in the Area Plan and/or generally described in the Town of Crested Butte Parks and Recreation Regional Master Plan and/or generally described in the Gunnison County Trails Master Plan, 2010, as amended, which traverse the subdivision. The Town may accept reasonable alternative trail alignments and dedications proposed by the subdivider which will implement the trail plans and policies.

### **Sec. 17-10-330. Relationship to other land dedication requirements.**

Land dedicated for a trail shall apply toward the subdivider's trail dedication requirements under Section 17-5-90 of this Chapter. Trails shall be dedicated to the Town unless they traverse open lands that will remain in private ownership. In such cases, permanent easements shall be provided for the trails in the name of the Town. Land area for sidewalks adjacent to streets for internal pedestrian circulation shall not be credited toward the trail or open land requirements.

### **Sec. 17-10-340. Location requirements.**

To fulfill the trail dedication requirements of Section 17-5-90 of this Chapter, the subdivider shall dedicate trails to the Town, or provide trail easements outside the subdivision, which are reasonably necessary or convenient to the subdivision, including the following:

- (1) Trails within three (3) miles of Town which are identified or described in the following documents:
  - a. The Crested Butte Trail Plan in the Area Plan;
  - b. More generally described in the Town of Crested Butte Parks and Recreation Regional Master Plan, or
  - c. More generally described in the Gunnison County Trails Master Plan, 2010, as amended.
- (2) Trails that provide reasonable access to schools, shopping areas, parks, trails, open land and other public areas.
- (3) Trail easements through open land areas that take advantage of the visual qualities of the area and that are designed to be an alternative to vehicular traffic.
- (4) Trails that provide access to public lands.
- (5) Trails along rivers, lakes or wetlands, shall be outside the wetland and other water feature buffer and shall comply with the requirements of Paragraph 17-8-90(b)(6). Short trails that cross a wetland or river/stream on a bridge or boardwalk may be approved by the Planning Commission.
- (6) Trails that create unsafe road crossings shall be avoided. Special structures and/or traffic control devices may be required at road crossings for safety.
- (7) Trails may be within a subdivision, or within three (3) miles of the Town.

### **Sec. 17-10-350. Design requirements.**

- (a) Separation between vehicular traffic ways and trails is required unless topography or other physical constraints necessitate a trail parallel to and near a traffic way. The minimum distance between vehicular rights-of-way and trails shall be twenty (20) feet.

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- (b) The type of construction for trails and walkways shall be compatible with the anticipated use.
  - (c) The traveled portion of improved, hard-surfaced trails shall be the same width as existing trails they connect with, or shall be no less than six (6) feet wide and no more than ten (10) feet wide if they do not connect with, existing trails, unless the terrain necessitates more width for safety purposes, or as approved by the Planning Commission considering proposed uses, location and terrain.
  - (d) The traveled portion of natural surfaced trails shall be the same width as existing trails they connect with or shall be two (2) feet to three (3) feet wide, unless the terrain necessitates more width for safety purposes, or as approved by the Planning Commission considering proposed uses, location and terrain.
  - (e) Easements for trails and trail rights-of-way shall be dedicated to the Town and shall be at least fifteen (15) feet wide when they are located outside otherwise dedicated public land. Easements over eight-percent gradient shall be wide enough, as determined by the Planning Commission with the help of the Crested Butte Mountain Bike Association, to accommodate switchbacks and maintain a grade of eight percent (8%) or less.
  - (f) Grades should be kept below five percent (5%) wherever possible, and should not exceed ten percent (10%) for sections of trail exceeding fifty (50) feet in length. The absolute maximum shall be twelve percent (12%) for sections of trail less than fifty (50) feet long, subject to approval of the Planning Commission. When long grades steeper than seven percent (7%) are unavoidable, consideration should be given to providing level stretches on which the user can rest or curves in the trail to make the grade less steep.
  - (g) Trails shall avoid all willows and indigenous shrubs larger than three (3) feet in diameter measured at the widest point of the canopy or crown and shall avoid or go around all trees with a trunk diameter of six (6) inches or more measured four and one-half (4½) feet above the ground. Trails shall avoid rocks larger than four (4) feet in diameter and other natural features. Trails shall go around such vegetation and natural features to create interesting, winding ways. Where necessary, trails shall be built by hand to preserve such vegetation or other natural features.

(Ord. 16 §50, 2011)

### **Sec. 17-10-360. Trail construction.**

The subdivider shall construct trails proposed within the subdivision.

### ***Division 3 Sidewalks***

### **Sec. 17-10-410. Sidewalks.**

- (a) Sidewalks shall be provided for reasonable access to magnet amenities, such as schools, shopping areas, parks, trails, open land and other public areas.
- (b) Sidewalks shall be required in all commercial or business zone districts on the side of the street where the commercial or business zone is located.
- (c) Sidewalks do not contribute to the trails required in Section 17-5-90 of this Chapter.
- (d) Sidewalks shall be six (6) to ten (10) feet wide, as determined by the Planning Commission. Typically, sidewalks in residential areas are narrower and sidewalks along arterial streets or commercial areas are wider. If a sidewalk will extend an existing sidewalk, the new sidewalk will be the same width as the existing sidewalk.
- (e) Because sidewalks are considered part of the infrastructure in Crested Butte, they shall be constructed by the subdivider with all other infrastructure constructed by the subdivider.

## **ARTICLE 11 Utility Standards**

### ***Division 1 Utility Standards Generally***

#### **Sec. 17-11-10. Utilities placed underground.**

The subdivider shall install service lines for local utilities underground, including those for electricity, natural gas, telephone, cable television and any other proposed utilities. If such lines are placed in a street or alley, they shall be in place prior to surfacing.

#### **Sec. 17-11-20. Location of aboveground utilities.**

Transformers, switching boxes, terminal compressor stations, pedestals or other similar facilities necessarily appurtenant and normally placed above ground may be placed within the subdivision easements or rights-of-way provided for the particular facilities in accordance with the approved utility service plan, but shall not be placed in any street or alley right-of-way to avoid conflicts with snowplowing. The location of each utility line shall be indicated on the utility plan.

#### **Sec. 17-11-30. Oversizing for extensions.**

Oversizing for likely extensions may be required to serve future phases. Utility lines, water and sewer lines, storm drainage facilities and irrigation ditches shall be sized to serve the total number of established and anticipated units in the subdivision and shall extend the full length of the subdivision. Oversizing may also be required to serve adjacent properties if a plan is in place at the time of subdivision approval stating that the cost of oversizing will be paid by subsequent users of the oversized line.

#### **Sec. 17-11-40. Easement location and design.**

Public utility easements shall be placed so as to be free from conflicting legal encumbrances, to avoid unnecessary removal of trees or excessive excavations and to be reasonably free from physical obstructions, and shall be dedicated at the time of final plat approval. Utility easements shall be at least twenty (20) feet wide; however, easements on two (2) adjoining tracts or parcels shall be a total of twenty (20) feet wide. In all cases, the subdivider shall work with the utility companies to provide reasonably sized easements a minimum of twenty (20) feet wide in appropriate locations.

#### **Sec. 17-11-50. Soil compaction.**

Soil compaction shall be required for fill of all utility lines, including service connections, within any public right-of-way. The compaction shall be ninety-five percent (95%) Standard Proctor.

#### **Sec. 17-11-60. Propane gas.**

No propane gas shall be used for structure, space or water heating.

### ***Division 2 Drainage Standards***

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### **Sec. 17-11-110. Drainage study.**

The drainage study shall be reviewed and approved by the Town Engineer to ensure that the information presented is accurate and uses standard engineering practices to solve expected drainage issues. The drainage plan shall describe how the expected maximum water flows from any twenty-five-year flood event and any one-hundred-year flood event shall be directed away from all buildings and other developed areas.

### **Sec. 17-11-120. Adjacent lands.**

The drainage system shall be designed to accommodate not only runoff from the subdivision, but also the historic runoff for those areas adjacent to and upstream from the proposed subdivision, as well as its effects on lands downstream.

### **Sec. 17-11-130. Storm drainage separate from sanitary sewage systems.**

Storm drainage systems shall be separate and independent of any sanitary sewer system.

### **Sec. 17-11-140. Historic runoff and drainage design.**

The drainage system shall be designed and constructed by the subdivider so that only historic runoff, not including historic irrigation, shall be released from the site. Drainage flows in excess of this amount shall be retained, detained in on-site detention ponds to maintain the historical rate of runoff for the one-hundred-year flood from the undeveloped site, or handled in a storm sewer system which takes into account the low winter temperatures of the area. Drainage shall not be directed to any other property without the written permission, in perpetuity, of the owner of said other property. All capital costs associated with handling runoff generated by a subdivision shall be paid by the subdivider, and all ongoing maintenance and operations costs of structures on public property or easements shall be paid by the Town unless it is agreed that the subdivider or his or her successors will maintain the drainage facilities.

### **Sec. 17-11-150. Drainage facilities.**

The subdivider shall provide culverts, drainage pipes, storm sewers, bridges and other flood and runoff control structures which shall be sized as required by the drainage study to protect all roadways, adjacent lots, tracts or parcels and property that is not a part of the subdivision. Particular attention will be given to items which will prevent over-topping, erosion or silting up of drainage facilities. Culverts and pipes shall be galvanized, corrugated steel or the approved equivalent. The minimum accepted culvert size shall be fifteen (15) inches in diameter. Open channels shall be a trapezoidal in shape with a minimum side slope of two (2) horizontal to one (1) vertical. They shall be sized to retain the anticipated flows at the design velocities.

### **Sec. 17-11-160. Drainage easements.**

Where a subdivision is traversed by a watercourse, drainage way, channel, stream, water supply ditch or canal (existing drainage way), there shall be provided in the subdivision a storm water or drainage easement or right-of-way conforming substantially to the lines of such existing drainage way. Such easements and existing drainage ways shall be of a width and constructed in a manner adequate to convey expected flows in a one-hundred-year flood. They shall also exclude improvements that would interfere with runoff. Drainage easements shall be shown on the final plat, shall provide a minimum access area on each side of the top of bank of twenty (20) feet for maintenance and access during flood events and shall be in accordance with the approved drainage study and drainage plan.

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### **Sec. 17-11-170. Floodplain designated as open space.**

Where a subdivision is located adjacent to the Slate River, Coal Creek or Washington Gulch, the subdivider should designate all land located within the one-hundred-year floodplain of the river, creek or gulch as open space or open land. In any event, no structures shall be placed within the one-hundred-year floodplain unless approved by the Town. One-hundred-year floodplain land designated for open space may apply toward the subdivider's open land requirements under Article 9 of this Chapter.

### **Sec. 17-11-180. Pollution from drainage.**

The subdivision shall not result in reasonably avoidable degradation of waterways, other water bodies or wetlands. This standard shall apply to both the construction activities and the ultimate use of the land. Features such as settling ponds, filtration galleries and sand traps, and the maintenance of these items, shall be addressed and resolved prior to preliminary plan approval.

### **Sec. 17-11-190. Curbs.**

Concrete curbs shall be required on both sides of streets and shall be designed to direct water so it will flow into the overall storm drainage system for the subdivision and the Town. Concrete curbs shall be located between the pavement edge of the street and sidewalk where sidewalks are proposed. Drainage shall be handled by surface drainage between curbs for a lineal distance of no more than nine hundred (900) feet or until the estimated flows exceed the capacity of the curbs, whichever is shorter. When the curbs can no longer handle the estimated flows, other drainage structures shall be used to direct water.

### **Sec. 17-11-200. Dips and swales.**

Concrete dips, pans or swales are required at street intersections to direct water flowing along curbs through intersections.

### **Sec. 17-11-210. Phased development drainage plans.**

A general drainage plan for the entire subdivision shall be presented as part of the first phase of a phased development, and appropriate development stages for the drainage system for each phase shall be indicated and constructed.

## ***Division 3 Water Supply***

### **Sec. 17-11-310. Connection required.**

Each building site within a subdivision shall be connected to the Town's public water supply facilities. Water supply service lines shall be required to serve all tracts or parcels.

### **Sec. 17-11-320. Design.**

The internal water distribution system of each subdivision shall be designed and sized hydraulically to meet the initial and future demands of the subdivision and shall comply with the Town design criteria found in *Public Works Criteria for Design and Construction: Earthwork, Sewer, and Water, March 2009*, as amended, and shall be approved by the Public Works Director and the Town Engineer.

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### **Sec. 17-11-330. Upgrading existing system.**

In the event the Town Engineer determines that the existing water treatment plant, water distribution lines or water storage facilities are insufficient to meet the then-current demand, including demand of lots, tracts or parcels paying availability of service charges, and the demand of the proposed subdivision, then the subdivider shall be required to provide and pay for the upgrades necessary to supply the proposed subdivision with adequate water for lawn irrigation and fire-fighting capabilities, and adequate potable water for household and any approved business or commercial uses, as required as defined in Sections 17-9-360 and 17-9-380 below.

### **Sec. 17-11-340. Oversizing for extensions.**

Oversizing for likely extensions may be required to serve future phases. Mains should be sized to serve the total number of established and anticipated units in the subdivision. Oversizing may also be required to serve adjacent properties. In such cases, an agreement shall be in place at the time of subdivision approval stating that the cost of oversizing will be paid by subsequent users of the oversized line.

### **Sec. 17-11-350. Sizing for fire demands.**

All subdivisions shall be served by the Town's central treated water system. Water distribution systems shall be designed for fire flows as required by the Crested Butte Fire Protection District. The system shall be sized hydraulically for maximum day demand plus fire flow demand or for peak hour demand, whichever is greater.

- (1) Maximum day demand, in gallons per minute, shall be three (3) times average day demand, and peak hour demand shall be assumed to be six (6) times the average day demand, unless calculations indicate otherwise and the design is approved by the Town.
- (2) Minimum residual pressures shall be forty (40) pounds per square inch (psi) under peak hour demands and twenty (20) psi if direct flow is used. The actual pressure in the supply system under the conditions specified shall be used in designing the distribution system.

### **Sec. 17-11-360. Materials specifications.**

The quality and materials specifications for all water systems must be submitted for review and are subject to approval by the Utilities Director. Proposed specifications should include the following:

- (1) The strength rating for distribution piping and fittings with fire flow demand shall have a minimum safety factor of four (4) times the anticipated internal operating pressure.
- (2) The system is to be designed for a minimum service life of fifty (50) years.
- (3) Water lines shall be buried a minimum of seven (7) feet below the finished ground surface, or as approved by the Utilities Director, and they shall be insulated under street crossings and driveway crossings to avoid freezing.
- (4) Dead-end mains are to be avoided but, if unavoidable, are to be provided with suitable means for flushing.

### **Sec. 17-11-370. Average daily demand.**

- (a) Sufficient supply for the average daily demand of a subdivision is based upon three hundred (300) gallons per day (gpd) per residential unit or one hundred (100) gpd per capita, whichever is greater.

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- (b) For business and commercial uses, the quantity will be reviewed and established based on the anticipated demand of the uses. Appropriate multipliers may be utilized in calculating this amount.
  - (c) Minimum water for irrigation uses should be supplied from sources other than the central treated water system, and quantities will be based on eight hundred sixty (860) cubic feet per day per acre. Required irrigation quantities may be higher if for ball fields in a park or school yard and other areas receiving high usage. If a separate irrigation system will not be used, then the average daily demand should be increased for each unit based on the eight-hundred-sixty-cubic-feet per day per acre figure and the proposed tract or parcel sizes.
  - (d) If estimates of water supply provided to satisfy Subparagraph 17-5-50(15)n. of this Chapter vary from the above numbers, the subdivider may propose such estimates and the Town may evaluate such estimates however; nothing herein shall obligate the Town to accept alternative estimates.

(Ord. 16 §53, 2011)

#### **Sec. 17-11-380. Stubbing water service lines.**

Water service lines shall be stubbed at least ten (10) feet into each tract or parcel created in the subdivision by the subdivider prior to acceptance of improvements by the Town. Such stubbed service lines shall be provided with curb shutoff valves at the end of the service line.

#### **Sec. 17-11-390. Fire hydrants.**

Fire hydrants shall be required in all subdivisions and will be located in conformity with the Fire Code adopted by the Town in Chapter 18 of this Code. Generally, there shall be one (1) fire hydrant where each alley intersects with a street. No fire hydrant shall be acceptable unless the outlet threads correspond with the hose threads used by the Crested Butte Fire Protection District. Each fire hydrant shall allow a minimum flow of one thousand five hundred (1,500) gpm. Fire hydrants may be required to allow larger flows depending upon the proposed nearby land uses.

#### **Sec. 17-11-400. Conformance with Fire District standards.**

All water supply infrastructure shall conform to the Crested Butte Fire Protection District Guidelines and Standards adopted March 15, 1989, as amended, with the exception that subdivisions without central (treated) water supply shall not be allowed.

#### **Sec. 17-11-410. Design and construction standards.**

Unless otherwise provided by these subdivision regulations, all design and construction shall be performed in a manner which, at a minimum, meets the commonly accepted engineering and construction standards for the Town area and other communities located in mountainous settings with similar conditions and climate.

#### **Sec. 17-11-420. Irrigation water supply.**

A second water supply system shall be provided for lawn, park and garden irrigation throughout the subdivision. It shall be sized to adequately meet the irrigation requirements of all lawns, parks and gardens proposed or anticipated, in the subdivision so treated water will not be used for such uses. The source of this second water supply will be nontreated water and may be irrigation water formerly associated with the site, but shall not be transferred water which results in the drying up of irrigated agricultural land in the Middle Slate River Valley as defined in the Area Plan. The Town may also require that land for storage be provided if the water source

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cannot irrigate all lawns, parks and garden spaces without storage. Land for water storage should be located so that water pressure is maintained by gravity. The quality of irrigation water shall be adequate for all irrigation uses proposed, as determined by the Town.

**Sec. 17-11-430. Land for water storage and treatment.**

Unless otherwise agreed to by the Town Engineer and the Public Works Director, land for water storage and treatment shall be provided by the subdivider to provide space for water storage for the subdivision and redundant water storage for the whole system. The amount and location of the land shall be proposed by the subdivider's engineer and reviewed by the Town Engineer and approved by the Planning Commission. Land for water storage should be located so that water pressure is maintained by gravity. Such land shall be counted as part of the required land for Town public facilities.

***Division 4 Sewage Disposal***

**Sec. 17-11-510. Connection required.**

Each subdivision shall be connected to the public sanitary sewage disposal facilities of the Town. Sanitary sewage disposal service lines shall be required to serve all tracts or parcels.

**Sec. 17-11-520. Design.**

Collection systems shall be designed to meet the demands of the proposed subdivision and shall be approved by the Utilities Director or Town Engineer.

**Sec. 17-11-530. Upgrading of existing system.**

In the event the Town Engineer determines that the existing wastewater treatment plant or sanitary mains are insufficient to serve the then-current demand, the future demand of tracts or parcels paying availability of service charges and the subdivision, the subdivider shall be required to provide and pay for the wastewater treatment plant and sanitary main upgrades necessary to meet the sewage treatment, sewage collection and sludge treatment demands of the proposed subdivision.

**Sec. 17-11-540. Oversizing for extensions.**

Oversizing for likely extensions may be required to serve future phases. Mains should be sized to serve the total number of established and anticipated units in the subdivision. Oversizing may also be required to serve adjacent properties. In such cases, an agreement shall be in place at the time of subdivision approval stating that the cost of oversizing will be paid by subsequent users of the oversized lines or the Town, within twenty-four (24) months.

**Sec. 17-11-550. Building permit limits.**

Building permits may be reasonably limited by the Town according to the capacity of the system. Any such limitation shall be included in the subdivision improvement agreement.

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**Sec. 17-11-560. Infiltration.**

The constructed system shall not permit infiltration in excess of two hundred (200) gallons per inch of diameter per mile of pipe per day, unless otherwise specified by the Town.

**Sec. 17-11-570. Stubbing sanitary sewer service lines.**

Sanitary sewer service lines shall be stubbed at least ten (10) feet into each tract or parcel, with cleanouts provided at the end of the service line stubs by the subdivider prior to acceptance of improvements by the Town.

***Division 5 Irrigation Systems*****Sec. 17-11-610. Irrigation systems encouraged.**

Public and private irrigation systems using untreated water are encouraged to be installed when the terrain allows, to avoid using potable water for landscape irrigation. The use of a separate irrigation system may allow the size of the water treatment facilities and treated water storage to be decreased since lawn irrigation will not be necessary with treated water.

**Sec. 17-11-620. Design.**

An irrigation system shall be designed to be compatible with adjacent irrigation systems and development if reasonably possible, and shall be subject to approval by the Town.

**ARTICLE 12 Affordable Housing and Local Housing****Sec. 17-12-10. Legislative intent.**

It is the purpose of this Section to promote owner-occupied and rental unit, deed-restricted, affordable housing in major subdivisions that will serve many segments of the community that need affordable housing. The target groups for this housing are people who desire, but cannot afford to purchase, tracts or units for long-term housing in the Town and who qualify for local housing and/or affordable housing in major subdivisions as described in this Section and in the Affordable Housing Guidelines for Major Subdivisions in Crested Butte, hereafter referred to as "Guidelines," as amended at the time of final plat approval. Such Guidelines are attached as an Appendix to this Code.

**Sec. 17-12-20. Affordable housing and local housing requirements.**

Any subdivider developing property that includes more than four (4) residential units shall comply with any of the following provisions:

- (1) The subdivider shall reserve at least sixty percent (60%) of the total number of proposed residential units in the new development annexed to the Town as local housing units. Such units shall, at a minimum, be deed-restricted to a variety of mixed-income people who earn at least eighty percent (80%) of their income in the County. The requirements for the reservation of local housing units as part of a new development annexed to the Town set forth in this Section are based on the recommendations set forth in the Crested Butte Area Plan in Section VII, Housing, Policy 2.

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- (2) The subdivider shall reserve at least twenty-one percent (21%) of the total number of residential units in the development, which may be a portion of the local housing units required above, to be affordable to households earning one hundred eleven percent (111%) to one hundred fifty-three percent (153%) of the Area Median Income for Gunnison County as published by the U.S. Department of Housing and Urban Development, or the agency that publishes such a number in its place in the future.
  - (3) As an alternative means of satisfying the required reservation of affordable housing and/or local housing units within a subdivision, as provided by this Section, the subdivider may offer to the Town a substitute percentage of affordable housing and/or local housing units to be built by the subdivider; provided, however, that nothing herein shall obligate the Town to accept such amount of substitute built affordable housing and/or local housing units. The Town shall not accept any substitute affordable housing or local housing that attempts to solve the entire affordable housing or local housing requirements by locating all units in only one (1) geographic area of a subdivision.

### **Sec. 17-12-30. Location of affordable housing and local housing.**

- (a) All local housing and/or affordable housing units required within a subdivision shall be located within and dispersed throughout the boundaries of the subdivision unless existing units are deed-restricted to affordable housing and/or local housing as described in Section 17-12-70 below. If the Town Council finds that unusual circumstances resulting from zoning and subdivision requirements or the location or size of the subdivision makes it unfeasible to reserve for use all or any portion of the required local housing and/or affordable housing units within the boundaries of the subdivision, the Town Council may, at its discretion, authorize the owner or subdivider to construct and reserve local housing and/or affordable housing units outside of the subdivision's boundaries to meet the affordable housing requirement for the subdivision.
- (b) Regardless of the type of housing proposed in a subdivision (e.g., single-family, multi-family, duplex, mobile home), the same proportion of each housing type to be used for free market housing shall be reserved for local housing and/or affordable housing, except as provided in Section 17-12-70 below.
- (c) The final plat shall identify each tract which shall have local housing and affordable housing units and it shall identify:
  - (1) The number of local housing and affordable housing units on each local housing and affordable housing tract;
  - (2) The number of affordable housing units in each category on the affordable housing tract, (the categories are described in the Guidelines); and
  - (3) The number of unrestricted units that may be built on the local housing and/or affordable housing tract, excluding accessory dwellings.
- (d) The required number of affordable housing units shall be divided equally among the four (4) categories.
- (e) The minimum size and minimum number of bedrooms in each category are described in the Guidelines, as amended at the time of final plat approval.
- (f) To maintain compatibility with existing ratios of owner-occupied and rental units in the Town, at least forty percent (40%) of the affordable housing shall be owner-occupied units and at least forty percent (40%) shall be rental units.

(Ord. 16 §11, 2006; Ord. 4 §1, 2009)

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## **Sec. 17-12-40. Qualifying affordable housing and local housing units.**

Affordable housing and local housing units intended for sale or rental use shall comply with Paragraph (1) below and affordable housing units shall also comply with Paragraph (2), (3) or (4).

- (1) The subdivider shall record with the County Clerk and Recorder either a deed or an irrevocable covenant running with the property that limits the use of the local housing units and affordable housing units and the appropriate portion of the tracts to local housing and affordable housing. Such deed or covenant shall be in perpetuity, shall be approved by the Town Attorney prior to recordation and shall provide that the Town may enforce the use restriction contained in the covenant. Examples of the deed restriction are located in the Guidelines.
- (2) The subdivider may convey all affordable housing units or tracts to the Town or a housing authority approved by the Town Council, at the Town's discretion. If conveyed to a housing authority, the housing authority may sell the owner-occupied units and may manage the rental units for the Town.
- (3) If the affordable housing tracts are conveyed to a housing authority, such housing authority may seek approval from the Town to place duplexes on the single-family tracts to satisfy the unit requirements in Categories 2 and 3 only. This allowance is made in recognition that Category 2 and 3 units may be more cost-effective as duplexes rather than single-family units. The subdivider will receive no additional credit for such duplex units.
- (4) If the subdivider chooses to build the affordable housing units, the subdivider may construct duplex units on some of the single-family tracts to satisfy the unit requirements in Categories 2 and 3 only. This allowance is made in recognition that Category 2 and 3 units may be more cost-effective as duplexes rather than single-family units. The subdivider will receive credit for each such built additional duplex unit towards the single-family residential unit requirement.

## **Sec. 17-12-50. Eligible occupants.**

Eligible occupants of local housing in the subdivision shall be those people who, at a minimum, earn eighty percent (80%) of their income in the County as described in the Crested Butte Area Plan. Eligible occupants of affordable housing in the subdivision shall be those people described in the Guidelines, as amended at the time of final plat approval. Unless otherwise stated in the Guidelines, eligible occupants for affordable housing shall:

- (1) Be residents of the County;
- (2) Have earned income, eighty percent (80%) of which shall be earned income from within the County;
- (3) Have worked in the County for at least three (3) of the past five (5) years;
- (4) Not exceed the income categories established in the Guidelines or by a housing authority that has been given the responsibility to set income guidelines by the Town;
- (5) Own no other developed residential land for rental units and no residential land for owner-occupied units;
- (6) Live on site; and
- (7) Work at least an average of one hundred twenty (120) hours per month during each calendar year in the County.

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### **Sec. 17-12-60. Rent and sales price limits.**

The Guidelines, as amended at the time of final plat approval, shall establish the maximum rent and sales price for each category of tenant or owner for all affordable housing units in major subdivisions.

### **Sec. 17-12-70. Satisfying local housing and/or affordable housing owner-occupied unit requirements by deed-restricting units.**

A subdivider may satisfy up to twenty-five (25%) of the requirements for local housing or for owner-occupied affordable housing by deed-restricting existing units in the Town.

- (1) Each existing unit that is deed-restricted to affordable housing shall be identified as a Category 1, 2, 3 or 4 unit, and the percentages of units in each category shall be maintained as required in Subsection 17-12-30(d) above.
- (2) The sales prices in the Guidelines, as amended at the time of final plat approval, shall apply to existing affordable housing units. Price increases for the resale of units shall take effect as described in the Guidelines, after the deed restriction is placed on the existing unit.
- (3) No more than twenty-five percent (25%) of the affordable housing requirement may be met by deed-restricting existing units.
- (4) Once deed-restricted, an affordable housing unit must be owner-occupied as set forth in the Guidelines.

### **Sec. 17-12-80. Sale of local housing and/or affordable housing tracts.**

- (a) Local housing and/or affordable housing tracts shall be sold with unrestricted tracts or, in the case of local housing and/or affordable housing tracts, conveyed to the Town or a housing authority approved by the Town. All tracts must be developed so they are ready for conveyance and construction; i.e., improved tracts with water, sewer, telephone, electricity, gas and streets in place to the property line. A soils report, prepared by a qualified engineer and based upon test holes within the building envelope of each tract, stipulating that the tract is suitable for construction of the intended dwelling type without requiring unusual excavation, foundation work or accommodation of other unusual conditions, shall accompany the conveyance if deemed necessary by the Building Official. When conveying local housing and/or affordable housing tracts to the Town or its designee, conveyance shall be concurrent with preliminary acceptance by the Town of the subdivision improvements.
- (b) Unless the tracts are conveyed to the Town or its designee, subdividers shall comply with the following rate of sales for each phase of a subdivision to ensure that a reasonable number of local housing tracts and/or affordable housing tracts are sold prior to unrestricted tracts:
  - (1) No more than twenty-five percent (25%) of the free market tracts in each phase of a subdivision shall be sold until twenty-five percent (25%) of either the local housing tracts or the affordable housing tracts, or a combination of both, are sold.
  - (2) No more than fifty percent (50%) of the free market tracts in each phase of a subdivision shall be sold until fifty percent (50%) of either the local housing tracts or the affordable housing tracts, or a combination of both, are sold.
  - (3) No more than seventy-five percent (75%) of the free market tracts in each phase of a subdivision shall be sold until one hundred percent (100%) of either the local housing tracts or the affordable housing tracts, or a combination of both, are sold.

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- (c) In the event the subdivider builds affordable housing, the Town Council shall reasonably decide how many free market tracts may be sold prior to the sale or rental of the affordable housing units or the local housing units, to be built by the subdivider.

(Ord. 16 §11, 2006; Ord. 4 §1, 2009)

### **Sec. 17-12-90. Administration.**

The Town Manager shall administer this Article and, subject to prior approval by the Town Council, may promulgate and enforce rules and regulations to implement its provisions.

## **ARTICLE 13 Miscellaneous Design Standards**

### **Sec. 17-13-10. Agricultural impacts.**

- (a) Fences. When a subdivision adjoins property classified by the County Assessor as agricultural and when the adjoining property is used for grazing, the subdivider shall construct a four-foot wire or wood fence along the subdivision boundary line adjacent to the agricultural use, which shall be capable of preventing livestock from passing through. After acceptance of the public improvements, it shall be the responsibility of the abutting property owner within the subdivision to properly maintain the fence unless the agricultural user agrees in writing to do so. Existing historical easements utilized to gain access to fences for maintenance or operational purposes shall be preserved or replaced with alternate easements suitable for such purposes.
- (b) Irrigation ditch access.
  - (1) Where actively utilized irrigation ditches cross or adjoin the subdivision, adequate provisions shall be made to ensure that water can be conveyed across the subdivision, including maintenance thereof. Ditch rights-of-way shall not be interfered with unless in compliance with Section 37-86-104, et seq., C.R.S., and a maintenance easement of at least twenty (20) feet from the edge of each ditch bank shall be preserved unless the subdivider can prove conclusively that the ditch has been legally abandoned. Existing historical easements utilized to gain access to ditches and head gates for maintenance or operational purposes shall be preserved or replaced with alternate easements suitable for such purposes.
  - (2) Conflicts between recorded and unrecorded irrigation ditch rights-of-way or easements shall be resolved by the subdivider and the ditch owner prior to final plat approval.
- (c) Irrigation ditch lining. Reasonable conditions may be imposed by the Town to protect subdivision residents from hazards caused by the existence of irrigation ditches in the subdivision and to ensure that irrigation water arrives at the irrigator's point of use. Reasonable protection may include lining and culverting of ditches.
- (d) Irrigation ditches not for drainage. Unless approved by the Town and the ditch owner, ditches shall not be used as drainage facilities.
- (e) Stock drive routes. Recorded easements for stock drive routes crossing the subdivision shall be maintained, or an alternate location may be established upon the prior written approval of the holder of the easement. The Town encourages subdividers to work with agriculture stock drivers to provide stock drives for moving stock where legal stock drive routes do not exist but where historic or traditional routes do exist.
- (f) Roads and boundary fences. Roads will be located a sufficient distance back from subdivision boundary fences so that normal maintenance of such roads, including snow removal, will not damage the fences.

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(Prior code 15-3-7; Ord. 4 §1, 2009; Ord. 16 §31, 2011)

### **Sec. 17-13-20. Recreational facilities.**

Any recreational facility proposed for dedication to the Town, or other appropriate entity, shall be included in the subdivision improvements agreement.

### **Sec. 17-13-30. Survey monuments.**

All surveying data shall be tied to primary control points, the location and description of which shall be recorded with the County Clerk and Recorder. Prior to acceptance of any public improvements by the Town, permanent survey monuments shall be set at all subdivision boundary corners, at points within the subdivision where there is a change of direction, at all tract or parcel corners and at the intersections of street and avenue centerlines. The monuments shall not be more than one thousand three hundred twenty (1,320) feet apart. All monuments and surveys shall be set and performed in accordance with Title 38, Articles 50 and 51 C.R.S.

### **Sec. 17-13-40. Landscaping.**

- (a) Landscaping subject to regulation. Because landscaping on public and private lands is essential to the aesthetic values, ecology and soil conservation of the Town, it is hereby declared to be a benefit to the general public. As such, landscaping shall be subject to regulation, be fully described in the subdivision improvements agreement and the landscape plan and be ensured by a guarantee of completion as provided in these subdivision regulations. The "Design Guidelines Town of Crested Butte" shall guide the subdivider on all topics that are not discussed in this Section.
- (b) Existing trees and shrubs. The landscaping plan shall demonstrate that a reasonable effort has been made to preserve all existing healthy trees and shrubs.
- (c) Appropriate vegetation. The landscaping plan shall provide for planting of indigenous vegetation or such other vegetation as may be recommended by the Colorado Forest Service. Cut-and-fill slopes shall be no steeper than a ratio of two (2) horizontal to one (1) vertical. All exposed ground surfaces shall be revegetated. Bluegrass and other grasses requiring high consumption of water are strongly discouraged.
- (d) Obstruction of signs and fire hydrants. No vegetation shall be located so as to interfere with the ability of motor vehicle operators to have unobstructed vision of traffic signs, street signs and intersecting streets. Fire hydrants shall not be obstructed by landscaping.
- (e) Protection of vegetation. Installation of vegetation protection devices shall be required during any construction.
- (f) Landscaping guarantee. All landscaping planted in accordance with this Section shall live for at least two (2) years after the applicable landscaping subdivision improvements have been made in compliance with Paragraph 17-5-80(h)(1) of this Chapter. It shall be properly maintained by the owner of the tract or parcel on which it is planted. Landscaping that dies within the two-year period shall be replaced and shall be required to live for at least two (2) years from the time it is replanted.
- (g) Debris, junk and equipment. No cut trees, timber, debris, junk, rubbish or other waste materials of any kind shall be buried, left or deposited on any tract, parcel, street or other area within the subdivision for more than ninety (90) days during construction of subdivision improvements. All such materials shall be kept within the subdivision. No construction equipment which is not being regularly used in the subdivision shall be left outside on the Property or within the Town for more than thirty (30) days.

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- (h) The subdivider shall be responsible for eradication of noxious weeds, on public land and on land owned by the subdivider, for at least five (5) years after final acceptance of subdivision improvements by the Town. Suitable bonding or other performance guarantee to ensure eradication of noxious weeds shall be established in the Subdivision Improvements Agreement. The bond or other performance guarantee shall not be less than 125% of the estimated cost of weed eradication on the site. Heavy equipment used for construction sites and new development shall be power washed to remove noxious weed seed prior to bringing it on site. The site shall be revegetated with native seed after infrastructure is constructed and after hazardous areas are reclaimed unless the Town agrees that other vegetation will be more appropriate, such as grass for a park on a portion of the site. An annual statement of performance report regarding noxious weed abatement shall be due to the Town by November 1, each year until the abatement of noxious weeds is accepted in accordance with the subdivision improvements agreement.

(Prior code 15-3-7; Ord. 4 §1, 2009; Ord. 16 §32, 2011)

### **Sec. 17-13-50. Other provisions.**

- (a) The Town may require, as a condition of subdivision approval, the construction of improvements not otherwise required by these subdivision regulations where such improvements are reasonably necessary to protect the health, safety or welfare of the Town and are made necessary as a result of the impacts created by the proposed subdivision. The Town shall provide written documentation for such necessity, and the obligation on the part of the subdivider for any required improvement shall be roughly proportional to the impacts of the proposed subdivision.
- (b) The final plat shall evidence conformance with any applicable requirements of the Americans with Disabilities Act (ADA) and any similar state requirements for accessibility of the subdivision and improvements to handicapped persons. Such conformance may be made a condition of subdivision approval; provided, however, that subdivision approval shall not constitute the Town's certification that the subdivision meets any applicable federal or state requirement. Conformance with such requirements shall remain an obligation of the subdivider and the property owner. Where an applicable requirement of these subdivision regulations is more stringent than a federal or state requirement, the more stringent requirement shall control.
- (c) The Town Council may approve the transfer of all or any portion of residential density allowable under the zoning classification for any reasonably zoned property which is denied all reasonable economic use by operation of these subdivision regulations. Such transfer of density shall be permitted from such residentially zoned property to another identified residentially zoned property only. The Town Council may impose reasonable conditions upon such transfer such as, but not limited to, the landowner's preservation of the property from which the density was transferred as open lands in accordance with Section 17-9-40 of this Chapter. Any transfer shall be approved by ordinance in the same manner as applicable to the rezoning of property and shall be evidenced by either a recorded written agreement between the property owner and the Town or the recording of the ordinance approving the transfer of residential density.
- (d) In the event that the subdivider disagrees with any dedication of land required by any provision of these subdivision regulations, the subdivider may provide to the Town studies and documentation identifying, through generally accepted techniques and models, the projected impact of the proposed subdivision upon the pertinent public facilities and amenities. Such study and documentation shall also include the subdivider's recommendation regarding a land dedication or fee which is proportional to the projected impact of the subdivision. Such evidence shall be considered by the Town in its final determination regarding land dedication requirements for the subdivision.

(Prior code 15-3-7; Ord. 20 §3, 1997; Ord. 16 §31, 2011)

## **ARTICLE 14 Appeals**

### **Sec. 17-14-10. Appeals of Building Official, Planning Director or Board decisions.**

- (a) Perfecting the appeal. Any decision by the Building Official, Planning Director or Board may be appealed by an aggrieved person to the Planning Commission within fourteen (14) days of the decision, provided that a written and signed request for such appeal is filed by the aggrieved party with the Town Clerk during said time period. This notice requirement is jurisdictional. The Planning Commission may also call a decision by the Building Official, Planning Director or the Board up for review by causing the Town Clerk to provide written notice to the Building Official, Planning Director or Board, and the subdivider.
- (b) Appeal hearing. The Planning Commission shall hear the appeal or call-up after giving at least five (5) days written notice to the Building Official, Planning Director or Board and subdivider within twenty (20) days of the receipt by the Town Clerk or subdivider, as the case may be, of notice of appeal or call-up. The Planning Commission shall take evidence, make written findings of fact and render a written decision thereon. If necessary, the appeal hearing may be continued for good cause for a reasonable time period. The Planning Commission's decision shall be in writing and provided to the parties within five (5) days after the decision is made.
- (c) Appeals decisions.
  - (1) The Planning Commission may uphold or reverse the appealed decision, or remand it to the Building Official, Planning Director or Board for further review and consideration. If new information, including but not limited to substantial changes in the design or other aspects of a proposal, is presented to the Planning Commission during the appeal that has not been reviewed by the Building Official, Planning Director or Board and, in the opinion of the Planning Commission this new information has a substantial impact on the proposal, the Planning Commission shall remand the proposal along with the new information to the Building Official, Planning Director or Board, as the case may be, for review and decision.
  - (2) If a decision is remanded, the Planning Commission may place conditions on the approval of the appealed decision so that it meets the intent of this Chapter and Chapter 16 of this Code.(Prior code 15-3-9; Ord. 4 §1, 2009)

### **Sec. 17-14-20. Appeal of Planning Commission or Town Council decisions.**

- (a) Administrative remedies provision. Where any subdivider believes that any provision or application of these subdivision regulations violates a provision of any federal or state statute other than Rule 106, C.R.C.P., or is otherwise unlawful, such person shall request in writing a hearing before the Town Council for the purpose of obtaining an administrative review by the Town Council of such claim and the evidence to support such claim. The Town Council shall schedule a public hearing to consider the claim. Within five (5) days following the conclusions of such hearing, the Town Council shall send or deliver to the aggrieved party a written finding regarding the claim, which may include either a finding that the claim is denied or a finding that the Town Council concurs with all or any part of the claim, and setting a time and date for the Town Council's review of and possible amendment or repeal of the provision. Failure of the Town Council to either set a hearing or reach a finding within the time required shall be deemed a denial of the claim. A request for such administrative proceeding and administrative remedy is a condition precedent to the filing of a complaint with a state or federal court challenging the subdivision regulations; provided, however, that nothing herein shall be deemed to apply to a claim brought pursuant to Rule 106, C.R.C.P.

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- (b) Perfecting the appeal. All appeals of Planning Commission or Town Council decisions shall be made by any aggrieved person as provided by state law, provided that the appealing party has provided a written and signed notice of intent to appeal the decision to the Town Clerk within thirty (30) days after the decision is made. This notice requirement is jurisdictional.
  - (c) Effect of decision. A decision by the courts to uphold a decision of the Planning Commission to deny a proposal shall result in closure of the file and shall void any previous Town approvals if no reapplication for the appropriate step in the application process is received by the Planning Director within six (6) months of the final trial or appellate court order, decree, judgment or mandate.
  - (d) Decisions which may be appealed. For purposes of judicial review of these subdivision regulations or any decision made by the Planning Commission or Town Council pursuant to these regulations, no "final decision" under Rule 106(b), C.R.C.P. shall be deemed to have been made until a written decision on a specific application for subdivision has been rendered by the Planning Commission or Town Council, as the case may be.

(Prior code 15-3-9; Ord. 4 §1, 2009)

## **ARTICLE 15 Enforcement and Penalty**

### **Sec. 17-15-10. Enforcement.**

It shall be the duty of the Town Council or its designee, to enforce the provisions of these subdivision regulations. No final plat of a subdivision shall be approved by the Town, nor shall any subdivision improvements agreement be approved by the Town, unless it conforms to the provisions of these regulations.

### **Sec. 17-15-20. Violation; penalty.**

- (a) Violation. It is unlawful for any person to violate any of the provisions of these subdivision regulations or to transfer, sell, lease or agree to sell or lease any lot, tract, parcel, site, separate interest (including a leasehold interest), condominium interest, time-share estate or any other interest within a subdivision or resubdivision within the Town which is subject to review and approval under these subdivision regulations unless and until the provisions of these subdivision regulations have been waived by the Building Official for a condominiumization or creation of townhouses, or such subdivision or resubdivision has been approved in writing by the Town and the final plat thereof recorded in the office of the County Clerk and Recorder, and any improvements described in the subdivision improvements agreement and in the final plan have been constructed and preliminarily accepted by the Town.
- (b) Penalty. Any person who violates any of the provisions of these subdivision regulations, or who knowingly provides false information for the Town to use as the basis for its decision when considering the proposed subdivision, shall be fined an amount not to exceed one thousand dollars (\$1,000.00) per day for each offense, incarceration in the County jail for not more than one (1) year or both, and required to pay any expenses and costs incurred by the Town to successfully prosecute the violation, including reasonable attorneys' fees.
- (c) Actions. The use of any land, building or structure, which activity or use is continued, operated or maintained contrary to any provision of these subdivision regulations, shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such remedies may include, without limitation, refusal to issue building permits, suspension of all building permits in the subdivision and refusal to issue certificates of occupancy in the subdivision.

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- (d) Remedies. The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
  - (e) Attorneys' fees. Any person who is found to be in violation of these subdivision regulations shall, in addition to any other penalties or remedies, pay the Town its reasonable attorneys' fees to ensure compliance with these subdivision regulations.

(Prior code 15-3-8; Ord. 4 §1, 2009)

## **ARTICLE 16 Wetland Functional Analysis**

### **Sec. 17-16-10. Description of functions.**

- (a) The information contained in this Article is a brief description of wetland functions commonly found in the Crested Butte region and of how each function shall be evaluated in the field. Typically, wetland functional analysis is determined while the wetlands are being delineated. The wetland functional analysis shall be determined during the growing season, as defined in the definitions.
- (b) Each of the seven (7) functions listed below shall be evaluated in the field and rated using a two-scale system. The first scale ranks the intensity from "1" to "3" with which the function is performed by the wetland in its current condition. A rating of "1" indicates that the function is not being performed. A rating of "2" indicates that the function is performed to a low to moderate degree. A rating of "3" indicates that the function is being performed to a high degree.
- (c) The second scale ranks the confidence (from a to c) that the evaluator has in the rating given with the first scale. A rating of "a" means the evaluator is confident of the intensity rating given for the function. A rating of "b" means that the evaluator is relatively certain, and a rating of "c" means that the evaluator has great uncertainty in the rating. Increased certainty often arises from direct observation of the function being performed. For example, a wetland that contains fish habitat where a native minnow species was observed might receive a rating of "2a" (habitat of low to moderate value with certainty that the habitat exists), whereas if no fish were observed, the same site would receive a "2b" or "2c" since there is uncertainty whether the fish are present.
- (d) Brief field notes and the ratings for each of the functions shall be recorded on the functional analysis data form (see Section 17-16-90 below). The data form and a brief summary of why the ratings were given shall be included in the wetland delineation report (see Section 17-5-30 of this Chapter).

(Ord. 16 §§30, 56, 2011)

### **Sec. 17-16-20. Groundwater discharge.**

This function involves the movement of groundwater to the ground surface. It is difficult to determine whether this function is occurring unless it is seen or measured, or unless a peatland is present. Peatlands always indicate groundwater discharge in the State and equate to this function being performed to a high degree (unless the site has been drained or otherwise impaired hydrologically). Other indicators of this function include an unrestricted outlet, the wetland is situated low in the watershed, there is a dam upstream and/or the site has diverse lithology (different bedrock types, some of which may be water bearing).

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### **Sec. 17-16-30. Flood storage.**

Flood storage is the process by which peak flows (from runoff, surface flow, groundwater flow and discharge and precipitation) enter a wetland basin and are delayed in their downslope journey. This function includes flood desynchronization, which involves the simultaneous storage of peak flows in numerous basins within a watershed and their subsequent gradual release in a non-simultaneous, staggered manner. A wetland that has good flood storage typically has one (1) or more of the following characteristics:

- (1) Occurs in a large watershed;
- (2) Occurs along a first or second order (very small) stream;
- (3) Its size greatly increases during periods of flooding;
- (4) Is located in a large and deep basin with a low-gradient;
- (5) Contains soils that are not permanently saturated;
- (6) Is located high above ground and/or below ground storage with no outlet; or
- (7) Dense vegetation.

A wetland that would perform this function to a high degree would likely occupy a large and broad, low-gradient basin. Wetlands that would not perform this function well would be those containing channelized stretches of streams, numerous irrigation ditches or canals.

### **Sec. 17-16-40. Sediment retention.**

Sediment retention or trapping is the process by which inorganic particulate matter of any size is retained and deposited within a wetland or its basin. This function may be performed over the short term or long term. Wetlands that perform this function to a high degree typically have the following characteristics: no outlet, surface water input exceeds surface water output, dense vegetation, gently sloping wetland edges and a wide floodplain. These wetlands often have surface deposits of sediment from deposition.

### **Sec. 17-16-50. Shoreline anchoring.**

Shoreline anchoring is the stabilization of soil at the water's edge or in shallow water by plant species with fibrous roots. Stabilization may include long-term accretion of sediment. This function only applies to wetlands that are situated along open water (lakes and streams). Rating this function is done under the assumption that vegetation density, vegetation type and wetland width are important predictors. Wetlands along streams that are dominated by woody vegetation, where the stream bottom is largely covered by fibrous roots, provide this function to a high degree.

### **Sec. 17-16-60. Water quality improvement.**

- (a) This function relates to water quality improvements as a result of nutrient retention and removal associated with biogeochemical processes. Excessive nutrient retention is the storing of nutrients within the substrate and vegetation of wetlands. Nutrient removal is the purging of nitrogen nutrients by conversion to gas (denitrification). Nutrient retention usually involves trapping runoff-borne nutrients in wetlands before they are carried downstream or into underlying aquifers. This nutrient storage may be over the long term (greater than five [5] years) or short term (thirty [30] days to five [5] years).

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- (b) The most critical nutrients for retention in aquatic ecosystems and removal are nitrogen and phosphorus compounds, although other nutrients may also be important. Wetlands that perform the water quality improvement function over the long term typically have the following characteristics:
    - (1) Ability to trap large amounts of sediments (which often contain nutrients);
    - (2) Presence of accumulated organic matter (debris); and
    - (3) No outlet and/or flooded permanently or semi-permanently. This creates reducing soil conditions by supporting active populations of denitrification bacteria and minimizing the oxidation of organics (which facilitates peat accumulation).
  - (c) Wetlands with a high-rated long-term water quality improvement function would be those with high sediment retention and/or those with highly productive vegetation containing organic soils that are permanently saturated (peatland). Many wetlands located in urban and industrial areas would also perform this function well.
  - (d) Wetlands that perform the water quality improvement function over the short term typically have the following characteristics:
    - (1) High net biological productivity;
    - (2) Good sediment retention;
    - (3) Nonacid soils; and
    - (4) Occur in watersheds that are highly developed, including those in urban, industrial and/or agricultural areas that have eroding soils and/or where fertilizer is applied.
  - (e) An example of a wetland that performs the water quality improvement function to a high degree over the short term is one with extremely productive vegetation and permanently saturated soils. Most densely vegetated marsh stands would meet these criteria. A wetland that would not perform this function well would have very sparse vegetation, little sediment retention and a steep slope which would keep sediment moving.

(Ord. 16 §§30, 56, 2011)

## **Sec. 17-16-70. Wildlife habitat in wetlands.**

- (a) Wildlife habitat is defined as those physical and chemical factors which affect the metabolism, attachment and predator avoidance of adult and/or larval forms of both aquatic and terrestrial wildlife, and provide food and cover needs in the place where they reside. These factors determine the suitability of a given site for an animal species. A wetland's physical and chemical characteristics that are good for one (1) species are not necessarily good for another species. However, there are several indicators of good habitat for animals in general. Good terrestrial wildlife habitat can be anticipated if a wetland has some of the following characteristics:
  - (1) Good edge ratio;
  - (2) Contains islands;
  - (3) High plant diversity;
  - (4) Some (but not excessive) alkalinity;
  - (5) Sinuous and irregular wetland basin;
  - (6) Basin and wetland area that are not small;

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- (7) Gentle gradient;
  - (8) No artificial water level fluctuations;
  - (9) Not moss-dominated;
  - (10) A pH that exceeds 6.0;
  - (11) Contains some open water;
  - (12) Not urban;
  - (13) No deep water;
  - (14) Not channelized or farmed;
  - (15) Relatively undisturbed by humans; and
  - (16) Good food sources.
- (b) Good aquatic wildlife habitat can be anticipated if the wetland has some of the following characteristics:
- (1) Some open water that is not too shallow;
  - (2) Not acidic;
  - (3) Not turbid;
  - (4) No barriers to migration;
  - (5) No oxygen stagnation;
  - (6) No artificial fluctuations;
  - (7) Not oligotrophic (nutrient poor);
  - (8) Does not experience flashy flows; and
  - (9) Cool water temperatures with some shade.
- (c) An example of a wetland that would provide high quality wildlife habitat would be one that supports diverse and productive vegetation, has some open water, is relatively undisturbed and provides some isolation from human activities.

(Ord. 16 §§30, 56, 2011)

### **Sec. 17-16-80. Aquatic food chain support.**

Food chain support is the export of organic matter produced in a wetland to a stream, lake or other water feature where the energy and nutrients in that organic matter are utilized by animals inhabiting the aquatic environment. Food chain support may occur within a wetland basin or in downstream habitats.

- (1) Wetlands that perform within basin food chain support to a high degree typically have the following characteristics:
  - a. No stagnant water;
  - b. Highly productive vegetation;
  - c. Irregularly shaped with no outlet;
  - d. Not entirely shallow with warm water in the summer (limited shading); and
  - e. Good mixing of the water.

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- (2) Wetlands that perform downstream food chain support to a high degree typically have the following characteristics:
- a. An outlet;
  - b. Nonacidic waters;
  - c. Not a sandy substrate;
  - d. Not permanently flooded;
  - e. Dense and diverse vegetation with high sustained productivity;
  - f. Not hypersaline;
  - g. Good flushing flows; and
  - h. Vegetation overhanging the water.

## Sec. 17-16-90. Wetland functional analysis data form.

Project Name/Location: Evaluator(s): Instructions: Check the observed or assumed indicators of each function and provide ratings. Include other indicators and detailed notes as appropriate. Refer to Article 13 of the Subdivision Regulations for more information.		Date: Wetland Identifier:	
<b>Ground Water Discharge</b> <input type="checkbox"/> Organic soils <input type="checkbox"/> Unrestricted outlet <input type="checkbox"/> Low in the watershed <input type="checkbox"/> Dam upstream <input type="checkbox"/> Diverse lithology <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:		<b>Sediment Retention</b> <input type="checkbox"/> No outlet <input type="checkbox"/> Surface water input exceeds output <input type="checkbox"/> Dense vegetation <input type="checkbox"/> Gently sloping wetland edges <input type="checkbox"/> Wide flood plain <input type="checkbox"/> Sediment deposits <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:	<b>Wildlife Habitat</b> Terrestrial <input type="checkbox"/> Good edge ratio <input type="checkbox"/> Contains islands <input type="checkbox"/> High plant diversity <input type="checkbox"/> Some (but not excessive) alkalinity <input type="checkbox"/> Sinuous and irregular wetland basin <input type="checkbox"/> Basin and wetland area that are not small <input type="checkbox"/> Gentle gradient <input type="checkbox"/> No artificial water level fluctuations <input type="checkbox"/> Not moss dominated <input type="checkbox"/> A pH that exceeds 6.0 <input type="checkbox"/> Contains some open water <input type="checkbox"/> Not urban <input type="checkbox"/> No deep water <input type="checkbox"/> Not channelized or farmed <input type="checkbox"/> Relatively undisturbed by humans <input type="checkbox"/> Good food sources <input type="checkbox"/> Other indicators:  Aquatic <input type="checkbox"/> Some open water that is not too shallow <input type="checkbox"/> Not acidic <input type="checkbox"/> Not turbid <input type="checkbox"/> No barriers to migration <input type="checkbox"/> No oxygen stagnation <input type="checkbox"/> No artificial water level fluctuations <input type="checkbox"/> Not oligotrophic (nutrient poor) <input type="checkbox"/> No flashy flows <input type="checkbox"/> Cool water temperatures with some shade <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:
<b>Flood Storage</b> <input type="checkbox"/> Large watershed <input type="checkbox"/> 1st or 2nd order stream <input type="checkbox"/> Wetland size greatly enlarged during flooding <input type="checkbox"/> Large and deep wetland basin <input type="checkbox"/> Low-gradient wetland basin <input type="checkbox"/> Not permanently saturated <input type="checkbox"/> High storage capacity with no outlet <input type="checkbox"/> Dense vegetation <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:		<b>Shore Line Anchoring</b> <input type="checkbox"/> Along stream, pond, or other open water <input type="checkbox"/> Dominated by woody vegetation <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:	<b>Aquatic</b> <input type="checkbox"/> Some open water that is not too shallow <input type="checkbox"/> Not acidic <input type="checkbox"/> Not turbid <input type="checkbox"/> No barriers to migration <input type="checkbox"/> No oxygen stagnation <input type="checkbox"/> No artificial water level fluctuations <input type="checkbox"/> Not oligotrophic (nutrient poor) <input type="checkbox"/> No flashy flows <input type="checkbox"/> Cool water temperatures with some shade <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:
<b>General Notes:</b>		<b>Water Quality Improvement</b> Long-Term <input type="checkbox"/> Ability to trap sediments <input type="checkbox"/> Accumulated organic matter (debris) <input type="checkbox"/> No outlet <input type="checkbox"/> Flooded permanently or semi-permanently <input type="checkbox"/> Other indicators:  Short-Term <input type="checkbox"/> High net biological productivity <input type="checkbox"/> Good sediment retention <input type="checkbox"/> Non-acid soils <input type="checkbox"/> Developed watershed <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:	<b>Aquatic Food Chain Support</b> Within Basin <input type="checkbox"/> No stagnant water <input type="checkbox"/> Highly productive vegetation <input type="checkbox"/> Irregularly shaped wetland basin with no outlet <input type="checkbox"/> Not entirely shallow with warm water <input type="checkbox"/> Good mixing of the water <input type="checkbox"/> Other indicators:  Downstream <input type="checkbox"/> An outlet <input type="checkbox"/> Non-acidic waters <input type="checkbox"/> Not a sandy substrate <input type="checkbox"/> Not permanently flooded <input type="checkbox"/> Dense, diverse and productive vegetation <input type="checkbox"/> Not hypersaline <input type="checkbox"/> Good flushing flows <input type="checkbox"/> Vegetation overhanging the water <input type="checkbox"/> Other indicators:  Intensity Rating (1-3): Confidence Rating (a-c): Notes:

(Ord. 16 §57, 2011)

## CHAPTER 18

### Building Regulations<sup>12</sup>

<sup>12</sup>Ord. No. 13 , § 1(Exh. A), adopted August 2, 2022, repealed the former Ch. 18, §§ 18-1-10—18-1-70, 18-2-10—18-2-30, 18-25-10, 18-25-20, 18-3-10—18-3-70, 18-4-10—18-4-60, 18-5-10—18-5-60, 18-6-10—18-6-70, 18-7-10—18-7-70, 18-8-10—18-8-100, 18-9-10—18-9-110, 18-10-10, 18-10-20, 18-11-10—18-11-30, 18-12-10—

CHAPTER 18 - Building Regulations  
ARTICLE 1 Building Code

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18-12-50, 18-13-10—18-13-100, 18-14-10—18-14-70, 18-15-10, 18-16-10, 18-17-10, 18-17-20, and enacted a new Ch. 18 as set out herein. The former Ch. 18 pertained to similar subject matter. See the Disposition of Ordinances Table for complete derivation.

## ARTICLE 1 Building Code

### Sec. 18-1-10. Adoption.

The International Building Code ("IBC"), 2021 edition, Chapters 1 through 35 without appendices, published by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes comprehensive provisions and standards regulating the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area and maintenance of buildings and structures for the purpose of protecting the public health, and safety and general welfare.

### Sec. 18-1-20. Copy on file.

At least one (1) copy of the International Building Code, certified to be a true copy, is on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### Sec. 18-1-30. Amendments.

The code adoption herein is modified by the following amendments:

- (1) IBC Section 105.2 is amended to read as follows:

R105.2 - Work exempt from permit. Building.

1. Fences less than 6 feet (1828.8 mm) high.
2. Oil derricks.
3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
4. Sidewalks and driveways not more than 18 inches (457 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
5. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
6. Temporary motion picture, television and theater stage sets and scenery.
7. Swings and other playground equipment accessory to detached one- and two-family dwellings.
8. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

- (2) IBC Section 202 is amended by inserting or amending the following definitions within the alphabetical order of the existing definitions as follows:

Crawlspace. Any space below the first floor of a building with a height of 60 inches or less, measured from the ground level at any point within the perimeter to the bottom of the floor joist directly above.

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All Electric Building. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (with the exception of solid fuel-burning devices that meet requirements in Article 8 of this Chapter), water heating (including pools and spas), cooking appliances (including barbeques but excluding Commercial Food Heat-processing Equipment), and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

Combustion Equipment. Any equipment or appliance used for space heating, service water heating, cooking, clothes drying and/or lighting that uses fuel gas or fuel oil.

Commercial Food Heat-processing Equipment. Equipment used in a food establishment for heat-processing food or utensils and that produces grease vapors, steam, fumes, smoke, or odors that are required to be removed through a local exhaust ventilation system.

Electric Heating Appliance. A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions.

Fuel Gas. A gas that is natural, manufactured, liquefied petroleum, or a mixture of these.

Townhouse. A single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from the foundation to roof and with open space on at least two sides.

(3) IBC Section 1301.1 is amended by adding three new subsubsections to read as follows:

1301.1.2. - All Electric Buildings. All new commercial buildings shall be All Electric Buildings.

1301.1.3. - EV Parking. Commercial buildings and accessory structures with two or more parking spaces shall provide one Level II EVSE. Additionally, ten percent (10%) of total required parking spaces (rounded up) shall be Electric Vehicle Ready Spaces, and one DC Fast Charger (25 kW) shall be provided for 5 or more required parking spaces.

1301.1.4. - Solar Requirements.

C401.2.3.3.1 - Buildings that are less than 5,000 square feet. A commercial building that is less than 5,000 square feet shall install Solar Ready Components.

C401.2.3.3.2 - Buildings that are 5,000 square feet or larger. A commercial building that is 5,000 square feet or larger shall install solar PV panels to roof(s) per Section 18-1.5-30(5). Solar requirements shall not exceed any Gunnison County Electric Association net metering limitation in place when submitting a building permit application.

(4) IBC Section 1805.3 is amended to read as follows:

1805.3 - Waterproofing. All basement construction shall adhere to Section 18-16-10 of the Crested Butte Municipal Code for basement waterproofing.

## **Sec. 18-1-40. Fees.**

Fees for any permit or inspection required by the codes adopted in this Chapter or required by Article 13 of this Chapter are set by resolution of the Town Council.

## **Sec. 18-1-50. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

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### **Sec. 18-1-60. Conflicting provisions.**

In the event of a conflict between the code adopted herein and any provision set forth in Chapter 16 of this Code, such conflict shall be resolved in favor of said Chapter 16.

### **Sec. 18-1-70. Violation, liability and penalty.**

- (a) Any person who violates any provision of this Article or this Chapter shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation of this Article or this Chapter continues to exist shall constitute a separate and additional offense.
- (b) Any person violating any provisions of this Article or this Chapter shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin or abate any violation of this Article or this Chapter.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 1.5 International Green Construction Code**

### **Sec. 18-1.5-10. Adoption.**

The International Green Construction Code ("IgCC"), 2021 edition, selected sections from Chapters 1, 3, 5, and 6 through 9 pursuant to Section 18-1.5-30, published by the International Code Council, Inc. 4051, West Flossmoor Road, Country Club Hills, Illinois 60478, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes minimum requirements to be used in conjunction with the other codes and standards adopted by this jurisdiction. The requirements in this code shall not be used to circumvent any applicable safety, health, or environmental requirements. The provisions of this Code shall apply to the design, construction, addition, alteration, equipment, change of occupancy, relocation, replacement, demolition and removal of every building or structure or any appurtenances connected or attached to such buildings or structures and to the building site on which the building is located. Occupancy classifications shall be determined in accordance with the International Building Code.

### **Sec. 18-1.5-20. Copy on file.**

At least one (1) copy of the International Green Construction Code certified to be a true copy, is on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-1.5-30. Selected sections to be adopted by reference and amendments thereto.**

The following selected sections of the Green Construction Code are hereby adopted in their entirety and amended as follows:

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- (1) IgCC Chapter 1 "Scope and Administration" is adopted in its entirety.
  - (2) IgCC Chapter 3 "Definitions, Abbreviations and Acronyms" is adopted in its entirety.
  - (3) IgCC Chapter 5 "Site Sustainability" Section 501.3.4 (Stormwater management) is adopted in its entirety.
  - (4) The following sections of IgCC Chapter 6: "Water Efficiency" shall be adopted in their entirety: Section 601.3.2 (Building water use reduction); Section 601.3.2.2 (Appliances); Section 601.3.2.3 (HVAC systems and equipment); Section 601.3.2.5 (Commercial food service operations); and Section 601.3.3 (Hot water distribution).
  - (5) The following sections of IgCC Chapter 7 "Energy Efficiency" shall be adopted in their entirety: Section 701.3.2 (On-site renewable energy systems) and Section 701.4.3.8 (Kitchen exhaust systems).
  - (6) The following sections of IgCC Chapter 8 "Indoor Environmental Quality" shall be adopted in their entirety: Section 801.3.1 (Indoor air quality); Section 801.4.3.4 (Soil-gas control); and Section 801.4.2 (Materials).
  - (7) IgCC Chapter 9 "Materials and Resources" Section 901.3.2 (Extracting, harvesting and/or manufacturing) shall be adopted in its entirety.
  - (8) IgCC Chapter 9 "Materials and Resources" Section 901.3.4 (Areas for storage and collection of recyclables and discarded goods) shall be adopted and amended to delete Sections 901.3.4.2 through 901.3.4.4.

## **ARTICLE 2 Residential Code**

### **Sec. 18-2-10. Adoption.**

The International Residential Code ("IRC"), 2021 edition, Chapters 1 through 44, with Appendix AF (Radon Control Methods), Appendix AK (Sound Transmission), Appendix AR (Light Straw-Clay Construction), and Appendix AS (Straw-Bale Construction), and Appendix AU (Cob Construction Monolithic adobe), published by the International Code Council, Inc. 4051, West Flossmoor Road, Country Club Hills, Illinois 60478, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes comprehensive provisions and standards regulating the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area and maintenance of buildings and structures for the purpose of protecting the public health, and safety and general welfare.

### **Sec. 18-2-20. Copy on file.**

At least one (1) copy of the International Residential Code, certified to be a true copy, is on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-2-30. Amendments.**

The code adoption herein is modified by the following amendments:

- (1) IRC Section R105.2. Building exemptions are amended to read as follows:

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R105.2 - Work exempt from permit. Building.

1. Fences less than 6 feet (1828.8 mm) high.
  2. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
  3. Sidewalks and driveways.
  4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
  5. Prefabricated swimming pools that are less than 24 inches (610 mm) deep.
  6. Swings and other playground equipment.
- (2) IRC Section R202 is amended by inserting or amending the following definitions within the alphabetical order of the existing definitions as follows:

All Electric Building. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (with the exception of solid fuel-burning devices that meet requirements in Article 8 of this Chapter), water heating (including pools and spas), cooking appliances (including barbeques but excluding Commercial Food Heat-processing Equipment), and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

Combustion Equipment. Any equipment or appliance used for space heating, service water heating, cooking, clothes drying and/or lighting that uses fuel gas or fuel oil.

Commercial Food Heat-processing Equipment. Equipment used in a food establishment for heat-processing food or utensils and that produces grease vapors, steam, fumes, smoke, or odors that are required to be removed through a local exhaust ventilation system.

Crawl Space. Any space below the first floor of a building with a height of 60 inches or less, measured from the ground level at any point within the perimeter to the bottom of the floor joist directly above.

Electric Heating Appliance. A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions.

Fuel Gas. A gas that is natural, manufactured, liquefied petroleum, or a mixture of these.

Townhouse. A single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from the foundation to roof and with open space on at least two sides.

- (3) IRC Section R301.2 is amended by adding the following table to R301.2(1) as follows:

Flat Roof Snow Load	100 lbs. per square foot
Ground Snow Load	Not Determined
Wind Design Speed	115 Miles per Hour
Topographic effects	No
Special wind region	No
Wind-borne debris zone	No
Seismic Design Category	C
Subject to Damage From:	
1. Weathering	Severe
2. Frost Line depth	36 inches
3. Termite	Slight
Winter Design Temp.	-16 degrees Fahrenheit

Roof Ice Barrier Underlayment Required	Yes
Floor Hazard	Flood Insurance Rate Maps (FIRM) 08051C0726D, 08051C0727D
Air Freezing Index	3500
Manual J Design Criteria	
1. Elevation	8921
Altitude Correction Factor by Appliance Manufacturer	
1. Coincident Wet Bulb Coldest Month	0.4 Percent
2. Indoor Winter Design Dry-Bulb Temp.	-68 Degrees Fahrenheit
3. Outdoor Winter Design Dry-Bulb Temp.	-25.0 Degree Fahrenheit
4. Heating Temperature Difference	93 Degrees (68 to -25)
Latitude	38.8697146
Mean Annual Temperature	35 degrees Fahrenheit

(4) IRC Section R303.3 is amended to read as follows:

R303.3 - Bathrooms. Bathrooms, water closet compartments and other similar rooms shall be provided with mechanical ventilation with minimum ventilation rates of 50 cfm for intermittent ventilation and 20 cfm for continuous ventilation. Ventilation air from the space shall be exhausted directly to the outside.

(5) IRC Section R310.4 is amended to read as follows:

R310.4 - Area Wells. An emergency escape and rescue opening where the bottom of the clear opening is below the adjacent grade shall be provided with an area well in accordance with Sections R310.4.1 through R310.4.4. All area wells required for emergency escape shall be provided with a roof or projection above and curbing sufficient to prevent the accumulation of snow and ice inside the window well. Roofs or projections over window wells that are larger than the minimum code size of 9 square feet will count toward FAR as covered decks.

(6) IRC Section R313.2 is amended to read as follows:

R313.2 - One- and two-family dwellings automatic sprinkler systems. Single-family dwellings are exempt from automatic residential fire sprinkler requirement.

(7) IRC Section R315.1 is amended to read as follows:

R315.1 - Carbon monoxide alarms. Carbon monoxide alarms shall comply with Section R315 and Chapter 18, Article 14 of the Crested Butte Municipal Code. In the case of conflicts between the codes the more restrictive will apply.

(8) IRC Section R406.2 is amended to read as follows:

R406.2 - Concrete and masonry foundation waterproofing. In areas where a high-water table or other severe soil-water conditions are known to exist, exterior foundation walls that retain earth and enclose interior spaces and floors below grade shall be waterproofed from the finished grade to the higher of the top of the footing or 6 inches (152 mm) below the top of the basement floor. Walls shall be waterproofed in accordance with one of the following:

1. Two-ply hot-mopped felts.
2. Fifty-five-pound (25 kg) roll roofing.
3. Forty-mil (1 mm) polymer-modified asphalt.
4. Sixty-mil (1.5 mm) flexible polymer cement.

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5. One-eighth-inch (3 mm) cement-based, fiber-reinforced, waterproof coating.
  6. Sixty-mil (1.5 mm) solvent-free liquid-applied synthetic rubber.

All joints in membrane waterproofing shall be lapped and sealed with an adhesive compatible with the membrane. All basement construction shall be in compliance with the requirements of Section 18-16-10 of the Crested Butte Municipal Code. In the case of conflicts between the codes, the more restrictive will apply

(9) IRC Section R1002.2 is amended to read as follows:

R1002.2 - Installation. Masonry heaters shall be installed in accordance with this section and comply with one of the following:

1. Masonry heaters shall comply with the requirements of ASTM E1602.
2. Masonry heaters shall be listed and labeled in accordance with UL 1482 or CEN 15250 and installed in accordance with the manufacturer's instructions.

All solid fuel burning devices shall conform to Chapter 18, Article 8 of the Crested Butte Municipal Code.

(10) IRC Section R1004.1 is amended to read as follows:

R1004.1 - General. Factory-built fireplaces shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Factory-built fireplaces shall be tested in accordance with UL 127. All solid fuel burning devices shall conform to Chapter 18, Article 8 of the Crested Butte Municipal Code.

(11) IRC Section R324.6.1 (Pathways) is deleted in its entirety and replaced with a new section to read as follows:

R324.6.1 - Pathways. A minimum of one pathway not less than 24 inches on each roof with installed photovoltaic (PV) arrays from eave to ridge shall be provided. 24 inches minimum pathway for roofs with roof valleys, as measured from the center of the valley to the PV array, shall be provided.

Pathways shall be located in areas capable of supporting fire fighters accessing the roof. Pathways shall be located in areas with minimal obstructions such as vent pipes, conduit, or mechanical equipment. For opposing roofs with PV arrays on both sides, one pathway shall be 24 inches wide and the other pathway shall be 36 inches wide on either side of the PV array. All pathways shall include 6 feet of clearance between solar panels and all sides of any solid fuel device chimney or stove pipe.

(12) IRC Section R324.6.2 is amended to read as follows:

R324.6.2 - Setback at ridge. For photovoltaic arrays, not less than an 18-inch (457 mm) clear setback is required on both sides of a horizontal ridge. A minimum of 18" (457 mm) clear setback from bottom of photovoltaic arrays to bottom of roof eave is required.

(13) IRC Section N1101.13 is amended to read as follows:

N1101.13 - Application. Residential buildings shall comply with Section N1101.13.5, Section N1101.13.6, and Section N1101.13.1, N1101.13.2, N1101.13.3 or N1101.13.4.

(14) IRC Section N1101.13 is amended by adding a new subsection to read as follows:

N1101.13.6. Residential Electric Requirements.

N1101.13.6.1 - All Electric. Residential buildings shall be All Electric Buildings.

N1101.13.6.2 - EV Parking. All residential buildings or garages shall provide one Electric Vehicle Ready Space per dwelling unit.

N1101.13.6.3 - Zero Energy Ready Home. All new heated buildings shall become qualified as a Department of Energy Zero Energy Ready Home (as amended by the Department of Energy) by

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meeting the national program requirements specified in the program, becoming verified and field-tested in accordance with HERS standards by an approved verifier, and meeting all applicable codes. Residential construction may meet the requirements of either the performance path or the prescriptive path to qualify.

- (15) IRC Section N1105.1 is amended to read as follows:

N1105.1 - Scope. This section establishes criteria for compliance using total building performance analysis. Such analysis shall include heating, cooling, mechanical ventilation and service water-heating energy only. The utilization of this section shall be specifically approved by the Building Official prior to submittal of design documents.

- (16) IRC Section N1109 is deleted in its entirety and replaced with a new section to read as follows:

N1109 - Existing Buildings - General. The alteration, repair, addition and change of occupancy of existing buildings and structures shall comply with the requirements of the 2021 International Existing Building Code (IEBC).

## **ARTICLE 2.5 Existing Building Code**

### **Sec. 18-2.5-10. Adoption.**

The International Existing Building Code ("IEBC"), 2021 edition, Chapters 1 through 16 without appendices, published by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes comprehensive provisions and standards regulating the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area and maintenance of buildings and structures for the purpose of protecting the public health, and safety and general welfare.

### **Sec. 18-2.5-20. Copy on file.**

At least one (1) copy of the International Existing Building Code certified to be a true copy, has been and is now on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-2.5-30. Amendments.**

The code adoption herein is modified by the following amendments:

- (1) IEBC Section 202 is amended by inserting or amending the following definitions within the alphabetical order of the existing definitions as follows:

Building Area. The area included within surrounding exterior walls, or exterior walls and fire walls, exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

DC Fast Charger ("DCFC"). EVSE that provides at least 50 kilowatts of direct current electrical power for charging a plug-in electric vehicle through a connector based on fast charging equipment standards and

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which is approved for installation for that purpose under the National Electric Code through an Underwriters Laboratories Certification or an equivalent certifying organization.

Electric Ready. A building that meets the following construction requirements:

- i. Where a gas heating system is installed provide a dedicated electric circuit, panel space and location for condensate drainage.
- ii. Where a gas water heating system is installed provide a dedicated electric circuit, panel space, location for condensate drainage.
- iii. Where a gas cooking stove is installed, a dedicated circuit and panel space for electric appliance replacement is provided.
- iv. Where a gas dryer is installed, a dedicated circuit and panel space for electric appliance replacement is provided.

Electric Vehicle Supply Equipment (EVSE). The conductors—including the ungrounded, grounded, and equipment grounding conductors—and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

Electric Vehicle (EV) Ready Space. Parking spaces that have full circuit installations of 208/240-volt (or greater), 40-ampere (or greater) panel capacity, raceway wiring, receptacle and circuit overprotection devices. This strategy provides all required electrical hardware for the future installation of EV Supply Equipment (EVSE). Anticipating the use of dual head EVSE, the same circuit may be used to support charging in adjacent EV-Ready spaces.

Home Energy Assessment. An assessment includes a home visit by a building performance institute (BPI) certified energy analyst that results in a report that analyzes the current condition and energy usage of a home and provides a list of recommended improvements.

Level II EVSE. An EVSE capable of charging at 30 amperes or higher at 208 or 240 VAC.

Solar Ready Components. Building construction components that facilitate and optimize the installation of a rooftop solar photovoltaic (PV) system at some point after the building has been constructed, including installation of electrical conduit from electrical panel space to the solar panel roof area.

Work Area. That portion or portions of the building consisting of reconfigured and altered spaces as indicated on the construction documents as measured from the inside face of the building envelope.

(2) IEBC Section 907 is deleted in its entirety and replaced with a new section to read as follows:

## 907 ENERGY CONSERVATION

907.1 - Minimum requirements. Except as specified in this section, Level 3 alterations to existing buildings or structures are permitted without requiring the entire building or structure to comply with the energy requirements of the International Energy Conservation Code or International Residential Code. The alterations shall conform to the energy requirements of the International Energy Conservation Code or International Residential Code as they relate to new construction only.

907.2 - Electric Ready. Existing buildings undergoing Level 3 alterations shall be Electric Ready.

907.3 - Commercial Level 3 Alterations.

907.3.1 - Level 3 alterations that are less than 5,000 square feet. A Level 3 alteration of commercial buildings that is less than 5,000 square feet shall install Solar Ready Components.

907.3.2 - Level 3 Alterations that are 5,000 square feet or larger. A Level 3 alteration of a commercial building that is 5,000 square feet or larger shall install solar PV panels to roof(s) per Sec. 18-1.5-30(5) of

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the Town Code. Solar requirements shall not exceed any Gunnison County Electric Association net metering limitation in place when submitting a building permit application.

907.3.3 - EV Parking. All commercial Level 3 alterations of buildings with two or more parking spaces shall provide one Level II ESVE. Additionally, ten percent (10%) of total required parking spaces (rounded up) shall be Electric Vehicle Ready Space(s).

907.4 - Residential Level 3 Alterations.

907.4.1 - Home Energy Assessment. Existing buildings undergoing Level 3 alterations shall obtain a Home Energy Assessment prior to issuance of a building permit.

907.4.2 - Residential EV Ready Parking. Existing buildings or garages undergoing Level 3 alterations shall provide one Electric Vehicle Ready Space per dwelling unit.

907.5 Historic buildings with Level 3 Alterations. Level 3 alterations of Historic Buildings, as defined in Section 16-1-20 of Town Code, shall meet 2021 IECC without damaging the existing historic structure, except that closed cell foam insulation can be used in the ceiling framing cavities only. No closed cell foam shall be used in the wall framing cavities. BOZAR shall review the areas to be disturbed on-site before any work commences and during the construction process as needed. A blower door test conducted after drywall is optional.

## **ARTICLE 3 Mechanical Code**

### **Sec. 18-3-10. Adoption.**

The International Mechanical Code ("IMC") 2021 edition, including Appendix A, as published by the International Code Council, Inc. 4051 West Flossmoor Road, Country Club Hills, Illinois 60478, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of mechanical systems as herein provided; providing for the issuance of permits and the collection of fees therefor.

### **Sec. 18-3-20. Copy on file.**

At least one (1) copy of the International Mechanical Code, certified to be a true copy, is on file in the office of the Town Clerk and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-3-30. Amendments.**

The code adopted herein is modified by the following amendments:

- (1) IMC Section 905.1 is amended to read as follows:

Section 905.1 - General. Fireplace stoves and solid-fuel type room heaters shall be listed and labeled and shall be installed in accordance with the conditions of the listing. Fireplace stoves shall be tested in accordance with UL 1482. Fireplace inserts intended for installation in fireplaces shall be listed and labeled in accordance with the requirements of UL 1482 and shall be installed in accordance with the manufacturer's

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instructions. New wood burning residential hydronic heaters shall be EPA certified. All solid fuel-burning devices shall comply with the requirements of Chapter 18, Article 8 of the Crested Butte Municipal Code.

### **Sec. 18-3-40. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **Sec. 18-3-50. Conflicting provisions.**

In the event of a conflict between the IMC and any provisions set forth in Chapter 16 of this Code, such conflict shall be resolved in favor of said Chapter 16.

### **Sec. 18-3-60. Fees.**

Fees for any permit or inspection required by the IMC are set forth in Appendix A to this Code.

### **Sec. 18-3-70. Violation, liability and penalty.**

- (a) Any person who violates any provision of the IMC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of the IMC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the IMC.
- (d) The remedies provided by this Section are cumulative and not exclusive and are in addition to any other remedies provided by law.

(Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 4 Plumbing Code**

### **Sec. 18-4-10. Adoption.**

The International Plumbing Code ("IPC"), 2018 edition, including Appendices C and E, published by the International Code Council, Inc. 4051 West Flossmoor Road, Country Club Hills, Illinois 60478, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of mechanical systems as herein provided; providing for the issuance of permits and the collection of fees therefor.

