

ORDINANCE NO. 14

SERIES 2006

AN ORDINANCE AMENDING THE ZONING AND LAND USE ORDINANCE TO PROHIBIT CERTAIN USES ON THE GROUND FLOOR IN THE “B1” BUSINESS DISTRICT AND THE “B3” BUSINESS DISTRICT.

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; and

WHEREAS, the Town’s Zoning and Land Use Ordinance (hereafter “Ordinance”) currently allows various retail and service uses as permitted and conditional uses in the “B1” and “B3” Business Districts; and

WHEREAS, the Town Council has determined that the number of sales-tax generating uses in the “B1” and “B3” Business Districts has declined significantly as a result of the proliferation of business offices and studios, professional offices and banks and financial institutions on the ground floors of buildings in those districts; and

WHEREAS, tourism and visitors are a vital part of our economy, and the downtown experience should appeal to the tourist and visitor; and

WHEREAS, a retail shopping experience is important to the visitors and residents of Crested Butte, and the proliferation of non-retail uses on the ground floors of buildings is undermining such experience, particularly in the “B1” Business District; and

WHEREAS, because of their unique character, it is appropriate that medical and dental services have fewer location restrictions than other types of non sales-tax generating uses; and

WHEREAS, it is appropriate that uses aimed at the tourist and visitor market be located in the “B3” Business District, even if such uses do not generate sales tax revenue; and

WHEREAS, some additional definitions to clarify the intent of the Ordinance are necessary; and

WHEREAS, to promote and encourage retail uses and other uses which are important to our local economy and the visitor experience, the Town Council finds that the below amendments are in the best interests of the health, safety and general welfare of the

inhabitants of the Town.

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

Section 1. Amending the Ordinance to Provide that Certain Uses are Permitted Uses on All Building Levels Except on the Ground Floor or Below, If Such Below Ground Floor Level Use will have Display Window(s) on Elk Avenue. Section 15-2-10.B.2. of the Ordinance is hereby amended to delete the current Section 15-2-10.B.2, and replace it with the following, and renumber the sections thereafter:

“2. Office uses, except for in buildings that front onto Elk Avenue, in which case office uses are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

3. Financial institutions (excluding automatic teller machines, which are permitted on any building level), except for in buildings that front onto Elk Avenue, in which case financial institutions are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

4. Personal services establishments, except for in buildings that front onto Elk Avenue, in which case personal services establishments are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

Section 2. Amending Section 15-2-3 of the Ordinance To Add Additional Definitions. Section 15-2-3 of the Ordinance is hereby amended to add the following definitions:

“Office Uses. A building, or portion thereof, used for the transaction of business, or professional services and activities including, without limitation, realtors, timeshare sales, non-profit organizations, advertising or insurance agents, lawyers, architects, designers, interior designers, engineers, accountants, veterinarians, sales promotions, property management companies or agents, and other licensed professionals.

Ground Floor. The first floor of a structure above finish grade at the front of the building.

Personal services establishments. Establishments offering personal services, including but not limited to travel agents, booking agents, recreation services providers or arrangers, outfitting companies, massage, yoga, healing arts, acupuncture, martial arts, dance, alternative health services, spas, salons, barber and beauty shops, laundromats (not commercial), shoe repair, sewing and tailoring, studios for instruction in the arts, massage, yoga, dance, martial arts and other disciplines, radio and television broadcasting, and catering services”

Section 3. Amending Section 15-2-10.B.3. of the Ordinance. Section 15-2-10.B.3. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following:

“Medical and dental offices and clinics, except for in buildings that front onto Elk Avenue, in which case medical and dental offices and clinics are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

Section 4. Amending Section 15-2-10.A. of the Ordinance. Section 15-2-10.A of the Ordinance is hereby amended by adding the following after the first sentence of that section:

“Sales-tax generating uses are encouraged.”

Section 5. Amending Section 15-2-10.B.7. of the Ordinance To Delete Newspaper Publishing Offices As A Permitted Use. Section 15-2-10.B.7. is hereby amended by deleting it in its entirety and by renumbering the sections as appropriate.

