

**ORDINANCE NO. 17**

**SERIES 2007**

**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;

**WHEREAS**, the Town's Zoning and Land Use Ordinance (the "**Ordinance**") allows various retail and service uses as permitted and conditional uses in the "B1" and "B3" Business Districts;

**WHEREAS**, the Town Council finds that the number of retail uses in the "B1" and "B3" Business Districts has shown decline as a result of the proliferation of business offices, professional offices, banks and financial institutions on the ground floors of properties in said Districts;

**WHEREAS**, the Town Council finds that retail uses are important to tourism and the community, the continued vibrancy and character of Town and the overall visitor experience in Crested Butte;

**WHEREAS**, the Town Council finds that visitors are a vital part of the Town's economy, and through their payment of sale taxes on purchases, provide important revenue for the Town;

**WHEREAS**, the Town Council finds that the proliferation of said non-retail uses on the ground floors of properties in the "B1" and "B3" Business Districts is undermining retail uses in said Districts and thus negatively affecting tourism and the community, the vibrancy and character of the Town as well as the growth in sales tax revenue; and

**WHEREAS**, the Town Council has determined that in order to promote and encourage retail uses and other uses which are important to tourism and the community, the vibrancy and character of the Town, the downtown visitor experience and the growth of sales tax revenue, the below amendments are necessary and, further, that said amendments are in the best interest of the health, safety and general welfare of the residents and visitors of the Town.

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

**Section 1. Amending Section 15-2-3. of the Ordinance by Adding Additional**

**Definitions.** Section 15-2-3. of the Ordinance is amended by adding the following definitions:

"Office Uses. The use of a property for the transaction of business or professional services and activities including, without limitation, realtors, timeshare sales, non-profit organizations, advertising or insurance agents, attorneys, 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 property above finish grade at the front of said property.

Personal Services Establishments. Businesses offering personal services, including, but not limited to, travel agents, booking agents, recreation services providers or planners, outfitting companies, massage, yoga, healing arts, acupuncture, martial arts and other similar disciplines, dance, alternative health services, spas, salons, barber and beauty shops, stationery and graphics shops, laundromats (not commercial), shoe repair, sewing and tailoring, non production copying and printing, studios for instruction in the arts, art studios, radio and television broadcasting, and catering services."

**Section 2. Amending Section 15-2-5. of the Ordinance to Address the Classification of Business Uses.** Section 15-2-5. of the Ordinance is amended by adding the following at the end of the 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 3. Amending the Conditional Use Provisions of Section 15-2-6.9.C.11. ("RC3" Core Residential District) of the Ordinance.** Section 15-2-6.9.C.11. of the Ordinance is deleted in its entirety, replaced with the following and the subsequent sections are renumbered as appropriate:

11. Office Uses;
12. Financial institutions;
13. Personal Services Establishments;"

**Section 4. Amending the Conditional Use Provisions of Section 15-2-6.9.C.13. ("RC3" Core Residential District) of the Ordinance.** Section 15-2-6.9.C.13. of the Ordinance is deleted in its entirety and replaced with the following:

15. Medical and dental clinics;"

**Section 5. Amending the Conditional Use Provisions of Section 15-2-6.9.C.23.**

**("RC3" Core Residential District) of the Ordinance.** Section 15-2-6.9.C.23. of the Ordinance is deleted in its entirety and the subsequent sections are renumbered as appropriate.

**Section 6. Amending the Conditional Use Provisions of Section 15-2-9.C.9. ("T" Tourist District) of the Ordinance.** Section 15-2-9.C.9. of the Ordinance is deleted in its entirety, replaced with the following and the subsequent sections are renumbered as appropriate:

9. Office Uses;
10. Financial institutions;
11. Personal Services Establishments;"

**Section 7. Amending the Conditional Use Provisions of Section 15-2-9.C.10. ("T" Tourist District) of the Ordinance.** Section 15-2-9.C.10. of the Ordinance is deleted in its entirety and replaced with the following:

"12. Medical and dental clinics;"

**Section 8. Amending the Intent of the District Provision Section 15-2-10.A. of the Ordinance.** Section 15-2-10.A. of the Ordinance is amended by adding the following after the first sentence of the Section:

"Sales-tax generating uses are encouraged."

