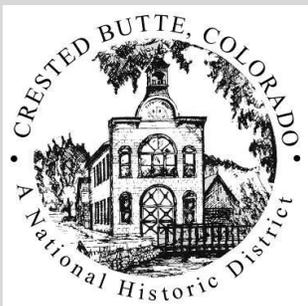


**AGENDA**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, December 4, 2017**  
**Council Chambers, Crested Butte Town Hall**



*Critical to our success is an engaged community and knowledgeable and experienced staff.*

**Town Council Values**

- *Preserve our high quality of Life*
- *Resource Efficiency/ Environmental Stewardship*
- *Support a sustainable and healthy business climate*
- *Maintain a "real" community*
- *Fiscally Responsible*
- *Historic Core*

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

**6:00 WORK SESSION**

1) Update on the East River Water Management Plan.

**6:25** 2) Update by Jenny Birnie from the Center for the Arts on Fundraising and Construction.

**6:45** 3) Update by Jenny Birnie on the Americans for the Arts Economic Prosperity Study.

**7:00 REGULAR COUNCIL MEETING CALLED TO ORDER BY MAYOR OR MAYOR PRO-TEM**

**7:02 APPROVAL OF AGENDA**

**7:04 CONSENT AGENDA**

1) November 20, 2017 Regular Town Council Meeting Minutes.

2) Town Council Regular Meeting Schedule for 2018.

3) Memorandum of Understanding between the Grand Mesa, Uncompahgre, and Gunnison National Forest and the Town of Crested Butte for the designation of the Town of Crested Butte as a Cooperating Agency in the GMUG Forest Plan Revision.

4) Letter to Scott Armentrout, Grand Mesa Uncompahgre and Gunnison (GMUG) National Forest Supervisor, providing comments from the Town of Crested Butte on the GMUG Forest Plan Assessment.

5) Resolution No. 72, Series 2017 - A Resolution of the Crested Butte Town Council Approving a Temporary Easement Agreement with the Crested Butte Limited Partnership.

*The listing under Consent Agenda is a group of items to be acted on with a single motion. The Consent Agenda is designed to expedite Council business. The Mayor will ask if any citizen or council member wishes to have any specific item discussed. You may request that an item be removed from Consent Agenda at that time, prior to the Council's vote. Items removed from the Consent Agenda will be considered under New Business.*

**7:06 PUBLIC COMMENT**

*Citizens may make comments on item not scheduled on the agenda. Those commenting should state their name and physical address for the record. Comments may be limited to five minutes.*

**7:12 STAFF UPDATES**

**7:25 PUBLIC HEARING**

1) Ordinance No. 35, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 4 of the Crested Butte Municipal Code to Include New Provisions Establishing the Affordable Housing Fund and a Tax on Vacation Rentals and Making Such Other Related Changes to the Code in Connection Therewith.

**7:35** 2) Ordinance No. 36, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Release of 1991 Restrictive Covenant for Parking.

**7:40 NEW BUSINESS**

1) Ordinance No. 37, Series 2017 - An Ordinance of the Crested Butte Town Council Adopting Changes and Additions to the 2017 Budget and Appropriations Relative to the Sales Tax Fund and Affordable Housing Fund.

**8:00** 2) Council Member Appointments to Boards and Committees.

**8:20 LEGAL MATTERS**

**8:25 COUNCIL REPORTS AND COMMITTEE UPDATES**

2

**8:35 OTHER BUSINESS TO COME BEFORE THE COUNCIL**

**8:45 DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, December 18, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, January 8, 2018 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, January 22, 2018 - 6:00PM Work Session - 7:00PM Regular Council

**8:50 EXECUTIVE SESSION**

For a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) with an update on ongoing legal matters including Mt. Emmons, ADU litigation, and Brush Creek.

**9:30 ADJOURNMENT**

**MINUTES**  
**Town of Crested Butte**  
**Regular Town Council Meeting**  
**Monday, November 20, 2017**  
**Council Chambers, Crested Butte Town Hall**

Mayor Michel called the meeting to order at 7:00PM.

Council members present to call the meeting to order: Jim Schmidt, Jackson Petito, Chris Ladoulis, Roland Mason, Laura Mitchell, and Paul Merck

Schmidt, Ladoulis, Mason, and Michel were outgoing members.

Council members present to continue the meeting: Jackson Petito, Kent Cowherd, Will Dujardin, Laura Mitchell, and Paul Merck

Staff Present: Town Manager Dara MacDonald, Town Attorney John Sullivan, Community Development Director Michael Yerman, and Parks and Recreation Director Janna Hansen

Town Clerk Lynelle Stanford and Public Works Director Rodney Due (for part of the meeting)

**RECOGNITION OF OUTGOING MAYOR AND COUNCIL MEMBERS**

MacDonald and Stanford expressed appreciation for the contributions of the outgoing Mayor and Council members. Framed pictures of Town were presented to them.

**SWEARING IN OF NEW COUNCIL MEMBERS**

Petito, Cowherd, and Dujardin took the oath of office, and they signed forms of acceptance.

**APPOINTMENT OF MAYOR PRO TEM AND APPOINTMENT OF ACTING MAYOR**

Dujardin nominated Petito to serve as the Mayor until the run-off election determined who won the Mayor's seat. Cowherd agreed. Merck and Mitchell also agreed.

Merck moved and Dujardin seconded a motion to make Jackson Petito Mayor until such time as the run-off and we have awarded the seat to the highest elected official. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

Cowherd moved and Merck seconded a motion to nominate Paul Merck as Mayor Pro-Tem. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

## **APPROVAL OF AGENDA**

Merck moved and Mitchell seconded a motion to approve the agenda. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

## **CONSENT AGENDA**

- 1) **November 6, 2017 Regular Town Council Meeting Minutes.**
- 2) **Resolution No. 68, Series 2017 - A Resolution of the Crested Butte Town Council Supporting the Reauthorization by the General Assembly of the Colorado Lottery Division in 2018.**
- 3) **Resolution No. 69, Series 2017 - A Resolution of the Crested Butte Town Council Authorizing the Town of Crested Butte to Apply for DOLA Energy and Mineral Impact Funding for the Design of the Water Treatment Plant Upgrades 2018.**
- 4) **Resolution No. 70, Series 2017 - A Resolution of the Crested Butte Town Council for the Release and Replacement of Resident Occupied Affordable Housing Guidelines for Unit I, Poverty Gulch Condominiums.**
- 5) **Resolution No. 71, Series 2017 - A Resolution of the Crested Butte Town Council Approving a Lease Agreement for the Rental of Property Legally Described as Unit I, Poverty Gulch Condominiums, Town of Crested Butte, County of Gunnison, State of Colorado with Douglas Collin.**
- 6) **Site Specific Standards Contractor Agreement.**

Merck moved and Dujardin seconded a motion to approve the Consent Agenda as presented. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

## **PUBLIC COMMENT**

None

## **STAFF UPDATES**

Lynelle Stanford

- Asked the Council on which dates they wanted to hold their January meetings, as the first and third Mondays were holidays. The Council decided to meet on January 8<sup>th</sup> and January 22<sup>nd</sup>.
- There would be a public hearing on the transfer of the Talk of the Town liquor license.
- Working on run-off election and master records project.

- Would send a list of boards and committees in advance for the Council to appoint at the next meeting.

#### Rodney Due

- In the process of interviewing for an operator position.
- There were new crew members that would be plowing this year.
- Received the substantially complete letter for the Transit Center.

#### Janna Hansen

- Crews were hoping to start making ice next week at Big Mine.
- Hired an evening Zamboni driver, and she was still looking for one more.
- They had a newer crew blowing the sidewalks.
- Many winter programs were getting started.
- They would be locating bike racks on the backside of the Transit Center.

#### Michel Yerman

- He was anticipating concept review for the Slate River Annexation in January.
- The Brush Creek work session would be next Thursday at 6PM in Council Chambers.
- There were two RFPs posted to the website for duplex construction and architectural services.

#### Dara MacDonald

- There was a vacancy coming in the Finance Department. Interviews would be held next week.
- The Town's holiday party would be Friday, December 8<sup>th</sup>.
- Region 10 was turning focus to Gunnison County. The plan was to complete the carrier neutral location in the Marshal's Office. They would need an additional \$3K in the budget for 2017. The Town would not be a customer and was participating for larger efforts County-wide.

### **PUBLIC HEARING**

#### **1) Ordinance No. 33, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Section 8-1-30 to Modify Regulations Regarding the Use of Snowcats in Town.**

Petito read the title of the ordinance, and he confirmed proper public notice had been given. MacDonald explained changes, such as that the Nordic Center was not limited as to hours. The ending time in the ordinance was 9PM.

The public hearing was opened. There were no comments from the public. The public hearing was closed. There was no further Council discussion.

Mitchell moved and Merck seconded a motion to approve Ordinance No. 33, Series 2017. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

**2) Ordinance No. 34, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Sale of Town-Owned Property Legally Described as Unit I, Poverty Gulch Condominiums, Town of Crested Butte, County of Gunnison, State of Colorado to Douglas Collin for the Sale Price of \$110,525.00.**

Petito read the title of the ordinance and confirmed proper public notice had been given. Yerman explained the background on the unit and the purpose of the ordinance. Douglas Collin thanked the Council for the opportunity to continue living in Crested Butte. There was no one else who wanted to comment. There was no further Council discussion.

Mitchell moved and Merck seconded a motion to approve Ordinance No. 34, Series 2017. A roll call vote was taken with all voting, “Yes.” **Motion passed unanimously.**

**NEW BUSINESS**

**1) Annual Report by the Weed Advisory Board on the Weed Management Plan for the Town of Crested Butte.**

Hansen explained this report was the first and would be occurring annually. They formed a weed advisory board to help guide the plan and help make decisions on best practices for weed management. She listed members of the Weed Board. A shared internship position was created with Gunnison County in partnership with the Town, Mt. Crested Butte, and the Land Trust to manage weeds in all municipalities within the County. Hansen showed a map depicting locations in and around Town where weeds were managed during the 2017 season. The Town would like to pursue a grant application for 2018 weed management. Hansen reviewed goals moving forward. Cowherd asked about ongoing evaluation. Hansen hoped to see results from this year, and ongoing work would be important. The Council gave Hansen a thumbs-up to apply for the grant.