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### **Sec. 18-4-20. Copy on file.**

At least one (1) copy of the International Plumbing Code, certified to be a true copy, has been and is now on file in the Building Department office and may be inspected by an interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-4-30. Amendments.**

The code adopted herein is modified by the following amendments: None.

### **Sec. 18-4-40. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **Sec. 18-4-50. Conflicting provisions.**

In the event of a conflict between the IPC and any provisions set forth in Chapter 16 of this Code, such conflict shall be resolved in favor of said Chapter 16.

### **Sec. 18-4-60. Violation, liability and penalty.**

- (a) Any person who violates any provision of the IPC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of the IPC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the IPC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 5 Electrical Code**

### **Sec. 18-5-10. Adoption.**

The National Electrical Code ("NEC"), 2020 edition, including Appendices C and E, published by National Fire Protection Association, One Battery March Park, Quincy, Massachusetts 02169-7471, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or

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maintenance of mechanical systems as herein provided; providing for the issuance of permits and the collection of fees therefor.

**Sec. 18-5-20. Copy on file.**

At least one (1) copy of the National Electrical Code, certified to be a true copy, has been and is now on file in on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

**Sec. 18-5-30. Amendments.**

The code adopted herein is modified by the following amendments: None.

**Sec. 18-5-40. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

**Sec. 18-5-50. Conflicting provisions.**

In the event of a conflict between the NEC and any provisions set forth in Chapter 16 of this Code, such conflict shall be resolved in favor of said Chapter 16.

**Sec. 18-5-60. Violation, liability and penalty.**

- (a) Any person who violates any provision of the NEC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of the NEC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the NEC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 6 Fire Code**

**Sec. 18-6-10. Adoption.**

The International Fire Code ("IFC"), 2021 Edition, including Appendices B-M, as published by the International Code Council, is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code as the Town Fire Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

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The subject matter of the adopted code includes regulating and governing the safeguarding of life and property from fire and explosion hazards arising from storage, handling and use of hazardous substances, materials and devices and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for issuance of permits and collection fees therefor. State and EPA regulations shall take precedence if there is any International Fire Code regulations pertaining to the use, storage, handling, manufacture or dispensing of flammable and compressed gases, corrosive materials, explosives and fireworks, flammable gases and solids, highly toxic and toxic materials, liquefied petroleum gases, organic peroxides, oxidizers, pyrophoric materials, pyroxylin (Cellulose nitrate) plastic, unstable (reactive) materials, water-reactive solids and liquids or any other material which may be characterized or become known as a hazardous material.

## **Sec. 18-6-20. Amendments.**

The code adoption herein is modified by the following amendments:

- (1) IFC Section 101.1. is amended to read as follows:

101.1. - Title. These regulations shall be known as the Fire Code of the Town of Crested Butte, hereinafter referred to as "this Code."

- (2) IFC Section 102.7 is amended to read as follows:

102.7 - Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 80, and such codes and standards shall be considered to be part of the requirements of this code to the prescribed extent of each such reference and as further regulated by Sections 102.7.1 and 102.7.2. The most current NFPA edition may be utilized upon approval of the CBFPD Fire Marshal.

- (3) IFC Section 102.8 is amended to read as follows:

102.8 - Subjects not related to this code. Where applicable standards or requirements are not set forth in this code, or are contained within other laws, codes, regulations, ordinances or bylaws adopted by the jurisdiction, compliance with applicable standards of the National Fire Protection Association or other nationally recognized fire safety standards, as approved, shall be deemed as *prima facie* evidence of compliance with the intent of this code. Nothing herein shall derogate from the authority of the fire code official to determine compliance with codes or standards for those activities or installations within the fire code official's jurisdiction or responsibility. The most current NFPA edition may be utilized upon approval of the CBFPD Fire Marshal.

- (4) IFC Section 108.2.1 is amended to read as follows:

108.2.1 - Inspection requests. Requests for inspections shall be submitted at least five (5) working days prior to the date of requested inspections.

- (5) IFC Section 403.11.3.1 is amended to read as follows:

403.11.3.1 - Number of crowd managers. Not fewer than two trained crowd managers, and not fewer than one trained crowd manager for each 250 persons or portion thereof, shall be provided for the gathering.

Exceptions:

1. Assembly occupancies used exclusively for religious worship with an occupant load not exceeding 1,000 shall not require crowd managers.
2. The number of crowd managers shall be reduced where, in the opinion of the fire code official, the fire protection provided by the facility and the nature of the event warrant a reduction.

- (6) IFC Section 507.1 is amended to read as follows:

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507.1 - Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises on which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. Where required fire flows cannot be provided, an approved monitored fire suppression system complying with Section 9 of this Code and the Guidelines and Standards of the Crested Butte Fire Protection District and Fire Code shall be installed throughout every occupancy and structure except Occupancy R-3 within the boundaries of the Town of Crested Butte.

(7) IFC Section 507.5.5 is amended to read as follows:

507.5.5 - Clear space around hydrants. A 3-foot clear space shall be maintained around the circumference of fire hydrants and "Fire Department Connections," except as otherwise required or approved.

(8) IFC Section 507.5.6 is amended to read as follows:

507.5.6 - Physical protection. Where fire hydrants and "Fire Department Connections" are subject to impact by motor vehicle, guard posts or other approved means shall comply with Section 312.

(9) IFC Section 605.9 is amended to read as follows:

605.9 - Gas Meters. Above-ground gas meters regulators and piping subject to damage shall be protected by a barrier complying with Section 312 or otherwise protected in an approved manner.

Locations of gas meters, regulators and piping shall also comply with the Crested Butte Fire Protection District and Fire Code.

(10) IFC Section 5806 is amended to read as follows:

5806 - Flammable Cryogenic Fluids. The storage and use of flammable cryogenic fluids is not allowed in the Town of Crested Butte.

(11) IFC Section 6103.3 is amended to read as follows:

6103.3 - Location of equipment and piping. Locations of gas meters, regulators and piping shall comply with this section and the Crested Butte Fire Protection District and Fire Code.

(12) IFC Appendix B105.1 is amended to read as follows:

B105.1 - Fire-flow requirements for buildings. The minimum fire-flow and flow duration requirements for one- and two-family dwellings (Group R-3), Group R-3 and R-4 buildings and townhouses shall be as specified in Tables B105.1(1) and B105.1(2). Minimum fire flow requirements shall be 1,500 gpm.

### **Sec. 18-6-30. Copy on file.**

At least one (1) copy of the International Fire Code, certified to be a true copy, is on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-6-40. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

### **Sec. 18-6-50. Conflicting provisions.**

In the event of a conflict between the code adopted herein and any provisions set forth in Chapter 16 of this Code, such conflict shall be resolved in favor of said Chapter 16.

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### **Sec. 18-6-60. Violation, liability and penalty.**

- (a) Any person who violates any provision of this Article shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation of this Article continues to exist shall constitute a separate and additional offense.
- (b) Any person violating any provisions of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin or abate any violation of this Article.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 7 Fuel Gas Code**

### **Sec. 18-7-10. Adoption.**

The International Fuel Gas Code, 2018 edition, including Appendices, published by the International Code Council, Inc. 4051 West Flossmoor Road, Country Club Hills, Illinois 60478 ("IFGC"), is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code as the Town Fuel Gas Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes regulating and governing the design, construction, quality of materials, erection, installation, alteration, repair, location, relocation, replacement, addition to, use or maintenance of fuel gas system and fuel gas appliances as herein provided; providing for the issuance of permits and the collection of fees therefor.

### **Sec. 18-7-20. Copy on file.**

At least one (1) copy of the International Fuel Gas Code, certified to be a true copy, has been and is now on file in on file in the Building Department office and may be inspected by any interested person between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

### **Sec. 18-7-30. Amendments.**

The code adoption herein is modified by the following amendments:

- (1) IFGC Section 101.1. is amended to read as follows:

101.1. - Title. These regulations shall be known as the Fuel Gas Code of the Town of Crested Butte, hereinafter referred to as "this Code."

- (2) IFGC Section 106.6.3. is deleted in its entirety.

- (3) IFGC Section 304.1 is amended to read as follows:

304.1 - Combustion, Ventilation and Dilution Air. Air for combustion, ventilation and dilution of flue gases for appliances installed in buildings shall be provided by application of one of the methods prescribed in Sections

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304.6, 304.8, and 304.9. Direct-vent appliances, gas appliances of other than natural draft design, vented gas appliances not designated as Category 1 and appliances equipped with power burners shall be provided with combustion, ventilation and dilution air in accordance with the appliance manufacturer's instructions. All installed fuel gas-burning appliances shall be high efficiency direct-vent appliances with sealed combustion, installed in accordance with their listing, and in compliance with the manufacturer's installation instructions. All such appliances shall be installed in compliance with Chapter 18, Article 9 of the Crested Butte Municipal Code.

- (4) IFGC Section 304.2. Appliance Location is deleted in its entirety.
- (5) IFGC Section 304.3. Draft hood/regulator location is deleted in its entirety.
- (6) IFGC Section 304.5. Indoor combustion air is deleted in its entirety.
- (7) IFGC Section 304.6. Outdoor combustion air is deleted in its entirety.
- (8) IFGC Section 304.7. Combination indoor and outdoor combustion air is deleted in its entirety.
- (9) IFGC Section 304.8. Engineered installations is deleted in its entirety.

#### **Sec. 18-7-40. Rules and regulations.**

The Town may, from time to time, promulgate such rules and regulations as it deems necessary to implement and carry out the intent of this Article; provided, however, that such rules and regulations shall not be inconsistent herewith.

#### **Sec. 18-7-50. Conflicting provisions.**

In the event of a conflict between the IFGC and any provisions set forth in Chapter 16 of this Code, such conflict shall be resolved in favor of Chapter 16.

#### **Sec. 18-7-60. Fees.**

Fees for any permit or inspection required by the IFGC are set forth in Appendix A to this Code.

#### **Sec. 18-7-70. Violation, liability and penalty.**

- (a) Any person who violates any provision of the IFGC shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.
- (b) Any person who violates any provision of the IFGC shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (c) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of the IFGC.
- (d) The remedies provided by this Section are cumulative and not exclusive, and are in addition to any other remedies provided by law.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 8 Solid Fuel-Burning Devices**

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## **Sec. 18-8-10. Definitions.**

For the purposes of this Article, the following terms shall have the meanings given in this Section:

*Approved solid fuel-burning device* means a solid fuel-burning device that meets the EPA Phase 2 qualified fireplace.

*Approved solid fuel-burning fireplace* means a solid fuel-burning device that meets the EPA Phase 2 qualified fireplace.

*Approved solid fuel burning stove* means a free-standing solid fuel-burning device that has an emission limit of 2.5 grams per hour and is listed on the EPA Certified Wood Stoves Data Base

*Solid fuel-burning device* means any stove, firebox or other mechanical device designed and/or used for the purpose of generating heat by the burning of wood, coal, pulp, paper or other nonliquid or nongaseous fuel.

## **Sec. 18-8-20. Required installation.**

No solid fuel-burning device shall be installed within any structure, building or mobile home in the Town unless such device is an approved solid fuel-burning device. No building can contain more than one (1) solid fuel-burning device; however, a building housing a retail sales space for authorized stove dealers who are selling stoves approved for use by the Town shall be allowed to have one (1) or two (2) solid fuel-burning devices so long as the device(s) in such space are being used for demonstration purposes only.

## **Sec. 18-8-30. Permit required.**

- (a) An application shall be filled out and a solid fuel-burning device installation permit issued prior to the installation of any solid fuel-burning device. This provision includes installation of any replacement devices, as well as first installations.
- (b) All applications requesting a first installation of a solid fuel-burning device shall comply with Section 18-9-60, Solid Fuel Burning Device Permit.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **Sec. 18-8-40. Notice of removal of solid fuel-burning device.**

The Building Department shall be notified when a solid fuel-burning device is removed from a structure. Once removed, a new compliant device may not be installed after sixty (60) days unless said structure is in compliance with Section 18-9-60 of this Chapter.

## **Sec. 18-8-50. Fees.**

In order to compensate the Town for the costs of enforcing this Article and for the costs of implementing programs and improvements to reduce air pollution caused by solid fuel-burning devices, a permit fee as established by resolution of the Town Council will be charged for applications requesting first installations, and a permit fee as established by resolution of the Town Council will be charged for replacement installations.

## **Sec. 18-8-60. Exemption from regulations.**

The following devices are exempt from these regulations; provided, however, that new nonconforming devices may not be installed under these exemptions. Applications for exemptions hereunder shall be made in

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writing to the Town Manager, who shall have the right to inspect the applicable premises to confirm the qualification for exemption. The decision of the Town Manager shall be final unless appealed to the Town Council within thirty (30) days of the decision. Upon appeal to the Town Council, the matter shall be considered and a decision rendered within sixty (60) days. The exemptions are:

- (1) A solid fuel-burning device using coal as an exclusive fuel source located in structures or buildings constructed prior to September 1, 1935, so long as such device was installed and in use prior to July 21, 1986, and is owned by the same owner since said date.
- (2) Any solid fuel-burning device upon real property which is owned and occupied on a full-time basis by a person who qualifies for a sewer and water service charge rebate pursuant to Section 13-1-330 of this Code.
- (3) Solid fuel-burning devices located in buildings with significant historical value that are not used as a primary heat source and are only fired on an occasional basis.
- (4) Solid fuel-burning devices utilized by authorized wood stove dealers as regulated by Section 18-8-20 of this Article.

#### **Sec. 18-8-70. Installation requirements and standards.**

All solid fuel-burning devices shall be installed as per the manufacturer's recommendations, in accordance with appropriate building and fire codes and standards as adopted in this Chapter, and as directed by the Building Official and Fire Marshal.

#### **Sec. 18-8-80. Maintenance of solid fuel-burning devices.**

It shall be the responsibility of each solid fuel-burning device owner to adequately repair and maintain the device in order to assure that it burns in accordance with its original specifications and does not exceed those particulate emission standards allowed. If complaints are filed or questionable emissions are observed on three (3) separate occasions, the Building Department may initiate an investigation of a device and require that the device be tested, repaired or replaced to assure compliance with this Article.

#### **Sec. 18-8-90. Penalty and delinquencies.**

Any person violating any provision or section of this Article, including a failure to obtain the required permit, shall be guilty of a misdemeanor and, upon conviction thereof, may be punished in accordance with the provisions of Section 1-4-20 of this Code. Any person or entity who does not pay the license fee when required shall also be deemed in violation of this Article. Any unpaid permit fee shall accrue a delinquency charge of three percent (3%) per month, compounded monthly. Any such delinquency shall become a lien upon the real property on which the permitted solid fuel-burning device exists, which lien may be collected in the same manner as a tax lien. The Town shall be entitled to recover all of its collection costs, including attorneys' fees, as part of any action or proceeding to collect delinquent permit fees due pursuant to this Article.

#### **Sec. 18-8-100. Abatement.**

The Town shall have the power to abate, enjoin or otherwise correct the violation of any provision of this Article through any court of competent jurisdiction. The Town, in such action, shall be entitled to its costs and attorney's fees in the event that it prevails.

### **ARTICLE 9 Energy Standards**

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## **Sec. 18-9-10. Purpose.**

The intent of this Article is to ensure energy conservation and sustainable building practice within the Town. All new, heated structures shall comply with the terms of this Article.

## **Sec. 18-9-20. Definitions.**

For purposes of this Article, the use of a plural form shall not necessarily imply that more than the singular is suggested, condoned or allowed, and the following terms shall have the meanings herein given:

*All Electric Building.* A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (with the exception of solid fuel-burning devices that meet requirements in Article 8 of this Chapter), water heating (including pools and spas), cooking appliances (including barbeques but excluding Commercial Food Heat-processing Equipment), and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

*Combustion Equipment.* Any equipment or appliance used for space heating, service water heating, cooking, clothes drying and/or lighting that uses fuel gas or fuel oil.

*Commercial Food Heat-processing Equipment.* Equipment used in a food establishment for heat-processing food or utensils and that produces grease vapors, steam, fumes, smoke, or odors that are required to be removed through a local exhaust ventilation system.

*DC Fast Charger ("DCFC").* EVSE that provides at least fifty (50) kilowatts of direct current electrical power for charging a plug-in electric vehicle through a connector based on fast charging equipment standards and which is approved for installation for that purpose under the National Electric Code through an Underwriters Laboratories Certification or an equivalent certifying organization.

*Decorative Appliance.* A device utilizing natural gas as a fuel designed to appear as a real fireplace and shall be a direct vent appliance with no opening to the interior of the structure.

*Electric Heating Appliance.* A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions.

*Electric Vehicle Supply Equipment (EVSE).* The conductors—including the ungrounded, grounded, and equipment grounding conductors—and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

*Electric Vehicle (EV) Ready Space.* Parking spaces that have full circuit installations of 208/240-volt (or greater), 40-ampere (or greater) panel capacity, raceway wiring, receptacle and circuit overprotection devices. This strategy provides all required electrical hardware for the future installation of EV Supply Equipment (EVSE). Anticipating the use of dual head EVSE, the same circuit may be used to support charging in adjacent EV-Ready spaces.

*Fuel Gas.* A gas that is natural, manufactured, liquefied petroleum, or a mixture of these.

*Home Energy Assessment.* An assessment includes a home visit by a building performance institute (BPI) certified energy analyst that results in a report that analyzes the current condition and energy usage of a home and provides a list of recommended improvements.

*Home Energy Rating System (HERS) certificate.* A certificate generated by an accredited home energy rating system program provider.

*Level II EVSE.* An EVSE capable of charging at 30 amperes or higher at 208 or 240 VAC.

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*R Value.* A term used to describe the thermal transmission of heat through a combination of insulating components in a wall, roof or foundation assembly.

*Renovation.* To improve or repair a structure and may include preservation and rehabilitation.

*Solar Ready Components.* Building construction components that facilitate and optimize the installation of a rooftop solar photovoltaic (PV) system at some point after the building has been constructed, including installation of electrical conduit from electrical panel space to the solar panel roof area.

*Sustainable building practices.* Building practices that accommodate increased population by means that reduce overall per-capita energy usage.

*U Value.* The reciprocal of R value. The rate of nonsolar heat flow through a building.

### **Sec. 18-9-30. Utilization of Home Energy Rating System (HERS).**

All new, heated residential structures shall become qualified as a Department of Energy Zero Energy Ready Home (as amended by the Department of Energy) by meeting the national program requirements, becoming verified and field-tested in accordance with HERS standards by an approved verifier, and meeting all applicable codes. Residential construction may meet the requirements of either the performance path or the prescriptive path as defined in the Zero Energy Ready Home Requirements to qualify.

### **Sec. 18-9-40. International Energy Conservation Code.**

- (a) Adoption. The International Energy Conservation Code ("IECC"), 2021 edition, without appendices, as published by the International Code Council, Inc. 4051 West Flossmoor Road, Country Club Hills, Illinois 60478 is hereby adopted by reference thereto and incorporated into and made part of the Crested Butte Municipal Code to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes regulating and governing the minimum energy conservation requirements as herein provided; providing for the issuance of permits and collection of fees (as appropriate) therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said code on file in the office of the Town are hereby referred to, adopted and made as part hereof, as if fully set out herein.

- (b) Amendments. The code adoption herein is modified by the following amendments:

- (8) Section C102.1.1 is amended to read as follows:

Section C102.1.1 - Above Code Programs. The code official or other authority having jurisdiction shall be permitted to deem a national, state or local energy efficiency program as exceeding the energy efficiency required by this code. Buildings approved in writing by such an energy efficiency program shall be considered to be in compliance with this code. The requirements identified in Table C407.2 shall be met. New commercial buildings are also governed by Article 1.5 of Chapter 18 of the Crested Butte Town Code (International Green Construction Code).

- (5) IECC Section C401.2 is amended to read as follows:

C401.2 -Application. Commercial buildings shall comply with Section C401.2.1 or C401.2.2, and shall comply with C401.2.3. A compliance method other than the Prescriptive Compliance Option in C401.2.1. shall be pre-approved by the building official.

- (6) IECC Section C401.2 is amended by adding a new subsection to read as follows:

C401.2.3. Commercial Electric Requirements.

C401.2.3.1. All Electric. Commercial buildings shall be All Electric Buildings.

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C401.2.3.2. EV Parking. Commercial buildings and accessory structures with two or more parking spaces shall provide one Level II EVSE. Additionally, ten percent (10%) of total required parking spaces (rounded up) shall be Electric Vehicle Ready Spaces, and one DC Fast Charger (25 kW) shall be provided for 5 or more required parking spaces.

C401.2.3.3. Solar Requirements.

C401.2.3.3.1 - Buildings that are less than 5,000 square feet. A commercial building that is less than 5,000 square feet shall install Solar Ready Components.

C401.2.3.3.2 - Buildings that are 5,000 square feet or larger. A commercial building that is 5,000 square feet or larger shall install solar PV panels to roof(s) per Sec 18-1.5-30(5). Solar requirements shall not exceed any Gunnison County Electric Association net metering limitation in place when submitting a building permit application.

(7) IECC Chapter 5 [CE] is deleted in its entirety and replaced with a new section to read as follows:

Chapter 5 [CE]. Commercial Existing Buildings. The alteration, repair, addition and change of occupancy of existing buildings and structures shall comply with the requirements of the 2021 International Existing Building Code (IEBC) as amended in Section 18-2.5-30 of the Town Code.

(8) IECC Section R401.2 is amended to read as follows:

R401.2 - Application. Residential buildings shall comply with Sections R401.2.5 and R401.2.6 and either Sections R401.2.1, R401.2.2, R401.2.3 or R401.2.4.

(9) IECC Section R401.2 is amended to add a new subsection R401.2.6 to read as follows:

R401.2.6. Residential Electric Requirements.

R401.2.6.1. All Electric. Residential buildings shall be All Electric Buildings.

R401.2.6.2. EV Parking. All residential buildings or garages shall provide one Electric Vehicle Ready Space per dwelling unit.

R401.2.6.3. - Zero Energy Ready Home. All new heated buildings shall become qualified as a Department of Energy Zero Energy Ready Home (as amended by the Department of Energy) by meeting the national program requirements specified in the program, becoming verified and field-tested in accordance with HERS standards by an approved verifier, and meeting all applicable codes. Residential construction may meet the requirements of either the performance path or the prescriptive path to qualify.

(10) IECC Section R405.1 is amended to read as follows:

R405.1 - Scope. This section establishes criteria for compliance using total building performance analysis. Such analysis shall include heating, cooling, mechanical ventilation and service water-heating energy only. The utilization of this section shall be specifically approved by the Building Official prior to submittal of design documents.

(11) IECC Chapter 5 [RE] is deleted in its entirety and replaced with a new section to read as follows:

Chapter 5 [RE]. Residential Existing Buildings. The alteration, repair, addition and change of occupancy of existing buildings and structures shall comply with the requirements of the 2021 International Existing Building Code (IEBC).

( Ord. No. 13 , § 1(Exh. A), 8-2-2022; Ord. No. 25 , § 1(Exh. A), 12-19-2022)

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## **Sec. 18-9-50. Minimum efficiency standards for new construction; commercial structures.**

Commercial buildings with less than five thousand (5,000) square feet shall install Solar Ready Components. Commercial buildings five thousand (5,000) square feet or larger shall install solar PV panels to roof(s) per Section 18-1.5-30(5). Solar installation requirements shall not exceed any Gunnison County Electric Association net metering limitation in place when submitting a building permit application.

## **Sec. 18-9-60. Solid fuel-burning device permit.**

- (a) Only one (1) solid fuel-burning device shall be permitted within any structure. Permits for solid fuel-burning devices shall be obtained from the Building Official. Prior to issuance of a permit allowing for the placement of a solid fuel-burning device within any structure, the applicant for such permit must conduct an Energy Rating System (HERS) Audit. The results of such energy efficiency test shall be provided to the Building Official along with the permit application for any solid fuel-burning device. The cost and expense of such E Star energy efficiency test shall be borne by the permit applicant.
- (b) All solid fuel-burning device permit applications must include a HERS rating for the structure of not more than:
  - (1) Thirty (30) for any new structure; and
  - (2) Fifty (50) for any existing structure.
- (c) Permissible solid fuel-burning devices shall meet the EPA List of Phase 2 Qualified Fireplaces.
- (d) Solid fuel—Burning device permit. All solid fuel-burning devices must incorporate exterior combustion air ventilation that complies with Sections 701.1 and 701.2 of the International Mechanical Code (IMC), as defined in Article 3 of this Chapter. Ducting for solid fuel-burning devices must be fitted with backdraft dampers.
- (e) All applications for solid fuel-burning devices shall reflect the applicant's compliance with the foregoing requirements.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **Sec. 18-9-70. Minimum efficiency standards for renovation of existing historic buildings.**

Any heated buildings or portions thereof undergoing renovations must comply with Section 18-9-40 above. The Building Official may waive any or all of the requirements of Section 18-9-40 at his or her discretion per IECC C101.3 and with IECC Section C501.5 Historic buildings - Commercial Provision and per IECC Sections R101.3 and R501.6 Historic buildings - Residential Provision.

Buildings shall meet IECC without damaging the existing historic structure with the exception that closed cell foam insulation can be used in the ceiling framing cavities. No closed cell foam shall be used in the wall framing cavities. BOZAR reviews this work on site before any work commences and during the construction process as needed. A blower door infiltration test conducted after drywall is optional.

## **Sec. 18-9-80. Building science requirements.**

- (a) All new, heated residential structures shall become qualified as a Department of Energy Zero Energy Ready Home (as amended by the Department of Energy) and Section 18-9-30 by meeting the national program requirements specified in the program, becoming verified and field-tested in accordance with HERS

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standards by an approved verifier, and meeting all applicable codes. Residential construction may meet the requirements of either the performance path or the prescriptive path to qualify.

- (b) Installation of energy-efficient lighting fixtures. All permanently installed light sources in a new structure shall be compact fluorescent (CF) or LED high-efficiency lamps. This requirement complies with IECC Section R404.1 Lighting equipment.
- (c) Use of energy-efficient appliances. All appliances, including microwave ovens, boilers, water heaters, refrigeration devices, clothing washers and dryers and dishwashers, in new construction and remodels of existing structures must be Energy Star certified. The permit must confirm compliance with this requirement during the Town's final inspection of the structure.
- (d) Mechanical fresh air ventilation system. All new construction shall incorporate an outdoor air ventilation system complying with Chapter 4, Section 403 of the IMC, as defined in Article 3 of this Chapter, or the equivalent with heat exchange.
- (e) Requirements for sealed combustion, direct-vent heating equipment. All gas-fired boilers, furnaces, water heaters and fireplaces must be sealed combustion, direct-vent type appliances or an appliance otherwise approved by the Building Official.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022; Ord. No. 25 , § 1(Exh. A), 12-19-2022)

### **Sec. 18-9-90. Snowmelt system requirements.**

All snowmelt systems must be approved by the Building Official and shall meet the following requirements:

- (1) R-10 insulation below the heated surface must be incorporated;
- (2) Minimum slab thickness for sidewalks must be five (5) inches; and
- (3) Snowmelt equipment must include automatic temperature and surface moisture controls (no idling snowmelt equipment is permitted).

### **Sec. 18-9-100. Renewable Energy Mitigation Program.**

Installing a zone and tubing to a future outdoor heated area is prohibited without first obtaining an outdoor energy usage permit. All outdoor snowmelt systems must meet IECC Section R403.9 Snow Melt and Ice System controls and comply with the following Energy Mitigation Program (REMP) requirements. All outdoor pools, hot tubs and spas must comply with the REMP requirements. Electric heat trace systems must comply with IECC Sections C404.6.2 and R403.5.1.2.

- (1) REMP; Applicability. For purposes hereof, an "outdoor snowmelt system" shall include any heating system installed in any walkway, driveway, roof or any other exterior surface. All energy utilized in operating outdoor snowmelt systems, and outdoor pools, hot tubs and spas with a top surface area in excess of sixty-four (64) square feet (as determined by the unit's manufacturer), shall be produced by a renewable energy system; or, in lieu thereof, the owner of the property with said outdoor snowmelt system and/or subject pool, hot tub or spa shall make payment to the Town in lieu of providing energy produced by a renewable energy system. The owner of the subject property shall have the right to choose between providing energy from a Town-approved renewable energy system or making payment in lieu thereof, or a combination of both, in order to offset energy used by outdoor snowmelt systems and subject pools, hot tubs and spas. For any subject hot tub or spa, only that surface area over said sixty-four (64) square feet shall be subject to the requirements of this Section. Any outdoor snowmelt system or subject pool, hot tub or spa that has been installed prior to June 25, 2007, shall be exempt from the requirements of this Section. Said exemption shall not apply, however, to any

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modification to any existing outdoor snowmelt system or outdoor pool increasing the square footage thereof, said modification requiring an outdoor energy usage permit as defined hereunder.

- (2) Outdoor energy usage permit. Prior to the installation of any (i) outdoor snowmelt system and/or (ii) outdoor pool, hot tub or spa, the owner of the property affected by such installation shall obtain an outdoor energy usage permit. No outdoor snowmelt system or subject pool, hot tub or spa shall be installed without first obtaining an outdoor energy usage permit, as well as a plumbing and mechanical permit as applicable, from the Building Official. No outdoor energy usage permit shall be required for any outdoor snowmelt system or subject pool, hot tub or spa located on public property or any portable outdoor heat lamp.
- a. An outdoor energy usage permit shall not be issued until the owner of the subject property has complied with the requirements of this Section. All outdoor snowmelt systems shall be in compliance with Section 18-9-90 above.
  - b. An outdoor energy usage permit shall be obtained by said owner for each outdoor snowmelt system and subject pool, hot tub and spa, or any modification to any outdoor snowmelt system and outdoor pool increasing the square footage thereof. An outdoor energy usage permit shall include a processing fee that shall cover the cost and expense of the Building Official of reviewing and processing said outdoor energy usage permit application.
  - c. The Building Official shall review and approve any complete and properly submitted application for an outdoor energy usage permit within thirty (30) days of its submission; except that, if the installation of any outdoor snowmelt system or subject pool, hot tub or spa is part of any new construction, addition, renovation or remodel that otherwise requires a building permit under this Code, the application for said outdoor energy usage permit shall be approved, if at all, along with the approval and issuance of said building permit, and the installation shall be considered part of the structure for purposes of Article 13 of this Chapter. In such circumstances, the issuance of an outdoor energy usage permit shall be subject to Board approval as provided in this Code. No outdoor energy usage permit shall be granted, however, until a Town-approved renewable energy system or other Town-approved system, as described in Subparagraph (3)b. of this Section, has been selected by the owner of the affected property and/or payment in lieu has been made, as applicable, as further described in Paragraph (3) of this Section. The owner shall provide the following supporting documentation along with the application for an outdoor energy usage permit:
    1. The legal description of the affected property;
    2. The signature of the owner of the property or other person with the written legal authority (e.g., power of attorney) of the owner;
    3. A site development plan drawn to scale for the building and/or sidewalk, driveway or patio, as applicable, that is the subject of the outdoor snowmelt system or subject pool, hot tub or spa installation;
    4. A complete set of drawings, plans and specifications, to scale, depicting any outdoor snowmelt system or subject pool, hot tub or spa installation, along with the type and efficiency of the same;
    5. If the owner of the affected property elects to incorporate a renewable energy system or other Town-approved system, a complete set of drawings, plans and specifications, to scale, of the renewable energy system or other Town-approved system and its proposed installation location, along with the type and efficiency of the same;

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6. The owner's election to either utilize a renewable energy system or other Town-approved system or make payment in lieu, or a combination of both, as set forth in Paragraph (3) of this Section; and
  7. Any other information requested by the Building Official in order to review the application for compliance with this Section and Section 18-9-90 above.

Only subsections (1), (2), (5), (6) and (7) hereof shall apply to subject pools, hot tubs and spas. The items listed above are hereby incorporated into the application for the outdoor energy usage permit.

- d. Outdoor energy usage permit applications, unless otherwise included as part of a building permit for any new construction, addition, renovation or remodel as discussed above, shall be submitted only to the Building Official and not the Board for approval.
- e. All installations of outdoor snowmelt systems shall be in strict compliance with the application requirements for an outdoor energy usage permit. Any deviation from the application requirements shall require a new outdoor energy usage permit. All installations of outdoor snowmelt systems shall be completed within six (6) months of issuance of an outdoor energy usage permit; except that, where the installation of an outdoor snowmelt system is otherwise associated with a building permit for any new construction, addition, renovation or remodel as discussed above, such longer permitted time under this Code as it relates to said building permit shall apply.
- f. Should the Building Official discover the installation of any outdoor snowmelt system or subject pool, hot tub or spa in violation of this Section, the same shall attach a "stop work order" to said installation in a conspicuous place. Where the Building Official discovers any use of property in violation of this Section, the same shall attach a "desist order" to the property and attempt to deliver a copy of the same to the occupier of the property. Any stop work order or desist order shall be signed by the Building Official and indicate the subject area in which the violations exists. The removal of a stop work order or desist order by any person before the violation is corrected shall constitute a violation of this Section. The continuation of construction or use in violation of a stop work or desist order shall also constitute a violation of this Section.
- g. An outdoor energy usage permit shall not be issued in connection with any property until all due and owing fees for sewer, water, sanitation, street or other improvement assessments, real property taxes, real estate transfer taxes and/or other fees or taxes due to the Town in connection with said property have been paid in full and are current in all respects.

(3) Calculations; Renewable energy systems; Payment in lieu.

- a. Calculations. The amount of energy used by an outdoor snowmelt system or subject pool, hot tub or spa shall be calculated by the Town using a system adopted by the Town. Said system shall also calculate the payment in lieu of providing energy produced by a renewable energy system or other Town-approved system. The Town shall utilize the Town of Crested Butte Outdoor Energy Worksheet attached as Exhibit "A" to the ordinance codified herein, a copy of which is on file in the Town Clerk's office, to calculate the mitigation required for outdoor energy usage. Said Town of Crested Butte Outdoor Energy Worksheet shall also be utilized to calculate the renewable energy mitigation credit proposed to offset the proposed outdoor energy usage. The assumptions and calculations incorporated into the Town of Crested Butte Outdoor Energy Worksheet are incorporated in the Calculation Assumptions attached as Exhibit "B" to the ordinance codified herein, a copy of which is on file in the Town Clerk's office. Once said energy usage and payment in lieu are calculated by the Town, the owner of the property affected by the outdoor snowmelt system or subject pool, hot tub or spa shall select whether it will utilize either a Town-approved renewable energy system or other Town-approved system to offset energy usage by any outdoor snowmelt system or subject pool, hot tub or spa, or make payment in lieu

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thereof. The owner of the affected property may select use of a combination of both a Town-approved renewable energy system or other Town-approved system to offset energy usage by any outdoor snowmelt system or subject pool, hot tub or spa and payment in lieu thereof. Such combination shall, however, be approved in advance by the Building Official. No outdoor energy usage permit may be issued until the owner of the affected property has selected either a Town-approved renewable energy system or other Town-approved system to offset energy usage by any outdoor snowmelt system or subject pool, hot tub or spa or payment in lieu thereof, or a combination of both as approved by the Town.

- b. Renewable energy systems. All renewable energy systems and other systems must be approved in advance by the Building Official. Said renewable energy systems may be solar or geothermal in nature. Other energy usage mitigation systems may be proposed but must be approved in advance by the Building Official. Any renewable energy system utilized as mitigation for outdoor energy usage must conform to the requirements set forth in the Project Checklist attached as Exhibit "C" to the ordinance codified herein, a copy of which is on file in the Town Clerk's office, as applicable. Other systems must provide an engineering analysis that calculates the renewable energy mitigation credit for the proposed system and provides all necessary information as determined by the Building Official. Review of the system will be at the expense of the owner. No renewable energy system or other system shall be approved which does not cause the mitigation of energy usage to be made within the Town. All proposed renewable energy mitigation systems and any other systems shall be included as part of the application for an outdoor energy usage permit. If the proposed renewable energy system is solar in nature, the panels and/or collectors must be approved through the standard building permit process and must be approved by the Board. The type of renewable energy system or other system, the specifications and efficiency thereof, the location of the installation of said renewable energy system or other system and any other additional information requested by the Building Official must be submitted with the application for an outdoor energy usage permit.
- c. Payments in lieu. The Town may accept payment from the owner of an affected property as described in this Section in lieu of providing energy produced by a Town-approved renewable energy system, or partial payment in lieu from said owner of an affected property providing only partial energy produced by a Town-approved renewable energy system, as delineated in this Section. Acceptable payments shall be made by cash or check only. The owner of the affected property shall make payment in lieu at the time of, and as a condition precedent to, issuance of an outdoor energy usage permit. Such payment requirements shall apply to any addition or modification to any outdoor snowmelt system or outdoor pool where the owner has selected payments in lieu as described in this Section. In the event that an owner of an outdoor snowmelt system, subject pool, hot tub or spa with an outdoor energy usage permit for such energy usage seeks to make modifications to such usage such that any payment in lieu previously made could otherwise be reduced, no refund shall be given by the Town.
- d. Appropriation of funds. All payments in lieu received pursuant to this Section shall be deposited into a separate account with the Town. Funds derived from payments in lieu made pursuant to this Section shall be utilized by the Town to, in no order of preference: (i) defray any costs and expenses associated with the operation, administration and enforcement of the REMP program described in this Section; (ii) reduce and offset energy consumption in public buildings; (iii) reduce energy consumption in residential affordable housing units; (iv) defray the cost and expense of engineering and education to promote energy consciousness, renewable energy installation and reducing energy use; and/or (iv) cover such other costs and expenses consistent with the goals of the REMP and the Energy Code, as determined by the Town Council.
- e. Updating and monitoring. The Building Official may monitor and, to the extent necessary, update and amend, as determined by the Building Official, the Town of Crested Butte Outdoor Energy

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Worksheet, the Calculation Assumptions and the Project Checklist in order to promote and advance the goals of the REMP.

- (4) Violations. Any person who violates any of the provisions of this Section may be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed to be a separate offense.

#### **Sec. 18-9-110. Penalties.**

- (a) Offense. Any person who violates any of the provisions of this Chapter shall be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.
- (b) Actions. The erection, construction, alteration, enlargement, conversion, moving or maintenance of any building, and the use of any land, building or structure, which activity or use is continued, operated or maintained contrary to any provision of this Chapter shall be unlawful. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation. Such action may also be maintained and instituted by any property owner who is damaged by a violation of this Article.

(Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 10 Sanitary Standards and Regulations**

#### **Sec. 18-10-10. Purpose.**

The purpose of this Article is to provide minimum requirements for the protection of the health, welfare and safety of the residents and inhabitants of the Town and the occupants of all public accommodations, and to set forth applicable standards of maintenance, sanitation, ventilation, occupancy and use of public accommodations and buildings.

#### **Sec. 18-10-20. Definitions.**

For the purpose of this Article, certain words and phrases shall be defined as follows:

*Boarding and rooming house* means a building other than a hotel or lodge where, for compensation, meals or lodging are provided for five (5), but not more than fifteen (15) persons.

*Building* means any structure having a roof supported by columns or walls.

*Dormitory* means a building containing sleeping rooms designed to be rented for short-term occupancy, with adequate sanitary facilities, and which may or may not have cooking facilities as an accessory use.

*Dwelling* means any building or part thereof designed or used for private residential purposes.

*Dwelling unit* means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living and sleeping, and a part of which is exclusively or occasionally appropriated for cooking or eating.

*Exit* means a continuous and unobstructed means of egress to a public way, and shall include intervening doorways, corridors, ramps, stairways, smoke-proof enclosures, horizontal exits, exit courts and yards.

*Floor area* means the sum of the areas of the several floors of main and accessory buildings on a lot, as measured by the exterior faces of the walls, and of enclosed porches as measured by the exterior limits thereof,

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but excluding the areas of unroofed porches or terraces, basements or attics used only for accessory storage or service, and accessory buildings used for garage purposes.

*Garbage* means all putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

*Grounds* means exterior yard areas or premises.

*Guest* means any person hiring or occupying a room for living or sleeping purposes.

*Guest room* means any room used, or intended to be used, by a guest for sleeping purposes.

*Habitable room* means a room or enclosed floor space used or intended to be used for sleeping, living, cooking or eating purposes, excluding bath or toilet rooms, service rooms, foyers, connecting corridors, closets, storage spaces or utility rooms.

*Health Department* means the Health Department and the officers and employees of the Town.

*Hot water* means water at a temperature of not less than one hundred twenty (120) degrees Fahrenheit.

*Hotel or lodge* means a building containing sleeping rooms designed to be rented for short-term occupancy and which may or may not have eating or drinking facilities as an accessory use.

*Kitchen* means a room used, or designed to be used, for the preparation of food.

*Motel* means a building or group of buildings containing individual sleeping or living units designed and used for temporary rental occupancy and with automobile parking space adjacent to or near each rental unit.

*Multiple dwelling* means any dwelling containing more than one (1) dwelling unit.

*Nuisance*. The following shall be defined as nuisances:

- a. Any public nuisance known at common law or in equity jurisprudence.
- b. An attractive nuisance known at common law or in equity jurisprudence.
- c. Whatever is dangerous to human life or detrimental to health.
- d. Overcrowding a room with occupants.
- e. Insufficient ventilation, illumination or heating.
- f. Inadequate or unsanitary sewerage or plumbing facilities.
- g. Unsanitary conditions.
- h. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

*Occupant* means any person living, sleeping, cooking in or having possession of a dwelling unit or rooming unit.

*Operator* means any person who owns or has charge, care or control of a building or part thereof in which dwelling units or rooms are rented.

*Public accommodations* means any establishment or building, including a rooming house, boarding house, lodging house, hotel, motel or other facility by whatever name known, which maintains, advertises, offers or rents to a guest as a place where sleeping or rooming accommodations are provided, whether with or without meals.

*Refuse* means all combustible or noncombustible, putrescible or nonputrescible solid or liquid wastes, including garbage, rubbish, ashes and manure.

*Rooming unit* means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

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*Sanitary facilities* means toilet, privies, lavatories, showers, baths, bathtubs, urinals, laundry tubs and the service rooms provided for installation and use of these units.

## **ARTICLE 11 Utility Undergrounding Requirements**

### **Sec. 18-11-10. Underground installation required.**

All electric and communication utility lines and services, and all street lighting circuits, except as hereinafter provided, shall be installed underground.

### **Sec. 18-11-20. Exceptions.**

Excepted from the requirements of the foregoing shall be the following:

- (1) Transformers, switching boxes, terminal boxes, meter cabinets, pedestals, ducts and other facilities necessarily appurtenant to such underground and street light facilities when placed aboveground within the utility easement provided therefor or within the street or other public place as appropriate.
- (2) All facilities reasonably necessary to connect underground facilities to existing or permitted overhead or aboveground facilities.
- (3) Overhead electric transmission and distribution feeder lines and overhead communication long distance, trunk and feeder lines, existing or new.
- (4) Such utility facilities as are present on the effective date of this Article which are used or useful in serving a proposed development.
- (5) Development of a limited extent in previously developed areas where overhead service exists, provided that a permit for such overhead service is obtained from the Board of Zoning and Architectural Review. Said permit shall only be issued in those cases where the new service cannot reasonably be placed underground.

### **Sec. 18-11-30. Responsibility of developer.**

The developer of any improvements to real property requiring the installation of utility service lines shall be responsible for complying with the requirements of this Article. He or she shall make the necessary arrangements, including payment for any construction or installation charges, with each of the serving utilities for the installation of such facilities. The developer shall present evidence, prior to the final approval of a certificate of occupancy for said improvements, that the necessary arrangements have been made with each of the serving utilities for the installation of facilities in compliance with this Article.

## **ARTICLE 12 Construction Site Regulations**

### **Sec. 18-12-10. Definition.**

For purposes of this Article, construction site shall mean any location where activities pursuant to a building permit are conducted.

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### **Sec. 18-12-20. Construction activity hours.**

No construction activity on any construction site shall take place before 7:00 a.m., nor extend past 7:00 p.m., Monday through Saturday. No construction activity on any construction site shall take place before 8:00 a.m. nor extend past 5:00 p.m. on any Sunday.

### **Sec. 18-12-30. Construction debris.**

The owner of a property on which construction activity is taking place is required to:

- (1) Provide recycling bins on the construction site to recycle glass bottles, plastic bottles, and cardboard, and
- (2) Ensure that all debris, garbage and refuse are removed from the construction site, and that such debris, garbage and refuse do not enter upon the public right-of-way or any private property.

### **Sec. 18-12-40. Construction site safety.**

Every excavation on site shall have safety fencing erected as a public safeguard. Adjoining public or private property shall be protected from damage during construction, remodeling, and demolition work. Protection shall be provided for footings, foundations, party wall, chimney, skylight and roof work. Provisions shall also be made to control water runoff and erosion during construction and demolition activities.

### **Sec. 18-12-50. Violation, liability and penalty.**

- (a) The failure to comply with this Article shall constitute a nuisance. The owner of the property upon which such violation occurs shall be jointly and severally liable for the violation.
- (b) Offense. Any person who violates any of the provisions of this Chapter shall be fined an amount not to exceed one thousand dollars (\$1,000.00) for each offense. Each day that such violation continues to exist shall be deemed a separate offense.
- (c) In addition, any person who violates any provision of this Article shall be liable to the Town for any expense, loss or damage, including reasonable attorneys' fees, occasioned by reason of such violation.
- (d) The Town may institute injunction, abatement or any other action to prevent, enjoin or abate any violation of this Article.
- (e) The remedies provided by this Article are cumulative and not exclusive, and are in addition to any other remedies provided by law.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

## **ARTICLE 13 Building Inspector and Building Permits**

### **Sec. 18-13-10. Powers of building inspector.**

- (a) There is hereby established the position of Building Inspector. The Building Inspector shall be appointed by the Town Manager, who may remove the Building Inspector according to procedures established for Town employees. The Building Inspector shall have the power to seek inspection of any property or structure at reasonable hours to determine compliance with Town zoning and land use ordinances.

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- (b) It shall be the duty of the Building Inspector to administer and enforce all provisions of this Article except for those powers granted to the Board of Zoning and Architectural Review, hereinafter referred to as the "Board." In addition, the Building Inspector may permit the construction of a foundation before the actual issuance of a building permit if all of the following conditions apply:
- (1) An application for a building permit has been submitted to the Building Inspector and is complete with sufficient plans, and is awaiting only Board approval;
  - (2) The applicant has signed a written and acknowledged agreement with the Town on a form provided by the Town agreeing to remove all work performed within sixty (60) days of the Board's rejection of the application; and
  - (3) The Building Inspector and the Chair of the Board agree that there is just cause for allowing work to commence on the foundation, and the application is in keeping with all Town regulations and policies of the Board.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

### **Sec. 18-13-20. Building permit applications.**

- (a) All applications for building permits shall be made on the forms provided by the Town for that purpose, and shall be accompanied by the following:
- (1) The legal description of the lot involved.
  - (2) A deed for the property establishing title.
  - (3) A plot plan of the lot or parcel, drawn preferably to a one-eighth-inch-to-one-foot scale, showing the dimensions of the lot or parcel and the size and location of the building or structure to be erected thereon, together with all other structures on the lot or parcel.
  - (4) Plans showing the height and elevation of the building or structure, and the exterior walls and roof thereof, with a general schematic drawing of the exterior design of the building drawn to one-quarter inch or one-eighth-inch to the foot scale.
  - (5) A statement concerning the use to be made of such building or structure.
  - (6) A statement setting forth necessary variances, conditional uses, conditional waivers or other special reviews.
  - (7) A cutout of the floor plan at a scale determined by the Building Inspector.
  - (8) A perspective, drawn to scale, showing the relationship of the proposed building or project to nearby buildings, if requested by the Chair of the Board or the Building Inspector.
  - (9) The signature of the owner of the property or some other person with the written legal authority of the owner, if that person has the written legal authority to make such application.
  - (10) Any other information specifically requested by the Board or Building Inspector in order to review the application for compliance with this Article or any other Town ordinance or code.
  - (11) A complete site development plan for the entire proposed building site, drawn to scale and indicating:
    - a. All paving, driveways, walkways, parking areas, trash or Dumpster locations and other service structures;
    - b. All walls and fences with their location and heights;
    - c. Grass or other planted ground cover;

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- d. Any trees and shrubbery with a notation as to species and size at the time of planting and a notation as to any mature landscaping proposed to be removed or relocated on the site;
  - e. Any exterior lighting; and
  - f. Proposed deviation of finish grade from natural grade in excess of one (1) vertical foot.
- (12) A front elevation, drawn to scale, showing the width and height of the street elevation (alley elevation in the case of an alley structure) of the proposed building, any other buildings on the proposed building site and the buildings on the parcels abutting the proposed building site, all on one (1) drawing.
- (13) A cross-section of each building section which varies in floor-to-ceiling height from any other section in the building.
- (14) If the natural grade of a building site varies more than two (2) vertical feet between any two (2) points on the site or one (1) vertical foot within the building footprint, the natural contour of the site shall be graphically depicted on the site plan with no greater than one-foot contour lines and depicted on the submitted elevations of the proposed structure. If the finish grade of the site is proposed to be different from the natural grade of the site by more than one (1) vertical foot, both finish and natural grade shall be clearly depicted and labeled as such on the site plan and on the submitted elevations of the structure.
- (15) The engineering plans for single and two family residences shall be prepared by a registered or licensed design professional and signed and stamped with a seal stamp.
- (16) All construction documents for commercial projects shall be prepared by registered or licensed design professionals and signed stamped with a seal stamp.
- (b) The Building Inspector shall refer all complete applications to the Board, except those applications designated "insubstantial" as provided in Paragraph 16-21-100(a)(9) of this Code, for sketch plan review, classification and approval as provided in Sections 16-21-130 and 16-21-140.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

### **Sec. 18-13-30. Application fees.**

- (a) The Building Official shall charge a fee for any building permit or sign permit application sufficient to cover related Town expenses as described in the building code adopted by the Town in this Chapter. Should any building or sign permit application or permit be withdrawn and returned to the Building Official within ninety (90) days after the date of application or issuance, the Building Official may refund up to eighty-five percent (85%) of any application or permit funds not used to pay publication costs. The Building Official shall be authorized to charge such additional fees as are necessary to offset expenses to the Town occasioned by requests or approvals not combined with building permit applications, special or extra publications or special Board meetings.
- (b) Building permit fees and application fees shall be waived for all resident-occupied affordable housing and all Accessory Dwellings upon execution of a restrictive covenant for Qualified Residents. Building permit fees are based on the entire building. Where a resident-occupied affordable housing unit is contained within the building, permit fees shall be reduced in proportion to the cost of construction of the resident occupied affordable housing unit.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022; Ord. No. 2 , § 3(Exh. A), 3-6-2023)

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### **Sec. 18-13-40. Building permit.**

- (a) No building or structure shall be erected, constructed, structurally altered, moved, demolished or changed without first obtaining a building permit issued by the Building Inspector. Such building permit shall be issued when the applicant has complied with all requirements of this Chapter and any code adopted herein, including the requirement for the submission of construction documents and payment of such fees as are required to review such documents, and when the applicant has obtained all approvals required hereunder.
- (b) The determination of value or valuation of the building permit scope of work under any provision of this Chapter shall be made by the Building Official based on the published International Code Council minimum valuation table multiplied by the regional multiplier of 2.70, or other evidence of value, whichever is greater, as determined by the Building Official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued. The approval by the Board of a building permit application shall be valid for the period of time set forth in Section 24-68-104, C.R.S., as implemented by Section 16-19-30 of this Code, so long as said sections remain in effect.
- (c) No building permit shall be issued unless and until a performance deposit has been deposited with the Building Department
  - (1) The amount of the performance deposit shall be the amount of the valuation of the structure for which a building permit is sought multiplied by fifty hundredths percent (.50%).
  - (2) The performance deposit will be released upon the issuance of a certificate of occupancy for the structure for which the building permit is sought, if the Building Department determines that all improvements have been completed in accordance with the approved plans, including landscaping and parking requirements. The performance deposit will be released upon request within a two-year period only after issuance of certificate of occupancy date.
  - (3) Two hundred fifty dollars (\$250.00) per violation may be retained by the Town where the applicant has failed to perform any building, construction, structural alteration, movement, demolition or change work to any building or other structure in strict compliance with the approved plans and specifications therefor. Such retained deposit amounts shall represent the estimated costs and expenses of the Building Inspector in processing and handling said failures. Following such failure to perform, the Building Inspector shall notice the applicant of such failure and thereafter may retain the same without further action on the part of the Town. Nothing contained herein shall prohibit the Town from exercising any other remedies provided at law or in equity, including, without limitation, an action for attorneys' fees, costs and expenses in connection with any such failure to comply.
- (d) No building permit shall be issued until written approval of the application is given by the Building Inspector and the Board when the latter is required under the terms of this Article.
- (e) No permit shall be issued after February 1st, 2023 unless a current building contractor license is submitted. The building contractor license shall meet Gunnison County building contractor licensing program requirements.
- (f) No building permit shall be issued unless the proposed erection, construction, alteration or change of the building or use of the building or land is in full conformance with this Article.
- (g) Upon issuance of the building permit, the applicant shall perform all work thereunder in strict accordance and compliance with the application, plans and specifications, representations to the Board and Building Inspector, and any memoranda of agreement. The Building Inspector, members of the Board and other Town officials shall monitor and inspect the work being performed and, upon the discovery of any deviation from the plans, application or representations, shall report the deviation to the Building Inspector who shall order

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all work on the structure to cease until the Board considers, at its next regular meeting, if the deviation is substantial, in which case a new building permit shall be required.

- (h) After the issuance of a building permit, any substantial deviation from the plans, application or representations shall require a new building permit, which shall be applied for and considered in the same fashion as a new application.
- (i) Any application or other request under this Article shall be made by an owner of the property or his or her legal representative as evidenced by a written power of attorney. Any permits, approvals, conditions or other decisions under this Article shall benefit and/or bind such applicant, the owner, other co-owners of the property and their heirs or assigns.
- (j) Penalties; enforcement. No person shall build, construct, structurally alter, move, demolish or change any building or other structure for which a building permit is required without compliance with the requirements of the Section. Any person who violates this Section shall be guilty of a misdemeanor and subject to a maximum fine of one thousand dollars (\$1,000.00) per offense, or by imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment. Each day any such building or structure is out of compliance with this Section shall be a separate offense hereunder. The Marshal's Department, the Building Inspector or the Town Manager may enforce the penalties provided hereunder, including, without limitation, by proper summons to appear in a court of competent jurisdiction. The Town may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Section. Remedies provided in this Section are cumulative and concurrent and not intended to be exclusive, and the same are in addition to all other rights provided at law and in equity.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

### **Sec. 18-13-50. Boundaries.**

No building or structure shall be constructed or erected on any lot prior to the property corners of the lot being properly established and marked by permanent monuments consisting of a metal pin not less than one-half (½) inch in diameter and not less than sixteen (16) inches in depth below ground level. Any such corner monument or other survey monumentation required by the Town after October 1, 1988, shall be surveyed from and based upon one (1) or both of two (2) official survey monuments. Such official survey monuments are located at the precise centerline intersections of Elk Avenue with Third Street and Seventh Street, respectively; stamped as follows: "CL ELK CL THIRD E.F. BENNER PLS 9476 1997" and "CL SEVENTH/ELK 1988 LS 11250." A cross mark "X" on each monument marks the precise centerline intersection.

### **Sec. 18-13-60. Construction time.**

Unless additional time, which shall be no more than six (6) months, is granted for good cause by the Building Inspector, all exterior construction must be totally completed within one (1) year of the commencement of construction under a building permit. If not so completed, the building permit shall be expired, and the owner shall obtain a new permit based on the valuation of the work to be complete the project.

### **Sec. 18-13-70. Certificate of occupancy.**

- (a) It is unlawful for the owner of a structure or any other person to rent, occupy or use any structure within the Town without obtaining, in advance, a certificate of occupancy; provided, however, that a certificate of occupancy shall not be required for that part of any structure which has been: (1) completed; and (2) occupied and in use, prior to July 24, 1973. Any modification or alteration of or addition to any structure after July 24, 1974, for which a building permit or other permit is required, shall not be occupied or used

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prior to the issuance of a certificate of occupancy. Any change in use within any structure shall require a new certificate of occupancy.

- (b) Procedure for obtaining a certificate of occupancy.
  - (1) A written request for a certificate of occupancy must be made to the Building Inspector at least forty-eight (48) hours prior to the certificate of occupancy inspection.
  - (2) As soon as reasonably practicable and not more than ten (10) days after receipt of the request for the certificate of occupancy, the Building Inspector shall inspect the structure for which the certificate of occupancy has been sought to ascertain if the structure conforms with all the applications, plans and specifications theretofore submitted to the Town and all state statutes and Town ordinances.
  - (3) If the Building Inspector determines that the structure conforms to all applications, plans and specifications theretofore submitted to the Town and all state statutes and Town ordinances, he or she shall issue a certificate of occupancy.
  - (4) If either the Building Inspector or the Chair of the Board determines that the structure fails, in any manner, to conform with all applications, plans and specifications theretofore submitted to the Town, or with all state statutes and Town ordinances, a certificate of occupancy shall not be issued. In that event, the applicant shall be informed of the reason why the certificate of occupancy has not been granted.
  - (5) After a denial of an application for a certificate of occupancy, the Building Inspector and/or the Chair of the Board shall ascertain, in their reasonable discretion, if the defects or shortcomings in the structure will require so substantial a reinspection as to warrant an additional application fee.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

### **Sec. 18-13-80. Stop work or desist order.**

Should the Building Inspector discover any construction within the Town in violation of this Article, he or she shall attach a stop work order to that construction in a conspicuous place. Should the Building Inspector discover any use of property in the Town in violation of this Article or in violation of any agreement pursuant to Section 16-9-70 of this Code, he or she shall attach a desist order to the property and attempt to deliver a copy of the same to the occupier of the property. Any stop work order or "desist" order shall be signed by the Building Inspector and indicate the subject area in which the violation exists. The removal of a stop work order or desist order before the violation is corrected shall constitute a violation of this Article. The continuation of construction or use in violation of a stop work order or desist order shall also constitute a violation of this Article.

### **Sec. 18-13-90. Payment of overdue fees.**

No building permit or certificate of occupancy shall be issued by the Town for any lot, parcel or structure until all overdue fees for sewer, water, sanitation, street or other improvement district assessments, real property taxes, real estate transfer taxes and/or other fees or taxes due to the Town in connection with said lot, parcel or structure have been paid in full.

### **Sec. 18-13-100. Appeals from Building Inspector.**

Any person desiring to appeal any order, requirement, decision, action, omission or determination by the Building Inspector under this Chapter must file such appeal with the Board within thirty (30) days after such action by delivering the same to the Town Clerk. Such appeal shall be in writing and shall contain all data and information necessary for a clear understanding and intelligent action by the Board.

## ARTICLE 14 Carbon Monoxide Detector/Alarm Regulations

### Sec. 18-14-10. Carbon monoxide detection.

- (a) Adoption. The International Fire Code ("IFC"), 2021 Edition, Chapter 9, Section 915, as published by the International Code Council, is hereby adopted by reference thereto and incorporated into this section to have the same force and effect as if set forth herein in every particular pursuant to Title 31, Article 16, Part 2, C.R.S.

The subject matter of the adopted code includes regulating and governing the safeguarding of life and property from carbon monoxide and the detection of conditions hazardous to life or property in the occupancy of buildings and premises as herein provided.

- (b) Amendments. The code adoption herein is modified by the following amendments:

- (1) IFC Section 915.1.4 is amended to read as follows:

Section 915.1.4 - Fuel-burning appliances outside of dwelling units, sleeping unit and classrooms.

Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms located in buildings that contain fuel-burning appliances or fuel-burning fireplaces within 15 feet of a bedroom.

Exception:

1. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where a carbon monoxide detector is provided in one of the following locations:
  - 1.1. In an approved location between the fuel-burning appliance or fuel-burning fireplace and the dwelling unit, sleeping unit or classroom.
  - 1.2. On the ceiling of the room containing the fuel-burning appliance or fuel-burning fireplace.

- (2) IFC Section 915.1.5 is amended to read as follows:

Section 915.1.5. - Private garages. Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms in buildings with attached private garages.

Exceptions:

1. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms without communicating openings between the private garage and the dwelling unit, sleeping unit or classroom.
2. Where a carbon monoxide detector is provided in an approved location between openings to a private garage and dwelling units, sleeping units or classrooms.

- (3) IFC Section 915.2.1 is amended to read as follows:

Section 915.2.1 - Dwelling. Carbon monoxide detection shall be installed in dwelling units outside of each separate sleeping area within 15 feet of the bedrooms. Where a fuel-burning appliance is located within a bedroom or its attached bathroom, carbon monoxide detection shall be installed within the bedroom.

- (4) IFC Section 915.2.2 is amended to read as follows:

Section 915.2.2. - Sleeping units. Carbon monoxide detection shall be installed in sleeping units.

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Exception:

Carbon monoxide detection shall be allowed to be installed outside of each separate sleeping area within 15 feet of the sleeping unit where the sleeping unit or its attached bathroom does not contain a fuel-burning appliance and is not served by a forced-air furnace.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

### **Sec. 18-14-20. Definitions.**

For purposes of this Article only, the following terms shall have the following meanings ascribed thereto:

*Adjacent* means directly above, below or next to.

*Carbon monoxide detector/alarm* means any single- or multiple-station carbon monoxide detector and alarm listed by a nationally recognized, independent product safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory or any successor standards.

*Dwelling unit* means one (1) or more rooms or other spaces, arranged for use by one (1) or more persons, on a permanent, temporary or transient basis, for sleeping or living, located in one (1) or more of the following use categories: R1, R2, R3 and R4.

*Enclosed parking area* means a structure or portion thereof utilized for the parking of motor vehicles and other carbon monoxide-emitting equipment which is less than fifty percent (50%) open at all times to outside air.

*Fuel-burning device* means any equipment that burns solid, liquid or gaseous fuel, or a combination thereof, including, without limitation, a gas-fueled stove, wood stove, coal stove, natural gas/heating oil heater, natural gas/heating oil boiler, natural gas/heating oil furnace and any equipment that burns wood, coal, natural gas, kerosene, petroleum or hydrocarbon products indoors.

*NFPA 720* means the NFPA 720 Standard for the Installation of Carbon Monoxide Detection and Warning Equipment.

*Other applicable uses* means one (1) or more rooms arranged for use by one (1) or more persons, on a permanent, temporary or transient basis, for sleeping or living, located in one (1) or more of the following use categories: E, I1, I2, I3 and I4. Other applicable uses shall include, but shall not be limited to, day care, hospital, medical and assisted living facilities.

### **Sec. 18-14-30. Installation guidelines.**

- (a) All existing dwelling units and existing other applicable uses or those undergoing new construction, additions, remodels and renovations where: (1) a fuel-burning device is or will be installed therein or adjacent thereto; and/or (2) an enclosed parking area is adjacent thereto, shall contain a carbon monoxide detector/alarm.
- (b) A carbon monoxide detector/alarm shall be installed in any room or space that is not otherwise considered a dwelling unit or other applicable use under this Article but that is:
  - (1) Fifty (50) square feet or less and that contains a fuel-burning device; and/or
  - (2) Generally utilized as a central location of one (1) or more fuel-burning devices.
- (c) In dwelling units and other applicable uses, a carbon monoxide detector/alarm shall be installed within fifteen (15) feet of the entrance to each room lawfully used at any time for sleeping.
- (d) Dwelling units and other applicable uses shall have a carbon monoxide detector/alarm installed on each story of the structure and in such other locations as deemed necessary by the Building Official.

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- (e) Carbon monoxide detectors/alarms for existing dwelling units and other applicable uses and those undergoing new construction, additions, remodels, renovations, and alterations shall carry the listing of a nationally recognized, independent product safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory or any successor standards.
  - (f) All carbon monoxide detectors/alarms shall be installed in accordance with NFPA 720 standards and the manufacturer's recommended installation requirements, except as otherwise provided in this Section.
  - (g) All dwelling units and other applicable uses undergoing new construction, additions, remodels, renovations, and alterations where a carbon monoxide detector/alarm is required shall have primary (i.e., hard-wired) and secondary (e.g., battery back-up) power sources for all carbon monoxide detectors/alarms. All multiple-station carbon monoxide detectors/alarms required by this Section shall be interconnected.
  - (h) All existing dwelling units and other applicable uses where a carbon monoxide detector/alarm is required must comply with NFPA 720 standards or, in lieu of an NFPA 720 standard carbon monoxide detector/alarm, a plug-in (without a switch and with battery back-up) or battery-operated carbon monoxide detector/alarm shall be installed which shall carry the listing of a nationally recognized, independent product safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory or any successor standards.
  - (i) In all structures with multiple dwelling units and other applicable uses where the structure contains a central fire alarm system, carbon monoxide detectors/alarms shall be connected to the structure's central fire alarm system and shall be audible in each dwelling unit within the structure. Such carbon monoxide detectors/alarms shall initiate a supervisory signal at the fire alarm panel and provide an audible alarm at the device upon the detection of carbon monoxide. Such carbon monoxide detectors/alarms shall be initiated to a monitoring agency or be an audible/visual alarm located in a conspicuous place on the exterior of the structure.
  - (j) Compliance with the requirements of this Article shall be irrespective of the occupancy of a dwelling unit or other applicable use.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

#### **Sec. 18-14-40. Exception to installation requirements.**

For any existing dwelling unit or other applicable use and those undergoing new construction, additions, remodels and renovations where a carbon monoxide detector/alarm is required by this Article, the Building Official may exempt such dwelling unit or other applicable uses from having to install a carbon monoxide detector/alarm where good cause is shown.

#### **Sec. 18-14-50. Time for compliance.**

All dwelling units and other applicable uses undergoing new construction, additions, remodels, renovations and alterations where carbon monoxide detectors/alarms are required under this Article shall be in compliance with these carbon monoxide detector/alarm regulations at the time of such construction, additions, remodels, renovations and alterations. All existing dwelling units and other applicable uses where carbon monoxide detectors/alarms are required under this Article shall have six (6) months from the effective date of these carbon monoxide detector/alarm regulations or a change in tenancy of the dwelling unit or other applicable use, whichever occurs first, to comply with the requirements hereof.

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### **Sec. 18-14-60. Testing, inspection and maintenance of carbon monoxide detectors/alarms.**

- (a) All carbon monoxide detectors/alarms shall be tested, inspected and maintained in accordance with NFPA 720 standards or shall carry the listing of a nationally recognized, independent product safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory or any successor standards.
- (b) Subject to the obligations of a tenant in any tenancy as described in Subsection (d) below, the owner of any dwelling unit or other applicable use where a carbon monoxide detector/alarm is required under this Article shall be responsible for the installation, testing, inspection, maintenance, repair and/or replacement of such carbon monoxide detector/alarm.
- (c) Prior to the commencement of any tenancy in any dwelling unit, the owner shall replace any carbon monoxide detector/alarm that has been stolen, removed, missing or is found to be not operational by the owner. At the time of the commencement of the tenancy for the dwelling unit, the owner shall ensure that any batteries necessary to make the carbon monoxide detector/alarm operational are provided to the tenant at the time the tenant takes residence in the dwelling unit. The owner shall replace any carbon monoxide detector/alarm if notified by a tenant as specified in Subsection (d) below that any carbon monoxide detector/alarm was stolen, removed, missing or is found to be not operational during the tenant's occupancy. The owner shall correct any deficiency in any carbon monoxide detector/alarm if notified by a tenant in accordance with Subsection (d).
- (d) The tenant of any rental property shall:
  - (1) Keep, test and maintain all carbon monoxide detectors/alarms in good repair;
  - (2) Notify, in writing, the owner of the dwelling unit or the owner's authorized agent, as applicable, if the batteries of any carbon monoxide detector/alarm require replacement;
  - (3) Notify, in writing, the owner of the dwelling unit or the owner's authorized representative if any carbon monoxide detector/alarm is stolen, removed, missing or is found to be not operational during the tenant's occupancy; and
  - (4) Notify, in writing, the owner of the dwelling unit or the owner's authorized representative of any deficiency in any carbon monoxide detector/alarm that the tenant cannot correct.
- (e) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide detector/alarm, except as part of a process to inspect, maintain, test, repair or replace the carbon monoxide detector/alarm or replace the batteries in the carbon monoxide detector/alarm.

( Ord. No. 13 , § 1(Exh. A), 8-2-2022)

### **Sec. 18-14-70. Limitation of liability.**

No person shall have a claim for relief against any property owner, an authorized agent of a property owner, a person in possession of real property and/or an installer of any carbon monoxide detector/alarm for any damages resulting from the installation, operation, maintenance or effectiveness of a carbon monoxide detector/alarm if the property owner, authorized agent, person in possession of real property and/or installer installs, operates, maintains and tests the carbon monoxide detector/alarm in accordance with the manufacturer's published instructions and the provisions of these carbon monoxide detector/alarm regulations.

## **ARTICLE 15 Deconstruction and Recycle Plan**

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### **Sec. 18-15-10. Required.**

If a permit is requested for the demolition of an existing structure in accordance with Section 16-2-60 or 16-14-190 of this Code, a site specific deconstruction and recycle plan must be submitted and approved by the Building Official. Said plan should, as a goal, seek to recycle, reuse or resell fifty percent (50%) of the existing materials in the deconstructed structure or element. Materials from the following categories should be considered: doors, windows, cabinets, roofing, wood flooring, plumbing fixtures, mechanical and heating fixtures, framing and structural materials, landscaping elements, concrete and bricks. The plan should identify what materials are to be recovered. The plan should either specify a destination for the recycled materials or the materials should be made available to the public for acquisition for a minimum of two (2) weeks, as well as how the same is to be communicated and accomplished. Recycled materials may not be placed on Town rights-of-way or other Town property.

## **ARTICLE 16 Basement Construction Requirements**

### **Sec. 18-16-10. Basement construction.**

All new basements, as defined in Section 16-1-20, of this code must meet the following requirements.

- (1) Basement foundation design. Basements shall be designed and constructed to be completely waterproof and shall be no larger in footprint than the aboveground structure they support, with the exception of window wells and exiting features and underground parking facilities in Business, Tourist and Commercial districts. Basement foundations shall be designed by a licensed Colorado professional engineer experienced in these types of waterproof structural systems, who shall affix his or her seal on all relevant construction documents.
- (2) Floors. All floors in basements are required to be waterproofed. They shall be constructed of concrete, designed and constructed to withstand the hydrostatic pressures to which such floors will be subjected. Waterproofing shall be accomplished through means approved in the International Building Code, such as applied membranes and coatings installed under the slab in accordance with the manufacturer's requirements. Additionally, concrete admixtures may be utilized in conjunction with approved membranes and coatings. Alternative designs may be approved on a case-by-case basis by the Building Official if submitted by a licensed Colorado professional engineer.
- (3) Walls. Walls required to be waterproofed shall be of concrete and shall be designed and constructed to withstand the hydrostatic pressure and other lateral loads to which such walls will be subjected. Waterproofing shall be accomplished through means approved in the International Building Code, such as applied membranes and coatings installed on the positive hydrostatic pressure side of the wall according to the manufacturer's requirements. The waterproofing shall be lapped and sealed to the slab waterproofing according to the manufacturer's requirements and shall extend to a point not less than six (6) inches above finished grade. Concrete admixtures may be utilized in conjunction with approved membranes and coatings. Alternative designs may be approved on a case-by-case basis by the Building Official if submitted by a licensed Colorado professional engineer.
- (4) Water table displacement. Basement foundations shall not extend more than one (1) story, as such term is defined in the International Residential Code (IRC), below existing grade. On sloping sites, maximum foundation depth will be determined by the Building Official.
- (5) Construction dewatering. Construction dewatering may be allowed only during construction of the basement foundation upon approval by the Building Department. The proponent is responsible for obtaining any required dewatering discharge permits that may be required by the State or other

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licensing agency and shall provide copies of the same to the Town. A construction dewatering and discharge plan including the location and point of discharge shall be submitted to the Town for approval prior to commencement of dewatering.

- (6) Dewatering systems. Permanent dewatering systems shall not be allowed. Accommodations for emergency dewatering systems and sumps may be allowed if they are designed by a Colorado professional engineer and shall be described as part of the foundation submittal and approved by the Building Department. Automatic pumping systems may not be incorporated into the design of such dewatering systems. Water may not be discharged into the Town's sewer system as part of an emergency dewatering proposal. Prior to activating any emergency dewatering system, the Town must be notified in writing, with such notice providing the address, location for discharge and volume of discharge. Said activation must be approved by the Town.

## **ARTICLE 17 Property Maintenance**

### **Sec. 18-17-10. Adoption.**

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is adopted as the Property Maintenance Code of the Town, by reference thereto, the International Property Maintenance Code, 2021 edition, including Chapters 1—8, as published by the International Code Council, Inc. 4051 West Flossmoor Road, Country Club Hills, Illinois 60478 ("IPMC"), regulating and governing the conditions and maintenance of all property, buildings and structures; by providing safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy within the Town of Crested Butte, is hereby adopted herein.

### **Sec. 18-17-20. Amendments.**

The code adoption herein is modified by the following amendments:

- (a) Section 101.1. is amended to read as follows:

101.1. - Title. These regulations shall be known as the Property Maintenance Code of the Town of Crested Butte, hereinafter referred to as "this Code."

- (b) Section 103.5. Fees is deleted in its entirety.

- (c) Section 113. Demolition is deleted in its entirety.

- (d) Section 110.4 is amended to read as follows:

110.4 - Stop Work Order Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to a maximum fine of one thousand dollars (\$1,000) per offense.

- (e) Section 302.4 is amended to read as follows:

302.4 - Weeds. Premises and exterior property shall be maintained free from weeds as defined herein, and Article 3 of the Town Code. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

- (f) Section 304.14. Insect screens is deleted in its entirety.

- (g) Section 602.3 is amended to read as follows:

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602.3 - Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units, on terms either expressed or implied, to furnish heat to the occupants thereof shall supply heat year-round to maintain a minimum temperature of 68 degrees in all habitable rooms, bathrooms and toilet rooms.

(h) Section 602.4 is amended to read as follows:

602.4 - Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat year-round to maintain a minimum temperature of 65 degrees during the period the spaces are occupied.

