

ORDINANCE NO. 19

SERIES 2007

**AN ORDINANCE AMENDING ARTICLE 6 OF THE
TOWN CODE TO ADOPT REGULATIONS
GOVERNING NOISE WITHIN THE TOWN**

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

WHEREAS, the Colorado General Assembly has found and declared that noise is a major source of environmental pollution and represents a threat to the serenity and quality of life enjoyed by citizens within the State and, furthermore, threatens public health, safety and welfare;

WHEREAS, the Town Council has determined that the adoption of noise regulations is necessary to better regulate noise, protect and preserve the Town's small-town atmosphere and eliminate or minimize potential injury to the public health, safety and welfare caused by loud and excessive noise;

WHEREAS, the Town Council has determined that the below amendments to the Town Code are in the best interest of the environment and the health, safety and general welfare of the residents and visitors of the Town.

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

Section 1. Adding a New Article 6-4, REGULATION OF NOISE. A new Article 6-4, REGULATION OF NOISE, is added to the Town Code and shall read as follows:

"ARTICLE 6-4

REGULATION OF NOISE

Section 6-4-1. Declaration of Policy. The Town Council finds that noise is a source of environmental pollution that is a threat to public peace and to the health, safety and welfare of the residents and visitors of the Town. Noise has an adverse effect on persons, and, accordingly, represents a threat to the economic and aesthetic well being of the community. Furthermore, the Town Council finds that it is the responsibility of individuals and businesses creating noise to mitigate and abate such noise and not the responsibility of those that are impacted by the noise. Based on these findings, the Town Council has determined that it is sound policy to establish standards for noise levels permitted in Town, types or noise permitted and prohibited and times periods in which certain noises are permitted and prohibited.

Section 6-4-2. Definitions. For purposes of this Article 6-4 only, capitalized terms contained herein shall have the following meanings ascribed to such terms. All terminology used in this Article and not otherwise defined below shall have the meanings generally ascribed to such terminology in the applicable publications of the American National Standards Institute (ANSI) or its successor organization.

A) "Commercial District" shall mean any area zoned primarily for commercial, business or other high impact uses, including, but not limited to, C, B1, B2, B3, T zone districts as defined in Article 15-2 of the Town Code.

B) "Construction Activities" shall mean any and all activities incidental to the erection, demolition, altering, assembling, installing or equipping of buildings, structures, roads or appurtenances thereto, including, without limitation, land clearing, grading, excavating, filling, landscaping, the use of power equipment and the delivery, loading or unloading of materials and equipment.

C) "Enforcement Officer" shall mean any member of the Marshal's Department or its designated representative.

D) "Nighttime" shall mean the period from 10:00 p.m. to 7:00 a.m. daily.

E) "Noise Suppression Plan" shall mean that plan for noise management and or mitigation as set forth in Section 6-4-7.

F) "Property Line" shall mean an imaginary line, at the ground surface, and its vertical extension, which separates the real property owned or rented by one person from that which is owned or rented by another person and separates real property from public premises, or in multiple dwelling units, from the adjoining unit, such as the wall between two apartments.

G) "Recipient Party" shall mean any person, business or other legal entity that is the recipient of any noise as addressed in this Article 6-4.

H) "Recreation and Public District" shall mean any area zoned primarily for recreation, sporting and entertainment and similar types of uses, including, but not limited to, P, as defined in Article 15-2 of the Town Code.

I) "Residential District" shall mean any area zoned primarily for residential use or other low impact use, including, but not limited to, R1, R1A, R1B, R1C, R1D, R1E, R2, R2A, R2C, R3C, R4 as defined in Article 15-2 of the Town Code.

J) "Sound Level Meter" shall mean an apparatus or instrument including a microphone, amplifier, attenuator, output meter and frequency weighting networks for the measurement of sound levels.

K) "Source Party" shall mean any person, business or other legal entity that is the generator or source of any noise as addressed in this Article 6-4.

L) "Special Event" shall mean any performance, sporting event, artistic showing, festive, commercial or gathering activity or other gathering on public property for a limited period of time which is sponsored by an organization, whether not for profit or not where (i) the expenditure of Town resources is contemplated or deemed necessary by Town personnel to maintain public health, safety and welfare, (ii) the event will be conducted on property that requires that the Town issue a Special Event Permit as defined in Article 5-5 of the Town Code, or (iii) the event is expected to have visual, noise or other environmental impact on the immediately vicinity or surrounding area of the event.

Section 6-4-3. Standards. Standards used in the measurement of sound as provided for in this Article 6-4 shall be as follows:

A) Sound level measurement shall be made with a Sound Level Meter using the "A" weighting scale, set on "slow" response.