**2) Ordinance No. 35, Series 2017 - An Ordinance of the Crested Butte Town Council Amending Chapter 4 of the Crested Butte Municipal Code to Include New Provisions Establishing the Affordable Housing Fund and a Tax on Vacation Rentals and Making Such Other Related Changes to the Code in Connection Therewith.**

MacDonald stated the ordinance was necessary to enact the vacation rental tax, and she explained the purposes, including that it established the affordable housing fund in the Code. She explained there could be changes to language on the administrative part of the tax. She reviewed specifics to language on uses for the affordable housing fund. Petito questioned the language, specifically, the section stating: “any other purposes allowed by law.” Sullivan viewed the section as being subject to the preceding language. Dujardin suggested rental assistance be included as a purpose of the fund in addition to down payment assistance. MacDonald pointed out the uses could be amended by a future Council by ordinance.

Mitchell moved and Dujardin seconded a motion to set Ordinance No. 35, Series 2017 to public hearing at the December 4<sup>th</sup> meeting. **Motion passed.**

**3) Ordinance No. 36, Series 2017 - An Ordinance of the Crested Butte Town Council Authorizing the Release of 1991 Restrictive Covenant for Parking - 210 Gothic Avenue.**

Yerman reviewed the history of the ordinance as reflected in his staff report. A parking easement was recorded on 210 Gothic and assigned to the Town for the neighboring property at 213 Gothic to operate as a bed and breakfast. Sullivan expounded that the owners of 210 Gothic requested that the easement be released. Both parties agreed upon an alternative easement.

Dujardin moved and Merck seconded a motion to set Ordinance No. 36, Series 2017 to public hearing on December 4<sup>th</sup>. **Motion passed.**

**LEGAL MATTERS**

Sullivan told the Council the attorneys would brief the board in full on December 4<sup>th</sup> in Executive Session.

**COUNCIL REPORTS AND COMMITTEE UPDATES**

Paul Merck

- The Center (for the Arts) would be in front of the Council on the 4<sup>th</sup>. It was business as usual for the winter with programming. Fund raising was continuing. Events and meetings were scheduled in the upcoming weeks. Construction was continuing.

Jackson Petito

- He was on the Gunnison Valley Housing Foundation. The regularly scheduled meeting was changed, and he missed the meeting.

Kent Cowherd

- Attended the RTA meeting.
- RTA was struggling with the compressed natural gas bus.
- There was discussion regarding bad behavior on the busses.

Will Dujardin

- Attended the Chamber's economic forecast and a water management plan meeting in Gunnison.

**OTHER BUSINESS TO COME BEFORE THE COUNCIL**

None

**DISCUSSION OF SCHEDULING FUTURE WORK SESSION TOPICS AND COUNCIL MEETING SCHEDULE**

- Monday, December 4, 2017 - 6:00PM Work Session - 7:00PM Regular Council
- Monday, December 18, 2017 - 6:00PM Work Session - 7:00PM Regular Council

MacDonald reviewed the topics that would be covered in the next work session. Yerman stated there would be a site visit at the Center during the day on the 4<sup>th</sup>.

MacDonald said they were working to schedule an orientation in December with the Department Heads.

**EXECUTIVE SESSION**

Petito read the reason for the Executive Session: for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e) regarding possible property acquisition.

Mitchell moved and Dujardin seconded a motion to go into Executive Session. A roll call vote was taken with all voting, "Yes." **Motion passed unanimously.**

The Council went into Executive Session at 8:15PM. The Council returned to open meeting at 8:54PM. Mayor Petito made the required announcement before returning to open meeting.

**ADJOURNMENT**

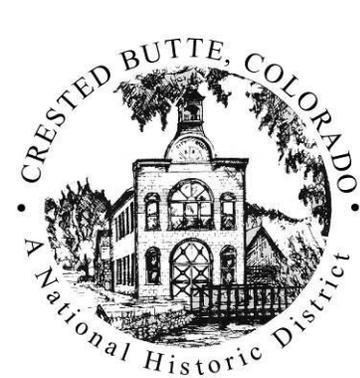
Mayor Petito adjourned the meeting at 8:55PM.

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Jackson Petito, Mayor

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Lynelle Stanford, Town Clerk (SEAL)



## Staff Report

December 4, 2017

**To:** Mayor and Town Council  
**Thru:** Dara MacDonald, Town Manager  
**From:** Lynelle Stanford, Town Clerk  
**Subject:** Town Council Regular Meeting Schedule for 2018  
**Date:** November 28, 2017

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### Summary:

A regular meeting schedule for 2018 is included in the packet. The Town Charter states in part that “the Council shall meet regularly at least twice each month at a day and hour to be fixed by the Council.” The municipal code states that the Council meetings are regularly scheduled on the first and third Mondays of each month, excluding holidays. In the case of a holiday falling on a Monday when a meeting would regularly be scheduled, the meeting is held the subsequent Tuesday.

At the last meeting, the Council decided to hold the January meetings on January 8<sup>th</sup> and January 22<sup>nd</sup>. Because the Code is specific to regular meetings on the first and third Mondays, the meetings in January will be considered special meetings and noticed as such.

### Recommendation:

Staff recommends approval of the Town Council Regular meeting schedule for 2018.

### Recommended Motion:

To approve the Town Council Regular meeting schedule for 2018 as part of the Consent Agenda.

## 2018 Regular Town Council Meeting Schedule

### January

8 Town Council 7 p.m.  
     \*Special Meeting  
 22 Town Council 7 p.m.  
     \*Special Meeting

### February

5 Town Council 7 p.m.  
  
 20 (TUESDAY) Town Council 7 p.m.  
     \*Due to Presidents' Day

### March

5 Town Council 7 p.m.  
  
 19 Town Council 7 p.m.

### April

2 Town Council 7 p.m.  
  
 16 Town Council 7 p.m.

### May

7 Town Council 7 p.m.  
  
 21 Town Council 7 p.m.

### June

4 Town Council 7 p.m.  
  
 18 Town Council 7 p.m.

### July

2 Town Council 7 p.m.  
  
 16 Town Council 7 p.m.

### August

7 (TUESDAY) Town Council 7 p.m.  
     \*Due to Colorado Day  
 20 Town Council 7 p.m.

### September

4 (TUESDAY) Town Council 7 p.m.  
     \*Due to Labor Day  
 17 Town Council 7 p.m.

### October

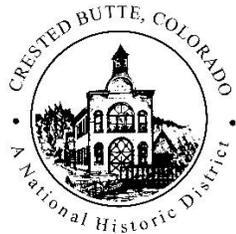
1 Town Council 7 p.m.  
  
 15 Town Council 7 p.m.

### November

5 Town Council 7 p.m.  
  
 19 Town Council 7 p.m.

### December

3 Town Council 7 p.m.  
  
 17 Town Council 7 p.m.



## Staff Report

December 4, 2017

**To:** Mayor and Town Council

**From:** Hilary Henry, Open Space/Creative District Coordinator

**Thru:** Michael Yerman, Community Development Director

**Subject:** **Memorandum of Understanding establishing the Town of Crested Butte as a cooperating agency in the GMUG Forest Planning Revision process**

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### **Background:**

In the Town Council's October 16, 2017 pre-assessment letter to the GMUG Forest Planning Team, the Council requested that the Town of Crested Butte be considered as a cooperating agency in the Forest Plan Revision process. Cooperating agency status recognizes government partners as official collaborators in the Forest Revision Process, but does not delegate the Forest Service's decision-making authority.

The GMUG has accepted our request to become a cooperating agency and asked that we sign a Memorandum of Understanding (MOU) formalizing our agreement. The Forest Service has asked that we limit our comments to our specific geographic region. This is defined in the MOU as the Coal Creek, Slate River, Washington Gulch, East River, Brush Creek, and Cement Creek watersheds.

### **Staff Recommendation:**

Staff recommends that the Council make a motion to authorize the Mayor to sign the Memorandum of Understanding between the United States Forest Service Grand Mesa, Uncompahgre, and Gunnison National Forests and the Town of Crested Butte.



FS Agreement No.	

Cooperator Agreement No.	
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**Memorandum of  
Understanding between the  
United States Forest  
Service Grand Mesa,  
Uncompahgre and  
Gunnison National Forests  
And  
the Town of Crested Butte**

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Town of Crested Butte, hereinafter referred to as “the Town” and the United States Department of Agriculture (USDA), Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG NF), hereinafter referred to as the “U.S. Forest Service.”

**Background:** As provided for by the National Environmental Policy Act (NEPA), as well as the 2012 Planning Rule (36 CFR 219), the U.S. Forest Service must prepare an Environmental Impact Statement (EIS) to revise the GMUG National Forests’ Land Management Plan (Forest Plan). The EIS process is meant to inform both the U.S. Forest Service and the public about the environmental impacts of the plan revision before a final decision is made.

**Title: Grand Mesa, Uncompahgre and Gunnison National Forests Plan Revision – Town of Crested Butte Cooperating Agency Agreement**

**I. PURPOSE:**

The purpose of this MOU is to document the cooperation between the parties to elicit the Town of Crested Butte within the State of Colorado to become cooperating agencies with the U.S. Forest Service, acting as lead agency, for the purpose of preparing a revised Forest Land and Resource Management Plan (Plan) and an Environmental Impact Statement (EIS). The U.S. Forest Service recognizes that the Town of Crested Butte has knowledge, experience and expertise, with respect to environmental, economic, and social impacts/conditions to inform the proposed plan revision process as defined at 36 CFR 219, otherwise known as the 2012 Planning Rule. The Town recognizes that the U.S. Forest Service has final decision-making authority regarding the scope of the analysis. In particular, the U.S.

