

AGENDA
Town of Crested Butte
Special Town Council Meeting
Monday, November 14, 2016
Council Chambers, Crested Butte Town Hall

PUBLIC NOTICE IS HEREBY GIVEN THAT THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO WILL HOLD A SPECIAL MEETING ON MONDAY, NOVEMBER 14, 2016 BEGINNING AT 6:00PM IN THE TOWN COUNCIL CHAMBERS LOCATED IN THE CRESTED BUTTE TOWN HALL, 507 MAROON AVENUE, CRESTED BUTTE, COLORADO.

The times are approximate. The meeting may move faster or slower than expected.

6:00 **SPECIAL COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM**

6:02 **APPROVAL OF AGENDA**

6:05 **NEW BUSINESS**

1) Presentation by Ashely Bembenek of the Coal Creek Watershed Coalition on Site Specific Standards Update on Coal Creek Regarding Mt. Emmons Mining Company (MEMC).

6:20 2) Update from Legal Counsel on Mt. Emmons.

7:00 3) Ordinance No. 12, Series 2016 - An Ordinance of the Crested Butte Town Council Amending Chapter 6 of the Crested Butte Municipal Code to Include New Regulations in Article 6 Thereof for the Licensing of Vacation Rentals and Making Such Other Recommended Changes to the Code in Connection Therewith.

9:00 **ADJOURNMENT**

J. D. BELKIN & ASSOCIATES, LLC

ATTORNEYS AT LAW
 Whiterock Professional Building
 502 Whiterock Avenue, Suite 200
 P.O. Box 2919 (U.S. Mail Stop)
 Crested Butte, Colorado 81224
 Direct: 970.349.6698
 Facsimile: 970.497.4401
 www.jbelkinlaw.com

John D. Belkin, Esq.
 E-mail: jbelkin@jbelkinlaw.com

MEMORANDUM

***** Non-Attorney - Client Privileged and Confidential Communication*****

TO: Town Council

FROM: John D. Belkin, Town Attorney
 Barbara Green, Sullivan Green Seavy

CC: Dara MacDonald, Town Manager
 Michael Yerman, Director of Planning

DATE: November 10, 2016

RE: **STATUS UPDATE: Mt. Emmons Mining Company Transactions**

- Attached are the current drafts of the withdrawal legislation prepared by Senator Bennett's office in conjunction with the Office of Legislative Counsel; the map of the proposed withdrawal area prepared by Freeport-McMoRan Inc. and Mt. Emmons Mining Company ("**MEMCO**"); and the MOI and MOU previously approved by the Town Council.
- During the presentation by Barbara Green and I during the Town Council meeting on Monday night, we will present and discuss with you the following topics:
 - ✓ The withdrawal legislation, what it is designed to accomplish, the status of the same and how it relates back to the terms of the MOI.
 - ✓ The map, what it reflects, how it connects to the withdrawal legislation and how it also relates back to the terms of the MOI.
 - ✓ The MOU, specifically the creation of site-specific standards by MEMCO and the other stakeholders, and the status of this effort.

*****Non Attorney - Client Privileged and Confidential Communication*****

Town Council

RE: STATUS UPDATE: Mt. Emmons Mining Company Transactions

November 10, 2016

Page 2

- ✓ The upcoming triennial review rulemaking for the basin in June of 2017 and how that relates to site-specific standards and the terms of the MOU.
- Please call me before the town Council meeting if you would like to discuss any of these matters in advance of Monday night, otherwise we can discuss the same during the Town Council meeting.

Encls./4

*****Non Attorney - Client Privileged and Confidential Communication*****

1 Title: To withdraw certain Federal land and interests in land from location, entry, and patent
2 under the mining laws.
3
4

5 Be it enacted by the Senate and House of Representatives of the United States of America in
6 Congress assembled,

7 SECTION 1. SHORT TITLE.

8 This Act may be cited as the “Mount Emmons Withdrawal Act of 2016”.

9 SEC. 2. DEFINITIONS.

10 In this Act:

11 (1) FEDERAL LAND.—The term “Federal land” means—

12 (A) the Federal land and interests in land generally depicted on the Map as within
13 the [_____] Federal Lands Withdrawal Area; and

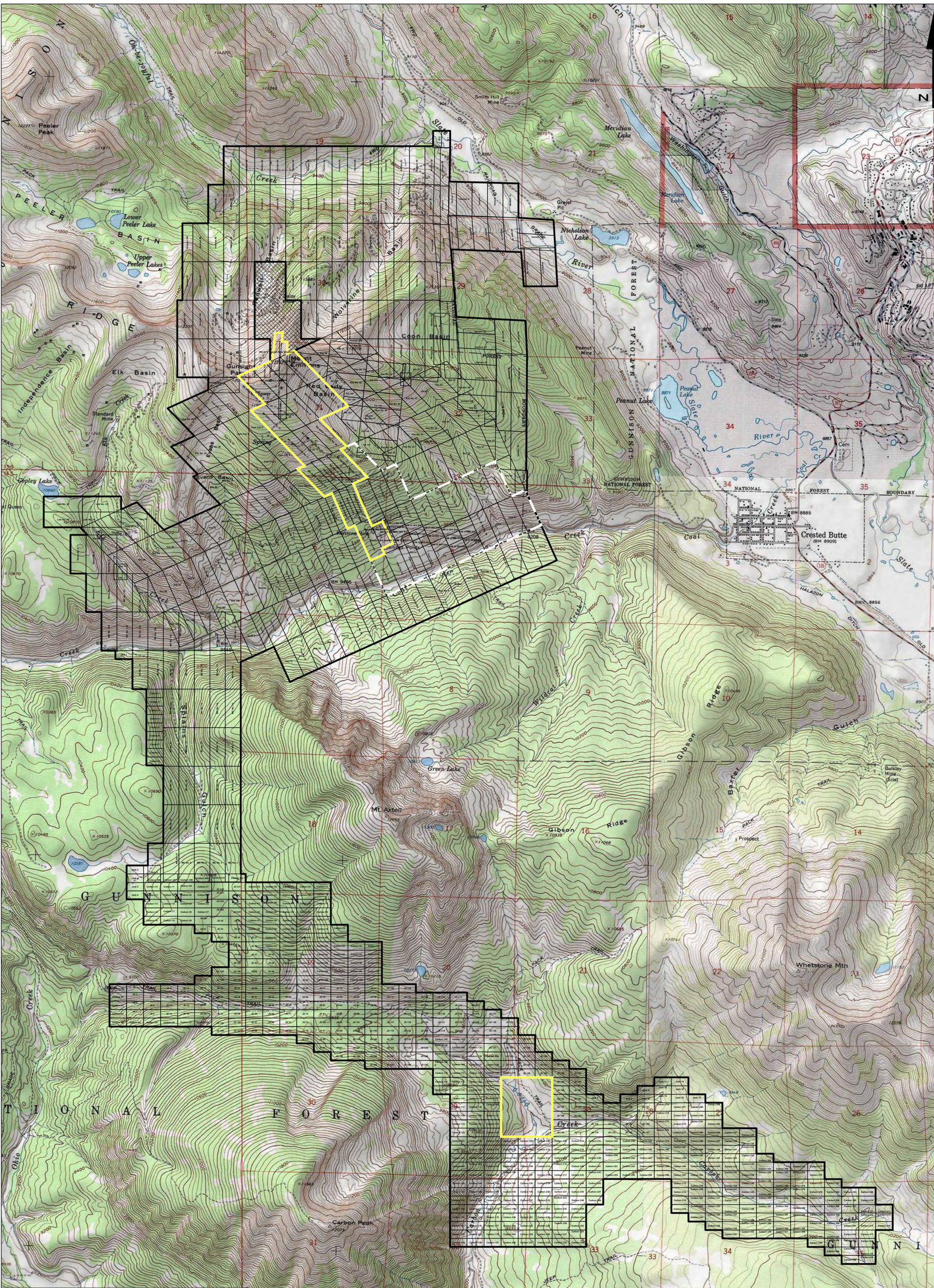
14 (B) any land or interest in land generally depicted on the Map as within the
15 [_____] Federal Lands Withdrawal Area that is acquired by the United States
16 after the date of enactment of this Act.

17 (2) MAP.—The term “Map” means the map entitled “[_____] Federal Lands
18 Withdrawal Area” and dated [_____] , 2016.

19 SEC. 3. WITHDRAWAL.

20 (a) In General.—Subject to valid existing rights, the Federal land is withdrawn from all forms
21 of location, entry, and patent under the mining laws.

22 (b) Availability of Map.—The Map shall be on file and available for public inspection in the
23 appropriate offices of the Bureau of Land Management and the Forest Service.



MEMC Discussion Draft - 11-02-2016

- Patented / Fee Lands
- Unpatented Claims to be Retained
- Lands Owned By Others
- Unpatented Claims



MEMORANDUM OF INTENT - MT. EMMONS

September __g 2016

This Memorandum of Intent (“**MOI**”) memorializes the understandings between Mt. Emmons Mining Company (“**MEMC**”), a wholly owned subsidiary of Freeport-McMoRan Inc. and the Town of Crested Butte, Colorado (the “**Town**”); the Town and MEMC collectively, are referred to as the “**Parties**”).