Section 6. Amending Section 15-2-10.C.1. of the Ordinance To Allow Publishing and Printing Offices As A Conditional Use on all Building Levels Except the Ground Floor or Below, If Such Use Will Have Display Window(s) On Elk Avenue. Section 15-2-10.C.1. is hereby amended by deleting it in its entirety and replacing it with the following:

“1. Newspaper publishing offices, printing and copy businesses are a conditional use, except for in buildings that front onto Elk Avenue, in which case newspaper publishing offices, printing and copy businesses are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground

floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.”

Section 7. Amending Section 15-2-12.B.6. of the Ordinance to Provide that Certain Uses Are Permitted On All Building Levels Except on the Ground Floor or Below, If Such Use Will Have Display Windows on Elk Avenue. Section 15-2-12.B.6. is hereby amended by deleting in its entirety, replacing it with the following and renumbering the subsequent sections as appropriate:

“6. Office uses, except for in buildings that front onto Elk Avenue, in which case office uses are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

7. Financial institutions (excluding automatic teller machines, which are permitted on any building level), except for in buildings that front onto Elk Avenue, in which case financial institutions are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located.

8. Personal services establishments;”

Section 8. Amending Section 15-2-10.C.2. of the Ordinance to Prohibit Residential Units on the Ground Floor or Lower. Section 15-2-10.C.2. is hereby amended by the addition of the following:

“Residential Units are prohibited in buildings that front onto Elk Avenue on the ground floor or any level below the ground floor of any such building if the below ground floor level has display window(s) fronting Elk Avenue. The prohibition against such uses in buildings that front onto Elk Avenue on the ground floor or below level (if the below ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line of the property upon which such use is located. However, residential uses in place in buildings that front onto Elk Avenue as of August 26, 2006, may revert to such use regardless of subsequent changes in use or building level. ”

Section 9. Amending Section 15-2-12.B.11. of the Ordinance. Section 15-2-12.B.11 of the Ordinance is hereby amended by deleting in its entirety and renumbering the subsequent sections as appropriate.

Section 10. Amending Section 15-2-12.C. of the Ordinance. Section 15-2-12.C of the Ordinance is hereby amended by the addition of the following:

“5. Newspaper publishing offices, printing and copy businesses, except for in buildings that front onto Elk Avenue, in which case such uses are prohibited in such buildings both on the ground floor and in building levels located below the ground floor, if such below ground floor use has display windows fronting Elk Avenue. The prohibition against such uses on the ground floor or below level in buildings fronting Elk Avenue (if the ground floor level has display window(s) fronting Elk Avenue) shall not apply to spaces set back more than forty (40) feet from the Elk Avenue property line upon which such use is located. “

Section 11. Amending Section 15-2-13.B.13. of the Ordinance To Delete Business Offices As A Permitted Use. Section 15-2-13.B.13. is hereby amended by deleting it in its entirety and by replacing it with the following:

“13. Office uses.”

Section 12. Amending Section 15-2-12.B.7. of the Ordinance. Section 15-2-12.B.7. of the Ordinance is hereby amended by deleting the words “and professional offices.”

Section 13. Amending Section 15-2-5 of the Ordinance to Address Classifying Business Uses. Section 15-2-5 of the Ordinance is hereby amended by adding the following after the first sentence of that section:

“For purposes of ascertaining the use classification of a business, the business will be classified based upon the primary activity of the business, as measured by the square footage allocated to such use as a percentage of the overall use. Only uses which are permitted or have been approved as a conditional use are allowed.”

Section 14. Amending Section 15-2-11.B.2. of the Ordinance. Section 15-2-11.B.2. and B.3 of the Ordinance is hereby amended by deleting them in their entirety and replacing them with the following and renumbering the subsequent sections as appropriate:

- “2. Office uses;
3. Financial institutions;
4. Personal services establishments;
5. Medical and dental clinics;”

Section 15. Amending Section 15-2-6.9.C.11. of the Ordinance. Section 15-2-6.9.C.11. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following and renumbering the subsequent sections as appropriate:

- “11. Office uses;
12. Financial institutions;

13. Personal services establishments;”

Section 16. Amending Section 15-2-6.9.C.13. of the Ordinance. Section 15-2-6.9.C.13. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following:

“13. Medical and dental clinics;”

Section 17. Amending Section 15-2-6.9.C.23. of the Ordinance. Section 15-2-6.9.C.23. of the Ordinance is hereby amended by deleting it in its entirety and renumbering the subsequent sections as appropriate.

