

ORDINANCE NO. 16

SERIES 2013

AN ORDINANCE AMENDING THE CRESTED BUTTE MUNICIPAL CODE TO: (I) AMEND THE DEFINED TERM “SHORT TERM RESIDENTIAL ACCOMODATION” TO INCLUDE ONLY SIX UNITS OR MORE; (II) AMEND THE DEFINED TERM “MOBILE HOME” TO INCLUDE ONLY A HOUSING AND URBAN DEVELOPMENT (HUD) APPROVED HOME; (III) ADD THE DEFINED TERM “ENCLOSED STRUCTURE;” (IV) INCLUDE REGULATIONS RESPECTING BATHING FACILITIES ASSOCIATED WITH COMMERCIAL USES; (V) ADD THE DEFINED TERM “BUILDING WIDTH;” (VI) AMEND THE NOISE REGULATIONS RELATIVE TO CONSTRUCTION ACTIVITIES ON THE WEEKENDS; (VII) AMEND THE DEFINED TERM “RENTAL, LONG-TERM” TO INCLUDE RESIDENCY REQUIREMENTS; (VIII) AMEND THE DEFINED TERM “GARAGE, PRIVATE” TO BE AT LEAST 10’X20’; (IX) AMEND THE REGULATIONS REGARDING THE APPLICABILITY OF TAP FEES TO UNHEATED AND UNPLUMBED ACCESSORY BUILDINGS; (X) SUBSTITUTING “FLOOR AREA” WITH THE UNDEFINED TERM “USEABLE SQUARE FOOTAGE” IN CHAPTER 16, ARTICLE 16; (XI) AMENDING AND REPLACING THE NOTICE OF AGREEMENT FOR LAND USE CONDITIONS AND RESTRICTIVE COVENANTS FOUND IN THE APPENDIX; AND (XII) MAKING SUCH OTHER RELATED, CONFORMING AMENDMENTS AS MAY BE DEEMED NECESSARY AND APPROPRIATE TO EFFECTUATE THE FOREGOING AMENDMENTS TO THE CODE

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;

WHEREAS, pursuant to Article XX of the Colorado Constitution, as implemented through the Town of Crested Butte Charter, Title 31, Article 23, and Title 20, Article 29, C.R.S., the Local Government Land Use Control Enabling Act of 1974, the Town has the authority to enact and enforce land use regulations;

WHEREAS, the Crested Butte Municipal Code (the “**Code**”) contains, among other things, regulations regarding the use of lands and the impacts of development thereon;

WHEREAS, the Town staff has found that certain regulations in the Code require amendments, including:

- (I) amending the defined term "Short term residential accommodation" to include only six units or more;
 - (II) amend the defined term "Mobile home" to include only a Housing and Urban Development (HUD) approved home;
 - (III) add the defined term "Enclosed structure;"
 - (IV) include regulations respecting bathing facilities associated with commercial uses;
 - (V) add the defined term "Building width;"
 - (VI) amend the noise regulations respecting construction activities on the weekends;
 - (VII) amend the defined term "Rental, long-term" to include residency requirements;
 - (VIII) amend the defined term "Garage-private" to be at least 10'X20';
 - (IX) amend the regulations regarding the applicability of tap fees to unheated and unplumbed accessory buildings;
 - (X) substituting "Floor area" with the undefined term "useable square footage" in Chapter 16, Article 16;
 - (XI) amending and replacing the Notice of Agreement for Land Use Conditions and Restrictive Covenants found in the Appendix; and
 - (XII) making such other related, conforming amendments as may be deemed necessary and appropriate to effectuate the foregoing amendments to the Code,
- all in order to better reflect the intents and purposes of such regulations;

WHEREAS, based on the foregoing, the Town staff has recommended that the Town Council adopt the amendments to the Code set forth below;

WHEREAS, the Town Council has review and discussed the amendments to the Code set forth below and found that such amendments are consistent with the intents and purposes of the applicable sections of the Code; and

WHEREAS, the Town Council has determined that the revisions to the Code proposed below accomplish the goals set forth above and are, for the foregoing reasons, in the best interest of the health, safety and general welfare of the residents 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 Section 16-1-20.** Section 16-1-20 of the Code is hereby amended as follows:

