

ORDINANCE NO. 35

SERIES 2017

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 4 OF THE CRESTED BUTTE MUNICIPAL CODE TO INCLUDE NEW PROVISIONS ESTABLISHING THE AFFORDABLE HOUSING FUND AND A TAX ON VACATION RENTALS AND MAKING SUCH OTHER RELATED CHANGES TO THE CODE IN CONNECTION THEREWITH

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

WHEREAS, at an election held on November 7, 2017, a majority of those voting approved the following ballot question approving the levy of an excise tax of not more than 5% on the amount charged any person for a vacation rental for the purpose of funding affordable housing programs:

SHALL TOWN OF CRESTED BUTTE TAXES BE INCREASED NOT MORE THAN \$325,000 IN 2018 AND BY WHATEVER AMOUNTS ARE GENERATED ANNUALLY THEREAFTER BY AN EXCISE TAX OF NOT MORE THAN 5% ON THE AMOUNT CHARGED TO ANY PERSON FOR A VACATION RENTAL FOR THE PURPOSE FUNDING AFFORDABLE HOUSING PROGRAMS, WITH THE RATE OF TAX BEING ALLOWED TO BE INCREASED OR DECREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF TAXATION DOES NOT EXCEED 5%; AND SHALL THE TOWN BE AUTHORIZED TO COLLECT, KEEP AND SPEND THE REVENUES FROM SUCH TAX AND ANY INVESTMENT INCOME THEREFROM NOTWITHSTANDING THE LIMITS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?; and

WHEREAS, it is necessary to amend the Town Code to implement the vacation rentals excise tax; and

WHEREAS, for the foregoing reasons, the Town Council hereby finds that the amendments to the Town of Crested Butte Municipal Code ("**Code**") set forth herein below are in the best interest of the Town of Crested Butte.

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

Section 1. Adding a New Section 4-1-70 to Chapter 4 of the Code. A new Section 4-1-70 is added to Chapter 4 of the Code to read as follows:

Sec. 4-1-70. – Affordable Housing Fund created.

(a) There is hereby created a fund, to be known as the *Affordable Housing Fund* for the purpose of creating, improving and maintaining workforce and affordable housing. The revenues from the vacation rental excise tax, and payments made in lieu of providing Resident Occupied Affordable Housing shall be recorded in the affordable housing fund. Such revenues may be supplemented by gifts and donations. Such fund shall be kept separately, and used only for the following purposes supporting and directly related to affordable or workforce housing:

- (1) Construction of new deed restricted units for rental and homeownership;
- (2) Construction and maintenance of rental housing for municipal employees;
- (3) Administration of deed restrictions, affordable housing programs and rental property management;
- (4) Land acquisition;
- (5) Down payment assistance;
- (6) Construction of infrastructure to serve new affordable housing units;
- (7) Contracts for affordable housing services;
- (8) Legal fees;
- (9) Supporting the Gunnison Valley Regional Housing Authority or subsequent housing authorities in the County;
- (10) Acquisition, repair and restoration of units;
- (11) The deed-restriction of existing units;
- (12) Leveraging of grant funds or servicing of debt;
- (13) Education and training for homeownership and related topics; and
- (14) Any other purposes allowed by law.

Section 2. Amending Section 6-6-100 of the Code. Section 6-6-100 of the Code is amended to read as follows:

Sec. 6-6-100. – Sales tax and vacation rental excise tax.

The owner of a vacation rental shall cause sales tax and vacation rental excise tax to be collected and remitted to the Town as required under the Code.

Section 3. Adding a New Article 9 to Chapter 4 of the Code. A new Article 9 is added to Chapter 4 of the Code to read as follows:

“Vacation Rental Tax”

Sec. 4-9-10. Purpose.

The purpose of this Article shall be to impose an excise tax known as a vacation rental tax on vacation rentals the proceeds of which will be recorded in the *Affordable Housing Fund* established by Sec. 4-1-70 for the purposes of supporting and directly related to affordable or workforce housing.

Sec. 4-9-20. Effective Date.

This Article shall be effective commencing on January 1, 2018, and shall apply to all vacation rentals.

Sec. 4-9-30. Definitions.

License means a vacation rental license required by Chapter 6 of Article 6 of this Code.

Vacation Rental has the same meaning as in Section 16-1-20 of this Code.

Vendor means any person who holds a License.