The purpose of this MOI is to serve as a basis for future cooperation and agreement among the Parties on the matters addressed herein.

This MOI is entered into in furtherance of the Memorandum of Understanding for Mt. Emmons (Mt. Emmons Project) dated February 12, 2016 (“**MOU**”), and in particular, bullet No. 5 thereof stating the Parties’ intentions to: “[p]ursue disposition of the mining and mill site claims . . . in a mutually beneficial way.” According, the Parties agree as follows:

- MEMC currently holds, is maintaining and devoting resources to certain unpatented mining and millsite claims under the 1872 General Mining Law located on and around Mt. Emmons, for which the Parties are willing to entertain a transaction by which MEMC would dispose of the claims on terms agreed to by the Parties for the sum of \$2,000,000.00.
- The Town is proceeding to prepare and submit to the Gunnison County election official a proposed ballot measure to be decided at the November 2016 general election to generate the funds needed to further the disposition of the mining and millsite claims.
- If the ballot measure is successful, MEMC and the Town shall at that time engage in further negotiations to complete a disposition of the mining and millsite claims for \$2,000,000.00.
- Simultaneously, the Parties will work collaboratively with the federal administration and legislative delegation on an administrative and/or legislative withdrawal of the lands on and around Mt. Emmons from future location of mining claims under the 1872 General Mining Law, which action is advantageous to both Parties.

The Parties recognize that this MOI is only a first step in a long-term relationship. The Parties commit to working together to achieve agreements to address the actions listed above in more specificity.

The Parties do not intend this MOI to have any effect on the past, present or future liability of MEMC or any other related entity, as no such liability has been determined as a matter of law and none is to be implied by or inferred from this MOI. The Parties intend this MOI to describe the concepts for future discussion concerning the contemplated disposition of the mining and millsite claims. This MOI lacks requisite material terms and binding obligations; it is a guide for drafting and negotiating necessary material terms moving forward.

This MOI shall not be the basis for a non-cooperative legal action or vehicle for enforcement. Further, no person that is not a party to this MOI may rely on any provision of this MOI for any purpose.

[Remainder of Page Intentionally Left Blank;
Signature Page(s) to Follow]

Signed (see following pages for signatures):

William Cobb
Vice President
Mt. Emmons Mining Company

Glenn Michel
Mayor
Town of Crested Butte, Colorado

WR Cobb

9/8/2016

William Cobb
Vice President
Mt. Emmons Mining Company

Date

Glenn Michel

9-8-16

Glenn Michel

Date

Mayor

Town of Crested Butte, Colorado

MEMORANDUM OF UNDERSTANDING FOR MT. EMMONS

Mt. Emmons Project

February 12, 2016

This Memorandum of Understanding ("MOU") memorializes the understandings between Mt. Emmons Mining Company ("Mt. Emmons"), a wholly owned subsidiary of Freeport-McMoRan Inc., and the local and state government parties ("Government Parties") listed below (collectively, the "Parties") should Mt. Emmons acquire the Mt. Emmons Mine Site, including the historic Keystone Mine and the existing water treatment plant ("Plant") (collectively, "the Site") from U.S. Energy Corp. ("USE").

The Government Parties the Colorado Department of Public Health and the Environment ("CDPHE"), its Water Quality Control Division ("WQCD") and Air Pollution Control Division ("APCD"), Colorado Department of Natural Resources ("DNR"), its Division of Reclamation Mining and Safety ("DRMS") (collectively, "State Agencies"), Gunnison County, Colorado (the "County"), and the Town of Crested Butte, Colorado (the "Town").

The purposes of this MOU are to protect the public health, safety, welfare and the environment, and to serve as a basis for future cooperation and agreement among the Parties on the matters addressed herein.

The Government Parties will assist Mt. Emmons in identifying and supporting cost effective solutions at the Site to ensure on-going protection of public health, safety, welfare and the environment, in exchange for other considerations given in this MOU.

Mt. Emmons has agreed as a goodwill measure to voluntarily pre-fund by escrow or other suitable mechanism the first two years of contractor labor costs at the treatment plant (based on the annual operating budget of approximately \$1 million) following the transition of site ownership to Mt. Emmons. Monthly invoices will be paid from the escrow account or other equivalent.

The Parties intend to mutually work to achieve the following:

- Support Mt. Emmons in acquiring the Site and assist in ensuring compliance with all applicable environmental laws and regulations.
- Find and implement technical solutions to the environmental issues at the site.
- Discuss long-term funding for environmental issues at the Site.
- Transfer any federal, state, and local permits and authorizations from USE to Mt. Emmons as soon as practicable after transfer of the Site.
- Pursue disposition of the mining and mill site claims and fee simple lands in a mutually beneficial way.
- Collaboratively work to develop site-specific water quality standards for Coal Creek that may include monthly technical meetings with interested Parties.
- Continue the current administrative extension of the Colorado Discharge Permit System discharge and stormwater permits until after a final decision is issued by

the Water Quality Control Commission in the June 2017 Gunnison Basin Rulemaking proceeding.

- Work with the federal legislative delegation on any mutually acceptable legislation required to implement long term solutions.

The Parties recognize that this MOU is only a first step in a long-term relationship. The parties commit to working together to achieve further agreements to address the actions listed above in more specificity.

The Parties do not intend this MOU to have any effect on the past, present or future liability of Mt. Emmons or any other related entity, as no such liability has been determined as a matter of law, and none is to be implied by or inferred from this MOU. Rather, Mt. Emmons has been proactively cooperating with the Government Parties to ensure sustained operation of the Plant and appropriate management of ancillary environmental issues described in this MOU. Consequently, this MOU should be read to reflect that the actions of Mt. Emmons are voluntary and not compulsory, and the Parties intend this MOU to facilitate a public-private partnership focused on addressing the issues in the manner described in this MOU.

This MOU is intended as a measure of good faith and fair dealings between the Parties and as a basis for long-term cooperation in furtherance of future agreements. The Parties do not intend this MOU to be, and shall not be, the basis for a non-cooperative legal action or vehicle for enforcement. Further, no person that is not a party to this MOU may rely on any provision of this MOU for any purpose.

Signed (see following pages for signatures):

William Cobb
Vice President
Mt. Emmons Mining Company

Larry Wolk, MD, MSPH
Executive Director and Chief Medical Office
Colorado Department of Public Health and Environment

Bob Randall
Executive Director
Colorado Department of Natural Resources

Glenn Michel
Mayor
Town of Crested Butte, Colorado

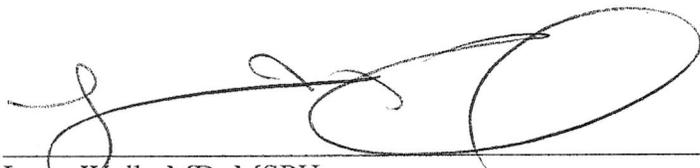
Paula Swenson
Chairperson
Board of County Commissioners of the County of Gunnison, Colorado

WR Cobb

3/2/16

William Cobb
Vice President
Mt. Emmons Mining Company

Date



3/2/16

Larry Wolk, MD, MSPH
Executive Director and Chief Medical Office
Colorado Department of Public Health and Environment

Date



Feb. 29, 2016

Bob Randall

Date

Interim Executive Director

Colorado Department of Natural Resources

Glenn Michel

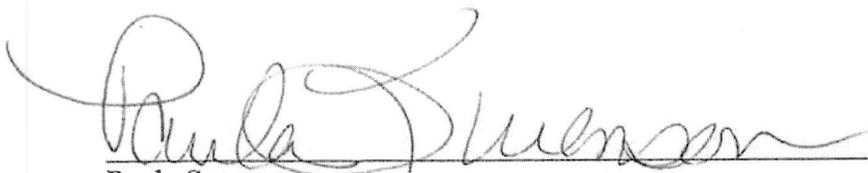
3-1-2016

Glenn Michel

Date

Mayor

Town of Crested Butte, Colorado



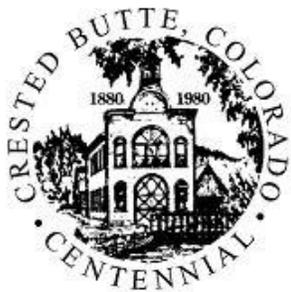
3/1/16

Paula Swenson

Date

Chairperson

Board of County Commissioners of the County of Gunnison, Colorado



Staff Report November 14, 2016

To: Mayor and Town Council
Thru: Dara MacDonald, Town Manager
From: Bob Gillie, Building and Zoning Director
Subject: **Ordinance #12, Series 2016, Licensing of Short Term Rentals**
Date: November 11, 2016

Summary: The Short Term Rental (STR) discussion has been ongoing for over a year and a half. It is a topic of discussion for many jurisdictions. The staff with guidance from the Short Term Rental Committee recommendations and direction from the Town Council has developed Ordinance #12, Series 2016 for consideration for first reading at the November 14, 2016 special Council meeting.