**Section 9. Amending the Permitted Use Provisions of Section 15-2-10.B. ("B1" Business District) of the Ordinance to Re-define and Re-list the Permitted Uses.** Sections 15-2-10.B. of the Ordinance is deleted in its entirety and replaced with the following:

"B. Permitted Uses:

1. Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.

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 windows 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. 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.

5. Personal Services Establishments.

6. Open use recreation sites, recreation clubs, theaters, assembly halls, schools, churches, hospitals, public buildings and government offices.

7. Shop crafts.

8. Rental, repair and wholesaling facilities in conjunction with any of the above use provided all such activity is clearly incidental and accessory to the permitted use and conducted within a building.

9. Museums (added Ord. 10, 2002; Ord. 2, 2003)."

**Section 10. Amending the Conditional Use Provisions of Section 15-2-10.C.1. ("B1" Business District) of the Ordinance to Allow Newspaper Publishing as a Conditional Use.** Section 15-2-10.C.1. is deleted in its entirety and replaced with the following:

"1. Newspaper publishing businesses, except for in buildings that front onto Elk Avenue, in which case newspaper publishing 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 11. Amending the Conditional Use Provisions of Section 15-2-10.C.2. ("B1" Business District) of the Ordinance to Prohibit as a Conditional Use**

**Residential Units on the Ground Floor or Lower.** Section 15-2-10.C.2. is deleted in its entirety and replaced with the following:

"2. Residential units comprising up to one-half of the total floor area of any building. Residential units located in historic buildings existing prior to May 15, 1994 shall not be limited by the above size restrictions. Such residential unit may only be used as a long-term rental or, under the circumstances set forth herein, as an owner-occupied unit. In the event that a conditional use for a residential unit is granted, that use may not in the future revert to any other use. The unit thereafter shall be restricted to such use. 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 July 9, 2007, may revert to such use regardless of subsequent changes in use or building level. In the event that the owner of a unit, for which a conditional use for a residential unit is granted, owns and uses for his or her own use another non-residential unit as a permitted use or an approved conditional use within the same building, the owner may occupy the residential unit. Only owners conducting business themselves in their non-residential unit may occupy their residential unit. Leasing the non-residential unit to another person or entity for their use is not considered using for his or her own use or conducting business themselves" under this section. (rev. 5/20/91; 5/16/94 Ord 2, 2003)"

**Section 12. Amending the Permitted Use Provisions of Sections 15-2-11.B.2. and 15-2-11.B.3. ("B2" Business District) of the Ordinance to Re-define and Re-list the Permitted Uses.** Sections 15-2-11.B.2. and 15-2-11.B.3 of the Ordinance are deleted, replaced with the following and the subsequent sections are renumbered as appropriate:

- "2. Office Uses;
3. Financial institutions;
4. Personal Services Establishments;
5. Medical and dental clinics;"

**Section 13. Amending the Permitted Use Provisions of Section 15-2-12.B. ("B3" Business District) of the Ordinance to Re-define and Re-list the Permitted Uses.** Section 15-2-12.B. is deleted in its entirety and replaced with the following:

"B. Permitted Uses: {rev. 5/20/91; 5/16/94}

1. Dwelling unit one family; or a residential unit in combination with any of the other permitted or conditional uses in this Section.

2. Accessory Building, Non-Residential Use, Not Heated or Plumbed.  
(rev Ord. 10, 2000).

3. Home occupations.

4. Private garages as accessory buildings to the principal uses.

5. Retail commercial establishments, limited to the following and similar uses: antiques, appliances, art supplies, galleries, retail bakeries, bookstores, cameras, candies, tobaccos, florists, food markets, furniture, gifts, hardware, hobby shops, photo shops, sporting goods, stationery and variety stores.

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.