Forest Service is seeking assistance from the Town to help provide knowledge and information that will help address management issues related to, but not limited to, land use plans, local social and economic conditions and natural resource management concerns related to range, roads, timber, wildlife, fire, recreation, land and water conservation. The Town of Crested Butte recognizes that in addition, the U.S. Forest Service invites the submittal of other information, data and comments from the Town pertaining to the GMUG NF Plan revision process. The establishment of this MOU further promotes responsible, transparent and timely dialogue during the Plan revision analysis between the Town and the GMUG NF in accordance with the following provisions.

## **II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**

The Town is surrounded by the GMUG National Forest and a significant portion of the Town's municipal watershed protection district lies within the GMUG National Forest area. . It is in the interest of the Town to provide information and expertise for use in the development of the revised Forest Plan, including the formulation and analysis of options/alternatives. As cooperating agencies, the Town may assist in reviewing the components of the plan and the monitoring program/proposals as they relate to individual county resources and jurisdiction.

The Forest Service has a mutual interest in incorporating information and expertise provided by the Town for a complete analysis of impacts and formulation of a full spectrum of alternatives during the Forest Plan revision.

Through this cooperative effort, the U.S. Forest Service and the Town will be more likely to develop a higher quality revised Forest plan, and gain a greater understanding of how the revised Forest Plan may impact or affect the associated ecological, social and economic concerns of the Town and its residents. Both parties will benefit through increased communication, sharing of information, and cooperation in implementing their respective missions as a part of the GMUG NF Plan revision process.

In consideration of the above premises, the parties agree as follows:

## **III. THE TOWN SHALL:**

- Be identified as a cooperating agency for the revision of the Forest Plan coincident with the initiation of the formal environmental review process under the National Environmental Policy Act.
- Designate a representative and an alternate to participate in the GMUG NF Forest plan revision process. Ensure Town designees are full-time or permanent part-time employees of the Town government (or their designated employee with authority to act on their behalf), acting in their official capacity (41 CFR 102-3.40(g)).
- Provide the U.S. Forest Service with relevant existing ecological, social and economic resource information for the GMUG NF revision process.
- The Town may provide comments on any aspect of the GMUG NF revision process, though their area of interest is generally agreed to be the lands in direct proximity to Crested Butte, including the Coal Creek, Slate River, Washington Gulch, East River, Brush Creek, and Cement Creek Watersheds.
- Provide timely response to any reviews agreed upon by both the US Forest Service and the Town.
- Assist with public meetings and with distributing Forest Plan revision information and documents to the public as the parties agree.

#### IV. THE U.S. FOREST SERVICE SHALL:

- Be the Lead Agency for the GMUG National Forests Forest Plan Revision.
- Consider the Town's input in the development of issues, options and alternatives addressed in the Plan revision process.
- Provide information and drafts to the Town with adequate time for review. For products that will be released for an *informal* public comment period *not* required by NEPA, provide the Town with such drafts two weeks prior to the public release; this early review would provide the Town with a longer review period. For products that will be released for a *formal* public comment period that *is* required by NEPA (the Draft EIS), provide the Town with such drafts one month prior to the public release for a preliminary two-week review period; this early review would provide the Town the opportunity to provide input that could be incorporated into the Draft EIS. The Town would subsequently have the same 90-day comment period as the public.

#### V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

**Town of Crested Butte – Hilary Henry**, Open Space/Creative  
District Coordinator  
Address: PO Box 39 Crested Butte, CO 81224  
Phone: (970) 349-5338  
Email: hhenry@crestedbutte-co.gov

#### Principal U.S. Forest Service Contacts:

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Name: Brittany Duffy Address: 2250 Main St. City, State, Zip: Delta, CO 81416 Telephone: (970) 874 – 6649 FAX: (970) 874 – 6686	Name: Becky Cuthbertson Address: 740 Simms St. City, State, Zip: Golden, CO 80401 Telephone: (303) 275-5068 FAX: 303-275-5453

**NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the Counties is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the Town's Principal Contact at the address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

**PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or the Town from participating in similar activities with other public or private agencies, organizations, and individuals.

**ENDORSEMENT.** Any of the Town's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of products or activities.

**NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

**USE OF U.S. FOREST SERVICE INSIGNIA.** In order for the Town to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.

**MEMBERS OF U.S. CONGRESS.** Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.

**FREEDOM OF INFORMATION ACT (FOIA).** Any records or documents generated/shared as a result of this MOU shall become part of the official record. Documents not marked/flagged proprietary or confidential by the originating office may be released to the public upon request by either party of this

MOU. Any request for proprietary/confidential documents will be referred to the originating agency for processing either under the Freedom of Information Act (5 U.S.C. 552) or the Colorado Open Records Act § 24-72-201 *et seq.*, C.R.S.

TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) The U.S. Forest Service recognizes and honors the applicability of the Tribal laws and ordinances developed under the authority of the Indian Self-Determination and Educational Assistance Act of 1975 (PL 93-638).

PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. The Town is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments

The Town's Principal Contact may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. The Town is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.

U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The Town shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.

NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The Town shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

***In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)***

**To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.**

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

***"This institution is an equal opportunity provider."***

TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.

DEBARMENT AND SUSPENSION. The Town shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective for five years or at the end of the Forest Plan revision process at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials..

DRAFT

AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU.

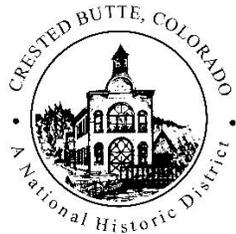
DRAFT

## Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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## Staff Report

December 4, 2017

**To:** Mayor and Town Council

**From:** Hilary Henry, Open Space/Creative District Coordinator

**Thru:** Michael Yerman, Community Development Director

**Subject:** **Letter to the GMUG Forest Planning Team, Re: Draft Forest Planning Assessment**

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### Background:

The Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forest is currently revising their Forest Plan. Forest Plans are similar to city or county comprehensive plans, setting Forest-wide goals and priorities, and zoning areas for specific uses without providing any site-specific approvals. The Forest Plan is a foundational document that will guide the Forest Service's actions for at least the next fifteen years.

The GMUG's current Forest Plan is from 1983, well exceeding the approximate 15-year lifespan of forest plans. Since the plan was last revised, conditions of our forest have changed significantly. The Forest Planning rule passed in 2012 significantly updates the planning rule used in 1983, emphasizing scientific basis, adaptive management, and public participation.

Forest Planning has three phases: assessment, planning, and monitoring. The GMUG Forest Plan is currently in the first of three phases: assessment. This phase is intended to allow Forest Service staff to evaluate the current conditions of the Forest and to develop a "Need to Change" document. This "Need to Change" document guides the revision during the second phase: planning.

On October 16, Town Council signed a pre-assessment letter to the Forest Service that outlined the Town's direct interests in the GMUG Forest Plan and encouraged the Forest Service to address four major issues for the Town in the upcoming Revision. These issue areas were: 1)the need for increased recreation infrastructure and management, 2)the continued protection and cleanup of the Coal Creek and Slate River Watersheds, 3)the preservation of historic resources, and 4)the potential for climate change to detrimentally affect the social, economic, and environmental conditions of the Town.

The GMUG Forest Planning Team released a Draft Assessment on November 6, with the comment period ending on December 8. Town Staff has reviewed the Draft Assessment and written a comment letter on the Town's direct interests in the GMUG National Forests and the six watersheds generally affecting the Town: Coal Creek, Slate River, Washington Gulch, East River, Brush Creek, and Cement Creek. Staff focused the Town's comments on the four issue areas raised in the Council's pre-assessment letter.

**Staff Recommendation:**

Town Staff recommends that the Council make a motion to authorize the Mayor to sign the comment letter on the GMUG's draft assessment.

Grand Mesa, Uncompahgre, and Gunnison National Forests  
Attn: Plan Revision Team  
2250 South Main Street  
Delta, CO 81416

*Submitted via email to: [gmugforestplan@fs.fed.us](mailto:gmugforestplan@fs.fed.us)*

December 4, 2017

Dear Scott Armentrout and the GMUG Forest Planning Team,

Thank you for undertaking such an extensive and complete assessment of the GMUG National Forest (GMUG) during this first phase of Forest Plan Revision. The work that the GMUG Planning Team has undertaken provides a thorough, foundational knowledge upon which the revised Forest Plan can be built. We appreciate the opportunity to comment at this stage of the revision and the GMUG's planning team's ongoing communication with our staff.

As we stated in our previous letter, the Town of Crested Butte (Town) is monitoring and participating in the Forest Plan Revision as we understand the social, economic, and physical health and wellbeing being of the Town is tightly linked with the context of the larger landscape. We are surrounded by Forest Service lands, and our municipal watershed protection area lies within the Forest Service boundary. Our primary concerns in Forest Plan revision are: 1) The need for increased recreation infrastructure and management, 2) The continued protection and cleanup of the Coal Creek and Slate River Watersheds, 3) The preservation of historic resources, and 4) The potential for climate change to detrimentally affect the Town's surrounding ecosystems and subsequently, the Town's social and economic wellbeing.

As we have reviewed the GMUG's Draft Forest Assessments, we have limited our comments to issues that could directly affect the wellbeing of the Town and the six watersheds we generally consider to be the primary geographic areas of influence for the Town: Coal Creek, Slate River, Washington Gulch, East River, Brush Creek, and Cement Creek. General and specific comments on the draft assessments are attached below.