Previous Council Action: On September 26, 2016 the Town Council held a special meeting to consider the recommendations of the Short Term Rental Committee. A presentation was given by Alex Fenlon, the chair of the committee. The committee made 14 recommendations which the Council discussed. The Council was largely okay with the provisions that dealt with the licensing and rule set associated with the licensing. The Council also discussed the imposition of limits on the number of STRs in Town. There was some support on the Council for limits if full time residents were excluded from the caps. It was also clear that there was an element of the audience that was not in favor of limiting the number of licenses in Town.

On October 17, 2016 an initial draft of Ordinance 12, 2016 was presented to the Council for discussion. At that time the Council discussed elements of the draft ordinance. Issues included licensing length, transfer of licenses, scope of licensing officials powers, and the requirement of a placard on the property. Public input was allowed. The Council also took a straw poll vote on limiting the number of STRs and the outcome was that there was a lack of support on the Council for limits. No public input was solicited on this item.

Discussion: Attached to this memo is a revised version of Ordinance 12 which incorporates some of the discussion points from October 17th. Also included are maps and tables outlining the location, number and zones of the BOLT licensed STRs as of November 10th. Note that in spite of the lack of a moratorium or cap discussion the number of STRs continues to increase. Since the October meeting, the number of STRs has increased from 242 to 252 and risen to 27% of the non-deed restricted housing units from 26%. In May this number was 18.5%

Following is a review of the Short Term Rentals Committees recommendations and how they have been accommodated into the ordinance with commentary.

1. There should be a limit placed on the number of STRs as a percentage of non-deed restricted housing units. The limit should be placed by zones and grouping of zones with some zones being not available for STRs. That grouping should be:
 - Category 1- Historic Residential and mixed use zones: R1C, R2C, R3C, B3 and B4. A maximum of 25% of non-deed restricted residences in these zones collectively may have STR licenses.
 - Category 2 - Non-historic Residential Zones: R1, R2, R1A, R1B, R1D R1E, and R4. In the M zone and blocks 55 and 37 of the T zone only short term rentals limited or short term room rentals are allowed. A maximum of 20% of the non-deed restricted residences in these zones collectively may have licenses.
 - Category 3- Commercial zones, Deed Restricted Zones and Public/open space zones: T (with the exception of blocks 55 and 37), B1, B2, C, AO, P, R2A. STRs are not allowed in these zones with the exception of those which are licensed as of the adoption date of this ordinance.

All STRs which have a BOLT license as of the date of the adoption of this ordinance may continue to be licensed until such time as the license lapses or is revoked. If no renewal is received in the time specified in a given year, no sales tax is paid in the prior year or a change in ownership takes place a lapse of the license will result. Change of ownership shall be defined as transactions that are subject to the RETT. Attempts to evade change of ownership registration through the use of corporate or other entities shall be cause to revoke the license

The different zone categorization is not included in Ordinance 12. The limitation cap also is not in the ordinance. Without the cap the zone differentiation did not have as much impact with regard to where STRs were more appropriate. Whether the Council wishes to make some differentiation by zone has not been definitively decided. Without the caps the zone categories would effectively become two areas, those zones where it is allow and those zones where it is not allowed. In the committee's recommendation those zones that were excluded were zones where new free market residential units are not allowed and where there is a likelihood of conflicts of use with existing uses, such as light industrial uses or bars. In Ordinance 12 the placement of STRs is addressed by Section 6-6-40 which allows STRs in all locations that allow residential uses provided the unit does not have restrictions that require other uses or prohibit it. There is no zoning component.

The grandfathering of BOLT licensed STRs is also not in the ordinance. Without caps grandfathering does not make much sense. If some zone differentiation is desired the Town would have to deal with existing BOLT licensed properties in restricted zones.

The time limit on renewals, the lack of sales tax paid in the previous year or change of ownership were related to reasonable requirements for licensing and administration. There is no specified time for licensing in the ordinance. There is a provision that sales tax be paid (6-6-100) but there is not a denial of licensing provision. The change of ownership

requirement is in 6-6-90 and is intended to keep records current not deny licensing at this point however current ownership of the property would be required to license (6-6-60).

2. Definitions should be enacted to define the different types and impacts of the STRs.
 - Short Term Rental unlimited: A residence available for rent for terms of less than 30 days, more than 60 days a year.
 - Short Term Rental limited: A primary residence* available for rent for terms of less than 30 days, but no more than 60 days total per year.
 - Short term room rental: A primary residence* where no more than two rooms are rented for terms of less than 30 days for an unlimited number of days per year. (The rental of more than 2 rooms in any residence shall be defined as a bed and breakfast and subject to the conditional use provisions and process outlined in the Crested Butte municipal code (16-8).

*A primary residence is defined as the location where a natural person resides for the majority of the year and where the person is registered to vote.

The vacation rental types still exist in 6-6-30 but without the primary residency requirements in the limited and room rental categories. Their existence now is related to tracking the impacts of different kinds of STRs and provide a method to differentiate on licensing fees if desired.

3. A STR license should be created above and beyond the BOLT license and should be renewable annually.

This is the purpose of this ordinance. The annual renewal is included in section 6-6-60 although the term proposed is two years.

4. Failure to license prior to advertising, renting or renting of a property contrary to licensing requirements should be subject to a significant penalty (A fine of \$2000 and loss of right to license a STR in that location for three years).

The failure to license language is included in 6-6-50. The monetary penalty is not specified and the loss of license is now one year. Penalties for non-compliance with the ordinance are the standard penalties outlined in Chapter 1, Article 4 of the municipal; code (6-6-200 a). The original language was more specific with regard to advertising which would be easier to track.

5. The license fees should be increased to fund a full time employee to inspect and regulate STRs and cover all costs related to the administration and regulation of STRs.
 - Short Term Rental unlimited: \$1000 per year.
 - Short Term Rental limited: \$500 per year.
 - Short Term Room rental: \$250 per room per year.

The hiring of an employee is a budget matter as is the fee schedule for the licenses. It is anticipated that both of these will be authorized although the definitive fees have not

been set. It is unlikely that this will be determined by the time the 2017 budget is adopted so there will likely have to be a subsequent resolution to address the budget issues if the regulations go forward.

6. The licensing requirements and form should be created to collect information regarding the impact and nexus between STRs and affordable housing.

This is not in the ordinance because it is administrative in nature but the staff would anticipate moving forward with this during licensing.

7. All STRs should have a local contact being capable of physically responding to issues within a 1 hour time limit.

This is in section 6-6-150 in the ordinance.

8. All STRs should be assigned a distinct number that is displayed on a placard placed in each STR and in all advertisements for the property. The placard should be visible to neighbors and display the local contact information.

The distinct number is addressed in 6-6-160. The advertising must display the number but the placard has not been included.

9. A STR section of the Town's web site should be created that lists all rules and maps the location of all STRs and their contact information.

This is administrative in nature and the staff would anticipate enacting it unless directed otherwise. There has been some concern with regard to the making of mapping on all STRs available to the public for the same reason that there was resistance to the placard. The reason being that it is thought to be an aid to criminal activity. This has not been an issue to this point and is counter to the neighbor's right to know the location of STRs and to find contact information. The ordinance does have section 6-6-70, c. which requires notification of all neighbors prior to licensing and renewal by the applicant.

- 10 . The maximum occupancy of any STR is 10 people. The occupancy may be adjusted as a result of a physical inspection of the property. The basis for the occupancy determination will be based upon two occupants per legitimate bedrooms plus two additional occupants. An increase above 10 must provide an on-site parking space for each four persons or part thereof in addition to the other parking required in item 11.

This is in Section 6-6-180 of the ordinance.

11. All STRs must have all the off street parking that was approved with the property in place and usable year round.

This is in Section 6-6-180 of the ordinance.

12. Information should be provided to all STR renters that inform the renter regarding:
- Winter and summer parking rules
 - Local contact information
 - Refuse and recycling pick-up (including bear proof issues)
 - Dog leash laws and poop pick-up provisions
 - Wood stove operation if applicable
 - Noise restrictions
 - Fire extinguisher locations

This is in Section 6-6-190 of the ordinance. The list is not in the ordinance but is implied and subject to change by the licensing official.

13. STRs should be inspected bi-yearly (once every two years) or prior to issuance of a new license. The inspection should inspect:

Safety items

- Fire and smoke alarms
- Carbon monoxide detectors if applicable
- Egress from sleeping units and residence
- Fire extinguishers
- Handrails
- Address in place and visible
- Obvious hazards related to electric and mechanical systems

Licensing items

- Availability of off street parking
- Placard in place
- Information for occupants in place
- Review of occupancy limit based on bedrooms

The bi-annual inspection is included in Section 6-6-120. The list is not in the ordinance because it is subject to change as building codes and requirements change. The previous ordinance had a section 6-6-100 which has been removed. It allowed the licensing official to develop reasonable terms and conditions. To protect the public health, safety and welfare and to obtain compliance with the requirements of this code. The language in section 6-6-130 allows the licensing official to administer and enforce the requirements of this Article and the Code.

