

**ORDINANCE NO. 17**

**SERIES 2013**

**AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2  
OF THE CRESTED BUTTE MUNICIPAL CODE TO  
INCLUDE NEW REGULATIONS FOR THE OCCUPANCY,  
CONSTRUCTION AND EXCAVATION WITHIN THE  
PUBLIC RIGHTS-OF-WAY**

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

WHEREAS, the Town has broad constitutional and statutory powers to regulate the use of lands within the Town limits, including, without limitation, the public rights-of-way;

WHEREAS, Chapter 11, Article 2 of the Crested Butte Municipal Code (the "**Code**") contains certain regulations regarding construction and excavation activities within the Town's public rights-of-way;

WHEREAS, the Town staff has determined that such regulations are inadequate to protecting the Town, the general public and businesses that operate in the public rights-of-way for the safe and orderly utilization of such public rights-of-way and has suggested that certain amendments be made to the Code to address such conditions;

WHEREAS, the Town Council has found that the safe and orderly use of the public rights-of-way by the Town, the general public and businesses that operate in the public rights-of-way is important to the well-being, health and safety of the inhabitants, businesses and visitors of Crested Butte;

WHEREAS, the Town Council has an obligation to the general public and businesses that operate in the public rights-of-way to manage such public rights-of-way in a manner that leads to the safe and orderly utilization of such public rights-of-way;

WHEREAS, the Town Council has determined that in order to ensure that the inhabitants, businesses and visitors of Crested Butte may utilize the public rights-of-way in a safe and orderly manner, it should adopt the amendments to the Code set for the below; and

WHEREAS, the amendments to the Code proposed in this ordinance are in the best interest of the health, safety and general welfare of the inhabitants, businesses and visitors of Crested Butte.

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

**Section 1. Amending Chapter 11, Article 2, Excavation.** Chapter 11, Article 2 of the Code is hereby amended by deleting said Article in its entirety and replacing the same with the following new Article 2 that shall read as follows:

**“ARTICLE 2**

*Part I*  
**General**

**Sec. 11-2-10. Definitions.**

For the purposes of this Article, the following terms shall have the meanings ascribed below:

*Applicant.* Shall be the owner of the project for which the contractor is undertaking the work as opposed to the contractor simply performing the work. The applicant and the permittee shall be the same person.

*Curb cut.* That portion of the street curb or roadway frontage that abuts a driveway.

*Emergency.* Any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, damaged electrical and communications facilities, or as otherwise recommended by the Town Manager.

*Pavement and/or paved improvements.* The term shall include any improvement constructed of asphalt concrete, seal and chip, concrete or similar impervious wearing surface, including but not limited to roadway, sidewalk, curb, gutter and similar improvements.

*Permittee.* Shall be the owner of the project for which the contractor is undertaking the work as opposed to the contractor simply performing the work. The permittee and the applicant shall be the same person.

*Public Works Criteria for Design and Construction.* Those current *Public Works Department Criteria for Design and Construction: Earthwork, Sewer and Water* adopted by the Town Manager governing the design and construction specifications for construction and excavation in the public rights-of-way. Such Public Works Criteria for Design and Construction may be updated and amended from time to time by the Town Manager.

*Public Works Director* shall include the Director of the Town Public Works Department and his/her designee. For purpose of this Article, the Public Works Director shall also include the Town Manager.

*Street improvement.* The term shall include roadway and alley paving, sidewalks, driveways, curbs, gutters, street lights, street signs, traffic signs and signals, storm sewers, culverts, bridges and drainage appurtenances and similar items.

*Town Manager.* Shall include the Town Manager in title and his/her Town staff designee.

**Sec. 11-2-20. Town Manager to Enforce.**

The Town Manager shall enforce these regulations and shall have the authority to adopt policies, procedures and criteria for the implementation of these regulations.