(1) the defined term “Short Term Residential Accommodation” is hereby deleted in its entirety and replaced with the following new defined term that shall read as follows:

“*Short-term residential accommodation* means a building, parcel or portion thereof that is condominiumized, containing six (6) units or more used for overnight lodging by either the owners thereof on a short-term basis for no fee or by the general public on a short-term basis for a fee. Short-term residential accommodations may be with or without kitchens within individual units, with or without meals provided, and shall have common reservation and cleaning services, combined utilities, housekeeping services, on-site meeting room space, maintenance, management and reception services, an on-site lobby with appropriate on-site desk service and, where appropriate, on-site recreational facilities. For those such properties with lock-off units, each key shall constitute a short-term residential accommodation for purposes of this Chapter. Bed and breakfasts, hotels or lodges, motels, resorts and condo hotels shall not be considered short-term residential accommodations. For each bedroom, fifteen (15) square feet of meeting space shall be included in the project, with a minimum of three hundred fifty (350) square feet of meeting space for each such project. Said space shall be capable of being isolated from the rest of the project and may be used for multiple purposes.”

(2) the defined term “Mobile Home” is hereby deleted in its entirety and replaced with the following new defined term that shall read as follows:

“*Mobile home*, also commonly referred to as a “manufactured home,” means a residence designed for human occupancy that is constructed off-site by a licensed manufacturer to the Manufactured Home Construction and Safety Standards as determined by the Department of Housing and Urban Development (HUD). Mobile homes are transported to the site and are equipped with a permanent chassis for purposes of relocation. Mobile homes shall be equipped with a HUD label and shall meet snow and wind load requirements determined by the Building Department. Additions and appended structures, regardless of whether such structures are capable of relocation by transport, may be attached to a mobile home if approved through the Town’s building design review process.”

(3) the following new defined term “Enclosed Structure” is added to the Code and shall read as follows:

“Enclosed structure means any structure that contains a roof and walls in which the aggregate of all vertical surfaces are hard surfaced or covered by more than 30% with materials that do not allow the atmosphere to freely move through the structure. For purposes hereof, windows and doors shall be deemed to be part of the hard surfaced structure.”

(4) the definition of “Floor area” is hereby deleted in its entirety and replaced with the following new defined term that shall read as follows:

“*Floor area* means the sum of the horizontal areas of all floors and areas in an enclosed structure with the potential to contain more horizontal floors, as set forth in Subparagraph e. below, in principal and accessory buildings on a building site, as measured from the exterior faces of the walls, and enclosed porches as measured by the exterior limits thereof.

However, those spaces that are above the fourteen-foot and twenty-three-foot heights which occur under a pitched roof of 10:12 or greater that are not suitable for potential living space are excluded for floor area ratio purposes. Such areas must be less than seven (7) feet wide in any dimension or measuring less than seventy (70) square feet. The floor area of basements, as defined by the building code adopted by the Town in Chapter 18 of this Code, shall not be included as floor area. For structures other than enclosed structures, floor area shall be computed as follows and shall be included as additional floor area:

a. Unroofed porches, decks, balconies and terraces:

1. If such improvement is more than eighteen (18) inches above grade and occupies less than ten percent (10%) of the area of the building, then zero (0) floor area.

2. If such improvement is more than eighteen (18) inches above grade and occupies ten percent (10%) or more of the area of the building, then one-half ($\frac{1}{2}$) the actual floor area.

3. If such improvement is eighteen (18) inches or less above grade, then zero (0) floor area.

b. Roofed or covered porches, decks, balconies and terraces:

1. If such improvement occupies less than ten percent (10%) of the area of the building, then one-half ($\frac{1}{2}$) the actual floor area.