14. Provision for appeal of revocation of license should be enacted.

This is addressed in section 6-6-80 of the ordinance.

Many of the recommendations of the committee have been addressed in the ordinance. The primary exclusions are the limitation on leasing and its tie to certain zones. Also the removal of the placard from properties is contrary to the recommendation.

Regulations related to the timing of implementation, January 1, 2018 (6-6-20) and other administrative elements are included in the ordinance.

One new inclusion in the ordinance is how to deal with the “Limitation on Leasing” in 16-14-90 of the existing code. You will find the existing provision attached. Section 2 of the ordinance deals with this issue. There are several ways to deal with this.

1. Leave it alone and not amend. This option would leave incongruities between Chapter 16 and the licensing provision in Chapter 6.
2. Delete the section entirely. This would leave the regulation of STRs entirely with the licensing provisions in this ordinance in Chapter 6.
3. Amend the zone list, assuming there is a zoning component (see item 1 above), to be consistent with the licensing provisions and let the licensing provisions provide direction.

Implicit in this decision is whether the control of STRs is a zoning land use issue or a licensing issue or both.

Council Decision Points:

The Council, at this meeting, should decide whether there are places or zones within the Town where STRs should not be allowed or limited. This decision would affect Section 6-6-40 and 16-14-90.

The Council should reaffirm that they do not want to impose any numeric limitation on the number of STRs either by zone or in the Town as a whole.

The Council should decide how they wish to deal with section 16-14-90.

The Council should identify any other provisions in the ordinance that they have questions regarding and any changes they would like to make to the ordinance.

Recommendation: The Town Council should set the public hearing for Ordinance Number 12, Series 2016, with any pertinent changes, either at the November 21st or the December 5th meeting.

The Town Council could also choose to continue the first reading of Ordinance Number 12, Series 2016 to one of the above dates.

ORDINANCE NO. 12**SERIES 2016****AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 6 OF THE CRESTED BUTTE MUNICIPAL CODE TO INCLUDE NEW REGULATIONS IN ARTICLE 6 THEREOF FOR THE LICENSING OF VACATION RENTALS AND MAKING SUCH OTHER RECOMMENDED CHANGES TO THE CODE IN CONNECTION THEREWITH**

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

WHEREAS, on September 26, 2016, the Chairperson of the Crested Butte Short-Term Rental Committee (the “**Committee**”) presented to the Town Council during a Special Meeting a Town Staff Report regarding the Committee’s findings and recommendations respecting the impacts of short-term rentals (a/k/a “**vacation rentals**”) of residential structures and the regulation thereof in Crested Butte;

WHEREAS, during such Special Meeting, after presenting the Committee’s findings as detailed in the Town Staff Report, the Committee and Town Staff made 14 recommendations regarding the Town’s regulation of vacation rentals of residential structures;

WHEREAS, the Committee’s recommendations addressed neighborhood impacts, community impacts and process regarding the regulation of vacation rentals of residential structures;

WHEREAS, the Committee’s recommendations also addressed the adoption and implementation a vacation rental licensing program directed toward ensuring the health, safety and welfare of the residents and visitors of Crested Butte through the licensing of vacation rentals of residential structures;

WHEREAS, the Committee’s recommendations contemplated that a collateral benefit of implementing a vacation rental licensing program would be the collection of vacation rental of residential structures use data to determine the impact of vacation rentals on neighborhoods;

WHEREAS, the Town Council, after hearing the presentation by the Committee, and receiving informal public comment from the community at the September 26 Special Meeting, finds that adopting a vacation rental licensing program that will ensure the health, safety and welfare of the residents and visitors of Crested Butte through the permitting of vacation rentals of residential structures is in the best interest of Crested Butte, its residents and visitors alike; and

WHEREAS, for the foregoing reasons, the Town Council hereby finds that the

amendments to the Town of Crested Butte Municipal Code (“**Code**”) set forth herein below are in the best interest of Crested Butte, its residents and visitors alike.

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

Section 1. Adding a New Article 6 to Chapter 6 of the Code. A new Article 6 is added to Chapter 6 of the Code and shall read as follows:

“Vacation Rental Licenses

Sec. 6-6-10. Purpose.

The purpose of this Article shall be to require the licensing of residential structures used as vacation rentals by transients. Such licensing shall provide the Town with necessary information relating to the operation of residential structures used for vacation rentals in order to protect the health, safety and welfare of the residents and visitors of Crested Butte.

Sec. 6-6-20. Effective Date.

This Article shall be effective commencing on January 1, 2018, and shall govern all applications submitted to the licensing official for the licensing of vacation rentals. Prior to such date the owner of an existing vacation rental must make application for a vacation rental license as described herein. Any property operated as a vacation rental after such date without a vacation rental license shall be in violation of this Article.

Sec. 6-6-30. Definitions.

Licensing official means the Town building official or such other officers as designated by the Town Manager.

Vacation rental means a residential structure leased or rented by transients for a period of less than 29 consecutive days in duration. Vacation rentals do not include bed and breakfasts, condo hotels, hotel or lodges, motels or short-term residential accommodations as defined in this Code.

Vacation rental type includes:

- (1) **Vacation Rental Unlimited:** a residential structure available for lease or rent for terms of less than 29 days for unlimited days in any calendar year.
- (2) **Vacation Rental Limited:** a residential structure available for lease or rent for terms of less than 29 days, but no more than 60 days total in any calendar year.
- (3) **Vacation Rental Room:** a residential structure where no more than two rooms are rented for terms of less than 29 days for an unlimited number of days in any calendar

year and that serves as a residence for one or more persons.

Sec. 6-6-40. Vacation Rentals Allowed.

Vacation rental licenses may be issued only where residential occupancy is permitted in the proposed vacation rental premises, provided that the issuance of any such license may not frustrate any limitation on use of the proposed vacation rental premises such as a deed restriction or other covenant.

Sec. 6-6-50. License Required; Compliance.

(a) It shall be unlawful and a violation of this Article for any person to use any residential structure 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) Any property found to be operating a vacation rental without a license after January 1, 2017 shall be ordered to cease such activity and will be denied a license for a period of one year.

Sec. 6-6-60. Application.

Application, whether initial or for any renewal, for a vacation rental license shall include the vested title property owner's name and address, property address, maximum occupancy of lease or rental guests, owner representative and contact information, parking plan for guests, acknowledgement of payment of all taxes and be accompanied with the required application fee, whether initial, renewal or transfer, by vacation rental type. The vested title property owner shall be the licensee for the vacation rental license. Application fees shall be set by annual resolutions of the Town Council. Vacation rental licenses shall have a term of two years and, subject to the requirements of this Article, may be renewed annually for an additional two-year term after such term.

Sec. 6-6-70. Issuance and Renewal.

(a) Applicant may appeal the licensing official's decision to issue, issue with conditions, renew, renew with conditions, suspend, revoke or deny the vacation rental license. Such appeal shall be filed with the Town Clerk in writing within 15 days of the licensing official's decision being appealed and shall be heard by the Town Manager within 30 days of receipt of applicant's appeal. The appeal shall be noticed at the Town's posting places. The Town Manager shall render a decision on the issues appealed within 15 days of the hearing of the appeal. The decision of the licensing official (if not appealed), or of the Town Manager (if appealed), shall be the final decision of the Town for purposes of judicial review.

(b) The licensing official shall deny any application, whether initial or for any renewal, where the application and supporting documentation do not establish the vacation

rental's conformity with the requirements of Code. The licensing official may also deny any application that contains false, misleading or incomplete information, and for good cause shown.

(c) At least 14 days prior to issuing or renewing a vacation rental license, the Applicant shall, in a format provided by the Town, notify all owners of real property within 200 feet of the property that is the subject of the vacation rental license of their opportunity to make comment on the application, whether initial or renewal, for the Town's consideration in such issuance.

Sec. 6-6-80. Suspension and Revocation.

A vacation rental license may be suspended or revoked by the licensing official for failure to comply with this Article. The applicant of such vacation rental license may appeal the licensing official's decision to suspend or revoke the vacation rental license. Such appeal shall follow the process outline in Section 6-6-80 hereof. The suspension or revocation of the vacation rental license shall not be deemed a prerequisite to the institution of enforcement proceedings as described elsewhere in the Code. The proper and timely filing of an appeal with the Town Manager shall temporarily stay the suspension or revocation of the vacation rental license pending the outcome of the appeal before the Town Manager unless the licensing official 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 suspension or revocation in the first instance, in which event a stay shall not enter.

Sec. 6-6-90. No Transfer.

Vacation rental licenses attach only to the property for which they are issued and are non-transferrable upon sale or other transfer of ownership of the vacation license property. Upon such transfer, the new owner of the vacation rental shall apply for a vacation rental license.