B) Measurements shall be taken at the Property Line of the Recipient Party, applying the sound pressure levels of the Zone Classification set forth in Table 1 of the Recipient Party's property as set forth in Section 6-4-6(A). Where the Recipient Party is an Enforcement Officer only, the location for taking said measurement shall be the Source Party's Property Line, applying the sound pressure levels of the Zone Classification set forth in Table 1 of the Source Party's property as set forth in Section 6-4-6(A). The Sound Level Meter shall be used according to the manufacturer's specifications.

C) Background noise levels shall be taken for comparison with a given source for accuracy of a measurement. Enforcement actions will be taken if the source of noise is greater than the stated permissible levels and the background noise level.

D) Extraneous or momentary spikes in the background noise readings shall not be used to compare with the source noise readings.

E) If the source is constant and too loud to determine the background noise level, then the Enforcement Officer must find a similar site and distance to test for the background noise level.

Section 6-4-4. Prohibited Noise. It shall be unlawful for any person to create, cause or allow the continuance of any unreasonably loud, disturbing, unusual, frightening or unnecessary noise, which interferes with a neighboring resident's reasonable use of his/her property. Such noise may include, but is not limited to, the following:

A) Horns and signaling devices: The intentional sounding of any horn or signaling device of a motor vehicle on any street or public place continuously or intermittently, except as an emergency warning device.

B) The sounding of a security alarm for more than three (3) minutes.

C) The repair, rebuilding or testing of any motor vehicle during Nighttime.

D) Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises therefrom.

E) Operating any motor vehicle, motorcycle, truck, equipment or snowmobile in any manner that includes the removal or modification of any manufacturers' supplied equipment, including, without limitation, the exhaust system, that causes unreasonable or disturbing noise.

F) Operating any motor vehicle or motorcycle in a manner as to constitute unreasonable and disturbing noise.

G) Noisy parties: congregating because of or participating in any party or gathering of people, during Nighttime in such a manner as to disturb the peace.

H) The playing of any radio, phonograph, musical instrument, outdoor speakers, television, or any such device in such a manner so as to disturb the peace of nearby persons during Nighttime.

I) Any periodic, impulsive or shrill noise which is loud enough to disturb the peace of others within any residence during the Nighttime.

J) The yelling, shouting, whistling or singing on the public streets or private property at Nighttime in such a manner as to disturb the peace.

K) Construction between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday and before 8:00 a.m. and after 5:00 p.m. on Saturdays and Sundays.

L) The use or firing of explosives, firearms or similar devices, which create loud sound.

M) Slamming of dumpster container covers and doors.

Section 6-4-5. Permitted Noise. The following noises are allowed to exceed the noise levels permitted in the zone district as further described in this Article 6-4 at the times specified herein unless deemed a disturbance of the peace by an enforcement officer.

A) Sound emanating from outdoor athletic events between 7:00 a.m. and 10:00 p.m.

B) Construction activities between 7:00 a.m. and 7:00 p.m. Monday through Friday and 8:00 a.m. and 5:00 p.m. on Saturdays and Sundays, provided that the following conditions are met:

(i) Noise levels do not exceed 80 decibels at the Property Line.

(ii) Equipment is operated in accordance with manufacturers' specifications and with all standard manufacturers' mufflers and noise-reducing equipment in use and in properly operating condition.

(iii) Notices shall be posted to inform workers, including sub-contractors, about the basic noise requirements, as well as specific noise restrictions, to the project.

(iv) Jack hammering, drilling, large compressors, and other types of equipment that exceed 80 decibels must be used in conjunction with an approved Noise Suppression Plan as approved by the Marshal's Department.

C) Special Events, farmers' markets or other events to which the public is invited, provided that the following conditions are met:

(i) The maximum decibel level at the perimeter of the event does not exceed 100 decibels.

(ii) Amplified noise shall be created only between the hours of 9:00 a.m. and 10:00 p.m.

(iii) Neighbors within two hundred fifty feet of the site of the proposed sound source are notified. Such notification must be in writing and be delivered seven (7) days prior to the start of the event.

(iv) The arrangement of loud speakers or the sound instruments must be such that they minimize the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically caused dispersal of sound beyond the property lines.

(v) All reasonable measures are taken to baffle or reduce noise impacts on the neighbors.

(vi) Event organizers agree to cooperate with the Marshal's Department in addressing noise complaints from neighbors, which may include the termination of the event.