2. If such improvement occupies ten percent (10%) or more of the area of the building, then the actual floor area.

3. For purposes hereof, such roofed or covered porches, decks, balconies and terraces shall not be enclosed structures meaning that no more than 30% of the vertical surfaces may be hard surfaced not allowing the passage of air through the porch, deck, balcony or terrace. When figuring this hard surface area, up to two (2) walls that compose parts of adjacent enclosed structures shall not be counted.

c. Any private garage, as that term is herein defined, shall have its floor area calculated and included as additional floor area in an amount equal to one-half ($\frac{1}{2}$) of the first two hundred (200) square feet if it is located within an accessory building or is attached to or part of the principal building; otherwise, its floor area shall be calculated and included as additional floor area in an amount equal to the actual floor area of such garage.

d. Any part of a building whose interior height is less than fourteen (14) feet is counted once for floor area purposes. Any part of a building whose interior height is fourteen (14) feet or higher is counted twice for floor area ratio purposes, except that any part of such building which has an interior height of twenty-three (23) feet or more is counted three (3) times. For floor area ratio purposes, interior heights shall be measured from the lowest floor level above grade to the underside of the roof assembly. In those cases where the lowest floor level is more than eighteen (18) inches above natural grade or the site is sloped in such a manner that the lowest floor intersects the natural grade, the Building Official will determine the floor plane from which measurements will be calculated.”

(5) the following new defined term “Building width” is added to the Code and shall read as follows:

“Building width means the distance between the furthest elements of a structure on opposing sides of the structure parallel to the lot line front. For purpose hereof, roof eaves and structures under eighteen (18) inches are not part of the calculation of building width.”

(6) the defined term “Rental, long-term” is hereby deleted in its entirety and replaced with the following new defined term that shall read as follows:

“*Rental, long-term* means the rental of any residential property by a person to any natural person who resides in Gunnison County as that person’s primary residence for a term of not less than six (6) months, which limitation of term of rental shall be recorded in the real property records of the County pursuant to Section 16-9-70 of this Chapter. Such property may not be rented to any person with greater than ten percent (10%) ownership interest in the property, or to any person with greater than ten percent (10%) ownership interest in any entity with ownership of the property. For purposes of this definition, *natural person* is only any individual and shall not include any association, firm, partnership, corporation or other entity”; and

(7) the defined term “Garage-private” is hereby deleted in its entirety and replaced with the following new defined term that shall read as follows:

“*Garage, private* means any building or structure designed principally for the storage or parking of vehicles, which use is incidental to the primary use of the property, whether attached to or separate from the primary structure, and is at least ten feet by twenty feet (10’x20’), and seven feet (7’) vertically of clear interior space.”

Section 2. Amending Chapter 16, Article 14. Chapter 16, Article 14 of the Code is hereby amended to add a new Section 16-14-200 that shall read as follows:

“Sec. 16-14-200. Bathing Facilities.

“Bathing facilities associated with commercial uses are limited to showers only and shall be located in a space with direct access to a common hallway with public access.”

Section 3. Amending Section 10-9-40. Subsection (11) of Section 10-9-40 of the Code is hereby deleted in its entirety and replaced with the following new subsection (11) that shall read as follows:

“(11) Construction between the hours of 7:00 p.m. and 7:00 a.m., Monday through Saturday, and before 8:00 a.m. and after 5:00 p.m. on Sundays.”

Section 4. Amending Section 13-1-40. Section 13-1-40 of the Code is hereby amended by deleting the defined term “Square footage for a fee calculation” in its entirety and replacing it with the following new definition:

“*Square footage for fee calculation* means the square footage for calculating fees, which shall be determined by measuring all interior square footage with five (5) feet or greater of headroom above the floor system including adjacent walls. Below grade spaces that fit the above definition are included. Garages shall be charged at full square footage if they are conditioned space and at fifty percent (50%) if they are not conditioned. Accessory buildings that are neither heated nor plumbed shall not incur a tap increment.”

Section 5. Amending Chapter 16, Article 16. The term “Floor area” as a referenced from time-to-time in this Article 16 is hereby replaced with the undefined term “usable square footage.”

Section 6. Amending and Replacing the Notice of Agreement for Land Use Conditions and Restrictive Covenants Found in Appendix. The Appendix to the Code is hereby amended by amending and replacing the Notice of Agreement for Land Use Conditions and Restrictive Covenants found in the Appendix (presently located at **Appendix “F”**) with a new agreement entitled “Restrictive Covenant Agreement” in the form and substance as attached hereto as **Exhibit “A.”**

Section 7. 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 8. 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 17th DAY OF JUNE, 2013.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 1st DAY OF JULY, 2013.