Sec. 4-9-40. Rate, imposition, collection, and distribution of vacation rental tax.

(a) There is hereby levied by the Town an excise tax of 5% on the amount charged to any person for a vacation rental.

(b) A vendor shall collect the tax and remit it to the Town pursuant to this Article.

(c) The Town shall record the proceeds of the vacation rental tax in the *Affordable Housing Fund*.

Sec. 4-9-50. Vacation rental tax schedule.

The vacation rental tax imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations approved by the Finance Director.

Sec. 4-9-60. Transactions, items and services subject to vacation rental tax.

The vacation rental tax shall apply to the price charged to any person(s) for use of a vacation rental.

Sec. 4-9-70. Exemptions from vacation rental excise tax.

The tax levied by Section 4-9-40 above shall not apply to the following:

- (a) All vacation rentals to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organization.
- (b) All vacation rentals to the federal government, the State or their departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
- (c) All vacation rentals which the Town is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State.

Sec. 4-9-80. - Exemption; burden of proof.

The burden of proving that a vacation rental is exempt from the vacation rental tax shall be on the purchaser under such reasonable requirements of proof as the Town Manager or the Finance Director may prescribe.

Sec. 4-9-90. - Credit sales.

If a vendor transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the vacation rental tax on the balance of the total rental price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a vendor to a closely held subsidiary shall not be deemed to require the vendor to pay the vacation rental tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account.

Sec. 4-9-100. - Acquisition, inception or cessation of vacation rental business.

(a) Any person who owns a vacation rental property who sells such property shall file a final return. The reporting period shall end on the date of the transfer of ownership of the business in question.

(b) Any person who purchases an existing vacation rental property shall be responsible for determining whether there is any tax due from that property and shall withhold from the initial purchase payment an amount sufficient to cover all such tax due, unless the former owner produces a receipt from the Town showing that all tax due has been paid or a certificate from the Town indicating that there is no tax due.

Any amount so withheld shall be paid to the Town within ten (10) days of the date of the sale of the property. Any purchaser who fails to withhold such tax due, or fails to pay to the Town the amount so withheld within the ten-day period shall, as well as the seller, be liable for any tax due.

(c) Every person who owns vacation rental property in the Town who ceases using such property for vacation rental purposes shall file a final return. The reporting period of such return shall end on the last day of renting property for vacation rental purposes.

Sec. 4-9-110. - Vendor responsible for collection and payment of tax.

Every vendor engaged in the vacation rental business in the Town shall be liable and responsible for collecting and paying to the Town an amount equivalent to the amount charged to any person for a vacation rental multiplied by the vacation rental tax rate established by Section 4-9-40 of this Code.

- (1) . Vendors shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no vendor shall advertise, hold out or state to the public or to any consumer, either directly or indirectly, that the vacation rental tax or any part thereof shall be assumed or absorbed by the vendor, that it will not be added to the price or, if added, that it or any part thereof shall be refunded.
- (2) Any tax added to the price by a vendor shall constitute a debt from the purchaser to the vendor until paid, and shall be recoverable at law in the same manner as other debts.
- (3) No vendor shall retain any vacation rental tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected, and include it in the calculation of tax due.
- (4) When a dispute arises between a vendor and a purchaser who claims that the rental is exempt from the tax, the vendor shall collect, and the purchaser shall pay, such tax. The purchaser may submit a claim for refund to the Town within sixty (60) days of the date of rental. Any such tax refunded by the Town will be paid directly to the purchaser.

Sec. 4-9-120. - Trust status of tax in possession of vendor.

All vacation rental tax collected by any vendor shall be the property of the Town and remain public money in the hands of such vendor, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

Sec. 4-9-130. - Filing returns; due date.

(a) Every vendor shall file a return, whether or not a tax is due, and remit any tax due to the Town on or before the twentieth day of the month following the reporting period. Failure to receive a return does not relieve a vendor of his or her legal responsibility for filing a return on or before the due date.

(b) A vendor engaged in business in the Town at two (2) or more locations who collects vacation rental tax, may file one (1) return for all such locations when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

(c) For good cause shown in a written request of a vendor, the Finance Director may extend the time for making returns and paying the tax due. Such good cause shall not include the vendor's inability to pay taxes due the Town due to other debts incurred by the vendor or his or her business.

(d) No person shall make any false statement in connection with a return.

Sec. 4-9-140. – Reporting periods.