(vii) Organizers of Special Events or other events that the public is invited to may request a variance from noise restrictions set forth in this Article 6-4 from the Town Council. The variance request must meet the following requirements before a variance is granted:

(a) The variance request shall include reasons why the variance should be granted, how the public good will outweigh impacts on neighbors and other factors supporting the request.

(b) If approved, the variance shall contain all conditions upon which said variance has been granted, including, but not limited to, the effective date(s), time(s) of day, location, sound pressure level or equipment limitation. The Town Council may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

D) Private events to which the public is not invited and that are located at a park, business or nonprofit facility with the following conditions:

(i) Private events must comply with the requirements of parts (i) thru (vi) of subsection C) above governing public events.

(ii) A maximum of two per week at any property.

(iii) If complaints are received from neighbors about noise from a private event, the event organizer must meet with the Marshal's Department and implement additional control measures for future events to prevent disturbance of neighbor.

(iv) An administrative fee of up to \$250.00 is required for review of additional control measures.

Section 6-4-6. Maximum Permitted Noise Levels By Zone District.

A) No person or group of persons shall operate or cause to be operated any continuous, regular or frequent source of noise that exceeds the maximum permissible sound pressure level set forth in Table 1.

Table 1:

Zone Classifications	Nighttime (10:00 p.m. to 7:00 a.m.)	Daytime (7:00 a.m. to 10:00 p.m.)
Residential District	50 dBA	55 dBA
Commercial District	60 dBA	70 dBA
Recreation and Public District	55 dBA	65 dBA

B) No person shall drive, operate, move, cause or knowingly permit to be driven a motor vehicle or combination of vehicles at any time in such a manner to exceed the noise limits for the category of motor vehicle shown in Table 2.

Table 2:

Type of Vehicle	Noise level dBA for speed of 25 mph or less
Motor vehicles with a manufacturer's gross vehicle weight rating (GVWR) or gross combination weight rating of 10,000 pounds or more, or by any combination of vehicles towed by such motor vehicles	82
Any other motor vehicle (less than 10,000 pounds) or any combination of vehicles towed by any motor vehicle	80

C) Noise shall be measured at a distance of at least twenty-five (25) feet from the vehicle with the sound level meter at least four (4) feet above the immediate surrounding surface.

Section 6-4-7. Exemptions. The following uses and activities shall be exempt from noise level regulations:

A) Emergency work that is necessary to restore property to a safe condition following a fire, accident or other disaster, or to restore public utilities, or to protect persons or property from an imminent danger. Such work must comply with the requirements of this

ordinance for a Noise Suppression Plan as approved by the Marshal's Department; except where the activity is undertaken as part of any governmental activity.

B) Noises of safety signals, warning devices and emergency pressure relief valves.

C) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.

D) Use of firearms or other devices by Enforcement Officers in performance of their official duties and training.

E) Noises resulting from public transportation vehicles and buses.

F) Noise from snow-plowing, street cleaning or trash collection.

G) Lawful fireworks.

Section 6-4-8. Noise Suppression Plan.

A) Where a Noise Suppression Plan is required under this Article 6-4, said Noise Suppression Plan shall be submitted to the Marshal's Department for approval and shall include the following: (i) contact information for the applicant; (ii) dates of the activity; (iii) hours of the activity; (iv) location of the activity; (v) any equipment constraints that prevent common noise reduction measures; (vi) description of how noise blocking or reducing measures will be utilized and implemented; and (vii) a layout map of the locations or baffles and other sound blocking or reducing measures with relation to the source of noise. All submittals must be timely for adequate review.

B) Approval may be granted upon a good and sufficient showing that: (i) the activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with this Article; and (ii) no reasonable alternative is available to the applicant.

C) An administrative fee of up to \$250.00 is required for review of any Noise Suppression Plan. Such fee shall not apply to any governmental activity.

D) Notwithstanding anything contained in this Article 6-4 to the contrary, the Town may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects of noise upon the community or the surrounding neighborhood.

Section 6-4-9. Enforcement; Penalty. An Enforcement Officer shall have the right to inspect property concerning any noise complaint, or, absent any complaint, on his own. Enforcement Officers may issue a warning notice or summons and complaint to any person in

violation of this Article 6-4. Any person who shall be the source of any noise in violation of this Article 6-4 shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not more than One Thousand Dollars (\$1,000.00) for each violation and/or incarcerated for not more than one (1) year for each separate offense.”

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. The Crested Butte Town Code of 1987, as previously amended and amended hereby, 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 date of adoption hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 9th DAY OF JULY, 2007.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 3rd DAY OF DECEMBER, 2007.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
Alan Bernholtz, Mayor

ATTEST:

Eileen Hughes, Town Clerk

(SEAL)