TOWN OF CRESTED BUTTE, COLORADO

By: *Aaron J. Huckstep*
Aaron J. Huckstep, Mayor

ATTEST:

Shelley Jansen
Shelley Jansen



EXHIBIT "A"

Restrictive Covenant Agreement

[attach form Restrictive Covenant Agreement here]

**RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:**

Town of Crested Butte
Attn: Town Clerk
P.O. Box 39
Crested Butte, CO 81224

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made effective this ___ day of _____, 20__ by and between the **TOWN OF CRESTED BUTTE** (the "**Town**"), Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and _____ ("**Owner**"), a _____ with an address of _____.

RECITALS:

A. Owner is the record title owner of certain real property located within Crested Butte and legally described as follows:

Town of Crested Butte,
State of Colorado,

commonly known as _____, Crested Butte, Colorado 81224 (the "**Subject Property**").

B. Owner applied with the Town (the "**Application**") for certain land use approvals for the Subject Property pursuant to the Crested Butte Municipal Code (the "**Code**").

C. The land use approval rights as requested in the Application for the Subject Property are not allowed as a matter of right pursuant to the Code.

D. On _____, 20__, the Board of Zoning and Architectural Review (the "**Board**") conducted public hearings on the Application.

E. At such public hearings, the Board granted approval of the Application pursuant to the Code (collectively, the "**Approvals**").

F. At such public hearings, in exchange for such Approvals, the Board placed certain conditions on the Approvals as further described herein.

G. Owner has agreed to satisfy such conditions and heretofore agreed to place the following covenants against the Subject Property.

In consideration of the agreements, covenants and conditions set forth herein, the Town and Owner agree as follows:

AGREEMENT:

1. **Grant of Approvals.** The Board, through the Approvals, hereby grants to Owner with respect to the Subject Property the following rights appurtenant (*check as applicable*):

- (a) variance;
- (b) conditional use;
- (c) conditional waiver;
- (d) special development permit;
- (e) planned unit development;
- (f) conditional rezoning; and/or
- (g) architectural approval.

2. **Conditions to Approvals.** In consideration of the Approvals, Owner hereby agrees to the following conditions and restrictions on the use and occupancy of the Subject Property (*include list and description of conditions in Approvals*):

- (a) _____;
- (b) _____; and
- (c) _____.

3. **Duration; Obligations.** The rights, obligations and restrictions contained in this Agreement shall run with the land and title to the Subject Property and shall forever bind all persons and entities having any right, title or interest in and to the Subject Property. The obligations set forth herein shall be binding upon Owner, its heirs, representatives, successors, transferees and assigns, and shall forever bind all persons and entities having any right, title or interest in and to the Subject Property or any parts thereof, along with their tenants, licensees, employees, guests and invitees.

4. **Indemnification.** Owner, for itself, its successors, transferees and assigns hereby undertakes to indemnify, defend and hold harmless the Town, its elected officials, appointed boards, officers, employees, managers, attorneys, contractors, agents, insurers and insurance pools, from any and all loss, cost, expense, claim or damage of any kind, including, without limitation, reasonable attorneys' fees, costs and expenses, arising from or relating to, directly or indirectly, this Agreement and/or Owner's exercise of the rights and privileges granted herein.

5. **Default; Remedies.**

5.1 The following conditions, occurrences or actions shall constitute a default by Owner under this Agreement:

- (a) Owner's failure to pay to the Town upon demand any amounts due and owing the Town in connection with the Subject Property and/or the Approvals; and/or

(b) Owner's violation of any provision of this Agreement, the Approvals or the Code.

5.2 Upon the occurrence of a default by Owner, the Town shall have one or more of the following remedies: (i) recover damages due to the default including reasonable attorneys' fees, costs and expenses; and/or (ii) terminate this Agreement and with it the Approvals and the rights granted by the Board pursuant thereto.