## APPENDIX

### Table of Contents

### APPENDIX A Fee Schedule

<b>CHAPTER 6</b> <b><i>Business Licenses</i></b>			
<b><i>Code Section</i></b>	<b><i>Description</i></b>	<b><i>Effective Dates</i></b>	<b><i>Fee</i></b>
6-2-40	Business license occupation license	Calendar Year 2018	\$100.00
6-2-40	Late fee for renewals after January 31 additional fee	Calendar Year 2018	\$25.00
6-2-40	Late fee for renewals after March 31 additional fee	Calendar Year 2017	\$50.00
6-2-40	Late fee for renewals after June 30 additional fee	Calendar Year 2017	\$75.00
6-2-40	Late fee for renewals after September 30 additional fee	Calendar Year 2017	\$100.00

(Prior code 5-7-4; Ord. 7 §11, 2003; Ord. 22 §1, 2004; Ord. 4 §1, 2009; Ord. 20 §1, 2009; Ord. 36 §2, 2010; Ord. 24 §2, 2011; Ord. 15 §2, 2012; Ord. No. 22, § 2, 2013 ; Ord. No. 15, § 2, 2014 ; Ord. 17 §2, 2016; Ord. No. 24 , § 2(Exh. A), 10-2-2017)

<b>CHAPTER 10</b> <b><i>Offenses</i></b>			
<b><i>Code Section</i></b>	<b><i>Type</i></b>	<b><i>Description</i></b>	<b><i>Fee</i></b>
10-9-50(4)	Private event noise control measures	Administrative fee	\$250.00
10-9-80(d)	Noise suppression plan review	Administrative fee	\$250.00

(Ord. 19 §1, 2007; Ord. 17 §1, 2008; Ord. 4 §1, 2009)

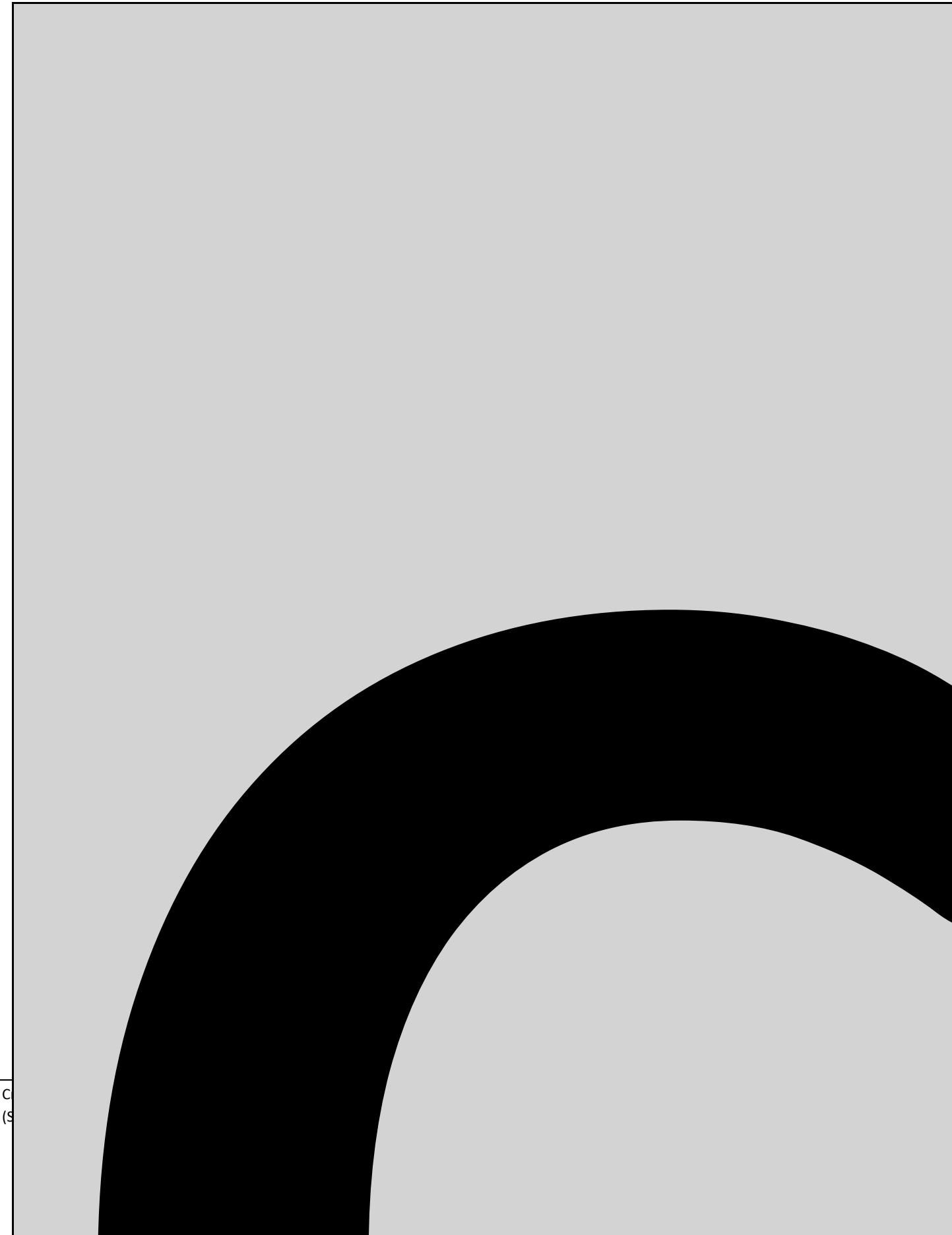
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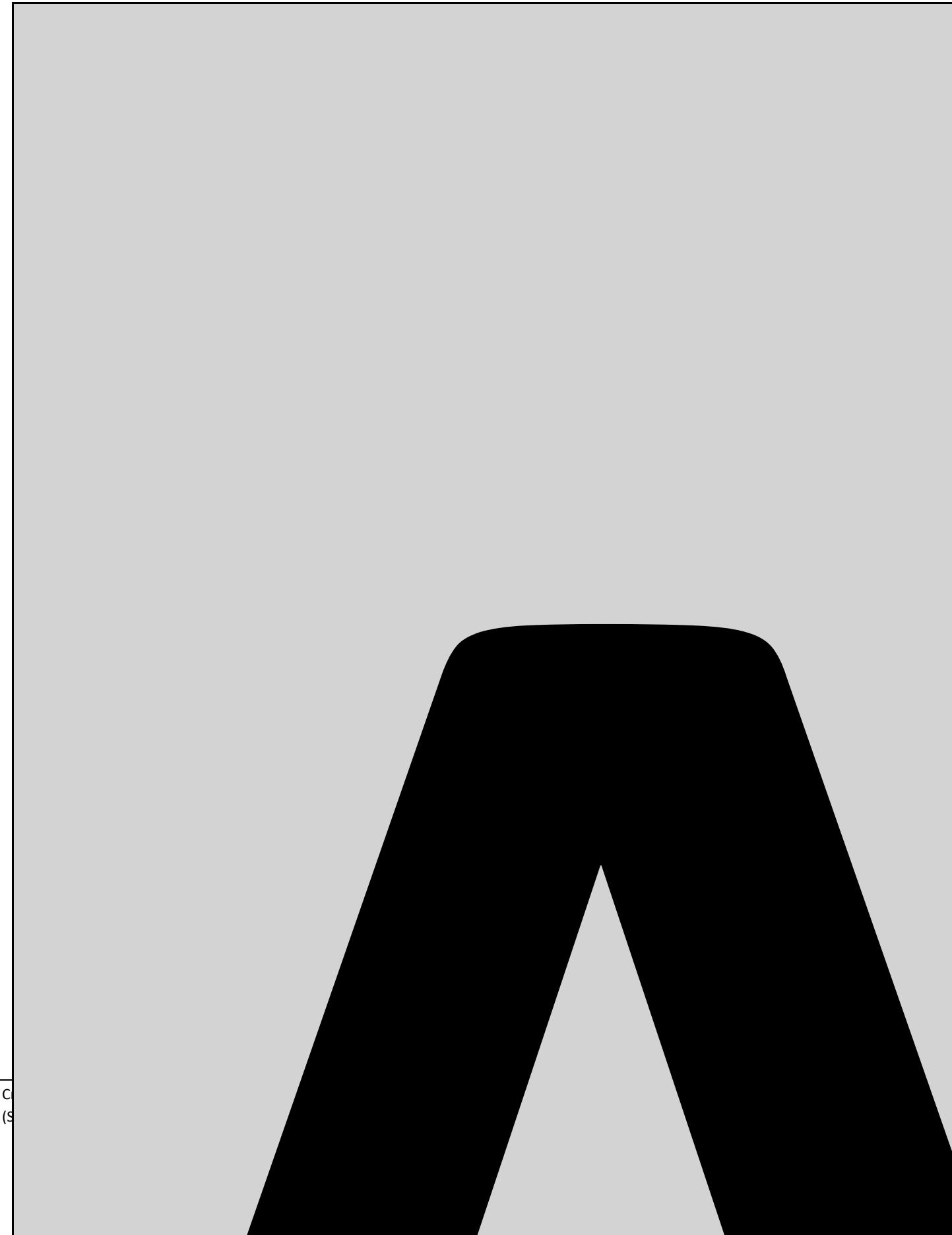
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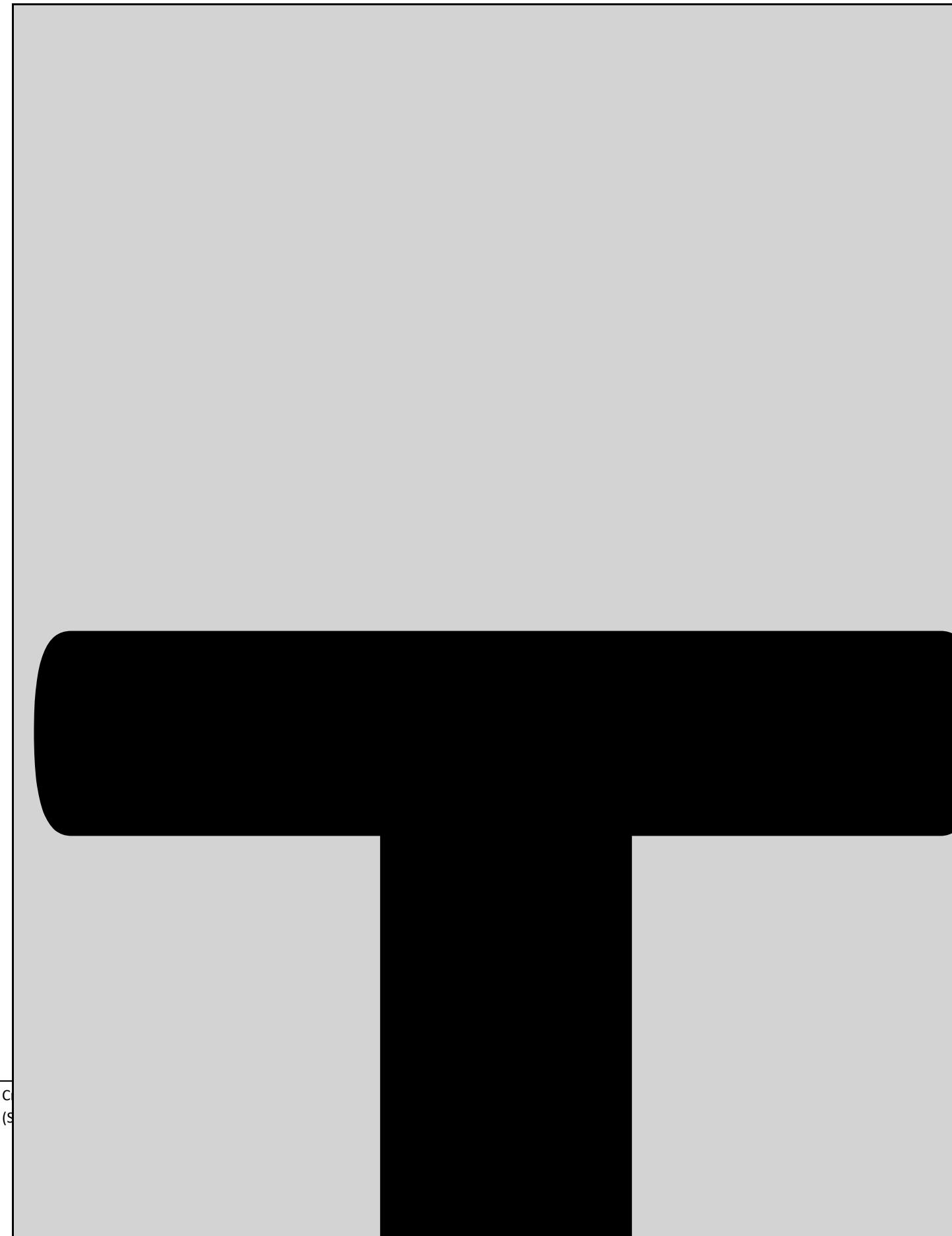
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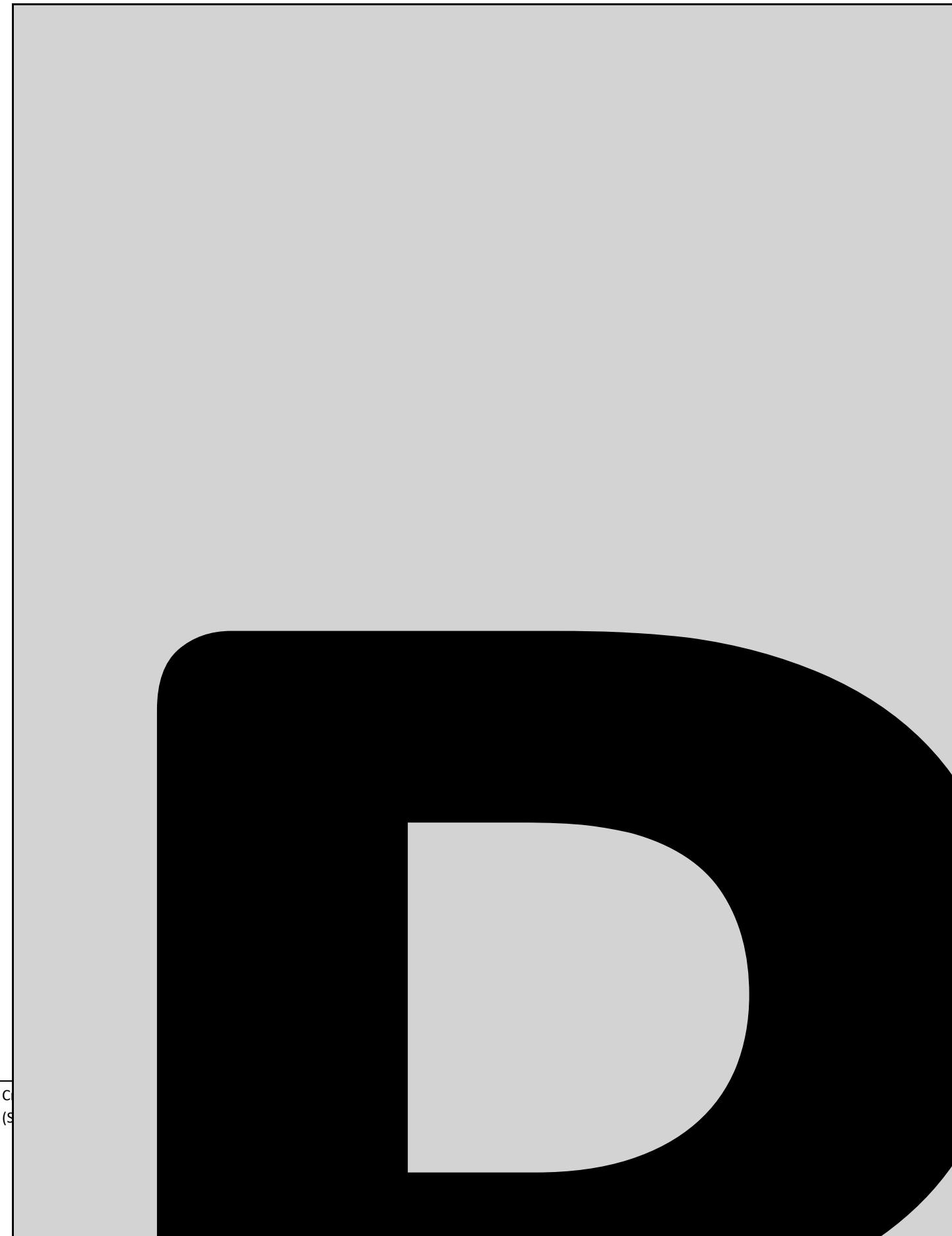
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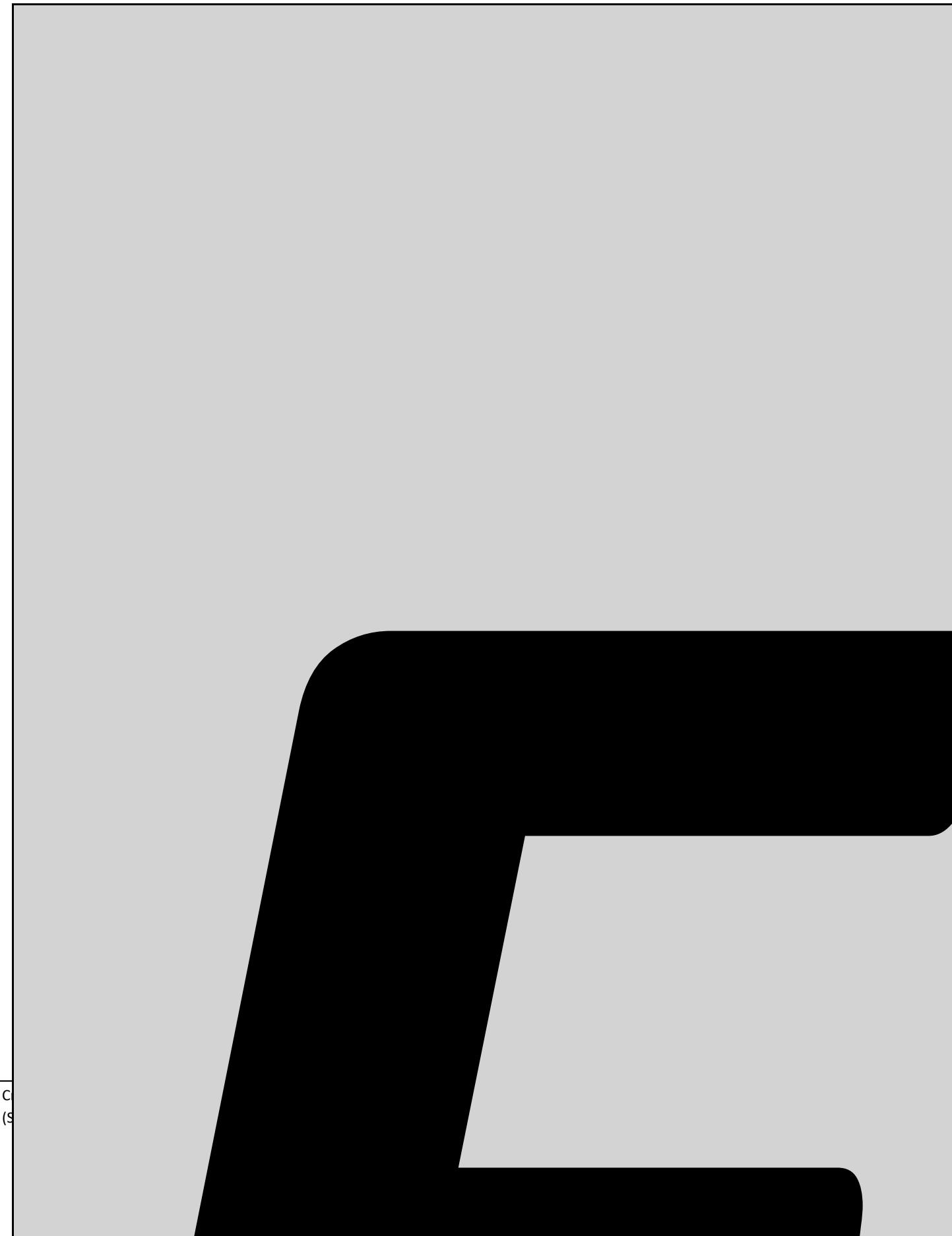
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<b>Code Section</b>	<b>Description</b>
13-1-110(b)	System development fee, single-family residence, water
13-1-110(b)	System development fee, single-family residence, sewer
13-1-110(c)	System development fee, other uses, water
13-1-110(c)	System development fee, other uses, sewer
13-1-110(d)	Expansion or use
13-1-110(e)	Rental units, long-term, affordable housing
13-1-120	Metered water rates
	Base rate, per month
	8,001 — 13,000 gallons (+ fraction of use) per EQR
	13,001 — 18,000 gallons (+ fraction of use) per EQR
	18,001 — 23,000 gallons (+ fraction of use) per EQR
	23,001 — 28,000 gallons (+ fraction of use) per EQR
	28,001 — 33,000 gallons (+ fraction of use) per EQR
	Over 33,000 gallons (+ fraction of use) per EQR
13-1-150	Sewer system rates (per EQR)
13-1-160(a)	Availability service fee, site within 150 feet of line
	Water service
	Sewer service
13-5-50(a)	Refuse collection fee

(Prior code 16-1-2, 16-5-4; Ord. 13 §1, 1988; Ord. 2 §1, 1992; Ord. 1 §1, 2001; Ord. 1 §§1, 2, 2005; Ord. 9 §§1, 2, 7, 2005; Ord. 2 §1, 2009; Ord. 4 §1, 2009; Ord. 34 §§1—5, 2010, Ord. 17 §1, 2012)

<b>CHAPTER 16</b>			
<b>Zoning</b>			
<b>Code Section</b>	<b>Description</b>	<b>Rate</b>	<b>Fee</b>
16-21-50(6)d.	Resident-occupied affordable housing payment assessed on newly constructed nonresidential floor area in lieu of providing ROAH units:		
	from June 2012 through June 2014	Per sq. ft.	\$18.51
	from July 2014 through June 2016	Per sq. ft.	\$27.76
	from July 2016 and thereafter	Per sq. ft.	\$37.01
16-21-50(6)d.	Resident-occupied affordable housing payment assessed on newly constructed lodging units or short-term residential accommodation units in lieu of providing ROAH units:		
	from June 2012 through June 2014	Per lodging unit	\$2,197.61
	from July 2014 through June 2016	Per lodging unit	\$3,296.42
	from July 2016 and thereafter	Per lodging unit	\$4,395.22
16-21-50(6)d.	Resident-occupied affordable housing payment assessed on new residential floor area in lieu of providing a fraction of a ROAH unit when total		

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	size of the residential unit is within the following unit range:		
	Unit range	Sq. ft.	
	A	1—499	Per sq. ft. \$1.38
	B	500—999	Per sq. ft. \$1.95
	C	1,000—1,499	Per sq. ft. \$2.11
	D	1,500—1,999	Per sq. ft. \$2.36
	E	2,000—2,499	Per sq. ft. \$2.69
	F	2,500—2,999	Per sq. ft. \$3.09
	G	3,000—3,499	Per sq. ft. \$3.56
	H	3,500—3,999	Per sq. ft. \$4.11
	I	4,000—4,499	Per sq. ft. \$4.75
	J	4,500—or more	Per sq. ft. \$5.40

(Ord. 19 §3, 2012; Ord. 6 §1, 2013)

<b>CHAPTER 18</b> <b><i>Building Regulations</i></b>			
<b>Code Section</b>	<b>Description</b>	<b>Total Structure Value*</b>	<b>Fee</b>
18-1-30	IBC building permit fee schedule	\$1.00—\$500.00	\$28.42
		\$501.00—\$2,000.00	\$28.42 plus \$3.68 per \$100.00 of TSV or fraction thereof above \$501.00
		\$2,001.00—\$25,000.00	\$83.74 plus \$16.95 per \$1,000.00 of TSV or fraction thereof above \$2,001.00
		\$25,001.00—\$50,000.00	\$473.79 plus \$12.18 per \$1,000.00 of TSV or fraction thereof above \$25,001.00
		\$50,001.00—\$100,000.00	\$778.58 plus \$8.47 per \$1,000.00 of TSV or fraction thereof above \$50,001.00
		\$100,001.00—\$500,000.00	\$1,202.07 plus \$6.77 per \$1,000.00 of TSV or fraction thereof above \$100,001.00
		\$500,001.00—\$1,000,000.00	\$3,911.05 plus \$5.74 per \$1,000.00 of TSV or fraction thereof above \$50,001.00
		\$1,000,001.00 and up	\$6,781.04 plus \$4.41 per \$1,000.00 of TSV or fraction thereof above \$1,001,000.00

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\* The Total Structure Value (TSV) or building valuation for all permit fees shall be based on the building valuation data table of the most current issue of "Building Safety Journal" published by the International Code Council, using a regional modifier of 1.54, or other evidence of value, whichever is greater, as determined by the Building Official.

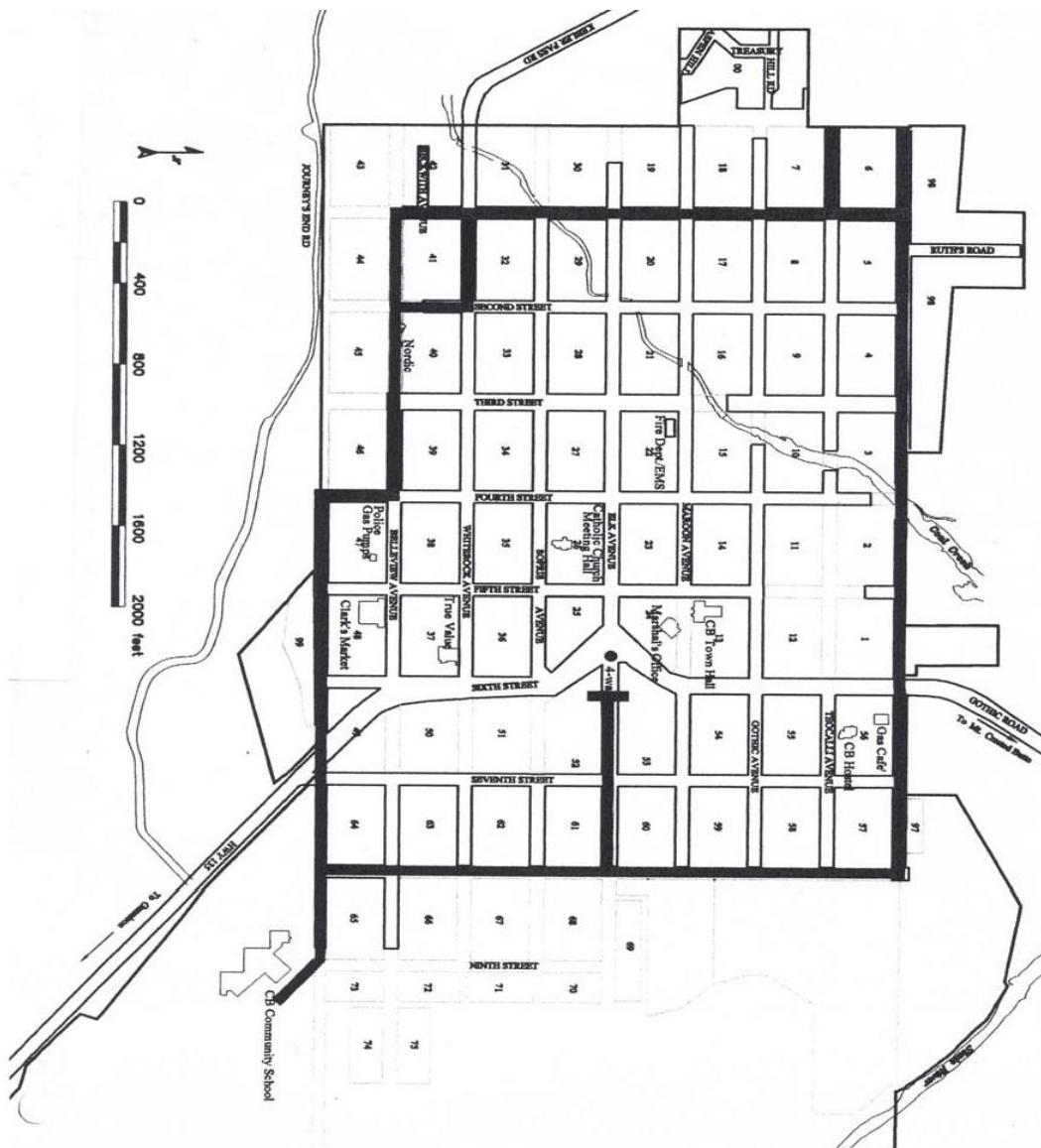
<b>CHAPTER 18 (cont'd)</b>			
<b><i>Building Regulations</i></b>			
<b><i>Code Sections</i></b>	<b><i>Description</i></b>	<b><i>Type</i></b>	<b><i>Fee</i></b>
18-3-30 and 18-7-30	Solid fuel burning device application		\$100.00
	Solid fuel burning device replacement		\$25.00
	Mechanical permit		\$28.43
	Supplemental permit		\$8.77
	Furnaces up to 100,000 BTU/hr.	Installation or relocation	\$17.91
	Furnaces over to 100,000 BTU/hr.	Installation or relocation	\$22.02
	Floor furnace and vent	Installation or relocation	\$17.91
	Suspended/recessed/wall-mount	Installation or relocation	\$17.91
	Installed appliance vents	Installation or relocation	\$8.77
	Repairs/alterations of appliances		\$16.58
	Boiler/compression/absorb system	3 horsepower or 100,000 BTU/hr.	\$17.79
		Up to 15 hp or 100,000 to 500,000 BTU/hr.	\$32.85
		Up to 30 hp or 500,000 to 1,000,000 BTU/hr.	\$45.07
		Up to 50 hp or 1,000,000 to 1,750,000 BTU/hr.	\$67.09
		Over 50 hp or 1,750,000 BTU/hr.	\$112.10
	Air handler	Up to 10 cfm or 4,719 L/s	\$12.89
		Over 10 cfm or 4,719 L/s	\$21.90
	Evaporative coolers	Non-portable type	\$12.89
	Single-duct vent fan		\$8.77
	Ventilation system		\$12.89
	Mechanical exhaust hood		\$12.89
	Domestic incinerator		\$22.02
	Commercial/industrial incinerator		\$17.54
	Misc. mechanical equipment		\$12.89
	Inspection after business hours	Minimum 2-hour charge	\$59.89/hour
	Reinspection fee	Per inspection	\$59.89
	Plan review/misc. inspection	Per hour or inspection	\$59.89

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(Prior code 6-3-7, 6-3-8, 14-1-10, 14-1-11, 14-1-12, 14-1-14; Ord. 14 §§1, 3, 1993; Ord. 1 §1, 1994; Ord. 7 §§9, 11, 13, 1994; Ord. 14 §1, 1994; Ord. 3 §§2, 3, 1995; Ord. 43 §§1, 3, 1995; Ord. 6 §1, 1997; Ord. 21 §§2, 3, 1997; Ord. 16 §§1, 2, 3, 1999; Ord. 22 §§6, 7, 1999; Ord. 19 §§1, 2, 3, 4, 2001; Ord. 28 §1, 2002; Ord. 8 §1, 2003; Ord. 25 §§1, 2, 2003; Ord. 29 §§1, 4, 2003; Ord. 20 §1, 2004; Ord. 23 §§1, 3, 2004; Ord. 27 §2, 2004; Ord. 17 §§1, 2, 3, 2005; Ord. 32 §§1, 2, 3, 2007; Ord. 24 §§1, 3, 4, 2008; Ord. 4 §1, 2009; Ord. 13 §§6, 7, 2011)

## APPENDIX B Streets Upon Which Skiing Is Permitted



**Skiing permitted on those portions of street marked in bold.**

(Code §8-1-30)

## **APPENDIX C Water Quality Monitoring Plan Outline**

Outline of minimum steps in the design of a Water Quality Monitoring Plan:

- (1) Evaluate information expectations.
  - a. Water quality concerns for the proposed permitted Activities.
  - b. Information goals.<sup>1</sup>
  - c. Monitoring objectives.
- (2) Establish statistical design criteria.
  - a. Development of hypotheses.<sup>2</sup>
  - b. Selection of statistical methods.
- (3) Design monitoring network.
  - a. Where to sample (i.e., points of compliance)
  - b. What to measure.
  - c. How frequently to sample.
- (4) Develop operating plans and procedures.
  - a. Sampling procedures.
  - b. Laboratory analysis procedures.
  - c. Quality control and quality assurance procedures.
  - d. Data storage and retrieval.
- (5) Develop information reporting procedures.
  - a. Types and timing of reports.
  - b. Reporting formats.
  - c. Distribution of information.
  - d. Monitoring program evaluations. (Are information expectations being met?)

<sup>1</sup>An example of an *information goal* would be to identify trends in metals concentrations or to determine if a water quality standard has been exceeded.

<sup>2</sup>The hypothesis helps to define the statistical methods to be applied. The hypothesis also helps to define the number of samples needed, confidence levels, baseline data needs, etc. An example of an *hypothesis* would be: if the information goal is to identify a trend in water quality, the hypothesis trend could be:

- (1) No change in a linear trend in raw data with a ninety-five percent (95%) confidence;
- (2) No change in a linear trend in annual means over ten (10) or more years; or
- (3) Data from post development sampling, with flow effects removed, are from the same population as data from predevelopment sampling, etc.

(Code §13-3-100)

## **APPENDIX D Spill Prevention, Storage, Control,**

### **Countermeasure and Contingency Plan**

Outline of minimum requirements for Spill Prevention, Storage, Control, Countermeasure and Contingency Plan:

- (1) Spill prevention, storage and control measures, procedures and protocols.
- (2) Containment measures, procedures and protocols.
- (3) Clean-up and contingency measures, procedures and protocols, including, without limitation, a description of how such efforts will be financed.
- (4) Reporting measures, procedures and protocols for spills and storage to Town, county, state and federal officials.
- (5) The right of the Town or its designee to undertake prevention, control, countermeasure, containment and clean-up measures in the event that the owner or applicant fails to comply with its obligations under the Spill Prevention, Storage, Control, Countermeasure and Contingency Plan, or if the Town has reason to believe that the owner or applicant could fail to comply with the Spill Prevention, Storage, Control, Countermeasure Plan. In connection herewith, the Spill Prevention, Storage, Control, Countermeasure and Contingency Plan shall contain an acknowledgement that the owner or applicant will pay all costs and expenses whatsoever associated with the Town's performance.
- (6) Provide specific and detailed responses to safety concern questions and issues that are likely to present themselves during the course of spill, control, containment and clean-up situations.
- (7) Prepared, at a minimum, in a manner that would satisfy Environmental Protection Agency (EPA) standards for Spill Prevention, Storage, Control, Countermeasure and Contingency Plans and contingency plans for petroleum products such as oil, hazardous materials and other fuels and pesticides.
- (8) Include a material safety data sheet (MSDS) listing all those pesticides, petroleum products, hazardous substances, hazardous wastes, toxic substances and other substances, stored, contained and used in connection with the Activity.

(Ord. 6 §1, 2008)

## **APPENDIX E Hearing Procedure and Record of Decision**

- (a) *Conduct of public hearing.* A public hearing shall be conducted in accordance with the following process:
  - (1) *Rights of all persons.* Any person may appear at a public hearing and submit evidence, including oral testimony, either individually or as a representative of an organization. Comment also may be submitted in written form before or during the hearing or within a designated period of time if the hearing is continued pursuant to Paragraph (6) below.
  - (2) *Time limits for testimony.* The Town Council may set reasonable time limits for testimony or presentation of evidence during the public hearing. Oral testimony may be limited based upon relevancy, redundancy or time constraints.
  - (3) *Order of proceedings.* The order of the proceeding shall be as follows:

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APPENDIX E Hearing Procedure and Record of Decision

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- a. *Confirmation of adequate public notice.* The Town Council shall determine whether or not adequate notice has been accomplished pursuant to the requirements of these Regulations.
  - b. Staff presentation. the Town Staff shall describe the proposed activity and identify the standards that apply and whether the activity meets those standards.
  - c. Applicant's presentation. The applicant may make an oral or a written presentation on behalf of the Watershed Permit application. The burden of proof is on the applicant to demonstrate that the activity satisfies the Watershed Protection Standards set forth in Chapter 13, Article 3, Division 2 of the Crested Butte Municipal Code.
  - d. Questions by Town Council. The Town Council may ask questions of the Town staff, the applicant or members of the public in attendance at any time.
  - e. Public comments. The Town Council shall hear public comments following the presentation by the applicant. Written comments that have been received before the hearing shall be reported by the Town staff and acknowledged to be part of the hearing record.
  - f. Staff response. The Town staff may respond to any statement made by the applicant, the public or the hearing body.
  - g. Applicant response. The applicant may respond to any comments made by the public, the Town staff or the Town Council.
- (4) *Close of public testimony.* At the conclusion of the public testimony, no further public comment shall be accepted.
- (5) *Deliberation and decision.* Following the close of public testimony, the Town Council shall proceed with deliberations. The Town Council's recommendation or decision to approve, approve with conditions or deny the Watershed Permit application shall be set forth in the form of an ordinance.
- (6) *Continuation of public hearing.* The Town Council may continue the public hearing to a fixed date and time. An applicant shall have the right to request, and be granted on a showing of good cause, a continuance of the required hearing. Any subsequent continuance shall be granted at the discretion of the Town Council and upon a finding that good cause has been shown for the continuance.
- (b) Record of decision. The record of decision shall include the following materials:
- (1) The recorded public hearing proceedings.
  - (2) The minutes of the public hearing.
  - (3) The application materials.
  - (4) Written materials submitted to the Town by an individual or agency regarding the application.
  - (5) Staff report, consultant reports and referral agency reports.
  - (6) The record of decision by Town Council.

(Ord. 6 §1, 2008)

## APPENDIX F Restrictive Covenant Agreement

**RECORDING REQUESTED BY:**

WHEN RECORDED RETURN TO:

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APPENDIX F Restrictive Covenant Agreement

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Town of Crested Butte  
Attn: Town Clerk  
P.O. Box 39  
**Crested Butte, CO 81224**

**RESTRICTIVE COVENANT AGREEMENT**

THIS RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the TOWN OF CRESTED BUTTE (the "Town"), Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and \_\_\_\_\_ ("Owner"), a \_\_\_\_\_ with an address of \_\_\_\_\_.

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**RECITALS**

- (a) Owner is the record title owner of certain real property located within Crested Butte and legally described as follows:

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Town of Crested Butte,  
State of Colorado,

commonly known as \_\_\_\_\_, Crested Butte, Colorado 81224 (the "Subject Property").

- (b) Owner applied with the Town (the "Application") for certain land use approvals for the Subject Property pursuant to the Crested Butte Municipal Code (the "Code").
- (c) The land use approval rights as requested in the Application for the Subject Property are not allowed as a matter of right pursuant to the Code.
- (d) On \_\_\_\_\_, 20\_\_\_\_, the Board of Zoning and Architectural Review (the "Board") conducted public hearings on the Application.
- (e) At such public hearings, the Board granted approval of the Application pursuant to the Code (collectively, the "Approvals").
- (f) At such public hearings, in exchange for such Approvals, the Board placed certain conditions on the Approvals as further described herein.
- (g) Owner has agreed to satisfy such conditions and heretofore agreed to place the following covenants against the Subject Property.

In consideration of the agreements, covenants and conditions set forth herein, the Town and Owner agree as follows:

**AGREEMENT**

1. Grant of Approvals. The Board, through the Approvals, hereby grants to Owner with respect to the Subject Property the following rights appurtenant (check as applicable):
  - (a) () variance;
  - (b) () conditional use;

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- (c) (\_\_\_\_\_) conditional waiver;
  - (d) (\_\_\_\_\_) special development permit;
  - (e) (\_\_\_\_\_) planned unit development;
  - (f) (\_\_\_\_\_) conditional rezoning; and/or
  - (g) (\_\_\_\_\_) architectural approval.
2. Conditions to Approvals. In consideration of the Approvals, Owner hereby agrees to the following conditions and restrictions on the use and occupancy of the Subject Property (include list and description of conditions in Approvals):
- (a) \_\_\_\_\_;
  - (b) \_\_\_\_\_; and
  - (c) \_\_\_\_\_.
3. Duration; Obligations. The rights, obligations and restrictions contained in this Agreement shall run with the land and title to the Subject Property and shall forever bind all persons and entities having any right, title or interest in and to the Subject Property. The obligations set forth herein shall be binding upon Owner, its heirs, representatives, successors, transferees and assigns and shall forever bind all persons and entities having any right, title or interest in and to the Subject Property or any parts thereof, along with their tenants, licensees, employees, guests and invitees.
4. Indemnification. Owner, for itself, its successors, transferees and assigns, hereby undertakes to indemnify, defend and hold harmless the Town, its elected officials, appointed boards, officers, employees, managers, attorneys, contractors, agents, insurers and insurance pools from any and all loss, cost, expense, claim or damage of any kind, including, without limitation, reasonable attorneys' fees, costs and expenses arising from or relating to, directly or indirectly, this Agreement and/or Owner's exercise of the rights and privileges granted herein.
5. Default; Remedies.
- 5.1 The following conditions, occurrences or actions shall constitute a default by Owner under this Agreement:
- (a) Owner's failure to pay to the Town upon demand any amounts due and owing the Town in connection with the Subject Property and/or the Approvals; and/or
  - (b) Owner's violation of any provision of this Agreement, the Approvals or the Code.
- 5.2 Upon the occurrences of a default by Owner, the Town shall have one (1) or more of the following remedies: (i) recover damages due to the default including reasonable attorneys' fees, costs and expenses; and/or (ii) terminate this Agreement and with it the Approvals and the rights granted by the Board pursuant thereto.
- 5.3 All remedies may be applied concurrently and not to the exclusion of any other remedy. In the event of any legal action or advice necessary to execute such remedies and/or interpret this Agreement, Owner shall pay to the Town all reasonable costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees.
6. Representations and Warranties. Owner represents and warrants that:
- (a) It is duly qualified to do business and is in good standing in the State of Colorado;

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APPENDIX F Restrictive Covenant Agreement

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- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) That it will comply with all applicable laws, ordinances, rules, regulations or orders issued by any public or governmental agency, body or authority, whether federal, state, local or otherwise, and has obtained all applicable permits and licenses required of Owner in connection with its obligations under this Agreement;
- (d) It shall be subject to all laws, ordinances and regulations that become effective after the effective date hereof;
- (e) The person signing on behalf of Owner is duly authorized to do so and has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement; and
- (f) Owner's compliance with the terms hereof do not violate any agreement, instrument or other obligation of Owner.

7. Miscellaneous.

- 7.1 Defined terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Code.
- 7.2 Recitals. The recitals set forth hereinabove are deemed to be material terms of this Agreement.
- 7.3 Construction. None of the provisions of this Agreement shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.
- 7.4 No third-party beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Town or Owner.
- 7.5 Enforcement.
  - 7.5.1 Every violation of this Agreement shall be deemed to be a nuisance and shall be subject to all the remedies provided for the abatement of nuisances. Each day a violation hereof exists shall be deemed to be a separate and distinct violation.
  - 7.5.2 A failure to comply with this Agreement shall be grounds for an action to recover damages, for injunctive relief, for specific performance and/or any other remedy available at law and in equity.
- 7.6 Notices. All notices required pursuant to this Agreement shall be deemed served upon depositing a certified letter, return receipt requested, in the United States mail, addressed to the party being served with such notice at the addresses set forth above, unless a request to mail to a different address is provided in writing to the other party.
- 7.7 Severability. If any provision of this Agreement is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.
- 7.8 Attorneys' fees; costs. If any dispute arises in connection with this Agreement or any document provided for herein or related hereto, the substantially prevailing party shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in connection with such dispute.
- 7.9 Entire agreement. This Agreement represents the entire agreement of the parties respecting the subject matters addressed herein.

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- 7.10 Governing law; venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue in any action in connection with this Agreement shall be the District Court of Gunnison County, Colorado.
- 7.11 Waiver. No breach by Owner, its heirs, successors, transferees and assigns, of any term or of this Agreement shall create a waiver by or estoppel against the Town as to future or continuing breaches, it being the express understanding of the parties that breaches of this Agreement may be waived only by written consent of the Town.
- 7.12 Amendment. No term or provision of this Agreement may be amended, except in writing, signed and duly acknowledged by the parties, and in the Town's case, duly adopted by the Board or Town Council, as applicable. No such amendment shall be effective until recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.
- 7.13 Counterparts; telecopy. This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument. For purpose of enforcement, facsimile, e-mail and telecopy reproductions of this Agreement shall be deemed to be originals.

IN WITNESS WHEREOF, Owner and the Town have caused this Agreement to be executed effective as of the date first written above.

TOWN:

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipality  
By: Mayor

Attest: Town Clerk

(SEAL)

OWNER: (Name)

OR

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing Restrictive Covenant Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, Mayor of the Town of Crested Butte, a Colorado home rule municipality on behalf of said entity.

Witness my hand and official seal.

My commission expires \_\_\_\_\_ Notary Public

(SEAL)

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APPENDIX F Restrictive Covenant Agreement

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STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing Restrictive Covenant Agreement was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

OR

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing Restrictive Covenant Agreement was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, on behalf of said entity.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

(Ord. 16 §6, 2013)

**APPENDIX G Restaurant Uses and Their Approximate  
Square Footage as They Existed on May 14, 1994**

<b>GIS Code</b>	<b>Sewer &amp; Water Acct. #</b>	<b>Year Built</b>	<b>Block</b>	<b>Legal Description</b>	<b>Business Name 1994</b>	<b>Business Name 2005</b>	<b>Estimated Restaurant Area (sq. ft.)</b>	<b>Estimated Deck Area (sq. ft.)</b>
498	19301	1890	19	B19 E/2 L29-L30	Timberline	Secret Stash	1009.00	0.00
419	20301	1900	20	B20 L29-30 See 20291	Soupçon	Soupçon	750.00	0.00
455	20301	1900	20	B20 L29-30 See 20291	Kochevars	Kochevars	3159.00	0.00
463	20311	1882	20	B20 Part L31-32 Forest Queen Townhouses	Forest Queen	Crested Butte R.E. Inc.	920.00	373.00
412	21071	1920	21	B21 Part L7-8 Creekside Plaza Condominium	Butte Bagels	Izzy's	540.00	131.00

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APPENDIX G Restaurant Uses and Their Approximate Square Footage as They Existed on May 14, 1994

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1224	21171		21	B21 L17-18	Le Bosquet	Timberline	1694.00	269.00
1051	21231	1976	21	B21 L23 Elk Ave Condo Units 1-6	Cafe Lobo	Eldo	2231.00	147.00
	21281		21	B21 W50' L28-32	Bistro - West Deck	Brick Oven Pizza	0.00	2141.00
444	21301	1885	21	B21 E75' L28-32	Bistro	Brick Oven Pizza	2638.75	806.70
1211	21301		21	B21 E75' L28-32	Brick Oven Pizza	Ginger Cafe	550.00	0.00
448	22171	1923	22	B22 W75' L17-21	Paradise Cafe	Paradise Cafe	900.00	560.00
448	22171	1923	22	B22 W75' L1—21	Vacant	Black Whale	4403.70	0.00
1213	22221		22	B22 L22 E25' L17- 21	Big Chill Ice Cream	Teocalli Tamale	1623.75	0.00
424	22261	1890	22	B22 L25-29	Jimmys	Lil's Land & Sea	1732.00	288.00
451	23291	1890	23	B23 L29-30	Landmark Cafe	Cucina	1700.00	0.00
440	24171	1885	24	B24 L17-19 W/2 L20	Angelo's	GS&L	3292.00	546.00
531	27021	1935	27	B27 L1-4	Donitas	Donitas	4397.00	0.00
514	27161	1975	27	B27 W50' L12-16	Bakery Cafe	Long Dragon	4206.00	0.00
1047	28021	1973	28	B28 N76.7' of W9.32' L2	Talk of the Town	Talk of the Town	3500.00	0.00
1048	28031	1882	28	B28 L3	Stephanics	Vacant	825.00	0.00
524	28041	1990	28	B28 L4-5	Idle Spur/CB Brewery	Idle Spur	5390.00	200.00
1049	28061	1882	28	B28 L6	Wooden Nickel	Wooden Nickel	2855.00	0.00
527	28081		28	B28 L8	Princess Wine Bar	Princess Wine Bar	1993.00	0.00
521	28101	1902	28	B28 L10	CB Roastery	Pitas in Paradise	1891.00	0.00
526	28121	1962	28	B28 L12-13 Baccanale	Bacchanale	Last Steep	1692.00	0.00
598	28281	1980	28	B28 E100' L28-29 Beckwith #1-5	Gourmet Noodle	Gourmet Noodle	1944.00	0.00
512	29031	1881	29	B29 Part L2-6	Powerhouse	Powerhouse	4176.00	0.00
508	29071	1890	29	B29 L7-8 Part L6 & 9	Penelopes	Vacant	6105.00	735.00
746	32321	1882	32	B32 L30-32	Slogars	Slogars	2938.00	0.00
721	33171	1889	33	B33 N70' L17—9 N/2 L20 L13-14	C.B. Club	C.B. Club	596.00	0.00
729	36261	1975	36	B36 L17-27	Rozman's	C.B. Academy	5835.44	690.00

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APPENDIX G Restaurant Uses and Their Approximate Square Footage as They Existed on May 14, 1994

29	56161	1984	56	B56 L11-16 Market & Condos	The Market Place	Gas Cafe	2324.00	328.00
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(Code §16-16-90; Ord. 4 §1, 2009)

## APPENDIX H Town of Crested Butte Vested Property Rights

**Option for Application Form #1;  
and/or  
Waiver of Vested Property Rights Form #2**

(Instructions: Applicant shall indicate choice of Option #1 or Option #2)

Type of Review

Property Owner's Name

Address of Property

Applicant's Name

**OPTION #1  
Application for Vested Property Rights**

I, \_\_\_\_\_, intend to pursue the creation of a vested property right as provided for in Chapter 16, Article 20 of the Crested Butte Municipal Code. In order to accomplish that, I am requesting that my application be referred to the Board of Zoning and Review, Town Planning Commission, Town Council or the Building Official, as appropriate, for a public hearing pursuant to Section 16-19-30 of said Municipal Code. I understand that, if my development is approved, the Town shall cause a notice advising the general public of the approval and the creation of a vested property right, to be published in the Town's newspaper of record no later than fourteen (14) days following final approval, and that said notice will cover the following elements of the approval:

(type of use; number of units; building footprint; building square footage; etc.)

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I understand and acknowledge that certain delays in my project's approval time may result in order to meet the hearing and notice requirements of state law for the creation of a vested property right.

PROPERTY OWNER

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

Witness: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

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APPENDIX H Town of Crested Butte Vested Property Rights

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**OPTION #2**  
**Waiver of Vested Property Rights**

I, \_\_\_\_\_, understand that I may pursue the creation of a vested property right under the common law or as provided for in Chapter 16, Article 20 of the Crested Butte Municipal Code, and Section 24-68-103, Colorado Revised Statutes. I choose to voluntarily WAIVE this right, but only upon the creation of subsequent vested property rights resulting from final approval concerning the land use change application submitted herewith. I have been advised by the Town to consult an attorney prior to signing this waiver. Further, I understand that this waiver does not diminish any right which may exist under the Town's land use regulations, except for said Chapter 16, Article 20.

**PROPERTY OWNER**

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

Witness: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

(Code §§16-20-50, 16-20-100)

**APPENDIX I Required Wording on Minor Subdivision Final Plat**

Wording of the following required statements shall be used on the Minor Subdivision Final Plat:

1. Heading.

The heading of the Final Plat shall include the words "Final Plat of the complete name of the subdivision," and the land "Sections, Township, Range, Principal Meridian, Town of Crested Butte, Gunnison County, Colorado" and the area of the subdivision.

2. Dedication. (For subdivisions identified in Section 17-3-20)

Know all people by these presents: That (printed name of owner), being the owner(s) of the land described as follows: (insert legal description of the land being subdivided and include acreage of area to two decimal places) in the Town of Crested Butte, Colorado, under the name and style of (complete name of subdivision in upper case letters), has laid out, platted and subdivided the same as shown on the plat, and by these presents does/do hereby dedicate to the perpetual use of the Town of Crested Butte, State of Colorado, the streets, alleys, roads, easements and other public portions of land labeled as such.

In witness whereof, the said (printed name of owner) has caused his/her/their name(s) to be hereunder subscribed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

By: Owner

3. Notarial.

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

- APPENDIX  
APPENDIX I Required Wording on Minor Subdivision Final Plat

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The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by (printed name of owner). (If by natural person(s), insert name(s); if by person acting in a representative official capacity, then insert the name of said person and his or her capacity; if by officers of a corporation, then insert the name of said officers as the president or other officers of such corporation, naming it).

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

4. Land Surveyor's Certificate

I, (printed name of land surveyor), being a registered land surveyor in the State of Colorado, do hereby certify that this plat and survey of (name of subdivision in capital letters) was made by me and under my supervision and that both are accurate to the best of my knowledge. Steel pins and/or brass cap monuments were set as required at all boundary corners.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature: \_\_\_\_\_

(SEAL)

Colorado registration number: \_\_\_\_\_

5. Title Company Certificate

\_\_\_\_\_, Title Company, does hereby certify that it has examined the title to all lands as shown hereon and title to such lands is in the dedicator free and clear of all liens, taxes, and encumbrances, except as follows:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Agent: \_\_\_\_\_

6. Board of Zoning and Architectural Review Approval (if applicable).

The Board of Zoning and Architectural Review of the Town of Crested Butte, Colorado, does hereby authorize and approve the Final Plat for the above subdivision at a meeting of the Board of Zoning and Architectural Review held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. This written plat of (name of subdivision in upper case letters) is approved for filing.

TOWN OF CRESTED BUTTE

By: Chairman

ATTEST: Town Clerk

(SEAL)

7. Gunnison County Clerk and Recorder's Acceptance (to be placed in the lower right-hand of the cover sheet).

This plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Reception number: \_\_\_\_\_ Time: \_\_\_\_\_

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APPENDIX I Required Wording on Minor Subdivision Final Plat

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Date: \_\_\_\_\_ County Clerk

8. Recordation of Protective Covenants (if applicable).

Protective Covenants for the subdivision are recorded in:

Reception No. \_\_\_\_\_

(Code §§16-7-20, 17-4-30; Ord. 4 §1, 2009)

## **APPENDIX J Subdivision Improvements Agreement Form**

This Subdivision Improvements Agreement ("Agreement") is made and entered into by and between the TOWN OF CRESTED BUTTE, a Colorado municipal corporation ("Town") and \_\_\_\_\_ ("Subdivider"). This Agreement shall be effective following execution by the Subdivider and immediately upon approval by the Town Council of the Town of Crested Butte as evidenced by the signature of the Town's Mayor or Mayor Pro Tem on the date indicated below.

1. *Recitals.* The parties agree that each of the following statements is true and is a material part of this Agreement:

1.1 The Subdivider represents that it is the sole owner of the real property described in the attached Exhibit A ("Property Description"), and has obtained approval from the Town to subdivide said property for a new subdivision to be known as \_\_\_\_\_ Subdivision, Phase \_\_\_\_, Filing No. \_\_\_\_, ("Subdivision").

1.2 Pursuant to the Town's Subdivision Regulations (Chapter 17 of the Crested Butte Municipal Code), the Final Plat of the Subdivision cannot be recorded until the Subdivider has entered into an agreement with the Town concerning the construction of the public improvements within the Subdivision. A copy of the Final Plat and the accompanying documents and plans shall be available for inspection at the Town Offices at 507 Maroon Avenue in Crested Butte, Colorado, during regular business hours. The Final Plat, as approved by the Town, is incorporated into this Agreement for all purposes, including illustration and interpretation of the terms and conditions of this Agreement.

1.3 The Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements within the Subdivision and thereby limiting the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive.

1.4 The purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself, and is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision.

1.5 As consideration for the approval by the Town of the Final Plat for the Subdivision, the Subdivider agrees to construct certain hereinafter-described public improvements within the Subdivision in accordance with, and subject to, the terms, conditions and requirements of this Agreement. The parties hereby acknowledge the sufficiency and adequacy of said consideration.

2. *Construction of Public Improvements.* The Subdivider covenants and agrees with the Town to plan, design, engineer and construct, at its sole cost, those public improvements (including required utility services) for the Subdivision as depicted on the attached Exhibit B ("Public Improvements List" and as described on the attached Exhibit C ("Public Improvements Description"). The Improvements shall be constructed strictly in accordance with

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APPENDIX J Subdivision Improvements Agreement Form

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the Town-approved plans and specifications for the Subdivision. In addition, the Subdivider shall provide to the Town, at no cost to the Town:

- (a) Adequate assurance by a registered engineer that all construction done pursuant to this Agreement has been completed in accordance with the approved plans and specifications for the Subdivision; and
- (b) "As-built" drawings for all the Improvements before preliminary acceptance by the Town as set forth in Subsection 17-5-80(g)(5) of the Subdivision Regulations contained in Chapter 17 of the Crested Butte Municipal Code.

Further, the Subdivider shall hire one (1) or more inspectors acceptable to the Town Engineer to provide inspection services to the reasonable satisfaction of the Town Engineer with respect to the construction of the Improvements to be constructed pursuant to this Agreement.

*3. Timetable for Construction of Public Improvements.*

3.1 Time of Essence. The Town and the Subdivider mutually agree that time is of the essence and that timely performance by the Subdivider shall be an essential part of this Agreement.

3.2 Construction Schedule. The Subdivider shall construct the Improvements in strict accordance with the schedule described on the attached Exhibit D ("Public Improvements Completion Schedule). Any failure by the Subdivider to commence or complete the construction of the Improvements in strict compliance with the schedule established in Exhibit D shall constitute a default by the Subdivider and shall entitle the Town to proceed in accordance with the provisions of Paragraph 14 of this Agreement. The Subdivider shall not cease construction activities for any period of more than thirty (30) consecutive days, except for delays occasioned by winter weather conditions, without the Town's prior written approval.

3.3 Subdivider's Obligation Not Contingent. The Subdivider's obligation to complete the Improvements shall arise upon the recording of the Final Plat of the Subdivision, shall be independent of any obligations of the Town contained herein and shall not be conditioned on the commencement of construction or sale of any lots or improvements within the Subdivision.

3.4 Force Majeure. If the Subdivider is delayed in commencing or completing construction of the Improvements, as required herein, by reasons of strikes or other labor troubles, unavailability of materials, national emergency, any rule, order or regulation of any governmental authority, or other similar cause not within the Subdivider's control, and if prompt written notice of said cause of delay is given to Town by the Subdivider, then the time for the Subdivider to commence or complete construction, as the case may be, shall be deemed extended by the period of time during which said cause of delay shall continue.

4. *Construction Standards.* The Improvements shall be constructed in accordance with all applicable laws, ordinances, codes, regulations and standards applicable in the Town.

*5. Quality of Construction; Warranty.*

5.1 Quality of Construction. The construction of the Improvements shall be done in a good and workmanlike manner.

5.2 Warranty. The Subdivider warrants that the Improvements, each and every one of them, shall remain free from defects for a period of two (2) years from the date that the Town preliminarily accepts the Improvements as provided in Paragraph 10 of this Agreement. During such two-year period, any defect determined to exist with respect to such Improvements shall be repaired or the Improvement replaced, at the Town's option, at the sole cost of the Subdivider. The Town shall have no obligation with respect to the Improvements, except for snowplowing, until they have been finally accepted by the Town in accordance with Subparagraph 10. The Subdivider shall maintain, in a reasonable, suitable and proper condition for

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APPENDIX J Subdivision Improvements Agreement Form

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travel, ingress and egress, all streets located within the subdivision until such time as the streets are finally accepted for maintenance by the Town.

**5.3 Notice of Default; Cure Period.** Except as provided in Subparagraph 5.4 with respect to emergency repairs, the Town shall provide notice to the Subdivider if inspection reveals that any Improvement is defective for any reason. The Subdivider shall have thirty (30) days from the giving of such notice to cure the defect. Such thirty-day time limit may be extended by the Town if the Town determines that such defect cannot reasonably be cured within such thirty-day period. In the event the Subdivider fails to cure the defect within the thirty-day period or any extension thereof granted by the Town, the Town may declare a default under this Agreement without further notice. No notice shall be required with respect to emergency repairs except as provided in Subparagraph 5.4.

**5.4 Emergency Repairs.** If at any time it appears that the Improvements may be significantly damaged or destroyed as a result of a bona fide emergency, the Town shall have the right, but not the duty, to enter upon the Property and perform such repairs and take such other action as may be reasonably required in the Town's judgment to protect and preserve the Improvements. The Town shall have no duty to inspect the Property to identify emergency situations which may arise. Prior to taking any action pursuant to this Subparagraph 5.4, the Town shall make a reasonable effort to locate the Subdivider and advise the Subdivider of the existence and nature of the emergency. The reasonableness of the Town's efforts to locate the Subdivider shall be determined based upon the nature of the emergency and the Town's efforts to locate and notify the Subdivider. If, after reasonable efforts, the Subdivider cannot be located, the Town shall have the right to enter the Property and perform any needed emergency repairs as herein provided; and, upon demand, the Subdivider shall reimburse the Town for the costs of such emergency repairs. Failure of the Subdivider to pay to the Town the costs of such emergency repairs within fifteen (15) days after demand shall constitute a default as provided in Subparagraph 12.8 of this Agreement.

**6. Compliance With Law and Building Permit.**

**6.1\Compliance With Law.** When fulfilling its obligations under this Agreement, the Subdivider shall comply with all relevant laws, ordinances and regulations in effect at the time of Final Plat approval. The Subdivider shall also be subject to laws, ordinances and regulations that become effective after Final Plat approval to the extent permitted by applicable Colorado law.

**6.2 Compliance With Building Permit.** When fulfilling its obligations under this Agreement, the Subdivider shall strictly comply with the terms, conditions, limitations and requirements of the Building Permit which has been issued for the construction of the Improvements by the Town.

**7. Transfer of Title to Improvements.**

**7.1 Dedication on Plat.** The Subdivider shall dedicate such of the Improvements as may be requested by the Town, by appropriate language on the face of the Final Plat of the Subdivision. Such dedication shall be made free and clear of all liens, encumbrances and restrictions, except for the permitted exceptions shown on the attached Exhibit E ("Permitted Title Exceptions"), which are the same as or fewer than those identified in the statement of ownership and encumbrances provided pursuant to Section 17-5-50(c) of the Crested Butte Municipal Code, and which, in the sole discretion of the Town, do not defeat, limit or impede the Town's ability to use the dedicated property as intended.

**7.2 Conveyance of Improvements Other Than by Dedication on Plat.** As to any of the Improvements which have not previously been dedicated on the Final Plat of the Subdivision, such Improvements shall be conveyed to the Town, or other appropriate entity, by general warranty deed (if real estate) or by bill of sale with full warranty of title (if personal property), free and clear of all liens, encumbrances and restrictions (except for permitted exceptions shown on Exhibit E), upon the determination of the Town Engineer that such Improvements have been satisfactorily completed and that acceptance of such Improvements by the

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APPENDIX J Subdivision Improvements Agreement Form

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Town is proper in accordance with the provisions of Paragraph 10 below. Conveyance of such Improvements shall be made by an instrument acceptable as to form and substance by the Town Attorney.

*8. Performance Guarantee.* The estimated cost of constructing the Improvements, as determined by a licensed engineer selected by the Subdivider, with the Town's approval is \$ \_\_\_\_\_ (see Exhibit C). Accordingly, the Subdivider has posted the following with the Town's approval as a guarantee of the performance of its obligations hereunder, including its obligation with respect to the two-year warranty period provided for in Subparagraph 5.2 above.

8.1 A cash bond in the amount of \$ \_\_\_\_\_.

8.2 An irrevocable Letter of Credit issued by a qualified Colorado lending institution acceptable to the Town in the amount of \$ \_\_\_\_\_; such letter of credit shall be substantially in the form provided on the attached Exhibit F ("Letter of Credit Form").

8.3 Other: Agreement to Provide Alternative Security for Subdivision Improvements, a copy of which is attached as Exhibit G ("Agreement for Alternative Security").

Such Performance Guarantee shall remain in effect and shall be renewed by the Subdivider as necessary until released by the Town in accordance with the provisions of Paragraph 9 of this Agreement. The Town shall use the Performance Guarantee, or any funds realized from the Performance Guarantee, for the purposes of completing the Improvements, correcting defects in or associated therewith, including actual legal and engineering expenses reasonably incurred by the Town.

*9. Release of Performance Guarantee.*

9.1 When Released. The Subdivider's Performance Guarantee described in Paragraph 8 above shall be released and returned to the Subdivider, without interest thereon, only at such time as the Town determines, in its sole discretion, that all of the Improvements have been properly constructed or installed and preliminarily accepts them in accordance with Subsection 17-5-70(g) of the Crested Butte Municipal Code; and the two-year warranty period provided for in Subparagraph 5.2 has expired and the Improvements are finally accepted. The Town may, in its sole discretion, and upon the request of the Subdivider made in accordance with Subparagraph 9.2, and subject to the requirements of said Subparagraph, partially release the Performance Guarantee so long as the amount of the Performance Guarantee at all times equals or exceeds one hundred twenty-five percent (125%) of the estimated cost to complete the remaining Improvements. There shall be no reduction in the amount of the Performance Guarantee if the Subdivider is in default under this Agreement.

9.2 Request for Partial Release of Performance Guarantee. The Subdivider may make periodic requests for the partial release of the Performance Guarantee in accordance with the provisions of this Subparagraph 9.2. All such requests shall be in writing to the Town Council, shall be for a reduction of at least twenty percent (20%) of the total original Performance Guarantee or any multiple thereof, and shall be accompanied by an invoice for the portion of the work reflected in the request. No more than one (1) request for a partial release of the Performance Guarantee may be submitted each month. The last twenty percent (20%) of the Performance Guarantee may not be released until all of the Improvements have been preliminarily accepted, and the two-year warranty period has run and the Improvements are finally accepted by the Town.

*10. Acceptance of Improvements.* Final acceptance of the Improvements by the Town shall occur as set forth in Subsection 17-5-70(h) of the Crested Butte Municipal Code, and evidenced by written notification from the Town Manager. The Town shall not be required to accept any of the Improvements until the Town Engineer determines that:

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- A. The Improvements have been satisfactorily completed in accordance with the approved plans and specifications for the Improvements;
- B. The Subdivider has delivered to the Town the as-built drawings as required by Paragraph 2; and
- C. As to any of the Improvements not dedicated on the face of the Plat, the Subdivider has delivered to the Town instruments conveying such Improvements to the Town or other appropriate entity in accordance with Paragraph 7, together with a policy of title insurance demonstrating to the satisfaction of the Town Attorney that the Town or other entity is or will be the owner of such Improvements free and clear of all liens, encumbrances or other restrictions (except for those permitted title exceptions as shown on Exhibit E).

Preliminary acceptance of the Improvements does not constitute a waiver by the Town of the right to draw on the Performance Guarantee to remedy any defect in or failure of the Improvements that is detected or which occurs after acceptance of the Improvements, nor shall such acceptance operate to release Subdivider from its warranty as herein provided.

11. *Payment in Lieu of Dedications.* The Developer agrees to make any and all payments in lieu of dedications as set forth in Subsection 17-5-90(i) of the Crested Butte Municipal Code prior to the Town's execution of its approval on the Final Plat. The amount of such payment shall be as calculated on the attached Exhibit H ("Payment in Lieu of Dedication").

12. *Default.* The following conditions, occurrences or actions shall constitute a default by the Subdivider under this Agreement:

- 12.1 Subdivider's failure to commence construction of the Improvements within the time specified in Exhibit D;
- 12.2 The Subdivider's failure to complete construction of the Improvements within the time specified in Exhibit D;
- 12.3 The Subdivider's failure to construct improvements in accordance with the approved plans and specifications for the Improvements and this Agreement;
- 12.4 The Subdivider's failure to cure defective construction of any Improvement within the applicable cure period as provided in Subparagraph 5.3;
- 12.5 The Subdivider's failure to perform work within the Subdivision for a period of more than thirty (30) consecutive days, except for delays occasioned by winter weather conditions, without the prior written approval of the Town;
- 12.6 The Subdivider's insolvency, the appointment of a receiver for the Subdivider or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;
- 12.7 Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of all or part of the Property in lieu of foreclosure prior to final acceptance of the Improvements by the Town as provided in Paragraph 10;
- 12.8 The Subdivider's failure to pay to Town upon demand the cost of emergency repairs performed in accordance with Subparagraph 5.4 of this Agreement;
- 12.9 The Subdivider's sale of any real property or transfer of any interest in real property in all or part of the Property prior to preliminary acceptance of the Improvements as provided in Paragraph 10 of this Agreement, in violation of Section 17-1-30 of the Crested Butte Municipal Code; or
- 12.10 The Subdivider's violation of any provision of this Agreement, the Town's Subdivision Regulations or Zoning and Land Use Ordinance, or any other ordinances of the Town;

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The Town may not declare a default until fifteen (15) days' advance written notice has been given to the Subdivider; provided, however, that such notice shall not be required with respect to any defective construction for which thirty (30) days' notice of right to cure has been given in accordance with Subparagraph 5.3 hereof.

**13. Measure of Damages.** The measure of damages for breach of this Agreement by the Subdivider shall be the reasonable costs of obtaining the appropriate performance guarantee funds and completing the Improvements, including design, engineering, legal and inspection costs. For Improvements upon which construction has not begun, the estimated cost of the Improvements as supplied by the Subdivider pursuant to Paragraph 8 and shown on Exhibit C shall be *prima facie* evidence of the cost of completion; however, neither that amount nor the amount of the Performance Guarantee establishes the maximum amount of the Subdivider's liability. The Town shall be entitled to, but not obligated to, complete all unfinished Improvements after the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced.

**14. Town's Rights Upon Default.** In the event of default, the Town shall have the following rights:

14.1 The Town Manager may stop work on the Improvements until a schedule and agreement on compliance for construction has been reached.

14.2 The Town may, but shall not be required to, have the Improvements constructed by such means and in such manner as the Town shall determine, without the necessity of public bidding.

14.3 If the Town elects to have the Improvements constructed pursuant to Subsection 17-5-70(e) of the Crested Butte Municipal Code and this Paragraph 14, it shall have the right to use the Subdivider's Performance Guarantee to pay for the construction of such Improvements. If the amount of the Performance Guarantee exceeds the costs of obtaining the performance guarantee funds and constructing the Improvements as set forth in Paragraph 13 hereof, the Town shall deliver any excess funds to the Subdivider. If the Performance Guarantee is insufficient to fully pay such costs, the Subdivider shall, upon demand, pay such deficiency to the Town, together with interest thereon as provided in Paragraph 15.

14.4 The Town may exercise such rights it may have under Colorado law, including, without limitation, the right to bring suit against the Subdivider for injunctive relief or for specific performance of this Agreement, or to recover damages for the breach by the Subdivider of this Agreement.

14.5 The Subdivider hereby grants to the Town, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining and repairing any Improvements pursuant to the provisions of this Paragraph 14.

14.6 In addition to any remedies provided for herein or by law or equity, while the Subdivider is in default under this Agreement, the Town may refuse to issue building permits for the Subdivision and the Subdivider shall have no right to sell, transfer or otherwise convey lots or homes within the Subdivision without the express written approval of the Town.

14.7 The remedies provided for herein are cumulative in nature.

**15. Interest.** Any sum which is required to be paid by the Subdivider to the Town under this Agreement and which is not timely paid shall accrue interest at eighteen percent (18%) per annum, commencing as of the date such sum was due.

**16. Maintenance of Open Lands.** As required by Section 17-9-100 of the Crested Butte Municipal Code:

16.1 The subdivider shall cause a stewardship fund in the amount of \$ \_\_\_\_\_ to be created within six (6) months after the execution of this Agreement, said fund to be segregated from other funds and used for resolving boundary disputes and to otherwise protect the open lands as required by the Subdivision Regulations.

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16.2 The Subdivider shall be responsible for and hereby agrees that open lands not dedicated to the Town shall be maintained in their natural state by providing for at least the following:

- a. Maintenance of natural and artificial water courses as free-flowing and devoid of debris;
- b. Adequate undeveloped space for stream channels to change as they naturally do over time; and
- c. The Subdivider and its successors and assigns, and the grantee of any conservation easement or other appropriate instrument, shall defend the preservation and use of the land as open land in perpetuity.

17. *Public Utilities.* The Subdivider shall pay all installation charges for lighting, electricity, natural gas and cable television required for the Subdivision. All utility lines shall be placed underground in accordance with applicable Town requirements.

18. *Relocation of Utility Lines and Easements; Oversizing.* The Subdivider shall bear all costs associated with relocating any water, sewer, electrical, gas or cable television lines and providing for respective easements for construction of the same within and outside of the Subdivision. If oversizing is required, the cost of such oversizing shall be paid as set forth in the Agreement attached as Exhibit I ("Agreement for Payment of Oversized Utility Fees").

19. *Subdivision Monumentation.* In accordance with applicable Colorado law, and with Section 17-6-60 of the Crested Butte Municipal Code, the Subdivider shall establish all subdivision lot corners and have the monumentation approved by the Town Building Official prior to issuance of any certificate of occupancy within the Subdivision.

20. *Debris.* The Subdivider shall take all steps necessary to limit and prevent the accumulation of and to remove accumulated mud, sediment, dirt, trash and other debris that is "tracked," blown or otherwise carried onto public property or off-site onto private property during development. Such obligation shall continue until all Improvements within the subdivision are completed. If the Subdivider fails to remedy any conditions caused or generated by the development of the Subdivision as contemplated by this Paragraph within twenty-four (24) hours of oral or written notice by the Town, the Subdivider agrees to pay upon demand to the Town any costs reasonably incurred by the Town in remedying such conditions. Nothing herein shall obligate the Town to remedy any such conditions or limit the Town in its selection of the method or manner of remedy.

21. *Payment of Fees and Charges.* The Subdivider agrees to comply with all the ordinances, rules and regulations of the Town and shall pay all fees and other charges in a timely manner as required by the Town, including but not limited to building permit fees, inspection fees and tap fees imposed by Town ordinance, resolution or motion, or by the terms and conditions of this Agreement.

22. *Landscape Improvements.* The Subdivider shall install, at its own expense and at no cost to the Town, all landscaping as depicted on the approved landscaping plan. All landscaping that dies within two (2) years after preliminary acceptance of the Improvements by the Town shall be replaced by the Subdivider at its sole cost, and shall be required to live for at least two (2) years from the time it is replanted. The Subdivider's obligations under this Paragraph shall be guaranteed as part of the Improvements, as set forth in Paragraphs 8, 9 and 10 of this Agreement.

23. *Erosion Control.* The Subdivider shall comply with the applicable provisions of Section 17-6-80 of the Crested Butte Municipal Code during all stages of Improvement construction.

24. *State Highway Access Permit.* The Subdivider agrees to obtain approval of any access permit required for Highway 135 or any county road prior to the commencement of construction of the Improvements.

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APPENDIX J Subdivision Improvements Agreement Form

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25. *Parking.* The Subdivider agrees to stripe and sign all parking spaces as may be required in accordance with the requirements of the final plan prior to the issuance of a certificate of occupancy for any structure served by the subject parking area.

26. *Contracting Licensing.* Before proceeding with any of the work contemplated herein, the Subdivider shall ensure that all contractors and/or subcontractors employed by the Subdivider shall have paid the appropriate business occupational license tax and other taxes or fees to the Town before commencing work on any of the Improvements.

27. *No Third-Party Beneficiaries.* It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Subdivider, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on this Agreement. It is the express intention of the Town and Subdivider that any person other than the Town or Subdivider receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

28. *Form of Payment of all Fees and Charges.* Unless otherwise agreed to by the Town Manager on a case-by-case basis, the Subdivider's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check or wire transferred funds delivered to the Town Manager or his or her designee, or to accounts identified by said person.

29. *Review of Reference Documents.* The Subdivider hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Town Code, Zoning and Land Use Ordinance and Subdivision Regulations, were prior to the execution of this Agreement, and are presently available for review and inspection at the Town Offices located at 308 Third Street, Crested Butte, Colorado from 8:30 a.m. through 5:00 p.m., Monday through Friday.

30. *Other Provisions.*

30.1. *Attorney's Fees.* It is agreed that, if any action is brought in a court of law by either party to this Agreement concerning the arbitration, enforcement, interpretation or construction of this Agreement, or any documents provided for herein, the substantially prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorneys' fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

30.2. *Indemnification.* The Subdivider agrees to indemnify and hold the Town, its officers, employees, agents and insurers harmless from and against all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the construction of the Improvements or other work performed upon the Subdivision, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, intentional act or other fault of the Subdivider any subcontractor of the Subdivider, or any officer, employee, representative or agent of the Subdivider or of any subcontractor of the Subdivider, or which arise out of any workers' compensation claim of any employee of the Subdivider or of any employee of any subcontractor of the Subdivider. The Subdivider agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims or demands at the sole expense of the Subdivider. The Subdivider also agrees to bear all other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims or demands alleged are determined to be groundless, false or fraudulent.

30.3. *No Waiver.* No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and Subdivider; nor shall the waiver of

- APPENDIX  
APPENDIX J Subdivision Improvements Agreement Form

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any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvements.

30.4. **Vested Property Rights.** This Agreement shall not alter, enlarge, extend or modify any vested right obtained by the Subdivider in connection with the Subdivision. The Subdivider hereby waives its rights to any claims against the Town under Colorado vested property rights statutory or common laws if the Town suspends work or withdraws its approval because of false or inaccurate information provided by the Subdivider.

30.5. **Recordation.** This Agreement and the Subdivision Final Plat shall be recorded by the Town in the office of the Clerk and Recorder of Gunnison County, Colorado, and the Subdivider shall pay to the Town the costs thereof upon demand. It is the Subdivider's obligation to prepare and submit to the Town the Final Plat in a form and upon material acceptable for recordation by the Clerk and Recorder.

30.6. **Immunity.** Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

30.7. **Personal Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement or the Performance Guarantee, shall be deemed to be proper only if such action is commenced in the District Court of Gunnison County, Colorado. The Subdivider expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

31. ***Code Changes.*** References in this Agreement to any provision of the Town's Municipal Code or to any Town or other governmental standard are intended to refer to any subsequent amendments and/or revisions to such Code or standard. Such amendments or revisions shall be binding upon Subdivider.

32. ***Nonassignability.*** This Agreement may not be assigned by the Subdivider without the prior written consent of the Town.

33. ***Notices.*** Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered, mailed by certified mail, return receipt requested, or sent by facsimile, addressed as follows:

If to the Town:

Town of Crested Butte  
Attn: Town Manager  
P. O. Box 39  
Crested Butte, CO 81224  
(970) 349-5338  
Fax No. (970)349-6626

With a Copy (Which Shall Not Constitute Notice to the Town) to:

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If to the Subdivider:

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- APPENDIX  
APPENDIX J Subdivision Improvements Agreement Form

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Notices mailed in accordance with the above provisions shall be deemed to have been given on the third business day after mailing. Notices personally delivered shall be deemed to have been given upon delivery. Notices sent by facsimile shall be deemed to have been given at the time the transmission is received. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

34. *Entire Agreement.* This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

35. *Severability.* It is understood and agreed by the parties hereto that, if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, state or federal, the validity of the remaining portions or provisions hereof shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

36. *Modification.* This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

37. *Counterparts.* This Agreement may be executed simultaneously in two (2) or more copies, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.

38. *Paragraph Headings.* Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

39. *Binding Effect.* This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and legal representatives.

40. *Governing Law.* This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

41. *Incorporation of Exhibits.* The attached Exhibits A through I, inclusive, are incorporated herein by reference. The Exhibits are:

- Exhibit A: Property Description
- Exhibit B: Public Improvements List
- Exhibit C: Public Improvements Description
- Exhibit D: Public Improvements Completion Schedule
- Exhibit E: Permitted Title Exceptions
- Exhibit F: Letter of Credit Form
- Exhibit G: Agreement for Alternative Security
- Exhibit H: Payment in Lieu of Dedication
- Exhibit I: Agreement for Payment of Oversized Utility Fees

Dated to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipal corporation  
By: Mayor

ATTEST: Town Clerk

DEVELOPER:

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

- APPENDIX  
APPENDIX J Subdivision Improvements Agreement Form

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STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_, by \_\_\_\_\_, Mayor, and \_\_\_\_\_, Town Clerk, of the  
Town of Crested Butte, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

(Code §§17-4-50, 17-5-50, 17-5-70, 17-5-80; Ord. 4 §1, 2009)

- APPENDIX  
APPENDIX K Subdivision Application Form

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**APPENDIX K Subdivision Application Form**

Subdivider's Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number (\_\_\_\_\_) \_\_\_\_\_

Property Owner Name \_\_\_\_\_

Address \_\_\_\_\_

Legal Description of Property \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Legal Description of Proposed Subdivision \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This is an application for \_\_\_\_\_ Sketch Plan \_\_\_\_\_ Preliminary Plan \_\_\_\_\_ Final Plan

Signature of subdivider \_\_\_\_\_ Date: \_\_\_\_\_

Signature of owner \_\_\_\_\_ Date: \_\_\_\_\_

Signature of owner \_\_\_\_\_ Date: \_\_\_\_\_

(Code §17-5-30; Ord. 4 §1, 2009)

**APPENDIX L Utility Location Plan**

- (a) The utility location plan shall include statements of approval signed by an appropriate representative of each utility provider for the electric, gas, telecommunications and telephone companies, and such other utilities as are appropriate.
- (b) The statements shall be worded substantially as follows:

- APPENDIX  
APPENDIX L Utility Location Plan

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I hereby certify that:

1. I have been authorized by my company or district to review and approve the attached utility location for: \_\_\_\_\_, Applicant.
2. I have reviewed said utility location plan.
3. The facilities and improvements shown on the utility location plan are acceptable to and serviceable by my company or district.
4. I do not anticipate any conflicts with other utilities based on the location of utilities as proposed on the utility plan.
5. Adequate service capability exists for the pending development utilizing the utility location plan, which is qualified as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. The utility location plan conforms with the recommendations of the Town's Land Use Plan, the requirements of other applicable ordinances, and any hazard and resource reports issued as part of the subject subdivision permitting process.

COMPANY/DISTRICT:

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Date: \_\_\_\_\_

(Code §17-5-50)

## **APPENDIX M Required Wording on Major Subdivision Final Plat**

Wording of the following required statements shall be used on the Major Subdivision Final Plat:

1. Heading. The heading of the Final Plat shall include the words "Final Plat of the complete name of the subdivision," the land "Sections, Township, Range, Principal Meridian, Town of Crested Butte, Gunnison County, Colorado" and the area of the subdivision.

2. Dedication.

KNOW ALL PEOPLE BY THESE PRESENTS: That (printed name of owner), being the owner(s) of the land described as follows:

(insert legal description of the land being subdivided and include acreage of area to two decimal places)

in the Town of Crested Butte, Colorado, under the name and style of (complete name of subdivision in upper case letters) has laid out, platted and subdivided the same as shown on the plat, and by these presents does/do hereby dedicate to the perpetual use of the Town of Crested Butte, State of Colorado, the streets, alleys, roads, easements and other public portions of land labeled as such.

In witness whereof, the said (printed name of owner) has caused his/her/their name(s) to be hereunder subscribed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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

- APPENDIX  
APPENDIX M Required Wording on Major Subdivision Final Plat

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3. Notarial.

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by (printed name of owner). (If by natural person, insert name; if by person acting in a representative official capacity, then insert the name of said person and his or her capacity; if by officers of a corporation, then insert the name of said officers as the president or other officers of such corporation, naming it).

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_ Notary Public

(SEAL)

4. Land Surveyor's Certificate.

I, (printed name of land surveyor), being a registered land surveyor in the State of Colorado, do hereby certify that this plat and survey of (name of subdivision in capital letters) was made by me and under my supervision and that both are accurate to the best of my knowledge. Steel pins and/or brass cap monuments were set as required at all boundary corners.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature:

(SEAL)

Colorado registration  
number: \_\_\_\_\_

5. Title Company Certificate.

\_\_\_\_\_, Title Company, does hereby certify that it has examined the title to all lands as shown hereon and title to such lands is in the dedicator free and clear of all liens, taxes, and encumbrances, except as follows:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Agent

6. Planning Commission Approval.

The Planning Commission of the Town of Crested Butte, Colorado, does hereby authorize and approve the final plan and Final Plat for the above subdivision at a meeting of the Planning Commission held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CRESTED BUTTE PLANNING COMMISSION

By: Chairman

7. Approval by Town Council.

This written plat of (names of subdivision in upper case letters) is approved for filing this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The dedication of the public ways and public lands including parks and municipal lands shown hereon are accepted by the Town of Crested Butte, Colorado, subject to the condition that the Town shall undertake the maintenance of said public ways and public lands only after construction of the public ways and public lands has been satisfactorily completed to the Town's specifications by the

- APPENDIX  
APPENDIX M Required Wording on Major Subdivision Final Plat

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subdivider, and a resolution of the Crested Butte Council accepting the same has been adopted and placed of record.

TOWN OF CRESTED BUTTE

By: Mayor

ATTEST: Town Clerk

(SEAL)

Approved: Planning Director

8. Gunnison County Clerk and Recorder's Acceptance (to be placed in the lower right-hand of the cover sheet).

This plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Reception number: \_\_\_\_\_ Time: \_\_\_\_\_

Date: \_\_\_\_\_ Gunnison County Clerk

9. Recordation of Protective Covenants (if applicable).

Protective Covenants for the subdivision are recorded in:

Reception No. \_\_\_\_\_

(Code §17-5-70; Ord. 4 §1, 2009)

## **APPENDIX N Affordable Housing Guidelines**

### **PART I. THE KAPUSHION ANNEXATION, OWNER-OCCUPIED AFFORDABLE HOUSING**

#### **Section 1. Owner-Occupied Affordable Housing Definition.**

Owner-Occupied Affordable Housing in Crested Butte is housing limited to a narrow segment of the market by deed restriction. The intended beneficiaries for such housing are people who cannot afford fair market sale prices for housing and who contribute toward making the Town of Crested Butte a community by providing personal time and energy for community projects, voluntary services or governance.

#### **Section 2. Rationale.**

The reason to create owner-occupied, deed-restricted, affordable housing is to serve one (1) of many segments of the community that need affordable housing. The target group for this housing is people who desire to purchase a lot or units for long-term housing in Crested Butte and who contribute to the community. These guidelines are not designed to provide housing as a stepping stone to larger or more expensive homes.

The 1992 Crested Butte/Gunnison Area Housing Needs Assessment demonstrates that affordable housing is needed and that most respondents prefer to own their home when they can afford to do so.