Sincerely,

Jackson Petito  
Mayor, Town of Crested Butte

## General Comments

The Town appreciates that many of the assessments explicitly seek to address three spatial scales: the context, plan, and local. The local scale is most relevant to the Town, with many of Forest-related issues we experience in Crested Butte not found uniformly across the communities in the Forest Plan area. Our reliance on outdoor recreation and tourism as an economic driver, as well as the intensity with which we are experiencing the increase in recreation use and its related impacts, set the Town, along with other resort communities, apart in the Plan Area. We appreciate the planning team's efforts to account for these localized differences in the assessments, while also seeking to address the issues in relation to the larger plan and context scales. Using this three-tiered spatial framework in all of the assessments could help ensure that the Forest Plan addresses both specific and broad influences on the Forest.

In addition, the Town would ask that the assessments seek to use data that fully reflects all three of these scales. Some of the assessments, including the recreation and socioeconomic assessments, rely heavily on the use of national or statewide datasets, or datasets that use methodology designed for a nationwide scale. Understanding how these datasets differ from or are corroborated by local data would make the plan a stronger tool at the local and site-specific scale. Many institutions in the Crested Butte area including the local municipalities, the county, the Rocky Mountain Biological Laboratory, the Crested Butte Land Trust, the Gunnison-Crested Butte Tourism Authority, and Western State Colorado University have data that could provide more accurate, localized information on the socio-economic, physical, and biological state of the Forest Plan Area, as well as the recreational usage.

## Comments on Specific Assessments:

### *Recreation*

1. The Town appreciates the recognition of partnerships as a valuable and important tool for addressing recreational issues. The Town is a willing partner in backcountry management issues and has already begun to invest significant resources in better maintaining our surrounding landscape. In 2018, the Town expects to spend \$32,300 in planning for the development of a campground<sup>1</sup>, water quality monitoring of the Coal Creek Watershed, and the trail maintenance through the Crested Butte Conservation Corps. The Town has \$700,000 budgeted for the development of a campground, primarily designed to help alleviate backcountry pressure, in 2022<sup>2</sup>. Given that the Forest Service's funding needs exceed the funding availability for recreation management on the GMUG (pg. 40), and the Town's recognition of the surrounding landscape as an important economic driver for our community, we hope to further partner with the Forest Service as necessary. As part of this partnership, we hope to work with the Forest Service to strategically address backcountry issues across jurisdictions. The assessment does not mention of how partnerships are

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<sup>1</sup> Further information on the Avalanche Park campground available online: [http://www.crestedbutte-co.gov/index.asp?SEC={5A8E1B89-6D7F-4511-A443-F9D3D15A2D28}&Type=B\\_BASIC&persistdesign=none](http://www.crestedbutte-co.gov/index.asp?SEC={5A8E1B89-6D7F-4511-A443-F9D3D15A2D28}&Type=B_BASIC&persistdesign=none)

<sup>2</sup> Town of Crested Butte Budget. Available online [http://www.crestedbutte-co.gov/vertical/Sites/%7B6058FFBB-CB06-4864-B42F-B476F794BE07%7D/uploads/2018\\_Budget\\_Adopted.pdf](http://www.crestedbutte-co.gov/vertical/Sites/%7B6058FFBB-CB06-4864-B42F-B476F794BE07%7D/uploads/2018_Budget_Adopted.pdf)

addressed in the current Forest Plan. If they are not included in the current Forest Plan, the Town would like to see a need for change statement explicitly addressing partnerships.

2. The Town sees a need for increased recreational infrastructure, including campsites, trailheads, and bathroom facilities. The Town is concerned with the potential infrastructure decommissioning referenced on page 33. The Town would ask the Forest Service only to decommission infrastructure that is no longer needed. If infrastructure is in disrepair but needed for recreational management, the Forest Service should look to partners and outside funding sources to maintain or rebuild the infrastructure, if internal funding is not available.
3. The Town is working with the Paonia Ranger District, Gunnison County, and Pitkin County Open Space on the development of the Carbondale to Crested Butte Trail<sup>3</sup>. This trail would make use of the Raggeds Trails from the top of McClure Pass to Erickson Springs. New trail construction is occurring in pieces from the Town of Crested Butte to Erickson Springs, along Kebler Pass. This trail could affect recreational use in the North Fork Area (pg. 10). Part of the Town's interest in this trail is its closely proximity to the West Elk Scenic Byway, of which the Town of Crested Butte is a partner.

### *Benefits to People*

1. While the assessment does an excellent job describing the socio-economic conditions of the Forest Plan area as they currently exist, it does not describe how the economic conditions of the Forest Plan Area at large are expected to change in response to known trends. As the plan is expected to be used for at least fifteen years, additional informational on potential changes to broad-scale socioeconomic conditions, such as changing populations and economic drivers in local communities, supplementing the information provided on socio-economic changes on specific resources those directly related to the Forest, such as forage and fishing, seems relevant and necessary for the planning efforts. The Town of Crested Butte expects our socio-economic condition as a Town to change in coming years, likely affecting our relationship with the forest. Climate change, population growth, improved technology, and increased recreational use will all likely have significant effects on our local economy. While these trends will affect the Town's socioeconomics in different and sometimes competing ways, we expect to see shorter ski seasons, less wildflowers, more location-neutral businesses (especially with increased flight and broadband availability), increased visitation from Colorado's Front Range (particularly with the paving of Cottonwood Pass), and more demand for recreational facilities in coming years. Accounting for these predicted changes in the forest plan would make the plan more applicable to future conditions.

### *Terrestrial Ecosystems*

1. The Town appreciates this assessment's focus on ecosystem resilience and climate change adaptation. The Town of Crested Butte is surrounded by high alpine ecosystems, which are expected to be highly vulnerable to climate change (pg. 127). Ensuring that these ecosystems can adapt, as best as possible, to climate is of high importance to the Town, especially given our reliance on the many ecosystem services they provide. As climate change adaptation is

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<sup>3</sup> Potential route alignment maps are available from the Paonia Ranger District and the Town of Crested Butte.

central to the future management of terrestrial ecosystems on the GMUG, this information should be similarly central to the assessment and integrated within the report body, rather than in an appendix.

### *Water*

1. The Town of Crested Butte has participated in cleanup efforts on the Coal Creek and Slate River Watersheds for many years. Continuing to cleanup these watersheds listed as ‘impaired’ by the Forest Service (Table 9, Page 17), and protecting them from further pollution, remain high priorities for the Town.
2. The Coal Creek Watershed is of particular importance to the Town as it provides the drinking water for the Town of Crested Butte. The Town supports the assessment’s proposed need for change to include the delineation of municipal watersheds in the revised Forest Plan. The Town can provide maps and other resources on our municipal watershed protection area to assist with these delineation efforts (Page 28).

### *Energy*

1. In the terrestrial ecosystem, aquatic and riparian ecosystems, water, invasive species, and rangeland assessments the Forest Service proposes ‘need for change’ statements that directly address the need to aid ecosystem adaptation and landscape resiliency in the face of increased pressure from climate change. While the Town understands that energy resources are politically fraught and regulated by a wide variety of legal and policy mechanisms, many of which are outside the scope of Forest Planning, we believe it is incongruent to simultaneously plan for climate change adaptation, while ignoring the ways GMUG activities are contributing to climate change. As the assessment states, GMUG greenhouse gas emissions cannot be directly tied to the ecosystem changes in the Forest induced by global climate change. However, the West Elk Coal Mine alone vented 2.347 billion cubic feet of methane in 2013<sup>4</sup>. The GMUG’s contributions to emissions at a state level, are not insignificant. The Town suggests that the Forest Service include an additional ‘need for change’ statement in this assessment that addresses the need for the GMUG Forest to include the greenhouse gas emission potential in their decision-making related to energy resources. As the Town expects to face significant socioeconomic effects from climate change in coming years, many stemming from the changes in tourism and outdoor recreation on Forest Service lands, addressing climate change is a high priority for the Town.

### *Invasive Species*

1. Invasive species not only have detrimental effects on native plant communities and the ecosystem services they provide, but can also have economic effects on local communities<sup>5</sup>. The Town of Crested Butte is highly reliant on our natural alpine scenery as an economic driver via tourism. The Town also places high importance on our agricultural heritage, and

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<sup>4</sup>Colorado Energy Office, prepared by Ruby Canyon Engineering. “Coal Mine Methane in Colorado Market Research Report”. March 2016. Available online:

<https://www.colorado.gov/pacific/sites/default/files/atoms/files/Coal%20Mine%20Methane%20Report%202016.pdf>

<sup>5</sup> Frasier, W. Mitchell. 2014. “Economic Impact of Invasive Weed Species in Colorado: Phase I.” Colorado State University. Available online: <http://www.cwma.org/docs/2014%20Econ%20Impact.pdf>

noxious weeds can cause significant costs to stockgrowers. The control of noxious weeds is important to the Town, not only for environmental, but also economic reasons.

2. The Town manages for noxious weeds through its Open Space Program. The Town suggests that the Forest Service plan to work with adjacent landowners, especially along travel corridors, to address noxious weeds. If the current plan does not address working with adjacent landowners and managers, this could be an additional ‘need to change’ statement. With the recent establishment of the Baxter Gulch trail, the Town hopes to partner with the Forest Service on the long-term weed control on this corridor.

#### *Scenic Character*

1. The Colorado State Legislature designated the Town of Crested Butte was named the Wildflower Capital of Colorado. Wildflowers are an important part of our scenic character and maintaining these resources into the future is a high priority for the Town. This could be added to page 4.
2. The Scenic Character map on page 30 seems to show the northern Slate River Valley as lower scenic character than the rest of the Crested Butte area, though the map is not high enough resolution to confirm the exact geographic location of the scenic character designations. The northern Slate River valley is home to the Paradise Divide, one of the best known scenic character resources in the Crested Butte area. Given the iconic nature of this area, the Town believes that it should have a high scenic character designation.

#### *Cultural and Historic Resources*

1. Historic resources in the greater landscape, besides their importance culturally, help to contextualize the Town’s Historic District. As stated on page 18, very little of the GMUG has been surveyed for cultural resources. The Town encourages the GMUG to continue to survey and protect cultural resources into the future.
2. In addition to the important historical influences on page 5, skiing made an early and significant impact on the history of the Town of Crested Butte with the establishment of the Pioneer Ski Area in 1939 and Crested Butte Mountain Resort in 1960.