(a) Unless otherwise approved by the Town, vendors must file returns and pay taxes as follows:

(1) Upon approval of the Finance Director, a vendor whose monthly tax is ten dollars (\$10.00) or less may file returns and pay tax annually, semi-annually, quarterly or monthly.

(2) Upon approval of the Finance Director, a vendor whose monthly tax due is more than ten dollars (\$10.00) and less than twenty dollars (\$20.00) may file returns and pay tax semi-annually, quarterly or monthly.

(3) Upon approval of the Finance Director, a vendor whose monthly tax due is more than twenty (\$20.00) and less than forty dollars (\$40.00) may file returns and pay tax quarterly or monthly.

(4) A vendor whose monthly tax due is forty dollars (\$40.00) or more shall file returns and pay tax monthly.

For the purpose of the timing of the filing of returns, the amounts considered in Paragraphs (1) through (4) above must be consistent for a period of three (3) consecutive months to be approved for any schedule other than reporting monthly.

(b) The reporting period for a final return shall end on the date of the transfer of ownership or cessation of the business renting property for vacation rental purposes.

(c) If any vendor who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director. Immediately following notice of such revocation, the vendor shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted.

Sec. 4-9-150. - Duty to keep books and records.

(a) Every vendor shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.

(b) Every vendor shall provide all such records for audit by the Town during normal business hours.

Sec. 4-9-160. - Authority of Finance Director.

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

(1) The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax.

(2) The Finance Director may formulate and promulgate, after hearing, appropriate and additional regulations to effectuate the purpose of this Article.

- (3) The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.
- (4) The Finance Director may issue a subpoena to command a person to attend and give testimony, or to produce books, records or accounts.
 - a. Any subpoenas issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure, including payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees shall be paid by the Town. When a witness is subpoenaed at the insistence of the vendor, the Finance Director may require that the cost of the service of the subpoena and the fee be paid by the vendor. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.
 - b. If a subpoena issued by the Finance Director is duly served and the respondent fails to attend, give testimony or produce books, accounts or records as commanded, the Finance Director may request the Town Attorney to file a motion with the Municipal Court for an order enforcing the subpoena.
- (5) The Finance Director is authorized to administer oaths and take testimony at the hearing.
- (6) The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.
- (7) The Finance Director may accept any partial payment made and apply such payment toward the tax due. Deposit of such payment shall not in any way imply that the remaining balance is or has been abated.
- (8) Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent postage paid by certified mail to the last known address of the vendor, or served in person by an officer of the Town Marshal's office.

Sec. 4-9-170. - Audit of record.

(a) For the purpose of ascertaining the correct amount of tax due from any vendor in the Town, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, records and accounts of such person.

(b) All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any vendor refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director or an authorized agent, the Finance Director may issue a subpoena to require that the vendor or his or her representative attend a hearing or produce any such books, accounts or records for examination.

(c) Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the Finance Director deems appropriate:

- (1) By comparing the tax reported and paid on returns to the actual tax due.

(2) By identifying transactions on which the tax was not properly or accurately collected or paid.

(3) By identifying other irregularities in the calculation of tax due.

(d) Any organization claiming exemption under the provisions of this Article is subject to audit in the same manner as a vendor.

Sec. 4-9-180. - Tax information confidential.

(a) All specific information gained under the provisions of this Article which is used to determine the tax due from a vendor, whether furnished by the vendor or obtained through an audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.

(b) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a vendor or his or her duly authorized representative of a copy of such confidential information relating to such vendor, the publication of statistics so classified as to prevent the identification of particular vendors, or the inspection of such confidential information by an officer, employee or legal representative of the Town.

(c) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding.

Sec. 4-9-190. - Overpayment from returns.

(a) If the amount remitted with the return is more than the tax due as computed from information in such return, the vendor shall be notified.

(b) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the vendor may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.

(c) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period.

Sec. 4-9-200. - Tax overpayment determined through audit.

If the Town ascertains through audit of a vendor's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund if such claim is signed and submitted by the vendor within thirty (30) days of the date of the notice of overpayment.

Sec. 4-9-210. - Refunds of disputed tax.

Refunds of tax paid to a vendor by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase.

Sec. 4-9-220. - Claim for refund.

(a) No tax overpayment, except as provided in Subsection 4-9-190(b), shall be refunded unless a claim for refund is signed and submitted to the Town by the vendor.