*Part II*

Occupancy of Public Rights-of-Way

**Sec. 11-2-30. Occupancy of public right-of-way prohibited without encroachment license; application fee.**

(a) No person shall occupy, construct, place or maintain within any public right-of-way any building, structure, appurtenance, fence, tree, vegetation or other obstruction without first having obtained an encroachment license from the Town Manager. Any person seeking an encroachment license must submit an application on forms provided by the Town accompanied by an administrative fee in an amount prescribed by Town. The Town Manager may specify the terms and conditions under which an encroachment license is to be issued so as to protect the best interests of the Town. All encroachment licenses granted under this Section shall be revocable by the Town with or without cause at any time.

(b) All encroachments shall comply with the most current edition of the Public Works Criteria for Design and Construction.

(c) Nothing contained in this Section shall be construed to apply to improvements or activities undertaken within a public right-of-way by the Town, its employees, contractors or agents, the placement of temporary safety barricades or structures around excavations, construction within a public right-of-way or the placement of other devices or structures that may be required to be placed in the public right-of-way by reason of State or federal law or regulation.

**Sec. 11-2-40. Temporary construction within public right-of-way restricted.**

Temporary guardrails, pedestrian walkways, protective canopies, field offices and similar items shall not be constructed on public right-of-way without prior approval of the Public Works Director.

**Sec. 11-2-50. Temporary storage of merchandise on public right-of-way restricted.**

It shall be unlawful for any person receiving or delivering merchandise, commodities or construction materials within the Town to place, keep or suffer to be kept upon the public rights-of-way any such merchandise, commodities or construction materials without the prior approval of the Public Works Director.

**Sec. 11-2-60. Obstruction of ditches and gutters prohibited.**

No person shall obstruct or damage in any manner any street improvement, ditch, gutter, drain, catch basin, culvert or other drainage improvement within the public rights-of-way or under control of the Town.

**Sec. 11-2-70. Dangerous openings in streets.**

No person shall leave or keep open any cellar door, pit, vault, manhole or other subterranean opening on any street, alley, sidewalk or other public way, or keep such opening in an unsecured condition so that vehicles, persons or animals will be in danger of sustaining injury or damage.

**Sec. 11-2-80. Obstructing excavations, construction or repairs prohibited.**

It shall be unlawful for any person to hinder or obstruct any excavation or the construction or repair of any paving, sidewalk, curb, gutter, drainage improvement, utility or other street improvements performed pursuant to the provisions of this Article.

**Sec. 11-2-90. Damage, removal, etc., of safety barricades or devices prohibited.**

It shall be unlawful to damage, displace, remove or interfere with any barricade, warning light or other safety appliance or device which is lawfully placed around or about any excavation or other street improvement construction in any street, alley, sidewalk or other public right-of-way.

**Sec. 11-2-100. Draining water onto public right-of-way restricted.**

(a) No person shall drain water from any swimming pool, therapy pool, hot tub or similar improvement onto a public right-of-way without approval of the Public Works Director. Emergency overflow shall be permitted upon approval of the Town Manager.

(b) No person shall discharge water from subterranean structures (e.g., basement, foundation, footer drain) onto any public right-of-way.

*Part III*

Construction and Excavation within the Public Rights-of-Way

**Sec. 11-2-110. Permit required.**

(a) It shall be unlawful for any person to undertake any construction, installation, excavation, maintenance or repair within or dig up, open, disturb, grade, excavate or otherwise alter any public right-of-way, or use, occupy or stage construction materials in any public right-of-way without first having obtained a permit for such work from the Town Manager. A separate permit shall be required for each such construction or excavation project. All permits granted under this Section shall be revocable by the Town with or without cause at any time.

(b) No sidewalk, driveway, curb, gutter or related street improvement required by this Article shall be constructed or repaired without complying with the requirements of Article and the Public Works Criteria for Design and Construction.

**Sec. 11-2-120. Application.**

Application for a right-of-way permit shall be made no later than one week prior to the planned commencement of the work. The Town Manager may allow the applicant to obtain a permit sooner than one week prior to the planned commencement of the work if the scope of the work is deemed to be de minimis. Emergency situations shall be exempt; however, a permit for such emergency work must be obtained as soon as is possible and no later than the next business day.