Staff Report  
December 4, 2017

**To:** Town Council

**Thru:** Dara MacDonald, Town Manager

**From:** Janna Hansen, Parks and Recreation Director

**Subject:** Resolution No. 72, Series 2017 - A Resolution of the Crested Butte Town Council Approving a Temporary Easement Agreement with the Crested Butte Limited Partnership

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**Background:**

This easement agreement between the Town of Crested Butte and Crested Butte Limited Partnership a/k/a Trappers Crossing, Ltd. would allow the Town temporary access to the Heights Open Space for the purpose of avalanche mitigation for the 2017/2018 winter season.

**Recommendation:**

Staff recommends approving Resolution No. 72, Series 2017.

**RESOLUTION NO. 72****SERIES 2017****A RESOLUTION OF THE CRESTED BUTTE TOWN COUNCIL APPROVING A TEMPORARY EASEMENT AGREEMENT WITH THE CRESTED BUTTE LIMITED PARTNERSHIP**

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

WHEREAS, the Town of Crested Butte has mitigated avalanches at Big Mine Park for over 15 years;

WHEREAS, the Crested Butte Limited Partnership desires that the Town maintain the Ditch Trail and related access trails and perform avalanche mitigation work during the winter of 2017-18, and are willing to allow the Town to have access to the Heights Open Space Property for these purposes;

WHEREAS, approving the temporary easement agreement between the Town of Crested Butte and Crested Butte Limited Partnership will allow the Town access to the Heights Open Space property for the purpose of trail maintenance and avalanche mitigation work;

WHEREAS, the Town Council supports the mitigation of avalanches at Big Mine Park and recognizes the need to manage the risk of avalanches at this park;

WHEREAS, the Town Council finds the approval of the temporary easement agreement with the Crested Butte Limited Partnership to be in the best interest of the health, safety, and welfare of the Town, its residents, and visitors.

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

1. The Town Council approves and adopts the Temporary Easement Agreement attached hereto as **Exhibit "A"** and authorizes the Town Manager to execute the Agreement;

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL OF THE  
TOWN OF CRESTED BUTTE, COLORADO THIS \_\_ DAY OF \_\_\_\_\_ 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: \_\_\_\_\_  
Jackson Petito, Mayor

ATTEST:

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

**EXHIBIT "A"**  
(Temporary Easement Agreement)

[attach here]

## TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT, ("Agreement") is made and entered into this \_\_\_ day of December, 2017, by and between, Crested Butte Limited Partnership, a Delaware partnership also known as Trappers Crossing, Ltd ("Grantors"), and the Town of Crested Butte, Colorado, a home rule municipality ("Town").

WHEREAS, Grantors own that certain real property in the County of Gunnison, State of Colorado, commonly known as the Heights Open Space and legally described as follows ("Heights Open Space Property"):

**See attached Exhibit A.**

WHEREAS, the Heights Open Space Property is crossed by a hiking and Nordic skiing trail known as the Ditch Trail and access trails north of the Ditch Trail.

WHEREAS, the Town is willing to continue maintaining the Ditch Trail in good condition, in an attractive state, free of debris, and litter during the winter of 2017-18 and to perform avalanche mitigation work on the Heights Open Space Property.

WHEREAS, the Town in agreement with Crested Butte Nordic, desires to groom the Ditch Trail to mitigate avalanche danger and to continue to provide for Nordic skiing on the Ditch Trail.

WHEREAS, the Grantors desire that the Town maintain the Ditch Trail and related access trails and perform avalanche mitigation work during the winter of 2017-18, and are willing to allow the Town to have access to the Heights Open Space Property for these purposes.

In consideration of the foregoing recitals and the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors and Town agree as follows:

1. Grant of Nonexclusive Temporary Easement. Grantors hereby grant to the Town and its representatives, employees and agents, a temporary, nonexclusive easement (the "Easement") on, over, under and across the Heights Open Space Property for the purposes of maintaining the Ditch Trail and related access trails, and performing avalanche mitigation work during the winter of 2017-18. This temporary easement shall commence upon execution of this Agreement and continue until May 15, 2018.

2. The Town agrees that it will not install structures on the Heights Open Space Property, as part of its trail maintenance, or for the purpose of avalanche mitigation.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first set forth above.





## Staff Report

December 4, 2017

**To:** Mayor and Town Council

**From:** Dara MacDonald, Town Manager

**Subject:** Ordinance 2017-35, An ordinance of the Crested Butte Town Council amending Chapter 4 of the Crested Butte Municipal Code to include new provisions establishing the affordable housing fund and a tax on vacation rentals and making such other related changes to the code in connection therewith

**Summary:** On November 7, 2017 voters approved a 5% excise tax on vacation rentals. This ordinance will implement that tax and create the affordable housing fund.

**Previous Council Action:** On September 5, 2017 the Town Council approved Resolution 2017-56 setting the ballot language asking voters to consider imposing a tax on vacation rentals with the proceeds to be used for affordable housing. The Council considered this ordinance on November 20<sup>th</sup> and set it for public hearing.

**Background:** The Town Council began discussions about the regulation of vacation rentals in 2015. In 2016 a citizen committee was formed to discuss the issue and make recommendations about possible regulations. The committee was charged with making recommendations regarding the following topics.

1. Neighborhood Impacts (noise, parking, trash)
2. Community Impacts (loss of long term rentals, impacts on community character)
3. Fairness (what rules should apply to STR relative to other short term lodging uses)
4. Process (licensing, fees)

The committee made a number of findings, two of which are relevant to this discussion:

1. The unfettered licensing of Short Term Rentals at some point is detrimental to the community, housing availability and the culture of Crested Butte.
2. It is desirable to find a way to help fund the creation of affordable housing from the STR component.

Throughout the many Council discussions that were held on the topic of vacation rentals in the fall and winter of 2015 and early 2016 the topic of affordable housing was intertwined with that of vacation rentals. Data was provided to the Council and the public showing the number of vacation rentals in town and the shift in the use of housing units from long-term rentals to vacation rentals. It became evident that Council did not feel that limiting the number of vacation rentals will result

in an increase in long-term rentals, however, there is a relationship between the proliferation of vacation rentals and the decrease in availability of long-term rentals.

In addition to the relationship between increasing numbers of vacation rentals and decreasing availability of long-term rentals, the Council heard from the public about the job generation associated with the growing number of vacation rentals in the community. There are both direct jobs generated (property managers, cleaning services, maintenance, etc.) and indirect jobs (wait staff, retail positions, catering, etc.) resulting from the increased numbers of vacationers staying in town. Given the already tight housing availability in the community, new job generation puts increasing pressure on the housing market, particularly since these are often service industry employees who often cannot afford the market rate rental or for sale units available in town.

At the meeting on July 24<sup>th</sup> the Council directed the staff to work towards a possible “Plan B” tax measure should the Gunnison Valley Regional Housing Authority (“GVRHA”) county-wide property tax measure not make it onto the ballot in November. Staff did that and the Council continued to have discussions on the possibility of asking the voters to approve an excise, or sales, tax on vacation rentals given the relationship between this growing industry and the decline in long-term rentals and increase in employment. On August 22<sup>nd</sup> the Board of County Commissioners for Gunnison County declined to lend their approval to the GVRHA moving ahead with their ballot measure, effectively eliminating the “Plan A” for the upcoming election.

At that point the Council approved Resolution 2017-56 asking the voters to approve a 5% excise tax on the fees charged for vacation rentals. In 2016 this would have generated \$275,000. The ballot language sets this expectation at \$325,000 for the first year. The Town wanted to be reasonable in its expectations but not to surpass the amount set in the ballot so that it does not get in the position of attempting to refund excess funds. The question also asked voters to allow the Town to keep all revenues generated by this tax in future years – commonly known as de-Brucing.

Voters approved the tax question on November 7<sup>th</sup> by a margin of 81% in favor to 19% opposed. The Council must now approve an ordinance formally establishing the Affordable Housing Fund and enacting the tax so that collections may begin on January 1, 2018.

**Discussion:** There are two components to the attached ordinance, 1) establishing the affordable housing fund, and 2) establishing the tax and mechanisms for administering the tax.

### **1. Affordable Housing Fund.**

In 2003, Ordinance 24 created an affordable housing fund in connection with the Resident Occupied Affordable Housing (“ROAH”) program. The Town has accounted for these funds separately in the budget each year since that time. However, the fund itself never made it into the Municipal Code. Approval of the new tax presents the opportunity to formally establish the Affordable Housing Fund as a fund of the municipality and to further refine the definition of how the funds could be used.

Ordinance 2003-24 which established the Resident Occupied Affordable Housing program and the affordable housing fund included the following language:

Such fees shall be placed in the Crested Butte “Affordable Housing Fund” for uses including but not limited to affordable housing administration, construction of new affordable housing units, land acquisition, down payment assistance, construction

of infrastructure to serve new affordable housing units, contracts for affordable housing services, legal fees, and acquisition, repair, and restoration and deed restriction of existing units.

Staff has reviewed this language and the Council discussed possible changes during their consideration of a tax question in August and September. Staff suggests the following language be inserted into the code establishing the Affordable Housing Fund and defining how the money can be utilized.

**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
- (14) Any other purposes allowed by law.

**2. Establishing the tax and mechanisms for administering the tax**

Staff worked with the Town attorney and special counsel Dee Wisor of Butler Snow to draft the implementation language found in Sections 2 and 3 of the attached ordinance. The language largely follows the provisions of the sales tax section of the current code regarding collections, reporting, remittals, audits, refunds, penalties and other aspects of administering the tax. This is largely administrative and provides the technical parameters under which the tax program will be managed.

Essentially vacation rental taxes will be remitted at the same time, by the same method, under the same rules, and on the same form as the Town's sales tax.