Sec. 6-6-100. Lodging and Sales Tax.

The owner of a vacation rental shall cause lodging tax and sales tax to be collected and remitted to the Town.

Sec. 6-6-110. Business Occupation License.

The owner of a vacation rental must possess a current Town business license. The business license must be renewed annually where the owner desires to let the property as a vacation rental. A vacation rental license may be denied or revoked if the owner of the vacation rental does not have a current business license.

Sec. 6-6-120. Bi-Annual Inspection.

All vacation rentals are subject to inspection every other year, or for cause. Vacation rental licenses may be limited, suspended, revoked or not renewed by the licensing official if all conditions and requirements of the vacation rental license and the Code are not met.

Sec. 6-6-130. Administration.

(a) The licensing official shall prescribe forms and make reasonable rules and regulations in accordance with the Code for, without limitation, application requirements, inspect all vacation rentals, verify the capacity and safety of such vacation rentals and administer and enforce the requirements of this Article and the Code in the issuance of all vacation rental licenses.

(b) Applicants must pay their license fee at the time of application, whether initial or renewal.

Sec. 6-6-140. Licensee Duties.

It shall be the duty of the owner of the vacation rental to ensure the following:

(1) Obtain a renewal of the vacation rental license annually, if the property remains a vacation rental.

(2) Cause the vacation rental to comply with the Code continuously and without interruption.

(3) Promptly notify the licensing official upon any change of local contact.

Sec. 6-6-150. 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 within one hour of the initial attempt to contact the vacation rental owner. The local contact must have physical access to the vacation rental and be authorized to make decisions regarding the vacation rental on behalf of the owner.

Sec. 6-6-160. License Number Display.

Every vacation rental license shall be issued a unique number. The vacation rental license number shall be displayed in all advertisements for the rental of the property. Advertisements for the vacation rental shall include any act, regardless of medium, of drawing the public's attention to the vacation rental in order to promote the availability of the vacation rental.

Sec. 6-6-170. Parking Required.

All vacation rentals must keep and maintain off street parking approved in conjunction with any Town land use approval for the vacation rental property and made available for year-round use by vacation rental tenants.

Sec. 6-6-180. Maximum Occupancy.

The maximum occupancy of any vacation rental is 10 people. Occupancy may be adjusted following physical inspection of the vacation rental. The basis for the occupancy determination shall be an allowance of two occupants per legitimate bedroom plus two additional occupants. Any increase above 10 people in a vacation rental shall include an on-site parking space for each four potential 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.

Sec. 6-6-190. Renter Requirements.

Each vacation rental shall prominently display on site and available to all renters the rules and regulations of the Town that apply to the occupancy of the vacation rental. Such information shall include information pertinent to the neighborhood where the vacation rental 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.

Sec. 6-6-200. Violation.

(a) Violations of this Article shall be enforced pursuant to Chapter 1, Article 4 of the Code.

(b) All amounts due and owing the Town in connection with any violation of this Article shall constitute a first priority lien on the vacation rental property and may be collected by any means including by way of those matters addressed in Section 4-8-10 of the Code.”

Section 2. Replacing Section 16-14-90. Section 16-14-90 is hereby deleted in its entirety and replaced with the following new Section that shall read as follows:

“Sec. 16-14-90. Limitation on Leasing.

(a) In the __, __, __, __, ____.... and __ Districts, short-term rentals shall be allowed, provided that the owner obtains a vacation rental license for such use from the Town as required under Chapter 6, Article 6 of the Code.”

Section 3. 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 4. **Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code shall remain valid and in full force and effect. Any provision of the Code that is in conflict with this ordinance is hereby repealed as of the effective date hereof.

[Remainder of Page Intentionally Left Blank;
Signature Page to Follow]

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS __ DAY OF _____, 2016.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS _____ DAY OF _____, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Glenn Michel, Mayor

ATTEST:

Lynelle Stanford, Town Clerk

[SEAL]

Sec. 16-14-90. - Limitation on leasing.

- (a) There shall be imposed a limitation on the short-term rentals of property as herein provided.
- (b) In the "B1" District, no property shall be rented for a period shorter than one (1) month more than twice in any calendar year.
- (c) In the "R1," "R1A," "R1C," "R2," "R2C," "R3C," and "B3" Districts, unlimited short-term rentals shall be allowed, provided that the owner obtains a revocable license for such use from the Town. Such revocable license shall be granted upon a showing of:
 - (1) Adequate parking;
 - (2) Receipt of required business licenses, including the business occupation license tax;
 - (3) Identification of a management contact person or entity within the County;
 - (4) Adequate rubbish storage and removal; and
 - (5) Adequate instruction to tenants regarding solid fuel-burning devices and parking restrictions.
- (d) The terms and conditions of this Section shall not apply to Timesharing, Condo Hotels and Hotels or Lodges, as the same shall not be considered short-term rentals.

(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)

Percentage of Primary Dwelling Units that are Short Term Rentals (by zoning district) 11/10/2016

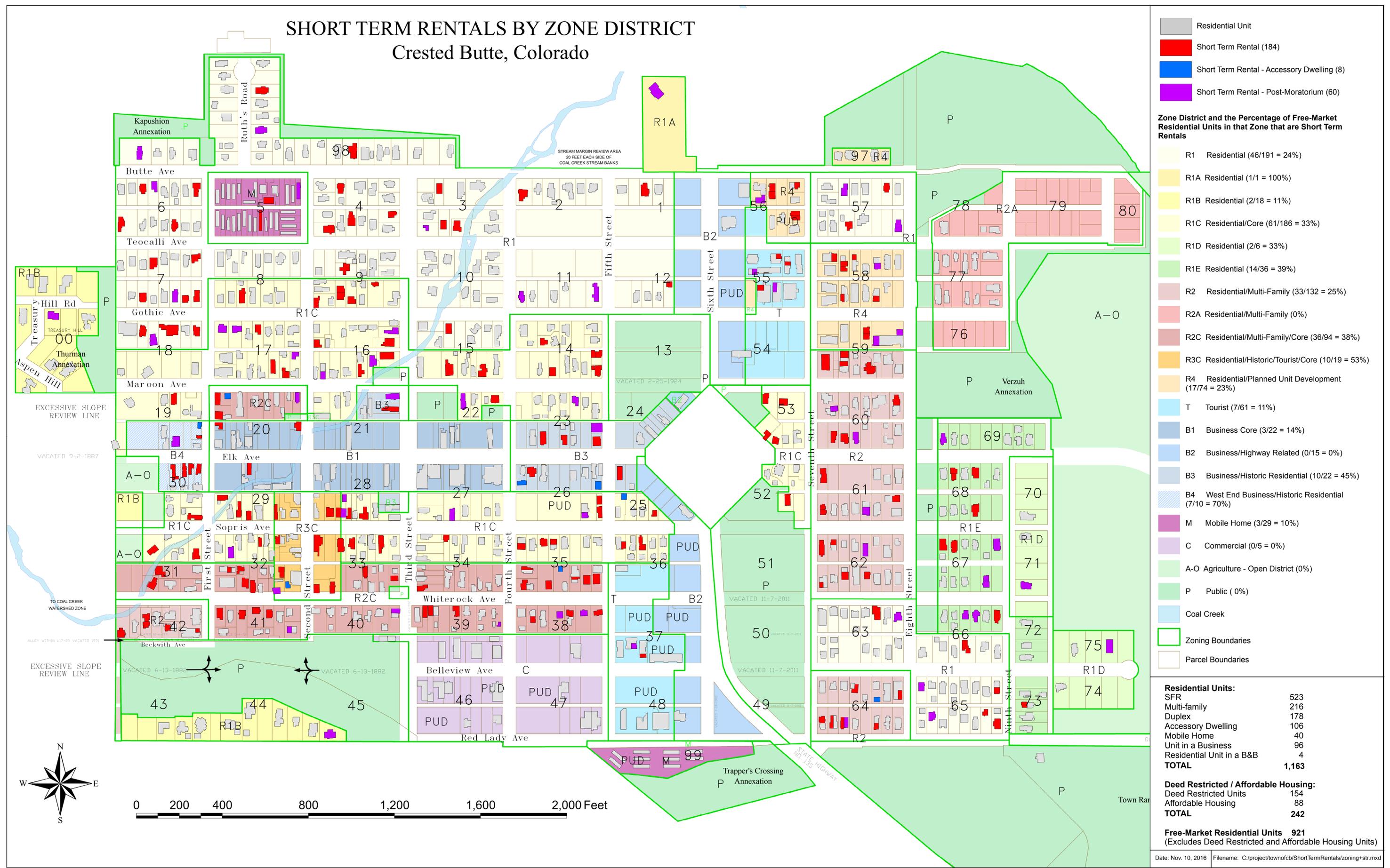
Zone	SFR	ACC_DWELL	DUPLEX	MULTI	MOBILE	CM/RS	B&B	TOTAL	STRs	#DRR	DRR Unit Type	#AH Units	# Free Market Units	% Primary Res. Units that are STRs
R1	180	22	12	0	1	0	0	215	46	19	19 ADU	5	191	24%
R1A	1	0	0	0	0	0	0	1	1	0			1	100%
R1B	18	3	0	0	0	0	0	21	2	3			18	11%
R1C	143	37	22	7	0	1	1	211	61	25	24 ADU, 1 Duplex Unit		186	33%
R1D	6	0	0	0	0	0	0	6	2	0			6	33%
R1E	33	6	10	0	0	0	0	49	14	6	1 SFR, 5 ADU	7	36	39%
R2	26	5	72	35	0	1	0	139	33	7	4 ADU, 3 Duplex Units		132	25%
R2A	5	1	18	0	0	0	0	24	0	1	1 ADU	23	0	0%
R2C	63	20	16	14	0	0	0	113	36	19	19 ADU		94	38%
R3C	15	3	2	0	0	2	0	22	10	3	3 ADU		19	53%
R4	2	0	26	62	0	0	0	90	17	6	6 Multi-units	10	74	23%
T	1	0	0	87	0	9	3	100	7	9	1 SFR, 1 Multi, 7 CM/RS	30	61	11%
B1	10	0	0	0	0	28	0	38	3	16	16 CM/RS		22	14%
B2	0	0	0	8	0	9	0	17	0	2	2 CM/RS		15	0%
B3	11	5	0	0	0	11	0	27	10	5	2 ADU, 3 CM/RS		22	45%
B4	9	4	0	0	0	0	0	13	7	3	3 ADU		10	70%
M	0	0	0	0	39	0	0	39	3	0		10	29	10%
C	0	0	0	0	0	35	0	35	0	30	30 CM/RS		5	0%
A-O	0	0	0	0	0	0	0	0	0	0			0	0%
P	0	0	0	3	0	0	0	3	0	0		3	0	0%
TOTAL	523	106	178	216	40	96	4	1163	252	154		88	921	