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### **Section 3. Qualifications for Ownership.**

To qualify for and be eligible to purchase an affordable housing lot or unit, a person must not own any residence or land or building approved by permit for residential use, and meet the following criteria:

**Table I-1**  
**Eligibility Qualifications**

<b>Category</b>	<b>Residency in Gunnison County North of Round Mountain</b>	<b>Minimum Earned Income in Gunnison County</b>	<b>Live on Site</b>
Category 1	5 of past 7 yrs	80%	Yes
Category 2	5 of past 7 yrs	80%	Yes
Category 3	3 of past 4 yrs	80%	Yes

- A. *Residency at Birth.* To be eligible for Category 1, a person must also have had Crested Butte residency upon birth and the birth must have occurred at least eighteen (18) years prior to the submission of a contract for purchase.
- B. *Process.* People eligible for Category 1 will be given the first chance to demonstrate to the Town that they qualify to purchase an affordable lot or unit. If not enough applicants meet the eligibility qualifications of Category 1, people eligible in Category 2 will be given the next chance to qualify for an affordable lot or unit. People in Categories 1 and 2 may qualify at this time. If not enough applicants meet the eligibility qualifications of Category 2, people eligible in Category 3 will be given the next chance to qualify for an affordable lot or unit. People in Categories 1, 2 and 3 may qualify at this time.
- C. *Income.* Eighty percent (80%) of all income must be earned income in Gunnison County. *Earned income* shall be defined by the Internal Revenue Service (IRC §32(c)(2)) Earned Income (3/20/1995).
- D. *Town Makes Determination.* The Town of Crested Butte will decide which applicants meet the criteria for eligibility.
- E. *Sale of Real Estate.* Applicants who own real estate must list and sell the real estate to an unrelated person or an entity in which the applicant has no interest for no less than fair market value prior to closing on the owner-occupied affordable housing unit or lot. However, if an applicant owns a fifty percent (50%) or less undivided interest in real estate, he or she may convey that interest to the joint owners with or without receiving consideration. If the real estate is not sold by the time of closing on the affordable housing unit or lot, the applicant becomes ineligible to purchase the affordable housing unit or lot and shall not close on it. The seller may delay closing until the applicant sells the other real estate or the seller may void the contract to sell and may enter into a new contract to sell to a different qualified person. Not more than one (1) affordable unit or lot may be owned by a person.
- F. *Maximum Income Limits.* There shall be no maximum income limits for applicants.
- G. *Asset Limits.* There shall be no asset limits for applicants.
- H. *Residency Location.* Residency is restricted to residency in the East River Valley and its tributaries, north of Round Mountain.
- I. *Co-borrowers.*
  1. Co-borrowers, such as parents helping a dependent, are permitted so long as the person who meets the Qualifications for Ownership is a record owner of the property.
  2. The co-borrower's name may be on the title if a lender requires both the purchaser and the co-borrower's names to be on the title.

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3. The name of a married spouse of the person meeting the eligibility qualifications in Section 3 above may be on the title if the qualifying person is also a record owner.
  4. If title transfers solely to the co-borrower or spouse, the unit must be relinquished unless the co-borrower or spouse meets the Qualifications for Ownership. This requirement may be waived by the Town for good cause shown. Co-borrowers who do not meet the Qualifications for Ownership and who receive title to the property may not occupy or rent the unit or lot prior to selling it.
- J. *Deadline for Building.* Owners who have purchased an affordable housing lot shall obtain a certificate of occupancy for a dwelling unit thereon no longer than twenty-four (24) months after closing the purchase. Any owner who fails to meet this deadline shall forthwith sell his or her parcel.

#### **Section 4. Establishing Qualifications for Ownership.**

In order to determine that a person or household desiring to rent or purchase an affordable housing unit or lot meets all of the Qualifications for Ownership, the Town shall request any combination, or all, of the following documentation as proof of residency and income source:

- A. Federal income tax returns for the previous five (5) years; Form 1040, 1040E or 1040EZ.
- B. Wage and tax statements for the previous five (5) years; Form W2.
- C. Landlord verification (proof of residency by physical address).
- D. Copy of valid Colorado driver's license.
- E. Vehicle registration.
- F. Voter registration.
- G. Other verification deemed necessary by the Town (i.e., wage stubs or employer name, address and phone number).

#### **Section 5. Sales Procedures.**

- A. The following describes how sales prices will be determined when selling affordable housing units.
  1. Undeveloped lots: Lot prices will be determined by the developer of the land. The market is limited to those who qualify by meeting the Qualifications for Ownership described in Section 3 above.
  2. Developed lots, or units: Once a structure has been built on a lot, or prior to a structure being built but after the initial sale by the developer, the resale value will be determined by the market; however, the market is limited to those meeting the Qualifications for Ownership in Section 3 above.
- B. *Procedure for Initial Sales.*
  1. When the developer is ready to sell units or lots, the developer shall place an announcement in the legal publications section of the official newspaper of the Town announcing the following:
    - a. The number or address of the units or lots that are for sale beginning on \_\_\_\_\_ (date).
    - b. People meeting the eligibility qualifications in Category 1 of Section 3 above may make an offer on the units or lots during the fifteen (15) days following publication of the notice.
    - c. The seller may be contacted at the following address.

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2. People meeting Category 1 eligibility in Section 3 above may make an offer on the units or lots during the fifteen (15) days following publication of the notice. A representative of the seller with authority to enter into a contract must be available during said fifteen (15) days.
  3. If contracts to purchase all of the units or lots at the advertised price are not consummated within said fifteen (15) days, the seller may place a second notice in the official newspaper of the Town announcing that the units or lots are for sale to people eligible for Category 2 in Section 3 above.
  4. People meeting Category 1 and Category 2 in Section 3 above may make an offer on said unit or lot during the fifteen (15) days following said publication. A representative of the seller with authority to enter into a contract must be available during said fifteen (15) days.
  5. If contracts to purchase all of the units or lots at the advertised price are not consummated within said fifteen (15) days, the seller may place a third notice in the official newspaper of the Town announcing that the units or lots are for sale to people meeting Category 3 in Section 3 above.
  6. People meeting Category 1, 2 or 3 eligibility, as described in Section 3 above, may make an offer on a unit or lot following publication of the notice. The units or lots shall remain available to any person meeting Category 1, 2 or 3 until they are sold.
- C. *Procedures for Sales After Initial Sales.* Units or lots may be sold only to people meeting Category 1, 2 or 3 in Section 3 above. There shall be no priority of eligibility within the categories.

## **Section 6. Duplex and Accessory Dwellings.**

When a duplex or accessory dwelling is allowed on an affordable lot, the leaseholder or purchaser of the duplex or accessory dwelling unit must meet the Eligibility Qualifications in Section 3 above, including parts A. through H.

## **Section 7. Enforcement.**

The terms, requirements and conditions set forth in these Guidelines shall be enforceable by any appropriate legal and/or equitable action, including but not limited to specific performance, injunction, abatement or eviction; and, if the Town substantially prevails in such an action, it shall be entitled to an award for its reasonable attorneys' fees and costs.

## **Section 8. Deed Restriction.**

Each affordable housing lot or unit must be deed restricted by a recorded instrument in substantially the following form:

### **Model Affordable Housing Guidelines for Major Subdivisions in Crested Butte**

#### **AFFORDABLE HOUSING DEED RESTRICTION**

Subject property: (Legal Description)

Hereafter, the "Property."

The ownership of the Property shall henceforth be limited exclusively to successful applicants and their spouses maintaining exclusive residency in Gunnison County, Colorado, who also meet the qualifications set forth in the Town of Crested Butte, 1995 Affordable Housing Guidelines, as amended ("Guidelines"), as determined by the Town or its designee at the time of purchase and during ownership. The use and occupancy of all or part of the

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property is hereby limited exclusively to people who meet the referenced qualifications, and their spouses and children.

Ownership, use and occupancy of the Property is subject to the following:

1. The Property must be owned, occupied and used only by persons meeting the qualifications set forth in the Guidelines, as they may be amended.
2. In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines and any amendments thereto, including but not limited to those provisions governing the qualifications for ownership, sale, transfer or conveyance of the Property.
3. The beneficiary of any deed of trust or other recorded instrument identifying the Property as security or collateral shall execute the Option to Purchase Affordable Housing prepared by the Town, unless waived by the Town, prior to the recordation of the deed of trust or other recorded instrument. Failure to so execute shall render any such encumbrance fully null and void.

The foregoing restrictions on ownership, use and occupancy constitute a perpetual covenant that runs with the land as a burden thereon for the benefit of the Town of Crested Butte, Colorado (hereafter the "Town"), or its designee, and shall be binding on the owner and the heirs, personal representatives, assigns, lessees, licensees and any transferees of the owner. The foregoing restrictions and covenants shall be administered by the Town and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. If the Town substantially prevails in such an action, it shall also be entitled to an award for its reasonable attorneys' fees and costs.

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the Town's failure to exercise and close its option rights under an Option to Purchase Affordable Housing. The date of the termination of this Deed Restriction shall be the date of recording a Public Trustee's or court-ordered foreclosure deed conveying the Property to the encumbrance beneficiary.

The foregoing Deed Restriction may be modified with the written consent of the owner, the Town or its designee and, if reasonably available in Gunnison County, the original Property developer. No such modification shall be effective until an instrument in writing is executed and recorded in the office of the Clerk and Recorder of Gunnison County. Provisions added to this Deed Restriction and/or the Guidelines after the time of recording the final subdivision plat of the Property, which are more restrictive than those in effect at the time of such recording, shall not apply to parcels within the Property, unless such provisions are designed to satisfy the Town's expressed interest to have only those persons meeting the Eligibility Qualifications (which shall not be amended) own, occupy or use the Property. However, less restrictive added provisions shall apply.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. Developer

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing Deed Restriction was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
by \_\_\_\_\_, developer of the Property.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

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(Supp. No. 20)

Created: 2023-05-12 10:44:43 [EST]

Return to: Town of Crested Butte  
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P.O. Box 39  
Crested Butte, CO 81224

(Code §17-12-10; Ord. 4 §1, 2009)

**APPENDIX N**  
**Affordable Housing Guidelines**

**PART II. RED LADY ESTATES MOBILE HOME PARK SPACES**

**Section 1. Goal.**

The reason to create mobile home affordable housing guidelines is to provide a framework for identifying who qualifies to live in the Town-owned mobile home park and to outline how the mobile home park will be operated. Red Lady Estates Mobile Home Park was created to provide housing for people who desire to own long-term housing in Crested Butte and who may move at a later time to other housing that better suits their needs as their needs change. The target group is residents who contribute to the community, who want to live in Crested Butte and who desire to purchase and live in a mobile home, or to purchase and live in a mobile home as a starter home.

**Section 2. Eligibility Qualifications.**

A. *Categories 1 and 2.* To qualify for and be eligible to lease a mobile home space in the Red Lady Estates Mobile Home Park, a person must comply with the criteria in one (1) of the following categories:

Category 1: Employees of the Town of Crested Butte who do not own improved residential land.

Category 2:

**Table II-1**  
**Eligibility Qualifications**

<b>Minimum Age</b>	<b>Residency in Gunnison County</b>	<b>Own Land</b>	<b>Minimum Earned Income in Gunnison County</b>	<b>Live On Site</b>
18 years old	5 of past 7 yrs	Yes but no improved residential land	80%	Yes

1. **Town employees.**

- a. To be eligible for Category 1, a person must be an employee of the Town of Crested Butte and must not own any improved residential land. An employee of the Town of Crested Butte ("Town employee") is any full-time employee who works for the Town at least thirty (30) hours per week and who meets the eligibility qualifications in Category 1. A maximum of three (3) mobile home spaces will be reserved for people who qualify for Category 1.  
  
b. At any time when there are fewer than three (3) spaces leased by Town employees, any space that becomes available will be offered to Town employees first.

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- c. If no Town employee leases the space, the space will then be offered to qualified people in Category 2 who are on the initial Category 2 qualifying list ("initial lottery waiting list") and, when that list is exhausted, the space will be offered to all qualified people on the new waiting list. Notice to all Town employees will be given by posting such notice on the bulletin board in the entrance to the Town offices, located at 507 Maroon Avenue.
  - d. If a Town employee becomes no longer employed by the Town, the space occupied by the former Town employee will no longer be counted as a Town employee space. In such case, the next mobile home space that becomes available for lease will be made available to all Town employees who do not own improved residential land. If no Town employee leases the space, the space will then be offered to people in Category 2 who are on the lottery waiting list or the new waiting list, as appropriate.
2. **Residency.** To be eligible to be placed on either Category 2 waiting list, a person must have lived in Gunnison County for five (5) of the last seven (7) years prior to his or her date of application for qualification. All people interested in being on either Category 2 waiting list must demonstrate that they meet the eligibility qualifications prior to being placed on the Category 2 waiting list. No new names will be added to the initial lottery waiting list.
  3. **Owners of improved residential land.** Owners of improved residential land do not meet the eligibility qualifications for Red Lady Estates Mobile Home Park.
  4. **Owners of unimproved residential land.** Owners of unimproved residential land are eligible for Categories 1 and 2. When the owner of a mobile home in Red Lady Estates builds a home or purchases any other home, the owner shall notify the Town that he or she is building or purchasing such a home and shall relinquish the mobile home space and sell his or her mobile home to a person in Category 1 or 2, as appropriate, or move it if necessary, prior to receipt of a certificate of occupancy.
  5. **Live on site.** Owners of mobile homes in Red Lady Estates Mobile Home Park shall occupy the unit as a primary residence, except as provided for in Paragraph E below.
- B. **Maximum Income Limits.** None.
- C. **Asset Limit.** None.
- D. **Income.** Eighty percent (80%) of all income must be earned income in Gunnison County. *Earned income* shall be defined by the Internal Revenue Service (IRC §32(c)(2)) Earned Income (3/20/1995).
- E. **Requalifying.** All mobile home owners will be requalified each year by the Town Planner before leases are renewed in May. Mobile home owners must continue to meet the eligibility qualifications as modified below:
1. **Residency.** During any seven-year period, all owners must occupy their mobile homes for a minimum of five (5) years and continue to meet the requirement of living in the County for five (5) of the past seven (7) years.
  2. **Town employee and former Town employee occupancy.** Notwithstanding the above, Town employees and former Town employees who have purchased a mobile home as Town employees do not need to meet the occupancy requirements but must continue to meet the land ownership requirements and the earned income requirements in this Paragraph E. To continue the lease, former Town employees must occupy the mobile home until they meet the residency requirements (must have lived in the County for five (5) of the past seven (7) years).
  3. **Income in Gunnison County.**
    - a. Any person who does not live in the mobile home for a minimum of six (6) months during a year does not need to meet the eighty-percent income eligibility criteria. Any person who does not

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- meet the eighty-percent income criteria for more than two (2) years in any seven-year period will no longer qualify for a mobile home space in Red Lady Estates Mobile Home Park.
- b. After lessees have been requalified by the Town, the Town Council shall approve the list of requalified lessees, and the leases between the Town and the lessees will be signed within thirty (30) days thereafter. The Town Council may approve a partial list of requalified lessees if one (1) or more lessees are unable to requalify in a timely manner, provided that they have attempted to do so. In such cases, the approval of the entire list may be subject to final approval by the Town Planner or his or her designee.
  - c. U.S. IRS forms and other required information in Section 3 will only be required for the previous year when requalifying.
- F. *Initial Occupancy of Red Lady Estates.* The first ten (10) mobile home space occupants will be chosen by lottery. After ten (10) people have been identified for mobile home spaces, the names of all of the people entered in the initial lottery will also be drawn, assigned a number and placed in that order on an initial lottery waiting list. If any of the first ten (10) chosen in the lottery cannot use the mobile home space for any reason, the eleventh person will be notified that the space is available. This process will continue until all mobile home spaces are filled. If there are people on the initial lottery waiting list when all ten (10) spaces are filled, the Town will maintain the initial lottery waiting list for future use when a space is vacated.
- G. *Annual Waiting List.*
- 1. When the initial lottery waiting list is exhausted, as discussed in Section 4, Paragraph A.6.d. below, a new annual waiting list will be created in May of each year. The Town shall publish a legal notice in the official newspaper of the Town asking "those interested people to submit evidence of how they meet the eligibility qualifications to the Town Planner or his or her designee.
  - 2. Only those people on the latest annual waiting list, and Town employees who own no residential land, shall be eligible to bid on mobile homes in Red Lady Estates when they become available. Only those people who have already been qualified by the Town Planner shall be included in the annual waiting list. People who want to be on the waiting list must provide proof that they meet the eligibility qualifications listed in this Section by the deadline given each year. Information submitted to demonstrate compliance with the eligibility qualifications must comply with Section 3 below.
- H. *Town Makes Final Decision on Eligibility.* The Town Planner or his or her designee will decide which applicants meet the criteria for eligibility.
- I. *Special Circumstances.*
- 1. Co-borrowers, such as parents helping a dependent, are permitted so long as the person who meets the qualifications for ownership is a record owner of the mobile home.
  - 2. The co-borrower's name may be on the title if a lender requires both the purchaser and the co-borrower's names to be on the title.
  - 3. The name of a married spouse of the person meeting the eligibility qualifications in Subsections 2.A, B, C and D above may be on the title if the qualifying person is also a record owner.
  - 4. If title transfers solely to the co-borrower or spouse, the unit must be relinquished unless the co-borrower or spouse meets the eligibility qualifications in this Section. This requirement may be waived by the Town for good cause shown. Co-borrowers who do not meet the eligibility qualifications and for whom this requirement is not waived may not occupy the mobile home prior to selling it.

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### **Section 3. Proof of Qualifications for Leasing a Mobile Home Space in Red Lady Estates.**

In order to demonstrate that a person or household desiring to lease a mobile home space meets all of the criteria set forth in Section 2 above, each prospective lessee shall supply the Town with a current signed income statement stating the total income and income sources of the prospective lessee in the previous year and the following documentation, as applicable, as determined by the Town Planner or his or her designee to determine qualifications:

- A. Copies of signed federal income tax returns, as filed, for the five (5) of seven (7) years the applicant lived in Gunnison County: Form 1040.
- B. Copies of Wage and Tax Statements for the same five (5) years: Form W2.
- C. Copies of self-employment forms filed with the IRS for federal income taxes for the same five (5) years; and, if requested by the Town, a list of customers, telephone numbers and addresses of the customers if applicable: Schedule C.

Any of the remaining items on this list shall be provided if requested by the Town to confirm eligibility:

- D. Explanation (source and services performed) of "other income": Form 1040 Line 21.
- E. Other verification of employment in Gunnison County (i.e., wage stubs or employer name, address and phone number).
- F. Landlord verification (proof of residency by physical address).

All information provided will be used confidentially by the reviewing staff. Information provided will only be made public in the aggregate. For instance, the Town may say on a grant application that "... 60% of the owners' incomes in the Town's affordable housing mobile home park are at or below the median income for the County."

### **Section 4. Sales Procedures.**

- A. *Sales Procedures Until Initial Lottery Waiting List is Exhausted.* As long as the initial lottery waiting list continues to have names of people on it who are waiting to be contacted to lease or purchase a mobile home space, the list shall be used. All people on the initial lottery waiting list must meet all Category 2 residency requirements prior to the time they move to the top of the list. The process for choosing the next person to lease a mobile home space or purchase a mobile home and mobile home space shall be as follows:
  - 1. Upon notification to the Town by the mobile home owner (seller) that he or she is leaving the mobile home park, and if there are fewer than three (3) mobile homes owned by Town employees, the Town shall notify all Town employees who own no improved residential land that the mobile home is available.
  - 2. Any qualified interested Town employees will have fifteen (15) days from the date set by the Town Planner or his or her designee to make an offer to the seller to purchase the seller's mobile home.
  - 3. If three (3) mobile homes are occupied by Town employees, or if no acceptable offer is made during the initial Town employee fifteen-day bidding period, the Town shall notify the next seven (7) remaining people on the initial lottery waiting list.
  - 4. Any qualified Town employees, and the people in Subparagraph 3 above, will have fifteen (15) days from the date set by the Town Planner or his or her designee to make an offer to the seller to purchase the seller's mobile home.
  - 5. If the seller finds one (1) of the offers to be acceptable, the buyer who made the acceptable offer and the seller shall enter into a contract to sell the mobile home to the buyer.

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6. In the event the seller finds none of the offers to be acceptable, the following process shall apply:
    - a. The Town shall notify the next seven (7) people on the initial lottery waiting list after the fifteen-day period in Subparagraph 4 above has passed, or after the previous seven (7) people notify the Town they do not want the mobile homes, whichever is sooner.
    - b. Once the second group of people is notified, they will have fifteen (15) days from the date set by the Town Planner or his or her designee to make an offer to the seller to purchase the seller's mobile home.
    - c. If the seller still finds none of the offers to be acceptable, the Town shall continue notifying people on the initial lottery waiting list in groups of seven (7) until the initial lottery waiting list is exhausted, and all people in each group will have fifteen (15) days from the date set by the Town Planner to make an offer prior to the next group being notified.
    - d. If no people on the initial lottery waiting list have made an acceptable offer for the mobile home when the list is exhausted, all people on the new waiting list shall be notified, by legal notice in the official newspaper of the Town, that they may bid on the mobile home; and the process outlined in Paragraph B below shall be followed.
    - e. Notwithstanding the listed time periods above, all people notified may continue making offers on the mobile home through the end of the ninety-day period discussed in Paragraph B below, that people on the new waiting list have to make offers.
  7. In the event the mobile home is removed from the space, the Town shall notify all Town employees if there are fewer than three (3) mobile home spaces leased by Town employees. If more than one (1) Town employee is interested in the space, a lottery will be conducted of Town employees. The first person on the Town employee lottery list shall have the first opportunity to lease the space. If the first person can not lease the mobile home space for any reason, the space shall be offered to the next person, and the next, until it is leased. If there are no Town employees who can lease the space, or if three (3) mobile home spaces are leased by Town employees, the first person on the initial lottery waiting list shall be notified. The person notified shall be offered the mobile home space. If the first person cannot lease the mobile home space for any reason, it shall be offered to the next person and the next until it is leased.

See Section 5, Paragraph D below for the timetable to move a new mobile home on the space.

8. Between the time the owner moves out and the new owner moves in, or the mobile home is removed from the space, the owner may rent the mobile home to anyone.
  9. Owners of mobile homes shall continue to make the monthly lease payments to the Town as long as the lease is in force, even if they move out of the mobile home.
- B. *Sales Procedures After Initial Lottery Waiting List is Exhausted.*
1. Upon notification by the mobile home owner (seller) that he or she is leaving the mobile home park, and if there are fewer than three (3) mobile home spaces leased or owned by Town employees, the Town shall notify all Town employees, who own no improved residential land, that the mobile home is available.
  2. Any qualified Town employees will have fifteen (15) days from the date set by the Town Planner or his or her designee to make an offer to the seller to purchase the seller's mobile home.
  3. When three (3) mobile home spaces are occupied by Town employees, or after the initial Town employee fifteen-day bidding period during which no acceptable offer is made, the Town shall notify all people on the waiting list, via notification in the legal section of the official newspaper of the Town,

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that a mobile home is available. The notice shall direct interested people to contact the Town for more information.

4. If the seller finds one (1) of the offers to be acceptable, the buyer who made the acceptable offer and the seller shall enter into a contract to sell the mobile home to the buyer.
  5. The seller of a mobile home on a leased space shall have a maximum of ninety (90) days after vacating his or her mobile home to enter into a contract with a buyer. If the seller does not enter into a contract within said ninety (90) days, the seller must relinquish the mobile home space and remove the mobile home. The mobile home shall be removed no later than thirty (30) days after the ninety-day bidding period has ended unless the deadline is extended by the Town Manager for good cause. There shall be no ninety-day period for owners of mobile home spaces.
  6. In the event the mobile home is removed from the space by the owner, the Town shall conduct a lottery for the space, among qualifying Town employees. The first name drawn shall be offered the space. If the first person does not lease the space, it shall be offered to the second person, etc. If no Town employees lease the space, a second lottery shall be conducted of the people on the waiting list. The first name drawn from the waiting list shall be offered the space. If the first person does not lease the space, it shall be offered to the second person, etc. Neither lottery in this Subparagraph 6 has any significance after a person places a mobile home on the space.
- C. *Renting a Mobile Home During Sales Process.* Between the time the owner notifies the Town that he or she is selling his or her mobile home and moves out and the new owner moves in, the owner may rent the mobile home for up to ninety (90) days to anyone.
- D. *Priorities for Persons Bidding to Purchase a Mobile Home in Red Lady Estates Mobile Home Park.* The seller of each mobile home shall make the final decision on which offer to accept or reject.
- E. *Mobile Home Sales Cap.*
1. The sales price of all mobile homes in Red Lady Estates shall be limited to one (1) of the following, as applicable:
    - a. The actual original purchase price of the mobile home, plus any documented setup charges, plus an inflation rate of two percent (2%) per year, beginning with the 1995 year. The two percent (2%) is not compounded.
    - b. After the first sale of the mobile home, the sales price will be limited to the most recent purchase price of the mobile home, plus an inflation rate of two percent (2%) per year, from the date of purchase.
  2. The two percent (2%) per year shall be prorated through the year so that, for instance, if a sale is made on June 30, the inflation rate for that year will be one percent (1%). Since most mobile homes were moved into Red Lady Estates in November 1994, the first two percent (2%) shall accrue on December 31, 1995. The Town recognizes that one (1) mobile home did not arrive until June 1995, but that mobile home would have been in place earlier if the initial eligibility screening had occurred faster and the owner was able to order the mobile home earlier and place it prior to the snow fall. Therefore, the same beginning year will be used for all mobile homes in Red Lady Estate Mobile Home Park.
  3. Since the price cap will change once the mobile home has been purchased, a copy of the bill of sale must be provided to the Town Planner or his or her designee within thirty (30) days of purchase so the new price cap can be determined.
  4. The purpose of the price cap is to ensure that the price of mobile homes in Red Lady Estates will not become unaffordable. This price cap is not intended to imply, or be, the appropriate price. The sales price of mobile homes that are not well-maintained is not expected to reach the price cap. The Town recognizes that most mobile homes depreciate in value.

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## **Section 5. Timetables.**

- A. *Deadlines for Lessees of Mobile Home Spaces to Leave Mobile Home or Remove Mobile Home.*
  - 1. Once the lessees of a mobile home space notify the Town that they will be leaving their mobile home space and enter into a contract to sell the mobile home, they must vacate the mobile home by the date agreed to in the contract.
  - 2. If the owner receives no offers to purchase the mobile home or finds none of the offers to purchase the mobile home acceptable, the mobile home shall be removed no later than thirty (30) days after the ninety-day bidding period for people on the new waiting list has ended.
  - 3. If the mobile home owner is removing the mobile home, it shall be removed within sixty (60) days after notifying the Town that the mobile home will be removed and that the occupant is relinquishing the mobile home space.
- B. *Deposit on Space.* Upon execution of a contract to purchase a mobile home, the buyer will have five (5) days from the date of signing to place with the Town a deposit of two hundred dollars (\$200.00) on the mobile home space.
- C. *Loan Commitment Deadline.* Any person who enters into a contract to purchase the mobile home will have forty-five (45) days to get a loan commitment from the date of notification by the Town that the person may make an offer on the mobile home. Such date shall be set by the Town Planner or his or her designee. If financing is delayed, the new lessee must provide proof of a timely loan application and present a letter to the Town from the lender estimating the timetable for decisions and closing on the mobile home. If the time to get a loan commitment will be more than sixty (60) days, the Town may disqualify the new lessee and move to the next person who has a backup offer on the mobile home.
- D. *New Mobile Home on Space.* If a new mobile home will be placed on the space, the following will apply:
  - 1. **Deposit, proof of qualification deadline:** Two (2) weeks after notification by the Town that the space is available. The deposit is two hundred dollars (\$200.00) and will be held by the Town until the person leaves the mobile home space. If the person is unable to obtain a loan or otherwise cannot purchase the mobile home, the deposit will be returned.
  - 2. **Proof of loan approval or proof of purchase deadline:** Forty-five (45) days after notification by the Town that the person may make an offer (See Paragraph C above).
  - 3. **Mobile home on site deadline:** Three (3) months after notification by the Town that the space is available. The Town Manager may extend this deadline if a hardship can be demonstrated by the buyer.

## **Section 6. Renting Mobile Homes in Red Lady Estates Mobile Home Park**

- A. *When Mobile Homes May Be Rented.* Mobile homes may be rented in their entirety:
  - 1. If an owner is not living in the mobile home as provided in Section 2, Paragraph F above; or
  - 2. Until the mobile home is purchased after the owner has notified the Town that the owner has permanently vacated the mobile home.
- B. *Mobile Home Renter and Owner Qualifications.* Mobile homes may only be rented or sold to persons who meet the eligibility qualifications in Section 2 unless the provisions of Section 4, Paragraph C apply.

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## **Section 7. Minimum Design Criteria and Rules and Regulations for Red Lady Estates.**

All mobile homes in Red Lady Estates shall meet the following minimum criteria:

1. Only single-wide mobile homes up to sixteen (16) feet wide and seventy-six (76) feet long are permitted.
2. Only pitched metal roofs with a slope of at least 3:12 are allowed, and all roofs must be designed for at least an eighty-pound snow load.
3. All mobile homes in Red Lady Estates must meet the following minimum R rating guidelines:
  - a. Roof: R33.
  - b. Exterior walls: R19.
  - c. Floors: R11.
4. The Town encourages all tenants to use horizontal wood or log siding for exterior walls of the mobile homes but will allow masonite or laminated siding upon approval of the Board of Zoning and Architectural Review (BOZAR). Metal siding is not allowed.
5. Maximum height will be fifteen (15) feet from grade level to the peak of the roof.
6. Water, sewer, electric, cable, telephone and gas lines will be installed by the Town to each space. Each tenant will be responsible for all utility hookups in accordance with the ordinances of the Town and all governmental codes pertaining to the same. Electric service will be wired for one hundred (100) amperes. Changes to the electric service for any electric service other than one hundred (100) amperes will be paid for by the tenant.
7. Red Lady Estates shall at all times be maintained in a clean and orderly condition and in accordance with the terms of the lease and rules and regulations. One (1) trash Dumpster will be utilized to service the mobile home park. The four (4) mobile homes at the east and west ends are encouraged to use individual trash cans for most of their trash. No storage of trash or debris shall be otherwise allowed on the premises. The Dumpsters will be kept free and clear of automobiles, debris and snow for regular service.
8. A storage building, approximately six (6) feet by ten (10) feet, will be provided by the Town in the vicinity of each mobile home space. Storage buildings shall be kept clean and well-maintained. No other storage of any kind will be allowed within Red Lady Estates unless it is under an individual mobile home.
9. The placement of the mobile homes and storage units, according to the PUD plan approved by the BOZAR, is intended to provide minimum unencumbered corridors for fire protection purposes. For purposes of this Section, an encumbrance shall include any object which may obstruct fire protection personnel or equipment. An uncovered porch or landing for a mobile home door which opens into such area may be allowed, provided that such porch or landing is approved by the Building Inspector and is not in excess of twenty (20) square feet (excluding stairways). Further, such porch or landing may not extend more than five (5) feet, including railings, from the mobile home to which it is attached.
10. An influence zone is designated on the PUD plan for each mobile home. Since common area lawn maintenance will be done by the property management company, the purpose of the individual influence zone is to identify the area where each mobile home owner may provide a garden or other personal landscaping. Except for the individual influence zones, all real property in Red Lady Estates is for the use and enjoyment of all occupants.

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11. No additions may be made to any mobile home except stairways, landings and mudrooms. Mudrooms must be no larger than twenty (20) square feet and must maintain eleven-foot setbacks between structures. Grade level decks, no more than eighteen (18) inches high, may be created within the influence zone. No fences may be erected in Red Lady Estates that violate the Fire Code or Crested Butte Municipal Code.
  12. All mobile homes in Red Lady Estates must be reviewed, during a public hearing at a regular BOZAR meeting, for approval prior to placement.
  13. The trail to the lower bench identified on the PUD plan is for use by the general public. This trail shall remain open and accessible at all times. The Town will provide landscaping at the entrance to this trail.
  14. Snowplowing and lawn maintenance will be provided by the property management company. Storage sheds will be provided and maintained by the Town.
  15. No solid fuel-burning devices are allowed.
  16. Maximum occupancy shall not exceed two (2) people per bedroom.
  17. The Red Lady Estates Homeowners' Association has been established to develop additional rules and regulations, including, the number and type of pets allowed for each space. All regulations established by the Association must be approved by the Crested Butte Town Council.

(Code §17-12-10; Ord. 4 §1, 2009)

## APPENDIX N Affordable Housing Guidelines

### **PART III. RED LADY ESTATES CONDOMINIUMS**

#### **Section 1. Goal.**

Red Lady Estates Condominiums (the "Project") was created to provide housing for individuals who desire to own long-term housing in Crested Butte and who may move at a later time to other housing that better suits their needs as their needs change. The target group is residents who contribute to the community, who want to live in Crested Butte and who desire to purchase and live in a mobile home.

#### **Section 2. Eligibility Qualifications.**

Only a person meeting the eligibility qualifications may be on the title to the Unit (except as set forth in Paragraph G below). In the event ownership is conveyed or transferred by any means to any person not meeting the eligibility qualifications, the owner must relinquish the unit by advertising the unit as set forth herein and selling the ownership interest in the unit. The unit may not be either occupied or rented, and must remain advertised for sale until the unit is sold.

- A. *Categories 1 and 2, Definitions and Conditions.* To qualify for, occupy and be eligible to purchase a unit in the Red Lady Estates Condominiums (a "qualified buyer"), at least one (1) person in a household must meet the eligibility qualifications set forth herein. Persons meeting the eligibility qualifications fall into one (1) of the following two (2) categories:

Category 1 employees of the Town who do not own improved residential land (see Subparagraph 1 below).

Category 2 households, of which at least one (1) person has the following qualifications:

**Table III-1**  
**Eligibility Qualifications**

<b>Minimum Age</b>	<b>Residency in Gunnison County</b>	<b>Own Land</b>	<b>Minimum Earned Income in Gunnison County</b>	<b>Live On Site</b>
18 years old	5 of past 7 yrs	Yes but not if improved residential land	80%	Yes

1. **Town Employees.**

- a. To be eligible for Category 1, a person must be an employee of the Town of Crested Butte and must not own any improved residential land. An employee of the Town of Crested Butte ("Town employee") is any full-time employee who works for the Town at least thirty (30) hours per week. A maximum of three (3) units will be reserved for people who qualify for Category 1.
- b. At any time when there are fewer than three (3) units owned by Town employees, any unit that becomes available will first be offered to Town employees (except as set forth in Paragraph 4.C below.). If no Town employee wishes to purchase the unit, the unit will then be offered to qualified households in Category 2. Notice to all Town employees will be given by posting such notice at the Town's official posting places.
- c. If a Town employee becomes no longer employed by the Town, the unit owned by the former Town employee will no longer be counted as a Town employee unit. In such case, the next unit that becomes available for sale will be made available to Town employees. If no Town employee purchases the unit, the unit will then be offered to Category 2 households.

- 2. **Residency.** The Category 2 eligibility qualifications includes a requirement that one (1) person in the household has lived in Gunnison County for five (5) of the last seven (7) years prior to the date of a sales contract on a unit.
- 3. **Owners of Improved Residential Land.** Owners of improved residential land do not meet the eligibility qualifications for Red Lady Estates Condominiums.
- 4. **Owners of Unimproved Residential Land.** Owners of unimproved residential land are eligible to purchase units. When the owner of a unit in Red Lady Estates Condominiums builds another home or purchases any other home, the owner shall notify the Town that he or she is building or purchasing such a home and shall relinquish the unit and sell his or her unit to a person in Category 1 or 2, as appropriate, prior to receipt of a certificate of occupancy or closing on the new home.
- 5. **Live on Site.** Owners of units in Red Lady Estates Condominiums shall occupy the unit as a primary residence except as otherwise provided herein.

B. **Maximum Income Limit.** None.

C. **Asset Limit.** None.

D. **Income.** Eighty percent (80%) of all income must be earned income in Gunnison County. *Earned income* shall be defined by the Internal Revenue Service (IRC §32(c)(2)) Earned Income (3/20/1995).

E. **Initial Ownership and/or Occupancy of Red Lady Estates Condominiums.**

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1. Only the owners of a mobile home in Red Lady Estates Mobile Home Park at the time of the recording of this document will be eligible to purchase a Red Lady Estates Condominiums building envelope. All such current owners are eligible to purchase a building envelope.
  2. Any occupant in Red Lady Estates Mobile Home Park at the time of the recording of this document not purchasing a building envelope, but desiring to continue to lease a space in the project, shall continue to be subject to the Affordable Housing Guidelines, Part II, Red Lady Estates Mobile Home Park Spaces, with respect to requirements regarding eligibility, occupancy and resale of the mobile home.
  3. The building envelope (as defined in the Declarations establishing Red Lady Estates Condominiums, as recorded in the real property records of Gunnison County, hereinafter referred to as "Declarations") upon which the mobile home of such nonpurchasing occupant is located shall continue to belong to the Town of Crested Butte, Colorado (hereinafter the "Town"), and shall be designated a unit belonging to the Town. Such unit shall have the allocation of interests set forth in the Declarations.
  4. When the current occupant who is leasing a space vacates the building envelope, the building envelope shall be offered for sale in accordance with the procedures set forth herein. The current occupant may either sell the mobile home to a subsequent unit purchaser, in which case the mobile home must be sold in accordance with the resale restrictions contained in the Model Affordable Housing Guidelines, Part II, Red Lady Estates Mobile Home Park Spaces, or the occupant may vacate by removing the mobile home from the building envelope. The purchase price of the building envelope shall be the same price as the purchase price of building envelopes purchased by the original building envelope purchasers, plus appreciation of the building envelope, calculated as set forth herein.

F. *Town Makes Final Decision on Eligibility.* The Town will decide which applicants meet the eligibility qualifications.

G. *Special Circumstances Allowing a Person Not Meeting Eligibility Qualifications to be on Unit Title.*

1. Co-borrowers, such as parents helping a dependent, are permitted so long as the person who meets the eligibility qualifications is a record owner of the unit.
2. The co-borrower's name may be on the title if a lender requires both the purchaser's and the co-borrower's names to be on the title.
3. The name of a married spouse of the person meeting the eligibility qualifications in this Section may be on the title if the qualified buyer is also a record owner.

If title transfers solely to the co-borrower or spouse, the unit must be relinquished unless the co-borrower or spouse meets the eligibility qualifications set forth in this Section 2. This requirement may be waived by the Town for good cause shown. Co-borrowers who do not meet the eligibility qualifications and for whom this requirement is not waived may neither occupy nor rent the unit prior to selling it.

H. *Exemption From Eligibility Qualifications.*

1. **Special Exemptions.** Those people, or those with federally recognized disabled dependents, who are certified as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely, and those people who are court-appointed legal guardians with wards who are otherwise qualified buyers, may be exempt from the eligibility qualification requirement that eighty percent (80%) of all earned income be earned in Gunnison County, upon a finding by the Town of just cause.
2. **Other Exemptions.** An exemption from the eligibility qualifications may be requested if an unusual hardship or special circumstance can be shown, and the variance from the strict application of the Guidelines is consistent with the intent and purpose of these Guidelines. In order to request a special review, a letter must be submitted to the Town stating the request, with documentation substantiating the unusual hardship or special circumstance. The applicant shall submit any additional information

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reasonably requested by the Town, and a meeting with the Town Council will be scheduled in a timely manner.

The Town Council may grant the request, with or without conditions, if the approval will not cause a substantial detriment to the public good and without substantially impairing the intent and purpose of the Guidelines, and if an unusual hardship or special circumstance is shown. Examples of unusual hardships or special circumstances include, but are not limited to:

1. A person who suffered from a major illness or accident and is unable to meet all eligibility requirements;
2. A person who left Gunnison County to engage in educational training; or
3. A newly hired senior staff Town employee.

### **Section 3. Establishing Eligibility Qualifications.**

In order to determine that a person desiring to purchase a unit meets all of the eligibility qualifications, the Town may request any documentation deemed necessary to make such a determination, including any combination of the following:

1. Federal income tax returns;
2. Wage and tax statements;
3. Landlord verification or other proof of residency by physical address for five (5) of the past seven (7) years;
4. Voter registration; and
5. Other verification deemed necessary by the Town (i.e., wage stubs or employer name, address and phone number, copy of valid Colorado driver's license).

### **Section 4. Subsequent Sales Procedures.**

- A. *Offering Units for Sale.* When an owner is ready to sell a unit, the owner shall place an announcement in the legal publications section of the official newspaper of the Town (and any other place the owner wishes to advertise the unit), announcing the following:
  1. The address of the unit;
  2. That households with a person meeting the eligibility qualifications in Category 1 and 2 of these Guidelines, or a household which has received an exemption from the eligibility qualifications in Section 2 above from the Town, may make an offer on the unit during the fifteen (15) days following publication of the notice;
  3. The contact address for the owner; and
  4. The sale price of the unit, which price shall not exceed the maximum sale price.
- B. *Determining Maximum Sale Price.* The maximum sale price shall be calculated according to one of the formulas set forth in Exhibit C. Prior to placing the advertisement announcing the availability of the unit, the owner shall consult with the Town to confirm the correct maximum sale price for the unit. In order to confirm the correct maximum sale price, the owner shall submit to the Town such documentation as the Town may require in order to calculate the maximum sale price, which shall at a minimum include the following:
  1. Records establishing the purchase price of the unit;

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- 2. Receipts to verify the costs of improvements located thereon, including labor costs;
  - 3. Records regarding any special improvement district assessments paid by the owner;
  - 4. A copy of any building permit obtained for the improvements;
  - 5. Records regarding any construction interest paid by the owner; and
  - 6. An affidavit verifying that the receipts are valid and correct and represent costs actually paid by the owner.
- C. *Contracting to Sell Units.* Only qualified buyers in Category 1 (if fewer than three [3] units are owned by Town employees) may enter into a purchase contract with the owner during the first fifteen (15) days following publication of the sale announcement. In the event that three (3) or more units are owned by Town employees, qualified buyers in either Category 1 or Category 2 may make an offer on the unit at any time. A representative of the owner with authority to enter into a contract must be available during said fifteen (15) days. The purchase contract shall be in substantially the form set forth in Exhibit D. Owners may sell to co-tenants, parents, children and spouses who are qualified buyers, notwithstanding the provisions above requiring offering the unit to Category 1 and 2 purchasers. The sale price may not in any circumstance exceed the maximum sale price.
- D. *Owners Decide to Whom They May Sell.* Owners shall decide to whom they sell a unit, subject to the above provisions, as long as they sell to a qualified buyer and as long as they comply with the terms of the provisions of the Town's first right of refusal.
- E. *First Right of Refusal.*
- 1. **Offer of purchase.** No owner may sell such owner's unit or any interest therein except pursuant to the provisions of this Section. Any owner, except the Town, who receives a bona fide offer for the purchase of his or her unit, which he or she intends to accept, shall give prompt written notice to the Town of such offer and of such intention, the name and address of the proposed purchaser, the terms of the proposed transaction and such other information as the Town may reasonably require; and such owner shall thereupon offer to sell his or her unit to the Town on the same terms and conditions as contained in the bona fide offer. The giving of notice shall constitute a warranty and representation to the Town that such owner believes the offer to purchase to be bona fide in all respects.
  - 2. **Term of Town's right.** Within fourteen (14) days, beginning on and including the date of the actual receipt of such information, the Town shall have the right to purchase the subject unit on the same terms and conditions as contained in the bona fide offer.
  - 3. **Exercise of right.** In order to exercise the right of first refusal, the Town must, on or before the end of such fourteen-day period, actually deliver to the owner a written commitment or commitments to purchase the subject unit. The Town, if it wishes to exercise its right to purchase the unit, shall enter into a contract with the offering owner to purchase the offered unit upon the same terms and conditions as contained in the bona fide offer or upon terms and conditions no less favorable to the offering owner, and tender to the offering owner any down payment or deposit theretofore made under the bona fide offer.
  - 4. **Nonexercise of right.** If the Town does not exercise its right hereunder within the time period provided, the offering owner shall be free to accept and close upon the basis of the bona fide offer with the person who made the bona fide offer. If the offering owner shall not within the period provided in the bona fide offer close the transaction on the terms and conditions as originally contained therein, then the offering owner shall be required to again comply with all of the terms and provisions of this Subsection in order to subsequently sell the unit.
  - 5. **Failure to comply.** Any sale of a unit without full compliance with the terms and provisions of this Subsection shall be voidable at the election of the Town.

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- 6. **Certificate.** After full compliance by an offering owner with this Subsection, and after the period of time provided for purchase by the Town has expired and the right of first refusal has not been exercised, then the Town shall execute a certificate in recordable form stating that the provisions of this Subsection have been complied with and that any right or rights of first refusal theretofore vested in the Town have terminated. Such certificate shall be signed by the Town and shall be conclusive upon the Town in favor of all persons who rely thereon in good faith.
  - 7. **Exceptions.** The following transfers or conveyances of a unit are expressly excepted from the provisions of this Subsection.
    - a. A transfer to or purchase by any mortgagee which acquires its title as a result of foreclosure proceedings or conveyance in lieu thereof; and a transfer or sale by any such mortgagee after acquisition of the unit by foreclosure or conveyance in lieu thereof.
    - b. A transfer or conveyance between or among co-tenants of the same unit, spouses, children or parents of owners.
    - c. A transfer or conveyance by gift, devise or inheritance or by operation of law.
- F. *Town Notification.* The owner shall submit to the Town the purchase contract and the documentation establishing the prospective purchaser's qualifications at least thirty (30) days prior to the scheduled closing date. The Town shall, within fifteen (15) days of receipt of the purchase contract and qualifying information for the prospective buyer, provide a letter to the owner indicating whether or not the prospective buyer is a qualified buyer.
- G. *Customary Closing Costs.* The owner shall not permit the buyer to assume any or all of the owner's customary closing costs, except that payment of the Town's land transfer excise tax may be negotiated between the parties. The owner shall not accept any other consideration which would cause an increase in the sales price of the unit above the maximum sale price, so as to induce the owner to sell the unit to such buyer.
- H. *No Guarantees.* Nothing herein shall be construed to constitute a representation or guarantee by the Town that, upon the sale of the unit, the owner shall obtain the maximum sale price.

## **Section 5. Maximum Sale Price.**

All units shall be limited in sale price to the maximum sale price for each unit. The maximum sale price of each unit shall be calculated using the method set forth in Exhibit C.

## **Section 6. Ownership of Deed-Restricted Units.**

All owners must comply with the following requirements:

- A. *Deed.* A copy of each deed conveying title to a unit must be provided to the Town within thirty (30) days after closing.
- B. *Occupancy.* Units must be occupied by owners as their sole and exclusive residence, subject to the provision on leaves of absence, below.
- C. *Continuing Qualifications.* Each owner shall continue to comply with the eligibility qualifications of a qualified buyer, except that an owner who has reached the age of fifty-nine and one-half (59½) years and retired from full-time work need not continue to derive eighty percent (80%) of his or her earned income in Gunnison County. At the request of the Town, an owner must demonstrate that he or she complies with all eligibility qualifications. If the owner ceases to have the qualifications of a qualified buyer or ceases to use the housing as his or her sole and exclusive place of residence, subject to the provision on leaves of absence below, the

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unit must be offered for sale by the owner and must be sold to a qualified buyer as provided herein. In the event that title to a unit vests by descent in individuals and/or entities who are not qualified buyers, as that term is defined herein, the unit shall be offered for sale and shall be sold to a qualified buyer. The unit may not be either occupied or rented, and must remain advertised for sale until the unit is sold.

- D. *Deed Restriction and Option to Purchase.* Each unit is subject to all terms and conditions contained in these Guidelines, and each unit must be deed-restricted by a recorded instrument that complies substantially with the form found in Exhibit A, incorporating the terms and restrictions contained in these Guidelines. Each unit must be encumbered by an option to purchase deed-restricted housing that complies substantially with the form found in Exhibit B, which must be recorded with the Gunnison County Clerk and Recorder upon each transfer of title to each unit.
- E. *Leaves of Absence.* An owner may request written approval from the Town, at least thirty (30) days prior to leaving, for a leave of absence from Gunnison County for a limited period of time, or may request written approval from the Town for a one-time, in-County leave of absence for one (1) year. A leave of absence may be granted by the Town upon clear and convincing evidence that the owner shows a bona fide reason for leaving and a commitment to return to live in the unit, for up to one (1) year which, at the discretion of the Town, may be extended for one (1) additional year; but in no event shall the leave exceed two (2) years in any seven-year period. Emergency circumstances may permit a waiver of the thirty-day advance notice requirement.
- F. *Rental of Unit.* A unit may be rented in its entirety if an owner has received permission from the Town for a leave of absence. The unit shall be rented in accordance with the qualifications for rental found in Part V, Paragraph 2.C.1, of the Model Affordable Housing Guidelines during the leave of absence.

## **Section 7. Grievance Procedures.**

A grievance is any dispute regarding procedures set forth herein that an owner or buyer may have with the Town. A grievance may be presented to the Town under the following procedures.

- A. *Filing a Grievance.*
  - 1. Any grievance must be presented in writing to the Town. It may be simply stated, but shall specify:
    - a. The particular grounds upon which it is based;
    - b. The action requested; and
    - c. The name, address and telephone number of the complainant and similar information about his or her representative, if any.
  - 2. The written statement of grievance must be submitted within thirty (30) days of the complained-of action by the Town.
  - 3. A hearing before the Crested Butte Town Council shall be scheduled within twenty (20) days of receipt of a written grievance.
  - 4. The complainant and the Town shall have the opportunity to examine and, before the hearing at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant to the hearing.
  - 5. Based on the record of proceedings, the Town Council will provide a written decision upon request and include the reasons for its determination. The decision of the Town Council shall be binding on the Town, which shall take all actions necessary to carry out the decision.

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## **Section 8. Default; Breach; Enforcement.**

If a violation, default or breach is alleged, the Town shall send a notice of such to the owner detailing the nature of the violation and allowing the owner fifteen (15) days to determine the merits of the allegations, or to correct the violation. In the event the owner disagrees with the allegation of violation of these Guidelines, the owner may request, in writing, a hearing before the Town. If the owner does not request a hearing or the violation is not cured within the fifteen-day period, the owner shall be considered in violation of these Guidelines.

1. The hearing described above shall be scheduled within twenty (20) days of the date of the receipt of a written request for a hearing. At any such hearing, the complainant may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made and the decision of the Town Council shall be a final decision, subject to judicial review.
2. In the event a unit is sold and/or conveyed, or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a unit, for all purposes, shall be deemed to include and incorporate by this reference all terms herein contained.
3. In the event an owner fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town or its designee may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction; and, if the Town substantially prevails in such action, it shall be entitled to an award for its attorney's fees and costs.

## **Section 9. Minimum Design Criteria for Red Lady Estates Condominiums.**

All units in Red Lady Estates Condominiums shall meet the following minimum criteria:

1. Only single-wide mobile homes in size of up to sixteen (16) feet wide and seventy-six (76) feet long are permitted.
2. Only pitched metal roofs with a slope of at least 3:12 are allowed, and all roofs must be designed for at least an eighty-pound snow load.
3. All units in Red Lady Estates must meet the following minimum R rating guidelines:

<b><i>Building Assembly</i></b>	<b><i>R-Rating</i></b>
Roof	R33
Exterior Walls	R 19
Floors	R-11

4. All mobile homes must comply with all applicable sections of the Crested Butte Municipal Code and Design Guidelines.
5. The maximum height will be sixteen (16) feet from grade level to the peak of the roof.
6. Electric utility service must be wired for one hundred (100) amperes.
7. No additions may be made to any units except stairways, landings and mudrooms. Mudrooms shall be no larger than twenty (20) square feet, plus stairways, and must maintain eleven-foot setbacks between structures. Grade level decks, no more than eighteen (18) inches high, may be created within the limited common elements.

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8. No fences may be erected in Red Lady Estates Condominiums that violate the Fire Code or Crested Butte Municipal Code. No fences may be erected between units.
  9. No solid fuel-burning devices are permitted.
  10. Mobile homes may be on permanent foundations.

**EXHIBIT A**  
**Affordable Housing Guidelines**  
**RED LADY ESTATES CONDOMINIUMS**  
**Affordable Housing Deed Restriction**

Subject property: \_\_\_\_\_ (Legal Description of units or tract)

Hereafter, the "Property."

The ownership and use of the Property shall henceforth be governed by the requirements and provisions set forth in the Affordable Housing Guidelines, Part III, Red Lady Estates Condominiums, as amended ("Red Lady Estates Guidelines"), at the time of purchase and during ownership.

Notice is herein given that ownership, use and occupancy of the Property are subject to the following:

1. The Property must be owned, occupied and used in accordance with all provisions of the Red Lady Estates Guidelines.
2. The Property may be owned, occupied and used only by persons meeting the qualifications set forth in the Red Lady Estates Guidelines.
3. In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the applicable Guidelines, including but not limited to those provisions governing the qualifications for ownership, sale, transfer or conveyance of the Property.
4. The beneficiary of any deed of trust or other recorded instrument identifying the Property as security or collateral shall execute the Option to Purchase Affordable Housing prepared by the Town, unless waived by the Town, prior to the recordation of the deed of trust or other recorded instrument. Failure to so execute shall render any such encumbrance fully null and void.

The foregoing restrictions on ownership, use and occupancy constitute a perpetual covenant that runs with the land as a burden thereon for the benefit of the Town of Crested Butte, Colorado or its designee (hereafter the "Town"), and shall be binding on the owner and the heirs, personal representatives, assigns, lessees, licensees and any transferees of the owner. The foregoing restrictions and covenants shall be administered by the Town and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants, or such other remedies and penalties as may be deemed appropriate by the Town. If the Town substantially prevails in such an action, it shall also be entitled to an award for reasonable attorneys' fees and costs.

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the Town's failure to exercise and close its option rights under an Option to Purchase Affordable Housing. The date of the termination of this Deed Restriction shall be the date of recording a public trustee's or court-ordered foreclosure deed conveying the Property to the encumbrance beneficiary.

The foregoing Deed Restriction may be modified with the written consent of the owner and the Town. No such modification shall be effective until an instrument in writing is executed and recorded in the office

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of the Clerk and Recorder of Gunnison County. Provisions added to this Deed Restriction and/or the Guidelines after the time of recording the final subdivision plat of the Property, which are more restrictive than those in effect at the time of such recording, shall not apply to the Property, unless such provisions are designed to satisfy the Town's expressed interest to have only those persons meeting the Eligibility Qualifications (which shall not be amended) own, occupy or use the Property. However, less restrictive added provisions shall apply.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

TOWN OF CRESTED BUTTE,  
A Colorado Home Rule Municipality:  
By: Mayor

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_ as Mayor of the Town of Crested Butte, Colorado, developer of the Property.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Return to: Town of Crested Butte

Attention: \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

**EXHIBIT B**  
**Option to Purchase Affordable Housing**

This Option to Purchase is made by and between the undersigned holder of a promissory note and for the protection of any governmental agency guaranteeing, insuring or acquiring the note from the holder ("the Holder"), and the Town of Crested Butte, a Colorado home rule municipality, its assigns or designees ("the Town").

1. **The Property.** A promissory note made by the undersigned Holder dated \_\_\_\_\_, is secured by a deed of trust ("Deed of Trust") encumbering property subject to an Affordable Housing Deed Restriction pursuant to Chapter 17, Article 12 of the Crested Butte Municipal Code, which property is described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
(the "Property").

2. **The Option.** In the event of a foreclosure of the Deed of Trust and subject to the issuance of a Public Trustee's Certificate of Purchase to the Holder following the foreclosure sale, or in the event the Holder receives a deed in lieu of foreclosure or other conveyance of the Property, the Holder hereby grants to the Town an option to purchase the Certificate of Purchase or Property on the terms set forth herein.
3. **Notice.** The Holder shall give such notice to the Town as is required under Colorado law in the foreclosure proceeding. In addition, the notice shall include a copy of the Notice of Election and Demand for Sale. They shall also be sent by certified mail, return receipt requested, and addressed as follows:

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Town Manager,  
Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224

4. **Exercise of Option.** The Town shall have thirty (30) days after receiving written notice from the Holder of the issuance of the Public Trustee's Certificate of Purchase, or conveyance of the Property to the Holder, in which to exercise this Option to Purchase by tendering to the Holder the sum for which the certificate was purchased or the Property conveyed, with interest from the date of sale or conveyance, together with any taxes paid or other proper charges as provided by law, with interest from the date such expense was paid. Such interest shall be charged at the default rate if specified in the original instrument or, if not so specified, at the regular rate specified in the original instrument.
5. **Title.** Upon receipt of the option price, the Holder shall deliver to the Town a properly executed assignment of the Certificate of Purchase or deed to the Property. The Holder shall not create or participate in the creation of any additional liens or encumbrances against the Property following issuance of the Public Trustee's Certificate of Purchase to the Holder, or conveyance of the Property to the Holder. The Holder shall not be liable for any of the costs of assignment or conveyance to the Town.
6. **Termination of Deed Restriction.** In the event that this Option to Purchase is not exercised and, in the case of a foreclosure, the Holder is issued a Public Trustee's deed following foreclosure, the Affordable Housing Deed Restriction shall automatically terminate. In addition, the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County a full and complete confirming release of the Affordable Housing Deed Restriction affecting the Property which appears in said records at Reception No \_\_\_\_\_. Such release shall be placed of record within fourteen (14) days after request therefor by the Holder, and a copy of the recorded release shall be mailed to the Holder following its recordation.
7. **Successors and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.
8. **Modifications.** The parties hereto agree that any modification to this Option to Purchase shall be effective only when made by writings signed by the Holder and the Town and recorded with the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on \_\_\_\_\_, 20\_\_\_\_.

Date: \_\_\_\_\_, 20\_\_\_\_.

HOLDER OF FIRST DEED OF TRUST: Name of Lender

By Authorized Officer

Title \_\_\_\_\_

Return to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_

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(Supp. No. 20)

Created: 2023-05-12 10:44:44 [EST]

Witness my hand and official seal.

My commission expires \_\_\_\_\_ Notary Public

(SEAL)

TOWN OF CRESTED BUTTE,  
A Colorado Home Rule Municipality:

By Authorized Officer

Title \_\_\_\_\_

Return to: Town of Crested Butte

Attention: \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_ Notary Public

(SEAL)

Date: \_\_\_\_\_, 20\_\_\_\_\_.

BORROWER: Name of Borrower

By Authorized Officer

Title \_\_\_\_\_

Return to: \_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_ Notary Public (SEAL)

Return to: Town of Crested Butte

Attention: \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

**EXHIBIT C**  
**Calculating Maximum Sale Price**

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The maximum sale price of all units in Red Lady Estates Condominiums shall be calculated according to one (1) of the following two (2) formulas, as applicable:

1. Formula 1: For the Sale of a Unit by a Seller Who Purchased the Mobile Home in 1994, and Purchased the Building Envelope at a Later Date. The maximum sale price will be limited to the total of:
  - a. The purchase price of the mobile home as described below; plus
  - b. Any documented setup charges for the mobile home, plus an inflation rate of two percent (2%) per year from the date of setup; plus
  - c. Costs for permitted improvements (defined below) plus an inflation rate of two percent (2%) per year, beginning with the year the improvements were made (if several improvements exist, these are labeled a<sub>1</sub>, a<sub>2</sub>, a<sub>3</sub> . . . ); plus
  - d. Owner-contributed sweat equity for permitted improvements, plus an inflation rate of two percent (2%) per year (if several permitted improvements exist, these are labeled b<sub>1</sub>, b<sub>2</sub>, b<sub>3</sub> . . . ); plus
  - e. The building envelope cost portion of the unit, plus an inflation rate of two percent (2%) per year from the date of purchase; plus
  - f. Other allowed costs.
2. Formula 2: For All Subsequent Sales of a Unit. The maximum sale price will be limited to the total of:
  - a. One (1) of the following:
    - 1) The purchase price of the mobile home portion of the Unit, as documented by the previous Contract to Purchase the Unit, plus an inflation rate of two percent (2%) per year from the date of purchase; or
    - 2) The purchase price of a mobile home purchased since the last sale of the unit, plus an inflation rate of two percent (2%) per year from the date of purchase;
  - (The most recent purchase of a mobile home shall be used); plus
  - b. The purchase price for Permitted Improvements, as documented by the Contract to Purchase the Unit, plus an inflation rate of two percent (2%) per year from the date of purchase (if several Permitted Improvements exist, these are labeled a<sub>1</sub>, a<sub>2</sub>, a<sub>3</sub> . . . ); plus
  - c. The purchase price of Owner-contributed labor for Permitted Improvements as documented by the Contract to Purchase the Unit, plus an inflation rate of two percent (2%) per year (if several Permitted Improvements exist, these are labeled b<sub>1</sub>, b<sub>2</sub>, b<sub>3</sub> . . . ); plus
  - d. The purchase price of the Building Envelope portion of the Unit, plus an inflation rate of two percent (2%) per year from the date of purchase, as documented by the Contract to Purchase the Unit; plus
  - e. The purchase price of Other Allowed Costs as documented by the Contract to Purchase the Unit, plus an inflation rate of two percent (2%) per year plus Other Allowed Costs since the last purchase of the Unit, plus two percent (2%) per year from the date of Other Allowed Costs (see below).

Notes for Formula 1 and Formula 2:

- a. If a mobile home is replaced, the purchase price of the mobile home will be the Maximum Sale Price of the most recently purchased mobile home, plus two percent (2%) per year from the date of purchase. This will require that appreciation of Building Envelope and mobile homes be tracked separately.

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- b. All Contracts to Purchase a Unit must list separately:
- 1) The price to be paid for the mobile home;
  - 2) The price to be paid for Permitted Improvements;
  - 3) The price to be paid for the Building Envelope; and
  - 4) The price to be paid for Other Allowed Costs.

(This information allows the Maximum Sale Price to be calculated even where any buyer has not paid Maximum Sale Price for any portion of the Unit, or if a mobile home is replaced.)

- c. The components of the formulas are:

MH = Most recent mobile home cost.
a = The cost of all Permitted Improvements during ownership of a Unit.
If several improvements exist, these are labeled a <sub>1</sub> , a <sub>2</sub> , a <sub>3</sub> , etc.
b = Owner-contributed ("sweat equity") for Permitted Improvements.
If several improvements exist, these are labeled b <sub>1</sub> , b <sub>2</sub> , b <sub>3</sub> , etc.
c = The total of Other Allowed Costs.
x = Building Envelope Cost.

**Definitions:**

*Building Envelope Cost.* The purchase price of the Building Envelope portion of a Unit, as the term "Building Envelope" is set forth in the Declarations Establishing Red Lady Estates Condominiums, as recorded in the real property records of Gunnison County.

*Mobile Home Cost.* The purchase price of a mobile home.

*Owner-Contributed Labor.* The cost of an Owner's time expended in making Permitted Improvements. In computing the value of Owner-Contributed Labor, the cost of labor cannot exceed the cost of materials.

*Other Allowed Costs.* Special district assessments, building permit fees and interest paid for construction loans.

*Permitted Improvements.* Permanent, durable improvements, for which a Town building permit is required. The Town shall make the final decision as to what is a Permitted Improvement. Receipts must be provided to document these costs. The costs include the cost of materials and labor. The cost of labor cannot exceed the cost of materials. Permitted Improvements include the following:

- a. Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements excluding repair, replacement and/or maintenance improvements;
- b. Improvements for energy and water conservation;
- c. Improvements for health and safety protection devices;
- d. Improvements to add and/or finish permanent/fixed storage space;
- e. Improvements to finish unfinished space; and/or
- f. The cost of adding decks and balconies and any extensions thereto.

Permitted Improvements shall not include the following:

- a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the Unit;

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- b. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, floor coverings, floor tile and other similar items; and/or
  - c. Upgrades or additions of decorative items, including lights, window coverings, floor tile, carpeting, paint and other similar items.

Costs that may not be included in the Maximum Sale Price are:

- a. Maintenance costs;
- b. Loan points or origination fees;
- c. Loan closing costs;
- d. Property taxes;
- e. Monthly water and sewer service fees;
- f. Condominium Association fees or dues;
- g. Mortgage interest.

The maximum sale price of the Unit is determined through the following calculation:

$$\text{MH} + (\text{MH} * .02 * \# \text{ of years owned, or portion thereof for each year owned}) + (a_1 + b_1) + ((a_1 + b_1) * .02 * \# \text{ of years since the improvement, or portion thereof for each year since the improvement}) + ((a_2 + b_2) \dots) \text{ etc.} + c * .02 * \# \text{ of years since the other allowed cost(s) were paid, or portion thereof for each year since the allowed cost(s)} + X + (X * .02 * \# \text{ of years owned, or portion thereof for each year owned}).$$

**Example 1. (Formula 1 - sale by the original owner of the mobile home)**

The Unit and Permitted Improvements are owned for five (5) years and the Building Envelope is owned for two and one-half (2½) years:

Mobile home cost is	\$40,000.00
Cost of 1st Permitted Improvement	20,000.00
Cost of owner-contributed labor (sweat equity) for 1st Permitted Improvement	1,000.00
Other allowed costs, for building permit fee	100.00
Building Envelope cost, purchased in the middle of year three	20,000.00
$\$40,000 + (\$40,000 * .02 * 5) + (\$2,000 + \$1,000) + ((\$2,000 + \$1,000) * .02 * 5) + 100 + (100 * .02 * 5) + \$20,000 + (\$20,000 * .02 * 2.5) = \$68,410.00$	

**Example 2. (Formula 2 - subsequent sales)**

The Unit, including all original improvements, is owned for three (3) years after purchasing the Unit and an improvement is made at the beginning of year two:

Purchase price of the mobile portion of the Unit was	\$25,000.00
Cost of Permitted Improvement at the beginning of year two	2,000.00
Cost of owner-contributed labor (sweat equity) for the Permitted Improvement	500.00
Other allowed costs, for building permit fee	30.00

The purchase price of the Building Envelope portion of the Unit was	20,000.00
$\begin{aligned} \$25,000 + (\$25,000 * .02 * 3) + (\$2,000 + \$500) + ((\$2,000 + \$500) * .02 * 2) + 30 + (30 * .02 * 2) + 20,000 + \\ (20,000 * .02 * 3) = \$50,331.20 \end{aligned}$	

**EXHIBIT D**  
**Purchase Contract**

Dated: \_\_\_\_\_ at the Town of Crested Butte, Gunnison County, Colorado as follows:

1. SELLER: The Seller is: \_\_\_\_\_, "hereafter termed "Seller."
2. PURCHASER: The Purchaser is: \_\_\_\_\_, (\_\_\_\_\_) in joint tenancy, (\_\_\_\_\_) as tenants in common, hereafter termed "Purchaser."
3. UNIT TO BE PURCHASED: Seller agrees to sell and Purchaser agrees to purchase, under the terms and conditions hereafter set forth, the following described property:

Unit \_\_\_\_\_, Red Lady Estates Condominiums, a condominium project, according to the Condominium Map bearing Reception No. \_\_\_\_\_ of the records of Gunnison County, Colorado and the Condominium Declaration of Red Lady Estates Condominiums, a condominium project, recorded bearing Reception No. \_\_\_\_\_ of the records of Gunnison County Colorado, Town of Crested Butte, County of Gunnison, State of Colorado.

4. PURCHASE PRICE. The Purchase price of the Unit is: \$ \_\_\_\_\_, allocated as follows:
  - 4.1 The purchase price of the mobile home portion of the Unit: \$ \_\_\_\_\_;
  - 4.2 The price of the Permitted Improvements: \$ \_\_\_\_\_;
  - 4.3 The price of owner-contributed labor for Permitted Improvements: \$ \_\_\_\_\_;
  - 4.4 The Building Envelope portion of the Unit: \$ \_\_\_\_\_;
  - 4.5 The Other Allowed Costs: \$ \_\_\_\_\_;
5. METHOD OF PAYMENT. The purchase price of the Unit shall be paid by Purchaser to Seller in the following manner:
  - 5.1 An earnest money deposit of \$ \_\_\_\_\_ toward the purchase price shall be paid upon the execution of this Agreement to Title Company of Crested Butte, 411 3rd Street, Crested Butte, CO 81224, or any other company designated by Seller ("Closing Agent"), to be held in its escrow account.
  - 5.2 \$ \_\_\_\_\_ in good funds shall be paid by Purchaser on the date of closing, as adjusted by any prorations to be made at closing in accordance with this Agreement.
6. DATE OF CLOSING AND DATE OF POSSESSION.
  - 6.1 The date of closing shall be \_\_\_\_\_.
  - 6.2 The date of closing shall be the date of possession.
  - 6.3 The place of closing shall be at the offices of Closing Agent.
7. GENERAL WARRANTY DEED. On the date of closing, Seller shall execute and deliver to Purchaser a General Warranty Deed conveying marketable title to the Unit free and clear of all liens and encumbrances except only:
  - 7.1 Real property taxes and assessments;

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- 7.2 Taxes and assessments which are a lien or are now due and payable; any unredeemed tax sales; any tax, special assessment, charge or lien imposed for water or sewer service; any tax, special assessment, charge or lien imposed for or by any special taxing district or on account of the inclusion of the subject property in one (1) or more improvement districts.
  - 7.3 Reservations or exceptions, or an act authorizing the issuance thereof, as created by United States Patents recorded December 10, 1892, in Book 101 at Page 93; recorded August 18, 1913, in Book 101 at Page 534; recorded March 10, 1897, in Book 101 at Page 158; and recorded October 11, 1984, in Book 610 at Page 798.
  - 7.4 Rights-of-way as set forth in Quit Claim Deed recorded October 12, 1983, in Book 598 at Page 148.
  - 7.5 Any taxes, fees, assessments or charges by Notice of Ordinances in the Town of Crested Butte, recorded December 1, 1986, in Book 636 at Page 145, as follows:
    - (a) Ordinance No. 15, Series 1979, as amended, providing for an excise tax upon the transfer of interests in real property.
    - (b) Ordinance No. 7, Series 1986, requiring the replacement of nonapproved solid fuel-burning devices with "Approved Solid Fuel-Burning Devices" upon the transfer of interests in real property.
    - (c) Chapters 16 and 17 of the Crested Butte Municipal Code, the Zoning and Land Use regulations of the Town.
  - 7.6 Agreement dated April 4, 1990, and recorded April 26, 1990, in Book 677 at Page 532.
  - 7.7 Terms, provisions, options, rights of first refusal, covenants, conditions, restrictions, easements, charges, assessments and liens (provisions, if any, based on race, color, religion or national origin are omitted) provided in the Declaration of Protective Covenants of Trapper's Crossing at Crested Butte recorded April 26, 1990, in Book 677 at Page 509; in the Amendment of Declaration of Protective Covenants of Trapper's Crossing at Crested Butte recorded February 14, 1991, in Book 687 at Page 946; and in the Approval of Town of Crested Butte to Amendment to Declaration of Protective Covenants of Trappers Crossing at Crested Butte recorded May 31, 2001, bearing Reception No. 511092.
  - 7.8 Covenant and condition that such property shall be used solely for residential housing, public park, public parking or any other public purposes and that the southerly portion thereof compromising the upper bench shall have no residential housing constructed thereon, as set forth in General Warranty Deed recorded January 2, 1991, in Book 686 at Page 535.
  - 7.9 Covenants, conditions, notations, restrictions, easements and rights-of-way for utility and other purposes as reserved on the Plat of Trapper's Crossing South recorded February 14, 1991, bearing Reception No. 425376.
  - 7.10 Terms, conditions, provisions, agreements and obligations specified in Ordinance No. 12 Series 1991, recorded August 23, 1995 in Book 769 at Page 94.
  - 7.11 Notice of Zoning Conditional and Restrictive Covenants recorded August 8, 1997, bearing Reception No. 477420.
  - 7.12 Ordinance No. 17, Series 2001, recorded September 11, 2001, bearing Reception No. 514122.
  - 7.13 Covenants, conditions, notations, restrictions, easements and rights-of-way for utility and other purposes as reserved on the Plat of Red Lady Estates Condominiums, a condominium project, recorded \_\_\_\_\_, bearing Reception No \_\_\_\_\_
  - 7.14 Terms, provisions, conditions, restrictions and rights of first refusal provided in the Condominium Declaration of Red Lady Estates Condominiums, a condominium project, recorded \_\_\_\_\_,

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bearing Reception No. \_\_\_\_\_ of the records of Gunnison County Colorado, Town of Crested Butte, County of Gunnison, State of Colorado, on \_\_\_\_\_, 2003.

7.15 The provisions of the Model Affordable Housing Guidelines, 2003 Edition, Part III, Red Lady Estates Condominiums, recorded \_\_\_\_\_, bearing Reception No. \_\_\_\_\_.

7.16 \_\_\_\_\_.

7.17 Any other exceptions to title approved by Purchaser.

Immediately following the closing, the General Warranty Deed shall be delivered to the office of the Clerk and Recorder of Gunnison County for recording, together with the Real Property Transfer Declaration pursuant to Section 39-14-102, C.R.S., executed by the Purchaser, and the required recording fee and documentary fee.

8. TITLE INSURANCE POLICY. Not later than ten (10) days before closing, Seller shall deliver to Purchaser a Commitment for Title Insurance issued by United General Title Insurance Company, which shall agree to insure the marketability of title of the Unit for the amount of the purchase price according to the conditions and requirements set forth therein. Such Commitment for Title Insurance shall show title to be marketable in Seller, free and clear of any liens and encumbrances, except only the following:

8.1 The items set forth in paragraphs 7.1 through 7.17 of this Agreement.

8.2 The standard printed exceptions as contained in an ALTA Owner's Policy of Title Insurance issued in the State of Colorado which are:

8.2.1 Rights or claims of parties in possession not shown by the public records.

8.2.2 Easements or claims of easements not shown by the public records.

8.2.3 Discrepancies, conflicts in boundary lines, shortage in area, encroachments and any fact which a correct survey and inspection of the premises would disclose and which are not shown by the public records.

8.2.4 Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records. Seller shall, at closing, sign a Final Affidavit in a form acceptable to the title insurance company to delete this Exception 8.2.4 from the Owner's Policy of Title Insurance.

8.2.5 Taxes and assessments which are a lien or are now due and payable; any tax, special assessment, charge or lien imposed for or by any special taxing district or for water and sewer service; or any unredeemed tax sales. Such exception is subject to the following:

8.2.5.1 At or prior to closing, this exception shall be modified by endorsement to read: "Taxes for the year of closing, a lien, but not yet due and payable."

8.2.5.2 The obligation for the payment of taxes and assessments is set forth in Paragraph 9 of this Agreement.

Within forty-five (45) business days after the date of closing, Seller shall deliver to Purchaser the Owner's Policy of Title Insurance, in accordance with the Commitment for Title Insurance, insuring the Purchaser's title to the Unit in the amount of the purchase price.

9. PRORATIONS.

9.1 Seller shall, on or before the date of closing, provide to Purchaser a current certificate of taxes due issued by the Gunnison County Treasurer. Seller shall pay the real estate taxes and assessments levied against the Unit for all years prior to the date of closing. Real estate taxes and assessments due and payable for the year in which the sale is closed shall be prorated as of the date of closing and, for the

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purpose of such proration, the prior year's real estate taxes and assessments shall be utilized as a final settlement. Purchaser assumes and agrees to pay all subsequent real estate taxes and assessments and the real estate taxes and assessments for the year of closing, subject to the proration being made as above provided.

- 9.2 The Town of Crested Butte Real Estate Transfer Tax shall be paid at closing by \_\_\_\_\_.
- 9.3 All other fees shall be allocated and/or prorated according to Gunnison County custom.
10. **WARRANTIES AND REPRESENTATIONS.** Seller and Purchaser agree that the following warranties and representations apply to this Agreement:
  - 10.1 Purchaser, or his or her representative, has inspected and reviewed the Unit, the exceptions to title, the zoning applicable to the Unit and the deed restriction encumbering the Unit, applying to the Unit the provisions of the Model Affordable Housing Guidelines, 2003 Edition, Part III, Red Lady Estates Condominiums, to the extent that Purchaser deems necessary and relies upon Purchaser's own judgment, inspection and review of the Unit, title, deed restriction and zoning to enter into this Agreement and to purchase the Unit, which Purchaser accepts "AS IS," with all faults.
  - 10.2 Seller and its employees, agents and representatives make no warranty or representation as to the status or condition of the Unit except only for the warranties and representations of Seller explicitly as set forth in this Agreement.
  - 10.3 Seller and its employees, agents and representatives have made no representation as to the investment potential of the Unit.
  - 10.4 Purchaser is aware of the fact that the Unit is within and subject to assessment by the Crested Butte Fire Protection District, which imposes property taxes:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENT OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICTS SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.
  - 10.5 Purchaser shall be responsible for paying all special assessments charged by the Town of Crested Butte.
11. **FEES AND EXPENSES.**
  - 11.1 Seller shall pay all fees and expenses for: (1) the premium for the Commitment for Title Insurance and the Owner's Policy of Title Insurance; (2) any real estate commissions incurred by Seller; (3) all attorneys' fees, costs and expenses incurred by Seller to close this transaction, including the preparation of all legal documents; and (4) one-half ( $\frac{1}{2}$ ) of the fees charged by the Closing Agent to close this transaction.
  - 11.2 Purchaser shall pay all fees and expenses for: (1) one-half ( $\frac{1}{2}$ ) of the fees charged by the Closing Agent to close this transaction; and (2) the premium for any Loan Policy of Title Insurance. To the extent that Purchaser incurs any obligation(s) for real estate commissions, attorneys' fees, professional fees, express shipping charges or other costs, fees and expenses pertaining to this transaction, other than as set forth in Paragraph 11.1, above, Purchaser shall be responsible for and shall timely pay the same.
12. **DEFAULT.** Seller and Purchaser hereby covenant and agree as follows:

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12.1 If Purchaser shall fail, neglect or refuse to make any payments required to be made under this Agreement on the date that the same are due and payable, or otherwise fail to comply with the terms and conditions of this Agreement, Seller shall have the following rights:

12.1.1 It is admitted that Seller shall have suffered damages by reason of such default, the parties desire and intend to liquidate such damages and it is difficult to ascertain at the time of entering into this Agreement the actual damages occurring from a breach of this Agreement; and, therefore, Seller shall be entitled to retain as its actual damages all amounts paid by Purchaser under this Agreement through the date of default, together with earned interest thereon, if any.

12.1.2 The payment of such damages shall constitute a full and complete settlement between Seller and Purchaser and, upon such payment, this Agreement shall be terminated in its entirety and no further rights shall accrue hereunder.

12.2 If Seller shall fail, neglect or refuse to comply with the terms of this Agreement on or before the date of closing, Purchaser shall have the right to have returned to him or her any amounts paid under this Agreement, together with earned interest (if such amounts have been placed in an interest bearing account), as a full and complete settlement between the parties. The payment of such amount shall constitute a full and complete settlement between Seller and Purchaser and, upon such payment, this Agreement shall be terminated in its entirety and no further rights shall accrue hereunder. In the alternative, Purchaser shall have the right to enforce the terms of this Agreement by an action for specific performance.

13. RECEIPT OF DOCUMENTS. Purchaser hereby acknowledges that, prior to the execution of this Agreement, Purchaser received and had an opportunity to review copies of the documents referred to in Paragraph 7 above.

14. NOTICES. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand-delivered, mailed by certified mail, return receipt requested or by facsimile or telegraphic communication to the required party at the following addresses:

SELLER: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

PURCHASER: as set forth following the Purchaser's signature.

Notice shall be deemed delivered at the time of personal delivery, facsimile or telegraphic communication or when mailed to the required party. Any party may change its address by giving written notice of a change of address to the other party in the manner above provided.

15. ENTIRE AGREEMENT. This Agreement constitutes the entire and only agreement between the parties regarding the subject matter hereof. All prior negotiations, agreements, representations and understandings, whether written or oral, are merged into and superseded by this Agreement and shall be of no further force and effect.
16. APPLICABLE LAW. This Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado.
17. JURISDICTION AND VENUE. Exclusive jurisdiction and venue of any action as to this Agreement and the interpretation, enforcement or the determination of the rights and duties of the parties hereto shall be in the County Court or District Court of Gunnison County, Colorado. Each party submits to the personal

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jurisdiction of the County Court or District Court of Gunnison County, Colorado, and waives any and all rights under the laws of any other state or county to object to the jurisdiction of the County Court or District Court of Gunnison County, Colorado, as to any action pertaining to this Agreement.

