ORDINANCE NO. 16

SERIES 2018

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 16, ARTICLE 15 OF THE CRESTED BUTTE MUNICIPAL CODE TO INCLUDE NEW REGULATIONS FOR THE REMOVAL OF TREES

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 Council has the authority pursuant to Article XX of the Colorado Constitution, the Town of Crested Butte Home Rule Charter and applicable State statute, including C.R.S. §31-15-401, to adopt ordinances, rules and regulations in furtherance of public health, safety and welfare;

WHEREAS, pursuant to Chapter 16, Article 15 of the Crested Butte Municipal Code (the "**Code**"), the Town Manager possesses the authority to set forth regulations for the care and removal of Trees on lots and tracts of land within Crested Butte;

WHEREAS, the Town of Crested Butte has been a certified Tree City USA since 2001 and that the Arbor Day Foundation and the National Association of State Foresters require that each certified municipality have a Tree care ordinance;

WHEREAS, in adopting such legislation, the Town Council recognizes the environmental, aesthetic, and health benefits of landscaping, and Trees in particular, to the residents and guests of the Town of Crested Butte;

WHEREAS, the Town Council's intent in adopting the Landscaping Article was to maintain, to the fullest extent possible, the number of existing Trees and the maximum diversity of Tree species in the Town by encouraging proper care and maintenance, and minimizing property management, development and construction activities that may result in the damage or loss of large Trees;

WHEREAS, the Town Staff has recommended to the Town Council that to better uphold § 16-15-10 et seq. "Landscaping", the Town Council adopt regulations to be included in the Code further addressing the management of Trees;

WHEREAS, the Town Council finds that in order to maintain, to the fullest extent possible, the number of existing Trees and the maximum diversity of Tree species in the Town, the Town Council should amend the Code to include regulations addressing the management of Trees; and

WHEREAS, the Town Council supports adoption of regulations addressing the management of Trees, such regulations being in the best interest of the health, safety and 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. Chapter 16, Article 15 of the Code is hereby repealed and replaced and shall read as follows:

ARTICLE 15

"Landscaping"

Sec. 16-15-10. - Terms and provisions.

The terms and provisions of this Article shall apply to all real property presently situated in or subsequently annexed to the corporate limits of the Town. The term "Tree" for the purposes of this Article shall include all coniferous and deciduous Trees having a trunk diameter of two inches (2") or more when measured at four feet six inches (4'-6") from ground level.

Sec. 16-15-20. - Intent.

Landscaping and Trees in particular provide important environmental, aesthetic, and health benefits to the residents and guests of the Town of Crested Butte. Landscaping enhances the quality of life and real estate values of property upon which it exists and other neighboring properties. Large Trees are a resource that cannot be fully replaced if they become dead, diseased, damaged or removed. The intent of this Article is to maintain, to the fullest extent practicable, the number of existing Trees and the maximum diversity of Tree species in the Town by encouraging proper care and maintenance, and minimizing property management, development and construction activities that may result in the damage or loss of large Trees.

Sec. 16-15-30. - Landscaping and site development.

(a) Landscaping subject to regulation. Landscaping shall conform to the landscape plan submitted pursuant to Section 18-13-20(a) of this Code and guaranteed to be completed and maintained in a healthy living condition. The Design Guidelines Town of Crested Butte shall guide the property owner on all topics that are not included in this Article. *Ref: Sec 17-13-40(a)*

(b) Existing Trees and shrubs. The landscape plan shall demonstrate that a reasonable effort has been made to preserve all existing healthy Trees and shrubs. *Ref: Sec 17-13-40(b)*

(c) Appropriate vegetation. The landscaping plan shall provide for planting of indigenous plant materials or such other vegetation recommended by the BOZAR Guideline Plant List of Trees and Shrubs in the Design Guidelines Town of Crested Butte. All exposed ground surfaces shall be revegetated. *Ref: Sec 17-13-40(c)*

(d) Obstruction of signs and fire hydrants. Vegetation shall not be located so as to interfere with the ability of motor vehicle operators to have unobstructed views of traffic signs, street signs and intersecting streets. Fire hydrants shall not be obstructed by landscaping. *Ref: Sec 17-13-40(d)*

(e) Protection of landscaping. Installation of vegetation protection devices shall be required during any excavation or construction activities. *Ref: Sec 17-13-40(e)*

(f) Landscaping installation. All landscaping and site development of a property shall be installed in accordance with the plans submitted pursuant to Subsection 18-13-20(a) of this Code and completed not later than the end of the first planting season following the issuance of the temporary certificate of occupancy for any building on the site; or in accordance with a Board-approved phased plan that shall as a minimum establish a vegetative ground cover in the first growing season.