Section 18. Amending Section 15-2-9.C.9. of the Ordinance. Section 15-2-9.C.9. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following and renumbering the subsequent sections as appropriate:

“9. Office uses;
10. Financial institutions;
11. Personal services establishments;”

Section 19. Amending Section 15-2-9.C.10. of the Ordinance. Section 15-2-9.C.10. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following:

“12. Medical and dental clinics;”

Section 20. Amending Section 15-2-13.C.3. of the Ordinance. Section 15-2-13.C.3. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following and renumbering the subsequent sections as appropriate:

“3. Financial institutions;
4. Personal services establishments;”

Section 21. Amending Section 15-2-15.C.3. of the Ordinance. Section 15-2-15.C.3. of the Ordinance is hereby amended by deleting it in its entirety and replacing it with the following:

“3. Retail commercial establishments, office uses, financial institutions and personal services establishments in buildings owned by or property leased by the Town.”

Section 22. Amending Section 15-2-24. of the Ordinance. Section 15-2-24. of the Ordinance is hereby amended by deleting Section A – H of that section and replacing them with the following:

“Section 15-2-24. Nonconformities.

A. **Purpose.** Within the zone districts established by this Chapter, there exist uses of land, buildings and structures that were lawfully established before this Chapter was adopted or amended which would be in violation of the terms and requirements of this Chapter. The purpose of this Chapter is to regulate and limit the continued existence of those uses, buildings, and structures that do not conform to the provisions of this Chapter as amended.

It is the intent of this Chapter to permit nonconformities to continue, but not to allow nonconformities to be enlarged, expanded, or in the case of nonresidential properties, to be continued when a change of business occurs. The provisions of this Chapter are designed to curtail substantial investment in nonconformities in order to preserve the integrity of the zone districts and the other provisions of this Chapter but should not be construed as an abatement provision.

B. **Nonconforming uses.**

1. **Authority to continue.** Nonconforming uses of land or structures may continue in accordance with the provisions of this Chapter and this section.

2. **Normal maintenance.** Normal maintenance may be performed upon non-conforming uses of land and structures, provided that the maintenance performed within any twelve (12) consecutive month period does not exceed ten percent (10%) of the current replacement cost of the structure.

3. **Extensions/Expansions.** Nonconforming uses shall not be extended or expanded. This prohibition shall be construed so as to prevent:

a. Enlargement of nonconforming use by increasing the area within a structure in which such nonconforming uses are located; or,

b. Occupancy of additional lands; or,

c. Increasing the size, considering all dimensions, of a structure in which a nonconforming use is located; or,

d. Change from one nonconforming use to another nonconforming use; or,

e. Change of business from one nonconforming business to another nonconforming business within the same use classification. A change of more than fifty percent (50%) of the

ownership interest in a business constitutes a change of business from one business to another. The following events shall not constitute a “change of business”: Any transfer in consequence of a gift where there is no consideration other than love and affection, any transfer pursuant to a court decree partitioning interests in real property or terminating an interest in real property, any transfer by reason of death, will or distribution, or any transfer ordered by a court under the Bankruptcy Act or in an equity receivership proceeding.

4. **Relocation.** A structure housing a nonconforming use may not be moved to another location on or off the parcel of land on which it is located, unless the use thereafter shall conform to the limitations of the zone district into which it is moved.

5. **Change in use.** A nonconforming use shall not be changed to any other use unless the new use conforms to the provisions of the zone district in which it is located.

6. **Abandonment or discontinuance.** The intent of the owner notwithstanding, where a nonconforming use of land or nonconforming use of a nonresidential structure is discontinued or abandoned for six (6) or more consecutive months, then such use may not be reestablished or resumed, and any subsequent use must conform to the provisions of this Chapter.

7. **Demolition or destruction.**

a. **Ability to restore.** Any nonconforming use not associated with a structure may not be restored after discontinuance period of more than thirty (30) days. Any nonconforming use located in a structure which is purposefully demolished, may not be continued or restored.

b. **Non-willful destruction.** Any nonconforming use which is demolished or destroyed by an act of nature or through any manner not purposefully accomplished by the owner may be restored as of right, regardless of the extent of demolition or destruction, if a building permit for reconstruction is issued within twelve (12) months of the date of demolition or destruction.

C. Nonconforming Structures.

1. **Authority to continue.** A nonconforming structure devoted to a use permitted in the zone district in which it is located may be continued in accordance with the provisions of this Chapter.