(b) An application for refund of tax shall:

- (1) Be made on a claim for refund form furnished by the Town.
- (2) Be signed by the vendor.
- (3) Include adequate documentation of the claim.

(c) The Finance Director shall examine the claim for refund and give written notice to the vendor of the amount to be refunded or denied.

(d) Refunds are not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.

(e) No person shall make any false statement in connection with a claim for refund.

Sec. 4-9-230. - Intercity claims for recovery.

(a) The intent of this Section is to streamline and standardize the procedures related to situations where tax has been remitted to the incorrect government. It is not intended to reduce or eliminate the responsibilities of the vendor to correctly pay, collect and remit vacation rental taxes to the Town.

(b) As used herein, *claim for recovery* means a claim for reimbursement of vacation rental taxes paid to the wrong jurisdiction.

(c) When it is determined by the Finance Director that vacation rental tax owed to the Town has been reported and paid to another municipality or jurisdiction, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted and that, as of the date of the notice, the vendor must cease improper tax collections and remittances.

(d) The Town may make a written claim for recovery directly to the municipality or jurisdiction that received the tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for the collection of the tax from the vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the vendor and/or vendor releasing its claim to the taxes paid to the wrong municipality or jurisdiction, evidence to substantiate the claim and a request that the municipality or jurisdiction approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality or jurisdiction to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim. The approval of such extension by the Town shall not unreasonably be withheld.

(e) Within ninety (90) days after receipt of a claim of recovery, the municipality or jurisdiction receiving taxes in error shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied, in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the municipality or jurisdiction receiving taxes in error shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of the approval. If a claim is submitted jointly by a municipality and a vendor or vendor, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

(f) A municipality or jurisdiction claimed to be receiving taxes in error may deny a claim for recovery on the grounds that it has previously paid a claim for recovery arising out of an audit of the same vendor.

(g) The period subject to a claim for recovery shall be limited to the thirty-six month period prior to the date the municipality or jurisdiction that was wrongly paid the tax receives the claim for recovery.

Sec. 4-9-240. - Underpayments from returns.

(a) If the amount remitted with a return is less than the tax computed from information in such return, the vendor shall be notified.

(b) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.

(c) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period.

Sec. 4-9-250. - Tax deficiencies from failure to file.

(a) If any vendor neglects or refuses to obtain a vacation rental license, the amount of tax due shall be estimated based upon such information as may be available, and a notice of assessment shall be issued.

(b) If any vendor neglects or refuses to file a return by the date due, the tax due shall be estimated based on such information as may be available, and a notice of assessment shall be issued.

(c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment.

Sec. 4-9-260. - Tax deficiencies determined through audit.

If the Town determines through an audit of the vendor's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued.

Sec. 4-9-270. - Penalties.

A penalty shall be levied for any tax deficiency.

- (1) For transactions consummated after the effective date of the initial ordinance codified herein, the penalty for late payment shall be fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater. Additionally, one-half percent (0.5%) of the tax deficiency per month from the date when due, not exceeding eighteen percent (18%) in the aggregate, shall be assessed.
- (2) If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred percent (100%) of the total tax deficiency.
- (3) Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the vendor submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause therefor.

Sec. 4-9-280. - Interest.

- (a) Interest shall be levied on any tax deficiency.
- (b) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For transactions consummated after the effective date of the initial ordinance codified herein, the monthly interest rate determined by the Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.
- (c) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the due date of such assessment and the payment date established in an informal meeting, or thirty (30) days after the date of a finding of fact, conclusion or decision issued after a hearing.
- (d) Interest properly assessed on any tax deficiency shall not be abated.

Sec. 4-9-290. - Notice of assessment.

- (a) The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.
- (b) Notices of assessment shall be in writing and delivered in person or sent postage paid by first class mail, to the last known address of the vendor.
- (c) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.
- (d) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists.

Sec. 4-9-300. - Protest of notice of assessment or denial of refund.

- (a) Any notice of assessment may be protested by the vendor to whom it is issued.

(1) A protest of a notice of assessment issued to a vendor or vendor for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.

(2) When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the vendor fails to pursue the protest in a timely manner.

(b) Any denial of a claim for a refund may be protested by the vendor who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.

(c) Any timely protest entitles a vendor to a hearing under the provision of this Article.

(1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the vendor to resolve the issues.

(2) Participation in such an informal meeting does not prevent either the vendor or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting.