PERCENTAGE OF FREE MARKET UNITS THAT ARE SHORT-TERM RENTALS

Non-Historic Residential Zones	118	487	24%
Historic Residential and Business Core Zones	124	331	37%
Entire Town	252	921	27%

SHORT TERM RENTALS BY ZONE DISTRICT

Crested Butte, Colorado



NOTE: This map is not to be used for survey or legal description purposes



LAW OF THE ROCKIES

Members
 Marcus J. Lock
 Jacob A. With
 Kendall K. Burgemeister

Of Counsel
 John R. Hill, Jr.

525 Main Street, Gunnison, CO 81230 | 970.641.1903

Lawoftherockies.com | Fax: 970.641.1943 | mlock@lawoftherockies.com

October 21, 2016

VIA UNITED STATES MAIL

The Town of Crested Butte
 P.O. Box 39
 Crested Butte, CO 81224

VIA EMAIL

The Honorable Glenn Michel, Mayor, Town of Crested Butte
 Crested Butte Town Council
 Crested Butte Town Manager
 Crested Butte Town Attorney

Re: *Proposed Ordinance #12, Series 2016 (the "Proposed Ordinance")*

Dear Mayor Michel, Town Councilors, Town Manager, and Town Attorney:

I am writing to you again on behalf of Crested Butte Owners Supporting Sound Housing Practices, a Colorado unincorporated nonprofit association (the "CB Owners Group"), and in response to the Crested Butte Town Council (the "Council") meeting held on October 17, 2016, during which, the possible short term rental ("STRs") regulations and Proposed Ordinance were discussed.

I. Preliminary Comments

First, I think the Council exercised prudent judgment in eliminating the concept of caps on the number of short term rentals within the Town of Crested Butte (the "Town"). I do not think such a proposal could have been implemented fairly and equitably, and as set forth in my prior correspondence of October 14th, 2016, I believe such a proposal was legally infirm. The October 13, 2016 staff report indicates that of the total number of free market units in town, 26% are short term rentals whereas the May Committee report indicated that "short term rentals . . . represent 15% of the housing stock." This suggests that current percentage has likely been artificially inflated by a "rush" for BOLT licenses motivated, first by the discussion of a

moratorium, and then second by the potential for caps. As these possibilities recede, licensing fees are increased, and health and safety measures are implemented, I believe market forces are likely to reduce the percentage of short term rentals licenses within Town to sustainable and acceptable levels. Moreover, I do not need to belabor to you the significance of the revenue generated for the Town through short term rental properties. This is revenue that can ultimately be used for many of the laudable pursuits on the Council's agenda, such as increasing the stock of affordable housing in Town.

Second, the CB Owners Group believes that the Council and Town staff have acted wisely in eliminating distinctions between locals and second homeowners in the types of vacation rental licenses that would be available under the Proposed Ordinance. Again, as set forth in my prior letter, I think this distinction may have been unconstitutional, and it certainly wasn't fair.

Third, before delving into the specifics of the Proposed Ordinance, I would like to raise one last question: What is the problem the Town is trying to fix with the Proposed Ordinance? As set forth above, before short term rentals became a hot topic before the Council, the percentage of short term rentals within Town did not seem unreasonably high at 15%, and this percentage is lower than many other mountain towns in Colorado based on my research. Furthermore, notably absent from all of the materials that have been produced by the Town and the Committee regarding this issue is any quantified, objective data regarding problems caused by short term rental units within Town. I think everyone agrees that a town consisting entirely of short term rental units would be fundamentally different; I hope everyone can also agree that realistically, this is not going to happen. Respectfully, good public policy is public policy that is based on facts and data, not anecdotes and speculation.

Accordingly, I hope the Council will consider a conservative, cautious approach to this issue. If the Council is going to act at this juncture (and there certainly is no requirement that it do so), perhaps it should start with just raising the fee, implementing health and safety regulations, and then studying the effect of these measures by collecting actual data to subsequently determine whether any additional regulation is necessary.

Right now, however, the Proposed Ordinance appears to go far beyond just raising the licensing fees and health and safety measures. In its current form, the Proposed Ordinance creates significant legal uncertainty for the Town and could still adversely affect the local economy. For example, I understand that the word "transient" is a word of art in community development circles, but it implies a negative connotation; people who rent short term rental properties are "visitors" to or "guests" of our valley, and I hope we both refer to them this way in the Proposed Ordinance, and treat them accordingly. If the Town implements an overly zealous and onerous set of regulations directed at "transient" short term renters, potential visitors are justifiably going to feel unwelcome. These guests are an important part of our economy and provide vital support to property owners and business owners alike. If the Town wants to avoid more "dark houses," I respectfully suggest it tread lightly with its Proposed Ordinance.

The CB Owners Group has the following specific concerns with the Proposed Ordinance.

II. Short Term Rentals Should Be Consistent With Deed Restrictions But Not Necessarily Precluded On Deed Restricted Properties

As currently written, section 6-6-40 would prevent any property with a deed restriction from short term renting any residential unit on the property. I think such a provision would be overly broad, unfair, create uncertainty, and thus give rise to disputes. However, I do not believe this was staff's intent. For instance, as currently drafted, section 6-6-40 would preclude the owner of a residential property with a long term rental deed restriction from short term renting the main residence. Similarly, it would preclude long term leasing of the main unit and short term leasing of the rental unit. Where there are two residential units on the property, either should be eligible for use as a short term rental so long as the other is used to comply with the deed restriction. Staff confirmed this interpretation for me earlier this month. I think the intent of 6-6-40 was to make clear that property owners desiring to short term rent residential units on their property must do so in compliance with any existing deed restrictions encumbering the property. This is fair. I think you could probably just strike everything after the first semi-colon and just provide that "Vacation rentals are allowed in any zone district in the Town where residential occupancy is permitted in the proposed vacation rental premises." Alternatively, if the Town wants to specifically address deed restrictions, then this provision could provide that "Vacation rentals are allowed in any zone district in the Town where residential occupancy is permitted in the proposed vacation rental premises; provided however, that nothing herein shall release a property owner from complying with any deed restriction encumbering his property."

III. Short Term Rental Licenses Should Be Transferrable

As set forth on pages 2 to 3 of my October 14th, 2016 letter (which cited a wealth of authority), it is indisputable that (a) short term rentals are permitted within Town now and (b) such rentals are consistent with residential zoning. Accordingly, depending on the nature and scope of the restrictions the Town implements, existing short term rental properties within Town may be entitled to protection as a nonconforming use. *See Eason v. Bd. Of Cty. Comm'rs or Cty. Of Boulder*, 70 P.3d 600, 605 (Colo. App. 2003) (recognizing that a landowner has a vested and protected property interest in zoning determinations where the landowner has acted in reliance on them); *see also* C.R.S. § 38-1-101(3)(a) (prohibiting a local government from enacting regulation that requires the termination of a nonconforming property use that was lawful at its inception). If a particular use of property constitutes a legal nonconforming use, then such use cannot be eliminated upon the transfer of the property. *See Town of Lyons v. Bashor*, 867 P.2d 159, 161 (Colo. App. 1993) (explaining that nonconforming use runs with the land and thus the mere transfer of the land neither terminates the right to continue the nonconforming use nor constitutes an unlawful extension of the use).