**Sec. 11-2-130. Plans and specifications required for construction.**

No permit for construction within any Town public right-of-way shall be issued until plans have been submitted to and approved by the Public Works Director.

**Sec. 11-2-140. Fees, surety and insurance.**

No permit shall be issued unless the applicant has entered into the required agreements, paid the required fees, filed the appropriate surety instruments and delivered the required insurance documentation to the Town as follows:

(a) An indemnification and hold harmless agreement as approved by the Town Attorney

(b) Permit fees in amounts prescribed by the Town.

(c) Surety in the form of, at the election of the Town Manager, an irrevocable letter of credit or cash deposit, in an amount equal to the total cost of construction, including labor and materials, or \$500.00, whichever is greater. Such surety shall be given to the Town on terms acceptable to the Town Attorney and shall guarantee the complete and final performance and maintenance of the work, any materials and equipment furnished in connection therewith, and that the workmanship employed in the performance of the work described in the right-of-way permit will be of such character and quality as to ensure it to be free from all defects, in continuous good order and in a condition satisfactory to the Public Works Director for a period of two years from the date of issuance of the final inspection log indicating 100% satisfactory

completion of the work and final acceptance thereof. Such surety shall be non-cancellable for at least two full years from the date of issuance of satisfactory completion.

(d) If the Town must replace or repair the improvements within two years of acceptance of the work, the Town may execute upon the letter of credit or cash deposit.

(e) Insurance with terms, limits and coverages as required by the permit application.

**Sec. 11-2-150. Permittee to repair all public rights-of-way.**

All construction work permitted in the public rights-of-way shall be performed such that such public rights-of-way, streets, alleys and all sidewalks, driveway, curb, gutters and related street improvements are returned to the same condition or better if required in the permit as existed prior to the commencement of such work. All such work shall be performed in accordance with the Public Works Criteria for Design and Construction and subject to inspections and final approval by the Public Works Director.

**Sec. 11-2-160. Conditions and special requirements for issuance.**

Permits under this Article shall be issued subject to any other special requirements or conditions that the Town Manager deems necessary in order to maintain the health, welfare, safety and convenience of the public.

**Sec. 11-2-170. Change in scope of work; duty to notify.**

If there is any change in the scope or extent of the work described in the approved right-of-way permit, the permittee shall immediately notify the Public Works Director.

**Sec. 11-2-180. Issuance of permit in certain months restricted.**

No permit required by this Article shall be issued for any construction or excavation within any public rights-of-way for the period from November 1 through March 31, except in cases of an emergency.

**Sec. 11-2-190. Permit to be kept and exhibited at site.**

The permit required by this Article shall be kept at the project site while the work is in progress and shall be presented to the Public Works Director upon request.

**Sec. 11-2-200. Construction and excavation subject to inspection.**

(a) All work requiring a permit pursuant to the provisions of this Article shall be subject to inspection by the Public Works Director at all times. It shall be unlawful to obstruct or hinder any such inspection. It is the responsibility of the permittee to contact the Public Works

Director 24 hours in advance for required inspections. All inspections must be scheduled during regular office hours at Town Hall, which are from the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

(b) Field tests of construction materials shall be required by the Public Works Director to ascertain compliance with the Town criteria and specifications. An independent testing firm must make tests. All testing and re-testing expenses shall be paid by the permittee. A written copy of all test reports must be submitted to the Public Works Director 24 hours following completion of field and laboratory material tests.

**Sec. 11-2-210. Emergency access required.**

No construction shall be performed or excavation made in such manner so as to prohibit access by emergency vehicles to any building, structure or dwelling unit abutting the street or public rights-of-way. It shall be the responsibility of the permittee to notify the Public Works Director when any construction or excavation obstructs the roadway from sunset to sunrise.