(g) Landscaping guarantee. All landscaping, including relocated Trees, planted in accordance with this Article shall live for a minimum of two (2) years after the installation. All landscaping shall be properly maintained in a healthy living condition by the owner of the property. Any landscaping that dies within the initial two (2) year period shall be replaced to the original specifications during the next available planting season and shall be required to live for a minimum of two (2) years from the time it is replanted. *Ref: Sec 17-13-40(f)*

Sec. 16-15-40. – Trees and landscaping on public property.

(a) Any Trees, shrubs and other landscaping planted in the public right-of-way and sidewalk area or other public property shall be approved prior to installation as to location and type by the Town Manager or designee(s).

(b) No person, other than a Town employee under the direction of the Town Manager or designee(s), shall plant, trim, prune, transplant or remove Trees situated upon Town property, streets or other public rights-of-way.

(c) No person using Town park property shall damage, cut, carve, transplant or remove any Tree or plant; or injure the bark of Trees or pick flowers or seeds of any plant; attach any rope, wire or other contrivance to any Tree; dig or otherwise disturb planter or grass areas; or in any other way harm or impair the usefulness or natural beauty of any public area. *Ref: Sec. 11-3-209(b)*

Sec. 16-15-50. – Removal of Trees on public and private property; permit required.

(a) No person, without first obtaining a permit for Tree removal as herein provided, shall remove, cause to be removed or effectively remove through damaging any Tree.

(b) No person, without first obtaining a permit from the Town Manager or designee(s), shall remove or cause to be removed any Tree. Said Tree removal application shall contain such information as the Town Manager or designee(s) may require to enable them to adequately enforce the provisions of this Article. A request to remove Trees or other landscaping that is part of a site development plan shall be reviewed by the Board as part of the building application process in conformance with Paragraph 18-13-20(a)(11) of this Code.

(c) No person, without first obtaining a permit, shall top, damage, girdle, limb up, or poison any living Tree. "Topping" is defined as the removal of more than five percent

(5%) of the height from the top of any deciduous Tree or the removal of the terminal bud from a coniferous Tree. The "terminal bud" of a coniferous Tree is defined as the highest bud on the Tree. "Limb-up" is defined as the removal of more than one third (1/3) of the live crown or branches of a Tree within one growing season.

(d) The Town may request, when necessary, to adequately evaluate the intended Tree removal proposal, a site plan drawn to scale showing the following:

(1) The location of the driveway, parking areas, all paving, walkways, trash or dumpster locations and other structures on the site.

(2) The location of all Trees shall be identified as to type, species and size of trunk diameter measured at four feet six inches (4'-6") from ground level.

(3) The identification of all diseased Trees and any Trees damaging or threatening to damage any buildings, structures, roadways, sidewalks, paved surfaces or utility service lines.

(4) The identification of any Trees to be relocated and/or removed, Trees to be retained and areas which will remain undisturbed.

(5) The identification of any proposed grade changes which might adversely affect or endanger any Trees on the site, with details and specifications as to how the Trees will be protected and preserved.

(e) After the application for a Tree removal permit is filed, the Town Manager or designee shall review the application (and site plan if required) and determine what effect the intended removal of the Tree(s) will have upon the natural resources, aesthetic qualities and safety of the area. The following factors shall be considered in determining whether a Tree removal permit shall be granted or denied:

(1) Whether removal of the Tree(s) is necessary to protect human safety, buildings, structures, utilities and other improvements.

(2) Whether removal of the Tree(s) will increase the potential for flooding, snowslides, landslides or other natural hazards.

(3) Whether removal of the Tree(s) will increase excess soil erosion, water runoff or otherwise negatively impact the watershed.

(4) Whether the removal of the Tree(s) will increase the potential of wind erosion, create dust during winds, or otherwise adversely affect air quality.

(5) Whether the removal of the Tree(s) is necessary due to insect infestation or disease.

(6) Whether the removal of the Tree(s) will substantially decrease the quantity of species and diversity of Trees in the immediate neighborhood, detract from the aesthetic qualities of the area, or adversely affect the reasonable use and enjoyment of property in the area.

(7) Whether the removal of the Tree(s) is necessary in order to construct proposed improvements and to allow reasonable use and enjoyment of the property.

(8) Whether the removal of the Tree(s) will result in the implementation of good forestry practices, including consideration to the number and types of healthy Trees that the subject site can support.

(9) Whether the removal or relocation of the Tree(s) upholds the intent of the original landscape plan as approved by the Board; and whether the methods proposed to be used for the removal or relocation of any Tree is adequate.