18. ATTORNEY FEES. If any legal action is commenced or maintained in Court, whether in law or in equity, by any party to this Agreement as to the interpretation, enforcement, construction or determination of the right and duties of the parties to this Agreement or any document provided for herein or related hereto, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees, together with all reasonable costs and expenses incurred in such action.
19. TIME IS OF THE ESSENCE. It is expressly agreed that time is of the essence of this Agreement.
20. WAIVER. No consent or waiver (whether express or implied) by any party to exercise any right under this Agreement upon a default of any other party shall be deemed a consent or waiver by such party as to any other default by any such other party of the same or any other right, duty or obligation under this Agreement. Failure by a party to complain of, continue to complain of or pursue a remedy with respect to any act or failure to act of any other party or the failure of a party to declare any other party in default, regardless of how long such default may continue, shall not constitute a waiver by such party of its rights or remedies, either under this Agreement or at law or in equity.
21. TERMINATION. This Agreement and the terms and conditions thereof shall remain in full force and effect until fully performed by the parties; and it is understood and agreed that the terms and conditions of this Agreement shall survive the date of closing and shall not be merged or extinguished by any instrument of conveyance or assignment.
22. COUNTERPARTS. This Agreement and any other documents or instruments required under this Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement, document or instrument.
23. TELECOPIER (FAX) SIGNATURE. The parties agree that a signature to this Agreement or any document relating hereto transmitted by telecopier shall be the binding signature of such party for the purpose of this Agreement.
24. PROFESSIONAL ADVICE. Seller recommends that Purchaser obtain the advice of legal counsel regarding this Agreement and all required documents for the closing of the transaction represented by this Agreement.
25. FOREIGN PERSON TRANSFEROR. Seller warrants that it is not subject to withholding as defined under the Internal Revenue Code Section 897 and the Internal Revenue Code Section 1445 (Foreign Person Transferor) and agrees to execute any required Affidavit at closing to that effect. An executed Affidavit by the Seller shall be provided to Purchaser on or before the time of closing.
26. PROCEEDS REPORTING REQUIREMENT. Under current tax law, the Closing Agent is required to report to the Internal Revenue Service on Form 1099B the proceeds paid to Seller. Seller shall supply to Closing Agent at closing the information necessary to complete such form and to include the tax identification number, name, address and ownership of Seller.
27. BINDING AGREEMENT. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, representatives and heirs.

Executed as of the date first above written.

SELLER:

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PURCHASER:

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(Supp. No. 20)

Created: 2023-05-12 10:44:44 [EST]

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SSN/EIN:

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Address of Purchaser:

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Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

PURCHASER'S RIGHT OF RESCISSION. PURCHASER SHALL HAVE THE RIGHT TO RESCIND THIS AGREEMENT, WITH OR WITHOUT CAUSE AND AT PURCHASER'S SOLE OPTION, BY TELEGRAM, MAIL OR HAND DELIVERY AT ANY TIME WITHIN FIVE (5) CALENDAR DAYS FOLLOWING THE DATE OF PURCHASER'S EXECUTION OF THIS AGREEMENT. SUCH REQUEST SHALL BE CONSIDERED MADE IF BY MAIL WHEN POSTMARKED, IF BY TELEGRAM WHEN FILED FOR TELEGRAPHIC TRANSMISSION, AND IF BY HAND DELIVERY WHEN DELIVERED TO SELLER'S PLACE OF BUSINESS. UPON SUCH RIGHT OF RESCISSION HAVING BEEN EXERCISED, SELLER SHALL PROMPTLY REFUND TO PURCHASER ALL MONIES THEN PAID BY PURCHASER IN GOOD FUNDS AS DEFINED IN SECTION 38-35-125, COLORADO REVISED STATUTES, WHEREUPON THIS AGREEMENT SHALL AUTOMATICALLY BE RENDERED NULL AND VOID. THIS RIGHT OF RESCISSION CANNOT BE WAIVED.

(Code §17-12-10; Ord. 4 §1, 2009)

**APPENDIX N**  
**Affordable Housing Guidelines**

**PART IV. TOWN OWNED RENTAL UNITS OCCUPANCY AND RENTAL GUIDELINES<sup>13</sup>**

**Section 1. Applicability.**

The following guidelines apply to rental units controlled by the Town of Crested Butte. These guidelines apply to the following units: Town Ranch Units 1-3, Block 77, Units 6A and 6B and the accessory dwelling unit located in Block 78, Lot 5 (which is subject to the additional regulations found in Section 5 below). Previous guidelines for these units relative to rentals are amended and supplemented by these guidelines.

( Ord. No. 9, § 1(Exh. A), 2014 )

**Section 2. Eligibility qualifications.**

- A. Eligible renters of Town employee rental living units shall be qualified in the following priority:
- 1) Full-time employees of the Town of Crested Butte as defined by the Town;
  - 2) Part-time and seasonal employees of the Town of Crested Butte;
  - 3) Essential services employees:

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<sup>13</sup>Ord. No. 9, § 1(Exh. A), adopted Aug. 25, 2014 , amended App. N, Pt. VI, to read as herein set out. Former App. N, Pt. IV, §§ 1—3, pertained to Town Ranch House Occupancy Guidelines, and derived from Code § 17-12-10; and Ord. 4, § 1, adopted 2009.

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- (a) Mountain Express employees;
  - (b) Fire personnel;
  - (b) Emergency Medical Technicians (EMTs);
  - (c) Public school teachers and administrators;
  - (d) Mt. Crested Butte emergency services personnel;
  - (e) County Sheriff personnel, and other as identified by the Town Council;
- 4) Members of the general public for a maximum lease period of a year.
- B. Eligible renters shall not own developed residential property in Gunnison County unless the Town Manager exempts such eligible renter for good cause shown.

( Ord. No. 9, § 1(Exh. A), 2014 )

### **Section 3. Process for qualifying for town rental.**

- A. Length of Lease. Each Town rental living unit shall be leased for one (1) year. Leases shall be renewed annually if persons in Categories 1, 2 and 3 are current in their rental payments and are not in violation of any term or condition of their lease. Category 4 units shall be reoffered to another eligible renter at the expiration of the lease term.
- B. Process.
  1. The Town shall notify all full-time Town employees when a Town rental living unit becomes available. If a unit is not leased by a full-time Town employee after notifying all eligible full-time Town employees that such unit is available, and following the completion of the lottery if applicable, it shall be leased to a person in Category 2. If more than one (1) full-time employee is interested in the unit the Town shall conduct a lottery as outlined in Section C below. If the first person chosen in the lottery does not sign a lease with the Town within fourteen (14) days of the lottery, the next person on the list for that unit shall be given the option to lease the unit within fourteen (14) days of notice from the Town, etc. A "full-time employee" works a minimum of [thirty-seven and one-half] (37.5) hours per week, [fifty-two] (52) weeks per year. A person who is a seasonal employee but is not currently employed by the Town is a Category 4 person unless they have worked for the Town more than one (1) season in which case they are deemed to be a Category 2 person.
  2. The Town shall notify part-time and seasonal Town employees when a Town rental living unit becomes available and when it has not been leased by a full-time Town employee. If a unit is not leased by a part-time or seasonal Town employee after notifying all eligible seasonal and part-time Town employees that the unit is available, and following the completion of the lottery if applicable, it shall be leased to a person in Category 3. If more than one (1) part-time or seasonal employee is interested in the unit the Town shall conduct a lottery as outlined in Section C below. If the first person chosen in the lottery does not sign a lease with the Town within fourteen (14) days of the lottery, the next person on the list from the lottery shall be given the option to lease the unit within fourteen (14) days of notice from the Town, etc. At the termination of employment, the lease is subject to Section 4 of these guidelines.
  3. The Town shall request that anyone in Category 3 who is interested in leasing the Town rental living unit complete a rental application when no full-time, seasonal or part-time Town employee leases the unit. The Town shall notify the persons in Category 3 and accept applications for a thirty (30)-day period following the date of such notification. The Town shall conduct a lottery as outlined in Section C below of those who have completed rental applications to identify the person to lease the unit. If the

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- first person chosen in the lottery does not sign a lease with the Town within fourteen (14) days of their selection in the lottery, the next person on the list from the lottery shall be given the option to lease the unit, etc.
4. If no applicants from Category 3 lease the Town owned rental living unit, the unit shall be advertised in the Crested Butte News once. If more than one (1) applicant is interested in the unit the Town shall conduct a lottery as outlined in Section C below. Prior to conducting the lottery, references of potential applicants shall be checked and verified. If the first person chosen in the lottery does not sign a lease with the Town within fourteen (14) days of the lottery, the next person on the list from the lottery shall be given the option to lease the unit within fourteen (14) days of notice from the Town, etc.
- C. Lottery process. If there is more than one interested applicant in a Town rental living unit in the applicable category, then the Town shall conduct a lottery. Each applicant shall receive a minimum of one (1) lottery pick. For every one (1) full year of employment with the Town or the current essential services employer, that applicant will receive one (1) additional lottery pick. If the employee was a former seasonal or part-time employee they will receive an additional .5 lottery pick for those years served which such .5 will be rounded downward. This does not apply for general members of the public in Category 4 which will each only receive one (1) lottery pick for the unit. Applicants will be notified of the date, time and place of the drawing. Attendance at the drawing is not mandatory but encouraged. At the lottery one (1) pick will be made at a time. In the event of multiple employees entering the lottery multiple names will be drawn and priority in the order picked in the event the winning applicant and next prioritized person does not sign a lease.

( Ord. No. 9, § 1(Exh. A), 2014 )

#### **Section 4. Termination of employment.**

Town employees or essential service employees shall vacate the Town owned living unit within thirty (30) days of date of termination of employment, or at the end of the lease period, whichever occurs first. Seasonal employees, who do not return for the following season, shall vacate the unit within thirty (30) [days] of their last day of work.

( Ord. No. 9, § 1(Exh. A), 2014 )

#### **Section 5. Accessory Dwelling Unit located in Block 78 Lot 5.**

The accessory dwelling unit is intended to be rented to a Town intern. If no intern is budgeted by any Town department the unit will be leased for a one (1) year term in conformance with Section 2 above and may be renewed by the Town and lessee for an additional one (1) year period if no intern is budgeted for the next fiscal year so long as such lessee in compliance with all terms of the lease. If no Town intern is hired for a fiscal year the unit will be offered under the same process as identified above but be subject to a one (1) year lease.

( Ord. No. 9, § 1(Exh. A), 2014 )

#### **APPENDIX N Affordable Housing Guidelines**

#### **PART V. POVERTY GULCH CONDOMINIUMS**

##### **Introduction.**

These Amended and Restated Affordable Housing Guidelines, Part V. Poverty Gulch Condominiums (Guidelines) amend, restate and replace in their entirety the prior guidelines "Town of Crested Butte 1995

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(Supp. No. 20)

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- APPENDIX  
APPENDIX N - Affordable Housing Guidelines  
PART V. POVERTY GULCH CONDOMINIUMS

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Affordable Housing Guidelines, 1999 Edition, Part V. Butte Avenue and Seventh Street" recorded at Reception Number 498499 in the records of the Gunnison County Clerk and Recorder.

These Guidelines affect the following Real Property: Units A-J, Poverty Gulch Condominiums, according to the Condominium Map bearing Reception No. 498092 of the records of Gunnison County, Colorado, and the Condominium Declaration of Poverty Gulch Condominiums bearing Reception No. 498091 of the records of Gunnison County, Colorado.

The Town of Crested Butte, Colorado (or its designee, including any housing authority designated by the Town, hereafter referred to as "Town") has identified the necessity for the creation of ten (10) residential condominium units (the "Unit" or "Units") as owner-occupied, deed-restricted, affordable housing. The use and occupancy of the Units shall be limited to housing for natural persons who meet the definition of "Qualified Buyers," their families and accompanying tenants. These Guidelines are intended to assure that all purchasers and sellers will be treated fairly and impartially.

All applicants are advised to consult legal counsel regarding examination of title and all contracts, agreements and title documents. The retention of such counsel, or of real estate brokers or such related services, shall be at the purchaser's or seller's own expense. The fees paid to the Town as set forth herein are to be paid regardless of any actions or services that the purchaser or seller may undertake or acquire.

## **Section 1. Qualified Buyers.**

A. *Definition.* A *qualified buyer* is a natural person who meets all of the following eligibility qualifications:

1. One who has lived or worked in Gunnison County for at least five (5) of the past seven (7) years or three (3) of the past four (4) years as of the date of the contract to purchase a Unit (a single Unit will be constructed to comply with the specifications set forth in the American Disabilities Act ["ADA"]). An applicant whose condition requires the use of an ADA-compliant Unit shall not be required to comply with these residency requirements.);
2. Derives eighty percent (80%) of his or her total "Earned Income" in Gunnison County. Earned Income shall be defined by the U.S. Internal Revenue Service (IRC, Sec. 32(2) Earned Income [3/20/1995] and as it may be amended);
3. Does not own an interest, alone or in conjunction with others, in any developed residential real estate (land). (Applicants who own developed residential land must sell the developed residential land to an unrelated person or an entity in which the applicant has no interest, for fair market value, prior to closing on a Unit. If an applicant owns a fifty-percent or less undivided interest in residential land, he or she may convey that interest to the joint owner with or without receiving consideration. If the developed residential land is not sold by the time of closing on a Unit, the applicant becomes ineligible to purchase the Unit and shall not close on it. The seller of the Unit may delay closing until the applicant sells the other developed residential land, or the seller may void the contract to sell and may enter into a new contract to sell to a different qualified buyer.);
4. Resides in Gunnison County at the time of application for a Unit;
5. Works at least an average of one hundred twenty (120) hours each month, averaged annually, in Gunnison County or for a company headquartered in Gunnison County; and
6. Does not exceed one hundred percent (100%) of the Area Median Income (AMI) for Gunnison County for the household size applying for a Unit, as published by the U.S. Department of Housing and Urban Development or its successor agency. The income to be used will depend upon the size of the

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household applying for the Unit. AMI is published for each household size. For instance, if a one-person household applies for a Unit, the AMI used will be for a one-person household but if a two-person household applies for the same Unit, the AMI used will be for a two-person household.

B. *Exemptions.*

1. **Exemptions from eligibility qualifications listed in Section 1.A.**

A request for an exemption from the Qualified Buyer criteria listed in Section 1.A. may be requested from the Town Council. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for the exemption. Examples of such hardships and special circumstances or compelling reasons include, but are not limited to, the following:

- a. Those people, or those with federally recognized dependents, who are certified as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely;
- b. Those people who are court-appointed legal guardians with wards who are otherwise qualified buyers;
- c. Current owners of Units whose circumstances change and who are now collecting Social Security Income or Worker's Compensation;
- d. A person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year;
- e. A person who temporarily left Gunnison County to attend college or other educational training;
- f. A recently hired employee of the Town or any other employee providing essential services to the Town;
- g. Those people with federally recognized disabled dependents.

2. **Mortgage loan co-signers.**

- a. An individual other than the qualified buyer may co-sign, along with the qualified buyer, on a mortgage loan for a Unit. That co-signer may also appear on the title to the Unit.
- b. If title to a Unit transfers solely to a co-signer, unless the co-signer is also a qualified buyer, the co-signer may not occupy or rent the Unit, and the Unit shall be listed for sale and sold to a qualified buyer.

C. *Information Required to be Qualified.* In order to be approved as a qualified buyer, a person must establish by competent evidence that he or she meets the eligibility qualifications. Evidence that is acceptable to establish such qualifications includes, but is not limited to, the following:

1. Copies of federal income tax returns and all applicable IRS W-2 forms.
2. Rent receipts.
3. Record of mortgage payments.
4. Utility receipts.
5. Voter registration records.
6. Payroll records.
7. Sworn affidavits regarding property ownership, tax roll records or employment.
8. Landlord verification.

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- 9. Colorado driver's license.
  - 10. Vehicle registration.
  - 11. Birth certificate.
  - 12. Any other verification deemed necessary by the Town.

## **Section 2. Procedures for Sales of Units.**

- A. *To Whom May Units be Sold.* Sale of Units subsequent to the initial sale to a qualified buyer shall be restricted to qualified buyers as defined herein. Purchasers must meet the qualified buyer criteria in Section 1.A. or receive an exemption from the Town Council as described in Section 1.B.
  - B. *Town Must Confirm Maximum Sales Price.* An owner of a Unit desiring to sell the Unit must consult with the Town to determine the maximum sales price permitted, as defined below, and other applicable provisions concerning a sale.
  - C. *Determining Sales Price.* After the initial sale of a Unit to a qualified buyer, no subsequent sale of a Unit shall be for an amount greater than the maximum sales price.
    - 1. For purposes of these Guidelines, the *maximum sales price* shall be:
      - a. The seller's purchase price of the Unit; plus
      - b. An amount equal to any special improvement district assessments paid by the seller during the seller's ownership of the Unit; plus
      - c. The cost of permitted capital improvements (as defined in Exhibit A attached hereto) plus appreciation as described in the formulas below. The amount for capital improvements included in the maximum sales price shall not exceed:
        - 1) Ten percent (10%) of the original purchase price when Units originally cost more than one hundred thousand dollars (\$100,000);
        - 2) Fifteen percent (15%) of the original purchase price when the Units originally cost less than seventy-five thousand dollars (\$75,000) but more than fifty thousand dollars (\$50,000);
        - 3) Twenty percent (20%) of the original purchase price when the Units originally cost less than fifty thousand dollars (\$50,000);
    - for an initial ten-year period. For every ten-year period from the date of the original purchase, another:
      - 4) Ten percent (10%) of the original purchase price for Units that originally cost more than one hundred thousand dollars (\$100,000);
      - 5) Fifteen percent (15%) of the original purchase price for Units that originally cost less than seventy-five thousand dollars (\$75,000) but more than fifty thousand dollars (\$50,000)
      - 6) Twenty percent (20%) of the original purchase price for Units that originally cost less than fifty thousand dollars (\$50,000);
- may be added to the value of the Unit for capital improvements. In calculating such amount, only those permitted capital improvements identified in Exhibit A and for which a building permit has been issued by the Town and for which receipts are provided, shall qualify for inclusion. All such permitted capital improvements installed or constructed over the life of the Unit shall qualify. The additional ten percent (10%), fifteen percent (15%) or twenty percent (20%) of the original purchase price for each subsequent ten-year period may be added to the sale price on the first day of the subsequent ten-year period.

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- d. The seller's contributed labor or "sweat equity" may be part of the cost of a permitted capital improvement plus appreciation as described in the formulas below.

2. The original purchase price and date of the original purchase for each Unit was as follows:

<b>Unit</b>	<b>Purchase Price</b>	<b>Original Purchase Date</b>
A	\$70,800	12/06/1999
B	\$70,800	12/06/1999
C	\$43,800	12/06/1999
D	\$43,800	12/06/1999
E	\$43,800	12/06/1999
F	\$43,800	12/06/1999
G	\$105,200	12/20/1999
H	\$105,200	12/20/1999
I	\$70,800	12/20/1999
J	\$70,800	12/20/1999

Source: Gunnison County Assessor's Office, Property Record Search.

3. Maximum sales price shall be calculated using the lesser of the two (2) following calculations:
- An amount equal to:
    - Three percent (3%) per annum of the seller's purchase price, prorated at the rate of twenty-five hundredths percent (.25%) per month from the date of the seller's purchase of the Unit to the date of the seller's sale of the Unit; plus
    - The value of all permitted capital improvements for which a building permit has been issued, including materials and labor and for which receipts are provided to the Town (see Exhibit A). (If several permitted capital improvements have been made after the initial Certificate of Occupancy [CO] has been issued, these are labeled c<sub>1</sub>, c<sub>2</sub>, c<sub>3</sub>, etc. in the formula below.); plus
    - Three percent (3%) per annum of the materials used in the permitted capital improvements, prorated at the rate of twenty-five hundredths percent (.25%) per month from the date of the building permit (BP); plus
    - The value of all labor, including seller's documented contributed labor or "sweat equity" for the permitted capital improvements (the value of all labor shall not exceed the value of all materials, and sweat equity shall be documented as a portion of all labor.); plus
    - Three percent (3%) per annum of all labor for the permitted capital improvements, prorated at the rate of twenty-five hundredths percent (.25%) per month from the date of the building permit;
  - or
  - An amount calculated in accordance with the following formula where:

a = permitted capital improvements materials cost, as of the date of the building permit  
b = labor for permitted capital improvements  
BP = building permit

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CPI = the Denver-Boulder-Greeley, CO Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. CPI will be the nearest CPI published prior to the dates in the formula.

$$\begin{array}{l} \text{Seller's purchase price} \quad \frac{\text{CPI prior to date of sales contract} + (a_1 + b_1)}{\text{CPI prior to purchase date by seller} \times \text{CPI prior to issuance of BP}} \\ \times \quad \frac{\text{CPI prior to date of sales contract} + (a_2 + b_2)}{\text{CPI prior to issuance of BP}} \\ \times \quad \frac{\text{CPI prior to date of sales contract} + (a_3 + b_3) \dots \text{etc.}}{\text{CPI prior to issuance of BP}} = \text{Maximum Sale Price} \end{array}$$

**Example:**

The Unit is owned three and one-half (3½) years or forty-two (42) months.

Seller's purchase price is \$60,000.

Cost of first improvement, made in the middle of year two (2), or thirty (30) months ago, is \$3,000.

Cost of all labor for first improvement is \$2,000.

CPI prior to purchase by seller is 165.

CPI prior to date of building permit is 168.1.

CPI prior to date of sales contract is 176.

**Example using three percent (3%) per annum:**

\$60,000 + (\$60,000 x .0025 x 42) + (\$3,000 + \$2,000) + (((\$3,000 + \$2,000) x .0025 x 30) = \$71,675

**Example using CPI:**

\$60,000 x + (\$3,000 + \$2,000) x = \$69,235

In this example, because the maximum sales price is lower using CPI, the maximum sales price is the amount using CPI or \$69,235.

D. *Advertising the Sale of a Unit.*

1. When an owner of a Unit is ready to sell a Unit, the owner shall place an announcement in the legal publications section of the official newspaper of the Town and any other place the owner wishes to advertise the Unit, announcing the following:
  - a. The address of the Unit;
  - b. That households with a person meeting the qualified buyer eligibility qualifications of these Town of Crested Butte Affordable Housing Guidelines, Part V. Poverty Gulch Condominiums, or a household which has received an exemption from the eligibility qualifications from the Town, may make an offer on the Unit;
  - c. The contact information for the owner;
  - d. The sale price of the Unit, which price shall not exceed the maximum sale price.

E. *Contracting to Sell Units.* Only qualified buyers may enter into a purchase contract with the owner.

1. In the event that none of the Units in the Poverty Gulch Condominiums are owned by Town employees, only Town employees may enter into a contract to purchase the Unit during the first fifteen (15) days following publication of the sale announcement. A representative of the owner with authority to enter into a contract must be available during said fifteen (15) days. Town employees include the following:
  - a. Any full-time employee who works for the Town at least thirty (30) hours per week.

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- b. Any seasonal Town employee who has worked for the Town for at least thirty (30) hours per week for at least four (4) seasons within the past four (4) consecutive years. (The four [4] seasons a Town employee has worked for the Town must be consecutive, such as four [4] consecutive winters or four [4] consecutive summers. For purposes of this Section, Mountain Express employees are seasonal employees.)
  - 2. In the event that the ADA-compliant Unit is available for sale, only applicants whose condition requires the use of an ADA-compliant Unit may enter into a contract to purchase the Unit during the first fifteen (15) days following publication of the sale announcement. A representative of the owner with authority to enter into a contract must be available during said fifteen (15) days.
  - 3. If at least one (1) Unit is owned by a Town employee and if the Unit offered for sale is not the ADA-compliant Unit, the owner shall decide to whom the owner shall sell the Unit, as long as the owner sells to a qualified buyer.
  - 4. Prior to the closing of a sale of a Unit, the seller shall obtain the approval of the Town that the sales price of the Unit does not exceed the maximum sales price. The seller shall submit to the Town a copy of the sales contract for the Unit, verified by affidavit of the seller as being a true and correct copy, and a calculation of the maximum sales price accompanied by evidence of the cost of any improvements which seller believes qualify for inclusion in the maximum sales price. The seller shall pay the Town the administrative fee for calculating maximum sale price as found in the fee schedule of the Town Code.
  - 5. The Town shall either approve or disapprove the sales contract and the maximum sales price calculation in writing and, if disapproved, shall state the reason for such disapproval within fifteen (15) business days of the receipt of the sales contract and accompanying materials. If the sales contract is disapproved, either the seller or buyer may request a hearing before the Town Council by submitting such request in writing within ten (10) business days of the date of the written notice disapproving the contract.
  - 6. The seller shall not permit the buyer to assume any or all of the seller's customary closing costs nor shall the seller accept any other consideration which would cause an increase in the sales price of the Unit above the maximum sales price so as to induce the seller to sell the Unit to such buyer.
  - 7. Nothing herein shall be construed to constitute a representation or guarantee by the Town that, upon the sale of a Unit, the seller shall obtain the maximum sales price.

### **Section 3. Ownership and Residence of Units.**

All owners, both initial and subsequent, must comply with the following requirements:

- A. *Copies of Deeds to Town After Each Sale.* A copy of each deed conveying title to a Unit must be provided to the Town within thirty (30) days of purchase.
- B. *Occupancy of Unit.* The owner of the Unit must occupy his or her Unit as his or her sole and exclusive residence, subject to the provisions on leaves of absence below.
- C. *Continuing Qualifications.*
  - 1. After the initial sale of each of the Units, each owner shall continue to comply with the eligibility qualifications of a qualified buyer with the following exceptions:
    - a. An owner who has reached the age of fifty-nine and one-half (59½) years and retired from full-time work need not continue to derive eighty percent (80%) of his or her total "Earned Income" in Gunnison County or work at least one hundred twenty (120) hours per month in Gunnison County.

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- b. After purchasing a Unit, all owners may earn more than the maximum income allowed in the definition of a qualified buyer.
  - 2. If the owner ceases to otherwise have the qualifications of a qualified buyer, or if the owner changes his or her domicile or ceases to use the Unit as his or her sole and exclusive place of residence, subject to the provisions on leaves of absence below, the Unit will be offered for sale and will be sold to a qualified buyer as provided herein. In the event that title to a Unit vests by descent in individuals and/or entities who are not qualified buyers, as that term is defined herein, the Unit shall be listed for sale and shall be sold to a qualified buyer.
- D. *Deed Restriction.* Each purchaser purchases the Unit subject to all terms and conditions contained in these Guidelines, and each Unit is subject to the deed restriction covering the purchased Unit, to be recorded with the Gunnison County Clerk and Recorder, which incorporates the terms and restrictions contained in these Guidelines.
- E. *Leaves of Absence.* An owner of a Unit may request written approval from the Town to vacate a Unit for the purpose of leaving Gunnison County for a limited period of time or may request written approval from the Town for a one-time, in-County leave of absence from his or her Unit for one (1) year. A leave of absence may be granted by the Town for up to one (1) year which, at the discretion of the Town, may be extended for one (1) additional year, but in no event shall the leave exceed two (2) years in any five-year period, upon clear and convincing evidence that the owner shows a bona fide reason for leaving and a commitment to return to live in the Unit. The Town Manager may make this determination on behalf of the Town.
- F. *Rental of Units.* A Unit may be rented in its entirety under the following circumstances:
- 1. If an owner has requested, in writing, permission from the Town for a leave of absence and for permission to rent the Unit during the period of the leave of absence, at least thirty (30) days prior to leaving, and has received permission from the Town. Notice of such intent to rent the Unit shall be provided to the Unit homeowners' association at the time of request to the Town. The Unit shall be rented in accordance with the Town's Guidelines found in Sections 3.G., 3.H. and 3.I. below, during the leave of absence.
  - 2. After an owner has permanently vacated the Unit, has notified the Town and is awaiting purchase of the Unit, unless the owner is a co-signer on the mortgage loan, in which case the Unit may not be rented.
- G. *Unit Renter Qualifications.* A Unit may only be rented to those who meet the eligibility qualifications of a qualified buyer as set forth in these Guidelines, unless a contract to purchase the Unit has been signed and the closing is required to be more than thirty (30) days but less than one hundred eighty (180) days from the date of the contract. Under such circumstances, the owner may rent the Unit to anyone for up to one hundred eighty (180) days. The Town prefers that people who meet the eligibility qualifications are given first chance to rent. Prior to the Town's qualification of a prospective tenant, said tenant shall acknowledge all covenants, rules and regulations for the Unit and agree to abide by them. Enforcement of said covenants shall be the responsibility of the homeowners' association. A copy of the executed lease shall be immediately furnished by the owner to the Town and to the homeowners' association.
- H. *Rental Rates.* The maximum rental rate for any Unit shall be no more than the total of the monthly mortgage principal and interest payment, plus condominium fees, utilities remaining in the owner's name and taxes and insurance prorated on a monthly basis, plus twenty dollars (\$20) per month. If the mortgage has been paid off, the rental rate shall be no more than the amount of the last mortgage payment plus the condominium fees, utilities, taxes, insurance and the twenty dollars (\$20) listed above. The additional amount in December, 1999, shall be twenty dollars (\$20). After December, 1999, the additional amount, twenty dollars (\$20), may increase with the change in the Denver-Boulder-Greeley Consumer Price Index for Urban Wage Earners according to the following formula:

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\$20 x

- I. *Roommates.* Roommates shall have a lease of at least six (6) months. Copies of all leases must be filed with the Town. The rental rate for the room shall not exceed the maximum rental rate, prorated on a per-bedroom basis.
- J. *Spouses and Dependents.* Spouses and dependents of owners may live in owner-occupied Units.

#### **Section 4. Grievance Procedures.**

A *grievance* is any dispute that a tenant or purchaser may have with the Town with respect to acting or failure to act in accordance with the individual tenant's or purchaser's rights, duties, welfare or status. A grievance may be presented to the Town under the following procedures.

- A. *Filing a Grievance.*
  - 1. Any grievance must be presented in writing to the Town. It may be simply stated but shall specify:
    - a. The particular grounds upon which it is based;
    - b. The action requested; and
    - c. The name, address and telephone number of the complainant and similar information about his or her representative, if any.
  - 2. Upon presentation of a written grievance, a hearing before the Town Council shall be scheduled. The matter may be reasonably continued at the discretion of the Town Council. The complainant shall be afforded a fair hearing providing the basic safeguard of due process, including notice and an opportunity to be heard in a timely manner.
  - 3. The complainant and the Town Council shall have the opportunity to examine and, before the hearing at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant to the hearing. Any document not made available after timely written request may not be relied upon at the hearing.
  - 4. The complainant has the right to be represented by counsel.
- B. *Conduct of Hearing.*
  - 1. If the complainant fails to appear at the scheduled hearing, the Town Council shall make a determination to postpone the hearing or make a determination based on the written documentation and the evidence submitted.
  - 2. The hearing shall be conducted by the Town Council as follows:
    - a. Oral or documentary evidence may be received without strict compliance with rules of evidence applicable to judicial proceedings.
    - b. The right to cross-examine shall be at the reasonable discretion of the Town Council and may be reasonably regulated by the Town Council as it deems necessary for a fair hearing.
  - 3. Based on the record of proceedings, the Town Council will provide a written decision and include therein the reasons for its determination. The decision of the Town Council shall be binding on the Town, which shall take all actions necessary to carry out the decision.

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## **Section 5. Default; Breach; Enforcement.**

- A. In the event the Town has reasonable cause to believe an owner is violating the provisions of these Guidelines, the Town, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the owner with no less than forty-eight (48) hours' written notice.
- B. The Town shall send a notice of violation to the owner detailing the nature of the violation and allowing the owner fifteen (15) days to determine the merits of the allegations or to correct the violation. In the event the owner disagrees with the allegation or violation of these Guidelines, the owner may request, in writing, a hearing before the Town. If the owner does not request a hearing and the violation is not cured within the fifteen-day period, the owner shall be considered in violation of these Guidelines.
  1. The hearing described above shall be scheduled within twenty-one (21) days of the date of the receipt of a written request for a hearing. At any such hearing, the owner or other aggrieved party may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made, and the decision of the Town shall be a final decision, subject to judicial review.
  2. In the event a Unit is sold and/or conveyed or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a Unit, for all purposes, shall be deemed to include and incorporate by this reference all terms herein contained.
  3. In the event an owner fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction; and, if the Town substantially prevails in such action, it shall be entitled to an award for its attorney's fees and costs.

### **EXHIBIT A** **Permitted Capital Improvements**

1. The term *Permitted Capital Improvement* shall include only the following and is subject to Paragraph 2. below:
  - a. Improvements or fixtures erected, installed or attached as permanent, functional, nondecorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
  - b. Improvements for energy and water conservation;
  - c. Improvements for health and safety protection devices;
  - d. Improvements to add and/or finish permanent/fixed storage space;
  - e. Improvements to finish unfinished space;
  - f. The cost of adding decks and balconies and any extensions thereto;
  - g. Building permit fees; and/or
  - h. Major landscaping such as trees.
2. Only the value of permitted capital improvements for which a receipt is provided to the Town shall be included in the permitted capital improvements. All receipts must indicate the value of materials and the value of labor. The value of all labor, including owner contributed labor, or sweat equity, shall not exceed the value of materials. Sweat equity shall be documented as a portion of all labor.
3. *Permitted Capital Improvements* shall NOT include the following:

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- a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the Unit;
  - b. Jacuzzis, saunas, steam showers and other similar items;
  - c. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and electrical fixtures, painting, carpeting and other similar items;
  - d. Upgrades or additions of decorative items, including lights, window coverings and other similar items;
  - e. Construction loan interest and permanent mortgage interest;
  - f. Crested Butte Real Estate Transfer Tax;
  - g. Costs for which no receipts are provided;
  - h. Costs for which receipts are provided but that do not state the product purchased;
  - i. Costs to clean up the job site;
  - j. Costs to install telephone, cable television, satellite televisions, computer services and other similar services which will most likely be reinstalled for the next owner;
  - k. Taxes and insurance;
  - l. Homeowners' or condominium association fees;
  - m. Maintenance costs;
  - n. Loan points or origination fees; and/or
  - o. Water and sewer monthly service fees.
4. All Permitted Capital Improvement items and costs shall be approved by the Town prior to being added to the maximum sale price as defined in the Guidelines.

**RECORDING REQUEST BY:**

**WHEN RECORDED RETURN TO:**

Town of Crested Butte  
Attn: Town Clerk  
PO Box 39  
507 Maroon Avenue  
Crested Butte, CO 81224

**AFFORDABLE HOUSING DEED RESTRICTION  
(Unit \_\_\_\_, Poverty Gulch Condominiums)**

THIS AFFORDABLE HOUSING DEED RESTRICTION (this "Deed Restriction") is entered into this \_\_\_\_ day of 20\_\_\_\_ by \_\_\_\_\_ ("Owner"), whose address is P.O. Box \_\_\_\_\_, \_\_\_\_\_, Crested Butte, Colorado 81224 and the TOWN OF CRESTED BUTTE (the "Town"), a Colorado home rule municipality, whose address is P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224. This Deed Restriction shall apply to the following real property and improvement thereon:

Unit \_\_\_\_, POVERTY GULCH CONDOMINIUMS, according to the Condominium Map bearing Reception No. 498092 of the records of Gunnison County, Colorado, and the Condominium Declaration of Poverty Gulch Condominiums bearing Reception No. 498091 of the records of Gunnison County, Colorado.

(the "Property").

**AGREEMENT:**

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1. **Applicability of Housing Guidelines.** The ownership of the Property shall henceforth be limited exclusively to successful applicants and their spouses maintaining exclusive residency in Gunnison County, Colorado, who meet the qualifications set forth in the Town of Crested Butte, Amended and Restated Affordable Housing Guidelines, Part V. Poverty Gulch Condominiums, as amended (the "**Guidelines**"), as determined by the Town or its designee at the time of purchase and during ownership. The Property shall be subject to the Guidelines, the terms and conditions of which shall be incorporated herein by this reference. The use and occupancy of all or part of the Property is hereby limited exclusively to people who meet the referenced qualifications, and their spouses and children. The Property must be owned, occupied, sold, purchased and used only by persons meeting the qualifications set forth in the Guidelines.
  2. **Transfer of the Property.** In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly Town may also, instead of purchasing the Property itself, assign its right to purchase the Property pursuant to the Option to another public agency, a nonprofit entity or other potential qualified owner under the Guidelines. If the Town assigns the Option, the assignee shall be bound to purchase the Property pursuant to the terms of this Deed Restriction. If the Town or its assignee elects to purchase the Property, the parties shall have the following rights and obligations:
  3. **Obligation Regarding Financing.** Owner and any beneficiary of any deed of trust or other lien encumbering the Property shall give immediate notice to the Town of any instance of either (i) Owner's receipt of notice of the commencement of foreclosure proceedings relative to the Property, or (ii) of any delinquency of twenty-one (21) days or more in Owner's payment on any indebtedness secured by a deed of trust or other lien encumbering the Property.
  4. **Default.** Any breach of the terms and conditions set forth herein, including, without limitation, a transfer in violation of the terms hereof shall constitute a "**default**." Further, breach by Owner of the terms of any deed of trust or other lien encumbering the Property or of the terms of any obligation secured by such a deed of trust or other lien shall constitute a default hereunder. In the event of a default, following notice and an opportunity to cure as provided for herein below, the Town shall have all rights and remedies set forth herein and available at law and in equity.
  5. **Notice of Violation; Cure.** The Town, in the event of a default of any term or condition of this Deed Restriction by Owner, shall deliver written notice of default to Owner identifying the default and allowing Owner thirty (30) days to cure such default (the "**Cure Period**"). In the event that Owner fails to cure any such default within the time period allowed, the Town may resort to any lawful means to enforce the terms of this Deed Restriction, including, but not limited to, specific performance of the terms of this Deed Restriction, an action for damages, including an action to recover any undue financial benefit resulting from a sale that does not comply with the terms of this Deed Restriction, or the exercise of the Option (as defined herein below).
  6. **Default of Deed of Trust.** In the event that Owner defaults on the terms of any deed of trust or other lien encumbering the Property, or of the terms of any obligation secured by such a deed of trust or other lien, the Town shall have all the rights of Owner under the deed of trust or other lien and applicable law, the same being assigned and transferred hereby to the Town in such circumstances. The Town may, but shall not be obligated to, make any payment required in order to avoid foreclosure or to redeem the Property after foreclosure. The Town may make such payments during the notice and cure periods, in which case the Town shall be entitled to reimbursement for said payments plus interest at a rate of eighteen percent (18%) per annum and all costs and expenses, including reasonable attorneys' fees, costs and expenses, as a condition of Owner's cure.
  7. **Option to Purchase.** In the event of a default by Owner which remains uncured for a period of thirty (30) days as set forth above, the Town shall have an option to purchase the Property as set forth herein ("**Option**"). The Town shall have forty-five (45) days after expiration of the Cure Period in which to exercise the Option (the "**Option Period**"). The Town shall exercise the Option by delivering to Owner written notice

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of such exercise within the Option Period. The Town shall be granted entry onto the Property during the Option Period in order to inspect the Property. If the Property is vacant, Owner or lienholder shall maintain utility connections until expiration of the Option Period or Closing (as defined herein below). The Town shall have the Option to purchase the Property for the amount due to any holder of a promissory note secured by a first deed of trust on the Property and any reasonable costs and expenses incurred by the holder during the Option Period (the "**Senior Lienholder Amount**"). The the Town and approved by Owner, which approval shall not be unreasonably withheld. The appraisal shall consider the sales prices of comparable properties sold in the market area during the preceding three-year period. The appraisal shall also consider the effect of the terms and conditions created herein. The cost of the appraisal shall be paid for by Owner. A copy of the appraisal shall be delivered to both the Town and Owner within seven (7) days of its completion.

- (a) Owner shall permit a final walk-through of the Property by the Town during the final three (3) days prior to Closing.
- (b) Upon payment of the Senior Lienholder Amount by the Town, Owner shall deliver to the Town a general warranty deed for the Property, free and clear of all liens and encumbrances.
- (c) Normal and customary Closing costs shall be shared equally by Owner and the Town. Owner shall be responsible for, at its cost, any and all title insurance fees, document fees and recording fees for the deed. Taxes shall be prorated based upon taxes for the calendar year immediately preceding Closing. Any fees incident to the issuance of a letter or statement of assessments by an association shall be shared equally between Owner and the Town. Owner shall receive a credit for that portion of association assessments paid in advance from date of Closing.
- (d) Closing on the purchase of the Property by the Town shall occur within sixty (60) days of the Town's exercise of the Option at a date and time to be mutually agreed upon by the Town and Owner (the "**Closing**"). The location of the Closing shall be the title company closing the transaction, said title company to be selected by the Town. Possession shall be delivered to the Town at Closing, unless otherwise agreed between Owner and Town.

8. **Termination of Deed Restriction.** In the event of foreclosure, acceptance of deed in lieu of foreclosure by the holder of a first deed of trust or an assignment of an insured mortgage to the United States Department of Housing and Urban Development (HUD), this Deed Restriction shall automatically and permanently terminate and be of no further force and effect if either of the following conditions is satisfied:

- (a) the Option Period has expired without exercise of the Option by the Town; or
- (b) the Town has exercised the Option but failed to close or perform under the Option in accordance with this Deed Restriction.

In the event of the termination of this Deed Restriction, the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County, Colorado, a full and complete release of this Deed Restriction. The Town's rights in a foreclosure, including, without limitation, its right of redemption, shall be the same as if it were the beneficiary of a second deed of trust. The amount of debt secured by such a second deed of trust shall be considered to be the difference between the Senior Lienholder Amount as of the date the notice of election and demand for sale is filed with the public trustee and the fair market value of the Property at that time; except that in the event that the fair market value is less than the Senior Lienholder Amount, then the amount of debt secured by such a second deed of trust shall be considered to be the difference between the amount of the certificate of purchase and the Senior Lienholder Amount. For purposes hereof, the "**fair market value**" shall be determined by a qualified real estate appraiser who is a Member of the Appraisal Institute ("M.A.I."). The appraiser shall be engaged by null and void *ab initio* and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines and any amendments thereto, including but not limited to those provisions governing the qualifications for ownership, rental, sale, transfer or conveyance of the Property.

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9. **Deed Restrictions Run with the Land.** The foregoing restrictions on ownership, use and occupancy of the Property constitute a perpetual Deed Restriction and covenant that shall run with the land as a burden thereon for the benefit of the Town, or its designee, and shall be binding on Owner, its heirs, personal representatives, successors, assigns, lessees, licensees and any transferees. The foregoing covenant and restrictions shall be administered by the Town and shall be enforceable by appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. All such remedies shall be cumulative and concurrent. If the Town substantially prevails in such an action, it shall also be entitled to an award for its reasonable attorneys' fees, costs and expenses.
  10. **General Provisions.** The following terms and conditions shall apply to this Deed Restriction:
    - (a) **Notices.** Any notice, consent or approval which is required to be given hereunder, shall be given by either: mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein; or hand-delivering the same to any address provided herein. Notices shall be considered delivered on the date of delivery if hand-delivered or if both hand-delivered and mailed; or three (3) days after postmarked, if mailed only. Notices, consents and approvals shall be sent to the parties at the addresses first written above unless otherwise notified in writing.
    - (b) **Severability.** Whenever possible, each provision of this Deed Restriction and any other related document shall be interpreted in such manner so as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.
    - (c) **Choice of Law.** This Deed Restriction and each and every related document shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action arising from this Deed Restriction shall be in Gunnison County, Colorado.
    - (d) **Successors and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the parties' heirs, successors, transferees and assigns.
    - (e) **Section Headings.** Section headings within this Deed Restriction are inserted solely for convenience of reference and are not intended to and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
    - (f) **Waiver.** No claim of waiver, consent or acquiescence with respect to any provision of this Deed Restriction shall be valid against any party hereto except on the basis of a written instrument executed by the parties. The party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing however.
    - (g) **Gender and Number.** Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
    - (h) **Construction.** None of the provisions of this Deed Restriction shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.
    - (i) **Amendments in Writing.** This Deed Restriction may only be modified or amended in writing by the Town or its designee and Owner. No such modification shall be effective until an instrument in writing is executed and recorded in the Office of the Clerk and Recorder of Gunnison County.
    - (j) **Further Assurances.** The Town and Owner shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to make this Deed Restriction fully and legally effective, binding and enforceable as contemplated herein.

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- (k) *Counterparts; Facsimile.* This Deed Restriction may be executed in one (1) or more counterparts, each of which, when taken together, shall constitute one and the same instrument. For purposes of enforcement of this Deed Restriction and any terms and conditions contained herein, facsimile reproductions shall be deemed to be original documents.

[Remainder of Page Intentionally Left Blank;  
Signature Page(s) To Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Deed Restriction effective as of the date first written above.

OWNER:

\_\_\_\_\_  
\_\_\_\_\_(NAME)

TOWN:

TOWN OF CRESTED BUTTE,  
a Colorado home rule municipality

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

\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_, Town Clerk

(SEAL)

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing Deed Restriction was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing Deed Restriction was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, Mayor of the Town of Crested Butte, Colorado, a Colorado home rule municipality,  
on behalf of such entity.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

(Ord. 14 §1, 2013)

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(Supp. No. 20)

Created: 2023-05-12 10:44:44 [EST]

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**APPENDIX N**  
**Affordable Housing Guidelines**

**PART VI. VERZUH ANNEXATION**

**Section 1. Definitions.**

*Offer the tract for sale* means advertising the tract for sale in the official newspaper of the Town, listing the property with a real estate broker or otherwise advertising the tract for sale to the public.

*Owner-occupied deed-restricted housing* in Crested Butte means housing limited by deed restriction to a narrow segment of the market. The intended beneficiaries for such housing are people who cannot afford fair market sale prices for housing and who contribute towards making the Town of Crested Butte a community by providing personal time and energy for community projects, voluntary services or governance.

*Tracts* means deed-restricted housing tracts identified on the Final Plat of the Verzuh Ranch Annexation Subdivision and on Exhibit D of the Verzuh Ranch Annexation, Annexation Agreement, and shall include unimproved and improved tracts of land, as appropriate.

*Units* means improved structures on a deed-restricted tract.

**Section 2. Rationale.**

The reason to create owner-occupied, deed-restricted housing is to serve one (1) of many segments of the community that needs affordable housing. The target group for this housing is people who desire to purchase a tract for long-term housing in Crested Butte and who contribute to the community.

The 1999 Gunnison County Housing Needs Assessment demonstrates that affordable housing is needed. The average price of a single family home was three hundred twenty-four thousand dollars (\$324,000.00) in 1998, and approximately twenty-one percent (21%) of the County's households are currently cost-burdened by either rent or mortgage payments.

**Table VII-1**  
**Summary of Eligibility Qualifications**

<b>Category</b>	<b>Minimum Residency in the Crested Butte Fire Protection District</b>	<b>Earned Income in Gunnison County</b>	<b>Live on Site</b>
Category 1	5 of past 7 years	80%	Yes
Category 2	3 of past 4 years	80%	Yes

**Section 3. Qualifications for Ownership.**

A. A qualified buyer is a natural person who meets all of the following eligibility qualifications:

1. One who has lived or worked in the Crested Butte Fire Protection District for at least five (5) of the past seven (7) years, or three (3) of the past four (4) years, as of the date of the execution of a contract to purchase a tract; and
2. Derives eighty percent (80%) of his or her total earned income in Gunnison County. *Earned income* shall be defined by the Internal Revenue Service. (IRC §32(c)(2)) Earned Income in the United States Internal Revenue Code, as amended.

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3. Ownership of other real estate.
    - a. Except as provided in Subparagraph b. below, does not own an interest, alone or in conjunction with others, in any other residence or residential land. An applicant and his or her spouse who own residential real estate must sell the residence or residential land to an unrelated person or entity in which the applicant or spouse has no interest, for no less than fair market value, prior to closing on a deed-restricted housing tract. If the residential real estate is not sold by the time of closing on the deed-restricted housing tract, the applicant becomes ineligible to purchase the tract and shall not close on it (the seller may delay closing until the applicant sells the other residential real estate, or the seller may void the contract to sell and may enter into a new contract to sell to a different qualified buyer).
    - b. Notwithstanding the provisions of Subparagraph a. above, an applicant who is otherwise a qualified buyer may continue to own his or her primary residence in Gunnison County after acquiring title to a deed-restricted housing tract. However, no certificate of occupancy will be issued for a residence on the deed-restricted housing tract until such primary residence has been sold to an unrelated person or entity in which the applicant has no interest, for no less than fair market value.
    - c. Except as provided in Subparagraph b. above, neither a qualified buyer nor his or her spouse may own any other residence or residential land while owning a deed-restricted housing tract.

4. Resides in Gunnison County at the time a purchase contract for the tract is signed.

B. *Exemption:*

1. **Special exemptions.** Those people, or those with federally recognized dependents, who are certified by a medical doctor as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely, and those people who are court-appointed legal guardians with wards who are otherwise qualified buyers, may be exempt from the following requirements after a finding by the Town of just cause:
    - a. One who has lived or worked in the Crested Butte Fire Protection District for at least five (5) of the past seven (7) years, or three (3) of the past four (4) years, as of the date of signing of a contract to purchase a tract; and
    - b. Derive eighty percent (80%) of his or her total earned income in Gunnison County.
  2. **Other exemptions.** The Town may, upon a showing of substantial hardship or exceptional circumstances, waive any or all of the qualifications for ownership. Any applicant or potential applicant may present evidence at a hearing before the Town with respect to such exemption.
  3. **Mortgage loan co-signers.** An individual other than the qualified buyer is permitted to co-sign on the mortgage loan for a tract, so long as there is a qualified buyer on the loan documents. The name of a married spouse of the person meeting the eligibility qualifications may be on the title so long as the qualified buyer is also a record owner. If title transfers solely to the co-signer or spouse, the tract must be relinquished unless the co-borrower or spouse meets the qualifications for ownership at the time the title transfers. A co-signer or spouse who does not meet the qualifications for ownership and who receives title to the property may not occupy or rent the tract prior to selling it.
- C. *Establishing Qualifications for Ownership.* In order to determine that a person desiring to purchase an affordable housing tract meets all of the qualifications for ownership, the Town may request any combination, or all, of the following documentation as proof of residency and income source:
1. Federal income tax returns for the previous five (5) years (Forms 1040, 1040E or 1040EZ).
  2. Wage and tax statements for the previous five (5) years (Form W2).

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3. Landlord verification (proof of residency by physical address).
  4. Copy of a valid Colorado driver's license.
  5. Vehicle registration.
  6. Voter registration.
  7. Other verification deemed necessary by the Town (i.e., wage stubs or employer name, address and phone number).

#### **Section 4. Procedures for Sale and Resale of Tracts.**

A. *Initial Sales by Subdivider.*

1. **Category 1, qualified buyers have the first opportunity to purchase tracts.** The subdivider will work with the Town to contract first with people who meet the eligibility requirements of Category 1. If qualified buyers cannot be found in the required time period for Category 1 buyers, the subdivider may enter into contracts with people who meet the requirements of Category 2.
2. **Offering tracts for sale.** When the subdivider is ready to sell tracts, the subdivider shall place an announcement in the legal publications section of the official newspaper of the Town announcing the following:
  - a. The number or address of the tracts for sale beginning on (date).
  - b. People meeting the eligibility qualifications in Category 1 and 2 of Section 3 above, or a person who has received an exemption from the eligibility requirements in Section 3 from the Town, may make an offer on the tracts during the fifteen (15) days following publication of the notice.
  - c. The contact address for the seller.
3. **Contracting to sell tracts.** People meeting Category 1 and 2 eligibility in Section 3 above, or a person who receives an exemption from the eligibility requirements in Section 3 from the Town, may make an offer on the tracts during the fifteen (15) days following publication of the notice. A representative of the seller with authority to enter into a contract must be available during said fifteen (15) days. During the initial fifteen (15) days after publication, the subdivider may only enter into purchase contracts with people who meet eligibility requirements for Category 1. If contracts to purchase tracts at the advertised price are not executed within said fifteen (15) days by Category 1 qualified buyers, the seller may enter into purchase contracts with people who meet Category 2 eligibility requirements for any remaining tracts. The tracts shall remain available to any person meeting Categories 1 or 2 until sold.
4. **Town makes determination.** Prior to the closing of a sale of a tract, the prospective buyer shall be qualified by the Town or its designee, and will receive a determination as to whether or not the prospective buyer is a qualified buyer.
5. **Deadline for building.** Owners who have purchased a tract shall obtain a certificate of occupancy for a dwelling unit thereon no later than sixty (60) months after closing the purchase. Any owner who fails to meet this deadline shall forthwith offer the tract for sale and, as soon as practicable, sell his or her tract.

B. *Procedures for Subsequent Sales of Tracts.*

1. **Sellers decide to whom they may sell.** Sellers shall decide to whom they sell a tract, as long as they sell to a qualified buyer.
2. **Qualified buyers.** Qualified buyers in subsequent sales of tracts shall be restricted to those meeting the same criteria as initial applicants. Subsequent qualified buyers may be from either Category 1 or 2 in

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Section 3 above, or a person who receives from the Town an exemption from the eligibility requirements in Section 3. Buyers shall be qualified by the Town. Prior to the closing of a sale of a tract, the prospective buyer shall be qualified by the Town or its designee, and will receive a determination as to whether or not the prospective buyer is a qualified buyer.

3. **Determining sales price.** An owner of a tract desiring to sell the tract must consult with the Town or its designee to determine the maximum sales price permitted as defined below. After initial sale of a tract by the subdivider to a qualified buyer, no subsequent sale of a tract to another qualified buyer shall be for an amount greater than the maximum sales price of a tract. For purposes of these Guidelines, the *maximum sales price* of a tract shall be calculated by one (1) of two (2) methods, using the lesser of the two (2):
  - a. Three percent (3%) per annum. Maximum sales price is calculated based on:
    - 1) The land cost, plus
    - 2) Three percent (3%) of that cost compounded annually and prorated for partial years, plus
    - 3) The cost of improvements, plus
    - 4) Three percent (3%) of the improvements cost compounded annually, and prorated for partial years, from the date a certificate of occupancy is issued by the Town for those improvements, where:

$x = \text{Land cost} - \text{the seller's basis in land costs, as determined under the United States Internal Revenue Code (specific included and excluded costs are listed below)}$
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$a = \text{Improvements cost} - \text{the seller's basis in improvements. If several improvements exist, these are labeled } a_1, a_2, a_3, \text{ etc.}$
---

$b = \text{Owner-contributed labor - sweat equity. If several improvements exist, these are labeled } b_1, b_2, b_3, \text{ etc.}$
--

The maximum sales price of the property is determined by the following formula:

$(x * 1.03 \text{ (or portion thereof) for each year owned}) + ((a_1 + b_1) * 1.03 \text{ (or portion thereof) for each year owned since the improvement}) + ((a_2 + b_2) \dots)$  etc.

**Example:**

The land is owned three and one-half (3½) years, total.

Land cost is	\$60,000
Cost of first improvement, made in middle of Year Two	120,000
Cost of owner-contributed labor for first improvement	20,000
$(\$60,000 * 1.03 * 1.03 * 1.015) + ((\$120,000 + \$20,000) * 1.03 * 1.03) = \$215,073.$	

- b. Consumer Price Index. Maximum sales price is calculated based on the land cost, the improvements cost and the increase in the Consumer Price Index ("CPI") where:

$x = \text{Land cost (see above)}$
------------------------------------

$a = \text{Improvements cost (see above)}$
--

$b = \text{Owner-contributed labor (see above)}$
--

The maximum sales price of the property is determined by the following formula:

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X \* +

(a<sub>1</sub> + b<sub>1</sub>)

+

(a<sub>2</sub> + b<sub>2</sub>) . . . etc.

**Example:**

CPI for month land is purchased is 65.
CPI for month prior to completion of construction is 68.1.
CPI for month prior to date of sales contract is 76.
\$60,000 * 76 + (120,000 + 20,000) * = \$226,394.66

For purposes of these Guidelines, *CPI* means the Denver/Boulder Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor agency. CPI for the month prior will be the nearest month CPI is available.

Costs that may be included in the basis and which the owner must document shall be:

- 1) The cost to purchase a tract; plus
- 2) The cost of all capital improvements, for which a Town building permit has been issued, made during ownership of a tract (capital improvements include the cost of materials and all labor, including "sweat equity" as documented by the owner. In computing the value of sweat equity, the cost of labor cannot exceed the cost of materials);
- 3) All closing costs except loan points or origination fees;
- 4) Tap fees;
- 5) Special district fees;
- 6) Building permit fees; and
- 7) Interest paid for construction loans.

Costs that may not be included in the basis are:

- 1) Maintenance costs;
  - 2) Loan points or origination fees;
  - 3) Property taxes;
  - 4) Water and sewer fees (both availability of service fees and monthly service fees); and
  - 5) Permanent mortgage interest.
- c. For an unimproved tract, the three percent (3%) per annum increase in the maximum sale price under Subparagraph a. above or the CPI increase in the maximum sale price under Subparagraph b. above shall commence on the date that the qualified buyer acquires title to such tract. For improvements constructed on such tract, the three percent (3%) per annum increase in the maximum sale price under

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Subparagraph a. above or the CPI increase in the maximum sale price under Subparagraph b. above shall commence on the date that the Town issues a certificate of occupancy for such improvements.

4. **Procedures for resale.**

- a. Offering tracts for resale. When an owner is ready to sell the tract, the owner shall offer the tract for sale.
  - b. Town makes determination. The seller shall submit to the Town a copy of the sales contract for the tract, and a calculation of the maximum sales price accompanied by evidence of the seller's basis. At a minimum, the seller shall submit:
    - 1) Receipts to verify the costs of the improvements, including all labor, and an affidavit verifying that the receipts are valid and correct and represent costs actually paid by the seller at the time the improvements were made;
    - 2) Records regarding any special improvement district assessments paid by the seller during the seller's ownership of the tract;
    - 3) A copy of any building permit obtained for the improvements; and
    - 4) Records regarding any construction interest paid by the seller and an affidavit verifying that the interest was paid.
  - c. Town notification. The Town or its designee shall, within fifteen (15) days of receipt of the purchase contract and qualifying information for the prospective buyer, provide a letter to the prospective buyer and the seller indicating that the sales price and that the prospective buyer meet the Town requirements or that one (1) or both do not, and why. The Town or its designee shall maintain a copy of the letter in a file for each tract (the calculations done by Town staff shall not be interpreted to be the seller's basis for tax purposes).
5. **Customary closing costs.** The seller shall not permit the buyer to assume any or all of the seller's customary closing costs, except that payment of the Town's land transfer excise tax may be negotiated between the parties. The seller shall not accept any other consideration which would cause an increase in the sales price of the tract above the maximum sales price, so as to induce the seller to sell the tract to such buyer.
6. **No guarantees.** Nothing herein shall be construed to constitute a representation or guarantee by the Town or the subdivider that, upon the sale of the tract, the seller shall obtain the maximum sales price.
7. **Deadline for building.** Owners who have purchased a deed-restricted housing tract shall obtain a certificate of occupancy for a dwelling unit thereon no later than sixty (60) months after closing the purchase. Any owner who fails to meet this deadline shall forthwith sell his or her parcel.
8. **Application of the Guidelines for Duplex Units.** In the event a duplex unit is constructed upon the tract, both of the resulting units will be subject to all of the terms, restrictions and conditions to which each tract is subject under these Guidelines.

## **Section 5. Ownership of Deed-Restricted Tracts.**

All owners, both initial and subsequent, must comply with the following requirements:

- A. A copy of each deed conveying title to a tract must be provided to the Town within thirty (30) days after closing.
- B. *Occupancy.* Deed-restricted housing must be occupied by owners as their sole and exclusive residence, subject to the provision on leaves of absence below.

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- C. *Continuing Qualifications.* After the initial sale of each of the tracts, each owner shall continue to comply with the eligibility qualifications of a qualified buyer, except that an owner who has reached the age of fifty-nine and one-half (59½) years and retired from full-time work need not continue to derive eighty percent (80%) of his or her total earned income in Gunnison County. Upon request of the Town or its designee, an owner must demonstrate that he or she complies with all eligibility requirements. If the owner ceases to have the qualifications of a qualified buyer, or ceases to use the housing as his or her sole and exclusive place of residence, subject to the provision on leaves of absence below, the tract or unit will be offered for sale by the seller and will be sold to a qualified buyer as provided herein. In the event that title to a tract vests by descent in individuals and/or entities who are not qualified buyers, as that term is defined herein, the tract shall be offered for sale and shall be sold to a qualified buyer within two (2) years after the Town notifies the owner of the obligation to sell.
  - D. *Deed Restriction and Option to Purchase.* Each tract and/or unit is subject to all terms and conditions contained in these Guidelines, and each is subject to the deed restriction and option to purchase, which must be recorded with the Gunnison County Clerk and Recorder, incorporating the terms and restrictions contained in these Guidelines.
  - E. *Leaves of Absence.* An owner may request written approval from the Town or its designee for a leave of absence from Gunnison County for a limited period of time, or may request written approval from the Town or its designee for a one-time, in-County leave of absence for one (1) year. A leave of absence may be granted by the Town or its designee, upon clear and convincing evidence that the owner shows a bona fide reason for leaving and a commitment to return to live in the deed-restricted housing for up to one (1) year which, at the discretion of the Town or its designee, may be extended for one (1) additional year; however, in no event shall the leave exceed two (2) years in any ten-year period.
  - F. *Rental of Units.* A unit may be rented in its entirety if an owner has requested, in writing, permission from the Town for a leave of absence, and for permission to rent the unit during the period of the leave of absence, at least thirty (30) days prior to leaving, and received permission from the Town. The unit shall be rented in accordance with the Town's Guidelines found in Subsection C.1 above during the leave of absence. Emergency circumstances may permit a waiver of the thirty-day procedural provisions.
  - G. *Unit Renter Qualifications.* A unit may only be rented to those who meet the eligibility qualifications of a qualified buyer as set forth in these Guidelines.

## **Section 6. Grievance Procedures.**

A grievance is any dispute regarding procedures set forth herein that a seller or buyer may have with the Town or its designee. A grievance may be presented to the Town under the following procedures:

- A. *Filing a Grievance:*
  - 1. Any grievance must be presented in writing to the Town. It may be simply stated, but shall specify:
    - a. The particular ground(s) upon which it is based;
    - b. The action requested; and
    - c. The name, address and telephone number of the complainant and similar information about his or her representative, if any.
  - 2. Upon presentation of a written grievance, a hearing before the Crested Butte Town Council shall be scheduled within twenty (20) days.

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3. The complainant and the Town shall have the opportunity to examine and, before the hearing at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant to the hearing.
  4. Based on the record of proceedings, the Town Council will provide a written decision upon request and include the reasons for its determination. The decision of the Town Council shall be binding on the Town or its designee, which shall take all actions necessary to carry out the decision.

## **Section 7. Default; Breach Enforcement.**

- A. If a violation, default or breach is alleged, the Town shall send a notice of such to the owner detailing the nature of the violation and allowing the owner fifteen (15) days to determine the merits of the allegations or to correct the violation. In the event the owner disagrees with the allegation of violation of these Guidelines, the owner may request, in writing, a hearing before the Town. If the owner does not request a hearing or the violation is not cured within the fifteen-day period, the owner shall be considered in violation of these Guidelines.
  1. The hearing described above shall be scheduled within twenty (20) days of the date of the receipt of a written request for a hearing. At any such hearing, the complainant may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made and the decision of the Town Council shall be a final decision, subject to judicial review.
  2. In the event a tract is sold and/or conveyed, or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a tract, for all purposes, shall be deemed to include and incorporate by this reference all terms herein contained.
  3. In the event an owner fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town or its designee may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction and, if the Town or its designee substantially prevails in such action, it shall be entitled to an award for attorney fees and costs.

## **Section 8. Deed Restriction.**

- A. Each tract and/or unit must be deed-restricted by a recorded instrument that complies substantially with the form found in Exhibit A.
- B. Each tract and/or unit must be encumbered by an option to purchase deed-restricted housing that complies substantially with the form found in Exhibit B.

**Exhibit A**  
**Town of Crested Butte**  
**Affordable Housing Guidelines**

**VERZUH ANNEXATION DEED RESTRICTION**

Subject property: \_\_\_\_\_ (Legal Description of units or tract)

Hereafter, the "Property."

The ownership of the Property shall henceforth be limited exclusively to successful applicants and their spouses maintaining exclusive residency in Gunnison County, Colorado, who also meet the qualifications set forth in the Town of Crested Butte, Affordable Housing Guidelines, Part VII, Verzuh Annexation, as amended

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("Guidelines"), as determined by the Town or its designee at the time of purchase and during ownership. The use and occupancy of all or part of the property is hereby limited exclusively to people who meet the referenced qualifications, and their spouses and children.

Ownership, use and occupancy of the Property is subject to the following:

1. The Property must be owned, occupied and used only by persons meeting the qualifications set forth in the Guidelines.
2. In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines, including but not limited to those provisions governing the qualifications for ownership, sale, transfer or conveyance of the Property.
3. The beneficiary of any deed of trust or other recorded instrument identifying the Property as security or collateral shall execute the option to purchase affordable housing prepared by the Town, unless waived by the Town, prior to the recordation of the deed of trust or other recorded instrument. Failure to so execute shall render any such encumbrance fully null and void.

The foregoing restrictions on ownership, use and occupancy constitute a perpetual covenant that runs with the land as a burden thereon for the benefit of the Town of Crested Butte, Colorado (hereafter the "Town") or its designee, and shall be binding on the owner and the heirs, personal representatives, assigns, lessees, licensees and any transferees of the owner. The foregoing restrictions and covenants shall be administered by the Town or its designee, and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants, or such other remedies and penalties as may be deemed appropriate by the Town. If the Town substantially prevails in such an action, it shall also be entitled to an award for reasonable attorney fees and costs.

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the Town's failure to exercise and close its option rights under an Option to Purchase Affordable Housing. The date of the termination of this Deed Restriction shall be the date of recording a Public Trustee's or Court-ordered foreclosure deed conveying the Property to the encumbrance beneficiary.

The foregoing Deed Restriction may be modified with the written consent of the owner, the Town or its designee and, if reasonably available in Gunnison County, the original Property developer. No such modification shall be effective until an instrument in writing is executed and recorded in the office of the Clerk and Recorder of Gunnison County. Provisions added to this Deed Restriction and/or the Guidelines after the time of recording the final subdivision plat of the Property, which are more restrictive than those in effect at the time of such recording, shall not apply to parcels within the Property, unless such provisions are designed to satisfy the Town's expressed interest to have only those persons meeting the Eligibility Qualifications (which shall not be amended) own, occupy or use the Property. However, less restrictive added provisions shall apply.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. Developer

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing Deed Restriction was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, developer of the Property.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

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(SEAL)

Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

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**Exhibit D**  
**Option to Purchase Deed-Restricted Housing**

This Option to Purchase is made by and between the undersigned beneficiary of a deed of trust or mortgage and for the protection of any governmental agency guaranteeing, insuring or acquiring the note from the holder ("the Holder"), and the Town of Crested Butte, a Colorado home rule municipality, its assigns or designees ("the Town").

1. **The Property.** A promissory note or mortgage held by the undersigned Holder dated \_\_\_\_\_, is secured by a deed of trust or mortgage ("Deed of Trust") encumbering property subject to a Deed Restriction pursuant to Chapter 17, Article 11 of the Crested Butte Municipal Code, which property is described as follows:
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(the "Property").

2. **The Option.** In the event of a foreclosure of the Deed of Trust or mortgage and subject to the issuance of a Certificate of Purchase to the Holder following the foreclosure sale, or in the event the Holder receives a deed in lieu of foreclosure or other conveyance of the Property, the Holder hereby grants to the Town an option to purchase the Certificate of Purchase or Property on the terms set forth herein.
3. **Notice.** The Holder shall give all notices to the Town required under Colorado law in the foreclosure proceeding, including a copy of the Notice of Election and Demand for Sale, sent by certified mail, return receipt requested, and addressed as follows:

Town Manager,  
Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224

4. **Exercise of Option.** The Town shall have thirty (30) days after receiving written notice from the Holder of the issuance of the Public Trustee's Certificate of Purchase, or conveyance of the Property to the Holder, in which to exercise this Option to Purchase by tendering to the Holder the sum for which the certificate was purchased or the Property conveyed, with interest from the date of sale or conveyance, together with any taxes paid or other proper charges as provided by law, with interest from the date such expense was paid. Such interest shall be charged at the default rate if specified in the original instrument or, if not so specified, at the regular rate specified in the original instrument.
5. **Title.** Upon receipt of the option price, the Holder shall deliver to the Town a properly executed assignment of the Certificate of Purchase or deed to the Property. The Holder shall not create or participate in the creation of any additional liens or encumbrances against the Property following issuance of the Public Trustee's Certificate of Purchase to the Holder, or conveyance of the Property to the Holder. The Holder shall not be liable for any of the costs of assignment or conveyance to the Town.
6. **Termination of Deed Restriction.** In the event that this Option to Purchase is not exercised and the Holder is issued a deed following foreclosure, the Affordable Housing Deed Restriction shall automatically terminate, in which event the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County a full and complete confirming release of the Deed Restriction affecting the Property which appears in said records at Reception No \_\_\_\_\_. Such release shall be placed of record within fourteen (14) days after request therefor by the

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Holder, and a copy of the recorded release shall be mailed to the Holder following its recordation.

7. **Successors and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.
8. **Modifications.** The parties hereto agree that any modification to this Option to Purchase shall be effective only when made by writings signed by the Holder and the Town and recorded with the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on \_\_\_\_\_, 20\_\_\_\_.

Date: \_\_\_\_\_, 20\_\_\_\_.

HOLDER OF FIRST DEED OF TRUST: Name of Lender

By Authorized Officer

Title\_\_\_\_\_

Mailing Address:\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

TOWN OF CRESTED BUTTE,  
A Colorado Home Rule Municipality:

By Authorized Officer

Title\_\_\_\_\_

Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

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(SEAL)

Date: \_\_\_\_\_, 20 \_\_\_\_.

BORROWER: Name of Borrower

By Authorized Officer

Title\_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

(Code §17-12-10; Ord. 4 §1, 2009; Ord. 11 §1, 2013)

**APPENDIX N**  
**Affordable Housing Guidelines**

**PART VII. PARADISE PARK SUBDIVISION, BLOCKS 77 AND 78**

**Definitions**

*Applicant* means any person who wishes to purchase or rent a Unit.

*Area median income ("AMI")* means the median income for Gunnison County, adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD), or the agency that publishes such a number in its place in the future, each year.

*Consumer Price Index ("CPI")* means the latest published version of the Denver-Boulder Greeley, CO Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.

*Customary closing costs* means the normal, ordinary costs associated with the sale and purchase of real property, including costs and expenses associated with the closing of a loan for real property. The customary closing costs shall be allocated as follows:

<i>Seller</i>	<i>Buyer</i>
Fifty percent (50%) of the Crested Butte "Land Transfer Excise Tax"	Fifty percent (50%) of the Crested Butte "Land Transfer Excise Tax"

- APPENDIX

APPENDIX N - Affordable Housing Guidelines  
PART VII. PARADISE PARK SUBDIVISION, BLOCKS 77 AND 78

Fifty percent (50%) of the Title Company's Closing/Settlement fees	Fifty percent (50%) of the Title Company's Closing/Settlement fees
All real property taxes prorated to the date of closing based upon taxes for the calendar year immediately preceding closing or the most recent mill levy and most recent assessment	Survey, if applicable
Prorated water and sewer monthly use fees to the date of closing	Recording fees
All other outstanding fees and assessments, such as homeowners' association dues, prorated to the date of closing	Certificate of taxes due
Owner's title insurance	One hundred percent (100%) of loan fees
Town administration fee, up to one and one-half percent (1½%) of total sale price, if applicable	Lender title insurance
Document preparation fees	Inspection fees
All real estate commissions	

*Dependent* means a minor child (eighteen [18] years or younger) or other relative of the renter or owner of a Unit, which child or relative is taken and listed as a dependent for federal income tax purposes by such renter or owner, or his or her present or former spouse, significant other or life partner (said child must also be related by blood or adoption and residing with the individual at least one hundred eighty [180] days out of every twelve-month period of time).

*Disabled person* means a person who meets the definition of "individual with a disability" contained in 29 U.S.C. § 706(8), as amended, and/or defined in the Americans with Disabilities Act of 1990; and/or a person who has a "handicap" as defined in Section 24-34-301(4), C.R.S., the Colorado Anti- discrimination Act.

*Grievance* means any dispute that an owner, purchaser or tenant may have with the Town or its designee with respect to action or failure to act in accordance with the individual owner's, purchaser's or tenant's rights, duties or status.

*Gross assets* means anything which has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of action which belong to any person, any blind trust(s), as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation or estate that is applicable or subject to the payment of debts. Gross assets shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts.

*Gross income* means the total income, to include alimony and child support derived from a business trust, employment and from income-producing property, before deductions for expenses, depreciation, taxes and similar allowances.

*Guidelines* means these Second Amended Guidelines, Rules, Requirements and Administrative Procedures Governing Affordable Housing in Blocks 77 and 78 of the Paradise Park Affordable Housing Subdivision Town of Crested Butte ("Guidelines"), executed on September 24, 2007, which are an amendment and restatement in their entirety of the Amended Guidelines, Rules, Requirements, and Administrative Procedures Governing Affordable Housing in the Paradise Park Affordable Housing Subdivision Town of Crested Butte, recorded at Reception No. 544060 in the real property records of Gunnison County, State of Colorado.

- APPENDIX  
APPENDIX N - Affordable Housing Guidelines  
PART VII. PARADISE PARK SUBDIVISION, BLOCKS 77 AND 78

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These Second Amended Guidelines, Rules, Requirements and Administrative Procedures Governing Affordable Housing in the Paradise Park Affordable Housing Subdivision apply solely to Tracts 1—14, Block 77, and Tracts 1—6, Block 78, according to the Final Plat of the Paradise Park Subdivision, Town of Crested Butte, Colorado, recorded on August 29, 2002, at Reception No. 523289 in the real property records of Gunnison County, State of Colorado, as amended by that certain Amendment to Final Plat of the Paradise Park Subdivision dated August 20, 2007, and recorded on September 7, 2007, in the real property records of Gunnison County, State of Colorado at Reception No. 578552.

*Habitat for Humanity* means Habitat for Humanity of Gunnison Valley, Incorporated, a Colorado nonprofit corporation ("Habitat").

*Household assets* means gross assets minus liabilities of a Qualified Buyer or Qualified Renter and his or her Dependents.

*Household income* means combined gross income of all household income, which is the income reported on the previous year's Federal Income Tax Return(s) of a Qualified Buyer or a Qualified Renter and his or her Dependents. Only the income of people who are eighteen (18) years old or above will be counted in the household income for people applying for Habitat for Humanities units.

*Household size* means household size computed by adding up the Qualified Buyer or Qualified Renter and his or her Dependents.

*Liabilities* means existing financial obligations or debts.

*Lottery* means a drawing to select a winner from equal applicants in the same priority.

*Maximum sale price* means the maximum amount for which a Unit may be transferred, calculated as described in Exhibit A.

*Net assets* means gross assets minus liabilities. Retirement accounts will be reviewed on a case-by-case basis to determine whether or not they shall be included as a net asset.

*Physically challenged accessible units* means those Units designed and constructed to specifically meet the needs of a Disabled Person.

*Qualified buyers* means persons meeting the Eligibility Qualifications for eligible owners set forth Section 1 below.

*Qualified renters* means persons meeting the Eligibility Qualifications for eligible renters set forth in Section 4 below.

*Roommates* means those people occupying a Unit who are neither Qualified Buyers nor Qualified Renters.

*Total maximum household income* means the combined income of a Qualified Buyer or a Qualified Renter and his or her Dependents.

*The Town* means the Town Manager of Crested Butte, or his/her designee.

*Town Council* means the Town Council of the Town of Crested Butte, acting in its official capacity.

*Unit* means any single unit of real property, whether a condominium unit, a townhouse unit or a tract or lot, located on Tracts 1—14, Block 77 and Tracts 1—6, Block 78, according to the Final Plat of the Paradise Park Subdivision, Town of Crested Butte, Colorado, recorded on August 29, 2002, at Reception No. 523289 in the real property records of Gunnison County, State of Colorado, as amended by that certain Amendment to Final Plat of the Paradise Park Subdivision dated August 20, 2007, and recorded on September 7, 2007, in the real property records of Gunnison County, State of Colorado at Reception No. 578552.

- APPENDIX  
APPENDIX N - Affordable Housing Guidelines  
PART VII. PARADISE PARK SUBDIVISION, BLOCKS 77 AND 78

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### **Introduction**

The Town of Crested Butte, Colorado has identified the need to create deed-restricted affordable dwelling units. These instant Guidelines apply to all vacant and improved real property located on Tracts 1—14, Block 77, and on Tracts 1—6, Block 78, according to the Final Plat of the Paradise Park Subdivision, Town of Crested Butte, Colorado, recorded on August 29, 2002, at Reception No. 523289 in the real property records of Gunnison County, State of Colorado, as amended by that certain Amendment to Final Plat of the Paradise Park Subdivision dated August 20, 2007, and recorded on September 7, 2007, in the real property records of Gunnison County, State of Colorado at Reception No. 578552 (the "Subdivision"). Each unit of real property shall henceforth be known as a Unit, regardless of whether the property is otherwise or elsewhere identified as a lot, tract or any other denomination. The use and occupancy of Units, to which these Guidelines applies, is limited to those who meet the description of "Qualified Buyers" and "Qualified Renters", as defined herein. These Guidelines are intended to assure that all purchasers, sellers and renters will be treated fairly and impartially.

*Rationale.* The 1992 Crested Butte/Gunnison Area Housing Needs Assessment, the 1999 Gunnison County Housing Needs Assessment, the 2000 Residential Job Generation Study, and the Housing Section of the Crested Butte Land Use Plan, amended March, 2003, demonstrate that affordable housing is needed in the Town of Crested Butte.

*Administration.* The Town Manager, or his or her designee, shall administer these Guidelines, and shall hereafter be referred to as "The Town". When the "Town Council" is referred to in these Guidelines, only the Town Council of Crested Butte shall perform such activities, unless the Town Council designates a staff person, a "housing authority" or other entity to perform the activity.

*Conflicts between these guidelines and other participating programs.* Various funding sources may be used to construct Units or infrastructure in the Subdivision, and certain approved entities will take title to Units. Where a conflict exists between the rules and regulations of those funding sources or other entities and these Guidelines, the rules and regulations of the approved funding sources and approved entities shall take precedence over these Guidelines, to the extent of the conflict only, except as otherwise indicated. Unit 2, Block 77 will be subject to additional restrictions, which will be memorialized in a separate deed restriction for Unit 2 only.

Owners, potential buyers and renters falling under the jurisdiction of rules and regulations other than those in these Guidelines must ensure that they meet all applicable requirements of the administering program as well as these Guidelines.

### **Section 1. Eligible Owners.**

- A. *Entities Approved by the Town Council ("Approved Entities").* Any entity, approved by the Town Council, having a purpose of providing or administering affordable housing, or any other nonprofit entity who would own a Unit for the purpose of housing necessary employees thereon; provided that the entity agrees to continue to enforce the herein Eligibility Qualifications for owners and renters, as well as the resale restrictions for owners with respect to whom a Unit may be sold and for what price. Habitat for Humanity of Gunnison Valley Incorporated, a Colorado nonprofit Corporation ("Habitat"), is exempted from the herein resale restrictions as to price, selection procedures and Eligibility Qualifications, and shall implement the rules and regulations of Habitat regarding these matters. Habitat, as well as other Approved Entities, may request exemptions from the Eligibility Qualifications for purchasers, pursuant to the procedures set forth herein for requesting exemptions from the Eligibility Qualifications. Habitat will impose more restrictive Eligibility Qualifications than those set forth herein, which will be contained in a separate deed restriction prepared by Habitat and recorded separately in the real property records of Gunnison County.

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B. *Qualified Buyers.* A Qualified Buyer is a person who meets all of the following Eligibility Qualifications. Asset Limits and Maximum Income Limits apply to a Qualified Buyer and his or her spouse and Dependents.