### **3. Changes since 1<sup>st</sup> reading**

There have been some modifications to the ordinance since 1<sup>st</sup> reading. Two items were added to the list under uses of the Affordable Housing Fund after further discussion among staff - #2 and #12. The use of this fund for constructing and maintain employee rentals and for leveraging grant funds have both occurred previously. The issuance of any debt that would rely on this fund for repayment would have to be approved by the voters.

There are a number of administrative changes in the bulk of the ordinance that came from legal counsel. There were no substantive changes, rather they are formatting, mostly eliminating titles on subsections and changing 'taxpayer' to 'vendor' throughout.

**Legal Implications:** The ordinance has been reviewed by the Town attorney and special counsel and all of their recommendations have been incorporated into the current version of the ordinance.

**Financial Implications:** Collection of the vacation rental tax cannot take place until it has been enacted by ordinance. Collections can begin as soon as January 1, 2018 should the Council approve an ordinance by December 18, 2017.

The ordinance is written such that the Town will implement the full authority of the tax at 5% of the charges for vacation rentals. Should the Council choose, they could implement the tax at a lower rate as voters approved the amount up to 5%.

**Recommendation:** Staff recommends the Council approve the ordinance.

**Proposed Motion:** A motion to approve Ordinance 2017-35. Followed by a second and a roll call vote.

**ORDINANCE NO. 35****SERIES 2017****AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 4 OF THE CRESTED BUTTE MUNICIPAL CODE TO INCLUDE NEW PROVISIONS ESTABLISHING THE AFFORDABLE HOUSING FUND AND A TAX ON VACATION RENTALS AND MAKING SUCH OTHER RELATED 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; and

WHEREAS, at an election held on November 7, 2017, a majority of those voting approved the following ballot question approving the levy of an excise tax of not more than 5% on the amount charged any person for a vacation rental for the purpose of funding affordable housing programs:

SHALL TOWN OF CRESTED BUTTE TAXES BE INCREASED NOT MORE THAN \$325,000 IN 2018 AND BY WHATEVER AMOUNTS ARE GENERATED ANNUALLY THEREAFTER BY AN EXCISE TAX OF NOT MORE THAN 5% ON THE AMOUNT CHARGED TO ANY PERSON FOR A VACATION RENTAL FOR THE PURPOSE FUNDING AFFORDABLE HOUSING PROGRAMS, WITH THE RATE OF TAX BEING ALLOWED TO BE INCREASED OR DECREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF TAXATION DOES NOT EXCEED 5%; AND SHALL THE TOWN BE AUTHORIZED TO COLLECT, KEEP AND SPEND THE REVENUES FROM SUCH TAX AND ANY INVESTMENT INCOME THEREFROM NOTWITHSTANDING THE LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?; and

WHEREAS, it is necessary to amend the Town Code to implement the vacation rentals excise tax; 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 the Town of Crested Butte.

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

**Section 1. Adding a New Section 4-1-70 to Chapter 4 of the Code.** A new Section 4-1-70 is added to Chapter 4 of the Code to read as follows:

**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
- (14) Any other purposes allowed by law.

**Section 2. Amending Section 6-6-100 of the Code.** Section 6-6-100 of the Code is amended to read as follows:

**Sec. 6-6-100. – 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.

**Section 3. Adding a New Article 9 to Chapter 4 of the Code.** A new Article 9 is added to Chapter 4 of the Code to read as follows:

**“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.

**Sec. 4-9-20. Effective Date.**

This Article shall be effective commencing on January 1, 2018, and shall apply to all vacation rentals.

**Sec. 4-9-30. Definitions.**

*License* means a vacation rental license required by Chapter 6 of Article 6 of this Code.

*Vacation Rental* has the same meaning as in Section 16-1-20 of this Code.

*Vendor* means any person who holds a License.

**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 5% 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*.

**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.

**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.

**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.

**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.

**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.

**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.

**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 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.

**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.

**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.

**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.

**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.

**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.

**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 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.

**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.

**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.

**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.

**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.

**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.

**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 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.

**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.

**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.

**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.

**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 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) 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) 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.

**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.

**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.

**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.

#### **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.

**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.

**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 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) 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.

**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.

**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.

**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.

**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.

**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 distraint 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.

(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.

**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.

**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.
- (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.

**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.

**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.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC  
HEARING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

TOWN OF CRESTED BUTTE, COLORADO

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

Jackson Petito, Mayor

ATTEST:

\_\_\_\_\_

[SEAL]

Lynelle Stanford, Town Clerk



## Staff Report

December 4, 2017

**To:** Town Council  
**From:** Michael Yerman, Community Development Director  
**Thru:** Dara MacDonald, Town Manager  
**Subject:** Ordinance 36, Series 2017- Release off 1991 Restrictive Covenant for Parking-  
210 Gothic Avenue

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### **Background:**

In 1991, the Town approved the Last Resort Bed and Breakfast (“B&B”) located at 213 Third Street. This land use approval required the B&B to provide five additional parking spaces on a neighboring property, 210 Gothic Avenue, located across the alley that was under the same ownership at the time. At the time of the land use approval, a parking easement was recorded on the neighboring property and assigned to the Town. This parking easement was granted only for the use while the property was used as a B&B.

In November of last year, the current owner of the Last Resort property changed the use of the B&B to a vacation rental. Since the property is no longer being used as a B&B, the new owners of 210 Gothic Avenue have requested the Town release the Parking Easement Reception #430432 that currently encumbers their property. Both parties have agreed on an alternative easement that will allow one parking space for 213 Third Street to be located on the neighboring property, 210 Gothic Avenue, on the alley. The vacation rental located at 213 Third Street will require four parking spaces because it contains 7 bedrooms. The other three spaces are being provided on the site of the vacation rental. The parties have drafted an alternative parking easement between the parties that will be filed with the Town’s release of the parking easement. The BOZAR Chair reviewed the new proposed parking easement and determined it will allow 213 Third Street to function as a 7 bedroom vacation rental with three additional spaces being provided on site.

### **RECOMMENDED ACTION:**

Staff recommends a Council member make a motion followed by a second to approve Ordinance 36, Series 2017.

**ORDINANCE NO. 36**

**SERIES 2017**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN  
COUNCIL AUTHORIZING THE RELEASE OF 1991  
RESTRICTIVE COVENANT FOR PARKING**

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

**WHEREAS**, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property;

**WHEREAS**, the Town owns a parking easement pursuant to that Notice of Zoning Conditions and Restrictive Covenants recorded at Reception No. 430432 on November 14, 1991 (“Restrictive Covenant”);

**WHEREAS**, the Town required this Restrictive Covenant to provide off-site parking for customers of a bed and breakfast located at 213 Third Avenue, Crested Butte, CO 81224, and that bed and breakfast is no longer in business;

**WHEREAS**, the Restrictive Covenant also provides that once the bed and breakfast located at 213 Third Avenue is no longer used for this purpose, the off-site parking required under the Restrictive Covenant may be discontinued;

**WHEREAS**, the owners of the property encumbered by the Restrictive Covenant at 210 Gothic Avenue, Crested Butte, Colorado 81224, have requested the Town to release the Restrictive Covenant; and

**WHEREAS**, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Restrictive Covenant should be discontinued and released as requested by the owners of the property at 210 Gothic Avenue, as set forth hereinbelow.

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

**Section 1. Authorization to Release Town-owned Restrictive Covenant.** The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to release the following described property from the Restrictive Covenant recorded at Reception No. 430432, to wit:

Lots 11 and 12, Block 16, Town of Crested Butte, County of Gunnison, State of Colorado

Also known as 210 Gothic Avenue, Crested Butte, CO 81224.

The Town Council authorizes and directs the Town Manager and Town Clerk to appropriately execute any and all documents necessary and appropriate to consummate the release of the Restrictive Covenant following approval thereof by the Town Attorney.

**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 shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 3. Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, 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 \_\_ DAY OF \_\_\_\_\_, 2017.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS \_\_ DAY OF \_\_\_\_\_, 2017.**

**TOWN OF CRESTED BUTTE, COLORADO**

**By: \_\_\_\_\_  
\_\_\_\_\_, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Lynelle Stanford, Town Clerk**

**[SEAL]**



## Staff Report

November 28, 2017

**To:** Mayor and Town Council  
**Thru:** Dara MacDonald, Town Manager  
**From:** Lois Rozman, Finance Director  
**Subject:** **Ordinance No. 37, 2017 Budget Amendment**

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**Summary:** Ordinance No. 37 adopts changes to the 2017 budget for additional expenditures out of the Sales Tax and Affordable Housing funds.

**Previous Council Action:** Council adopted the 2017 budget via Resolution No. 40, Series 2016 on December 5, 2016.

**Discussion:** The changes to the 2017 budget are as follows:

***Sales Tax Fund increased from \$4,572,474 to \$4,719,344***

Change in expenses:

- Transportation Distribution increased from \$775,813 to \$855,000
- Capital Distribution increased from \$0 to \$26,005
- Parks Distribution increased from \$408,322 to \$450,000

Change in revenue:

- Town Sales Tax increased from \$3,674,902 to \$3,875,000
- County Sales Tax increased from \$382,473 to \$422,000

Total Sales Tax Fund revenue is estimated to be \$4,849,131 including \$100,000 Contribution from Reserve from the Transportation fund balance for the contribution towards the new 4-way stop transit center and \$435,931 Contribution from Reserve for the Center for the Arts project.