9. Medical and dental clinics.

10. Open use recreation sites, recreation clubs, theaters, assembly halls, schools, churches, hospitals, public buildings and governmental offices.

11. Shop crafts.

12. Newspaper publishing businesses.

13. Rental, repair and wholesaling facilities in conjunction with any of the above uses provided all such activity is clearly incidental and accessory to the permitted use and conducted within a building.

14. Motor vehicle, snowmobiles and Recreational Vehicle leasing and rentals, provided that the following requirements are met:

(a) The property upon which such activity is conducted shall be contiguous to Colorado Highway 135 or the Gothic County Road.

(b) No more than two (2) of permittee's motor vehicles or two (2) of permittee's snowmobiles or two (2) of permittee's Recreational Vehicles shall be parked on the premises at any time, but no combination of more than two (2) of the above.

(c) No vehicle repairs or maintenance of any kind shall be performed upon the premises.

(d) "Recreational Vehicle" shall mean a self-propelled wheeled vehicle primarily designed to be operated for recreational purposes on the roads and highways for which registration as a motor vehicle is required or permitted under Colorado state law.

(e) The size, weight and type of vehicle to be parked on the premises shall be considered in issuing any permit for a conditional use pursuant to this Ordinance. The standard for review shall be based on the appropriateness of the vehicle to the premises and adjoining uses."

**Section 14. Amending the Permitted Use Provisions of Section 15-2-13.B.13. ("C" Commercial District) of the Ordinance to Re-define and Re-List Certain Permitted Uses.** Section 15-2-13.B.13. is deleted in its entirety and replaced with the following:

"13. Office Uses."

**Section 15. Amending the Conditional Use Provisions of Section 15-2-13.C.3. ("C" Commercial District) of the Ordinance to Re-define and Re-list Certain Conditional Uses.** Section 15-2-13.C.3. of the Ordinance is deleted in its entirety, replaced with the following and the subsequent sections are renumbered as appropriate:

3. Financial institutions;
4. Personal Services Establishments;"

**Section 16. Amending the Conditional Use Provisions of Section 15-2-15.C.3. ("P" Public District) of the Ordinance to Re-define and Re-list Certain Conditional Uses.** Section 15-2-15.C.3. of the Ordinance is deleted in its entirety and replaced 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 17. Amending the Non-conforming Use or Aspect Provisions of Section 15-2-24. to Make Hotel or Lodge, Motel, Restaurant or Resort Uses an Exception to the Abandonment Requirements.** Section 15-2-24.D. of the Ordinance is deleted in its entirety and replaced with the following:

"D. Abandonment. Whenever a non-conforming nonresidential use or aspect has been discontinued or abandoned for a period of six (6) consecutive months or more, such use or aspect shall not thereafter be re-established, and any future use of the building, structure or land shall be in conformance with this Article; except: (i) that such restriction shall not apply to Hotel or Lodge, Motel, Restaurant or Resort non-conforming uses where (a) there has been no intervening different use or aspect, and (b) all water and sewer charges for said non-conforming use have been timely paid during the period of discontinued use or abandonment; and (ii) for non-conforming aspects approved by the Board as part of a reasonable facsimile of a historic building previously existing on the historic site, as "historic building" is defined herein. In making its decision, the Board shall utilize the Criteria for Board Decision and the requirements therein which are set forth in Subsection H of this Section 15-2-24. The Board shall have the discretion to: {rev. 10/3/94; 4/7/95, Ord. 11 1995}

1. impose such conditions upon the modifications to the proposed building as the Board deems appropriate to satisfy such Criteria for Board Decision; and

2. to require elimination of any non-conforming aspect which is not practically difficult to avoid."

**Section 18. 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 19. Savings Clause.** Except as amended hereby, 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 18 DAY OF June, 2007.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS 9 DAY OF JULY, 2007.

TOWN OF CRESTED BUTTE, COLORADO

By: Margot Leung  
~~Alan Bernholtz, Mayor~~  
MAYOR PRO-TEM

ATTEST:

Eileen Hughes  
Eileen Hughes, Town Clerk

[SEAL]