1. **Eligibility qualifications:**

- a. Work in Gunnison County. The person is employed in Gunnison County.
- b. Percentage of income in the County. Eighty percent (80%) of all his or her income is "earned income" in Gunnison County during the twelve (12) months prior to applying to qualify to purchase a Unit. Earned income shall be defined by the Internal Revenue Service (IRC S 32(c)(2) Earned Income (3/20/1995) or as it may be amended).
- c. Land ownership. No person or his or her Dependents shall own an interest, alone or in conjunction with others, in any improved residential real estate except residential property which according to the terms of a deed restriction cannot be owner-occupied at the time of closing on a Unit. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to closing on a Unit. An owner of a fifty percent (50%) or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration. Unimproved residential real property outside the Subdivision must remain unimproved during the time a Unit is rented in the Subdivision. If the unimproved land is improved with a residence, the owner must sell the Unit upon issuance of a Certificate of Occupancy on the other real property.
- d. Residency. The person must reside in Gunnison County, Colorado, at the time a contract is signed.
- e. Maximum income limit. The total maximum income limit for a qualified buyer, and his or her dependents shall depend upon the particular unit sought and shall be no greater than that set forth in Exhibit B. There are no maximum income limits for units on Tracts 12 and 13, Block 77.
- f. Asset limits. The assets of a qualified buyer and his or her dependents shall not exceed four (4) times the maximum income limit for the unit, unless the qualified buyer or his or her dependents is/are a senior citizen aged fifty-nine and one-half (59%) or older, in which case the asset limit is one hundred fifty percent (150%) of four (4) times the maximum income for the unit based on the targeted household size for the unit identified in Exhibit B. There are no asset limits for units on Tracts 12 and 13 in Block 77. Vacant land, which can be owned by a qualified buyer, will be valued as stated in the Gunnison County Assessor Notice of Valuation.
- g. Qualified renters of Town employee units. Units 2A and 2B in Block 78 are Town employee units. The order of priority for buyers of these units is as follows:
  - 1) Full-time employees of the Town of Crested Butte as defined by the Town.
  - 2) Part-time employees of the Town of Crested Butte as defined by the Town.
  - 3) Mountain Express employees.
  - 4) Essential services employees, including but not limited to:
    - (a) Fire personnel;
    - (b) Emergency Medical Technicians (EMTs);
    - (c) Public school teachers and administrators;
    - (d) Mt. Crested Butte emergency services personnel;
    - (e) County Sheriff personnel; and
    - (f) Others as identified by the Town Council.

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2. **Exemptions from Eligibility Qualifications.** A request for an exemption from the Eligibility Qualifications may be requested from the Town Council. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines, and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for the exemption.
    - a. A request for an exemption must be submitted in writing to the Town and shall include appropriate documentation in support of the exemption. The applicant shall submit any additional information reasonably requested by the Town, in support of such request.
    - b. The request shall be reviewed by the Town Council in a timely manner. Upon demonstration that an exemption is appropriate, the Town may grant the request, with or without conditions. The approval should not compromise the public good and should not substantially impair the intent and purpose of these Guidelines.
    - c. Examples of hardships, exceptional circumstances or compelling reasons include, but are not limited to:
      - 1) A person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year;
      - 2) A person who temporarily left Gunnison County to attend college or other educational training;
      - 3) A recently hired employee of the municipal government of Crested Butte or any other employee providing essential services to the Town;
      - 4) Those who are certified as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely;
      - 5) Those with federally recognized disabled dependents;
      - 6) Those persons who are court-appointed legal guardians with wards who are otherwise Qualified Buyers; or
      - 7) Those who wish to acquire Units owned or administered by Habitat, who may be found to be exempt by the Town Council from the Eligibility Qualifications relating to work in Gunnison County, Percentage of Income in the County, Minimum Hours Worked and Maximum Income.
  3. **Establishing Eligibility Qualifications.** To establish Eligibility Qualifications, the Town will request documentation that may include, but not be limited to:
    - a. Copies of federal income tax returns;
    - b. Verification of employment in Gunnison County (i.e., wage and tax statements);
    - c. IRS Form W2;
    - d. Completed, signed and dated Town application;
    - e. A statement regarding the applicant's ownership of other real property;
    - f. An affidavit by the applicant verifying the truth of the information provided;
    - g. Landlord verification (proof of residency by physical address);
    - h. Vehicle registration;
    - i. Voter registration;

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- j. Wage stubs;
  - k. Employer name and address;
  - l. Copy of a valid Colorado driver's license or Colorado identification card;
  - m. Telephone number; and
  - n. Any other verification deemed necessary by the Town.
4. **Town to make determination as to eligibility.** The Town shall make the final determination as to the Eligibility Qualifications of a prospective purchaser of a Unit.
  5. **Mortgage loan co-signers.**
    - a. An individual other than a Qualified Buyer may co-sign, along with the Qualified Buyer, on a mortgage loan for a Unit. That individual may also appear on the title to the Unit.
    - b. If title to a Unit transfers solely to the co-signer, the Unit must be sold to a Qualified Buyer unless the co-signer meets all of the criteria for a Qualified Buyer at the time the title transfers. The Unit may not be occupied or rented prior to the sale.

## **Section 2. Procedures for Sales of Units.**

The sale of all Units shall be in accordance with the procedures set forth below, except that where a conflict exists between the rules and regulations of other funding sources or Approved Entities, the rules and regulations of the funding sources or entities shall take precedence over these Guidelines, to the extent of the conflict only, except as otherwise indicated (Habitat shall utilize its own procedures for Unit 2, which shall be set forth in a separately recorded deed restriction).

- A. *Consulting Legal Counsel.* All purchasers and sellers are advised to consult legal counsel regarding examination of title, all contracts, agreements and title documents pertaining to the purchase or sale of property discussed herein. The retention of such counsel or such related services shall be at the purchaser's or seller's own expense.
- B. *Initial Sale of Units.* Upon a determination by the Town that a Unit is available for sale, the Town shall place an announcement in the legal publications section of the official newspaper of the Town announcing the address of the Unit for sale and information regarding where to obtain applications to purchase the Unit, or the Town Council may convey the Unit directly to an Approved Entity. If the Unit is conveyed directly to an Approved Entity, these following selection procedures need not apply to such Approved Entity for the selection of a purchaser for such Unit, so long as the purchaser selected is a Qualified Buyer.
  1. Applicants shall complete an application for the Unit, which application shall contain sufficient information for the Town to determine whether or not the applicant is a Qualified Buyer, including a letter from a lending institution stating that the applicant is qualified to borrow adequate funds to pay for the Unit.
  2. Applicants will be notified in a timely manner by the Town as to whether he or she meets the Eligibility Requirements to be a Qualified Buyer. Applicants who have been determined not to be a Qualified Buyer may request an exemption from the Town Council.
  3. Approved Entities may select Qualified Buyers pursuant to their own established rules and regulations, so long as the purchaser selected is a Qualified Buyer. Approved Entities may request exemptions from the Eligibility Qualifications as appropriate.
  4. **Lotteries.** If more than one Qualified Buyer applies to purchase a Unit, lotteries shall be held to choose which Qualified Buyer will be offered the opportunity to purchase a Unit. Lotteries for Town Employee

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Units are exempt from paragraphs a. through g. and shall follow the procedures set forth in paragraph h.

- a. First lottery. Qualified Buyers who meet the Target Household Size set forth in Exhibit B and who have also worked more than four (3) years in Gunnison County will receive top priority in the lottery process. A first lottery will be held for each Unit containing only the names of Qualified Buyers who meet the Target Household Sizes and who have also worked more than four (4) years in Gunnison County. Each such Qualified Buyer will receive the number of chances in the lottery as set forth in Table VIII-1 below.
- b. Subsequent lotteries. A Qualified Buyer who has worked more than four (4) years in Gunnison County but does not meet Target Household Size will receive second priority in the lottery process. A subsequent, separate lottery will be held for each Unit containing only the names of Qualified Buyers in the second priority, and each Qualified Buyer will receive the number of chances in the lottery as set forth in Table VIII-1, below.

**Table VIII-1**

**Number of Chances in Lottery Based on Number of Years Worked in Gunnison County (For Those Applicants in the Second Priority Category — Those Who Have Worked in Gunnison County More Than 4 Years Prior to Application Date)**

<b>Years Worked Category</b>	<b>Number of Chances</b>
More than 4 years, fewer than 8 years	5 chances
More than 8 years, fewer than 12 years	6 chances
More than 12 years, fewer than 16 years	7 chances
More than 16 years, fewer than 20 years	8 chances
More than 20 years	9 chances

- c. Subsequent lotteries for people who have worked in Gunnison County more than one (1) year immediately prior to the lottery. If no Qualified Buyer applying for a Unit has worked in Gunnison County more than four (4) years, a subsequent, separate lottery will be held containing the name of a Qualified Buyer who has worked in Gunnison County more than one (1) year immediately prior to application for purchase. Each applicant will receive a single chance in that lottery.
- d. Subsequent lotteries for people who have worked in Gunnison County less than one (1) year. If no Qualified Buyer applying for a Unit has worked in Gunnison County at least one (1) year, another subsequent, separate lottery will be held containing the name of a Qualified Buyer who has worked in Gunnison County immediately prior to application for purchase. Each applicant will receive a single chance in that lottery.
- e. Maintaining a list of the chosen people. A list of the order in which names are chosen will be retained. In the event the first name drawn cannot complete the transaction, the next name chosen will be offered the opportunity to purchase the Unit. In the event the next name drawn cannot complete the transaction, the subsequent name chosen will be offered the opportunity to purchase the Unit, and so on, until a purchaser has been found for the Unit. Once a name has been drawn, on subsequent times the same name is drawn, that name will be discarded. The lottery shall continue until each applicant's name has been drawn.
- f. Exception to lottery procedures. In the event more than one (1) Qualified Buyer applies to purchase a Physically Challenged Accessible Unit, first priority for such Unit shall be given to households with Qualified Buyers that include Disabled Persons, prioritized by length of time the Qualified Buyer has worked in Gunnison County. Such household shall have the first right to purchase such Units.

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- g. Other guidelines concerning lotteries. Prior to any lottery, the date, time and place of the lottery will be published in the legal publications section of the official newspaper of the Town for at least one (1) week prior to the lottery. All lotteries will be administered by the Town Manager or his designated representative.
  - h. Town employee units initial sale and resale procedures. Regardless of whether the sale is an initial sale or a resale, Town employee Units shall be offered to full-time Town employees first by notifying all full-time Town employees that the Unit is available when they receive payroll checks. The Town shall define full-time Town employees at this time. If more than one (1) full-time Town employee applies for a Unit, a lottery will be conducted by the Town to choose the Town employee who will be given the first opportunity to purchase the Unit. The Town shall maintain a list of the Town employees chosen in the lottery for such purchases. In the event the first name drawn cannot provide evidence satisfactory to the Town that he or she can consummate the purchase of the Unit, the next name chosen will be offered the opportunity to purchase the Unit. If no full-time Town employees apply to purchase the Unit and provide evidence satisfactory to the Town that they can consummate the purchase of the Unit, the Unit will be offered to the next priority Town Employee Qualified Buyers as listed in Subparagraph 1.B.1.g. above by notifying all potential buyers in the next pool of buyers when they receive payroll checks. Notwithstanding anything contained herein to the contrary, essential services employees will be notified in one (1) legal advertisement and the Town will list which essential services employees are eligible to purchase the Unit by advertisement in the legal publications section the official newspaper of the Town. If the Unit is not sold in an initial sale to a Town employee, a Mountain Express employee or an essential services employee, the Town Council will decide whether to rent the Unit or to whom the Unit may be sold. If no Town employees, Mountain Express employees or essential services employees apply to purchase the Unit in a resale, then the Town Council will decide, in a timely fashion, to purchase the Unit or to whom the Unit may be sold. Offering Town employee Units for resale will be as described in this paragraph.

C. *Procedures for Resale for All Units.*

- 1. **Application of these resale regulations.** This Section applies to all Units, except that Approved Entities may select Qualified Buyers pursuant to their own established rules and regulations, so long as the purchaser selected is a Qualified Buyer. Approved Entities may request exemptions from the Eligibility Qualifications for purchasers as appropriate, pursuant to the procedures set forth herein for requesting exemptions from the Eligibility Qualifications. Habitat is exempted from the herein resale restrictions as to resale price, and shall implement the rules and regulations of Habitat regarding resale price and the Eligibility Qualifications for a Qualified Buyer, which will be more restrictive than those set forth herein.
- 2. **Sellers decide to whom they may sell.** Sellers may sell to any Qualified Buyer.
- 3. **Qualified Buyers.** Subsequent Qualified Buyers must meet the same Eligibility Qualifications and be qualified in the same manner as initial applicants.
- 4. **Offering Units for sale.** The Owner shall notify the Town of the intent to sell the Unit prior to advertising the Unit or listing it for sale. The Owner shall consult with the Town to confirm the correct Maximum Sale Price for the Unit prior to announcing the Unit for sale. The Owner shall list the Unit with the Town if a licensed transactional broker is available through the Town. If no transactional broker is available, the Seller may sell a Unit directly, or the Seller may list the Unit with a real estate broker licensed to do business in the State of Colorado. After notifying the Town of the intent to sell the Unit, the Owner must also place an announcement in the legal publications section of the official newspaper of the Town, at the Owner's expense, containing:
  - a. The address of the Unit;

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- b. A statement that potential buyers must meet Town Eligibility Qualifications, or receive an exemption from the Town;
  - c. The contact address for the Owner; and
  - d. The offered sale price of the Unit, not to exceed the Maximum Sale Price, as established in Exhibit A.
5. **Determining the Maximum Sale Price.** The Maximum Sale Price for each Unit shall be calculated according to the appropriate formula set forth in Exhibit A. Units 12 and 13 are not subject to a Maximum Sale Price. The owners of such Units may offer such Units at such price as the owner deems appropriate. Unit 2 shall be additionally subject to the more restrictive resale rules of Habitat.
6. **Town notification.** The owner shall submit to the Town the purchase contract and the documentation establishing the prospective purchaser's qualifications at least thirty (30) days prior to the scheduled closing. The Town shall, within fifteen (15) days of receipt of the purchase contract and prospective purchaser information, provide a letter to the owner and prospective purchaser indicating whether or not the prospective purchaser is an Eligible Owner as set forth in Subsection 1.A. hereof.
7. **Customary closing costs.** The Owner shall not permit the prospective purchaser to assume any or all of the seller's customary closing costs. The Owner shall not accept any other consideration which would cause an increase in the sales price of the Unit above the Maximum Sale Price, or for any other reason induce the owner to sell the Unit to a purchaser in violation of these Guidelines.
8. **No guarantees.** The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price.
9. **Deadline for building.** Owners who have purchased a vacant Unit shall obtain a building permit for a dwelling unit thereon no later than forty-eight (48) months after closing the purchase. Any owner who fails to meet this deadline shall forthwith offer the Unit for sale and as soon as practicable, sell their Unit.
10. **Administration fees.**
  - a. If a licensed transactional broker is available through the Town, at the closing of the sale of a Unit, the owner will pay the Town an administration fee in an amount to be established by the Town. The amount shall not exceed one and one-half percent (1½%) of the total sale price of the Unit. One-half (½) of the administration fee shall be paid by the seller at the time of listing, which is applied to the total administration fee payable at closing. The Town may instruct the title company to pay the balance of administration fees owed to the Town out of the funds available to the owner at the closing. In the event the owner fails to perform under the listing contract, rejects all offers at Maximum Sale Price in cash or cash-equivalent terms, or withdraws the listing after advertising has commenced, that portion of the administration fee paid will not be refunded. In the event the owner withdraws for failure of any bids to be received at Maximum Sale Price or with acceptable terms, the advertising and administrative costs incurred by the Town shall be deducted from the administration fee, and the balance refunded or credited to the owner's administration fee when the Unit is sold.
  - b. If a licensed transactional broker is not available at the Town, there will be no administration fees.
11. **First right of refusal.**
  - a. Offer of purchase/first right of refusal. No owner may sell a Unit or any interest therein except pursuant to the provisions of this Section. Any owner, except the Town, who receives, and intends to accept, a bona fide offer for the purchase of a Unit, shall give prompt written notice to the Town of the name and address of the proposed purchaser, the terms of the proposed

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transaction and other information as the Town may reasonably require. The owner shall thereupon offer to sell his or her Unit to the Town under the same terms and conditions. The giving of notice shall constitute a warranty and representation to the Town that such owner believes the offer to purchase to be bona fide in all respects.

- b. Term of Town's right. Within twenty-four (24) days, beginning on and including the date of the actual receipt of such information, the Town shall have the right to purchase the noticed Unit on the same terms and conditions as contained in the original offer.
- c. Exercise of right. In order to exercise its right of first refusal, the Town must, on or before the end of such twenty-four-day period, actually deliver to the owner a written commitment to purchase the noticed Unit. If the Town exercises its right to purchase the Unit, it shall contract with the offering owner to purchase the noticed Unit upon the same terms and conditions as contained in the noticed offer, or upon terms and conditions no less favorable to the offering owner. The Town shall also tender to the offering owner any down payment or deposit made under the noticed offer.
- d. Nonexercise of right. If the Town does not exercise its right hereunder within the time period provided, the offering owner shall be free to accept and close upon the noticed offer. If the offering owner does not, within the period provided in the noticed offer, close the transaction on the terms and conditions contained therein, the offering owner shall be required to again comply with all of the terms and provisions of this Section in order to subsequently sell the Unit.
- e. Failure to comply. Any sale of a Unit without full compliance with the terms and provisions of this Section may be voided at the election of the Town.
- f. Certificate. After full compliance with this Section by an offering owner, and after the period of time provided for purchase by the Town has expired and the right of first refusal has not been exercised, the Town shall execute a certificate of record stating that the provisions of this Section have been met, and any right of first refusal vested with the Town has terminated.
- g. Exceptions. The following transfers or conveyances are excepted from the provisions of this Section:
  - 1) A transfer to, or purchase by, any mortgagee who acquires title as a result of foreclosure proceedings or conveyance in lieu thereof; and a transfer or sale by any such mortgagee after acquisition of the Unit by foreclosure or conveyance in lieu thereof.
  - 2) A transfer or conveyance between or among co-tenants of the same Unit, spouses, children or parents of owners (who must be Qualified Buyers).
  - 3) A transfer or conveyance by gift, devise or inheritance or by operation of law.

### **Section 3. Ownership of units and maintaining eligibility for ownership.**

All Unit owners, both initial and subsequent, must comply with the following requirements:

- A, *Units Subject to Deed Restriction and Option to Purchase.* Each Unit is subject to all terms and conditions contained in these Guidelines, except where otherwise noted. It is also subject to the Deed Restriction and Option to Purchase that must be executed upon purchase and recorded with the Gunnison County Clerk and Recorder incorporating the terms and restrictions contained herein upon sale/purchase of the Unit. A copy of each recorded deed conveying title to a Unit and a copy of the Option to Purchase, in the name of the Town, must be provided to the Town within thirty (30) days after closing. Unit 2 shall additionally be subject to the terms of a deed restriction recorded by Habitat.
- B. *Occupancy.*

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1. All Units in the Subdivision must be occupied by owners or by renters of Rental Units as their sole and exclusive residence, subject to the provision on Leaves of Absence described in Section 3.D. below.
  2. The Crested Butte Town Manager shall be exempt from the requirement to occupy his or her unit as his or her sole and exclusive residence.
  3. The Town Manager may temporarily suspend the requirement in Paragraph 1. above that units must be occupied by owners as their sole and exclusive residence, subject to the provision on Leaves of Absence described in Subsection 3.D.
    - a. The Town Manager may temporarily suspend the owner occupancy requirement in Paragraph 1. above when the Town Manager finds the following circumstances to be true:
      - 1) An owner makes a written request to the Town to rent his/her unit, for no more than six (6) months,
      - 2) The Unit owner has been actively trying to sell the unit for at least six (6) months, and
      - 3) The owner has moved out of Gunnison County and does not intend to return.
    - b. Owner-occupied units that are rented when the owner has moved out of the County shall only be rented to Qualified Renters, as described in Section 4, Rentals, and such renters shall be qualified by the Town as described in Subsection 4.B.
    - c. Prior to the end of the six-month rental term, if the Unit has not been sold, the owner may request a second six-month rental term. At the end of the second rental term, the Unit may no longer be rented and, if the owner has not returned to live in the Unit, the Unit shall be sold to a Qualified Buyer as provided herein.

C. *Requalification.*

1. **Continuing compliance with eligibility qualifications.** The Town may conduct random audits and investigate complaints or reports of noncompliance at its discretion. The Town may require an owner to demonstrate that he/she complies with all applicable Eligibility Qualifications. If the owner fails to meet the applicable Eligibility Qualifications or ceases to use the housing as his or her sole and exclusive place of residence (subject to the provisions on Leaves of Absence), the Unit shall be sold to a Qualified Buyer as provided herein. In the event that title to a Unit vests by descent in individuals and/or entities who are not Qualified Buyers, the Unit shall be offered for sale and shall be sold to a Qualified Buyer within one (1) year after the Town notifies the owner of the obligation to sell. In the event a Unit is required to be sold pursuant to this Section, the Unit may not be occupied or rented prior to the sale.
2. **Exceptions to complying with eligibility qualifications.** Each owner shall continue to comply with the applicable Eligibility Qualifications except for the following:
  - a. Maximum Income Limits and Asset Limits.
  - b. An owner who reaches the age of fifty-nine and one-half (59½) years and/or otherwise demonstrates retirement from full-time work need not continue to comply with the following Qualified Buyer requirements: work in Gunnison County, and percentage of income in the County.

D. *Leaves of Absence.*

1. **Requests for Leaves of Absence.** An owner may request written approval from the Town for a Leave of Absence for up to one (1) year, or, in the Town's discretion, up to one (1) additional year. Leaves of Absence may not exceed two (2) years in any ten-year period. Leaves of Absence may be granted upon

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convincing evidence that the owner has a bona fide reason for leaving and a commitment to return to live in the Unit.

2. **Renting a unit during a Leave of Absence.** A Unit may be rented if an owner has requested and received, in writing, permission from the Town for a Leave of Absence, and additional permission to rent the Unit during the period of the absence.
3. **People to whom units may be rented.** When an owner has been granted a Leave of Absence, the owner's Unit may only be rented to those who meet the Eligibility Qualifications of a Qualified Renter as set forth herein.
4. **Rental rates.** When an owner has been granted a Leave of Absence, the maximum rental rate for any Unit shall be no more than the sum of:
  - a. The monthly mortgage principal and interest payment; plus
  - b. Condominium or townhouse fees; plus
  - c. Utility costs remaining in the owner's name; plus
  - d. Taxes and insurance prorated on a monthly basis; plus
  - e. Up to three percent (3%) of the monthly principal and interest payment per month.

- E. *Roommates Occupying a Unit With Owner.* Roommates need not meet Eligibility Requirements.

## **Section 4. Rentals.**

Units designated "Rental Unit" in Exhibit B must be occupied by at least one (1) Qualified Renter.

- A. *Qualified Renters.* Qualified Renters are people who meet all of the following Rental Eligibility Qualifications, or is the Crested Butte Town Manager, and are named on a lease for a Rental Unit.
1. Rental eligibility qualifications:
    - a. Work in Gunnison County. The person is employed in Gunnison County.
    - b. Percentage of income in the County. Eighty percent (80%) of all his or her income in Gunnison County during the twelve (12) months prior to applying to qualify to purchase a Unit. Earned income is defined by the Internal Revenue Service (IRC S 32(c)(2) Earned Income (3/20/1995) or as it may be amended).
    - c. Land ownership. No person or his or her Dependents shall own an interest, alone or in conjunction with others, in any improved residential real estate at the time of entering into a lease on a Unit, except residential property which according to the terms of its deed restriction cannot be owner-occupied. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to entering into a lease on a Unit. An owner of a fifty percent (50%) or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration. Unimproved residential real property outside the Subdivision must remain unimproved during the time a unit is rented in the Subdivision. If the unimproved land is improved with a residence, the owner must sell the unit upon issuance of a Certificate of Occupancy on the other real property.
    - d. Residency. The person must reside in Gunnison County, Colorado, at the time a lease is signed.
    - e. Maximum income limits. The total maximum income limit for a qualified renter and his or her dependents shall depend upon the particular unit sought, and shall be no greater than that set forth Exhibit B.

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- f. Asset limits. The assets of the qualified renter and his or her dependents shall not exceed four (4) times the maximum income for the unit, unless the qualified renter or his or her dependents is/are a senior citizen (aged fifty-nine and one-half [59½] or older), in which case the asset limit is one hundred fifty percent (150%) of four (4) times the maximum income for the unit.
- g. Qualified renters of Town employee units. Units 6A and 6B in Block 77 are Town employee units. The order of priority for renters of these units is as follows:
- 1) Full-time employees of the Town of Crested Butte as defined by the Town;
  - 2) Part-time employees of the Town of Crested Butte;
  - 3) Mountain Express employees;
  - 4) Essential services employees
    - (a) Fire personnel;
    - (b) Emergency Medical Technicians (EMTs);
    - (c) Public school teachers and administrators;
    - (d) Mt. Crested Butte emergency services personnel;
    - (e) County Sheriff personnel, and other as identified by the Town Council;

**Table VIII-2**

<b><i>Summary of Rental Eligibility Qualifications</i></b>	
Work in Gunnison County	Yes
Minimum % earned income in Gunnison County	80%
Own developed residential land	No
Reside on site	Yes
Resident of Gunnison County when lease is signed	Yes
Asset limits	Yes
Income limits	Yes

B. *Qualifying for Rental Affordable Housing.*

1. **Determination by Town.** The Town will decide which applicants meet the Rental Eligibility Qualifications.
2. **Establishing Rental Eligibility Qualifications.** To establish Rental Eligibility Qualifications, the Town may request documentation as set forth in Paragraph 1.B.3., Establishing Eligibility Qualifications.

C. *Exemptions.*

1. Any prospective renter may apply for an exemption from the Rental Eligibility Qualifications, utilizing the exemption procedures for Qualified Buyers set forth above at Paragraph 1.B.2.
2. **Retirees.** Eligible Renters may continue to rent a Rental Unit after retirement as long as they continue to meet all Rental Eligibility Qualifications, excluding: work in Gunnison County, percentage of income in the County, minimum hours worked each month, and maximum income.
3. The Town Manager shall be exempt from the Rental Eligibility Qualifications set forth herein.

D. *Requalifying for New Lease Term.*

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1. **Continuing to meet rental eligibility qualifications.** Only Eligible Renters may renew leases for Rental Units. The qualifications of renters shall be reviewed and verified prior to the execution of a new lease, to ensure they continue to meet the Eligibility Qualifications for the Unit. A Town employee whose employment with the Town is terminated shall vacate the Unit at the end of his or her lease unless the Town employee begins working for Mountain Express or one (1) of the essential services organizations listed at Section 1, Subparagraph B.1.g,4).
  2. **Continuing to rent when no longer meeting eligibility qualifications.** If a Qualified Renter no longer meets the Rental Eligibility Qualifications upon review for a new lease term, the formerly Qualified Renter may continue to rent and occupy the Unit at the rent and upon the terms established by the lease for up to one (1) additional year in order to provide adequate time to comply with the requirements or secure new housing. The foregoing shall not apply to Town employees whose employment with the Town has terminated.
- E. *Occupying Rental Units.* Qualified Renters must occupy the Unit as their sole and exclusive residence, subject to the provision on Leaves of Absence, below.
- F. *Leaves of Absence.*
1. **Requests for Leaves of Absence.** A Qualified Renter may request written approval from the Town for a Leave of Absence. Leaves of Absence may be granted upon convincing evidence that the Qualified Renter has a bona fide reason for leaving and a commitment to return to live in the Unit. Leaves of Absence shall not exceed two (2) years in any ten-year period.
  2. **Subletting a Unit during a Leave of Absence.** A Unit may be sublet in its entirety after a Qualified Renter has received, in writing, permission from the Town for a Leave of Absence.
    - a. The Unit may only be sublet to those who meet the Rental Eligibility Qualifications.
    - b. The Maximum Rental Rate for the Unit shall be no more than the rate established in the original lease.
- C. *Roommates Occupying a Unit With the Qualified Renter.* Roommates need not meet Eligibility Requirements.

## **Section 5. Grievance Procedures.**

- A grievance may be presented to the Town under the following procedures.
- A. *Filing a Grievance.* Any grievance must be presented in writing to the Town. It may be simply stated, but shall specify:
1. The particular ground(s) upon which it is based;
  2. The action requested; and
  3. The name, address, telephone number of the complainant and similar information about his or her representative, if any.
- B. *Hearing.*
1. If a grievance cannot be resolved by the Town, a hearing before the Town Council may be requested in writing by the complainant. Upon receipt of the written request, a hearing must be scheduled within twenty (20) days unless waived by the complainant.
  2. The complainant and the Town shall have the opportunity to examine and, at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant, before the hearing.

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- 3. The complainant and the Town have the right to be represented by counsel. All costs and expenses incurred by a complainant in prosecuting any complaint or grievance shall be said complainant's sole responsibility and shall not be the responsibility of the Town irrespective of the outcome of said complaint or grievance.
  - C. *Decision.* Based on the record of proceedings, the Town Council will provide a written decision upon request and include the reasons for its determination. The decision of the Town Council shall be binding on the complainant and the Town, except in such cases where an appeal to a court of competent jurisdiction is requested. The parties shall take all reasonable actions necessary to carry out the decision except in cases where the decision of the Town Council is appealed to a Court.

## **Section 6. Default/Breach/Enforcement.**

- A. *Procedure for Violation, Default or Breach.* If a violation, default or breach is alleged, the Town shall send a notice of such to the owner detailing the nature of the violation and allowing the owner or renter fifteen (15) days to determine the merits of the allegations or to correct the violation. In the event the owner or renter disagrees with the allegation of violation of these Guidelines and the matter cannot be settled informally with the Town, the owner or renter may request, in writing, a hearing before the Town Council. If the owner or renter does not request a hearing or the violation is not cured within the fifteen-day period, the owner shall be considered in violation of these Guidelines.
  - 1. **Hearing.** The hearing described above shall be scheduled within twenty (20) days of the date of the receipt of a written request for a hearing. At any such hearing, the complainant and the Town may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made and the decision of the Town Council shall be a final decision, subject to judicial review.
  - 2. **Effect of noncompliance.** In the event a Unit is sold and/or conveyed, or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a Unit for all purposes shall be deemed to include and incorporate by this reference all terms herein contained.
  - 3. **Enforcement options.** In the event an owner or renter fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction, and if the Town substantially prevails in such action, it shall be entitled to an award for its attorney fees and costs.

## **Section 7. Deed Restriction.**

- A. Each Unit must be deed-restricted by a recorded instrument that complies substantially with the form found in Exhibit C.
- B. Each Unit must be encumbered by an Option to Purchase Deed-Restricted Housing that complies substantially with the form found in Exhibit D.

## **Section 8. Scrivener's Error.**

In the event that any scriveners or other clerical error is found in these Guidelines, the Town may correct said scriveners or other clerical error by memorandum recorded in the real property records of Gunnison County, State of Colorado. Said corrective memorandum shall not require the approval of the Town Council.

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**Exhibit A**  
**Maximum Sale Price**

No Unit, other than Units located on Tracts 2, 12 and 13 in Block 77, may be sold for an amount in excess of the Maximum Sale Price. Maximum Sale Price will be established as of the date the seller notifies the Town of the seller's desire to sell the Unit.

- A. *Ascertaining Maximum Sale Price.* For purposes of these Guidelines, the "Maximum Sale Price" of a Unit shall be calculated by one (1) of four (4) methods.
  1. Method 1 or Method 2, whichever results in the lower Maximum Sale Price, shall be used for all Units, except Units 2A, 2B, 3A, 3B, 4A, 4B, 7A, 7B, 8A, 8B, 11A, 11B, 12 and 13 in Block 77.
  2. The Maximum Sale Price for Units 4A, 4B, 7A, 7B, 8A and 8B in Block 77 shall be calculated utilizing Method 3.
  3. The Maximum Sale Price for Units 3A, 3B, 11A and 11B in Block 77 shall be calculated utilizing Method 4.
  4. Habitat shall utilize its own rules and regulations regarding resale prices for Units 2A and 2B in Block 77.
  5. There is no Maximum Sale Price for Units 12 and 13 in Block 77 (such Units have no resale price restrictions).
- B. *Calculating Maximum Sale Price.*
  1. The maximum sale price includes:
    - a. The most recent purchase price of a Unit.
    - b. The documented costs (costs for which a receipt is submitted) for all initial and Permitted Subsequent Improvements made during ownership of a Unit, including the cost of materials and labor. Only the cost of improvements for which a Town building permit ("BP") has been issued, and decks less than eighteen (18) inches high, are permitted to be utilized in calculating costs. The cost of labor cannot exceed the cost of materials.
    - c. Methods 3 and 4 do not permit the inclusion of owner-contributed labor costs when calculating the initial Maximum Sale Price, when the owner/builder sells to the next (second) buyer. Tap fees, building permit fees, initial closing costs and initial landscaping costs are already included in the initial development cost in Methods 3 and 4 and may not be included again in subsequent calculations.
    - d. Method 3 allows for Permitted Subsequent Improvement costs after the initial sale by the owner/builder the next (second) buyer.
    - e. Method 4 allows for Permitted Subsequent Improvement costs throughout ownership.
    - f. All closing costs incurred by seller at purchase of the Unit (See definition of Customary Closing Costs).
    - g. Tap fees paid by seller.
    - h. Building permit fees paid by seller.
    - i. Landscaping costs incurred prior to issuance of the initial Certificate of Occupancy ("CO").
    - j. See Exhibit F for further clarifications regarding what can be included in Maximum Sales Price.
  2. **Permitted subsequent improvements.** The costs of Permitted Subsequent Improvements are permitted to be included in the Maximum Sale Price of a Unit in order to allow owners to be

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reimbursed for enhancing the value of their Unit through improvements that require Town building permits (and the cost of decks less than eighteen [18] inches high, which are included as Permitted Subsequent Improvements, but do not require a building permit).

- a. Permitted subsequent improvements include only the following permitted, permanent, durable improvements to real property, for which receipts must be provided to the Town and for which a Town building permit has been issued (and the cost of decks no greater than eighteen [18] inches high, for which a building permit is not required and major landscaping [see below]). Improvements include the cost of materials and labor (The cost of labor cannot exceed the cost of materials.):

- 1) Improvements or fixtures erected, installed or attached as permanent, functional, nondecorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
- 2) Improvements for energy and water conservation;
- 3) Improvements for health and safety protection devices;
- 4) Improvements to add and/or finish permanent/fixed storage space;
- 5) Improvements to finish unfinished space;
- 6) The cost of adding decks and balconies and any extensions thereto;
- 7) Tap fees;
- 8) Building permit fees;
- 9) Major landscaping, such as trees, bushes sidewalks and structures, but not bedding plants or annual flowers, after the initial improvements (after the initial CO); and/or
- 10) See Exhibit F for further clarifications regarding what can be included in Maximum Sales Price.

- b. Permitted subsequent improvements shall not include the following:

- 1) Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the Unit;
- 2) Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, floor coverings, floor tile and other, similar items; and/or
- 3) Upgrades or addition of decorative items, including lights, window coverings, floor tile, carpeting and other similar items.

- c. All permitted subsequent improvement items and costs shall be approved by the Town prior to being added to the Maximum Sale Price as defined in these Guidelines and must be documented with receipts.

3. Maximum sale price does not include:

- a. Taxes and insurance;
- b. Homeowners' or condominium association fees;
- c. Maintenance costs;
- d. Loan points or origination fees;
- e. Property taxes;

- f. Water and sewer fees (both availability of service fees and monthly service fees);
- g. Construction loan interest and permanent mortgage interest;
- h. Special improvement district assessments;
- i. Crested Butte real estate transfer tax; or
- j. Costs for which no receipts are provided.
4. **Information that must be provided when the Town calculates Maximum Sale Price.** The Owner shall submit to the Town such documentation as the Town may require in order to calculate the Maximum Sale Price, which shall at a minimum include the following:
- Records establishing the purchase price of the Unit;
  - Receipts to verify the costs of improvements located thereon, including labor costs (Units utilizing Methods 3 and 4 may not include labor costs, when determining the initial sale price when the owner/builder sells to the next (second) buyer in calculating Maximum Sale Price);
  - A copy of any building permit obtained for the improvements; and
  - An affidavit verifying that the receipts are valid and correct and represent costs actually paid by the Owner for construction of his or her home. (Cancelled checks, without receipts, will not be acceptable documentation of costs.).
5. **Methods for calculating maximum sale price.**
- Method 1.** (Three percent [3%] per annum). Method 1 has two (2) formulas. The first formula will be used prior to, and including, the first sale after a CO is issued for the initial improvements. The second formula will be used for all sales after the first sale after a CO has been issued for the initial improvements. (Method for Units, 5, 9, 14A and 14B in Block 77 and Units IA, 1B, IC, 2A, 2B, 6A, 6B, and 6C in Block 78, unless Method 2 results in a lower Maximum Sale Price, in which case Method 2 shall be utilized).

<b>Method 1, Formula #1.</b> <i>The Maximum Sale Price, Prior to, and Including the First Sale After a CO Was Issued for the Initial Improvements, Is Calculated Based On:</i>					
The land cost, including the proportionate share for multifamily Units, plus (+)	Three percent (3%) of that cost for each year the seller has owned the land, not compounded annually, and prorated for partial years, plus (+)	The cost of initial improvements, plus (+)	Three percent (3%) of the initial improvements cost for each year since a CO was issued for the improvement, not compounded annually, and prorated for partial years, from the date a CO is issued by the Town for those	The cost of Permitted Subsequent Improvements (including owner-contributed labor), plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost for each year after the improvement is complete, not compounded annually, and prorated for partial years, from the date a building permit is issued by the Town for those improvements.

			improvements, plus (+)		
<b>X</b> = Land cost — Original price of land plus the Buyer Costs listed in the definition of Customary Closing Costs.					
<b>a</b> = Initial improvements cost — The cost of all initial improvements prior to issuance of a CO, including all structures and landscaping prior to the CO.					
<b>b</b> = Owner-contributed labor for initial improvements — The cost of labor shall not exceed the cost of materials.					
<b>c</b> = Permitted Subsequent Improvements cost after the initial CO - If several Permitted Subsequent Improvements have been made after the initial CO has been issued, these are labeled c <sub>1</sub> , c <sub>2</sub> , c <sub>3</sub> , etc.					
Permitted Subsequent Improvements (including owner-contributed labor) made after the issuance of a CO shall not exceed ten percent (10%) of the value of the initial improvements from the date of the issuance of the CO, for an initial ten-year period. For every ten-year period thereafter, another ten percent (10%) of the value of all improvements (including the value of initial improvements and the Permitted Subsequent Improvements for each ten-year period thereafter) may be added to the value of the improvements.					
Construction of an accessory dwelling, subsequent to the issuance of a CO for a primary dwelling, shall be exempt from the ten-percent limit. Once the CO is issued for the accessory dwelling, the ten-percent cap shall not exceed the value of all existing improvements including the allowed ten-percent cap during each ten-year period as discussed above.					
<b>d</b> = Owner-contributed labor for Permitted Subsequent Improvements — If several subsequent improvements have been made after the initial CO has been issued, these are labeled d <sub>1</sub> , d <sub>2</sub> , d <sub>3</sub> , etc.					
The Maximum Sale Price of the Unit is determined by the following formula: $(X + ((X * .03) * \# \text{ of years since purchased})) + ((a + b) + (((a + b) * .03) * \# \text{ of years since CO}) + ((c_1 + d_1) + ((c_1 + d_1) * .03) * \# \text{ of years since BP})) + ((c_2 + d_2) + ((c_2 + d_2) * .03) * \# \text{ of years since BP})), \text{ etc.}$					
* = The symbol for multiplication in all formulas					
<b>Example</b>					
Sale of the Unit is in January 2007					
The land is owned three years and six months (purchased in July 2003)					
Land cost is				\$30,000	
Cost of initial improvements, for which a C.O. is issued in July 2005				\$95,000	
Cost of owner-contributed labor for initial improvement (July 2005)				\$25,000	
Cost of Permitted Subsequent Improvements finished in July 2006				\$3,000	
Cost of owner-contributed labor for subsequent improvements (July 2006) is				\$2,000	
Total costs				\$155,000	
$(\$30,000 + ((\$30,000 * .03) * 3^6/12)) + ((95,000 + 25,000) + (((95,000 + \$25,000) * .03) * 1^6/12)) + ((\$3,000 + \$2,000) + ((\$3,000 + \$2,000) * .03) * 6/12) = \$163,625$					
<b>OR</b>					
\$30,000				= \$30,000	
+ \$(30,000 * .03) * 3^6/12				= 3,150	
+ \$95,000				= 95,000	
+ \$(95,000 * .03) * 1^6/12				= 4,275	
+ \$25,000				= 25,000	
+ \$(25,000 * .03) * 1^6/12				= 1,125	
+ \$3,000				= 3,000	
+ \$(3,000 * .03) * 6/12				= 45	
+ \$2,000				= 2,000	
+ \$(2,000 * .03) * 6/12				= 30	
Total				= \$163,625	

<b>Method 1, Formula #2.</b> <i>The Maximum Sale Price for the Second Sale, After a Certificate of Occupancy for the Initial Improvements Was Issued, and for All Subsequent Sales Is Calculated Based On:</i>			
The most recent purchase price of a unit, plus (+)	Three percent (3%) of that cost for each year the seller has owned the Unit, not compounded annually, and prorated for partial years, plus (+)	The cost of Permitted Subsequent Improvements (see above), plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost (including owner-contributed labor) for each year after the improvement is complete, not compounded annually, and prorated for partial years, from the date a building permit is issued by the Town for those improvements (see above).
$f = \text{Most recent sales price} - (\text{Seller purchased the Unit in January 2009 and paid} + \text{Cost of Permitted Subsequent Improvements finished in July 2011} + \text{Cost of owner-contributed labor for Permitted Subsequent Improvements} + \text{Seller sold the Unit in July 2012})$			
$c = \text{Permitted Subsequent Improvements costs} - (\text{Seller purchased the Unit in January 2009 and paid} + \text{Cost of Permitted Subsequent Improvements finished in July 2011} + \text{Cost of owner-contributed labor for Permitted Subsequent Improvements})$			
$d = \text{Owner-contributed labor for Permitted Subsequent Improvements}$			
The Maximum Sale Price of the Unit is determined by the following formula: $(f + (f * .03) * \# \text{ of years since purchased}) + (c_1 + d_1) + ((c_1 + d_1) * .03 * \# \text{ of years since BP}) + (c_2 + d_2) + ((c_2 + d_2) * .03 * \# \text{ of years since BP}), \text{ etc.}$			
<b>Example</b>			
Seller purchased the Unit in January 2009 and paid			\$170,000
Cost of Permitted Subsequent Improvements finished in July 2011			\$3,000
Cost of owner-contributed labor for Permitted Subsequent Improvements			\$2,000
Seller sold the Unit in July 2012			—
Total costs			\$175,000
$(\$170,000 + (\$170,000 * .03) * 3^6 / 12) + (\$3,000 + \$2,000) + ((\$3,000 + \$2,000) * .03 * 1) = \$193,000$			
<b>OR</b>			
\$170,000			= \$170,000
+ \$(170,000 * .03) * 3^6 / 12			= 17,850
+ \$3,000			= 3,000
+ \$(3,000 * .03) * 1			= 90
+ \$2,000			= 2,000
+ \$(2,000 * .03) * 1			= 60
Total			= \$193,000

- b. **Method 2.** (Consumer Price Index Method). Method 2 has two (2) formulas. The first formula will be used prior to, and including, the first sale after a CO is issued for the initial improvements. The second formula will be used for all subsequent sales after the first sale. (Method for Units 5, 9, 14A and 14B in Block 77 and Units 1A, 1B, 1C, 2A, 2B, 6A, 6B, and 6C in Block 78, unless Method I results in a lower Maximum Sale Price, in which case Method I shall be utilized).

**Method 2, Formula #1.**

**The Maximum Sale Price, Until the Second Sale After a Certificate of Occupancy is Issued for the Initial Improvements, Is Calculated Based on the Land Cost, the Improvements Cost and the Change in the Consumer Price Index ("CPI") Where:**

**X** = Land cost (see above)

**a** = Initial improvements cost (see above)

**b** = Owner-contributed labor (see above)

**c** = Permitted Subsequent improvement cost after the initial CO (see above)

**d** = Owner-contributed labor for Permitted Subsequent Improvements (see above)

The CPI figures are published for the first half and second half of each year. Therefore the CPI figure for the first half of a year will be used for all expenses or sales from January 1 through June 30. The CPI figure for the second half of a year will be used for all expenses or sales from July 1 through December 31.

The Maximum Sale Price of the property is determined by the following formula:

$X * + (a + b) * + (c_1 + d_1) * * (c_2 + d_2)$ , etc. = Maximum Sale Price

**Example**

Sale of the Unit is in January 2007	—
CPI prior to purchase of the land in July 2003	187.8
CPI prior to completion of initial improvements in July 2005 (projected, not actual)	189.2
CPI prior to completion of Permitted Subsequent Improvements in July 2006 (projected, not actual)	196.3
CPI prior to date of sales contract in January 2007 (projected, not actual) - (The second half CPI number will be used for sales between January 1 and June 30)	199.1
$\$30,000 * + (95,000 + 25,000) * + (3,000 + 2,000) * = \$163,155.50$	

Since Formula #1 in Method 2, using CPI, results in a lower Maximum Sale Price than Formula 1 in Method 1, the Method 2 number would be the Maximum Sale Price.

**Method 2, Formula #2.**

**The Maximum Sale Price, for the Second Sale After a Certificate of Occupancy for the Initial Improvements Is Issued, and for All Subsequent Sales, Is Calculated Based On:**

The most recent purchase price of a Unit; plus (+)	Three percent (3%) of that cost for each year the seller has owned the Unit, not compounded annually, and prorated for partial years; plus (+)	The cost of Permitted Subsequent Improvements; plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost (including owner contributed labor) for each year after the improvement is complete, not compounded annually, and prorated for partial years, from the date a building permit is issued by the Town for those improvements.
<b>f</b> = Most recent purchase price of a Unit			
<b>c</b> = Permitted Subsequent improvement cost after the initial CO (see above)			

<b>d</b> = Owner-contributed labor for Permitted Subsequent Improvements (see above)	
The CPI figures used will be for the first half or second half of the year prior to the expense or sale.	
The Maximum Sale Price of the property is determined by the following formula:	
$f * + (c_1 + d_1) * + (c_2 + d_2), \text{ etc.} = \text{Maximum Sale Price}$	
* = The symbol for multiplication in all formulas	
<b>Example</b>	
Seller purchased the Unit in January 2009 and paid \$170,000	
Cost of Permitted Subsequent Improvements finished in July 2011 \$3,000	
Cost of owner-contributed labor for Permitted Subsequent Improvements \$2,000	
Seller sold the Unit in July 2012	
Total \$175,000	
CPI in December 2008 (projected, not actual) 207.96	
CPI in June 2011 (projected, not actual) 218.45	
CPI in June 2012 (projected, not actual) 222.88	
\$170,000 * + (\$3,000 + \$2,000) * = \$187,297.97	
<b>OR</b>	
\$170,000 *	= \$182,196.57
+ \$3,000 + 2000 *	= 5,101.40
Total	= \$187,297.97

Since Formula #2 in Method 2, using CPI, results in a lower Maximum Sale Price than Formula #2 in Method 1, the Method 2 number would be the Maximum Sale Price.

- c. **Method 3.** (First Mutual Self-Help Build Method). Method 3 has two (2) formulas. The first formula will be used when the owner/builder sells to the next (second) buyer. The first sale was to the builder of the Unit. The second formula will be used for all subsequent sales, when the second owner, and all subsequent owners, sell the Unit. (Method for Units 4A, 4B, 7A, 7B, 8A, and 8B in Block 77).

<b>Method 3, Formula #1.</b>		
<i>Maximum Sale Price For The Initial Sale Of These Units (When The Owner/Builder Sells To The Next [Second] Buyer) Is Calculated Based On The Initial Development Cost Plus Three Percent (3%) Per Annum Plus the Change in the Consumer Price Index ("CPI") as Set Forth in Formula #1 Below</i>		
<b>Unit</b>	<b>Initial Development Cost</b>	<b>Date Purchased by Owner/Builder</b>
4A	\$119,199.00	8/12/2004
4B	\$106,529.00	1/12/2005
7A	\$118,153.00	8/12/2004
7B	\$108,137.00	8/12/2004
8A	\$163,409.00	8/12/2004
8B	\$118,119.00	8/12/2004
<b>M</b> = Initial development cost for the unit		
<b>CPI</b> = Consumer Price Index		
The maximum sale price of the unit is determined by the following formula: $M + ((M * .03) * \text{number of years since purchased}) + M * = \text{Maximum Sales Price}$		
This method does not permit the inclusion of owner-contributed labor costs. Tap fees, building permit fees, initial closing costs permitted subsequent improvement costs, and initial landscaping costs are already included in the initial development cost and may not be included in the sale, when the owner/builder sells to the next (second) buyer.		

<b>Example</b>	
Unit 4A in Block 77 is sold to the second buyer in January 2007	—
CPI prior to the date the unit was purchased in August 2004	186.5
CPI prior to date of sales contract in January, 2007	199.1
$\$119,199 * ((\$119,199 * .03) * 2^{4/12}) + \$119,199 = \$254,795.04$	
<b>OR</b>	
\$119,199	= \$119,119.00
+ \$(119,199 * .03) * 2^4 / 12	= 8,343.93
+ \$119,199 *	= 127,252.11
Total	= \$254,795.04

<b>Method 3, Formula #2.</b>		
<b>The Maximum Sale Price, When the Second Owner and All Subsequent Owners Sell the Unit, Is Calculated Based on the Most Recent Sales Amount Plus Three Percent (3%) Per Annum Plus the Change in the Consumer Price Index ("CPI") Plus Any Qualifying Permitted Subsequent Improvement Costs, as Set Forth in Formula #2 Below.</b>		
<b>P</b> = The purchase price for the unit		
<b>CPI</b> = Consumer Price Index		
<b>c</b> = Permitted subsequent improvement cost after purchase by the seller (see above)		
<b>d</b> = Owner-contributed labor for permitted subsequent improvements after purchase by the seller (see above)		
<b>BP</b> = Building permit		
The Maximum Sale Price, for the second sale after a certificate of occupancy for the initial improvements is issued, and for all subsequent sales, is calculated based on:		
$((P * .03) * \text{number of years since purchased}) + P * + (c_1 + d_1) * + (c_2 + d_2), \text{ etc.} = \text{Maximum Sale Price}$		
<b>Example Assumptions</b>		
Even though Unit 4A could sell for as much as \$254,795 in 2007 using Formula #1, the Unit is also regulated in Exhibit B to a maximum income for the household purchasing the Unit. Exhibit B states Qualified Buyers for Unit 4A are limited to eighty percent (80%) of the Area Median Income (AMI) and the targeted household size is two (2) people. Eighty percent (80%) of AMI for a two-person household in 2007 was \$39,800. The Town expects that a \$39,800 income can afford a \$137,500 mortgage using thirty percent (30%) of the income for housing and subtracting property taxes, insurance and mortgage insurance. If a five percent (5%) down payment is also made, the price paid in 2007 could have been \$144,375.		
Unit 4A is sold to the second buyer in January 2010		
There are no permitted subsequent improvements to the Unit		
Assume CPI is as follows in the future:		
	First Half	Second Half
2006	196.3	199.1
2007	200.3	201.1
2008	202.6	204.1
2009	205.6	207.1
2010	208.6	210.1
Therefore:		
CPI prior to the date the Unit was purchased in July 2007 will be	200.3	
CPI prior to the date of sales contract in January 2010, will be	207.1	
$\$(144,375 * .03) * 2^{6/12} + \$144,375 = \$160,104.52$		
<b>OR</b>		
+ \$(144,375 * .03) * 2^6 / 12	= \$ 10,828.13	

+ \$144,375 *	= 149,276.39
Total	= \$160,104.52

Tap fees, building permit fees, initial closing costs, initial improvement costs, and initial landscaping costs were already included in the initial development cost and may not be included again in subsequent calculations. This method permits the inclusion of permitted subsequent improvement costs and owner-contributed labor costs for permitted subsequent improvements made after the initial sale of the Unit by the owner/builder.

Permitted Subsequent Improvements (including owner-contributed labor) made after the initial sale (after the owner/builder sells the Unit to the next [second] buyer), shall not exceed ten percent (10%) of the value of the initial improvements, listed above, from the date of the sale of the Unit to the next buyer, for an initial ten-year period. For every ten-year period thereafter, another ten percent (10%) of the value of all improvements (including the value of initial improvements and the Permitted Subsequent Improvements for each ten-year period thereafter) may be added to the value of the improvements. Each time the Unit is sold, the initial ten-year period begins again.

- d. **Method 4.** (Second Mutual Self-Help Build Method). Method 4 has two (2) formulas. The first formula will be used when the owner/builder sells to the next (second) buyer. The second formula will be used for all subsequent sales after the first sale. (Method for Units 3A, 3B, 11A, and 11B in Block 77).

#### **Method 4, Formula #1.**

**Maximum Sale Price for the Initial Sale of These Units (When the Owner/Builder Sells to the Next [Second] Buyer) Is Calculated Based on the Initial Development Cost Plus Three Percent (3%) Per Annum Plus the Change in the Consumer Price Index ("CPI") as Set Forth in Formula #1 below. Appreciation Begins as of the CO Because Owners Have a Construction Loan Until the CO is Issued and Permanent Mortgage Payments Begin After Issuance of the CO.**

<b>Unit</b>	<b>Initial Development Cost</b>	<b>Date of Certificate of Occupancy</b>
3A	\$165,000.00	5/23/07
3B	138,771.00	5/23/07
11A	154,473.00	5/23/07
11B	134,035.00	5/23/07

Formula #1: Formula for the first sale after construction of the Unit:

M = Initial development cost for the unit

CPI = The Consumer Price Index, for the half year prior to the expense or sale

c = Permitted Subsequent Improvements cost after the initial CO (see above)

d = Owner contributed labor for Permitted Subsequent Improvements (See above)

The Maximum Sale Price of the Unit is determined by the following formula:

$((M * .03) * \# \text{ of years since purchased}) + M * + (c_1 + d_1)$

\* + (c<sub>2</sub> + d<sub>2</sub>), etc. = Maximum Sale Price

#### **Example Assumptions**

Unit 3A in Block 77 receives a CO in July 2007 and the initial development cost is \$130,000

Unit 3A is sold to the second buyer in January 2010

Assume CPI is as follows in the future:

	First Half	Second Half
2007	200.3	201.1
2008	202.6	204.1
2009	205.6	207.1
2010	208.6	210.1

Therefore:	
CPI prior to the date the Unit was purchased in July 2007 was	200.3
CPI prior to date of sales contract in January 2010 will be	207.1
$(\$130,000 * .03) * 2^6/12 + \$130,000 = \$144,163.37$	

<b>Example</b>	
Unit 4A in Block 77 is sold to the second buyer in January 2007	—
CPI prior to the date the unit was purchased in August 2004	186.5
CPI prior to date of sales contract in January 2007	199.1
$\$119,199 * ((\$119,199 * .03) * 2^6/12) + \$119,199 = \$254,795.04$	

<b>OR</b>	
$+\$130,000 * .03 * 2^6/12$	= 9,750.00
$+\$130,000 * .03 * 2^6/12$	= 134,413.37
Total	= \\$144,163.37

**Method 4, Formula #2.**  
**Formula for the Second Sale, (After the Initial Sale by the Owner/Builder) and All Subsequent Sales, After the Initial Sale of the Unit**

P = The purchase price for the unit  
 CPI = The Consumer Price Index, for the half year prior to the expense or sale  
 c = Permitted subsequent improvement cost after purchase by the seller (see above)  
 d = Owner-contributed labor for permitted subsequent improvements after purchase by the seller (see above)  
 BP = Building permit  
 The Maximum Sale Price of the Unit, after the first sale of the Unit, is determined by the following formula:  
 $((P * .03) * \# \text{ of years since purchased}) + P * (c_1 + d_1)$   
 $* (c_2 + d_2)$ , etc. = Maximum Sale Price.

**Example Assumptions**  
 Unit 3A is sold to the second buyer in January 2010  
 There are no permitted subsequent improvements to the Unit  
 Assume CPI is as follows in the future:

	First Half	Second Half
2006	196.3	199.1
2007	200.3	201.1
2008	202.6	204.1
2009	205.6	207.1
2010	208.6	210.1

Therefore:  
 CPI prior to the date the Unit was purchased in July 2007 will be 200.3  
 CPI prior to date of sales contract in January 2010, will be 207.1  
 $\$(144,163 * .03) * 2^6/12 + \$144,163 = \$159,869.42$

<b>OR</b>	
$+\$(144,163 * .03) * 2^6/12$	= 10,812.23
$+\$144,163 * .03 * 2^6/12$	= 149,057.19

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Total	= \$159,869.42
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Tap fees, building permit fees, initial closing costs, and initial landscaping costs were already included in the initial development cost and may not be included again in subsequent calculations. This method permits the inclusion of permitted subsequent improvement costs and owner-contributed labor costs for permitted subsequent improvements after the initial sale of the Unit by the owner/builder.

Permitted Subsequent Improvements (including owner-contributed labor) made after the issuance of a CO shall not exceed ten percent (10%) of the value of the initial improvements, listed above, from the date of the issuance of the CO, for an initial ten-year period. For every ten-year period thereafter, another ten percent (10%) of the value of all improvements (including the value of initial improvements and the Permitted Subsequent Improvements for each ten-year period thereafter) may be added to the value of the improvements.

**Exhibit B**  
**Maximum Income Limits and Target Household Sizes**

The Maximum Income Limit and Target Household Size for each Unit are listed below. AMI is based upon Household Size (the Qualified Buyer or Qualified Renter plus his or her Dependents).

Because the Town wishes to maximize its affordable housing stock, and to house as many people as have a need for affordable housing, Target Household Sizes are set forth herein. Where possible, the Target Household Sizes shall be accomplished.

All Units shall be owner-occupied, unless listed as a *Rental Unit* below.

**Maximum Income Limits and Target Household Sizes**

<b>Block 77 Unit</b>	<b>Maximum Income Limit</b>		<b>Target Household Size</b>
1A	80% of AMI	Rental unit	2 person household
1B	80% of AMI	Rental unit	2 person household
1C	80% of AMI	Rental unit	1 person household
1D	80% of AMI	Rental unit	1 person household
2A	50% of AMI		all family sizes
2B	50% of AMI		all family sizes
3A	100% of AMI		1 person household
3B	100% of AMI		3 person household
4A	80% of AMI		2 person household
4B	80% of AMI		1 person household
5	90% of AMI		2 person household
6A	100% of AMI		1 person household
6B	100% of AMI		1 person household
7A	80% of AMI		2 person household
7B	80% of AMI		2 person household
8A	80% of AMI		3 person household
8B	80% of AMI		2 person household
9	100% of AMI		3 person household
10A	100% of AMI	Rental unit	1 person household
10B	100% of AMI	Rental unit	1 person household
11A	90% of AMI		2 person household
11B	100% of AMI		4 person household
12	no income limit		all family sizes

13	no income limit		all family sizes
14A	100% of AMI		2 person household
14B	120% of AMI		2 person household

<b>Block 78 Unit</b>	<b>Maximum Income Limit</b>		<b>Target Household Size</b>
1A	120% of AMI		2 person household
1B	140% of AMI		2 person household
1C	100% of AMI		1 person household
2A	130% of AMI		2 person household
2B	130% of AMI		2 person household
3A	80% of AMI	Rental unit	1 person household
3B	80% of AMI	Rental unit	2 person household
3C	80% of AMI	Rental unit	2 person household
4A	80% of AMI	Rental unit	1 person household
4B	80% of AMI	Rental unit	2 person household
4C	80% of AMI	Rental unit	2 person household
5A	no income limit	Rental unit	all family sizes
5B	no income limit	Rental unit	all family sizes
6A	80% of AMI		2 person household
6B	100% of AMI		2 person household
6C	120% of AMI		1 person household

**Exhibit C**  
**TOWN OF CRESTED BUTTE**

**Guidelines, Rules, Requirements and Administrative Procedures**

Governing Affordable Housing in the Paradise Park

**Affordable Housing Subdivision Deed Restriction**

Subject property: (Legal Description). Hereafter, the "Property."

The ownership of the Property shall henceforth be limited exclusively to successful applicants who meet the qualifications set forth in the Second Amended Guidelines, Rules, Requirements, and Administrative Procedures Governing Affordable Housing in Block 77 and 78 in the Paradise Park Affordable Housing Subdivision Town of Crested Butte Adopted \_\_\_\_\_, recorded in the real property records of Gunnison County, Colorado, at Reception No. \_\_\_\_\_ ("Guidelines"), as determined by the Town or its designee at the time of purchase and during ownership. The use and occupancy of all or part of the property is hereby limited exclusively to people who meet the referenced qualifications, and their spouses and children.

Ownership, use and occupancy of the Property is subject to the following:

1. The Property must be owned, occupied and used only by persons meeting the qualifications set forth in the Guidelines as they may be amended.
2. In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines and any amendments thereto, including but not limited to those provisions governing the qualifications for ownership, sale, transfer or conveyance of the Property.

- 
3. The beneficiary of any deed of trust or other recorded instrument identifying the Property as security or collateral shall execute the Option to Purchase Affordable Housing prepared by the Town, unless waived by the Town, prior to the recordation of the deed of trust or other recorded instrument. Failure to so execute shall render any such encumbrance fully null and void.

The foregoing restrictions on ownership, use and occupancy constitute a perpetual covenant that runs with the land as a burden thereon for the benefit of the Town of Crested Butte, Colorado (hereafter the "Town"), or its designee and shall be binding on the owner and the heirs, personal representatives, assigns, lessees, licensees and any transferees of the owner. The foregoing restrictions and covenants shall be administered by the Town or its designee, and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. If the Town substantially prevails in such an action, it shall also be entitled to an award for its reasonable attorneys' fees and costs.

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the Town's failure to exercise and close its option rights under an Option to Purchase Affordable Housing. The date of the termination of this Deed Restriction shall be the date of recording a Public Trustee's or Court-ordered foreclosure deed conveying the Property to the encumbrance beneficiary.

The foregoing Deed Restriction may be modified with the written consent of the owner and the Town or its designee, or, if the modification is less restrictive than those contained in the Guidelines, without the owner's consent. No such modification shall be effective until an instrument in writing is executed and recorded in the office of the Clerk and Recorder of Gunnison County. Provisions added to this Deed Restriction and/or the Guidelines after the conveyance of the Property which are more restrictive than those in effect at the time of such recording shall not apply to the Property, unless such provisions are designed to satisfy the Town's expressed interest to have only those persons meeting the Eligibility Qualifications (which shall not be amended) own, occupy or use the Property. However, less restrictive added provisions shall apply.

TOWN OF CRESTED BUTTE,  
A Colorado Home Rule Municipality:

By Authorized Officer

Title \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing Deed Restriction was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

**Exhibit D**  
**Option to Purchase Deed-Restricted Housing**

This Option to Purchase is made by and between the undersigned beneficiary of a deed of trust or mortgage and for the protection of any governmental agency guaranteeing, insuring or acquiring the note from the holder

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("the Holder"), and the Town of Crested Butte, a Colorado home rule municipality, its assigns or designees ("the Town").

- (1) **The Property.** A promissory note or mortgage held by the undersigned Holder dated \_\_\_\_\_, is secured by a deed of trust or mortgage ("Deed of Trust") encumbering property subject to a deed restriction pursuant to the Second Amended Guidelines, Rules, Requirements and Administrative Procedures Governing Affordable Housing in the Paradise Park Affordable Housing Subdivision, Town of Crested Butte, which property is described as follows:
- 

(the "Property").

- (2) **The Option.** In the event of a foreclosure of the Deed of Trust or mortgage and subject to the issuance of a Certificate of Purchase to the Holder following the foreclosure sale, or in the event the Holder receives a deed in lieu of foreclosure or other conveyance of the Property, the Holder hereby grants to the Town an option to purchase the Certificate of Purchase or Property on the terms set forth herein.
- (3) **Notice.** The Holder shall give all notices to the Town required under Colorado law in the foreclosure proceeding, including a copy of the Notice of Election and Demand for Sale, sent by certified mail, return receipt requested, and addressed as follows:

Town Manager,  
Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224

- (4) **Exercise of Option.** The Town shall have thirty (30) days after receiving written notice from the Holder of the issuance of the Public Trustee's Certificate of Purchase, or conveyance of the Property to Holder, in which to exercise this Option to Purchase by tendering to the Holder the sum for which the certificate was purchased or the Property conveyed, with interest from the date of sale, or conveyance, together with any taxes paid or other proper charges as provided by law, with interest from the date such expense was paid. Such interest shall be charged at the default rate if specified in the original instrument or, if not so specified, at the regular rate specified in the original instrument.
- (5) **Title.** Upon receipt of the option price, the Holder shall deliver to the Town a properly executed assignment of the Certificate of Purchase or deed to the Property. The Holder shall not create or participate in the creation of any additional liens or encumbrances against the Property following issuance of the Public Trustee's Certificate of Purchase to the Holder, or conveyance of the Property to the Holder. The Holder shall not be liable for any of the costs of assignment or conveyance to the Town.
- (6) **Termination of Deed Restriction.** In the event that this Option to Purchase is not exercised and the Holder is issued a deed following foreclosure, the Affordable Housing Deed Restriction shall automatically terminate, in which event the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County a full and complete confirming release of the Deed Restriction affecting the Property which appears in said records at Reception No. \_\_\_\_\_. Such release shall be placed of record within fourteen (14) days after request therefor by the Holder, and a copy of the recorded release shall be mailed to the Holder following its recordation.
- (7) **Successors and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

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(8) **Modifications.** The parties hereto agree that any modification to this Option to Purchase shall be effective only when made by writings signed by Holder and the Town and recorded with the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on \_\_\_\_\_, 20\_\_\_\_.

Date: \_\_\_\_\_, 20\_\_\_\_.

HOLDER OF FIRST DEED OF TRUST: Name of Lender

By Authorized Officer

Title\_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Date: \_\_\_\_\_, 20\_\_\_\_.

TOWN OF CRESTED BUTTE,  
A Colorado Home Rule Municipality:

By Authorized Officer

Title\_\_\_\_\_

Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Date: \_\_\_\_\_, 20\_\_\_\_.

BORROWER: Name of Borrower

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(Supp. No. 20)

Created: 2023-05-12 10:44:45 [EST]

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By Authorized Officer

Title \_\_\_\_\_

Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

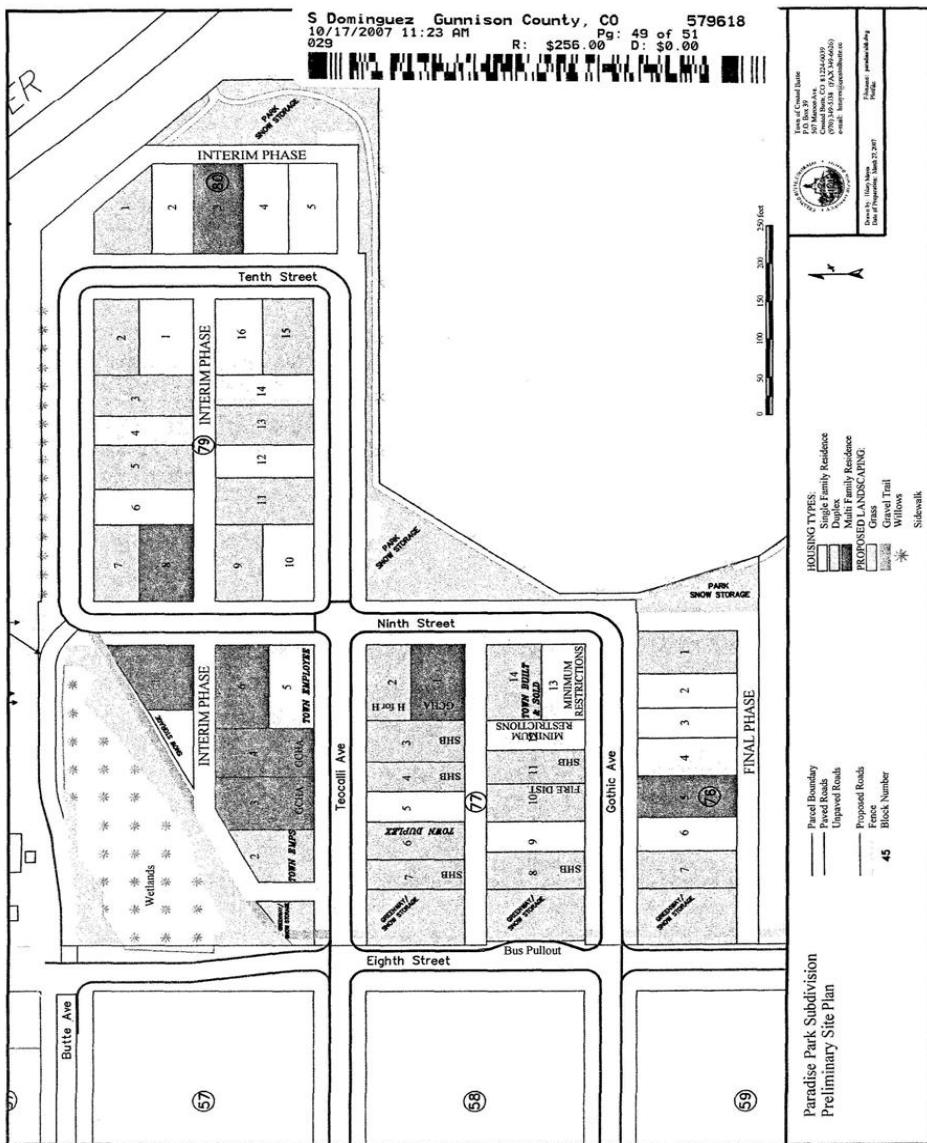
Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

## **Exhibit E**



## **Exhibit F**

## **TOWN OF CRESTED BUTTE**

## **Interpretations of the Second Amended Guidelines, Rules, Requirements and Administrative Procedures Governing Affordable Housing in Blocks 77 and 78 of the Paradise Park Affordable Housing Subdivision**

These interpretations are intended to clarify the Second Amended Guidelines, Rules, Requirements, and Administrative Procedures Governing Affordable Housing in Blocks 77 and 78 in the Paradise Park Affordable Housing Subdivision, Town of Crested Butte. These interpretations have been made by the Crested Butte Town Manager in his or her capacity as the administrator of these Guidelines.

**1. Clarification to Exhibit A, Maximum Sale Price and Permitted Subsequent Improvements.**

### B.3. Calculating maximum sale price.

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The intent is that homeowners be reimbursed for the permanent improvements when a Unit is sold. The documented costs for initial improvements and Permitted Subsequent Improvements include only the following permitted, permanent, durable improvements to the Unit, for which receipts must be provided to the Town and for which a Town building permit has been issued (and the cost of decks no greater than eighteen [18] inches high, for which a building permit is not required). Improvements include the cost of materials and labor (the cost of labor cannot exceed the cost of materials):

Therefore, Maximum Sale Price does not include:

- a. Taxes and insurance;
- b. Homeowners' or condominium association fees;
- c. Maintenance costs;
- d. Loan points or origination fees;
- e. Property taxes;
- f. Water and sewer fees (both availability of service fees and monthly service fees);
- g. Construction loan interest and permanent mortgage interest;
- h. Special improvement district assessments;
- i. Crested Butte real estate transfer tax;
- j. Costs for which no receipts are provided;
- k. Costs for which receipts are provided but that do not state the product purchased;
- l. Costs to cleanup the job site;
- m. Costs to install telephone, cable television, satellite television, computer services and other similar services which will most likely be reinstalled for the next owner; and
- n. Fire extinguishers and other nonpermanent accessories, such as appliances that are not intended to be sold with the unit.

**2. Clarification to Exhibit B, Maximum Income Limits and Target Household Sizes.**

The Maximum Income Limit and Target Household Size for each Unit are listed in Exhibit B. Household income will be based on the actual size of the household applying (the Qualified Buyer plus his or her Dependents) for a unit and will not be based on the target size for the Unit identified in Exhibit B. For example: if the targeted household is a two-person household earning not more than eighty percent (80%) of AMI, but a three-person household ends up qualifying for the Unit, the maximum income will be based on eighty percent (80%) of AMI for a three-person household.

**3. Clarification to Exhibit B, Maximum Income Limits and Target Household Sizes.**

Maximum Income limits will be based upon AMI and Household Size (the Qualified Buyer or Qualified Renter plus his or her Dependents).

**4. Asset Limits.**

Asset limits, which are four (4) times the allowed household income, will be based on the actual household size, not the target household size for the Unit listed in Exhibit B.

(Code §17-12-10; Ord. 4 §1, 2009; Ord. 10 §1, 2011; Ord. 11 §1, 2013)

**APPENDIX N**  
**Affordable Housing Guidelines**

**PART VIII. GUIDELINES, RULES AND REQUIREMENTS  
GOVERNING RESIDENT-OCCUPIED AFFORDABLE HOUSING  
IN THE TOWN OF CRESTED BUTTE**  
**June 4, 2012**

**Section 1. Definitions.**

To the extent of conflict between definitions in these Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte and Chapter 16, Article 21 of the Crested Butte Municipal Code (Code), the definitions in the Code shall control.

*Applicant* means any person who wishes to purchase or rent a ROAH unit.

*Approvedentity* means any entity approved by the Crested Butte Town Council which has a purpose of providing or administering affordable housing, or any person who would own a ROAH unit for the purpose of housing employees therein, provided the approved entity agrees to comply and be responsible for compliance with all requirements in these Guidelines.

*AreaMedian Income (AMI)* means figures published annually for counties by the U.S. Department of Housing and Urban Development (HUD) by household size. When a single figure is referenced, such as the median income for Gunnison County, it refers to one hundred percent (100%) of the area median income for a four-person (4-person) household.

*Bona fide offer* means an offer made in good faith, without fraud or deceit, between unrelated parties to purchase an Owner-Occupied ROAH unit which the owner intends to accept.

*ConsumerPrice Index (CPI)* means the Denver-Boulder-Greeley, Colorado Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor index.

*Customaryclosing costs* means the normal, ordinary costs associated with the sale and purchase of real property including, without limitation, costs and expenses associated with closing a loan on real property. The customary closing costs shall be allocated as follows:

<b>Owner (Seller)</b>	<b>Buyer</b>
Fifty percent (50%) of the title company's closing/settlement fees	Fifty percent (50%) of the title company's closing/settlement fees
All real property taxes prorated to the date of closing based upon taxes for the calendar year immediately preceding closing or the most recent mill levy and most recent assessment	Survey, or improvement location certificate, if applicable
Prorated water and sewer monthly use fees to the date of closing	Recording fees
All other outstanding fees and assessments such as homeowners association dues prorated to the date of closing	Certificate of taxes due

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Owner's title insurance	One hundred percent (100%) of loan fees
Town administration fee, up to one and one-half percent (1½%) of total sale price, if applicable	Mortgagee policy
Document preparation fees	Inspection fees
All real estate commissions	
Owner's title policy	

The Town encourages the Town Land Excise Transfer Tax (Real Estate Transfer Tax) to be equally divided between the owner and buyer.

*Deedrestriction* means that certain ROAH Deed Restriction encumbrance recorded against a Resident-Occupied Affordable Housing unit that restricts the sale, purchase and use of such ROAH unit to the requirements of these Guidelines.

*Dependent* means a minor child, eighteen (18) years or younger, or other relative of the renter or owner of a ROAH unit, which such child or relative is listed as a dependent for federal income tax purposes by such renter or owner, or his or her present or former spouse, significant other or life partner (said child must also be related by blood or adoption and reside with the individual at least one hundred eighty [180] days out of every twelve-month period of time).

*Disabledperson* means a person who meets the definition of "individual with a disability" contained in 29 U.S.C. § 706(8), as amended, and/or defined in the Americans with Disabilities Act of 1990; and/or a person who has a "handicap" as defined in Section 24-34-301(4), C.R.S., the Colorado Anti-Discrimination Act.

*Grievance* means any dispute that an owner, purchaser or tenant may have with the Town or its designee in connection with these Guidelines.

*Grossassets* means anything which has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of action which belong to any person, as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation or estate that is applicable or subject to the payment of debts. *Gross assets* shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts. Assets are evaluated at current fair market value, not accounting book value.

*Gross income* means total individual income including income from employment, Social Security benefits, alimony and child support; trust and other investment income; and net income derived from a business or from income-producing property after reasonable deductions for expenses, depreciation, taxes and similar allowances. Only the income of people who are eighteen (18) years old, or older, will be counted in the household income.

*Guidelines* means these Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte.

*Household* means all owners of Owner-Occupied ROAH units or renters of ROAH rental units, their immediate family which includes spouses, siblings, parents and/or offspring, either biologically, by marriage or by legal adoption, regardless of age, and any parties who by legal arrangement including by leasehold interest, deed, joint tenancy, tenancy in common or tenancy in its entirety shall have a legal right to fee ownership of leasehold interest, who will be occupying the ROAH unit.

*Householdassets* means gross assets minus liabilities of a qualified buyer or qualified renter and his or her Dependents.

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*Household income* means combined gross income of all persons in the Household.

*Household size* is computed by adding up the Qualified Buyer or Qualified Renter, his or her Dependents and all others included in the definition of household.

*Letter of Certification* means a letter issued by the Town stating that the person to whom it has been issued is a Qualified Buyer. A Letter of Certification is valid for up to one (1) year.

*Liabilities* means existing financial obligations or debts.

*Maximum Sale Price* means the maximum amount for which a ROAH unit may be transferred, calculated as described in Exhibit A. The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price.

*Net assets* means gross assets minus liabilities. Retirement accounts will be reviewed on a case-by-case basis to determine whether or not they shall be included as a net asset.

*Owner-Occupied ROAH unit* means a ROAH unit which is limited to an Owner-Occupied unit by deed restriction.

*Qualified Buyers* means persons meeting the Eligibility Qualifications for eligible owners set forth in Section 3 below.

*Qualified Renters* means persons meeting the Eligibility Qualifications for eligible renters set forth in Section 6 below.

*Resident-Occupied Affordable Housing unit (ROAH unit)* means any single unit of real property, whether a single-family home, condominium unit, a townhouse unit, a tract or lot, or an accessory dwelling unit located in the Town, which may be an Owner-Occupied ROAH unit or ROAH Rental unit, that is subject to these Guidelines.

*Roommates* means those people occupying a ROAH unit who are neither Qualified Buyers nor Qualified Renters.

*Town* means the Town of Crested Butte, as defined in Section 1-2-10 of the Crested Butte Municipal Code.

*Town Code (Code)* means the Crested Butte Municipal Code.

*Town Council* means the Town Council of the Town of Crested Butte, acting in its official capacity.

## **Section 2. Purpose.**

These Guidelines apply to all ROAH units created in accordance with Chapter 16, Article 21 of the Code. These Guidelines are created for the purposes of guiding the use of ROAH units by Qualified Buyers and Qualified Renters. These Guidelines are intended to assure that all purchasers, sellers (owners) and renters will be treated fairly and impartially.

## **Section 3. Eligible Owners.**

### A. *Rental ROAH Units.*

The Town may own a ROAH Rental unit. An Approved Entity may own a ROAH Rental unit after approval by the Town Council, if it agrees to be responsible for compliance with all requirements in these Guidelines. The developer or owner of the property subject to the requirements of Chapter 16, Article 21 of the Code may own ROAH Rental units but shall be responsible for compliance with all requirements in these Guidelines and the requirements of Chapter 16, Article 21 of the Code.

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B. *Owner-Occupied ROAH Units.*

The Town may own an Owner-Occupied ROAH unit. The developer or owner of the property subject to the requirements of Chapter 16, Article 21 of the Code may own an Owner-Occupied ROAH unit and shall be responsible for compliance with all requirements in these Guidelines. A Qualified Entity may own an Owner-Occupied ROAH unit as an intermediary, to resolve issues, when Qualified Buyers are unable to purchase the Owner-Occupied ROAH unit. A Qualified Buyer may own an Owner-Occupied ROAH unit. Only a Qualified Buyer may occupy an Owner-Occupied ROAH unit after purchasing the unit.

C. *Qualified Buyers.*

A Qualified Buyer is a natural person who meets all of the following Eligibility Qualifications, as determined by the Town Manager, and who has been issued a Letter of Certification by the Town Manager.

1. **Eligibility Qualifications:**

- a. Work in Gunnison County. The person is employed in Gunnison County.
- b. Percentage of income in the County. Eighty percent (80%) of all his or her income is "earned income" in Gunnison County during the twelve (12) months prior to applying to qualify to purchase an Owner-Occupied ROAH unit. "Earned income" shall be defined by the Internal Revenue Service (IRC S 32(c) Earned Income or as it may be amended).
- c. Land ownership. No person or his or her Dependents shall own an interest, alone or in conjunction with others, in any improved residential real estate except residential property which according to the terms of a restrictive covenant cannot be owner-occupied at the time of closing on an Owner-Occupied ROAH unit. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to closing on an Owner-Occupied ROAH unit. An owner of a fifty percent (50%) or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration. Unimproved residential real property may be owned by a Qualified Buyer but must remain unimproved during the time an Owner-Occupied ROAH unit is owned by a Qualified Buyer. If unimproved residential real property is improved with a residence, the owner must sell the Owner-Occupied ROAH unit upon issuance of a Certificate of Occupancy on the other real property.

Notwithstanding the provisions in Section 3.B.1.c., a Qualified Buyer who is moving from an Owner-Occupied ROAH unit to another deed-restricted affordable housing unit may continue to own the ROAH unit as provided for in Subparagraphs 5.C.1.d., e. and f. below.

