

**ORDINANCE NO. 3**

**SERIES 2009**

**AN ORDINANCE AMENDING THE ZONING AND LAND USE ORDINANCE TO ESTABLISH A NEW ZONE DISTRICT ("B4" – WEST END BUSINESS/HISTORIC RESIDENTIAL) AND TO AMEND THE PROHIBITIONS ON CERTAIN USES ON THE GROUND FLOOR IN THE "B1" AND THE "B3" DISTRICTS**

**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") contains, among other things, restrictions on certain uses of both the Ground Floor and below Ground Floor levels in buildings fronting Elk Avenue in the "B1" and "B3" Districts;

**WHEREAS**, the Town Council imposed such restrictions by way of Ordinance No. 17, Series 2007 (the "Horizontal Zoning Ordinance"), where it found that the number of retail uses in the "B1" and "B3" Districts was in 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, as it did in the Horizontal Zoning Ordinance, that retail uses continue to be important to tourism and the community, the continued vibrancy and character of Town and the overall visitor experience in Crested Butte and that visitors are a vital part of the Town's economy, and through their payment of sale taxes on purchases provide important revenue source for the Town;

**WHEREAS**, the Town Council finds that the restrictions placed on both the Ground Floor and below Ground Floor levels in buildings fronting Elk Avenue in the "B1" and "B3" Districts are too expansive, are affecting the use of one of such floors for uses other than retail uses and therefore potentially causing one of such floors to remain vacant in some circumstances; and, accordingly, such restrictions should only be maintained on one of such floor levels;

**WHEREAS**, the Town Council also finds that part of the "B3" District commonly known as the "0 block" of Elk Avenue experiences different use impacts and conditions than the remainder of the "B3" District, and even the "B1" District, such as, for example, reduced pedestrian and vehicular traffic, and accordingly, necessitates that the Town Council establish a new zone district for such block;

**WHEREAS**, the Town staff, in conjunction with establishing such new zone district, has recommended that certain other conforming changes be made to the Ordinance; and

**WHEREAS**, the Town Council has determined that the below amendments to the Ordinance promote the goals and desires of the Town Council and the Town staff to 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 and are in the best interest of the environment, 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 Amending the Definition of "Ground Floor".** The definition of "Ground Floor" in Section 15-2-3. of the Ordinance is amended by deleting said definition in its entirety and replacing it with the following new definition:

"Ground Floor. The first floor of a property above finish grade at the front of said property; except that for purposes of determining what permitted and conditional uses are allowed in a building where certain uses are restricted by this Article, the ground floor shall be deemed to be the floor level that has display windows immediately adjacent to grade at the front elevation of the building. Each building shall have only one Ground Floor."

**Section 2. Amending the Permitted Use Provisions of Section 15-2-10.B. ("B1" Business District) of the Ordinance to Re-define the Permitted Uses.** Sections 15-2-10.B. is hereby 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 on the Ground Floor. The prohibition against such uses on the Ground Floor 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 on the Ground Floor. The prohibition against such uses on the Ground Floor 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.

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 on the Ground Floor. The prohibition against such uses on the Ground Floor 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.

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."

**Section 3. Amending the Conditional Use Provisions of Section 15-2-10.C.1. ("B1" Business District) of the Ordinance to Re-define Newspaper Publishing as a Conditional Use.** Section 15-2-10.C.1. is hereby 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 on the Ground Floor. The prohibition against such uses on the Ground Floor 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."

**Section 4. Amending the Conditional Use Provisions of Section 15-2-10.C.2. ("B1" Business District) of the Ordinance to Redefine the Prohibition as a Conditional Use Residential Units on the Ground Floor.** Section 15-2-10.C.2. is hereby 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. The prohibition against such uses on the Ground Floor 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. 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 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."

**Section 5. Amending the Permitted Use Provisions of Section 15-2-12.B. ("B3" Business District) of the Ordinance to Re-define the Permitted Uses.** Section 15-2-12.B. is hereby deleted in its entirety and replaced with the following:

"B. Permitted Uses:

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.
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 on the Ground Floor. The prohibition against such uses on the Ground Floor 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.
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 on the Ground Floor. The prohibition against such uses on the Ground Floor 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.