Right now, section 6-6-90 of the Proposed Ordinance provides that vacation rental licenses are non-transferrable, and that the new owner of the property must apply for a new license. If the transferee's application is denied, this denial could violate the property owner's right to continue using the property as a short term rental as a nonconforming use. Furthermore, non-transferability of a short term rental license adversely affects the value of a property. Many

purchasers are counting on being able to continue short term renting the property in making their decision to buy it. It is common for rental histories to be evaluated and factored into the purchase price agreed to by the parties. If, however, the short term rental license is not transferrable, then the property's value as a short term rental will not be factored into the purchase price.

In articulating the reasons for section 6-6-90 at the October 17, 2016 Town Council Meeting, Ms. MacDonald essentially explained that requiring the new owner to apply for a new license would ensure that the new owner is on notice of the rules and regulations governing short term rental properties. I agree that this is important, and it can be achieved by requiring that a notice of transfer of a short term rental license be filed with the Town. But, providing that licenses are nontransferable, and then failing to clearly articulate the reasons why a new license might be denied to the new property owner is a recipe for potential litigation, both for the Town and sellers alike.

IV. The Council Is The Appropriate Body To Develop and Approve *All* Rules and Regulations Governing Short Term Rental Properties

One of the most troubling components of the Proposed Ordinance is the virtually unfettered discretion it would give to the "licensing official." Section 6-6-70 provides that upon application, a license can be issued, issued with conditions, renewed, renewed with conditions, transferred, transferred with conditions, suspended, revoked or denied. *But, it does not say why.* Moreover, section 6-6-140 gives licensing official the ability to make all sorts of rules and regulations including those he or she deems necessary for the "mitigation of negative impacts on the surrounding neighborhood." And, Section 6-6-100 essentially authorizes the licensing official to impose whatever conditions on the issuance of a license that he or she wants. So, a licensing official could make up a rule or condition, and then deny a license for failure to comply with that rule or condition. This would be a quintessential example of arbitrary and capricious conduct. All property owners within Town should be treated equally, and any new short term rental regulations should be applied fairly and consistently. Accordingly, it should be the Council, with public input, that transparently develops the rules and regulations applicable to short term rentals; these rules and regulations should be codified, and the licensing official should be tasked with implementing and enforcing them. So long as a property is compliant with the rules and regulations developed and approved by the Council, the property owner should be entitled to a short term rental license.

V. Miscellaneous Comments

- With respect to section 6-6-60, the CB Owners Group understands the policy behind the Council reserving the right to set fees by annual resolution. However, the group would very much like to know the fees the Town is contemplating imposing for the first year such licenses go into effect.
- Section 6-6-70 includes an appeal provision. However, this provision also should include a sentence providing that any appeal stays the denial or conditions of the licensing

official (unless such denial or conditions are necessary to prevent an immediate threat to the safety of persons or property). The addition of such a sentence would make section 6-6-70 consistent with section 6-6-80, which already includes this provision.

- Section 6-6-120 contemplates the owner of a short term rental being required to have both a short term rental license and a separate business license. If two licenses are really necessary, the CB Owners Group respectfully requests that the Town at least develop a combined application process to minimize duplication and inefficiency.
- With respect to section 6-6-130, the CB Owners Group respectfully suggests that inspections need not be performed every year, or even every other year. It seems that less frequent inspections would be sufficient and minimize the burden of such inspections on Town staff.
- With respect to section 6-6-170, the CB Owners Group respectfully requests that short term rental properties not be required to physically display short term rental license numbers. In addition to being aesthetically displeasing, requiring these placards presents a safety hazard by inviting the potential for criminal activity. The Town, including the Marshall's office, will have a database of short term rental properties and local contact persons. If there is a disturbance or other problem, a neighbor can call the Marshall or the Town, depending on the nature of the issue, and the local contact person can be called.
- Based on the discussion that occurred at the October 17, 2016 Town Council meeting, the CB Owners Group understands that the Town is not intending to impose any new parking requirement through the Proposed Ordinance and that the intent of section 6-6-180 is simply to provide that any off-street parking previously required for a property must actually exist. If this is correct, it may be helpful to reword this provision to clarify that the obligation imposed is only to maintain off street parking for the short term rental property that was "previously required by the Town, if any." In this same regard, the CB Owners Group would appreciate an explanation of the "parking plan" required to be submitted under section 6-6-60 as part of a license application. Reading sections 6-6-60 and 6-6-180 together, the "parking plan" submittal that appears to be contemplated in section 6-6-60 would appear to be simply a confirmation that the applicant is in compliance with section 6-6-180.
- With respect to section 6-6-190, the CB Owners Group respectfully submits that the maximum occupancy should simply be two occupants per legitimate bedroom plus two additional occupants. This accommodates homes within the Town (that have already been approved by the Town) that have more than four bedrooms.

- Section 6-6-200 is reasonable in concept. But, each property should be required to display the same information, and therefore, the CB Owners Group respectfully requests that the Council develop the information to be required and not leave this determination up to the licensing official. Allowing the licensing official to require a different set of disclosure requirements for each short term rental property could result in disparate treatment of short term rental properties.

VI. Conclusion

As you have probably gathered, the overarching theme of these comments (and of my prior correspondence) is that any short term rental restrictions should be fair, should treat each short term rental property similarly, and should be approved by the Council (with public input), and not left to be subsequently developed by the licensing official.

Thank you for the opportunity to comment and for your consideration. The CB Owners Group looks forward to continuing the discussion about the Proposed Ordinance on November 14, 2016 and thanks the Council and Town staff for its hard work in tackling this challenging issue.

Sincerely,



Marcus J. Lock
LAW OF THE ROCKIES

Crested Butte Town Council,

Thank you for the opportunity to weigh in on the STR conversation- although I was on the committee you appointed, I am writing this letter from a purely personal point of view, and this letter reflects only my opinions.

The heart of my interest in this issue is the fact that I, as a resident of Crested Butte, believe that there is a point at which STR's are harmful to the community that I love.

My belief is that without any limits, the financial incentive to buy a house and use it as a business is so strong, our available housing stock is under tremendous pressure from investors looking to profit from the attractiveness of our community. This in turn decreases the likelihood of a future resident- community member- from being able to purchase a house and move here.

The way the STR industry has developed in the last 5 years has changed the game. The CEO of Airbnb accompanied President Obama on his first visit to Cuba. It has become a \$30B company in a matter of a few years. Along with VRBO, they are sending letters to rental owners to come to these meetings! Many cities and towns around the world are coming to grips with how they are being affected, but the main theme is, this exploding industry is impacting the communities it is profiting from in a variety of ways.

If the practice of STR's is allowed without limits, yes, perhaps the market will correct itself, but at what level? If 50% of houses in Crested Butte become businesses, what will this town look like? Or will it stop at 75%?

The recommendations from the committee are moderate, given what other cities are implementing. Some are banning the practice (Berlin, Durango), while others stipulate primary residents only (Denver). I think 3 out of 10 houses is totally reasonable. If there is still demand on the bed base, don't forget that a hotel could also be used to house tourists. I'm sure it is daunting to hear the legality of an ordinance being questioned, but we have an attorney who can give us answers to all of those challenges.

As someone who hopes to continue to raise his kids here and be a part of this community for several decades to come, I, perhaps selfishly, want the chance to have neighbors. Real people who will live here. Maybe they will have kids that my kids will get to know.

I have been asked several times over recent months: "Who are we saving Crested Butte for?" I think the answer is us.

Sincerely,

Alex Fenlon

From: [Betty Warren](#)
To: [Lynelle Stanford](#)
Subject: FW: Proposed Changes to Short-Term Rental Regulation
Date: Friday, November 11, 2016 11:36:45 AM
Attachments: [image001.png](#)

Betty Warren
Deputy Town Clerk
Town of Crested Butte
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224
Phone: (970) 349-5338 x123
Fax: (970) 349-6626
BWarren@crestedbutte-co.gov

From: Walter Gonzales [mailto:wgonzales@homeaway.com]
Sent: Friday, November 11, 2016 11:32 AM
To: Glenn Michel <GlennMichel@crestedbutte-co.gov>; R Mason <RMason@crestedbutte-co.gov>; J Schmidt <JSchmidt@crestedbutte-co.gov>; Chris Ladoulis <CLadoulis@crestedbutte-co.gov>; Paul Merck <pmerck@crestedbutte-co.gov>; Erika Vohman <evohman@crestedbutte-co.gov>; Laura Mitchell <lmitchell@crestedbutte-co.gov>
Cc: Shelley Jansen <sjansen@crestedbutte-co.gov>; Betty Warren <BWarren@crestedbutte-co.gov>
Subject: Proposed Changes to Short-Term Rental Regulation

November 10, 2016

Mayor Glenn Michel
Mayor Pro Tem Roland Mason
Councilmember Chris Ladoulis
Councilmember Paul Merck
Councilmember Laura Mitchell
Councilmember Jim Schmidt
Councilmember Erika Vohman

Re: Proposed Changes To Regulations On STRs

Dear Members of the Crested Butte Town Council,

On behalf of HomeAway, I would like to express our support for reasonable regulations and taxation of short-term rentals (STRs), as well as our concern regarding proposed changes to the draft ordinance restricting where STRs can operate. Previously, the Town Council has rejected attempts to

put artificial caps on where STRs can operate, which would infringe on the property rights of individual homeowners. We believe the Council should continue to oppose efforts that favor one property owner over another and instead advocate for policies that are fair, easy for homeowners to comply with, and support economic growth.