**Sec. 11-2-220. Safety measures and barricades required.**

(a) It shall be unlawful for any person to perform any work requiring a permit pursuant to the provisions of this Article without providing sufficient warning lights and safety barricades or fencing around the construction or excavation from sunset to sunrise to prevent persons, animals and vehicles from sustaining injury or damage.

(b) From sunrise to sunset, safety barricades or fencing shall be maintained.

(c) Flagmen, signals, special traffic signing, walkways, ramps, canopies or other similar safety precautions shall be required when the Public Works Director deems necessary in order to maintain the health, welfare, safety and convenience of the public, and shall conform applicable law.

(d) All State laws, provisions of this Code, Town ordinances and requirements contained in the Public Works Criteria for Design and Construction addressing measures for the safety of workmen and the public shall be observed by the permittee.

**Sec. 11-2-230. Protection of street improvements, utilities and adjacent property.**

Any person performing any work requiring a permit pursuant to the provisions of this Article shall provide shoring, bracing, piling or other necessary devices and shall use the necessary precautions to protect street improvements, utilities and adjacent property from damage or disturbance. It shall be the responsibility of the permittee to obtain the location of any underground utilities.

**Sec. 11-2-240. Responsibility to protect street improvements, utilities or property and report their damage.**

It is the responsibility of the permittee to sustain, secure and protect any pipes, poles, mains, cables, conduits, street improvements or property from damage or disturbance that was not previously authorized. If damage occurs, the permittee shall immediately notify the Public Works Director and the affected utility.

**Sec. 11-2-250. Maintenance of backfill and temporary patch.**

(a) All backfill and any pavement or improvement shall be maintained in a satisfactory condition, and all places showing signs of settlement shall be filled and maintained for a period of 24 months following the date of final acceptance. When the permittee is notified by the Public Works Director that any backfill, patch or paved improvement is hazardous, it shall immediately correct such hazardous condition. If the hazardous condition is not repaired within three working days after notification, the Town may elect to repair the hazardous condition. The expense of such repair shall be the responsibility of the permittee. Repair by the Town will not release the permittee from responsibility for subsequent failures.

(b) Backhoe equipment outriggers shall be fitted with rubber pads or other like protective material whenever outriggers are placed on any paved surface. Tracked vehicles that may damage pavement surfaces shall not be permitted on paved surfaces unless specific precautions are taken to protect the surface. The permittee shall be responsible for any damage caused to the pavement by the operation of such equipment. Should the permittee fail to make such repairs within three days to the satisfaction of the Town, the Town may repair any damage and charge the permittee.

(c) Any utilities or paved improvements damaged by settlement shall be immediately repaired by the permittee to the satisfaction of the Public Works Director. If the damage is not repaired within three working days after notification, the Town may elect to repair the damage. The expense of such repair shall be the responsibility of the permittee. Repair by the Town will not release the permittee from responsibility for subsequent damage by settlement.

(f) The permittee shall be responsible for the cost to the Town of all claims for damages made and actions brought against the Town for and on account of such damage.

**Sec. 11-2-260. Compliance required.**

Any work performed that is not in strict conformity with this Article shall, within 10 days after notice to the permittee, be made to conform to this Article at the expense of the permittee, or the same shall be corrected or removed by the Town at the expense of the permittee and the cost of such correction or removal may be assessed upon and made a lien upon the land so benefited. The Town shall have the right to make an assessment against the property and collect such costs in the same manner as general taxes are collected under State and local laws.

**Sec. 11-2-270 Warranty period.**

All materials and workmanship employed in the performance of the work described in the right-of-way permit will be of such character and quality so as to ensure it to be free from all defects, in continuous good order and in a condition satisfactory to the Public Works Director for a period of two years from the date of issuance of the final inspection log indicating 100% satisfactory completion of the work and final acceptance thereof.