5.3 All remedies may be applied concurrently and not to the exclusion of any other remedy. In the event of any legal action or advice necessary to execute such remedies and/or interpret this Agreement, Owner shall pay to the Town all reasonable costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees.

6. **Representations and Warranties.** Owner represents and warrants that:

(a) it is duly qualified to do business and is in good standing in the State of Colorado;

(b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;

(c) that it will comply with all applicable laws, ordinances, rules, regulations or orders issued by any public or governmental agency, body or authority, whether federal, State, local or otherwise, and has obtained all applicable permits and licenses required of Owner in connection with its obligations under this Agreement;

(d) it shall be subject to all laws, ordinances and regulations that become effective after the effective date hereof;

(e) the person signing on behalf of Owner is duly authorized to do so and has obtained any and all approvals necessary to enter into and perform the obligations contained in this Agreement; and

(g) Owner's compliance with the terms hereof do violate any agreement, instrument or other obligation of Owner.

7. **Miscellaneous.**

7.1 **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Code.

7.2 **Recitals.** The Recitals set forth hereinabove are deemed to be material terms of this Agreement.

7.3 **Construction.** None of the provisions of this Agreement shall be construed against or interpreted to the disadvantage of either party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provisions.

7.4 **No Third-Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the Town or Owner.

7.5 **Enforcement.**

7.5.1 Every violation of this Agreement shall be deemed to be a nuisance and shall be subject to all the remedies provided for the abatement of nuisances. Each day a violation hereof exists shall be deemed to be a separate and distinct violation.

7.5.2 A failure to comply with this Agreement shall be grounds for an action to recover damages, for injunctive relief, for specific performance and/or any other remedy available at law and in equity.

7.6 **Notices.** All notices required pursuant to this Agreement shall be deemed served upon depositing a certified letter, return receipt requested, in the United States mail, addressed to the party being served with such notice at the addresses set forth above, unless a request to mail to a different address is provided in writing to the other party.

7.7 **Severability.** If any provision of this Agreement is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

7.8 **Attorneys' Fees; Costs.** If any dispute arises in connection with this Agreement or any document provided for herein or related hereto, the substantially prevailing party shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in connection with such dispute.

7.9 **Entire Agreement.** This Agreement represents the entire agreement of the parties respecting the subject matters addressed herein.

7.10 **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue is any action in connection with this Agreement shall be the District Court of Gunnison County, Colorado.

7.11 **Waiver.** No breach by Owner, its heirs, successors, transferees and assigns, of any term or of this Agreement, shall create a waiver by, or estoppel against the Town, as to future or continuing breaches it being the express understanding of the parties that breaches of this Agreement may be waived only by written consent of the Town.

7.12 **Amendment.** No term or provision of this Agreement may be amended, except in writing signed and duly acknowledged by the parties, and in the Town's case, duly adopted by the Board or Town Council, as applicable. No such amendment shall be effective until recorded in the official real property records of the Clerk and Recorder of Gunnison County, Colorado.

7.13 **Counterparts; Telecopy.** This Agreement may be executed in multiple counterparts, each of when, when taken together, shall constitute one and the same instrument. For purpose of enforcement, facsimile, E-mail and telecopy reproductions of this Agreement shall be deemed to be originals.

IN WITNESS WHEREOF, Owner and the Town have caused this Agreement to be executed effective as of the date first written above.

TOWN:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: _____
_____, Mayor

Attest: _____
_____, Town Clerk

[SEAL]

OWNER:

[NAME]

OR

a _____

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Restrictive Covenant Agreement was acknowledged before me this _____ day of _____, 20__ by _____, Mayor of the Town of Crested Butte, a Colorado home rule municipality on behalf of said entity.

Witness my hand and official seal.
My commission expires:

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Restrictive Covenant Agreement was acknowledged before me this _____ day of _____, 20__ by _____.

Witness my hand and official seal.
My commission expires:

Notary Public

OR

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Restrictive Covenant Agreement was acknowledged before me this _____ day of _____, 20__ by _____, _____ of _____, a _____ on behalf of said entity.

Witness my hand and official seal.
My commission expires:

Notary Public