There are some who have advocated for placing artificial and onerous limits on where STRs can be located. This recommendation blatantly and arbitrarily discriminates against the rights of some property owners and limits the economic growth of local communities. Any changes to STR regulations should protect the rights of all property owners, no matter the location of their home or whether they rent a single room or a whole home.

Tourism is a critical part of Crested Butte's economy, and the local vacation rental ecosystem has emerged as a cornerstone of economic development and the health of the local travel and tourism industry. Last year, the Colorado Tourism Office reported a record 77.7 million visitors to the state, spending an all-time high of \$19.1 billion. Increasingly, travelers are choosing locations where they can stay in an STR due to the flexibility and unique experience STRs provide over traditional hotel options. In fact, the availability of these vacation rentals could determine whether a family decides to visit Crested Butte or another town. According to a 2015 Travel Tech and Internet Association [survey](#), "1 in 3 Americans would be less inclined to visit a city if it banned short-term rentals."

What's more, the money these visitors spend directly and indirectly supports jobs, economic development, and government revenues. Given that the 2013 Gunnison County Biennial Citizen Survey found that 88 percent of respondents said job growth was too slow, the council should be doing everything it can to support increased economic activity, not slowing it down.

I applaud the Council's previous rejection of artificial restrictions on STRs and hope it continues down the path of supporting reasonable regulations that encourage growth, protect the rights of all property owners, and support overall economic development. Please let me know if I can be of assistance as the town considers a prudent path forward.

Sincerely,

Walter R. Gonzales

Government Affairs Manager, Southwest Region

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From: [Dara MacDonald](#)
To: [Lynelle Stanford](#)
Subject: FW: PUBLIC HEARING ON SHORT TERM RENTALS (STRs) ORDINANCE
Date: Tuesday, October 25, 2016 10:07:14 AM

From: David Leinsdorf [mailto:david81224@gmail.com]
Sent: Tuesday, October 25, 2016 8:33 AM
To: Glenn Michel <GlennMichel@crestedbutte-co.gov>; mason@crestedbutte-co.gov; J Schmidt <JSchmidt@crestedbutte-co.gov>; Chris Ladoulis <CLadoulis@crestedbutte-co.gov>; Paul Merck <pmerck@crestedbutte-co.gov>; Erika Vohman <evohman@crestedbutte-co.gov>; Laura Mitchell <lmitchell@crestedbutte-co.gov>
Cc: Dara MacDonald <dmacdonald@crestedbutte-co.gov>; Bob Gillie <bobg@crestedbutte-co.gov>; Michael Yerman <MYerman@crestedbutte-co.gov>; Lois Rozman <Loisr@crestedbutte-co.gov>; John Belkin <jbelkin@jbelkinlaw.com>; Marcus Lock <mlock@lawoftherockies.com>; ritaapayne@yahoo.com; stevereep@q.com
Subject: Re: PUBLIC HEARING ON SHORT TERM RENTALS (STRs) ORDINANCE

Dear Mayor Glenn and Town Council,

Many thanks for dedicating the evening of November 14 for the short term rental ordinance public hearing. The Town Council and citizens need an open-ended opportunity to explore in detail how to address this issue that will significantly affect our valley and its economy. All who live, work, visit and invest in our Town have a common interest in avoiding unintended negative consequences.

I write with some suggestions for the draft ordinance.

1. Please give the new short term rental business license a three year term, like vested rights. That will enable property owners to accept reservations years in advance, a necessity for weddings, reunions and other events that are planned years ahead. A three year license would also reduce the administrative burden on Town staff and property owners without compromising the Town's ability to suspend or

terminate a license for violations of the ordinance. A three year license term would not prevent the Town from inspecting a problem property more frequently.

2. Make the license fees proportional to the number of bedrooms. It's reasonable to assume that the amount of Town staff required to inspect a property for ordinance compliance will be generally proportional to the size of the home.

3. For homes with more than five bedrooms, allow occupancy that's at least equal to two persons per bedroom.

4. Allow the unexpired term of a short term rental business license to transfer to a new property owner on condition that:

(a) the seller has strictly complied with all requirements of the license, a strong incentive for compliance,

(b) the new owner signs an agreement to comply with all terms and conditions of the license,

(c) the new owner pays a transfer fee to defray the Town's costs in processing the transfer, and

(d) the parties have complied with the real estate transfer tax ordinance.

Those conditions will ensure Town control and protect residential neighborhoods as well as the reasonable investment based expectations of locals and second homeowners alike.

Thank you for your consideration.

Best regards

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David Leinsdorf, Attorney

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215 Elk Avenue (required for FedEx, UPS, etc.)
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Town Council Members,

Thank you for the opportunity to submit these comments regarding Ordinance #12. We appreciate the time and care that you are taking to ensure this ordinance is enacted properly and fairly.

We would like to make one general comment and several specific ones.

Generally, we think it might be a good idea for the Council to open the meeting scheduled for November 14th by stating exactly what the purpose of this ordinance is. What is the main issue that the Council is trying to address by creating this ordinance? We have heard the Council discuss noise and parking as issues. Are these the main concern? How big are these problems? There has also been discussion about saving the town by keeping it from becoming one big hotel. Is this the main concern? Is it a combination, or is there something else that is driving this ordinance? As we recall, this discussion came out of the discussions regarding affordable housing. While it seems everyone understands that STRs and affordable housing are separate issues, is the affordable housing issue still driving the discussion? Or, is this discussion completely separate?

Perhaps the Council could have a public discussion carefully defining the main issues and concerns that this ordinance is being crafted to address. Understanding these issues may help the community to draft a better ordinance.

Specifically, regarding the draft of the ordinance presented at the 10/17 meeting of the Town Council, we have comments on the following sections of Ordinance No. 12:

6-6-20. Effective Date. We think the proposed January 1, 2018 effective date makes sense because it will give everyone time to adjust to the new regulations and the town time to perform the necessary inspections. We would like to suggest that perhaps licenses could be available 6 or 8 months earlier (free of charge) so that people could apply early and the inspections could be spread across the year.

6-6-30. Definitions. We don't understand the need for several types of Vacation Rentals. We believe that in order to be fair to everyone, there should only be one type of license and that everyone should pay the same amount and be treated the same. This provision as written would make things more complicated. It seems like people could take advantage of the different licenses by purchasing the cheaper one and renting for more than 60 days. How will the 60 day limit be enforced?

6-6-40. Vacation Rentals Allowed. We think that the intent is to keep deed restricted properties from being used as STRs. While we agree with this intent, we think the wording of this section needs to be reworked. We have a deed restriction on our home because we built an accessory dwelling and agreed to the deed restriction. Our deed restriction requires us to rent one of the houses on our property as a long-term rental. We think that the current wording of this ordinance won't allow us to rent the other house on a short term basis. Please fix this by making clear that as long as one of the houses on a lot with a deed restricted accessory dwelling is in the long term rental market, the other can be used as a short term rental.

6-6-60. Application. Before you pass any ordinance, could you please publicly discuss the fees which will be set by a separate resolution? By our math, the suggested fees of \$1,000 per license would raise about \$200,000 per year. Is this the amount that was determined to be necessary to enforce these regulations? It seems to us that administering this program which includes an inspection every other year would cost a lot less than that. Is it necessary to hire a new employee, or could the inspections be contracted out for less?

6-6-110. Lodging and Sales Tax. The way this is currently written, it sounds like the Town collects Lodging tax. We understand that the State collects the Lodging tax (as well as State sales tax, County sales tax, and the RTA sales tax.)

6-6-100. Authority to Impose Conditions. & 6-6-140. Administration. Would it be possible for the Council to adopt a checklist of items that will be inspected? It seems that under these two provisions, the licensing official has very broad latitude to make rules and regulations. We think it would be beneficial for the licensees to have an understanding of what will be inspected prior to the inspection and for the Council to put parameters on the inspections.

6-6-130. Annual Inspection. Would it be possible to have a set period of time for the license holder to fix any issues found in the bi-annual inspection? We think giving the licensee a period of time to fix the issues is more fair than having an official immediately revoke a license.

6-6-170. License Number Display. We have no problem including the license number on our advertising through our website and other mediums. We don't like the idea of having to place a "Scarlett Letter" on our home.

Thank you very much for your consideration.

Sincerely,

Scott Truex and Lisa D'Arrigo
219 Gothic Avenue.