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 6. Amending the Zoning District Map as Referred to in Section 15-2-4 (Establishment of Districts and a Zoning Map) to Add a New Zone District.** The

Zoning District Map referred to Section 15-2-4 is hereby amended to add the following new zone district which shall be described as follows:

**““B4” WEST END BUSINESS/HISTORIC RESIDENTIAL”**

Said new zone district shall include the following real property and all improvements thereon and appurtenances thereto:

Lots 1-8, Block 30,  
Lots 19-32, Block 19,  
Town of Crested Butte,  
County of Gunnison  
State of Colorado.

The Zoning District Map is hereby amended to include the foregoing new zone district.

**Section 7. Amending Section 15-2-4 (Establishment of Districts and a Zoning Map) to Add a New Zone District.** Section 15-2-4 is hereby deleted in its entirety and replaced with the following:

**“SECTION 15-2-4. Establishment of Districts and a Zoning Map.**

A. Establishment of Districts. In order to carry out the intent and purposes of this Article, the Town of Crested Butte is hereby divided into the following twenty (20) zoning districts:

- “R1” RESIDENTIAL
- “R1A” RESIDENTIAL
- “R1B” RESIDENTIAL
- “R1C” CORE RESIDENTIAL
- “R1D” RESIDENTIAL
- “R1E” RESIDENTIAL
- “R2” RESIDENTIAL/MULTI-FAMILY
- “R2A” RESIDENTIAL
- “R2C” CORE RESIDENTIAL/MULTI-FAMILY
- “R3C” CORE RESIDENTIAL/BUSINESS
- “R4” RESIDENTIAL/MULTI-FAMILY
- “T” TOURIST
- “B1” BUSINESS CORE
- “B2” BUSINESS/HIGHWAY RELATED
- “B3” BUSINESS/HISTORICAL RESIDENTIAL
- “B4” WEST END BUSINESS/HISTORIC RESIDENTIAL
- “C” COMMERCIAL
- “M” MOBILE HOME
- “P” PUBLIC HOME
- “A-O” AGRICULTURE-OPEN DISTRICT

If a question arises as to whether a specific use falls within any of the above delineated use categories, any person may apply to the Board for a determination as to whether a specified use is expressly or conditionally permitted. Such determination shall be made on an analysis of the intention of the district and the compatibility of the proposed use with specified permitted and conditional uses. All permitted and conditional uses within any district are subject to the additional regulations as contained in this Article and any ordinance or regulations adopted by the Town of Crested Butte or other governmental entity with proper jurisdiction.

B. Zoning District Map and Interpretation.

1. The location and boundaries of the zoning districts herein established, along with the Height Line, and Stream Margin Review Line, are set forth on the Zoning District Map of the Town of Crested Butte, which accompanies this Article, and which map, with all notations, references, and other information shown thereon, is incorporated herein as part of this Article.

2. Regardless of the existence of purported copies of the official Zoning District Map which from time to time may be made or published, the official map, which shall be available for public inspection upon request, shall be the final authority as to the current zoning district status of the Town.

3. All legal changes made in accordance with the provisions of this Article shall be promptly entered on the official Zoning District Map.

4. When any contradiction or conflict exists in interpreting the Zoning District Map, the Building Inspector shall interpret said map upon the request of any person, and any person aggrieved by such interpretation may appeal the same to the Board, whose interpretation shall be final. Unless otherwise indicated on said map, the district boundaries shall be construed to be the centerline of streets or alleys, or lot lines of property divided into lots and blocks.

C. Uses. Except as herein provided, no building, structure, or property shall hereafter be used, and no building or other structure shall be erected, reconstructed, altered, or moved into or within the Town of Crested Butte, except in conformance with the regulations of the zoning district in which such building, structure or property is located."

**Section 8. Amending Article 15-2 (The Zoning and Land Use Ordinance) to Add a New Section 15-2-12.1 ("B4" West End Business/Historic Residential).** A new Section 15-2-12.1 is added to Article 15-2 which shall read as follows:

**"SECTION 15-2-12.1 "B4" West End Business/Historic Residential.**

A. Intent of District. The purpose for which this district is created is to encourage the preservation of the historic and architecturally interesting structures found in this district, by allowing them to remain in residential use, or by converting them to business uses as long as essentially the same structures are retained. This district is characterized by reduced pedestrian and vehicular traffic.

B. Permitted Uses:

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, nonresidential use, not heated or plumbed.

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, photos shops, sporting goods, stationary and variety stores.

6. Office uses.

7. Financial institutions.

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.

(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 Code. The standard for review shall be based on the appropriateness of the vehicle to the premises and adjoining uses.