***Affordable Housing Fund increased from \$493,640 to \$588,970***

Change in expenses:

- Deed Restricted Unit Purchase from \$0 to \$137,000 –Poverty Gulch unit approved by Council on April 10, 2017
- Legal Fees from \$10,000 to \$14,000 – legal needed for Poverty Gulch unit purchase & new plat
- Town Rental (School) Build from \$130,000 to \$185,000 – increased construction costs, Council approved on April 3, 2017

- Housing Authority increased from \$55,000 to \$61,000 – participate in survey for regional tax question, Council approved on March 6, 2017
- Affordable Housing Taps decreased from \$233,340 to \$116,670 – budgeted for 20 deed restricted taps but only anticipate 7 - 10 (4 duplex builds delayed a year)

Change in revenue:

- Housing Payment in Lieu revenue decreased from \$60,000 to \$34,000 – more remodels and fewer new home & commercial construction projects
- Paradise Park Sales Revenue is decreased from \$190,000 to \$90,000 – not able to close on 2 lots in Block 79, the lottery winners are to close on the lots in 2018
- Sale of Deed Restricted Unit increased from \$0 to \$110,525 for the sale of the Poverty Gulch Unit – approved by Council on November 20, 2017

Total Affordable Housing Fund revenue is estimated to be \$275,125 and a use of fund balance of \$313,845. Ending fund balance is estimated to be \$155,000.

**Recommendation:** Staff recommends setting Ordinance No. 37, Series 2017 for public hearing at the December 18, 2017 Council meeting.

**Possible Motion:** I move to set Ordinance No. 37, Series 2017 for public hearing at the December 18, 2017 Town Council meeting.

**ORDINANCE NO. 37  
SERIES 2017**

**AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL ADOPTING CHANGES AND ADDITIONS TO THE 2017 BUDGET AND APPROPRIATIONS RELATIVE TO THE SALES TAX FUND AND AFFORDABLE HOUSING FUND**

**WHEREAS**, the Town Council, pursuant to Resolution No. 40, Series 2016, adopted the budget and projected expenditures for the Town for 2017, and

**WHEREAS**, the income and expenditures for the Sales Tax Fund and Affordable Housing Fund for the fiscal year 2017, January 1 through December 31, are more than budgeted and appropriated, and

**WHEREAS**, the increases and contingencies could not have been reasonably foreseen at the time of adoption of Resolution No. 40, Series 2016, and

**WHEREAS**, the revenues to pay the increased expenditures are available in the same funds from unappropriated funds and surpluses,

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

That the appropriation for expenditures from the following funds are increased as set forth below:

1. Sales Tax Fund from \$4,572,474 to \$4,719,344
2. Affordable Housing Fund from \$493,640 to \$588,970

**INTRODUCED AND FIRST READ BEFORE THE TOWN COUNCIL THIS FOURTH DAY OF DECEMBER, 2017.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS \_\_\_\_\_ DAY OF DECEMBER, 2017.**

**TOWN OF CRESTED BUTTE**

(SEAL)

By \_\_\_\_\_  
**Jackson Petito, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Lynelle Stanford, Town Clerk**



## Staff Report

December 4, 2017

**To:** Mayor and Town Council  
**Thru:** Dara MacDonald, Town Manager  
**From:** Lynelle Stanford, Town Clerk  
**Subject:** Council Member Appointments to Boards and Committees  
**Date:** November 28, 2017

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### **Summary:**

Included in the packet are lists of boards and committees. One list contains background information, meeting schedules, and contact information for organizations. The other list is meant to be an at-a-glance reference.

Existing appointments remain on the list as previously determined, but the Council could make changes if desired. The appointments of both Jim Schmidt and Chris Ladoulis have also been included on the list for the Council's reference.

### **Recommendation:**

The Council should discuss and decide whom they would like to appoint to each board and committee.

### **Recommended Motion:**

Motion to approve the appointments to boards and committees as discussed.

**BOARDS, COMMITTEES AND TEMPORARY COMMITTEE APPOINTMENTS**  
**Revised December 2017**

**Rural Transportation Authority Board (RTA)**

- 1.
- 2.

**Mountain Express Board**

1. Laura Mitchell
- 2.

**Tourism Association (TA) Advisory Board**

1. Chris Ladoulis

**Crested Butte/Mt. Crested Butte Chamber of Commerce**

1. Laura Mitchell
2. Jackson Petito (alternate)

**Coldharbour Institute**

1. Paul Merck
2. (alternate)

**Gunnison County Housing Authority Advisory Board**

1. Michael Yerman
2. Jim Schmidt

**Gunnison Valley Housing Foundation**

1. Jackson Petito

**Center for the Arts**

1. Paul Merck

**Gunnison Valley Land Preservation Board**

1. Sue Navy
2. Jim Schmidt
3. Paul Merck (alternate)

**West Elk Loop Scenic Byway Committee**

1. Laura Mitchell

**Colorado Association of Ski Towns**

1. (Typically the Mayor)
2. Dara MacDonald

**DOLA Region 10**

1. Chris Ladoulis

**Upper Gunnison River Water Conservancy District**

- 1.

**Water Quality/Quantity Committee**

- 1.

**Downtown Crested Butte Lodging Association**

1. Chris Ladoulis

**Cemetery Committee**

1. Jim Schmidt

**Community Builders Taskforce**

- 1.

**CDOT Region 3**

1. Jim Schmidt

**Creative District Commission**

1. Paul Merck

**Grant Review Committee**

1. Chris Ladoulis
2. Jim Schmidt

## Boards and Committees List Revised December 2017

### Rural Transportation Authority Board (RTA)

The mission of the Gunnison Valley Rural Transportation Authority is to provide and improve air transportation to and from the Gunnison-Crested Butte Regional Airport on a year round basis, and to develop a long term and energy efficient public ground transportation system within Gunnison County.

- Bylaws mandate two elected officials from each municipality serve on the board. Council members are voting members of the Board.

#### **Current Members:**

- 1.
- 2.

**Meeting Schedule:** Meetings start at 8 a.m. The location alternates between the Gunnison County Courthouse and the Crested Butte Town Hall. 12/8/2017, 1/12/2018, 3/9/2018, 5/4/2018, 6/8/2018, 8/10/2018, 9/28/2018, 11/2/2018, 12/7/2018

**Director:** Scott Truex

**Phone:** 970-275-0111

**E-mail:** [struex@gunnisonvalleyrta.org](mailto:struex@gunnisonvalleyrta.org)

**Website:** [Gunnisonvalleyrta.org](http://Gunnisonvalleyrta.org)

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### Mountain Express Board

Mission Statement - To provide safe, free and courteous public ground transportation services for residents of and visitors to Mt. Crested Butte, Crested Butte, and surrounding north valley communities and to provide a safe, fair, and honest working environment for Mountain Express employees.

- Bylaws state that two board members are nominated by the Town of Crested Butte, two board members nominated by the Town of Mt. Crested Butte, and one member nominated by a majority vote of the Board. Council members are voting members of the Board.

#### **Current Members:**

1. Laura Mitchell
- 2.

**Meeting Schedule:** Meets the 3<sup>rd</sup> Thursday of every month, at 9 a.m., alternating between Mt. Crested Butte Town Hall and Crested Butte Town Hall.

**Director:** Chris Larsen

**Phone:** 970-275-5175

**E-Mail:** [Clarsen@crestedbutte-co.gov](mailto:Clarsen@crestedbutte-co.gov)

**Website:** [www.mtexp.org](http://www.mtexp.org)

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### **Tourism Association (TA) Advisory Board**

The Gunnison-Crested Butte Tourism Association was officially formed in September 2002 in anticipation and support of the November 2002 ballot initiatives to create a Local Marketing District for Gunnison County and to serve as the marketing arm of the Gunnison Valley Rural Transportation Authority, also on the ballot at that time.

**Mission:** Enhance economic vitality by marketing our county as a year round destination and foster relationships with community partners to ensure a quality guest experience.

- One Council member.

#### **Current Member:**

1. Chris Ladoulis

**Meeting Schedule:** Every second Thursday, once a month at 7:30 a.m., alternating between the Crested Butte/Mt. Crested Butte Chamber of Commerce and the Gunnison County Courthouse. The next meeting is on December 14, 2017 at the Courthouse.

Please RSVP for meetings, and they will provide food.

**Director:** John Norton

**Phone:** 970-379-5498

**E-Mail:** [john@nortonglobal.com](mailto:john@nortonglobal.com)

**Website:** [www.gunnisoncrestedbutte.com](http://www.gunnisoncrestedbutte.com)

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### **Crested Butte/Mt. Crested Butte Chamber of Commerce**

The Chamber provides information for visitors to the community, as well as residents, and business owners (both current and prospective).

As the leading business organization in the community, the Chamber seeks to:

- Promote the Community
- Create a Strong Local Economy
- Provide Networking Opportunities
- Represent the Interests of Business with Government
- Provide Value and Benefit to our Members

- One council member and one alternate. Nonvoting member.

#### **Current Members:**

1. Laura Mitchell
2. Jackson Petito (alternate)

**Meeting Schedule:** Meets the 3<sup>rd</sup> Tuesday of every month at 8:00 a.m. at the Visitors Center in Crested Butte.

**Director:** Ashley Upchurch

**E-Mail:** director@cbchamber.com

**Phone:** 970-349-6438

**Website:** www.cbchamber.com

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### **Coldharbour Institute**

**Current Members:**

1. Paul Merck
2. (alternate)

**Meeting Schedule:** Every two months

**Director:** Suzanne Ewy

**Phone:** 719-530-1103

**E-Mail:** sewy@western.edu

**Website:** www.coldharbourinstitute.org

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### **Gunnison County Housing Authority Advisory Board**

The mission of the Gunnison County Housing Authority (GCHA) is to assist in providing suitable housing and an acceptable environment for the elderly, the handicapped, and the disadvantaged; and to encourage private investment in housing to help meet the housing needs of all citizens.

Rental Assistance Programs: Section 8 Rental Assistance; Mountain View Senior Apartments.

Homebuyer Programs: Homebuyer Counselor; Mutual Self-Help Build (Owner/Builder Program).

- The Council appoints two members and one alternate. One of the regular appointees must be a Town councilmember, the other two appointees do not need to be on the Town Council. Board members are voting members of the Board. The Board serves in an advisory capacity to the Board of County Commissioners.