- d. Residency. The person must reside in Gunnison County, Colorado, at the time a purchase contract is signed.
- e. Maximum Household Income limit. The maximum Household Income for a Qualified Buyer shall depend upon the particular Owner-Occupied ROAH unit sought and shall be no greater than the percentage of Gunnison County AMI identified in the restrictive covenant for the Owner-Occupied ROAH unit. Household Income will be based on the actual size of the household applying for an Owner-Occupied ROAH unit. For example, if the maximum Household Income limit is eighty percent (80%) of the AMI, and a three-person household applies, the maximum Household Income will be based on eighty percent (80%) of the AMI for a three-person household.
- f. Asset limit. The assets of a Qualified Buyer and all people in the household, including his or her Dependents, but not renters, shall not exceed four (4) times the maximum Household Income limit for the Owner-Occupied ROAH unit as set forth in the restrictive covenant for the Owner-Occupied ROAH unit, unless the Qualified Buyer or at least one (1) of his or her

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Dependents is a senior citizen aged fifty-nine and one-half (59½) or older, in which case the asset limit is one hundred fifty percent (150%) of four (4) times the maximum Household Income for the Owner-Occupied ROAH unit as set forth in the restrictive covenant. Vacant land, which can be owned by a Qualified Buyer, will be valued as stated in the Gunnison County Assessor's Office notice of valuation.

2. **Exemptions from Eligibility Qualifications.** A request for an exemption from the Eligibility Qualifications may be requested from the Town. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines, and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for an exemption.
  - a. A request for an exemption must be submitted in writing to the Town and shall include appropriate documentation in support of the exemption. The applicant shall submit any additional information reasonably requested by the Town Manager in support of such request.
  - b. The request shall be reviewed by the Town Manager. Upon demonstration that an exemption is appropriate, the Town Manager may grant the request, with or without conditions. The approval should not compromise the public good and should not substantially impair the intent and purpose of these Guidelines. The Town Manager may request that the decision for the requested exemption be rendered by the Town Council.
  - c. Examples of hardships, exceptional circumstances or compelling reasons include, but are not limited to:
    - 1) A person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year;
    - 2) A person who temporarily left Gunnison County to attend college or other educational training;
    - 3) A recently hired employee of the Town;
    - 4) An employee of the Town who helps provide essential services to the Town;
    - 5) A person who is certified as being unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to last indefinitely;
    - 6) A person with federally recognized disabled dependents; or
    - 7) A person or persons who are court-appointed legal guardians with wards who are otherwise Qualified Buyers.
3. **Establishing Eligibility Qualifications.** To establish Eligibility Qualifications, the Town Manager will request documentation that may include, but not be limited to, copies of the following:
  - a. Most recent federal income tax returns (Form 1040);
  - b. Most recent IRS Form W2s associated with the most recent 1040 form;
  - c. Completed, signed and dated Town application;
  - d. An affidavit by the applicant regarding the applicant's ownership of other real property;
  - e. An affidavit by the applicant verifying the truth of the information provided;
  - f. Landlord verification (proof of residency by physical address);
  - g. Wage stubs;

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- h. Employer name and address; and
  - i. Any other verification deemed necessary by the Town Manager to make a determination.
4. **Town to make determination as to eligibility.** The Town Manager shall make the final determination as to the Eligibility Qualifications of a prospective purchaser of an Owner-Occupied ROAH unit.
  5. **Mortgage loan co-signers.**
    - a. A person other than a Qualified Buyer may co-sign, along with the Qualified Buyer, on a mortgage loan for an Owner-Occupied ROAH unit. That person may also appear on the title to the Owner-Occupied ROAH unit.
    - b. If title to an Owner-Occupied ROAH unit transfers solely to the co-signer, the Owner-Occupied ROAH unit must be sold to a Qualified Buyer unless the co-signer meets all of the criteria for a Qualified Buyer at the time of the title transfer. The Owner-Occupied ROAH unit may not be occupied or rented prior to the sale.

#### **Section 4. Procedures for Sale of Units.**

The sale of all Owner-Occupied ROAH units shall be in accordance with the procedures set forth below.

- A. *Consulting Legal Counsel.* All purchasers and sellers are advised to consult legal counsel regarding examination of title, all contracts, agreements and title documents pertaining to the purchase or sale of property discussed herein. The retention of such counsel or such related services shall be at purchaser's or owner's (seller's) own expense.
- B. *Sellers Decide to Whom They May Sell.* Owners may sell to any Qualified Buyer who has been issued a Letter of Certification.
- C. *Qualified Buyers.* Qualified Buyers must meet the same Eligibility Qualifications and be qualified after complying with the following:
  1. Applicants shall complete an application for an Owner-Occupied ROAH unit, which application shall contain sufficient information for the Town Manager to determine whether or not the applicant is a Qualified Buyer.
  2. An applicant will be notified by the Town Manager as to whether he or she meets the Eligibility Requirements to be a Qualified Buyer. People who are determined by the Town Manager to be Qualified Buyers will be issued a Letter of Certification, which the Qualified Buyer can use to demonstrate to the owner that he or she is a Qualified Buyer. An applicant who has been determined not to be a Qualified Buyer may request an exemption from the Town Council.
  3. Applicants should refrain from making an offer to purchase an Owner-Occupied ROAH unit until after a Letter of Certification is issued by the Town Manager.
- D. *Offering Owner-Occupied Units for Sale.* Owner(s) shall notify the Town Manager of the intent to sell an Owner-Occupied ROAH unit prior to advertising the Owner-Occupied ROAH unit or listing it for sale. The owner shall consult with the Town Manager to confirm the correct Maximum Sale Price for the Owner-Occupied ROAH unit prior to announcing the Owner-Occupied ROAH unit for sale. The owner shall list the Owner-Occupied ROAH unit with the Town if a licensed transactional broker is available through the Town. If no transactional broker is available, the owner may sell an Owner-Occupied ROAH unit directly or the owner may list the ROAH unit with a real estate broker licensed to do business in the State of Colorado. After notifying the Town Manager of the intent to sell the Owner-Occupied

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ROAH unit, the owner must also place an announcement in the legal publications section of the official newspaper of the Town, at the owner's expense, containing:

1. The address of the Owner-Occupied ROAH unit;
  2. A statement that potential buyers must meet Town Eligibility Qualifications, or receive an exemption from the Town Council;
  3. The contact address for the owner; and
  4. The offered sale price of the Owner-Occupied ROAH unit, not to exceed the Maximum Sale Price, as established in Exhibit A. Maximum Sale Price will be established as of the date the seller notifies the Town Manager of the seller's desire to sell the Owner-Occupied ROAH unit.
- E. *Determining the Maximum Sale Price.* The Maximum Sale Price for each Owner-Occupied ROAH unit shall be calculated according to the appropriate formula set forth in Exhibit A.
- F. *Customary Closing Costs.* The owner shall not permit the prospective purchaser to assume any or all of the seller's customary closing costs. The owner shall not accept any other consideration which would cause an increase in the sales price of the Owner-Occupied ROAH unit above the Maximum Sale Price, or for any other reason induce the owner to sell the Owner-Occupied ROAH unit to a purchaser in violation of these Guidelines.
- G. *No Guarantees.* The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price.
- H. *Administration Fees.*
1. If a licensed transactional broker is available through the Town, at the closing of the sale of an Owner-Occupied ROAH unit, the owner will pay the Town an administration fee in an amount to be established by the Town Manager. The amount shall not exceed one and one-half percent (1½%) of the total sale price of the Owner-Occupied ROAH unit. One-half (½) of the administration fee shall be paid by the owner at the time of listing, which is applied to the total administration fee payable at closing. The Town Manager may instruct the title company to pay the balance of administration fees owed to the Town out of the funds available to the owner at the closing. In the event the owner fails to perform under the listing contract, rejects all offers at Maximum Sale Price in cash or cash-equivalent terms, or withdraws the listing after advertising has commenced, that portion of the administration fee paid will not be refunded. In the event the owner withdraws for failure of any bids to be received at Maximum Sale Price or with acceptable terms, the advertising and administrative costs incurred by the Town shall be deducted from the administration fee and the balance refunded or credited to the owner's administration fee when the Owner-Occupied ROAH unit is sold.
  2. If a licensed transactional broker is not available through the Town, there will be no administration fees.
- I. *First Right of Refusal.*
1. Offer of Purchase/First Right of Refusal. No owner may sell an Owner-Occupied ROAH unit or any interest therein except pursuant to the provisions of this Section. Any owner, except the Town, who receives and intends to accept a bona fide offer for the purchase of an Owner-Occupied ROAH unit, shall give prompt written notice to the Town Manager of the name and address of the proposed purchaser, the terms of the proposed transaction and other information as the Town Manager may reasonably require. The owner shall thereupon offer to sell his or her Owner-Occupied ROAH unit to the Town under the same terms and conditions. The giving of notice shall constitute a warranty and representation to the Town that such owner believes the offer to purchase to be bona fide in all respects.

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2. Term of Town Council's Right. Within fourteen (14) days beginning on and including the date of the actual receipt of such information, the Town Council shall have the right to purchase the noticed Owner-Occupied ROAH unit on the same terms and conditions as contained in the bona fide offer.
  3. Exercise of Right. In order to exercise its right of first refusal, the Town Council must, on or before the end of such fourteen-day period actually deliver to the owner a written commitment to purchase the noticed Owner-Occupied ROAH unit. If the Town Council exercises its right to purchase the noticed Owner-Occupied ROAH unit, it shall contract with the owner to purchase the noticed Owner-Occupied ROAH unit upon the same terms and conditions as contained in the bona fide offer, or upon terms and conditions no less favorable to the owner. The Town Council shall also tender to the owner any down payment or deposit made under the bona fide offer.
  4. Non-exercise of Right. If the Town Council does not exercise its right hereunder within the time period provided, the owner shall be free to accept and close upon the bona fide offer. If the owner does not, within the period provided in the bona fide offer, close the transaction on the terms and conditions contained therein, the owner shall be required to again comply with all of the terms and provisions of this Section in order to subsequently sell the Owner-Occupied ROAH unit.
  5. Failure to Comply. Any sale of an Owner-Occupied ROAH unit without full compliance with the terms and provisions of this Section may be voided at the election of the Town Council.
  6. Certificate. After full compliance with this Section by an offering owner, and after the period of time provided for purchase by the Town has expired and the right of first refusal has not been exercised, the Town Attorney shall execute a certificate of record stating that the provisions of this Section have been met and any right of first refusal vested with the Town has terminated.
  7. Exceptions. The following transfers or conveyances are excepted from the provisions of this Section:
    - a. A transfer to, or purchase by, any mortgagee who acquires title as a result of foreclosure proceedings or conveyance in lieu thereof; and a transfer or sale by any such mortgagee after acquisition of the unit by foreclosure or conveyance in lieu thereof.
    - b. A transfer or conveyance between or among co-tenants of the same Owner-Occupied ROAH unit, spouses, children or parents of owners (who must be Qualified Buyers).
    - c. A transfer or conveyance by gift, devise or inheritance or by operation of law.

## **Section 5. Ownership of ROAH Units and Maintaining Eligibility for Ownership.**

All ROAH unit owners must comply with the following requirements:

A. *ROAH Units Subject to Deed Restriction.*

Each ROAH unit, including Owner-Occupied ROAH units and ROAH Rental units, is subject to the terms and conditions of these Guidelines, except where otherwise noted herein. Each ROAH unit is also subject to the Deed Restriction to be executed by the purchaser of a ROAH unit upon purchase and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado, incorporating the terms and restrictions contained herein. Such Deed Restriction shall be joined by any senior lien holder. A copy of each recorded deed conveying title to a ROAH unit and an original of such Deed Restriction and joinder of lien holder benefitting the Town shall be provided to the Town at closing, failing which, such transfer of the subject ROAH unit shall be void ab initio.

B. *Occupancy.*

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All ROAH units must be occupied by owners or by renters of ROAH units as their sole and exclusive residence, subject to the provision on Leaves of Absence described in Subsection 5.D. below.

C. *Requalification.*

1. **Continuing Compliance with Eligibility Qualifications.** The Town Manager may conduct random audits and investigate complaints or reports of noncompliance at his or her discretion. The Town Manager may require an owner to demonstrate that he or she complies with all applicable Eligibility Qualifications. If the owner fails to meet the applicable Eligibility Qualifications or ceases to use the housing as his or her sole and exclusive place of residence (subject to the provisions on Leaves of Absence), an Owner-Occupied ROAH unit shall be sold to a Qualified Buyer as provided herein. In the event that title to an Owner-Occupied ROAH unit vests by descent in individuals and/or entities who are not Qualified Buyers, the Owner-Occupied ROAH unit shall be offered for sale and shall be sold to a Qualified Buyer within one (1) year after the Town notifies the owner of the obligation to sell. In the event an Owner-Occupied ROAH unit is required to be sold pursuant to this Section, the Owner-Occupied ROAH unit may not be occupied or rented prior to the sale.
  - a. The Town Manager may temporarily suspend the owner occupancy requirements in Subparagraph 1 above when the Town Manager finds the following circumstances to be true:
    - 1) An owner makes a written request to the Town Manager to rent his or her unit, for no more than six (6) months;
    - 2) The Owner-Occupied ROAH unit owner has been actively trying to sell the unit for at least six (6) months; and
    - 3) The owner has moved out of Gunnison County, or is about to move out of Gunnison County, and does not intend to return.
  - b. An Owner-Occupied ROAH unit that is rented when the owner has moved, or is about to move, out of the County shall only be rented to Qualified Renters, as described in Section 6. Such renters shall be qualified by the Town Manager as described in Subsection 6.B. below.
  - c. Prior to the end of the six-month rental term, if the Owner-Occupied ROAH unit has not been sold, the owner may request a second six (6) month rental term. At the end of the second rental term the Owner-Occupied ROAH unit may no longer be rented and, if the owner has not returned to live in the ROAH unit, the Owner-Occupied ROAH unit shall be sold to a Qualified Buyer as provided herein.
  - d. The Town Manager may temporarily suspend the prohibition against owning more than one (1) developed residential property in Section 3.B.1.C. when the Town Manager finds the following circumstances to be true:
    - 1) An owner makes a written request to the Town Manager to rent his or her unit for no more than six (6) months;
    - 2) The owner of the Owner-Occupied ROAH unit has been actively trying to sell the unit for at least six (6) months; and
    - 3) The owner has a contract to purchase another deed-restricted affordable housing unit within the Town limits of Crested Butte.

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- e. An Owner-Occupied ROAH unit that is no longer occupied by the owner may be rented to Qualified Renters, as described in Section 6. Such renters shall be qualified by the Town Manager as described in Paragraph 6.B.
  - f. At the end of the six-month rental term the Owner-Occupied ROAH unit shall no longer be rented and shall be sold to a Qualified Buyer as provided herein.
2. **Exceptions to Complying with Eligibility Qualifications.** Each owner shall continue to comply with the applicable Eligibility Qualifications except for the following:
- a. Total Maximum Income Limits and Asset Limits.
  - b. An owner who reaches the age of fifty-nine and one-half (59½) years and/or otherwise demonstrates retirement from full time work need not continue to comply with the following Qualified Buyer requirements:
    - 1) Work in Gunnison County (Subparagraph 3.B.1.a.);
    - 2) Percentage of Income (Subparagraph 3.B.1.b.); and
    - 3) Occupancy (Subsection 5.B.).
- D. *Leaves of Absence.*
- 1. **Requests for Leaves of Absence.** An owner may request written approval from the Town Manager for a leave of absence for up to one (1) year or, at the Town Manager's discretion, up to one (1) additional year. Leaves of Absence may not exceed two (2) years in any ten-year period. Leaves of Absence may be granted upon convincing evidence that the owner has a valid reason for leaving and a commitment to return to live in the ROAH unit.
  - 2. **Renting a ROAH Unit During a Leave of Absence.** An Owner-Occupied ROAH unit may be rented if an owner has requested and received, in writing, permission from the Town Manager for a Leave of Absence, and additional permission to rent the Owner-Occupied ROAH unit during the period of the absence.
  - 3. **People to Whom ROAH Units May be Rented.** When an owner has been granted a Leave of Absence, the owner's Owner-Occupied ROAH unit may only be rented to those people who meet the Eligibility Qualifications of a Qualified Renter as set forth herein.
- E. *Roommates Occupying an Owner-Occupied ROAH Unit with the Owner.* Roommates need not meet Eligibility Requirements.

## **Section 6. Rentals.**

ROAH units which will be used as "ROAH Rental units" by the Town, the developer or owner of the property subject to the requirements of Chapter 16, Article 21 of the Code and subsequent owners of the ROAH Rental units must be occupied by at least one (1) Qualified Renter.

- A. **Qualified Renters.** Qualified Renters are people who meet all of the following Rental Eligibility Qualifications and are named on a lease for a ROAH Rental unit.
  - 1. **Rental Eligibility Qualifications:**
    - a. Work in Gunnison County. The person is employed in Gunnison County.
    - b. Percentage of income in the County. Eighty percent (80%) of all his or her income is "earned income" in Gunnison County during the twelve (12) months prior to applying to qualify to rent a ROAH Rental unit. "Earned income" is defined by the Internal Revenue Service (IRC S 32(c) Earned Income or as it may be amended).

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c. Land Ownership.

No person or his or her Dependents shall own an interest, alone or in conjunction with others, in any improved residential real estate at the time of entering into a lease on a ROAH Rental unit, except residential property which according to the terms of its deed restriction cannot be owner-occupied. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to entering into a lease on a ROAH Rental unit. An owner of a fifty-percent or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration. Unimproved residential real property must remain unimproved during the time a ROAH Rental unit is rented. If the unimproved property is improved with a residence, the lease will be terminated and the renter must vacate the premises upon issuance of a Certificate of Occupancy on the other real property.

- d. Residency. The person must reside in Gunnison County, Colorado, at the time a lease is signed.
- e. Maximum Household Income limit. The maximum Household Income limit for a Qualified Renter shall depend upon the particular ROAH Rental unit sought and shall be no greater than the percentage of Gunnison County AMI set forth in the restrictive covenant for the ROAH Rental unit. Household Income will be based on the actual size of the household applying for a ROAH Rental unit. For example, if the maximum Household Income limit is eighty percent (80%) of the AMI and a three-person household applies, the maximum income will be based on eighty percent (80%) of the AMI for a three-person household.
- f. Asset limit. The assets of the Qualified Renter and all people in the household, including his or her Dependents, shall not exceed four (4) times the maximum Household Income for the ROAH Rental unit unless the Qualified Renter or his or her Dependents is/are a senior citizen aged fifty-nine and one-half (59½) or older, in which case the asset limit is one hundred fifty percent (150%) of four (4) times the maximum Household Income for the ROAH Rental unit as set forth in the restrictive covenant. Vacant land, which can be owned by a Qualified Renter, will be valued as stated in the Gunnison County Assessor's Office notice of valuation.
- g. Qualified renters of Town employee units. When compliance with the requirements of Chapter 16, Article 21 of the Code results in a ROAH Rental unit being owned by the Town and when the Town Council designates such units as Town employee units, the order of priority for renters of these Town employee ROAH Rental units is as follows:
- 1) Full-time employees of the Town as defined by the Town Manager;
  - 2) Part-time employees of the Town as defined by the Town Manager;
  - 3) Mountain Express employees;
  - 4) Essential services employees, including but not limited to:
    - a) Fire personnel;
    - b) Emergency Medical Technicians (EMTs);
    - c) Public school teachers and administrators;
    - d) Mt. Crested Butte emergency services personnel;
    - e) County Sheriff personnel; and
    - f) Others as identified by the Town Council; and

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5) The general public.

B. *Qualifying for Rental Affordable Housing.*

1. **Determination by Town.** The Town Manager will decide which applicants meet the Rental Eligibility Qualifications for Town-owned ROAH Rental units. Approved Entities that own ROAH Rental units shall decide which applicants meet the Rental Eligibility Qualifications and shall be responsible for compliance with the requirements of Subsection 6.A. Approved Entities are subject to Section 8 (Default/Breach/Enforcement). Approved Entities may request that the Town Manager decide which applicants meet the Rental Eligibility Qualifications for Approved Entity-owned ROAH Rental units and, if the Town Manager agrees, an agreement between the Town and the Approved Entity shall set forth the conditions of doing so.
2. **Establishing Rental Eligibility Qualifications.** To establish Rental Eligibility Qualifications, the Town Manager, or Approved Entities, may request documentation as set forth above in Paragraph 3.C.3., Establishing Eligibility Qualifications.

C. *Exemptions.*

1. Any prospective renter may apply for an exemption from the Rental Eligibility Qualifications utilizing the exemption procedures for Qualified Buyers set forth above at Paragraph 3.C.2.
2. **Retirees.** Qualified Renters may continue to rent a ROAH Rental unit after retirement as long as they continue to meet all Rental Eligibility Qualifications, excluding: work in Gunnison County, percentage of income in the County, and maximum income. Retirees shall also be exempt from sole and exclusive residency requirements.

D. *Requalifying for New Lease Term.*

1. **Continuing to meet Rental Eligibility Qualifications.** Only Eligible Renters may renew leases for ROAH Rental units. The qualifications of renters shall be reviewed and verified prior to the execution of a new lease to ensure they continue to meet the Eligibility Qualifications for the ROAH Rental unit. A Town employee, whose employment with the Town is terminated, shall vacate the ROAH Rental unit at the end of his or her lease unless the Town employee begins working for Mountain Express or one (1) of the essential services organizations listed in Subparagraph 6.A.1.g.4).
2. **Continuing to rent when no longer meeting Eligibility Qualifications.** If a Qualified Renter no longer meets the Rental Eligibility Qualifications upon review for a new lease term, the formerly Qualified Renter may continue to rent and occupy the ROAH Rental unit at the rent and upon the terms established by the lease for up to one (1) additional year in order to provide adequate time to comply with the requirements or secure new housing. The foregoing shall not apply to Town employees whose employment with the Town has terminated.

E. *Occupying ROAH Rental Units.* Qualified Renters must occupy the ROAH Rental unit as their sole and exclusive residence, subject to the provision on Leaves of Absence below.

F. *Leaves of Absence.*

1. **Requests for Leaves of Absence.** A Qualified Renter may request written approval from the Town Manager for a Leave of Absence for up to one (1) year or, at the Town Manager's discretion, up to one (1) additional year. Leaves of Absence may be granted upon convincing evidence that the Qualified Renter has a valid reason for leaving and a commitment to return to live in the ROAH Rental unit. Leaves of Absence shall not exceed two (2) years in any ten-year period.

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- 2. **Subletting a ROAH Unit during a Leave of Absence.** A ROAH Rental unit may be sublet in its entirety after a Qualified Renter has received, in writing, permission from the Town Manager for a Leave of Absence. The following conditions apply when subletting:
    - a. The ROAH Rental unit may only be sublet to those who meet the Rental Eligibility Qualifications.
    - b. The Maximum Rental Rate for the ROAH Rental unit shall be no more than the rate established in the original lease.

## **Section 7. Grievance Procedures.**

A grievance may be presented to the Town under the following procedures:

- A. *Filing a Grievance.* Any grievance must be presented in writing to the Town Manager. It may be simply stated, but shall specify:
  1. The particular ground(s) upon which it is based;
  2. The action requested; and
  3. The name, address, telephone number of the complainant and similar information about his or her representative, if any.
- B. *Hearing.*
  1. If a grievance cannot be resolved by the Town Manager, a hearing before the Town Council may be requested in writing by the complainant. Upon receipt of the written request, a hearing must be scheduled within twenty (20) days unless waived by the complainant.
  2. The complainant and the Town shall have the opportunity to examine and, at the expense of the requesting party, to copy all documents, records and regulations of the Town that are relevant, before the hearing.
  3. The complainant and the Town have the right to be represented by counsel. All costs and expenses incurred by a complainant in prosecuting any complaint or grievance shall be said complainant's sole responsibility and shall not be the responsibility of the Town irrespective of the outcome of said complaint or grievance.
- C. *Decision.* Based on the record of proceedings, the Town Council will provide a written decision upon request and include the reasons for its determination. The decision of the Town Council shall be binding on the complainant and the Town, except in such cases where an appeal to a court of competent jurisdiction is requested. The parties shall take all reasonable actions necessary to carry out the decision except in cases where the decision of the Town Council is appealed to a Court.

## **Section 8. Default/Breach/Enforcement.**

- A. *Procedure for Violation, Default or Breach.* If a violation, default or breach is alleged, the Town Manager shall send a notice of such to the owner detailing the nature of the violation and allowing the owner or renter fifteen (15) days to determine the merits of the allegations, or to correct the violation. In the event the owner or renter disagrees with the allegation of violation of these Guidelines and the matter cannot be settled informally with the Town Manager, the owner or renter may request, in writing, a hearing before the Town Council. If the owner or renter does not request a hearing or the violation is not cured within the fifteen-day period, the owner shall be considered in violation of these Guidelines.

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1. **Hearing.** The hearing described above shall be scheduled within twenty (20) days of the date of the receipt of a written request for a hearing. At any such hearing, the complainant and the Town may be represented by counsel and may present evidence on the issues to be determined at the hearing. An electronic record of the hearing shall be made and the decision of the Town Council shall be a final decision, subject to judicial review.
  2. **Effect of noncompliance.** In the event a ROAH unit is sold and/or conveyed, or utilized in any way without compliance with the terms of these Guidelines, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of a ROAH unit for all purposes, shall be deemed to include and incorporate by this reference all terms herein contained.
  3. **Enforcement options.** In the event an owner or renter fails to cure any breach of the terms, requirements and conditions set forth in these Guidelines, the Town may resort to any and all legal and/or equitable actions, including but not limited to specific performance of these Guidelines, injunction, abatement or eviction and, if the Town substantially prevails in such action, it shall be entitled to an award for its attorney fees and costs.

## **Section 9. Deed Restriction.**

Each Owner-Occupied ROAH unit and ROAH Rental unit shall be deed-restricted by a recorded Deed Restriction in substantially the same form as attached hereto as Exhibit B. Such form Deed Restriction may be modified and amended with the approval of the Town Attorney; provided that any amendments to such Deed Restriction that, on balance, materially alter the benefits contemplated to be provided to the Town thereunder, shall be approved by motion of the Town Council. All Deed Restrictions shall be executed by the Mayor or Mayor Pro Tem.

## **Section 10. Scrivener's Error.**

In the event that any scrivener's or other clerical error is found in these Guidelines, the Town Manager may correct said scrivener's or other clerical error by memorandum recorded in the real property records of Gunnison County, State of Colorado. Said corrective memorandum shall not require the approval of the Town Council.

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**Exhibit A**  
**Maximum Sale Price**

No Owner-Occupied ROAH unit may be sold for an amount in excess of the Maximum Sale Price. The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price. Maximum Sale Price will be established as of the date the seller notifies the Town Manager of the seller's desire to sell the Owner-Occupied ROAH unit.

A. *Ascertaining Maximum Sale Price.*

1. When the person who creates the Owner-Occupied ROAH unit decides to sell it, (the initial sale) the initial Maximum Sale Price, shall not exceed the current initial Maximum Sale Price displayed in Table 1.B of the Crested Butte Resident-Occupied Affordable Housing Administrative Procedures (Administrative Procedures) as updated each year as explained in Part 1.B. of the Administrative Procedures. Each ROAH unit shall be designated a Category 1 or Category 2 ROAH unit in the deed restriction for the unit and the designated Category will determine which row of prices will be used in Table 1.B. Because initial Maximum Sale Prices vary by household size, the price will vary depending upon whether the Qualified Buyer's household size includes one (1), two (2), three (3), four (4) or more people, as explained in Part 1.B. of the Administrative Procedures.
2. When a Qualified Buyer sells his or her Owner-Occupied ROAH unit, the Maximum Sale Price shall be calculated by Formula #1 or Formula #2 found in Section C of Exhibit A. Formula #1 or Formula #2, whichever results in the lower Maximum Sale Price, shall be used for the sale of all Owner-Occupied ROAH units after the initial sale.
3. ROAH Rental units may be sold, but only to Approved Entities that agree to comply with the restrictive covenant for the ROAH Rental unit. There is no maximum sale price for ROAH Rental units, but the units must be rented to households that qualify to be in Category 1 or Category 2, as stated in the deed restriction, and must be affordable for households as stated in Subsection 16-21-60(a) of this Code.

B. *Calculating Maximum Sale Price.*

1. The Maximum Sale Price includes:
  - a. The most recent purchase price of an Owner-Occupied ROAH unit;
  - b. The cost of Permitted Subsequent Improvements (See Paragraph B.3.a. below for allowed Permitted Subsequent Improvements) for which a Town building permit has been issued;
  - c. Cost of decks less than eighteen (18) inches high for which no building permit is required;
  - d. Closing costs incurred by owner at purchase of the Owner-Occupied ROAH unit (See definition of Customary Closing Costs); and
  - e. All costs must be substantiated as follows:
    - 1) All costs must be documented costs (costs for which a receipt is submitted) for all Permitted Subsequent Improvements made during ownership of an Owner-Occupied ROAH unit, including the cost of materials and labor;
    - 2) The cost of labor, including sweat equity, cannot exceed the cost of materials; and
    - 3) Owner sweat equity shall be substantiated by a worksheet indicating hours worked, how sweat equity was used and dates of work and an affidavit shall be provided stating that the hours worked are true and accurate.

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2. Maximum Sale Price does not include:
    - a. Taxes and insurance;
    - b. Homeowners' or condominium association fees;
    - c. Maintenance costs;
    - d. Loan points or origination fees;
    - e. Property taxes;
    - f. Water and sewer fees (both availability of service fees and monthly service fees);
    - g. Construction loan interest and permanent mortgage interest;
    - h. Special improvement district assessments;
    - i. Crested Butte Real Estate Transfer Tax;
    - j. Costs for which no receipts are provided;
    - k. Costs for which receipts are provided but that do not state the product purchased;
    - l. Costs to clean up the job site;
    - m. Costs to install telephone, cable television, satellite television, computer services and other similar services which will most likely be reinstalled for the next owner;
    - n. Fire extinguishers and other nonpermanent accessories such as appliances that are not intended to be sold with the ROAH unit;
    - o. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items;
    - p. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, floor coverings, floor tile and other similar items; and
    - q. Upgrades or addition of decorative items, including lights, window coverings, floor tile, carpeting and other similar items.
  3. Permitted Subsequent Improvements. The costs of Permitted Subsequent Improvements are permitted to be included in the Maximum Sale Price of an Owner-Occupied ROAH unit in order to allow owners to be reimbursed for enhancing the value of their Owner-Occupied ROAH unit through improvements that require Town building permits and the cost of decks less than eighteen (18) inches high. The value of Permitted Subsequent Improvements may also appreciate as described in the formulas.

Permitted Subsequent Improvements (including owner-contributed sweat equity) made after the initial sale shall not exceed ten percent (10%) of the value of the purchase price, from the date of the sale of the Owner-Occupied ROAH unit to a Qualified Buyer, for an initial ten-year period. For every ten-year period thereafter, another ten percent (10%) of the value of all improvements (including the initial purchase price and the value of Permitted Subsequent Improvements for each ten-year period thereafter) may be added to the value of the improvements. Each time the Owner-Occupied ROAH unit is sold, the initial ten-year period begins again and the value of subsequent improvements that may be reimbursed shall be based on ten percent (10%) of the most recent purchase price. Permitted Subsequent Improvements to Owner-Occupied ROAH units which are initially sold for less than one hundred thousand dollars (\$100,000) shall be limited to twenty percent (20%) of the purchase price

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because ten percent (10%) of one hundred thousand dollars (\$100,000) may not allow for a significant amount of Permitted Subsequent Improvements.

- a. Permitted Subsequent Improvements include only the following permitted, permanent, durable improvements to real property, for which receipts must be provided to the Town Manager and for which a Town building permit has been issued and the cost of decks no greater than eighteen (18) inches high, for which a building permit is not required:
  - 1) Improvements or fixtures erected, installed or attached as permanent, functional, nondecorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
  - 2) Improvements for energy and water conservation;
  - 3) Improvements for health and safety protection devices;
  - 4) Improvements to add and/or finish permanent/fixed storage space;
  - 5) Improvements to finish unfinished space;
  - 6) The cost of adding decks and balconies and any extensions thereto;
  - 7) Tap fees; and
  - 8) Building permit fees.

Improvements include the cost of materials and labor. The cost of labor, including owner-contributed labor, cannot exceed the cost of materials.

- b. Permitted Subsequent Improvements shall not include the list of items included in Subsection B.2. above (Maximum Sales Price does not include:);
  - c. All Permitted Subsequent Improvement items and costs shall be approved by the Town Manager prior to being added to the Maximum Sale Price as defined in these Guidelines and must be documented with receipts.
4. Information that must be provided when the Town calculates Maximum Sale Price. The owner shall submit to the Town Manager such documentation as the Town Manager may require in order to calculate the Maximum Sale Price, which shall, at a minimum, include the following:
    - a. Records establishing the purchase price of the Owner-Occupied ROAH unit;
    - b. Receipts to verify the costs of improvements located thereon, including labor costs;
    - c. A copy of any building permit obtained for the improvements; and
    - d. An affidavit verifying that the receipts are valid and correct and represent costs actually paid by the owner for construction of improvements for their home. (Cancelled checks, without receipts, will not be acceptable documentation of costs.)

C. *Formulas for Calculating Maximum Sale Price.*

**Formula #1 (3% Per Annum)**

<b><i>The Maximum Sale Price using three percent (3%) per annum for all sales after the initial sale of an Owner-Occupied ROAH Unit is calculated based on:</i></b>			
The most recent purchase price of an Owner-Occupied ROAH unit, plus (+)	Three percent (3%) of that cost for each year the seller has owned the Owner-Occupied ROAH	The cost of Permitted Subsequent Improvements (see above), plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost (including owner-

	unit, not compounded annually, and prorated for partial years, plus (+)		contributed labor) for each year after the building permit was issued for the improvement, not compounded annually, and prorated for partial years, from the date a building permit was issued by the Town for those improvements (see above)
<b>p</b> = Most recent sale price of the Owner-Occupied ROAH unit.			
<b>c</b> = Permitted Subsequent Improvement costs - after the Owner-Occupied ROAH unit was purchased (see above).			
<b>d</b> = Labor, including owner-contributed labor, for Permitted Subsequent Improvements (see above).			
<b>BP</b> = Building permit.			
The Maximum Sale Price (MSP) of the unit is determined by the following formula: $p + ((p * .03) * \# \text{ of years since purchased}) + (c_1 + d_1) + (((c_1 + d_1) * .03) * \# \text{ of years since BP for } c_1 \text{ and } d_1) + (c_2 + d_2) + (((c_2 + d_2) * .03) * \# \text{ of years since BP...}) \text{ etc.} = \text{MSP.}$			
<b>Example</b>			
Seller purchased the ROAH unit in January 2012 and paid		\$ 170,000	
Cost of Permitted Subsequent Improvements finished in July 2013		3,000	
Cost of labor for Permitted Subsequent Improvements		2,000	
Seller sold the ROAH unit in July 2015		—	
Total costs		\$ 175,000	
$\$170,000 + (\$170,000 * .03) * 3.5 + (\$3,000 + \$2,000) + ((\$3,000 + \$2,000) * .03) * 2 = \$193,150$			

### Formula #2 (Consumer Price Index Method)

<b>The Maximum Sale Price using CPI for the second sale, after an Owner-Occupied ROAH unit was sold by the developer, and for all subsequent sales is calculated based on:</b>		
The most recent purchase price of a unit, plus (+)	The cost of Permitted Subsequent Improvements (see above), plus (+)	The change in the Consumer Price Index (CPI) where:
<b>p</b> = Most recent purchase price of the Owner-Occupied ROAH unit.		
<b>c</b> = Permitted Subsequent Improvements costs after the Owner-Occupied ROAH unit was purchased (see above).		
<b>d</b> = Labor, including owner-contributed labor for Permitted Subsequent Improvements (see above).		
<b>BP</b> = Building permit.		
<b>CPI</b> = The Denver-Boulder-Greeley, Colorado Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor index.		
CPI figures are published for the first half and second half of each year. Therefore, CPI will always be the published CPI number for the six-month period prior to the expense. The Maximum Sale Price (MSP) of the property is determined by the following formula:		
$p * + (c_1 + d_1) * + ((c_2 + d_2) * \text{etc.}) = \text{MSP}$		
<b>Example</b>		
Seller purchased the unit in January 2012 and paid		\$ 170,000
Cost of Permitted Subsequent Improvements finished in July 2013		3,000

Cost of owner-contributed labor for Permitted Subsequent Improvements	2,000
Seller sold the unit in July 2015	—
Total costs	\$ 175,000
CPI at the end of December 2011 was	211.96 (actual)
CPI at the end of June 2013 was	212.45 (projected, not actual)
CPI at the end of June 2015 was	220.88 (projected, not actual)
$\$170,000 * 220.88/211.96 + ((\$3,000 + \$2,000) * 220.88/212.45) = \$182,352.60$	

Since Formula #2, using CPI, results in a lower Maximum Sale Price than Formula #1, the results of Formula #2 would be the Maximum Sale Price.

#### Exhibit B

**RECORDING REQUEST BY:**

**WHEN RECORDED RETURN TO:**

Town of Crested Butte  
 Attn: Town Clerk  
 P.O. Box 39  
 507 Maroon Avenue  
 Crested Butte, CO 81224

**RESIDENT-OCCUPIED AFFORDABLE HOUSING DEED RESTRICTION**

**THIS RESIDENT-OCCUPIED AFFORDABLE HOUSING DEED RESTRICTION** ("Deed Restriction") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by \_\_\_\_\_ ("Owner"), whose address is \_\_\_\_\_, \_\_\_\_\_ and the TOWN OF CRESTED BUTTE (the "Town"), a Colorado home rule municipality, whose address is P.O. Box 39, 507 Maroon Avenue, Crested Butte, Colorado 81224. This Deed Restriction shall apply to the following real property and improvements thereon:

**[INCLUDE LEGAL DESCRIPTION FROM TITLE COMMITMENT HERE]**

(the "Property").

**AGREEMENT:**

1. **Applicability of Housing Guidelines.** The ownership of the Property shall be limited exclusively to successful applicants who meet the qualifications set forth in the Guidelines, Rules and Requirements Governing Resident-Occupied Affordable Housing in the Town of Crested Butte dated \_\_\_\_\_ and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado, on \_\_\_\_\_, 20\_\_\_\_ at Reception No. \_\_\_\_\_, as amended and modified from time to time (the "Guidelines"), and as determined by the Town or its designee at the time of purchase and during ownership. The Property shall be subject to the Guidelines, the terms and condition of which shall be incorporated herein by this reference. The use and occupancy of all or part of the Property is hereby limited exclusively to people who meet the referenced qualifications. The Property must be owned, occupied, sold, purchased and used only by persons meeting the qualifications set forth in the Guidelines.
2. **Ownership Limitations. [INCLUDE LIMITATIONS HERE]**  
 Ownership, use and occupancy of the Property is subject to the following:
  - a. The household income for households occupying this property shall be limited to one (1) of the following:

- 
- Category 1: ≤ 80% of Gunnison County Area Median Income (AMI); or
- Category 2: 81 to 120% of Gunnison County AMI (Category 2 units).
- b. This property shall be limited to one (1) of the following:
- Owner-Occupied ROAH unit; or
- ROAH Rental unit.
3. **Transfer of the Property.** In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void ab initio and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines and any amendments thereto, including but not limited to those provisions governing the qualifications for ownership, rental, sale, transfer or conveyance of the Property.
4. **Obligation Regarding Financing.** Owner and any beneficiary of any deed of trust or other lien encumbering the Property shall give immediate notice to the Town of any instance of either (i) Owner's receipt of notice of the commencement of foreclosure proceedings relative to the Property, or (ii) of any delinquency of twenty-one (21) days or more in Owner's payment on any indebtedness secured by a deed of trust or other lien encumbering the Property.
5. **Default.** Any breach of the terms and conditions set forth herein, including, without limitation, a transfer in violation of the terms hereof shall constitute a "default." Further, breach by Owner of the terms of any deed of trust or other lien encumbering the Property or of the terms of any obligation secured by such a deed of trust or other lien shall constitute a default hereunder. In the event of a default, following notice and an opportunity to cure as provided for herein below, the Town shall have all rights and remedies set forth herein and available at law and in equity.
6. **Notice of Violation; Cure.** The Town, in the event of a default of any term or condition of this Deed Restriction by Owner, shall deliver written notice of default to Owner identifying the default and allowing Owner thirty (30) days to cure such default (the "Cure Period"). In the event that Owner fails to cure any such default within the time period allowed, the Town may resort to any lawful means to enforce the terms of this Deed Restriction, including but not limited to specific performance of the terms of this Deed Restriction, an action for damages, including an action to recover any undue financial benefit resulting from a sale that does not comply with the terms of this Deed Restriction, or the exercise of the Option (as defined herein below).
7. **Default of Deed of Trust.** In the event that Owner defaults on the terms of any deed of trust or other lien encumbering the Property, or of the terms of any obligation secured by such a deed of trust or other lien, the Town shall have all the rights of Owner under the deed of trust or other lien and applicable law, the same being assigned and transferred hereby to the Town in such circumstances. The Town may, but shall not be obligated to, make any payment required in order to avoid foreclosure or to redeem the Property after foreclosure. The Town may make such payments during the notice and cure periods, in which case the Town shall be entitled to reimbursement for said payments plus interest at a rate of ten percent (10%) above the prime rate per annum and all costs and expenses, including reasonable attorneys' fees, costs and expenses, as a condition of Owner's cure.
8. **Option to Purchase.** In the event of a default by Owner which remains uncured for a period of thirty (30) days as set forth above, the Town shall have an option to purchase the Property as set forth herein ("Option"). The Town shall have forty-five (45) days after expiration of the Cure Period in which to exercise the Option (the "Option Period"). The Town shall exercise the Option by delivering to Owner written notice of such exercise within the Option Period. The Town shall be granted entry onto the Property during the Option Period in order to inspect the Property. If the Property is vacant, Owner or lien holder shall maintain utility connections until expiration of the Option Period or Closing (as defined

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herein below). The Town shall have the Option to purchase the Property for the amount due to any holder of a promissory note secured by a first deed of trust on the Property and any reasonable costs and expenses incurred by the holder during the Option Period (the "Senior Lien Holder Amount"). The Town may also, instead of purchasing the Property itself, assign its right to purchase the Property pursuant to the Option to another public agency, a nonprofit entity or other potential qualified owner under the Guidelines. If the Town assigns the Option, the assignee shall be bound to purchase the Property pursuant to the terms of this Deed Restriction. If the Town or its assignee elects to purchase the Property, the parties shall have the following rights and obligations:

- (a) Owner shall permit a final walk-through of the Property by the Town during the final three (3) days prior to Closing.
  - (b) Upon payment of the Senior Lien Holder Amount by the Town, Owner shall deliver to the Town a general warranty deed for the Property, free and clear of all liens and encumbrances.
  - (c) Normal and customary Closing costs shall be shared equally by Owner and the Town. Owner shall be responsible for, at its cost, any and all title insurance fees, document fees and recording fees for the deed. Taxes shall be prorated based upon taxes for the calendar year immediately preceding Closing. Any fees incident to the issuance of a letter or statement of assessments by an association shall be shared equally between Owner and the Town. Owner shall receive a credit for that portion of association assessments paid in advance from date of Closing.
  - (d) Closing on the purchase of the Property by the Town shall occur within sixty (60) days of the Town's exercise of the Option at a date and time to be mutually agreed upon by the Town and Owner (the "Closing"). The location of the Closing shall be the title company closing the transaction, said title company to be selected by the Town. Possession shall be delivered to the Town at Closing, unless otherwise agreed between Owner and the Town.
9. **Termination of Deed Restriction.** In the event of foreclosure, acceptance of deed in lieu of foreclosure by the holder of a first deed of trust or an assignment of an insured mortgage to the United States Department of Housing and Urban Development (HUD), this Deed Restriction shall automatically and permanently terminate and be of no further force and effect if either of the following conditions is satisfied:
- (a) The Option Period has expired without exercise of the Option by the Town; or
  - (b) The Town has exercised the Option but failed to close or perform under the Option in accordance with this Deed Restriction.

In the event of the termination of this Deed Restriction, the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County, Colorado, a full and complete release of this Deed Restriction. The Town's rights in a foreclosure, including, without limitation, its right of redemption, shall be the same as if it were the beneficiary of a second deed of trust. The amount of debt secured by such a second deed of trust shall be considered to be the difference between the Senior Lien Holder Amount as of the date the notice of election and demand for sale is filed with the public trustee and the fair market value of the Property at that time; except that in the event that the fair market value is less than the Senior Lien Holder Amount, then the amount of debt secured by such a second deed of trust shall be considered to be the difference between the amount of the certificate of purchase and the Senior Lien Holder Amount. For purposes hereof, the "fair market value" shall be determined by a qualified real estate appraiser who is a Member of the Appraisal Institute ("M.A.I."). The appraiser shall be engaged by the Town and approved by Owner, which approval shall not be unreasonably withheld. The appraisal shall consider the sales prices of comparable properties sold in the market area during the preceding three-year period. The appraisal shall also consider the effect of the terms and conditions created herein. The cost of the appraisal shall be paid for by Owner. A copy of the appraisal shall be delivered to both the Town and Owner within seven (7) days of its completion.

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10. **Deed Restrictions Run with the Land.** The foregoing restrictions on ownership, use and occupancy of the Property constitute a perpetual Deed Restriction and covenant that shall run with the land as a burden thereon for the benefit of the Town, or its designee, and shall be binding on Owner, its heirs, personal representatives, successors, assigns, lessees, licensees and any transferees. The foregoing covenant and restrictions shall be administered by the Town and shall be enforceable by appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. All such remedies shall be cumulative and concurrent. If the Town substantially prevails in such an action, it shall also be entitled to an award for its reasonable attorneys' fees, costs and expenses.
  11. **General Provisions.** The following terms and conditions shall apply to this Deed Restriction:
    - (a) Notices. Any notice, consent or approval which is required to be given hereunder, shall be given by either: mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein; or hand-delivering the same to any address provided herein. Notices shall be considered delivered on the date of delivery if hand-delivered or if both hand-delivered and mailed; or three (3) days after postmarked, if mailed only. Notices, consents and approvals shall be sent to the parties at the addresses first written above unless otherwise notified in writing.
    - (b) Severability. Whenever possible, each provision of this Deed Restriction and any other related document shall be interpreted in such manner so as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under applicable law, such provisions shall be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.
    - (c) Choice of law. This Deed Restriction and each and every related document shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action arising from this Deed Restriction shall be in Gunnison County, Colorado.
    - (d) Successor and assigns. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the parties' heirs, successors, transferees and assigns.
    - (e) Section headings. Section headings within this Deed Restriction are inserted solely for convenience of reference and are not intended to and shall not govern, limit or aid in the construction of any terms or provisions contained herein.
    - (f) Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Deed Restriction shall be valid against any party hereto except on the basis of a written instrument executed by the parties. The party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition in writing however.
    - (g) Gender and number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
    - (h) Construction. None of the provisions of this Deed Restriction shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.
    - (i) Amendments in writing. This Deed Restriction may only be modified or amended in writing by the Town or its designee and Owner. No such modification shall be effective until an instrument in writing is executed and recorded in the Office of the Clerk and Recorder of Gunnison County.

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- (j) Further assurances. The Town and Owner shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to make this Deed Restriction fully and legally effective, binding and enforceable as contemplated herein.
  - (k) Counterparts; facsimile. This Deed Restriction may be executed in one (1) or more counterparts, each of which, when taken together, shall constitute one and the same instrument. For purposes of enforcement of this Deed Restriction and any terms and conditions contained herein, facsimile reproductions shall be deemed to be original documents.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE(S) TO FOLLOW]**

**IN WITNESS WHEREOF**, the parties hereto have executed and entered into this Deed Restriction as of the Effective Date written above.

OWNER:

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

Name: \_\_\_\_\_

TOWN:

TOWN OF CRESTED BUTTE,  
A Colorado Home Rule Municipality

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

\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_, Town Clerk

(SEAL)

STATE OF \_\_\_\_\_ )  
    ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Resident-OccUPIed Affordable Housing Deed Restriction was acknowledged before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

STATE OF \_\_\_\_\_ )  
    ) ss.  
COUNTY OF \_\_\_\_\_ )

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The foregoing Resident-Occupied Affordable Housing Deed Restriction was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_, Mayor of the Town of Crested Butte, Colorado, a Colorado home rule municipality, on behalf of such entity.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

**JOINDER OF LIEN HOLDER**

By execution of this **JOINDER OF LIEN HOLDER** (this "Joinder") the undersigned lien holder hereby agrees to be bound by all of the agreements, terms, conditions, covenants and requirements, and inures to the benefits, rights and protections contained in that certain Resident-Occupied Affordable Housing Deed Restriction ("Deed Restriction") dated \_\_\_\_\_, 20\_\_\_\_\_, and recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado, on \_\_\_\_\_, 20\_\_ at Reception No. \_\_\_\_\_, respecting the real property and improvements described therein, as and when the circumstances may dictate. For purposes hereof, the contents, terms and conditions of the Deed Restriction are incorporated herein as if fully set forth herein.

**IN WITNESS WHEREOF**, the undersigned lien holder has given this Joinder by its duly authorized representative as of the Effective Date of the Deed Restriction.

LIEN HOLDER:

\_\_\_\_\_, a

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Facsimile: \_\_\_\_\_

(Ord. 6 §1, 2012; Ord. 11 §1, 2013)

**APPENDIX N**  
**Affordable Housing Guidelines**

**PART IX. MODEL AFFORDABLE HOUSING GUIDELINES FOR  
MAJOR SUBDIVISIONS IN CRESTED BUTTE**

This Part V of the TOWN OF CRESTED BUTTE AFFORDABLE HOUSING GUIDELINES, including Sections 1, 2, 3, 4, 5, 6 and attachments, are hereby promulgated by the Town Manager and approved by the Town Council to implement the provisions of Section Chapter 17, Article 12 of the Crested Butte Municipal Code.

- APPENDIX

APPENDIX N - Affordable Housing Guidelines

PART IX. MODEL AFFORDABLE HOUSING GUIDELINES FOR MAJOR SUBDIVISIONS IN CRESTED BUTTE

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**Definitions.**

*Approved entities* mean any entity, approved by the Town Council, having a purpose of providing or administering affordable housing, or any other nonprofit entity which would own a Unit for the purpose of housing necessary employees thereon, provided that the entity agrees to continue to enforce the herein Qualifications for Ownership and Qualifications for Rental for owners and renters, as well as the resale restrictions for owners with respect to whom a Unit may be sold and for what price.

*Area Median Income (AMI)* means the median income for Gunnison County, adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD), or the agency that publishes such a number in its place in the future, each year.

*Consumer Price Index (CPI)* means the latest published version of the Denver-Boulder-Greeley, CO Consumer Price Index for Urban Wage Earners, published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.

*Customary closing costs* mean the normal, ordinary costs associated with the sale and purchase of real property, including costs and expenses associated with the closing of a loan for real property. The customary closing costs shall be allocated as follows:

<b>Seller</b>	<b>Buyer</b>
Fifty percent (50%) of the Crested Butte "Land Transfer Excise Tax."	Fifty percent (50%) of the Crested Butte "Land Transfer Excise Tax."
Fifty percent (50%) of the Title Company's Closing/Settlement fees.	Fifty percent (50%) of the Title Company's closing/settlement fees.
All real property taxes prorated to the date of closing based upon taxes for the calendar year immediately preceding closing or the most recent mill levy and most recent assessment	Survey, if applicable.
Prorated water and sewer monthly use fees to the date of closing.	Recording fees.
All other outstanding fees and assessments, such as homeowners association dues, prorated to the date of closing.	Certificate of taxes due.
Owner's title insurance.	One hundred percent (100%) of loan fees.
Town administration fee, up to one and one-half percent (1½%) of total sale price, if applicable.	Lender title insurance.
Document preparation fees.	Inspection fees.
All real estate commissions.	

*Dependent* means a minor child eighteen (18) years or younger or other relative of the renter or owner of a Unit, which child or relative is taken and listed as a dependent for federal income tax purposes by such renter or owner, or his or her present or former spouse, significant other or life partner. Said child must also be related by blood or adoption and residing with the individual at least one hundred eighty (180) days out of every twelve-month period of time.

*Disabled person* means a person who meets the definition of "individual with a disability" contained in 29 U.S.C. § 706(8), as amended, and/or defined in the Americans with Disabilities Act of 1990; and/or a person who has a "handicap" as defined in Section 24-34-301(4), C.R.S., the Colorado Anti-Discrimination Act.

- APPENDIX

APPENDIX N - Affordable Housing Guidelines

PART IX. MODEL AFFORDABLE HOUSING GUIDELINES FOR MAJOR SUBDIVISIONS IN CRESTED BUTTE

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*Grievance* means any dispute that an owner, purchaser or tenant may have with the Town or its designee with respect to action or failure to act in accordance with the individual owner's, purchaser's or tenant's rights, duties or status.

*Gross assets* mean anything which has tangible or intangible value, including property of all kinds, both real and personal; includes among other things, patents and causes of action which belong to any person, any blind trust(s), as well as any stock in a corporation and any interest in the estate of a decedent; also, the entire property of a person, association, corporation or estate that is applicable or subject to the payment of debts. *Gross assets* shall include funds or property held in a living trust or any similar entity or interest, where the person has management rights or the ability to apply the assets to the payment of debts.

*Gross household income* means the total income to include alimony and child support derived from a business trust, securities, trusts, employment and income-producing property, before deductions for expenses, depreciation, taxes and similar allowances.

*Habitat for Humanity* means the Habitat for Humanity of Gunnison Valley Incorporated, a Colorado nonprofit corporation ("Habitat").

*Household assets* mean gross assets minus liabilities of a Qualified Buyer or Qualified Renter and his or her Dependents.

*Household income* means the combined gross income of all household income reported on the previous year's Federal Income Tax Return of a Qualified Buyer or a Qualified Renter and his or her Dependents. Only the income of people who are eighteen (18) years old or above will be counted in the household income for people applying for Habitat for Humanities units.

*Household size* means the household size or "household" computed by adding up the Qualified Buyer or Qualified Renter and his or her Dependents and any other people whose names will be on the lease.

*Liabilities* mean existing financial obligations or debts.

*Lottery* means a drawing to select a winner from equal applicants in the same priority.

*Maximum sale price* means the maximum amount for which a Tract or Unit may be transferred, calculated as described in Subsection 1.G. below

*Net assets* mean gross assets minus liabilities. Retirement accounts will be reviewed on a case-by-case basis to determine whether or not they shall be included as a net asset.

*Owner-occupied affordable housing* in Crested Butte is deed-restricted owned housing intended to serve many segments of the community that need affordable housing with emphasis on the lower income market. The intended beneficiaries for such housing are people who cannot afford unrestricted market prices for owner-occupied housing.

*Physically challenged accessible units* means those Units designed and constructed to specifically meet the needs of a Disabled Person.

*Qualified buyers* means persons or households meeting the Qualifications for Ownership for eligible owners set forth in Subsection 1(c) below.

*Qualified renters* means persons or households meeting the Qualifications for Rental set forth in Section 2.C. below.

*Rental affordable housing* means rental affordable Housing in Crested Butte which is deed-restricted rental housing intended to serve many segments of the community that need affordable housing with emphasis on the

lower income market. The intended beneficiaries for such housing are people who cannot afford unrestricted market rental prices for housing.

*Roommates* means those people occupying a Unit who are neither Qualified Buyers nor Qualified Renters.

*Total maximum household* income means the combined income of a Qualified Buyer or a Qualified Renter and his or her Dependents.

*Town* means the Town Manager of Crested Butte, or his or her designee.

*Town Council* means the Town Council of the Town of Crested Butte, acting in its official capacity.

## **Section 1. Owner-Occupied Affordable Housing.**

Deed restrictions for Owner-Occupied Affordable Housing which may be rented in certain circumstances and for all units designed to be rentals shall include a provision conveying an interest in the Unit to the Town, a Town housing authority or similar agency acceptable to the Town meeting the requirements of Section 38-12-301, C.R.S. Such interest may include, without limitation:

- (1) A fractional undivided ownership or trustee interest, provided that the Town shall be indemnified against any and all liability by reason of its interest.
- (2) A lease to the Town of the unit or units with authorization to the Town to sublet pursuant to these Guidelines, provided that the Town assumes no liability by reason thereof. The Town may in its sole discretion accept or reject any proposed conveyance or lease, or lease purchase agreement offered pursuant to this Section.

The Town will not participate in any financing or future investments regarding any Tract or Unit which is owned by a third party.

### A. *Rationale.*

The reason to create owner-occupied, deed-restricted, affordable housing in Major Subdivisions is to serve many segments of the community that need affordable housing. The target groups for this housing are people who qualify for affordable housing and who cannot afford to purchase units or tracts for long-term housing in Crested Butte.

The 1992 Crested Butte/Gunnison Area Housing Needs Assessment, the 1999 Gunnison County Housing Needs Assessment, the 2000 Residential Job Generation Study, and the Housing Section of the Crested Butte Land Use Plan, Amended, 2003, demonstrate that affordable housing is needed and that most respondents prefer to own their home when they can afford to do so.

### B. *Administration.*

The Town of Crested Butte shall administer these owner-occupied affordable housing Guidelines.

### C. *Qualifications for Ownership.*

Any Approved Entity may own a unit in the subdivision, provided that the entity agrees to continue to enforce the herein Qualifications for Ownership and Qualifications for Rental for owners and renters, as well as the resale restrictions for owners with respect to whom a Unit may be sold and for what price.

Unless an Approved Entity is the owner, to qualify for and be eligible to purchase an affordable housing unit or vacant tract, hereafter *tract*, at least one (1) member of the applying household of the

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Qualified Buyer must meet all of the following criteria except income and assets which are based on the income and assets of all the people in the household:

1. **Percentage of earned income, property ownership, work and disabilities.**

**Table V-1**

<b>Summary of Eligibility Qualifications for Owner-Occupied Affordable Housing</b>	
Worked in Gunnison County at least:	1 year
Minimum % earned income in Gunnison County	80%
Ownership of improved residential property	no
Resident on-site	yes
Resident of Gunnison County	yes
Average minimum hours worked each month	116

**Table V-1 Explanations:**

- a. *Minimum percent earned income in Gunnison County.* Eighty percent (80%) of all income must be earned income in Gunnison County. *Earned income* shall be defined by the Internal Revenue Service (IRC §32(c)(2)) Earned Income (3/20/1995).
- b. *Ownership of residential property.*
  - 1) No person in and household of a Qualified Buyer shall own an interest, alone or in conjunction with others, in any improved residential real estate except residential property which according to the terms of a deed-restriction cannot be owner-occupied at the time of closing on a Unit. Improved residential real estate must be sold to an unrelated person or an entity in which such person has no interest, prior to closing on a Unit. An owner of a fifty-percent or less undivided interest in improved residential real estate may convey that interest to the other joint owner(s) with or without receiving consideration.
  - 2) Notwithstanding the above provisions, an otherwise Qualified Buyer for an unimproved deed-restricted lot, tract or parcel may continue to own a primary residence in Gunnison County after acquiring title to an unimproved deed-restricted lot, tract or parcel until such time as a dwelling unit is constructed. However, no Certificate of Occupancy will be issued for a residence on the deed-restricted lot, tract or parcel until the other primary residence has been sold. Unimproved residential real property outside the Subdivision may also be owned by a Qualified Buyer but must remain unimproved during the time a Unit is owned in the Subdivision. If the land located outside the Subdivision is improved with a residence, the owner must sell the deed-restricted lot, tract or parcel, with or without a dwelling unit, upon issuance of a Certificate of Occupancy on the other real property.
- c. *Reside on site.* Upon purchase of a Unit, the Qualified Buyer must make and continuously maintain the Unit as his or her principal place of residence unless granted a Leave of Absence. During any five-year period, all owners must occupy their affordable housing unit for a minimum of three (3) years. See Paragraph H, "Leave of Absence," below.
- d. *Work in Gunnison County.* Qualified Buyers must work in Gunnison County and must have worked in Gunnison County for minimum of one (1) year.
- e. *Minimum ours worked each month.* Qualified Buyers shall work at least an average of one hundred sixteen (116) hours each month:
  - 1) In Gunnison County; or

- 2) For a company headquartered in Gunnison County. Since some jobs are seasonal, the Town may determine that a person who works at least one thousand three hundred ninety-two (1,392) hours each calendar year in the County, or for a company headquartered in Gunnison County, also qualifies to own affordable housing. The Town may waive this requirement after finding just cause for a person who suffered from a major illness or accident and is unable to engage in any substantial gainful activity.
- 3) Up to ten percent (10%) of the required hours per year may be filled by verifiable Volunteer Community Service with a qualified nonprofit organization in Gunnison County which has received its 501(c)(3) status from the U.S. Internal Revenue Service in those same boundaries.

## 2. Asset limits.

The Net Assets of a Qualified Buyer, and all members of the household including his or her Dependents, shall not exceed three (3) times the maximum Gross Household Income he, she, or they qualify under, unless the Qualified Buyer or his or her Dependents is/are a senior citizen (aged 59½ or older), in which case the Household Asset Limit is one hundred fifty percent (150%) of three (3) times the maximum Gross Household Income. For purposes of this Qualification, vacant land, which can be owned by a Qualified Buyer, will be valued as stated in the Gunnison County Assessor Notice of Valuation. Asset limits will be based on the actual household size, not the target household size for the Tract or Unit listed in Exhibit A.

At the time of application, a Qualified Buyer may own other undeveloped or developed residential or commercial property (see Section 1, Paragraph 1.C.1.b. above). The fair market value of such property will be taken into consideration when determining Household Net Assets. Any change in the fair market value of such property shall be taken into consideration in evaluating the Household's continued Qualification to own a Tract or Unit.

Any member of a Household who has assigned, conveyed, transferred or otherwise disposed of property or other assets within the last two (2) years without fair consideration in order to meet the net asset limitation or the property ownership limitation shall be ineligible.

The Town may from time to time employ outside accounting expertise to evaluate the reasonability of Applicant or Household representations of Income and Assets, especially in cases of self-employment, business ownership and complex asset portfolios and the applicant shall pay for such services.

## 3. Income Categories.

Each owner-occupied unit shall be assigned an Income Category at the time of subdivision and shall be approved by the Town so the number of units in each Income Category meets the needs of the Town. The Income Categories will be assigned from the Income Categories in Table V-2.

**Table V-2**  
**Maximum Gross Household Income by Category for Owner-Occupied Affordable Housing Units or Tracts**

<b>Income Category</b>	<b>Percent AMI</b>	<b>Minimum Income</b>	<b>Maximum Income (Household Size)</b>			
			<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 or More Persons</b>
Income Category 1	50% AMI	\$17,400	\$22,907	\$26,156	\$ 29,437	\$ 32,688

Income Category 2	80% AMI	24,000	36,650	41,850	47,100	52,300
Income Category 3	100% AMI	30,000	45,813	52,313	58,875	65,375
Income Category 4	140% AMI	45,000	64,138	73,238	73,238	91,525
Income Category 5	180% AMI	65,000	82,463	94,163	105,975	117,675

Note: The incomes in Table V-2 are based on 2012 AMI numbers and should be updated annually.

#### 4. Qualified essential services employees.

The following employees are Qualified Essential Services Employees, presented in no particular priority, who also meet all above qualifications, and are eligible to own Essential Services Employee Tracts or Units:

- a. Full-time employees of the Town of Crested Butte as defined by the Town,
- b. Part-time employees of the Town of Crested Butte as defined by the Town,
- c. Mountain Express employees,
- d. Other Essential Services Employees, who work north of Round Mountain in the Crested Butte Fire Protection District (CBFPD), or for a company headquartered in the CBFDPD, including but not limited to:
  - 1) Fire personnel;
  - 2) Emergency Medical Technicians (EMTs);
  - 3) Public school teachers and administrators,
  - 4) County Sheriff personnel, and
  - 5) Others as identified by the Town Council.

#### 5. Co-borrowers.

- a. Co-borrowers, such as but not limited to parents helping their child, are permitted so long as the person who meets the Qualifications for Ownership (See Section 1, Paragraphs C.1., 2. and 3. above, and may also meet the requirements of Paragraph 4.) is a record owner of the property.
- b. The co-borrower's name may be on the title if a lender requires both the purchaser and the co-borrower's names to be on the title.
- c. If title transfers solely to the co-borrower, spouse, dependent or person who inherits the unit, the unit or tract must be relinquished unless the co-borrower or spouse meets the requirements for Qualifications for Ownership in Section 1, Paragraphs C.1., 2. and 3., and may also meet the requirements of Paragraph 4. This requirement may be waived by the Town for good cause shown. Co-borrowers who do not meet the Qualifications for Ownership and who receive title to the unit or tract may not occupy or rent the unit prior to selling it.

#### 6. Exemptions from Eligibility Qualifications.

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A request for an exemption from the Eligibility Qualifications may be requested from the Town Council. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines, and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for the exemption.

- a. A request for an exemption must be submitted in writing to the Town and shall include documentation that is sufficient to establish that the exemption is justifiable. The applicant shall submit any additional information reasonably requested by the Town, in support of such request.
- b. The request shall be reviewed by the Town Council in a timely manner. Upon demonstration that an exemption is appropriate, the Town may grant the request, with or without conditions. The approval should not compromise the public good and should not substantially impair the intent and purpose of these Guidelines.
- c. Examples of hardships, exceptional circumstances or compelling reasons include, but are not limited to:
  - 1) A person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year;
  - 2) A person who temporarily left Gunnison County to attend college or other educational training;
  - 3) A recently hired employee of the municipal government of Crested Butte or any other employee providing essential services to the Town;
  - 4) Those who are certified as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely;
  - 5) Those with federally recognized disabled dependents;
  - 6) Those persons who are court-appointed legal guardians with wards who are otherwise Qualified Buyers; or
  - 7) Those who wish to acquire Units owned or administered by Habitat, who may be found to be exempt, by the Town Council, from the Eligibility Qualifications relating to Work in Gunnison County, Percentage of Income in the County, Minimum Hours Worked and Maximum Income.

7. **Requalifying.**

- a. Owners of owner-occupied affordable housing units or tracts need not be requalified, but all "Qualifications for Ownership" criteria in Section 1, Paragraphs C.1., 2., 3., and 4. must be met continuously so long as the Qualified Buyer occupies the Unit, except maximum incomes in the Income Categories and Maximum Asset Limits. Maximum Assets limits shall not exceed twenty (20) times the income in the Income Category for each unit in the current year. After age fifty (50), Maximum Assets shall be unlimited.

- b. If at any time the Qualifications for Ownership are not met (excluding income) or the maximum assets of the Qualified Buyer exceed twenty (20) times the Income Category for a Tract or Unit, the Town may give notice requiring the owner to sell the Tract or Unit within one (1) year from the date of the notice.

8. **Town makes determination.** The Town will decide which applicants meet the criteria for eligibility and which category each applicant is in.

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D. *How to Qualify for Owner-Occupied Affordable Housing.*

1. **Documentation as proof of residency and income.** In order to determine that a person or household desiring to purchase an affordable housing unit or tract meets all of the Qualifications for Ownership, the Town shall request any combination, or all, of the following documentation as proof of residency and income source:
  - a. Federal income tax returns for the year prior to applying for owner-occupied affordable housing. At a minimum, Form 1040, 1040E or 1040EZ and any forms necessary to explain the 1040 form will be required.
  - b. Verification of employment in Gunnison County; i.e., Wage and Tax Statements; Form W2.
  - c. An applicant must also furnish a current income statement, a current financial statement and a statement that the applicant owns no residential land, in a form acceptable to the Town verified by the applicant to be true and correct; or other documentation acceptable to the Town. When current income is twenty percent (20%) more or less than income reported on the prior year's tax returns, the applicant's income will be averaged based upon current income and the prior year's tax returns to establish an income category for the purpose of purchasing a unit or tract.
  - d. Landlord verification (proof of residency by physical address);
  - e. Copy of a valid Colorado driver's license;
  - f. Vehicle registration;
  - g. Voter registration;
  - h. Other verification deemed necessary by the Town (e.g., wage stubs or employer name, address and phone number).
2. **Confidential information.** All personal and financial information provided to the Town will be kept strictly confidential, except as follows:
  - a. Signed contracts between the applicant or household and the Town or developer, including but not limited to contracts to purchase a Tract or Unit, deed restrictions, any document to be recorded with the sale of a Tract or Unit along with the deed restriction, and any document that would customarily be a matter of public record in the property records of the applicable jurisdiction.
  - b. The names and lottery positions of all persons who have participated in any lottery held under these Guidelines; and
  - c. Any other information which is subject to disclosure under applicable law, including, without limitation, the Colorado Open Records Act.
  - d. In addition, the Town may provide for access to personal and private information to any person or entity undertaking an independent audit of the records kept under these Guidelines. In such a case, the Town shall endeavor to obtain an agreement from such persons to keep such information confidential.
- E. *Procedures for Sales of Units.* The sale of all Tracts or Units shall be in accordance with the procedures set forth below, except that where a conflict exists between the rules and regulations of other funding sources or Approved Entities, the rules and regulations of the funding sources or Approved Entities shall take precedence over these Guidelines, to the extent of the conflict only, except as otherwise indicated.

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1. **Consulting legal counsel.** All purchasers and sellers are advised to consult legal counsel regarding examination of title, all contracts, agreements and title documents pertaining to the purchase or sale of property discussed herein. The retention of such counsel or such related services shall be at the purchaser's or seller's own expense.
  2. **Initial sale of units.** Upon a determination by the Town that a Tract or Unit is available for sale, the Town shall place an announcement in the legal publications section of the official newspaper of the Town announcing the address of the Tract or Unit for sale and information regarding where to obtain applications to purchase the Tract or Unit, or the Town Council may convey the Tract or Unit directly to an Approved Entity.
    - a. Applicants shall complete an application for the Tract or Unit, which application shall contain sufficient information for the Town to determine whether or not the applicant is a Qualified Buyer, including a letter from a lending institution stating the applicant is qualified to borrow adequate funds to pay for the Tract or Unit. Applicants shall sign a release of information so that the Town may obtain such information. The Town will require a sworn statement of the facts contained in the application, including at least the following certifications:
      - 1) That the facts contained in the application are true and correct to the best of the Applicant's knowledge;
      - 2) That the Applicant has been given the standard application information packet by Town staff; and
      - 3) That the Applicant, on the basis of the application presented, believes that the Applicant qualifies to own the Tract or Unit in question according to the deed restriction, these Guidelines and all other applicable procedures, rules and regulations.
- Any material misstatement of fact or deliberate fraud by the applicant in connection with any information supplied to the Town shall be cause for immediate expulsion from the application process and/or forced sale of the Tract or Unit.
- b. Applicants will be notified in a timely manner by the Town as to whether they meet the eligibility requirements to be a Qualified Buyer. Applicants who have been determined not to be a Qualified Buyer may request an exemption from the Town Council.
  - c. Approved Entities may select Qualified Buyers pursuant to their own established rules and regulations, so long as the purchaser selected is a Qualified Buyer. Approved Entities may request exemptions from the Qualifications for Ownership as appropriate.
  - d. Qualified Buyers must close on a Tract or Unit within ninety (90) days of selection as the buyer unless the buyer requests and is granted an extension by the Town. Any extension may be granted by the Town Council in its sole discretion for good cause only. No such extension shall be for more than sixty (60) days. If the selected buyer fails to close on the tract or unit within ninety (90) days and if no extension is granted, the tract or unit shall be sold to the next person on the Chosen People list (See Paragraph E.2.e.2 below.).
  - e. Lotteries. If more than one (1) Qualified Buyer applies to purchase a Tract or Unit, lotteries shall be held to choose which Qualified Buyer will be offered the opportunity to purchase a Tract or Unit. Lotteries for Qualified Buyers, who meet only the various levels of qualifications discussed below, will be held in the following order:
    - 1) Lotteries for Qualified Buyers, who meet only the various levels of qualifications discussed in each paragraph below.

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- a) Essential Services Employees (ESEs) who meet the Target Income Categories and Household Size identified in Exhibit A and who have worked in Gunnison County more than four (4) years. Such Essential Services Employees, referred to in this Paragraph and in subsequent lottery paragraphs, must meet the Qualifications for Ownership described in Section 1, Paragraphs C.1., 2., 3. and 4. Each such ESE will receive the number of chances in the lottery as set forth in Table V-3, below. (An Exhibit A will be created for each phase in a new subdivision. Exhibit A will identify each Tract or Unit, the Target Income Category and the Target Household Size for each Tract or Unit as appropriate.) This lottery will only be held if less than fifty percent (50%) of the tracts or units, whichever is being applied for, are owned by ESEs.
  - b) Qualified Buyers (QB), including ESEs, who meet the Target Income Categories and Household Size identified in Exhibit A and who have worked in Gunnison County more than four (4) years. Each such QB will receive the number of chances in the lottery as set forth in Table V-3, below.
  - c) ESEs who do not meet the Target Household size but who have worked in Gunnison County at least four (4) years and who meet the Target Income Categories, as explained below. Each such ESE will receive the number of chances in the lottery as set forth in Table IV-3 below. When household size is different from the Targeted Household Size identified in Exhibit A, Household Income will be based on the actual size of the household applying (the ESE plus his or her Dependents) for a unit and will not be based on the target size for the Unit identified in Exhibit A. For example: if the Targeted Household is a two-person household earning not more than eighty percent (80%) of AMI, but a three-person household ends up qualifying for the Unit, the maximum income will be based on eighty percent (80%) of AMI for a three-person household. This lottery will only be held if less than fifty percent (50%) of the tracts or units, whichever is being applied for, are owned by ESEs.
  - d) QBs, including ESEs, who do not meet the Target Household size but who have worked in Gunnison County at least four (4) years and who meet the Target Income Categories, as explained in Paragraph (c) above. Each such QB will receive the number of chances in the lottery as set forth in Table V-3, below. When the household size is different from the Targeted Household Size identified in Exhibit A, Household Income will be based on the actual size of the household applying (the QB plus his or her Dependents) for a unit and will not be based on the target size for the Unit identified in Exhibit A.
  - e) QBs, including ESEs, who have lived in Gunnison County less than four (4) years but more than one (1) year and who meet the Target Income Categories and Household Size identified in Exhibit A. Each applicant will receive a single chance in that lottery.
  - f) QBs, including ESEs, who have lived in Gunnison County less than four (4) years but more than one (1) year and who do not meet the Household Size identified in Exhibit A and who meet the Target Income Categories,

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as explained in Paragraph (c) above. Each applicant will receive a single chance in that lottery.

- g) QBs, including ESEs, who have lived in Gunnison County less than one (1) year and who do not meet the Target Income and Target Household Size. Each applicant will receive a single chance in that lottery. When household size is different from the Targeted Household Size identified in Exhibit A, Household Income will be based on the actual size of the household applying (the QB plus his or her Dependents) for a unit and will not be based on the target size for the Unit identified in Exhibit A.

**Table V-3 \***  
**Number of Chances in Lottery Based on**  
**Number of Years Worked in Gunnison County**

<b>Years Worked Category</b>	<b>Number of Chances</b>
1. More than 4 years, fewer than 8 years	5 chances
2. More than 8 years, fewer than 12 years	7 chances
3. More than 12 years, fewer than 16 years	9 chances
4. More than 16 years	11 chances

\* This table applies to those Essential Services Employees and Qualified Buyers in the first and second lotteries of each of those categories - those who have worked in Gunnison County more than four (4) years prior to the application date.

- 2) Maintaining a list of the chosen people. A list of the order in which names are chosen will be retained. In the event the first name drawn cannot complete the transaction, the next name chosen will be offered the opportunity to purchase the Tract or Unit. In the event the next name drawn cannot complete the transaction, the subsequent name chosen will be offered the opportunity to purchase the Tract or Unit, and so on, until a purchaser has been found for the Tract or Unit. Once a name has been drawn, on subsequent times the same name is drawn, that name will be discarded. The lottery shall continue until each applicant's name has been drawn.
- 3) Exception to lottery procedures. In the event more than one (1) Qualified Buyer applies to purchase a Physically Challenged Accessible Unit, first priority for such Unit shall be given to households with Qualified Buyers that include Disabled Persons, prioritized by the length of time the Qualified Buyer has worked in Gunnison County. Such household shall have the first right to purchase such Units.
- 4) Other guidelines concerning lotteries. Prior to any lottery, the date, time and place of the lottery will be published in the legal publications section of the official newspaper of the Town for at least one (1) week prior to the lottery. All lotteries will be administered by the Town Manager or his/her designated representative.

**3. Procedures for resale for all tracts or units.**

- a. Town's first option to purchase.

- 1) Offer to Town. No owner, including Approved Entities, may sell a Tract or Unit or any interest therein except pursuant to the provisions of this Section. Any

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- owner preparing to sell his or her Tract or Unit shall first offer it to the Town for purchase by writing a letter to the Town Manager offering the Tract or Unit for sale.
- 2) Term of Town's right. Within twenty-four (24) days beginning on and including the date of the actual receipt of such information, the Town shall have the right to purchase the Tract or Unit at the Maximum Sales Price, or at an agreed upon sale price less than the Maximum Sale Price.
  - 3) Exercise of right. In order to exercise its right, the Town must, on or before the end of such twenty-four-day period, actually deliver to the owner a written contract to purchase the Tract or Unit. The Town shall also tender to the offering owner a two-thousand-dollar down payment or escrow payment.
  - 4) Nonexercise of right. If the Town does not exercise its right hereunder within the time period provided, the offering owner shall be free to accept and close upon offers from Qualified Buyers, as described above.
  - 5) Failure to comply. Any sale of a Tract or Unit without full compliance with the terms and provisions of this Section may be voided at the election of the Town.
  - 6) Certificate. After full compliance with this Section by an offering owner, and after the period of time provided for purchase by the Town has expired and the right of first refusal has not been exercised, the Town shall execute a certificate of record stating that the provisions of this Section have been met, and any right of first refusal vested with the Town has terminated.
  - 7) Exceptions. The following transfers or conveyances are excepted from the provisions of this Section:
    - a) A transfer to, or purchase by, any mortgagee who acquires title as a result of foreclosure proceedings or conveyance in lieu thereof; and a transfer or sale by any such mortgagee after acquisition of the Tract or Unit by foreclosure or conveyance in lieu thereof.
    - b) A transfer or conveyance between or among co-tenants of the same Tract or Unit, spouses, children or parents of owners (who must be Qualified Buyers).
    - c) A transfer or conveyance by gift, devise or inheritance or by operation of law.
- b. Application of these resale regulations if not to the Town. Subparagraphs b. through l. below apply to all Tracts or Units where the Town has executed a certificate of record stating that the provisions of this Section have been met, and any right of first refusal vested with the Town has terminated, except that Approved Entities may select Qualified Buyers pursuant to their own established rules and regulations, so long as the purchaser selected is a Qualified Buyer. Approved Entities may request exemptions from the eligibility qualifications for purchasers as appropriate, pursuant to the procedures set forth herein for requesting exemptions from the eligibility qualifications. Habitat is exempted from the herein resale restrictions as to resale price, and shall implement the rules and regulations of Habitat regarding resale price and the Eligibility Qualifications for a Qualified Buyer, which will be more restrictive than those set forth herein.
- c. Sellers decide to whom they may sell. Sellers may sell to any Qualified Buyer. If a Tract is being sold and less than fifty percent (50%) of all Tracts in a subdivision are owned by

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Essential Services Employees, then the Tract must first be offered to Essential Services Employees. If a Unit is being sold and less than fifty percent of all Units in a subdivision are owned by Essential Services Employees, then the Unit must first be offered to Essential Services Employees. (See Paragraph e. below).