Sec. 4-9-310. - Hearings.

(a) The Town shall commence a hearing within ninety (90) days after the Town's receipt of the vendor's written protest; except that the Town may extend such period if the delay is requested by the vendor. The Finance Director shall notify the vendor in writing of the time and place of such hearing.

(b) Every hearing shall be held within the Town and before the Finance Director.

(c) The vendor may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the vendor, are pertinent to the protest. The filing of briefs shall not be required.

(d) Based on the evidence presented at the hearing, the Finance Director shall issue a finding of fact, conclusions and decision which may modify or abate in full the tax, penalties and/or interest protested at the hearing, approve a refund or uphold the assessment.

(e) After such hearing, the vendor shall not be entitled to a second hearing on the same notice of assessment or denial of refund.

(f) Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the finding of fact, conclusions and decision.

Sec. 4-9-320. - Appeals.

(a) Subsequent to a hearing, the vendor may appeal the decision of the Finance Director in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(b) Upon appeal to the District Court, the vendor shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director.

(c) An appeal of a final decision of the Finance Director in a hearing held pursuant to Section 4-9-310 above shall be commenced within thirty (30) days of such decision.

Sec. 4-9-330. - Lien for tax due.

(a) If any tax due is not paid by the payment date of a notice of assessment, the Finance Director may issue a notice of lien on the real and personal property of the vendor. Such lien shall specify the name of the vendor, the tax due, the date of accrual thereof and the location of the property, and shall be certified by the Finance Director.

(b) The notice of lien shall be filed in the office of the clerk and recorder of any county in the State in which the real and personal property of the vendor is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.

(c) The attachment and priority of such lien shall be as follows:

(1) Such lien shall be a first and prior lien upon the goods and business fixtures owned or used by any vendor, including those under lease, installment sale or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.

(2) Such lien on the real and tangible personal property of the vendor that is not goods, stock in trade and business fixtures shall be a first and prior lien except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.

(3) The personal property of an owner who has made a bona fide lease to a vendor shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the clerk and recorder of the county where the property is located or based.

(4) Motor vehicles which are property registered in this State, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has earned reserve, allowance for depreciation not to exceed the fair market value, or similar interest which is or may be credited to the lease.

(5) Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this Section.

(d) If a notice of lien is filed against any real property, the Finance Director may direct the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

Sec. 4-9-340. - Performance of lien.

(a) Any lien for tax due shall continue until a release of lien is filed by the Finance Director.

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired.

Sec. 4-9-350. - Release of lien.

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of the lien with the clerk and recorder of the county in which the lien was filed.

Sec. 4-9-360. - Civil action to recover tax due.

(a) Any unpaid tax due shall constitute a debt of the vendor to the Town, and the Finance Director may direct the Town Attorney to file a civil action to collect such taxes due.

(b) The return filed by a vendor or the notice of assessment issued by the Finance Director shall be prima facie proof of the tax due.

(c) If a judgment is obtained by the Town, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment.

Sec. 4-9-370. - Jeopardy assessment.

(a) If the collection of any tax due from a vendor, whether or not previously assessed, will be jeopardized by delay, the Town Manager may declare the taxable period immediately terminated, require the Finance Director to determine the tax and issue a jeopardy assessment and demand payment. Any tax so assessed shall be due and payable immediately.

(b) Enforcement of a jeopardy assessment and demand for payment may be stayed if the vendor gives security for payment which is satisfactory to the Town Manager.

(c) If, in the opinion of the vendor, the jeopardy assessment is not for the correct amount of the tax due, the vendor shall pay the tax due as assessed and submit a claim for refund to the Town.

Sec. 4-9-380. - Distraint and sale.

(a) Unless such property is exempt by state statute from distraint and sale, the Town Manager may sign and issue a warrant directed to any employee or agent of the Town, or any sheriff of any county in the State, commanding the distraint and sale of personal property of the vendor on which a lien has attached for payment of the tax due.

(1) Such warrant may be issued if such tax due is not paid on or before twenty-one (21) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.

(2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment have been issued.

(b) If the vendor does not volunteer entry into the premises, the Town Manager may apply to the Municipal Court for a warrant authorizing any employee of the Town to search for and distraint property located within the Town to enforce the collection of the tax due.

(1) The Town Manager shall demonstrate to the Municipal Court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due.

