

ORDINANCE NO. 26

SERIES 2008

**AN ORDINANCE AMENDING THE TOWN'S  
ZONING AND LAND USE ORDINANCE TO  
INCLUDE PROVISIONS TO PREVENT THE  
DEMOLITION BY NEGLECT OF HISTORIC  
STRUCTURES**

**WHEREAS**, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

**WHEREAS**, the Zoning and Land Use Ordinance (the "**Ordinance**") contained in the Crested Butte Municipal Code of 1987, as amended, contains regulations that mandate that no person may demolish a historic structure unless the Board of Zoning and Architectural Review (the "**Board**") first makes certain findings and approves such demolition;

**WHEREAS**, the Ordinance does not contain regulations prohibiting the demolition of historic structures by the neglect or failure of a persons in charge of or having control and supervision of properties where such historic structures are located and requiring said persons to maintain and keep-up said structures;

**WHEREAS**, the Town Council finds that the maintenance, keep-up and continued existence of historic structures in Town is essential to the Town's unique character, its historic and cultural heritage, the recognition of the accomplishments of past generations and the economic vitality of the community;

**WHEREAS**, the Town staff has determined that the demolition by neglect of historic structures in Town is a problem for the Town, and that in order to prevent such demolitions from occurring in the future, the Town Council should adopt an ordinance to prevent the same and establish enforcement mechanisms and penalties applicable to circumstances where persons fail to comply with the aforesaid prevention measures; and

**WHEREAS**, the Town Council has determined that the below amendments to the Ordinance advance the aforesaid goals of the Town staff and the Town Council and are in the best interests of the health, safety and general welfare of the residents and visitors of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,**

**Section 1. Amending Section 15-2-22 F. - Demolition of Historic Structure.**  
Section 15-2-22 F. is hereby amended by deleting said Section in its entirety and replacing the same with the following new Section F. which shall read as follows:

**"F. Demolition of Historic Structure.**

1. Notwithstanding any other provision of this Article, no structure over fifty (50) years of age (for purposes of this Section F. only, a "historic structure") shall be demolished unless the Board finds that the following criteria are first met.

(A) The historic structure is dangerous or unsafe as determined by the Building Inspector.

(B) 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.

(C) 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 effect 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 B. of this Section 15-2-22. For purposes of this Section F., "demolish" or "demolition", *mutatis mutandi*, 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.

2. 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 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.

3. 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 F. shall be guilty of a misdemeanor and subject to a maximum fine of \$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 historic structure is out of compliance with this Section F. shall be a separate offense hereunder. The Marshal's Department or the Town Manager and/or his/her designee(s) 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 F. 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.

4. Upon a conviction pursuant to Section 2 above in a court of competent jurisdiction the Building Official shall be authorized to order up to a ten (10) year moratorium on the issuance of any permit and/or certificate of occupancy in connection with the subject property, except as otherwise described in Section 5 below. The Building Official shall consider the following factors in deciding whether to impose such a moratorium:

(A) the impact of the demolition upon the historical integrity and architectural character of the Town;

(B) the factual circumstances concerning the cause of the demolition, as may be identified after reasonable investigation by the Building Official; and

(C) whether the demolition would have been approved by the Board had an application for the same been submitted.

5. During the pendency of prosecution described in Section 2 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 Section 4 above. Such temporary moratorium shall remain in effect for the duration of the prosecution and any appeal therefrom.

6. 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 Clerk and Recorder of Gunnison County, State of Colorado.

7. Notwithstanding anything contained in this Section F. to the contrary, the existence of a moratorium on property as described under this Section F. 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 Land Use Ordinance.

8. The Building Official may order the lifting of any moratorium as described under this Section F. 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 Clerk and Recorder of Gunnison County, State of Colorado.

9. Remedies provided in this Section F. 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."

**Section 2. Severability.** 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.

**Section 3. Savings Clause.** Except as amended hereby, the Town of Crested Butte Municipal Code of 1987, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

**INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 1<sup>st</sup> DAY OF DECEMBER, 2008.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 15<sup>th</sup> DAY OF 2008.**

**TOWN OF CRESTED BUTTE, COLORADO**

By:   
Alan Bernholtz, Mayor

ATTEST:

  
Eileen Hughes, Town Clerk

(SEAL)