**Sec. 11-2-280. Termination of project if not expeditiously completed.**

All work shall be commenced at the time specified on the permit and shall be diligently and continuously performed until completed, with a maximum allowable time as set forth in the permit. In the event that weather, process of law or any other unexpected obstacles cause work to be stopped for so long that public travel is unreasonably obstructed, the Public Works Director may order the excavation refilled, compacted and repaved as if the work contemplated in the permit were actually completed.

**Sec. 11-2-290. Repaving.**

In the case of excavations requiring repaving, the permittee shall follow all applicable Town standards including the Public Works Criteria for Design and Construction. The Public Works Director shall have sole discretion concerning the quality and acceptance of a paved improvement. No certificate of occupancy shall be issued for the project connected with such work that has unacceptable paved improvements or patches.

**Sec. 11-2-300. As-built drawings required.**

The Town will furnish the applicant with a map of the area proposed for development. Upon completion of the work, the applicant shall furnish a mark-up of the map showing all utilities encountered during the excavation and construction, their size, identification and location, based on swing ties to fixed monuments such as manholes, streetlights, curbs and their depths below the surface of the street, alley or sidewalk area. This mark-up shall also identify any new improvements made to the area, including, but not limited to, utility connections, sidewalks, driveways, curb, gutter or other street improvement. These as-builts drawings may also be submitted in a digital format where acceptable to the Town.

**Sec. 11-2-310. Excavation under existing curb, gutter and sidewalk.**

If any excavation occurs under existing curb, gutter or sidewalk, that curb and gutter and sidewalk shall be removed and replaced. The replacement shall be from the nearest concrete joint. The curb, gutter and sidewalk must be replaced within seven working days after the excavation is complete. The permittee may bore under curb, gutter and sidewalk and not have to replace the same to the extent approved by the Public Works Director. All such work shall be performed in accordance with the Public Works Criteria for Design and Construction.

**Sec. 11-2-320. Responsibility to repair sidewalks, driveways and gutters.**

(a) When notified that any public rights-of-way, street, alley, sidewalk, driveway, curb, gutter, street improvement or any combination thereof is in need of repair, the Public Works Director shall cause notice to be served upon the owner or other person in charge of or having the control and supervision of the premises to repair such public rights-of-way, street, alley, sidewalk, driveway, curb, gutter, street improvement within thirty 30 days. It shall be unlawful for any person to fail or refuse to comply with such notice to repair. Upon a failure or refusal to comply with such a notice to repair, the Town may repair the same by day's work or by contract, and the cost of such repair may be assessed upon and made a lien upon the land so benefited. The Town shall have the right to make an assessment against the property and collect such costs in the same manner as general taxes are collected under State and local laws. In addition thereto, the Town may cause an action to be instituted against the permittee and the owner or the person in charge of the property upon whom such notice was served in any court of competent jurisdiction to recover such costs. All such remedies shall be cumulative and may be concurrently pursued.

(b) For the purpose of this Article, a sidewalk in need of repair shall mean a sidewalk experiencing any of the following conditions: (i) concrete that is spalling or crumbling; (ii) vertical displacement of the adjoining sidewalk section is in excess of 3/4 inch; (iii) lateral displacement of adjoining sidewalk sections in excess of one inch; or (iv) sidewalks that have a transverse slope in excess of one inch per foot or the combination of the transverse and longitudinal grade is insufficient for adequate drainage of the sidewalk causing accumulation of water and ice.

**Sec. 11-2-330. Violation.**

(a) Any person who violates any provision of this Article shall be punished by a fine not to exceed one \$1,000.00 for each offense. Each day that a violation continues to exist shall constitute a separate and additional offense.

(b) Any person who violates any provision of this Article shall be liable to the Town for any expense, loss, cost or damage, including reasonable attorneys' fees, the costs of enforcement, occasioned by reason of such violation."

**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 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 15th DAY OF JULY, 2013.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 6th DAY OF AUGUST, 2013.

TOWN OF CRESTED BUTTE, COLORADO

By:   
Aaron J. Huckstep, Mayor

ATTEST:

  
Shelley Jansen

[SEAL]