(2) If a jeopardy assessment and demand for payment have been issued, the Town Manager shall specify to the Municipal Court why collection of the tax will be jeopardized.

(3) The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) Disposal of distrained property:

(1) A signed inventory of the property distrained shall be made by the Town or its agent. Prior to the sale, the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the tax due and related expenses incurred to date, and the time and place of sale.

(2) A notice of time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu of thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where the distraint is made, and in at least two (2) other places of general public view within such county.

(3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the Town or its agent for no more than ninety (90) days from the date originally fixed for the sale.

(4) The property shall be sold at public auction for not less than a fair minimum price and, if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the Town and the Town shall file a release of lien thereon. If the property is purchased by the Town, such property may be disposed of in the same manner as other Town property and the lien thereon shall be released.

(5) The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the Town or its agent may accept the higher bid.

(6) The property offered for sale may be redeemed if the owner, possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.

(7) The Town or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale, and shall transfer to the purchaser all right, title and interest of the vendor in and to the property sold.

a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.

b. When the property sold consists of securities or other evidence of debt, the certificate of sale shall be good and valid evidence of title.

(8) Any surplus remaining after satisfaction of the tax due, plus any costs of making the distraint and advertising the sale, may be distributed by the Town, first to other jurisdictions which have filed liens or claims of vacation rental or personal property ad valorem taxes, and second to the owner or other person having a legal right thereto.

(9) The Finance Director shall submit a written account of the sale to the Town Manager.

(d) Exempt property. Property of the vendor subject to distraint shall include the personal property of the vendor and the goods, stock in trade and business fixtures owned or used by any vendor, including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described Subsection 4-9-330(c) above.

(e) Return of property. The vendor or any person who claims an ownership interest or right of possession in the distraint property may petition the Town Manager, or the Municipal Court if the property was seized pursuant to warrant issued by the court, for return of the property.

(1) The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the Town's interest, or that the property is exempt from the Town's lien.

(2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines by a preponderance of the evidence in favor of the vendor or other petitioner, the property shall be returned.

Sec. 4-9-390. - Status of tax due in bankruptcy and receivership.

Whenever the business or property of any vendor is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the vendor. No sheriff, receiver, assignee or other officer shall sell the property of any such vendor under process or order of the Finance Director for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant.

Sec. 4-9-400. - Violations; summons and complaints; penalty.

(a) It shall be a violation of this Article to fail to perform any applicable affirmative duty specified in this Article, including but not limited to:

- (1) The failure of any vendor in the Town to obtain a license.
- (2) The failure of any vendor to file a timely return or to make timely payment of any tax due.
- (3) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing.
- (4) The evasion of collection of any vacation rental tax by any person, or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

(b) The Finance Director may direct the issuance of a complaint and summons to appear before the Municipal Court to any person who may be in violation of this Article or of the rules and regulations promulgated by the Finance Director to enforce this Article.

(c) Violations of this Article shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

Sec. 4-9-410. - Statute of limitations.

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained herein shall be as follows:

- (1) Refunds.
 - a. Any claim for refund for disputed tax shall be submitted to the Town on or before sixty (60) days from the date of such purchase.
 - b. Any claim for refund resulting from a notice of overpayment shall be submitted to the Town on or before thirty (30) days after the date of such notice of overpayment.
 - c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the Town.
- (2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due.

- (3) Liens. No notice of lien shall be issued more than three (3) years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for each extended period.
- (4) Returns.
 - a. When a vendor fails or refuses to file a return, the tax due may be assessed and collected at any time.
 - b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun at any time.
- (5) Protests. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director in other than written form, or after the period allowed in this Article.
- (6) Extension. The period of limitation may be extended before its expiration.
 - a. The vendor and Finance Director may agree in writing to extend the period.
 - b. If the Town provides written notice to the vendor prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. *Audit period* is the thirty-six-month reporting period preceding the date of the notice of audit.
- (7) Performance of an audit does not constitute a waiver or exemption from the statute of limitations, or preclude additional audits of the same period within the parameters of this Section.

Section 3. **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 4. **Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code 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 27th DAY OF November, 2017.

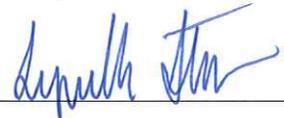
ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC
HEARING THIS 4th DAY OF December, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By: 

Jackson Petito, Mayor

ATTEST:



Lynelle Stanford, Town Clerk

[SEAL]