(f) No person shall remove a totally dead Tree without providing prior notice to the Town Manager or designee and obtaining a Tree removal permit. Following such removal, the owner shall replace the dead Tree with a comparable substitute(s), as defined in Subsection 16-15-60(c) below.

(g) Any person, in the event of an emergency caused by a Tree being in a hazardous or dangerous condition and posing an immediate threat to person or property, may remove such Tree without adhering to the procedures described herein. The Crested Butte Marshal must be notified prior to the removal of a hazard Tree. Following such removal, the owner shall notify the Town Manager or designee within twenty four (24) hours and submit a Tree replacement plan identifying comparable substitute(s) as defined below in Subsection 16-15-60(c).

Sec. 16-15-60. - Maintenance of Trees.

(a) Within residential zone districts, unless necessary to allow reasonable use and enjoyment of the property, all healthy living Trees at least five (5) feet in height planted within the front yard setback shall remain, whether the subject setback is ten (10) feet or twenty (20) feet. When such setback is "any distance conditionally approved," all such Trees shall remain in the ten (10) feet closest to the street, whether or not in the setback.

(b) In the business zone districts, unless necessary to allow reasonable use and enjoyment of the property, all healthy living Trees of any size planted in the front yard setback shall remain.

(c) Where construction of structures or improvements on any property necessitates the removal of any Tree the Town Manager or designee, as a condition of approval for removal, may require that the owner either relocate or replace the Trees with a comparable substitute elsewhere within the building site. Comparable substitute is defined as a Tree with a canopy at maturity being comparable to the canopy at maturity of the removed Tree with no replacement deciduous Tree being less than two inches (2") in diameter measured at the root collar, and no evergreen Tree being less than four feet (4') in height.

(d) In the business zone districts, if any Tree located within the building site totaling at least six inches (6") in diameter when measured at four feet six inches (4'-6") from ground level are preserved, upon approval of the Board, one (1) required parking space may not have to be provided. Trees having a diameter of less than two inches (2") when measured at four feet six inches (4'-6") from ground level shall not be included in the above computation.

(e) In the business zone districts, in the event a suitable location for a Tree replacement is not available on the site, the property owner may either plant a comparable

substitute on another property owned by the applicant in a business zone district of Town, or plant a comparable substitute Tree on Town property in a location to be determined by the Town Manager or designee. Any Tree planted on Town property must be warrantied to the Town guaranteeing survival for one (1) year after the time of planting. Substitute Tree(s) must be planted by a professional Tree-planting service provider.

Sec. 16-15-70. - Preservation during construction.

(a) No person, without first obtaining a permit, shall be allowed to dig, excavate, turn, compact, or till the soil within the dripline of any Tree in such a manner as to cause material damage to the root system of the Tree. Dripline is defined as a cylinder having a radius equal to the length of the longest branch of the Tree, with the center of the cylinder located at the center of the trunk of the Tree and extending from grade level down to a depth of ten feet (10') below grade.

(b) No person, while constructing any structure or other improvement, shall be allowed to place material, machinery, temporary soil or rock deposits, or any other material within the dripline of any Tree. During construction, the Town Manager or designee may require the erection of suitable barriers around any such Trees to be preserved and to protect existing natural resources as necessary. In addition, during construction, no attachments or wires other than protective guy wires shall be attached to any such Tree.

Sec. 16-15-80. - Relocation of Trees on public and private property; permit required.

(a) No person, without first obtaining a Tree relocation permit as herein provided, shall relocate any Tree on public or private property. Such application may contain such information as needed by the Town Manager or designee to enable adequate review and enforcement of this Section.

(b) All relocated Trees shall be maintained in a healthy living condition, and any relocated Tree that is severely injured, damaged or dies within two (2) years of relocation, shall be replaced with a Tree of the same type, species and size during the next available planting season after its demise.

Sec. 16-15-90. – Subdivision approval for relocation and removal.

If a subdivision plat shows each Tree proposed to be relocated or removed is approved by the Town pursuant to Chapter 17 of this Code, such approval by the Town shall constitute a permit to relocate and remove the Trees designated and no application pursuant to this Article shall be required.

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**. Except as amended hereby, the Crested Butte Municipal Code, as amended, 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 4th DAY OF June, 2018.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 18th DAY OF June, 2018.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

ATTEST:

_____
Lynelle Stanford, Town Clerk

[SEAL]

TOWN OF CRESTED BUTTE CORPORATE SEAL JULY 2, 1880 GUNNISON COUNTY, CO