2. **Normal maintenance.** Normal maintenance to nonconforming structures may be performed without affecting the authorization to continue as a nonconforming structure. Provided, however, that no structural alteration or improvement may be made.

3. **Extensions.**

a. General. A nonconforming structure shall not be extended by an enlargement or expansion that increases the nonconformity.

b. The only exception to this requirement shall be for a structure which has been determined and designated a "historical building or monument" by appropriate action of the Town, County, State or Federal Government. Such structures may be altered, improved, or restored. Any proposal to allow the enlargement of a nonconforming accessory dwelling must also be reviewed under the Conditional Use Procedures set forth in Section 15-2-16, but need not conform to the requirement that it be deed-restricted only as a long-term rental unit.

4. **Relocation.** A nonconforming structure shall not be moved unless it thereafter conforms to the standards and requirements of the zone district in which it is located.

5. **Unsafe structure.** Any portion of a nonconforming structure which becomes physically unsafe or unlawful due to lack of repairs and maintenance, and which is declared unsafe or unlawful by a duly authorized Town official, but which an owner wishes to restore, repair or rebuild shall only be restored, repaired or rebuilt in conformity with the provisions of this Chapter.

6. **Ability to Restore.**

a. Repairs and Maintenance. Ordinary repairs and maintenance of a non-conforming building or structure shall be permitted, provided, however, that no structural alteration or improvement may be made.

b. Restoration. If a non-conforming building is damaged or destroyed by any cause to the extent of more than fifty percent (50%) of its fair market value, it shall not be restored except as a reasonable facsimile of such damaged or destroyed building or in full conformity with the restrictions of the zoning district in which it is situate. However, if such a non-conforming structure is within the

twenty foot stream bank setback set forth in Section 15-2-18.C.3 (b) of this Article, it may not be so restored as a reasonable facsimile within the setback unless a retaining wall is designed and constructed as set forth in said Section.

D. Nonconforming accessory uses and accessory structures. No nonconforming accessory use or accessory structure shall continue after the principal structure or use shall have terminated unless such structure or use thereafter shall conform to the provisions of the zone district in which it is located.

E. Lot reduction.

1. No lot or interest therein shall be transferred, conveyed, sold or subdivided so as to create a new nonconforming lot, to avoid, circumvent or subvert any provision of this Chapter, or to leave remaining any lot in violation of the dimensional requirements of this Chapter.

2. No lot or portion of a lot required as a building site under this Chapter shall be used as a portion of a lot required as a site for another structure.

3. No building permit shall be issued for any lot or parcel of land which has been conveyed, sold, or subdivided in violation of this section.

F. Conditional Waivers. The Board, in its discretion, and based on the following criteria, may override Sections B.5, C.3.a, and C.6.b of this Section. Conditional waivers to increase the size of buildings that have non-conforming aspects apply to the following:

1. additions in the setback;

2. additions on non-conforming parcels which are too small, too large, too narrow or too wide; and

3. additions to structures that are too high, or too wide and that will add more structure that is too high or too wide.

No conditional waiver shall be granted which allows any fence or other structure to be erected within the largest rear yard setbacks on lots within Blocks 20, 21, 22, 27, 28, and 29. No conditional waiver shall be granted for an increase in floor area ratio beyond that which is allowed in the applicable zoning district. No conditional waiver shall be granted for a non-conforming aspect, if such non-conforming aspect was created by the grant of a variance. No conditional waiver shall be granted to allow any further encroachment by a building or other structure into the twenty (20) or twelve (12) foot setback from the normal stream banks of Coal Creek as set forth in Section 15-2-18.C.3 (b).

Any proposal to enlarge a non-conforming aspect or to enlarge a structure on a non-conforming lot, must be reviewed under the following criteria to ensure the proposal does not exacerbate potential problems caused by the existing non-conforming aspect.”

Section 23. 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 24. Savings Clause. Except as hereby amended, the 1987 Crested Butte Municipal Code shall remain valid, and in full force and effect. Any provision of any ordinance previously adopted by the Town of Crested Butte which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 17 DAY OF JULY, 2006.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS 21 DAY OF AUGUST, 2006.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Alan Bernholtz, Mayor

ATTEST:

Eileen Hughes, Town Clerk

SEAL