**Current Members:**

1. Michael Yerman
2. Jim Schmidt

**Meeting Schedule:** Attempt to meet the 2<sup>nd</sup> Thursday of each month. In the summer the meetings take place in Crested Butte (at the Chamber of Commerce) and in the winter the meetings take place in Gunnison (at the Housing Authority Offices).

**Director:** Jennifer Kermode

**Phone:** 970-641-7901

**E-Mail:** kfulmer@gvrha.org

**Website:** www.gunnisoncounty.org

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### **Gunnison Valley Housing Foundation**

#### Mission:

1. Facilitate an exchange of the Clark land parcel with the U.S. Forest Service for future affordable housing projects.
2. Act as a non-profit affordable housing developer.

Members of the Gunnison County Housing Authority Advisory Board have also been serving on the Gunnison Valley Housing Foundation Board.

#### **Current Members:**

1. Jackson Petito

**Meeting Schedule:** The 2<sup>nd</sup> or 3<sup>rd</sup> Thursday of every month usually at 4 p.m. prior to Gunnison County Housing Authority Advisory Board meetings.

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### **Center for the Arts**

Mission-The Center for the Arts, a home for arts and culture, offers engaging opportunities and educational experiences to enrich and expand the life of our community.

- One council member; Non-voting member.

#### **Current Member:**

1. Paul Merck

**Director:** Jenny Bernie

**Phone:** 970-349-7487 x2

**E-Mail:** jenny@crestedbuttearts.org

**Website:** www.crestedbuttearts.org

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### **Gunnison Valley Land Preservation Board**

Meets on an as-needed basis, usually a few times a year, generally at 6pm, alternating between Blackstock Building and Crested Butte Town Hall.

- Two members and one alternate are appointed by the Town of Crested Butte

#### **Current Members:**

1. Sue Navy
2. Jim Schmidt
3. Paul Merck (Alternate)

**Meeting Schedule:** Meets on an as-needed basis, usually a few times a year, typically Monday evening at 6 p.m.

**Contact person:** Mike Pelletier  
**Phone:** 970-641-7645  
**E-Mail:** mpelletier@gunnisoncounty.org  
**Website:** [www.gunnisoncounty.org](http://www.gunnisoncounty.org)

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### **West Elk Loop Scenic Byway Committee**

The Colorado Scenic and Historic Byways program is a statewide partnership intended to provide recreational, educational, and economic benefits to Coloradans and visitors. This system of outstanding touring routes in Colorado affords the traveler interpretation and identification of key points of interest and services while providing for the protection of significant resources.

Scenic and Historic Byways are nominated by local partnership groups and designated by the Colorado Scenic and Historic Byways Commission for their exceptional scenic, historic, cultural, recreational, and natural features.

- One council member, one alternate.

#### **Current Member:**

1. Laura Mitchell

**Meeting Schedule:** Quarterly 10 a.m. to approximately 2 p.m. Meeting locations vary and are rotated among different towns along the byway.

**Contact Person:** John Hoffman

**Phone:**

**E-Mail:** jhof@rof.net

**Website:**

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### **Colorado Association of Ski Towns**

The Colorado Association of Ski Towns is an organization of 25 municipalities whose economies are largely dependent upon tourism. Members include the mayors and managers of the resort towns. The Association was formed in part to recognize that resort communities face unique challenges in providing municipal services to residents and visitors. Member municipalities share the benefits of our diverse knowledge, experience and leadership through meetings, conferences, surveys and other informational venues, as decided by the members.

CAST members use the power of the coalition to seek support for legislation that will benefit and sustain the mountain communities. We support actions that keep our communities livable, protect our pristine environment, and promote community-based land use, mass transit, affordable housing, and sustainable tourism. Our goal is to foster growth that will ensure an exceptional quality of life for citizens and a positive experience for visitors.

- One council member (typically the mayor) and the Town Manager

#### **Current Members:**

- 1.

2. Dara MacDonald
3. If Mayor cannot attend an alternate will be sought on an as-needed basis.

**Contact person:** Margaret Bowes, Executive Director

**Phone:** 970-485-2737

**E-Mail:** [mbowes@coskitowns.com](mailto:mbowes@coskitowns.com)

**Website:** [www.coloradoskitowns.org](http://www.coloradoskitowns.org)

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### **DOLA Region 10**

Region 10 League for Economic Assistance and Planning serves as the economic, community and senior programs leader for six, western Colorado counties. The Region 10 staff, together with its membership, assists local governments, businesses and residents in facilitating and implementing programs that will benefit our economy, community and quality of life.

One council member

**Current Member:**

1. Chris Ladoulis

**Meeting Schedule:** 4<sup>th</sup> Thursday of February, May, and August and the third Thursday of November. All meetings are at Noon in the Enterprise Center, 300 N Cascade Avenue in Montrose.

**Contact person:** Michelle Haynes, Executive Director

**Phone:** 970-249-2436 ext. 202

**E-Mail:** [mhaynes@region10.net](mailto:mhaynes@region10.net)

**Website:** [www.region10.net](http://www.region10.net)

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### **Upper Gunnison River Water Conservancy District**

UGRWCD's mission is to be an active leader in all issues affecting the water resources of the Upper Gunnison River Basin.

An elected official could attend meetings, but it is not a voting position.

**Current Member:**

- 1.

**Meeting Schedule:** The 4<sup>th</sup> Monday of the month, at 5:30PM, at 210 West Spencer.  
Next meeting will be January 29, 2018

**Contact person:** Frank Kugel

**Phone:** 970-641-6065

**E-mail:** [fkugel@ugrwcd.org](mailto:fkugel@ugrwcd.org)

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### **Water Quality/Quantity Committee**

The Water Quality/ Quantity Committee (QQ) comprises municipalities, counties, water and sanitation districts, and conservancy districts in the headwaters region of Colorado located in Grand, Summit, Eagle, Pitkin, Park and Gunnison counties. The Colorado River Water Conservation District is also a QQ member. The Board is made up of elected and appointed officials from member jurisdictions. QQ's purpose is to facilitate and augment the efforts of member jurisdictions to protect and enhance the region's water quality while encouraging its responsible use for the good of Colorado citizens and the environment. QQ's contract team provides members with legislative monitoring, water quality information, litigation and rulemaking support, trans-mountain diversion oversight, and related technical assistance to further intergovernmental cooperation, and increase political clout with state and federal agencies.

**Meeting Schedule:** Quarterly as determined by members' schedules.

**Contact Person:** Torrie Jarvis

**Phone:** 970-596-5039

**E-mail:** qqwater@nwccog.org

### **Downtown Crested Butte Lodging Association**

**Current Member:**

1. Chris Ladoulis

### **Cemetery Committee**

**Current Member:**

1. Jim Schmidt

### **Community Builders Taskforce**

**Current Member:**

- 1.

### **CDOT Region 3**

**Current Member:**

1. Jim Schmidt

### **Creative District Commission**

**Current Member:**

1. Paul Merck

**Grant Review Committee****Current Members:**

1. Chris Ladoulis
2. Jim Schmidt



Evaluation & Training, Inc.

November 24, 2017

Town of Crested Butte  
 ATTN: Finance Department  
 P.O. Box 39  
 Crested Butte, CO 81224-0039

Dear Lois and Members of the Town Council:

All of us at Six Points were delighted to receive notice of your 2018 Community Grant Award in the amount of \$1,000. On behalf of the Board of Directors, staff and especially the clients of Six Points, bless you for partnering with us to help us provide needed services to those that have suffered a traumatic brain injury. We also thank you for your continued efforts in supporting vocational training for the adults with developmental disabilities that we serve. We continue to look for ways to expand our programs, so this funding will be so helpful!

As requested, I have attached a completed, signed copy of the service "Community Grant Disbursement Request" form. If you should require anything further from us at this time, please don't hesitate to contact me at 641-3081.

In closing, please let everyone on the Town Council know that their continued support helps us better serve our clients and improve our outreach to the entire valley. When you are down in Gunnison, please stop in and say hello (1160 N. Main Street, between the Auto Corral and Gunnison Rec Center). We'd love to thank you in person.

Happy Holidays,

Daniel Bruce  
 Executive Director

*Thank you so much!  
 for your support!  
 It is much appreciated.*

**December 18, 2017**

Proclamation

Disposition of Land at Avalanche Park

Resolution – Professional Services Agreement with Western State for Energy Plan Update

**January 8, 2018****Work Session**

Sam Light from CIRSA

**Consent Agenda**

Resolution – Posting Places

**Executive Session**

Update on legal matters – water cases – Scott Miller attending

**January 22, 2018****Work Session**

Roundabout 101 (JVA and McDowell Engineering)

**New Business**

Torie Jarvis presenting about NWCCOG QQ Committee  
Slate River Development Annexation Concept Review

**Future Items**

Land Trust possible land acquisition funding request

Update to current version of Model Traffic Code

Update Section 8-2-50 - winter parking signs

Charter Franchise Agreement

Ordinance Adopting Standard Sales Tax Definitions

**Future Work Session Items:**

- Camping @ Town Ranch (allow? Not allow? Allow camping in other places?)
- BLM and OBJ Campground/Seasonal Housing Shortage (this could be combined with others – especially the Affordable Housing item at the bottom of this list)
- Perimeter Trail – Update, timelines, costs, what does this look like when finished
- Land Trust and Town Preservation Priorities – basically a joint planning/discussion with the CBLT (maybe in Exec Session if they would like) to confer on the priority parcels identified by the CBLT and the priorities of the Town (for planning future open space acquisitions). Maybe even a discussion about purchasing trail easements.
- Elk Avenue Rule Set re: Private Clubs – the whole “private clubs on Elk Avenue” concern that was raised when Irwin obtained a private liquor license for the Scarp Ridge Lodge.
- Affordable Housing/Density/Workforce – Blk 79/80
- Special Events
- Double Basements