- d. Qualified Buyers. Subsequent Qualified Buyers must meet the same Eligibility Qualifications and be qualified in the same manner as initial applicants.
- e. Offering tracts or units for sale. Owner(s) shall notify the Town of the intent to sell the Tract or Unit prior to advertising the Tract or Unit or listing it for sale. The Owner shall consult with the Town to confirm the correct Maximum Sale Price for the Tract or Unit prior to announcing the Tract or Unit for sale. The Owner shall list the Tract or Unit with the Town if a licensed transactional broker is available through the Town. If no transactional broker is available, the Seller may sell a Tract or Unit directly, or the Seller may list the Tract or Unit with a real estate broker licensed to do business in the State of Colorado. After notifying the Town of the intent to sell the Tract or Unit, the Owner must also place an announcement in the legal publications section of the official newspaper of the Town, at the Owner's expense, containing:
  - 1) The address of the tract or unit;
  - 2) A statement that potential buyers must meet Town Eligibility Qualifications, or receive an exemption from the Town;
  - 3) The contact address for the Owner; and
  - 4) The offered sale price of the Tract or Unit, not to exceed the Maximum Sale Price, as established in Section 1, Subsection G. below.
- f. Offering a Tract or Unit to Essential Services Employees and Other Qualified Buyers.
  - 1) If less than fifty percent (50%) of all Tracts in a subdivision are owned by Essential Services Employees, the Tract must first be offered to Essential Services Employees. If less than fifty percent (50%) of all units in a subdivision are owned by Essential Services Employees, the unit must first be offered to Essential Services Employees.
  - 2) The initial listing period for Essential Services Employees shall be for a period of not less than forty five (45) days.
  - 3) If no contract has been signed by the seller during the first forty five (45) days, or if fifty percent (50%) of all Tracts or Units, as applicable, are owned by Essential Services Employees, the seller may list the Tract or Unit for sale to Essential Services Employees and Qualified Buyers who meet the targeted household income and targeted household size for the Tract or Unit as described in Exhibit A.
  - 4) The listing period for Essential Services Employees and Qualified Buyers who meet the targeted household income and targeted household size shall be for a period of not less than forty five (45) days. During this period, the seller may accept an offer from any Essential Services Employee or Qualified Buyer who meets the targeted income and targeted household size.
  - 5) If no contract has been signed by the seller during the second forty-five-day period, the seller may list the Tract or Unit for Essential Services Employees, and Qualified Buyers who do not meet the targeted household income and

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targeted household size for the Tract or Unit as described in Exhibit A, and all other Qualified Buyers.

- g. Determining the Maximum Sale Price. The Maximum Sale Price for each Tract or Unit shall be calculated according to the appropriate formula set forth in Section 1, Subsection G. below.
- h. Town notification. The owner shall submit to the Town the purchase contract and the documentation establishing the prospective purchaser's qualifications at least thirty (30) days prior to the scheduled closing. The Town shall, within fifteen (15) days of receipt of the purchase contract and prospective purchaser information, provide a letter to the owner and prospective purchaser indicating whether or not the prospective purchaser is an Eligible Owner as set forth in Section 1, Subsection A. above.
- i. Customary closing costs. The Owner shall not permit the prospective purchaser to assume any or all of the seller's customary closing costs. The Owner shall not accept any other consideration which would cause an increase in the sales price of the Tract or Unit above the Maximum Sale Price, or for any other reason induce the owner to sell the Tract or Unit to a purchaser in violation of these Guidelines.
- j. No guarantees. The Town does not represent or guarantee that the owner will obtain the Maximum Sale Price.
- k. Deadline for building. Owners who have purchased a vacant Tract shall obtain a building permit for a dwelling unit thereon no later than forty-eight (48) months after closing the purchase. Any owner who fails to meet this deadline shall forthwith offer the Tract for sale and, as soon as practicable, sell their Tract.
- I. Administration fees.
  - 1) Maximum Sales Price determination fee. A fee of one hundred dollars (\$100.00) will be charged to any owner or seller requesting a required determination of Maximum Sales Price from the Town at the time of the request.
  - 2) Transaction fee. If a licensed transactional broker is available through the Town, at the closing of the sale of a Tract or Unit, the owner will pay the Town an administration fee in an amount to be established by the Town. The amount shall not exceed one and one-half percent (1½%) of the total sale price of the Tract or Unit. One-half (½) of the administration fee shall be paid by the seller at the time of listing, which is applied to the total administration fee payable at closing. The Town may instruct the title company to pay the balance of administration fees owed to the Town out of the funds available to the owner at the closing. In the event the owner fails to perform under the listing contract, rejects all offers at Maximum Sale Price in cash or cash-equivalent terms or withdraws the listing after advertising has commenced, that portion of the administration fee paid will not be refunded. In the event the owner withdraws for failure of any bids to be received at Maximum Sale Price or with acceptable terms, the advertising and administrative costs incurred by the Town shall be deducted from the administration fee, and the balance refunded or credited to the owner's administration fee when the Tract or Unit is sold.
  - 3) If a licensed transactional broker is not available at the Town, there will be no administration fees.

4. **Deed restriction.** The purchaser must execute, in a form satisfactory to the Town and for recording with the Gunnison County Clerk and Recorder concurrent with the closing of the sale, a

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document acknowledging the purchaser's agreement to be bound by the recorded Deed Restriction covering the purchased Tract or Unit.

- F. *Maximum Sales Prices for Initial Sales of Affordable Housing Units and Tracts in Major Subdivisions.* The Maximum Sales Price for the initial sale of a deed-restricted Affordable Housing unit or tract shall be based upon the buyer paying no more than thirty percent (30%) of his/her/their income on housing. Exhibit A identifies each Tract and Unit Income Category and Targeted Household Size.

1. **Sample maximum sale prices for particular incomes.** The Maximum Sales Prices in Table V-4 are shown as example only and are based on the maximum incomes in Paragraph C.3. above. The housing costs assume that no more than thirty percent (30%) of the income in each category is used for housing, they take into account assumed property taxes, insurance, mortgage insurance, and they assume a five percent (5%) down payment. It is likely that most multifamily deed-restricted units will also pay a homeowners association fee. The number in Table IV-4 does not include this fee since there will also be deed-restricted single-family homes which are less likely to pay a homeowners association fee. As the incomes for each income category in Table IV-2 change, the numbers in Table IV-4 will also change.

**Table V-4**  
**Maximum Unit Sales Prices by Category**

Category	Maximum AMI	AMI Used for Maximum Price	Household size			
			1 Person	2 Persons	3 Persons	4 or More Persons
Category 1	50%	40%	\$ 71,866	\$ 82,063	\$ 92,356	\$102,553
Category 2	80%	65%	116,783	133,352	150,079	166,649
Category 3	100%	90%	161,699	184,641	207,802	230,744
Category 4	140%	120%	215,599	246,188	277,069	307,659
Category 5	180%	160%	287,465	328,251	369,426	410,212

Note: The Maximum Unit Sales Prices in Table V-4 are based on 2012 AMI numbers and should be updated annually.

2. **Initial sale prices.** The initial sales price of deed-restricted tracts and/or dwelling units controlled by these Guidelines will be determined by the developer of the land. However, the initial Maximum Sales Price for the initial sale of a deed-restricted Unit and Tract shall not exceed the price affordable to a buyer in the identified Income Category and shall be no more than what thirty percent (30%) of the income in said Income Category can afford for principal and interest on their mortgage, plus a five percent (5%) down payment, and assuming that property taxes, insurance, mortgage insurance and homeowners' association fees and other costs will be twenty percent (20%) of the thirty percent (30%).
3. **Vacant tract sales price.** In the event a vacant deed-restricted tract is sold, the Maximum Sales Price shall not exceed the Maximum Sales Price described in Paragraph 2. above and shall account for the cost per square foot of a unit on the tract, so that the cost for the tract and the unit does not exceed thirty percent (30%) of the income for the targeted household income. The cost per square foot to build a deed-restricted Affordable Housing unit shall be based on the average cost to build existing deed-restricted units of similar size over the previous five (5) years and must be approved by the Town, prior to advertising any tract sales prices.
4. **Household income based on actual household size.** The Maximum Income Limit and Target Household Size for each Unit are listed in Exhibit A. Household income will be based on the actual size of the household applying (the Qualified Buyer plus his or her Dependents) for a unit and will not be based on the target size for the Unit identified in Exhibit A. For example: if the targeted household is a two-

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person household earning not more than eighty percent (80%) of AMI, but a three-person household ends up qualifying for the Unit, the maximum income will be based on eighty percent (80%) of the AMI for a three-person household.

Developers of tracts shall assume a unit size as described in Table V-5 for each Tract. Each Tract will be labeled in Exhibit A with regard to Targeted Income Category and Targeted Household Size.

G. *Resale Controls.*

1. **Appreciation will use CPI or three percent (3%) per annum.** The maximum resale price of a unit, including a proportionate share of the Tract, shall be controlled by the Deed Restriction for each Tract or Unit which shall limit annual increases in resale value to the annual rate of change in the Denver-Boulder-Greeley Urban Wage Earners Consumer Price Index, published by the U.S. Bureau of Labor Statistics, or three percent (3%) per annum, not compounded, whichever is less.
2. **Resale of units after a certificate of occupancy is issued.** No Unit may be sold for an amount in excess of the Maximum Sale Price. The Maximum Sale Price will be established as of the date the seller notifies the Town of the seller's desire to sell the Unit.
  - a. Ascertaining maximum sale price. For purposes of these Guidelines, the Maximum Sale Price of a Tract or Unit shall be calculated by one (1) of two (2) methods, Method 1 or Method 2, whichever results in the lower Maximum Sale Price.
    - b. Calculating maximum sale price.
      - 1) The maximum sale price includes:
        - a) The most recent purchase price of a Tract or Unit.
        - b) The documented costs (costs for which a receipt is submitted) for all initial and Permitted Subsequent Improvements made during ownership of a Unit, including the cost of materials and labor. Only the cost of improvements for which a Town building permit ("BP") has been issued, and decks less than eighteen (18) inches high, are permitted to be utilized in calculating costs. The cost of labor cannot exceed the cost of materials.
        - c) All closing costs incurred by the seller at purchase of the Tract or Unit.
        - d) Tap fees paid by the seller.
        - e) Building permit fees paid by the seller; and
        - f) Landscaping costs incurred prior to issuance of the initial certificate of Occupancy ("CO").
      - 2) Permitted Subsequent Improvements. The costs of Permitted Subsequent Improvements are permitted to be included in the Maximum Sale Price of a Unit in order to allow owners to be reimbursed for enhancing the value of their Unit through improvements that require Town building permits (and the cost of decks less than eighteen [18] inches high, which are included as Permitted Subsequent Improvements, but do not require a building permit).
        - a) *Permitted Subsequent Improvements* include only the following permitted, permanent, durable improvements to real property, for which receipts must be provided to the Town and for which a Town building permit has been issued (and the cost of decks no greater than eighteen [18] inches high, for which a building permit is not required and major landscaping). Improvements include the cost of materials and labor (the cost of labor cannot exceed the cost of materials.):

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- (1) Improvements or fixtures erected, installed or attached as permanent, functional, nondecorative improvements to real property, excluding repair, replacement and/or maintenance improvements;
  - (2) Improvements for energy and water conservation;
  - (3) Improvements for health and safety protection devices;
  - (4) Improvements to add and/or finish permanent/fixed storage space;
  - (5) Improvements to finish unfinished space;
  - (6) The cost of adding decks and balconies and any extensions thereto;
  - (7) Tap fees;
  - (8) Building permit fees; and/or
  - (9) Major landscaping, such as trees, bushes sidewalks and structures, but not bedding plants or annual flowers, after the initial improvements (after the initial CO).
- b) Permitted Subsequent Improvements shall not include the following:
    - (1) Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of the Unit;
    - (2) Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, floor coverings, floor tile and other, similar items; and/or
    - (3) Upgrades or addition of decorative items, including lights, window coverings, floor tile, carpeting and other similar items.
  - c) All Permitted Subsequent Improvement items and costs shall be approved by the Town prior to being added to the Maximum Sale Price as defined in these Guidelines and must be documented with receipts.
- 3) Maximum Sale Price does not include:
    - a) Taxes and insurance;
    - b) Homeowners' or condominium association fees;
    - c) Maintenance costs;
    - d) Loan points or origination fees;
    - e) Property taxes;
    - f) Water and sewer fees (both availability of service fees and monthly service fees);
    - g) Construction loan interest and permanent mortgage interest;
    - h) Special improvement district assessments;
    - i) Crested Butte real estate transfer tax;
    - j) Costs for which no receipts are provided.

- k) Costs for which receipts are provided but that do not state the product purchased;  
 l) Costs to clean up the job site;  
 m) Costs to install telephone, cable television, satellite television, computer services and other similar services which will most likely be reinstalled for the next owner; and  
 n) Fire extinguishers and other nonpermanent accessories, such as appliances that are not intended to be sold with the unit.
- 4) Information that must be provided when the Town calculates Maximum Sale Price. The Owner shall submit to the Town such documentation as the Town may require to calculate the Maximum Sale Price, which shall at a minimum include the following:
- Records establishing the purchase price of the Unit;
  - Receipts to verify the costs of improvements located thereon, including labor costs;
  - A copy of any building permit obtained for the improvements; and
  - An affidavit verifying that the receipts are valid and correct and represent costs actually paid by the Owner for construction of their home. (Cancelled checks, without receipts, will not be acceptable documentation of costs.)
- c. Methods for calculating maximum sale price.
- 1) **Method 1** (Three percent [3%] per annum). Method 1 has two (2) formulas. The first formula will be used prior to, and including, the first sale after a CO is issued for the initial improvements. The second formula will be used for all sales after the first sale and after a certificate of occupancy has been issued for the initial improvements. The second formula is based on the most recent sales price so the seller does not need to keep track of the original land cost and the original improvements costs forever.

**Formula #1.**

***The Maximum Sale Price, Prior to and Including the First Sale After a CO Was Issued for the Initial Improvements, Is Calculated Based On:***

The land cost, including the proportionate share for multifamily Units, plus (+)	Three percent (3%) of that cost for each year the seller has owned the land, not compounded annually, and prorated for partial years, plus (+)	The cost of initial improvements, plus (+)	Three percent (3%) of the initial improvements cost for each year since a CO was issued for the improvement, not compounded annually, and prorated for partial years, from the date a CO is issued by the Town for	The cost of Permitted Subsequent Improvements (including owner contributed labor), plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost for each year after the improvement is complete, not compounded annually, and prorated for partial years, from the date a building permit is issued by the
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			those improvements, plus (+)		Town for those improvements.
<b>X</b> = Land cost — Original price of land plus the Buyer Costs listed below, but not including the Land Transfer Excise Tax. Buyer costs include the normal, ordinary costs associated with the sale and purchase of real property, including costs and expenses associated with the closing of a loan for real property. (See definition of Customary Closing Costs.)					
<b>a</b> = Initial improvements cost — The cost of all initial improvements prior to issuance of a CO, including all structures and landscaping prior to the CO.					
<b>b</b> = Owner-contributed labor for initial improvements — The cost of labor shall not exceed the cost of materials.					
<b>c</b> = Permitted Subsequent Improvements cost after the initial CO — If several Permitted Subsequent Improvements have been made after the initial CO has been issued, these are labeled c <sub>1</sub> , c <sub>2</sub> , c <sub>3</sub> , etc.					
Permitted Subsequent Improvements (including owner-contributed labor) made after the issuance of a CO shall not exceed ten percent (10%) of the value of the initial improvements from the date of the issuance of the CO, for an initial ten-year period. For every ten-year period thereafter, another ten percent (10%) of the value of all improvements (including the value of initial improvements and the Permitted Subsequent Improvements for each ten-year period thereafter) may be added to the value of the improvements.					
Construction of an accessory dwelling, subsequent to the issuance of a CO for a primary dwelling, shall be exempt from the ten-percent limit. Once the CO is issued for the accessory dwelling, the ten-percent cap shall not exceed the value of all existing improvements, including the allowed ten-percent cap during each ten-year period as discussed above.					
<b>d</b> = Owner-contributed labor for Permitted Subsequent Improvements — If several subsequent improvements have been made after the initial CO has been issued, these are labeled d <sub>1</sub> , d <sub>2</sub> , d <sub>3</sub> , etc.					
The Maximum Sale Price of the Unit is determined by the following formula:					
$(X + ((X * .03) * \# \text{ of years since purchased})) + ((a + b) + (((a + b) * .03) * \# \text{ of years since CO})) + ((c_1 + d_1) + ((c_1 + d_1) * .03) * \# \text{ of years since BP}) + ((c_2 + d_2) + ((c_2 + d_2) * .03) * \# \text{ of years since BP})), \text{ etc.}$					
* = The symbol for multiplication in all formulas					
<b>Example</b>					
Sale of the Unit is in January 2007.					
The land is owned three years and six months (purchased in July 2003)					
Land cost is					\$30,000
Cost of initial improvements, for which a CO is issued in July 2005					\$95,000
Cost of owner-contributed labor for initial improvement (July 2005)					\$25,000
Cost of Permitted Subsequent Improvements finished in July 2006					\$3,000
Cost of owner-contributed labor for subsequent improvements (July 2006) is					\$2,000
<b>Total costs</b>					\$155,000
$(\$30,000 + ((\$30,000 * .03) * 3 6/12)) + ((95,000 + 25,000) + (((95,000 + \$25,000) * .03) * 1 6/12)) + ((\$3,000 + \$2,000) + ((\$3,000 + \$2,000) * .03) * 6/12)) = \$ 163,625$					
<b>OR</b>					
\$30,000					= \$30,000
+ \$(30,000 * .03) * 3 6/12					= 3,150
+ \$95,000					= 95,000
+ \$(95,000 * .03) * 1 6/12					= 4,275
+ \$25,000					= 25,000
+ \$(25,000 * .03) * 1 6/12					= 1,125
+ \$3,000					= 3,000
+ \$(3,000 * .03) * 6/12					= 45
+ \$2,000					= 2,000

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+ \$(2,000 * .03) * 6/12	= 30
<b>Total</b>	= \$163,625

**Formula #2.**

*The Maximum Sale Price for the Second Sale, After a Certificate of Occupancy for the Initial Improvements Was Issued, and for All Subsequent Sales Is Calculated Based On:*

The most recent purchase price of a unit, plus (+)	Three percent (3%) of that cost for each year the seller has owned the Unit, not compounded annually, and prorated for partial years, plus (+)	The cost of Permitted Subsequent Improvements (see above), plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost (including owner-contributed labor) for each year after the improvement is complete, not compounded annually, and prorated for partial years, from the date a building permit is issued by the Town for those improvements (see above).
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f = Most recent sales price — The price paid for the land and all improvements including landscaping.

c = Permitted Subsequent Improvements costs — after the Unit was purchased (see above).

d = Owner-contributed labor for Permitted Subsequent Improvements (see above).

The Maximum Sale Price of the Unit is determined by the following formula:

(f + (f \* .03) \* # of years since purchased) + (c<sub>1</sub> + d<sub>1</sub>) + ((c<sub>1</sub> + d<sub>1</sub>) \* .03 \* # of years since BP) + (c<sub>2</sub> + d<sub>2</sub>) + ((c<sub>2</sub> + d<sub>2</sub>) \* .03 \* # of years since BP), etc.

**Example**

Seller purchased the Unit in January 2009 and paid	\$170,000
Cost of Permitted Subsequent Improvements finished in July 2011	\$3,000
Cost of owner-contributed labor for Permitted Subsequent Improvements	\$2,000
Seller sold the Unit in July 2012	—
<b>Total costs</b>	<b>\$175,000</b>

$\$170,000 + (\$170,000 * .03) * 3^6 / 12 + (\$3,000 + \$2,000) + ((\$3,000 + \$2,000) * .03 * 1) = \$193,000$

**OR**

\$170,000	= \$170,000
+ \$(170,000 * .03) * 3 <sup>6</sup> / 12	= 17,850
+ \$ 3,000	= 3,000
+ \$(3,000 * .03) * 1	= 90
+ \$2,000	= 2,000
+ \$(2,000 * .03) * 1	= 60
<b>Total</b>	<b>\$193,000</b>

- 2) **Method 2 (Consumer Price Index Method).** Method 2 has two (2) formulas. The first formula will be used prior to, and including, the first sale after a CO is issued for the initial improvements. The second formula will be used for all subsequent sales after the first sale. The second formula is based on the most

recent sales price so the seller does not need to keep track of the original land cost and the original improvements costs forever.

**Formula #1.**

**The Maximum Sale Price, Until the Second Sale After a Certificate of Occupancy is Issued for the Initial Improvements, Is Calculated Based on the Land Cost, the Improvements Cost and the Change in the Consumer Price Index ("CPI") Where:**

X = Land cost (see above)

a = Initial improvements cost (see above)

b = Owner-contributed labor (see above)

c = Permitted Subsequent improvement cost after the initial CO (see above)

d = Owner-contributed labor for Permitted Subsequent Improvements (see above)

The CPI figures are published for the first half and second half of each year. Therefore, the CPI figure for the first half of a year will be used for all expenses or sales from January 1, through June 30. The CPI figure for the second half of a year will be used for all expenses or sales from July 1 through December 31.

The Maximum Sale Price of the property is determined by the following formula:

$X * + (a + b) * + (c_1 + d_1) * + (c_2 + d_2)$ , etc. = Maximum Sale Price

**Example**

Sale of the Unit is in January 2007	—
CPI prior to purchase of the land in July 2003	187.8
CPI prior to completion of initial improvements in July 2005 (projected, not actual)	189.2
CPI prior to completion of Permitted Subsequent Improvements in July 2006 (projected, not actual)	196.3
CPI prior to date of sales contract in January 2007 (projected, not actual) - (The second half CPI number will be used for sales between January 1 and June 30)	199.1
$\$30,000 * 1 + (95,000 + 25,000) * + (3,000 + 2,000) * = \$163,155.50$	

Since Formula #1 in Method 2, using CPI, results in a lower Maximum Sale Price than Formula 1 in Method 1, the Method 2 number would be the Maximum Sale Price.

**Formula #2.**

**The Maximum Sale Price, for the Second Sale After A Certificate of Occupancy for the Initial Improvements Is Issued, and for All Subsequent Sales, Is Calculated Based On:**

The most recent purchase price of a Unit; plus (+)	Three percent (3%) of that cost for each year the seller has owned the Unit, not compounded annually, and prorated for partial years; plus (+)	The cost of Permitted Subsequent Improvements; plus (+)	Three percent (3%) of the Permitted Subsequent Improvements cost (including owner contributed labor) for each year after the improvement is complete, not compounded annually, and prorated for partial years, from the date a building permit is issued by the Town for those improvements.
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f = Most recent purchase price of a Unit	
c = Permitted Subsequent improvement cost after the initial CO (see above)	
d = Owner-contributed labor for Permitted Subsequent Improvements (see above)	
The CPI figures used will be for the First Half or Second Half of the year prior to the expense or sale.	
The Maximum Sale Price of the property is determined by the following formula:	
$f * + (c_1 + d_1) * (c_2 + d_2)$ , etc. = Maximum Sale Price	
* = The symbol for multiplication in all formulas	
<b>Example</b>	
Seller purchased the Unit in January 2009 and paid	\$170,000
Cost of Permitted Subsequent Improvements finished in July 2011	\$3,000
Cost of owner-contributed labor for Permitted Subsequent Improvements	\$2,000
Seller sold the Unit in July 2012	—
Total	\$175,000
CPI in December 2008 (projected, not actual)	207.96
CPI in June 2011 (projected, not actual)	218.45
CPI in June 2012 (projected, not actual)	222.88
$\$170,000 * + (\$3,000 + \$2,000) * = \$187,297.97$	
<b>OR</b>	
\$170,000 *	= \$182,196.57
+ \$3,000 + 2000 *	= 5,101.40
Total	\$187,297.97

Since Formula #2 in Method 2, using CPI, results in a lower Maximum Sale Price than Formula #2 in Method 1, the Method 2 number would be the Maximum Sale Price.

H. *Leave of Absence for Owners of Affordable Housing Units.*

1. If an owner of an Affordable Housing Unit wishes to leave Gunnison County for a limited period of time and desires to rent the unit during the absence, a leave of absence may be granted by the Town for up to one (1) year upon clear and convincing evidence which shows a bona fide reason for leaving and a commitment to return to live in the unit. A letter must be sent to the Town at least thirty (30) days prior to leaving, requesting permission to rent the unit during the leave of absence. Notice of such intent to rent the unit and the ability to comment shall be provided to any applicable homeowner's association at the time of request to the Town by the Town or its designee. The leave of absence shall be for up to one (1) year and may, at the discretion of the Town be extended for one (1) year, but in no event shall the leave exceed two (2) years in any five-year period. The unit shall be rented in accordance with the Town's guidelines during said one- or two-year period.
2. Prior to the Town's or its designee's qualification of the tenant, said tenant shall acknowledge all covenants, rules and regulations for the unit and agree to abide by them. Enforcement of said covenants shall be the responsibility of the homeowner's association. Enforcement of the rules and regulations included in these Guidelines, shall be the responsibility of the Town. A copy of the executed lease shall be immediately furnished by the owner to the Town and the homeowner's association.
3. Additionally, an owner may request a one-time in-county leave of absence for one (1) year by Special Review with all of the above conditions applying.

I. *Rental Rates.*

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1. **Maximum rental rates.** When an owner has been granted a Leave of Absence, and when the Town has an ownership interest in the unit, the maximum rental rate for any Unit shall be no more than the sum of:
    - a. The monthly mortgage principal and interest payment; plus
    - b. Condominium or townhouse fees; plus
    - c. Utility costs remaining in the owner's name; plus
    - d. Taxes and insurance prorated on a monthly basis; plus
    - e. Up to three percent (3%) of the monthly principal and interest payment per month.
  2. **Rental guidelines.** In cases where rental of a Housing Unit is permitted, the following general guidelines shall apply:
    - a. Tenants shall be a Qualified Household according to the Qualification for Rental contained in Section 2.C. of these Guidelines. Town staff shall certify the qualification of the Household prior to occupancy of the Unit.
    - b. Tenants shall meet the Eligibility Criteria with respect to Income and Assets that apply to the particular Unit in question at the time of initial occupancy.
    - c. Qualification and Eligibility shall be recertified by the Town at any time there is a change in occupancy of the Unit.
    - d. Rental of such Units must be by a written Lease, an executed copy of which shall be on file with the Town at all times during the period in which rental of the Unit has been approved. In cases where the approved rental period exceeds one (1) year, the lease copy on file shall be updated at least once every twelve (12) calendar months.
    - e. Prior to signing a lease for or occupancy of a deed-restricted rental unit, tenants must be certified by the Town as a Qualified Renter and provide to the Town all eligibility verification required under these Guidelines. Occupants must provide the owner/landlord with proof of verification and qualification by the Town prior to occupancy. Leases must be for a minimum of six (6) months with a maximum of twenty-four (24) months. Owners shall provide a copy of the lease agreement with the tenant to the Town within five (5) working days of its execution.
- J. *Roommates.* Roommates are permitted in owner-occupied units. Roommates shall have a lease of at least six (6) months. Copies of all leases must be filed with the Town.
- K. *Spouses and Dependents.* Spouses and dependents of owners may live in owner-occupied affordable housing units.
- L. *Homeowners' Associations.* The Housing Unit may be subject to a Homeowners Association (HOA). HOA dues are authorized in Colorado under Section 38-33.3-101, et seq., C.R.S. All Owners of Housing Units are required to pay HOA dues, if applicable, unless otherwise exempted. Please be aware that HOA dues may be substantial. Homeowners Associations frequently have other interests and regulations that affect the Housing Unit. It is the Owner's responsibility to be aware of these interests.

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## **Section 2. Rental Affordable Housing.**

Deed restrictions for all units designed to be rentals shall include a provision conveying an interest in the Unit or Units to the Town, a Town housing authority (or similar agency acceptable to the Town) meeting the requirements of Section 38-12-301, C.R.S. Such interest may include:

- A fractional undivided ownership or trustee interest, provided that the Town shall be indemnified against any and all liability by reason of its interest.
- A lease to the Town of the Unit or Units with authorization to the Town to sublet pursuant to these Guidelines, provided that the Town assumes no liability by reason thereof. The Town may in its sole discretion accept or reject any proposed conveyance or lease, or lease purchase agreement offered pursuant to this Section.

The Town will not participate in any financing or future investments regarding any Tract or Unit which is owned by a third party.

- A. *Rationale.* The reason to create rental, deed-restricted, affordable housing in Major Subdivisions is to serve the many segments of the community that need affordable housing. The target group for this housing is people who meet the criteria in the Qualifications for Rental. The 1992 Crested Butte/Gunnison Area Housing Needs Assessment, the 1999 Gunnison County Housing Needs Assessment, the 2000 Residential Job Generation Study, and the Crested Butte Land Use Plan Amended, 2003, demonstrate that affordable housing is needed and that, despite the finding that most respondents prefer to own their home when they can afford to do so, rental units are also needed for those who cannot afford to own.
- B. *Administration.* The Town, or its designee, shall administer these rental Affordable Housing Guidelines after creation and signing of an intergovernmental agreement between the Town and its designee, as applicable.
- C. *Qualifications for Rental.* A deed-restricted affordable housing rental unit shall only be rented to a person approved by the Town as meeting the requirements of this Subsection C. Such people shall be known as Qualified Renters. Renters shall also meet the targeted Income Category and household size of the unit.
  1. **Percent Earned Income, Residence, Minimum Hours Work, Land Ownership and Essential Services Employees.**

**Table V-5**  
**Summary of Eligibility Qualifications for Rental Affordable Housing**

<b>Group</b>	<b>Minimum % Earned Income in Gunnison County</b>	<b>Own Developed Residential Land</b>	<b>Resident on Site</b>	<b>Resident of Gunnison County</b>	<b>Average Minimum Hours Worked Each Month</b>	<b>Essential Services Employees</b>
Group 1	80%	no	yes	yes	160	yes
Group 2	80%	no	yes	yes	160	no
Group 3	80%	no	yes	yes	116	no

Note: See (g) below for exceptions to hours worked.

### **Table V-5. Explanations**

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- a. Groups. Deed-restricted rental units will be available in priority to Qualified Renters who meet the criteria of Groups 1, 2 or 3. Those people who meet the criteria for Group 1 will be given first choice to rent all rental units, subject to the targeted household size for the unit. Those people who meet the criteria for Group 2 will be given a second choice to rent all rental units, subject to the targeted household size for each unit. Those people who meet the criteria for Group 3 will be given a third choice to rent all rental units, subject to the targeted household size for the unit.
  - b. Worked in Gunnison County. The requirements of Section 1, Paragraph C.1.d., shall apply.
  - c. Minimum percent earned income in Gunnison County. The requirements of Section 1, Paragraph C.1.a. shall apply.

When people who live in a rental affordable housing unit retire, they may continue to live in the unit, as long as they continue to meet all other eligibility requirements, excluding Section 2, Subparagraphs C.1.b., d., f., g. and h., and Paragraphs C.2., C.3. and C.4., and if they are age sixty-two (62) or older when they retire.

The Town of Crested Butte may waive this requirement after finding just cause for a person who suffered from a major illness or accident and is unable to engage in any substantial gainful activity after renting the unit.

- d. *Own developed residential land*. Eligible renters of affordable housing shall not own any developed residential land.
- e. *Reside on site*. Eligible renters of rental affordable housing must live on site.
- f. *Residency location*. Qualified Renters must be residents of Gunnison County at the time they apply for affordable housing.
- g. *Average minimum hours worked each month*. The number of hours required to be worked varies according to the Group a Qualified Renter is in. Qualified Renters of affordable housing shall work at least the number of hours listed below for each Group:
  - 1) Group 1. One hundred sixty (160) hours, averaged annually each month and public school teachers who work at least one thousand three hundred ninety-two (1,392) hours also qualify for Group 1.
  - 2) Group 2. One hundred sixty (160) hours, averaged annually each month.
  - 3) Group 3. One hundred sixteen (116) hours, averaged annually each month.

The location of the work shall be:

- 1) In Gunnison County; or
- 2) For a company headquartered in Gunnison County.

Since some jobs are seasonal, the Town may determine that a person who works at least one thousand nine hundred twenty (1,920) hours for Groups 1 or 2 or one thousand three hundred ninety-two (1,392) hours for Group 3, each year in the County, or for a company headquartered in Gunnison County, also qualifies to rent affordable housing. Public school teachers who work at least one thousand three hundred ninety-two (1,392) hours shall be included in Group 1. The Town may waive this requirement after finding just cause for a person who suffered from a major illness or accident and is unable to engage in any substantial gainful activity after renting the unit.

- h. Qualified essential services employees. The following employees, who also meet all above qualifications, are eligible to rent any deed-restricted rental unit:

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- 1) Full-time employees of the Town of Crested Butte, as defined by the Town;  
 2) Mountain Express employees;  
 3) Other essential services employees, who work north of Round Mountain in the Crested Butte Fire Protection District (CBFPD) or for companies headquartered in the CBFDPD, including but not limited to:  
 a) Fire personnel;  
 b) Emergency Medical Technicians (EMTs);  
 c) Public school teachers and administrators;  
 d) County Sheriff personnel; and  
 e) Others as identified by the Town Council.
2. **Asset limits.** The requirements of Section 1, Subsection C.2. shall apply.
3. **Income categories.** Each rental unit shall be assigned an Income Category at the time of subdivision and shall be approved by the Town so the number of units in each Income Category meets the needs of the Town. The Income Categories will be assigned from the Income Categories in Table V-6.

**Table V-6**  
**Maximum Gross Household Income by Household Size for Rental Affordable Housing Units**

<b>Category</b>	<b>Percent AMI</b>	<b>Minimum Income</b>	<b>Maximum Income Household Size</b>			
			<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 or More Persons</b>
Income Category 1	30%	\$10,000	\$13,744	\$15,694	\$17,657	\$19,013
Income Category 2	50%	17,400	22,907	26,156	29,437	32,688
Income Category 3	60%	19,000	27,487	31,388	35,314	38,025
Income Category 4	80%	24,000	36,605	41,805	47,100	52,300
Income Category 5	100%	30,000	45,813	52,313	58,875	63,375

Note: The incomes in Table V-6 are based on 2012 AMI numbers and should be updated annually.

**Table V-6 Note:**

- a. AMI = Area Median Income.
- b. Numbers shown are from the U.S. Housing and Urban Development FY 2008 Income Limits Summary for Gunnison County, Colorado found at [www.huduser.org](http://www.huduser.org).
- c. As the incomes in this table are periodically updated by the U.S. Department of Housing and Urban Development (HUD), the incomes to qualify for each unit or tract of affordable housing will be automatically modified to comply with the updated figures from HUD.

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- d. At the time of subdivision approval, the Crested Butte Planning Commission will approve the number and location of deed-restricted units in each Income Category listed in Table V-6.
  - 4. **Essential Town employees.** Notwithstanding the above provisions, an Essential Town Employee, as identified by the Town Council, who is exempt from Paragraphs C.1., 2. and 3. above and who owns developed residential property outside Gunnison County before he or she begins working for the Town, may continue to own that property outside of the County, but when his or her employment with the Town terminates, he or she must relinquish the deed-restricted rental unit.
  - 5. **Exemptions from Eligibility Qualifications.** A request for an exemption from the Eligibility Qualifications may be requested from the Town Council. Variations from the strict application of these Guidelines must be consistent with the intent of these Guidelines, and may be granted only upon a showing of unusual hardship, special circumstance or a compelling reason for the exemption.
    - a. A request for an exemption must be submitted in writing to the Town, and shall include appropriate documentation in support of the exemption. The applicant shall submit any additional information reasonably requested by the Town, in support of such request.
    - b. The request shall be reviewed by the Town Council in a timely manner. Upon demonstration that an exemption is appropriate, the Town may grant the request, with or without conditions. The approval should not compromise the public good and should not substantially impair the intent and purpose of these Guidelines.
    - c. Examples of hardships, exceptional circumstances or compelling reasons include, but are not limited to:
      - 1) A person who suffered from a major illness or accident and was unable to engage in any substantial gainful activity during the past year;
      - 2) A person who temporarily left Gunnison County to attend college or other educational training;
      - 3) A recently hired employee of the municipal government of Crested Butte or any other employee providing essential services to the Town;
      - 4) Those who are certified as being unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last indefinitely;
      - 5) Those with federally recognized disabled dependents; or
      - 6) Those persons who are court-appointed legal guardians with wards who are otherwise Qualified Buyers.
  - 6. **Requalifying.**
    - a. In addition to the initial qualification requirements set forth above, renters of affordable housing units shall be reviewed and verified every two (2) years from their initial date of eligibility to ensure that they meet income range requirements for their unit under the Guidelines as they are amended from time to time. Landlords shall provide disclosure in their leases that tenants must be requalified every two (2) years and that tenants must reapply for qualification in the second year.
    - b. The Town shall endeavor to cause the landlord to give each tenant written notice, at least thirty (30) days prior to the expiration of the two-year period, of the requirement for requalification with the Town. The notice should be accompanied by the Town's Rental

- 
- Approval Form (with instructions for requalification). If the tenant does not receive the landlord's notice or the Rental Approval Form, the tenant should contact the Town. The Town will impose a fifteen-dollar fee for requalification.
- c. If a tenant exceeds one hundred fifty percent (150%) of the current maximum income for the unit, upon review for requalification, the tenant may continue to rent and occupy the unit at the rent (subject to the Guidelines limit) and upon the terms established by the landlord's lease, for up to one (1) additional year in order to provide adequate time to secure new housing or come under compliance.
7. **Sale of applicant's real estate.** Applicants who own developed residential real estate must list and sell the real estate to an unrelated person or an entity in which the applicant has no interest for no less than fair market value prior to entering into the affordable housing lease. Provided, however, if an applicant owns a fifty-percent or less undivided interest in developed residential real estate, he or she may convey that interest to the joint owners with or without receiving consideration. If the residential real estate is not sold by the time of lease signing, the applicant becomes ineligible to rent the unit. Not more than one (1) affordable housing rental unit may be leased by the same person.
8. **Town makes determination.** The Town will decide which applicants meet the criteria for eligibility and which category each applicant is in.
- D. *How to Qualify for Rental Affordable Housing.* In order to determine that a person or household desiring to rent an affordable housing unit meets all of the Qualifications for Rental, the Town shall request any combination, or all, of the following documentation as proof of residency and income source:
1. Federal income tax returns for the year prior to applying for rental affordable housing. At a minimum, Form 1040, 1040E or 1040EZ and any forms necessary to explain the 1040 Form will be required;
  2. Verification of employment in Gunnison County (i.e., Wage and Tax Statements for the previous two [2] years; Form W2);
  3. An applicant must also furnish a current income statement, a current financial statement, and a statement that the applicant owns no developed residential land, in a form acceptable to the Town verified by the applicant to be true and correct; or other documentation acceptable to the Town. When current income is twenty percent (20%) more or less than income reported on the prior year's tax returns, then the applicant's income will be averaged based upon current income and the prior year's tax returns to establish an income category for the purpose of renting a unit;
  4. Landlord verification (proof of residency by physical address);
  5. Copy of a valid Colorado driver's license;
  6. Vehicle registration;
  7. Voter registration;
  8. Other verification deemed necessary by the Town or its designee (i.e., wage stubs or employer name, address and phone number).
- E. *Procedures for Renting an Affordable Housing Unit.*
1. **Renting to Qualified Renters in Categories 1, 2 or 3.**
- a. **Group 1.** Group 1 employees (Essential Services Employees) will be given first option to rent a unit until at least fifty percent (50%) of all rental units are occupied by Essential

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Services Employees. When units become available for rent and if at least fifty percent (50%) of all rental units are not occupied by Essential Services Employees, the units shall be advertised, at a minimum in the Town's official newspaper and posted at Town Hall, for fourteen (14) days, only to Qualified Renters in Group 1.

- b. **Group 2.** When a unit becomes available for rent and if:
    - 1) At least fifty percent (50%) of all rental units are occupied by Essential Services Employees; or
    - 2) A unit has been advertised to Group 1 Qualified Renters for at least fourteen (14) days and no lease has been signed, the unit may be rented to anyone meeting Group 1 or 2 criteria listed above. In such circumstances, when units become available for rent, the units shall be advertised at a minimum in the Town's official newspaper and posted at Town Hall, for fourteen (14) days, only to Qualified Renters in Groups 1 and 2.
  - c. **Group 3.** If no one in Group 1 or 2 rents the unit after advertising the unit for fourteen (14) days to Group 1 and 2 Qualified Renters, Qualified Renters in Group 3 may rent the unit. In such circumstances, when units become available for rent, the units shall be advertised at a minimum in the Town's official newspaper and posted at Town Hall, for fourteen (14) days, only to Qualified Renters in Groups 1, 2 and 3.
- 2. **Qualifying all renters by Town.** Prior to occupancy of a deed-restricted rental Affordable Housing unit in a Major Subdivision, all prospective tenants, excluding children under eighteen (18) years old, must be qualified by the Town for occupancy and provide to the Town all verification required under these Guidelines. Applicants must provide the owner/landlord with proof of verification and qualification by the Town prior to occupancy. Owners shall be required to provide a copy of the lease agreement with the tenant to the Town for approval, which shall be given or denied within five (5) business days after receipt by the Town. Leases shall conform to occupancy standards and allowed rental rates, and shall be for a minimum term of six (6) months. An executed copy of the lease with all tenant names shall be provided by the owner to the Town prior to occupancy by tenant, and at the time of any renewal of the lease.
- F. **Maximum Monthly Rental Rates for Rental Affordable Housing Units in Major Subdivisions.** Rental rates of deed-restricted dwelling units controlled by these Guidelines will be determined by the developer of the units. However, when the Town has an ownership interest in the units, the annual rental rate shall not exceed the thirty percent (30%) of the identified Income Category for the unit.
  - G. **Roommates.** Roommates are permitted in rental units provided that they meet the provisions of Section 2., Paragraphs C.1., C.2., C.3. and C.4., except as otherwise allowed for good cause. Each roommate shall be on the lease. When the renters pool maintained by the Town is exhausted, roommates no longer need to comply with the eligibility qualifications.
  - H. **Maximum Vacancy.** Deed-restricted rental units may be vacant between tenancies for a maximum period of sixty (60) days, unless longer periods are authorized for good cause by the Town. If the owner exceeds the sixty-day limit without Town approval, then the Town may place a qualified tenant from the renters pool with a minimum six-month lease.
  - I. **Spouses and Dependents.** Spouses and dependents of renters who have leases for rental affordable housing may live in rental affordable housing units without qualifying.

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### **Section 3. Affordable Housing Standards.**

A. *Minimum Floor Area and Minimum Number of Bedrooms for Affordable Housing Units in Major Subdivisions.*

Generally, the expectation is that the permanently affordable Units be "functionally equivalent" to market rate units. This means that, when features are included in market rate units, such as kitchen cabinets, countertops, dishwashers, etc., then equivalent features are included in the permanently affordable units. This does not mean that the type of features need to be identical. For example, market rate units could include Corian or granite countertops, while laminate countertops of reasonable quality would be acceptable for the permanently affordable Units.

The Town will consider variations that result in an equivalent livability outcome. Generally, if affordable units share design features with market rate units, then such features would be acceptable for the permanently affordable Units. For example, if all units, both permanently affordable and market rate units provide pantry space for kitchen storage instead of cabinets, then that would constitute an acceptable "functional equivalent." The desire is to achieve a balance between not being overly prescriptive and allowing flexibility, but ensuring a basic level of livability.

**Table V-7** sets forth the minimum type of unit required in each Income Category and Household size and the minimum floor area for each unit type. Developers may choose to construct larger units; however, allowable rent and sales prices for such larger units may not exceed the maximums set forth in Section 2.F. above. The minimum livable square foot requirements may be reduced upon demonstration to and approval by the Town that the development satisfies, or is required to adjust to, other physical factors or considerations, including but not limited to design for livability, common storage, other amenities, location or site designs. *Floor area* is as defined in Section 16-1-20 of the Crested Butte Municipal Code.

**Table V-7**  
**Minimum Floor Area and Number of Bedrooms for Each Household Size**

<b>Unit Type (Minimum)</b>	<b>Household Size</b>	<b>Minimum Floor Area with Common Storage (sq. ft.)</b>	<b>Minimum Floor Area Without Common Storage (sq. ft.)</b>
Studio	1 person	400	500
1 bedroom	2 persons	600	800
2 bedroom	3 persons	800	1,100
3 bedroom	4 persons	1,050	1,450

**Table V-7 Note:**

Minimum Floor Area calculations shall be required for the affordable housing unit component of a project and must be verified and approved for compliance by the Town Building Department prior to issuance of any building permits for either the unrestricted or restricted housing units of a building project which includes restricted units.

B. *Compliance with codes.* All newly deed-restricted affordable housing sales and rental units must comply with the International Building Code and with all rules, regulations and codes of the Town of Crested Butte. The owner of affordable housing rental units, at its cost and expense, must keep and maintain the interior and exterior of the total structure (including all residential units therein) and the adjacent open areas in a safe and clean condition and in a state of good order and repair; reasonable wear and tear and negligent or intentional damage by tenants excepted.

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## **Section 4. Grievance Procedures.**

A grievance may be presented to the Town under the following procedures.

- A. *Filing a Grievance.* Any grievance must be presented in writing to the Town. It may be simply stated, but shall specify, at a minimum:
  - 1. The particular grounds upon which it is based;
  - 2. The desired action requested; and
  - 3. The name, address, telephone number of the complainant and similar information about his or her representative, if any.
- B. *Hearing.*
  - 1. If a grievance cannot be resolved by the Town staff, a hearing before the Town Council may be requested in writing by the complainant. Upon receipt of the written request, a hearing must be scheduled within twenty (20) days unless waived by the complainant.
  - 2. The complainant and the Town shall have the opportunity to examine, and at the expense of the requesting party, to copy all documents, records and regulations that the Town deems to be relevant.
  - 3. The complainant and the Town shall have the right to be represented by counsel. All costs and expenses incurred by a complainant in prosecuting any complaint or grievance shall be the complainant's sole responsibility and shall not be the responsibility of the Town, irrespective of the outcome of said complaint or grievance.
- C. *Conduct of Public Hearing.* A public hearing shall be conducted in accordance with the following process:
  - 1. **Right to hearing.** The applicant may appear at the hearing and submit evidence, including oral testimony, either individually or as a representative of an organization. Comment also may be submitted in written form before or during the hearing, or within a designated period of time if the hearing is continued pursuant to Paragraph (6) below.
  - 2. **Time limits for testimony.** The Town Council may set reasonable time limits for testimony or presentation of evidence during the public hearing. Oral testimony may be limited based upon relevancy, redundancy or time constraints.
  - 3. **Order of proceedings.** The order of the proceedings shall be as follows:
    - a. Confirmation of adequate public notice. The Town Council shall determine whether or not adequate notice has been accomplished pursuant to the requirements of these Guidelines.
    - b. Staff presentation. The Town staff shall identify the standards and relevant issues.
    - c. Applicant's presentation. The applicant may make an oral or a written presentation on behalf of its case. The burden of proof is on the applicant.
    - d. Questions by Town Council. The Town Council may ask questions of the Town staff and the applicant.
    - e. Public comments. The Town Council shall hear public comments following the presentation by the applicant. Written comments that have been received before the hearing shall be reported by the Town staff and acknowledged to be part of the hearing record.
    - f. Staff response. The Town staff may respond to any statement made by the applicant, the public or the hearing body.

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- g. Applicant response. The applicant may respond to any comments made by the public, the Town staff or the Town Council.
  - 4. **Close of public testimony.** At the conclusion of the public testimony, no further public comment shall be accepted.
  - 5. **Deliberation and decision.** Following close of public testimony, the Town Council shall proceed with deliberations. The Town Council's recommendation or decision to approve or deny the application shall be set forth in the form of a motion.
  - 6. **Continuation of public hearing.** The Town Council may continue the public hearing to a fixed date and time. An applicant shall have the right to request, and be granted on a showing of good cause, a continuance of the required hearing. Any subsequent continuances shall be granted at the discretion of the Town Council and upon a finding that good cause has been shown for the continuance.
- D. *Record of Decision.* Based on the record of proceedings, the Town Council will provide a written decision upon request and include the reasons for its determination. The decision of the Town Council shall be binding on the complainant and the Town, except in such cases where an appeal to a court of competent jurisdiction granted and an alternative decision rendered by said court. The parties shall take all reasonable actions necessary to carry out the decision except in cases where the decision of the Town Council is appealed to a court and an alternate decision rendered by such court. The record of decision shall include the following materials.
- 1. The recorded public hearing proceedings.
  - 2. The minutes of the public hearing.
  - 3. The application materials.
  - 4. Written materials submitted to the Town by any person in connection with the application.
  - 5. Staff reports.
- E. *Decision.*

## **Section 5. Enforcement.**

- A. The terms, requirements and conditions set forth in these Guidelines shall be enforceable by any appropriate legal and/or equitable action, including but not limited to specific performance, injunction, abatement or eviction, and if the Town substantially prevails in such an action, it shall be entitled to an award for its reasonable attorneys' fees and costs.
- B. It shall be unlawful for any person to violate these Guidelines. Any person who violates these Guidelines, or who provides false information to the Town in connection with these Guidelines, shall be fined an amount not to exceed one thousand dollars (\$1,000.00) per day for each offense, incarcerated for not more than ninety (90) days, or both, and required to pay any expenses and costs incurred by the Town, including, without limitation, reasonable attorneys' fees, in connection with such violation.

## **Section 6. Deed Restriction.**

Each affordable housing Unit or Tract must be deed-restricted by a recorded instrument in substantially the following form, and the subdivider shall provide the Town with a copy of each recorded instrument no later than five (5) days after recordation:

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**TOWN OF CRESTED BUTTE**  
**Affordable Housing Guidelines**  
**Major Subdivision**  
**Affordable Housing Owner-Occupied Deed Restriction**

Subject property:

(Legal Description of unit or tract)

(hereafter, the "Property").

The ownership of the Property shall henceforth be limited exclusively to successful applicants maintaining exclusive residency in Gunnison County, Colorado. Owners must meet the qualifications set forth in Part V, Section 1. of the Town of Crested Butte, Affordable Housing Guidelines, 1997 Edition, as amended ("Guidelines") as determined by the Town of Crested Butte, or its designee (hereafter the "Town"), at the time of purchase and during ownership. The use and occupancy of all or part of the Property is hereby limited exclusively to people who meet the referenced qualifications, and their spouses and children. Ownership, use and occupancy of the Property is subject to the following:

1. The property must be owned, occupied and used only by persons meeting the qualifications and as otherwise set forth in the Guidelines as they may be amended.
2. In the event the Property is sold, transferred or otherwise conveyed without complying with this Deed Restriction, such sale, transfer or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference all terms of the Guidelines and any amendments thereto, including but not limited to those provisions governing the qualifications for ownership, rental, sale, transfer or conveyance of the Property.
3. The beneficiary of any deed of trust or other recorded instrument identifying the Property as security or collateral shall execute the Option to Purchase Affordable Housing prepared by the Town, unless waived by the Town, prior to the recordation of the deed of trust or other recorded instrument. Failure to so execute shall render any such deed of trust or other encumbrance fully null and void.
4. Unit(s) (numbers) built on the Property shall be restricted Category unit(s). All income, price controls and other criteria described in the Guidelines for this Category shall apply to (these units) (the Property).
5. Except for accessory dwellings, no more units than those designated on the Final Plat as restricted or unrestricted units shall be constructed on the subject tract.

The foregoing restrictions on ownership, use and occupancy constitute a perpetual covenant that runs with the Property as a burden thereon for the benefit of the Town and shall be binding on the owner and the heirs, personal representatives, assigns, lessees, licensees and any transferees of the owner. The foregoing restrictions and covenants shall be administered by the Town and shall be enforceable by any appropriate legal or equitable action, including but not limited to specific performance, injunction, abatement or eviction of noncomplying owners or occupants or such other remedies and penalties as may be deemed appropriate by the Town. If the Town substantially prevails in such an action, it shall also be entitled to an award for its reasonable attorneys' fees and costs including expert and other witness fees.

Notwithstanding the foregoing, this Deed Restriction shall automatically terminate upon the Town's failure to exercise and close its option rights under the Option to Purchase Affordable Housing affecting the Property. The date of such termination shall be as set forth in the Option.

The foregoing Deed Restriction may be modified with the written consent of the owner and the Town, and if reasonably available in Gunnison County, the original Property developer. No such modification shall be effective until an instrument in writing is executed and recorded in the office of the Clerk and Recorder of Gunnison County.

---

Amendments to this Deed Restriction and/or the Guidelines after the time of recording the final subdivision plat which includes the Property which are more restrictive than those in effect at the time of such recording shall not apply to the Property, unless such provisions are designed to satisfy the Town's expressed interest to have only those persons meeting the Eligibility Qualifications own, occupy or use the Property. However, less restrictive amendments shall apply.

Executed on \_\_\_\_\_.

By: Developer

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing Deed Restriction was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, developer of the Property.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Return to: Town of Crested Butte

Attention \_\_\_\_\_

P.O. Box 39

Crested Butte, CO 81224

#### **Option to Purchase Affordable Housing**

This Option to Purchase is made by and between the undersigned holder of a promissory note and for the protection of any governmental agency guaranteeing, insuring or acquiring the note from the holder ("the Holder"), and the Town of Crested Butte, a Colorado home rule municipality, its assigns or designee ("the Town").

- (1) **The Property.** A promissory note made by the undersigned Holder dated \_\_\_\_\_ is secured by a deed of trust ("Deed of Trust") encumbering property subject to an Affordable Housing Deed Restriction pursuant to Chapter 17, Article 12 of the Crested Butte Municipal Code, which property is described as follows:  
(the "Property").
- (2) **The Option.** In the event of a foreclosure of the Deed of Trust and subject to the issuance of a Public Trustee's Certificate of Purchase to the Holder following the foreclosure sale or, in the event the Holder receives a deed in lieu of foreclosure or other conveyance of the Property, the Holder hereby grants to the Town an option to purchase the Certificate of Purchase or Property on the terms set forth herein.
- (3) **Notice.** The Holder shall give such notice to the Town as is required under Colorado law in the foreclosure proceeding. In addition, the notice shall include a copy of the Notice of Election and Demand for Sale. They shall also be sent by certified mail, return receipt requested, and addressed as follows:  
Town Manager  
Town of Crested Butte  
P.O. Box 39  
Crested Butte, CO 81224
- (4) **Exercise of Option.** The Town shall have thirty (30) days after receiving written notice from the Holder of the issuance of the Public Trustee's Certificate of Purchase, or conveyance of the Property to the Holder, in which to exercise this Option to Purchase by tendering to the Holder the sum for which the

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Certificate was purchased or the Property conveyed, with interest from the date of sale, or conveyance, together with any taxes paid or other proper charges as provided by law, with interest from the date such expense was paid. Such interest shall be charged at the default rate if specified in the original instrument or, if not so specified, at the regular rate specified in the original instrument.

- (5) **Title.** Upon receipt of the option price, the Holder shall deliver to the Town a properly executed assignment of the Certificate of Purchase, or deed to the Property. The Holder shall not create or participate in the creation of any additional liens or encumbrances against the Property following issuance of the Public Trustee's Certificate of Purchase to the Holder, or conveyance of the Property to the Holder. The Holder shall not be liable for any of the costs of assignment or conveyance to the Town.
- (6) **Termination of Deed Restriction.** In the event that this Option to Purchase is not exercised, and in the case of a foreclosure the Holder is issued a Public Trustee's deed following foreclosure, the Affordable Housing Deed Restriction shall automatically terminate. In addition, the Town shall cause to be recorded in the records of the Clerk and Recorder of Gunnison County a full and complete confirming release of the Affordable Housing Deed Restriction affecting the Property which appears in said records at Reception No. \_\_\_\_\_. Such release shall be placed of record within fourteen (14) days after request therefor by the Holder, and a copy of the recorded release shall be mailed to the Holder following its recordation.
- (7) **Successors and Assigns.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.
- (8) **Modifications.** The parties hereto agree that any modification to this Option to Purchase shall be effective only when made by writings signed by Holder and the Town and recorded with the Clerk and Recorder of Gunnison County, Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on \_\_\_\_\_.

HOLDER OF DEED OF TRUST Name of Lender

By: Authorized Lender

Date: \_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

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(Supp. No. 20)

Created: 2023-05-12 10:44:46 [EST]

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(SEAL)

TOWN OF CRESTED BUTTE  
A Colorado Home Rule Municipality

By: Authorized Officer

Date: \_\_\_\_\_

Return to: Town of Crested Butte

Attention \_\_\_\_\_  
P.O. Box 39  
Crested Butte, CO 81224

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Date: \_\_\_\_\_

BORROWER Name of Lender

By: Authorized Lender

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

Witness my hand and official seal.

My commission expires \_\_\_\_\_. Notary Public

(SEAL)

Return to: Town of Crested Butte

Attention \_\_\_\_\_  
P.O. Box 39  
Crested Butte, CO 81224

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**Exhibit A**  
**(Example only)**

**Maximum Income Limits and Target Household Sizes**

The Maximum Income Limit and Target Household Size for each Unit are listed below. AMI is based upon Household Size (the Qualified Buyer or Qualified Renter plus his or her Dependents).

Because the Town wishes to maximize its affordable housing stock, and to house as many people as have a need for affordable housing, Target Household Sizes are set forth herein. Where possible, the Target Household Sizes shall be accomplished.

All Units shall be owner occupied, unless listed as a "Rental Unit" below.

**Maximum Income Limits and Target Household Sizes**

<b>Block 85</b>			
<b>Unit</b>	<b>Maximum Income Limit</b>		<b>Target Household Size</b>
1A	80% of AMI		2-person household
1B	60% of AMI	Rental Unit	2-person household

(Code §17-12-10; Ord. 4 §1, 2009; Ord. 11 §1, 2013)

**APPENDIX O Land Transfer Excise Tax Exemption Application and Certificate**

**CERTIFICATE FOR EXEMPTION**

**TOWN OF CRESTED BUTTEGRANTEE** \_\_\_\_\_

LAND TRANSFER EXCISE TAX

**EXEMPTION APPLICATION**

**Exemption Cert. #** \_\_\_\_\_

**Date Issued:** \_\_\_\_\_

This Town of Crested Butte Land Transfer Excise Tax is due at the time of transfer and prior to recording of the applicable deed(s) or other instrument(s). The Town has allowed for the exemption of the RETTs to be addressed on this Form.

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

The undersigned, as grantor (grantee) of a deed or instrument of transfer from \_\_\_\_\_ (grantor / aka transferor, seller, etc.) to \_\_\_\_\_ (see reverse for detailed ownership requirements)

\_\_\_\_\_(grantee / aka transferee, buyer, etc.)  
(see reverse for detailed ownership requirements)

dated \_\_\_\_\_, 20\_\_\_\_\_, transferring the following described property situated in the State of Colorado, County of Gunnison, Town of Crested Butte

(attach copy of legal description here):

does hereby apply for exemption from the payment of the Town's Land Transfer Excise Tax under the authority of Ordinance No. 15, Series 1979, of the Town of Crested Butte.

**- APPENDIX**

- State all of applicable exemptions defined in Section 4-4-50 of the Crested Butte Municipal Code that apply.
  - The basis of such exemption is as follows (you must be explicit; attach exhibits, documents and substantiation, as required):

Please indicate the type of property by checking on the items below:

- Deed-restricted housing
  - Fractional (timeshare) residential
  - Nonfractional residential
  - Commercial
  - Industrial

## AFFIDAVIT

I Hereby Certify, Under Penalty of Perjury, In Compliance With the Town of Crested Butte Municipal Code, that the Foregoing is True and Correct.

Name of Purchaser (Grantee): \_\_\_\_\_  
Signature (if signed by an agent, certificate of agency is required)

Signature of Purchaser (Grantee): \_\_\_\_\_ Signature (if signed by an agent, certificate of agency is required)

Phone Number of Purchaser (Grantee):

*Notarization of Purchaser(s)' Signatures Is Mandatory:*

My commission expires:

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Notary Public

**Address:**

[END OF CERTIFICATE]

- APPENDIX  
APPENDIX O Land Transfer Excise Tax Exemption Application and Certificate

**PLEASE PROVIDE INDIVIDUAL OWNERSHIP DETAILS AS NOTED BELOW:**

In order to determine the propriety of Land Transfer Exemption requests, the Town of Crested Butte requires documentation of each of the individual owners and their respective percentage of ownership, especially when the grantors or grantees are, for example and not by way of limitation, corporations, LLCs, LLPs, PCs, partnerships, etc. Please indicate the individual full names of the grantors and grantees below and attach substantiating documentation, such as, for example, corporate resolutions or partnership agreements which clearly support the individual ownerships and percentages listed below:

**GRANTOR(s) (aka transferors, sellers, etc. – first & last names):**

1: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %  
2: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %  
3: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %  
4: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %

(if additional space is required, please attach a list of the grantors and percentage of ownership) TOTAL  
= 100%

**GRANTEE(s) (aka transferees, buyers, etc. – first & last names):**

1: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %  
2: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %  
3: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %  
4: \_\_\_\_\_ % of Ownership = \_\_\_\_\_ %

(if additional space is required, please attach a list of the grantees and percentage of ownership) TOTAL  
= 100%

**FOR APPLICATION OF EXEMPTION PURSUANT TO PARAGRAPH 4-4-50(15),  
PLEASE PROVIDE THE INFORMATION AS NOTED BELOW:**

In order to determine the propriety of Land Transfer Exemption requests pursuant to Paragraph 4-4-50(15), the Town of Crested Butte requires sufficient supporting documentation (e.g., instrument of transfer, note, loan agreement, evidence of debt, deed of trust, security agreement, mortgage, installment land contract, etc.) as to whether (i) the grantee is the person holding the obligation or instrument which is being cancelled, in whole or part, in exchange for the transfer or upon which the proceeding is based, as applicable, or the grantee is a junior lienholder or exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution, (ii) such grantee is the original obligation holder or a financial institution (if the grantee is not the original obligation holder or a financial institution, the identity of the obligation holder), and (iii) the extent of the obligation which is being canceled, in whole or in part, in exchange for the transfer or is being satisfied at the execution or foreclosure sale and any obligations to prior lien holders paid from the sale.

As respects exemptions for transfers pursuant to Section 4-4-50(15), prior to any exemption being granted, the transferor and transferee shall execute an affidavit certifying that the obligation that is being cancelled must be in default at the time of the transfer and that no additional consideration shall be exchanged in connection with the transfer.

- APPENDIX  
APPENDIX O Land Transfer Excise Tax Exemption Application and Certificate

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Satisfaction of the foregoing requirements are mandatory to the application of exemption pursuant to Paragraph 4-4-50(15).

**CERTIFICATE(S) OF EXEMPTION FROM TOWN OF CRESTED BUTTE:**

I hereby certify that the within described transfer of real property is exempt from payments of the Town of Crested Butte's Land Transfer Excise Tax.

Signature of Town Official: \_\_\_\_\_ Date: \_\_\_\_\_

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Any person whose claim of exemption, duly applied for under the provisions of Section 4-4-50 of the Crested Butte Municipal Code, is denied by the Town Manager may immediately appeal to the Crested Butte Town Council for a determination of such exemption, and such appeal shall be considered by the Town Council in accordance with Section 4-4-60 of the Crested Butte Municipal Code. In the event of a determination by the Town Council favorable to the appellant, any tax previously deposited or so much therefor as may be allowed by the Town Manager shall be promptly refunded to the person paying or depositing the same.

For More Information, please contact:

Lois Rozman, Finance Director

P.O. Box 39 (mailing) Page:

Address:

507 Maroon Avenue

Crested Butte, CO 81224

Phone : 970.349.5338

E-mail : loisr@crestedbutte-co.gov

Town of Crested Butte Municipal Code Web

http://www.colocode.com/crestedbutte.html

Look in Chapter 4, Article 4

**INSTRUCTIONS:**

**EXEMPTIONS FROM THE TOWN OF CRESTED BUTTE'S LAND TRANSFER EXCISE TAX:**

**In general, the basic substantiation required for a Crested Butte Land Transfer Excise Tax exemption will be detailed legal documents as noted below each section of the Crested Butte Municipal Code provided below.**

**COMMON EXEMPTION REQUESTS:**

In the case of a gift or a "no change of individual percentage of ownership" and/or "no consideration" transaction, one (1) or more of the following types of documents may be required:

- 1) Statement on the deed or instrument of transfer itself stating that no consideration in excess of five hundred dollars (\$500.00) is being exchanged. (See Exemption (2) below).
- 2) Legal documents providing that there has been no change in ownership through the detailed delineation of individual owners and that the percentage of ownership of each owner has not changed. Documents such as, for example and not by way of limitation, partnership and operating agreements for all limited liability companies, limited liability partnerships or similar types of ownership organizations may be required to provide proof of exemption. In the case of corporations, a copy of the corporate resolution stating the individual owners and the percentages of the outstanding stock of the corporation held may be required. In the event any of the owners indicated in any of these documents are other than individual's names, the Town will require the same type of documentation for such

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organizations until the actual individual owners' names and percentages of ownership are determined. (See Exemption "Other" below.)

The following has been excerpted (but shall not replace) from the Crested Butte Municipal Code, Section 4-4-50. After each number or subsection, the types of acceptable documentation required are indicated:

- (1) Any document wherein the United States or any agency or instrumentality thereof, the State, any county, city and county municipality, district or other political subdivision of this State, is either the grantor or grantee.
  - In the event the governmental status of a grantor or grantee is unknown, a legal document providing that the grantor or grantee is in fact a governmental entity, such as a certified copy of the approved and enacted referendum, etc., which created the governmental entity.
- (2) Any document transferring title to real property in consequence of a gift of such property, where no consideration other than love and affection or charitable donation is evidenced by the terms of the document of transfer.
  - Evidentiary documentary proof of the gift or charitable status of the exchange of property, such as a statement on the deed or instrument of transfer itself stating that no consideration other than love and affection is being exchanged or that no consideration in excess of five hundred dollars (\$500.00) is being exchanged.
- (3) Any document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy in real property, except where additional consideration of value is paid in connection with such partition or termination.
  - Evidentiary documentary proof of the partition or termination of such joint tenancy for no compensation, such as a statement on the deed or instrument itself that states that the purpose of the deed or instrument of transfer is to partition or terminate the joint tenancy.
- (4) Transfers pursuant to a decree of separation or divorce except where the transfer is made to a third party.
  - Divorce decree or decree of separation.
- (5) Any transfer of title or change of interest in real property by reason of death, will or decree of distribution.
  - Copy of the death certificate and will stating that the grantee is the recipient of such property.
- (6) Any transfer made pursuant to business organization, reorganization or restructuring, including but not limited to mergers or consolidations of corporations or by subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock or ownership interest. The transfer of at least seventeen percent (17%) of the stock in a corporation or seventeen percent (17%) of any ownership interest in a business entity whose assets include real property within the Town shall not be included in this exemption, and such transfer shall be subject to imposition of the Town's Land Transfer Excise Tax.
  - A clear, notarized, sworn-to narrative description of the subject transaction with copies of the substantiating legal documents clearly indicating that there was in fact no consideration exchanged in the corporate transaction other than the surrender of the subsidiary's stock or ownership interest.
- (7) Any transfer to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Federal Bankruptcy Act or in an equity receivership proceeding.

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- A copy of the court-approved plan and order.
- (8) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of titles; or granting easements, rights-of-way or licenses.
- Such deeds or instruments are normally headed at the top with the words "**Correction Deed**." Correction Deeds should evidence that no change in principals or percentage of ownership of principals to the transaction has occurred.
- (9) **Any decree or order of a court of record** quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.
- A copy of the court decree or order.
- (10) Any transfer granting or conveying title to **cemetery lots**.
- A clear property description on the deed or other instrument indicating that the same is in fact for a cemetery lot.
- (11) Any **lease of any real property**, or assignment or transfer of any interest in such lease, provided that the terms and conditions of such lease do not constitute a de facto conveyance of the subject property. In the latter event, the Land Transfer Excise Tax shall be based upon the capitalization at five percent (5%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined or at the election of the Town Manager, the Land Transfer Excise Tax shall be based upon the assessed value of the property covered by the lease.
- A copy of the subject lease and a clear indication through notarized and sworn-to statement or other legal document indicating that the lease does not constitute a de facto conveyance or transfer of the property.
- (12) Any **mineral transfer or mineral royalty transfer**.
- A clear indication on the deed or instrument of transfer itself that the same is in fact a "mineral" or "royalty" transfer.
- (13) Any **transfer to secure a debt** or other obligation or transfer **or release of property which is security for a debt** or other obligation.
- A copy of the actual debt obligations (promissory notes, loan agreement, deeds of trust, security instruments, etc.) stating that the subject property is the specified collateral for the debt obligation.
  - A copy of the signed legal document which releases the security (the subject property) for a debt.
- (14) Any **executory contract for the sale of real property** of less than three (3) years' duration, under which the purchaser is entitled to or does take possession thereof **without acquiring title thereto**, or any assignment or cancellation of any such contract.
- Copies of adequate legal documents to support the allegation that the purchaser is in fact entitled to the subject property without acquiring title.
- (15) Any transfer under execution sale or **foreclosure sale** under a power of sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed; or deed in lieu of foreclosure.

- Copies of the notices of the foreclosure sales, sheriff's or treasurer's deed, clearly referencing the subject property.
- Copies of instrument of transfer, note, loan agreement, evidence of debt, deed of trust, security agreement, mortgage, installment land contract, etc.

**It is possible that "Other" reasons not specifically delineated in the Town of Crested Butte Municipal Code may exist:**

"**Other**" may include transfers between trusts and their owners or their beneficiaries and other estate planning. In all cases, the Town of Crested Butte requires a copy of the trust agreement(s) clearly delineating the trust relationships and demonstrating that no consideration was exchanged in such transactions, unless the language in the deed or instrument of transfer itself states that there is no other consideration other than love and affection.

Legal documents providing that there has been no change in ownership through a detailed delineation of individual owners and the percentage of ownership which each owner holds, both before and after the real estate transaction, in order to substantiate that the percentage of ownership retained by each owner has not changed. This would include copies of partnership and operating agreements for all limited liability companies, limited liability partnerships or similar types of ownership organizations. In the case of corporations, a copy of the corporate resolution stating the individual owners and the percentage of the outstanding stock of the corporation held. In the event any of the owners indicated in any of these documents are other than individuals' names, the Town will require the same type of documentation for such organizations until the actual individual owners' names and percentage of ownership are determined.

#### **IRC Section 1031 Exchanges of Property:**

In an Internal Revenue Code Section 1031 exchange of properties, any properties so exchanged are fully subject to the Town's Land Transfer Excise Tax. In the event that a "straw man" (an intermediary person or entity through which a transaction is made for income tax deferment purposes) is used in the transaction, the purchase by the "straw man" in order to set up the transaction would normally be exempted from the Town's Land Transfer Excise Tax, and the subsequent exchange of properties would both be subject to the Town's Land Transfer Excise Tax (assuming both properties are located in Crested Butte).

In the event that the transfer for the "straw man" does not take place on the same day as the final exchange of parties, the "straw man's" purchase would be subject to payment of the Town's Land Transfer Excise Tax, and, when the exchange actually takes place (assuming it takes place within six [6] months' time from the first transaction), the transfer from the "straw man" at that time would be exempted because the "straw man" has already paid the Town the Land Transfer Excise Tax on the first transaction when he or she acquired the property. If the final exchange does not take place within said six (6) months of the first transaction, the "straw man" exemption no longer applies, it being assumed that the "straw man" actually acquired title for his or her own use and is in fact required to pay the Town's Land Transfer Excise Tax.

#### **Similarities between Corporations and LLCs, etc.:**

Deedless property sales may result in the Town's Land Transfer Excise Tax being due and owing. In the case of LLCs and similar types of limited liability business organizations, the following applies: acquiring any interest in a limited liability business organization which owns property in Crested Butte will require the payment of the Town's Land Transfer Excise Tax, whether or not there is an actual deed or similar instrument of transfer present and whether or not there is a transfer of the majority ownership.

#### **Trusts and Financial Planning:**

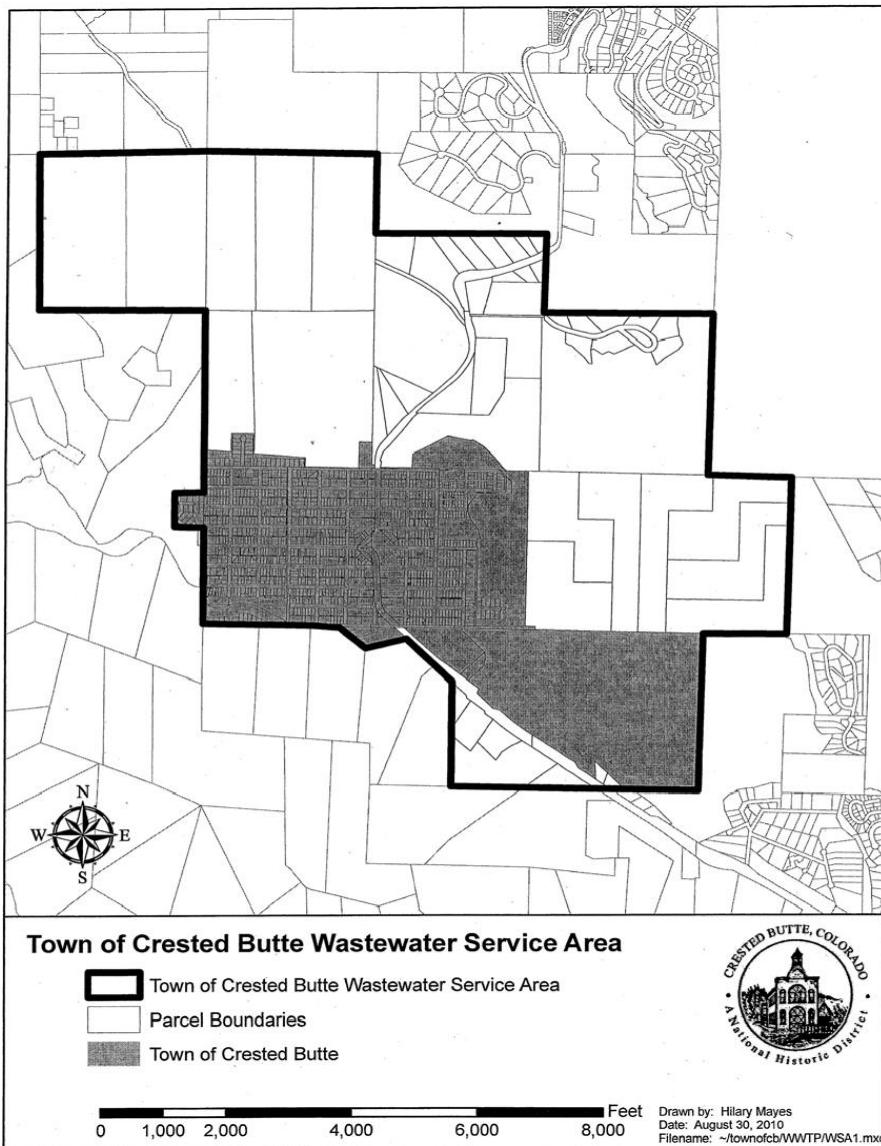
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These are some of the most common property transfer transactions in Crested Butte. If the language "for no other consideration other than love and affection" is used on the deed or other instrument of transfer itself, it is automatically exempt from the Town's Land Transfer Excise Tax with no further documentation required. Otherwise, the Town requires copies of the trust documents/agreements, etc., to demonstrate that no consideration has been exchanged.

(Ord. 7 §3, 2013)

### APPENDIX P Wastewater Service Area



(Ord. 25 §1, 2010)

## **APPENDIX Q Model Subdivision Cost and Expense Reimbursement Agreement**

The undersigned ("Applicant") has applied ("Application") to the Town of Crested Butte ("Town"), a Colorado home rule municipality, for approval of a proposed subdivision for that certain property legally described as \_\_\_\_\_ ("Property") pursuant to the requirements of the Town Code ("Project"). Applicant acknowledges and agrees that in consideration for the Town processing, reviewing and prosecuting the Application and the Project, Applicant shall make the following payments to the Town and agrees as follows:

1. Fees, Costs and Expenses. Applicant shall pay all fees, costs and expenses whatsoever, including, without limitation, all such fees, costs and expenses in connection with any legal publications, notices, filings, reproduction of materials, public hearings, recording of documents, engineering, attorney services, consultant services, administrative time of Town staff, security, permits and easements, in connection with the Application and the Project, either directly or indirectly, whether incurred prior to Applicant's execution of this Agreement or after the completion of the Project.

2. Payment. Any and all bills for said costs and expenses are due and payable to the Town as follows: (i) all accounts are due net fifteen (15) days from the date of the bill; and (ii) interest on any overdue amounts shall be assessed and paid by Applicant at the rate of 1.5% per month from the date due until paid.

3. Deposit. Simultaneously with execution hereof, Applicant shall place on deposit with the Town \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Deposit"). The Deposit shall be placed by the Town in a non-interest-bearing account at a local financial institution. Said Deposit shall secure Applicant's payment to the Town of all costs and expenses described in Section 1 hereof. The Town may draw upon such Deposit, upon delivery of written notice to Applicant, in the event that the Applicant fails to pay to the Town any amounts billed to the Applicant within said fifteen-day period of the date of said bill. In the event that the Town draws upon said Deposit, the Applicant shall replace the funds withdrawn therefrom within five (5) business days. At the conclusion of the Project, and after all actions have been taken by the Town and Applicant in connection with the Project, and all costs and expenses associated therewith having been paid to the Town, the Town shall refund the remaining Deposit funds, if any, to Applicant within a reasonable time thereafter.

4. Breach. In the event of a breach of any of the terms and conditions of this Agreement by Applicant, the Town may take any action necessary or appropriate and permitted by law or equity, including but not limited to: (i) an immediate suspension of the processing, reviewing and prosecuting of the Application and the Project, including, without limitation, the cancellation of any scheduled hearings; (ii) the refusal to issue any building permit or certificate of occupancy associated with the Property; (iii) the recording with the County Clerk and Recorder of an affidavit approved in writing by the Town Attorney and executed by the Town Manager stating that the terms and conditions of this Agreement have been breached; (iv) a demand or draw for payment on any performance guarantee for completion of public improvements by any owner of the Property; (v) refusal to allow further development review for the Property and the Project; (vi) a draw upon the Deposit; and (vii) any other remedy available at law or in equity, including claims for damages or injunctive relief. In the event of a breach by Applicant, Applicant shall be responsible for all attorneys' fees, costs and expenses associated therewith.

5. Continuing Obligation. Applicant's obligation to pay the costs and expenses provided for in this Agreement shall exist and continue independent of whether the Application, or any part thereof, is approved, approved with conditions, denied, withdrawn or terminated by the Town or the Applicant prior to a final decision in the process.

6. Termination by Applicant. Applicant may terminate the Application at any time by giving written notice to the Town. The Town shall take all reasonable steps necessary to terminate the accrual of costs to Applicant and file

Crested Butte, Colorado, Municipal Code  
SUPPLEMENT HISTORY TABLE

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such notices as are required by the Town's requirements. The Applicant shall be liable for all costs incurred by the Town in terminating the processing of the Application.

7. No Representations. Applicant acknowledges and agrees that the Town in no way guarantees, assures or otherwise represents to Applicant that either the Application filed by Applicant or the Project will be granted and makes no representation concerning the timing of the review thereof.

8. Binding Obligation. Applicant agrees and acknowledges that this Agreement shall be a continuing obligation which will run with the land and be binding on Applicant and any future owners of the land, and will include the obligation to reimburse the Town for any and all costs associated with the Project incurred by the Town, including, without limitation: (i) participation in any litigation or depositions, whether the Town is a party or not, associated with the Property or any approvals granted with regard to the Property; (ii) counseling and advice associated with any potential amendments to approvals or compliance or lack of compliance with any approvals; and (iii) any actual costs directly associated with the Property and the Project incurred by the Town.

9. Warranty. Applicant represents and warrants that the lien or encumbrance created by the obligations contained in this Agreement shall be superior to any deed of trust or other lien.

10. Indemnification. Applicant shall indemnify, defend and hold harmless the Town and any of its elected officers, employees, agents, independent contractors, insurers, insurance pools, attorneys and consultants from and against any and all damages and other obligations or liabilities, costs and expenses (including reasonable attorneys' fees) incurred by the same in connection with Applicant's actions or failure to act stemming from the transactions contemplated under this Agreement.

11. Severability. If any provisions of the Agreement shall be determined to be void by any court of competent jurisdiction, such determination shall not affect any other provisions hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two (2) constructions, one (1) of which would render the provisions void and the other which renders the provisions valid, then the provision shall have the meaning which renders it valid.

12. Collection. In the event the Town finds it necessary to pursue collection of any amounts due and unpaid under this Agreement, it shall be entitled to collect attorneys' fees and all costs and expenses reasonably incurred in said collection efforts in addition to the amounts due and unpaid hereunder.

13. Venue. Venue in any dispute in connection with this Agreement shall be the District Court for the County of Gunnison, State of Colorado. By executing this Agreement, Applicant submits to the personal jurisdiction of the state courts of the State of Colorado.

14. Counterparts. This Agreement may be executed in several counterparts and, after execution and as executed, shall constitute an agreement binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

15. Facsimile. A facsimile, telecopy or other reproduction of this Agreement may be executed by the parties and shall be considered valid, binding and effective for all purposes.

16. Memorandum of Record. A memorandum of record of this Agreement may be recorded in the official real property record of the Clerk and Recorder of Gunnison County, State of Colorado.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[APPLICANT]

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

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