C. Conditional Uses:

1. Accessory dwellings;
2. Parking areas;
3. Restaurants, cocktail lounges or other places serving food and/or alcoholic beverages, excluding drive-in eating places that serve customers in their automobiles or vehicles; and
4. Accessory building, nonresidential use, heated and/or plumbed.

D. Minimum Lot Area: three thousand (3,000) square feet.

E. Maximum Lot Area: six thousand two hundred fifty (6,250) square feet.

F. Minimum Lot Width: twenty-five (25) feet.

G. Minimum Front Yard: Any distance conditionally approved.

H. Minimum Side Yard: From three (3) feet to as much as seven and one-half (7.5) feet for flat-roof buildings and from seven and one-half (7.5) feet to as much as eleven and one-half (11.5) feet for sloped-roof buildings, dependent upon snow storage requirements and guidelines and proximity of adjacent structures, as determined by the Board. Provided, however, that any setback between three (3) feet and seven and one-half (7.5) feet must meet the criteria required for approval of a nonconforming aspect as set forth in Section 15-2-24.

I. Minimum Rear Yard:

1. Principal building – ten (10) feet.
2. Accessory building – five (5) feet.

J. Minimum Floor Area: four hundred (400) square feet for each residential unit. Provided, however, that the minimum floor area for an accessory structure built before July 1, 1942, which is being converted to a Residential Unit, Historic Accessory Structure shall be two hundred twenty (220) square feet, plus a closet, a bathroom and one hundred (100) additional square feet for each occupant in excess of two (2), only if the following conditions are met:

1. The residential unit must be an accessory dwelling used exclusively as a long-term rental unit;

2. The occupants of the dwelling must have been residents of Gunnison County for three (3) consecutive years of the proceeding seven (7) years;

3. At least fifty-one percent (51%) of the occupants' income must be earned from work for a Gunnison County employer or from work actually performed in Gunnison County; and

4. The above limitations for occupants and the limitation of the term of rental shall be recorded pursuant to Section 15-2-17 of this Article.

K. Maximum Floor Area:

1. Accessory building, including an accessory dwelling, if any – one thousand (1,000) square feet or two-thirds (2/3) of the floor area of the principal building, whichever is smaller.

2. Accessory dwelling – one thousand (1,000) square feet or two-thirds (2/3) the floor area of the principal building, whichever is less.

L. Maximum Floor Area Ratio: All buildings - .4 as a matter of right up to .5 dependent upon provision of site amenities.

M. Maximum Building Height: thirty (30) feet.

N. Minimum Exterior Wall Height: seven (7) feet.

O. Minimum Vertical Distance from Eave line of Roof to the Finished Grade Level: six (6) feet.

P. Slope of Roof: A minimum of 4:12. A flat roof must contain a parapet on the sides facing the street, and as otherwise required by the Board.

Q. Trash Storage: An open and unoccupied area at least twelve (12) feet by twelve (12) feet in size, which is accessible at all times, shall be provided on site for an appropriate trash storage/Dumpster location."

**Section 9. Amending Section 15-2-15.2 (Planned Unit Developments) to Include Reference to the "B4" District.** Section 15-2-4.B.1. is hereby deleted in its entirety and replaced with the following:

"B. Location of P.U.D. Overlay. The following land within the Town of Crested Butte shall be subject to these P.U.D. regulations, at the option of the owner thereof:

1. Any four (4) or more contiguous town lots, under the ownership of one (1) person, located in the "C" Commercial District; any five (5) or more contiguous town lots, under the ownership of one (1) person, in both the "T" Tourist District and the "B2" Business District; and any six (6) or more contiguous town lots, under the ownership of one (1) person, in both the "B3" Business District, the "B4" Business

District and in "R4" Residential District. Any five (5) or more contiguous town lots, under the ownership of one person or entity, located in the "B2" zone district. Any P.U.D. in the "B2" zone district shall provide for a mix of building shapes relative to others existing in the entire "B2" zone district."

**Section 10. 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 11. Savings Clause.** Except as amended hereby, the Town of Crested Butte Municipal Code of 1987, 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 16<sup>th</sup> DAY OF March, 2009.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 6<sup>th</sup> DAY OF April, 2009.

TOWN OF CRESTED BUTTE, COLORADO

By: *Alan Bernholtz*  
Alan Bernholtz, Mayor

ATTEST:

*Eileen Hughes*  
Eileen Hughes, Town Clerk

