

**CITY OF CREEDE, COLORADO
ORDINANCE NO. 369**

**AMENDING THE CREEDE CODE TO ESTABLISH A BOARD OF
ADJUSTMENT AND REGULATIONS AND AMENDING THE
CREEDE LAND USE CODE TO ESTABLISH PROCEDURES FOR
THE BOARD OF ADJUSTMENTS**

WHEREAS, the Board of Trustees of the City of Creede ("Creede") are granted the authority by C.R.S. §31-23-307 to establish a Board of Adjustment and to adopt regulations governing the Board of Adjustment; and

WHEREAS, the Board of Trustees finds that transfer of authority of the Board of Adjustments to the Planning and Zoning Commission will provide beneficial convenience and efficiency in the administration, schedule and training of the Board of Adjustments; and

WHEREAS, the Board of Trustees finds that ordinance will thereby promote the health, safety and general welfare of the Creede community.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COUNTY OF MINERAL, STATE OF COLORADO, the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees.

Section 2. Amendment to Section 2-10-10 of the City of Creede Municipal Code.

ARTICLE 10 Board of Adjustments of the Creede Municipal Code is hereby repealed in its entirety and re-enacted to read as follows:

"Sec. 2-10-10. Establishment.

A Board of Adjustment is hereby established in accordance with C.R.S. §31-23-207. The membership of the Board of Adjustments shall be composed of the membership of the City of Creede Planning and Zoning Commission, as established by **ARTICLE 9 Planning and Zoning Commission**. The qualifications for membership, terms of membership, filling of vacancies, and removal of members shall be according to the same laws and rules as are applicable for the Planning and Zoning Commission members.

Sec. 2-10-20. Meetings.

The meetings of the Board of Adjustment shall be scheduled as necessary when variance applications or appeals are submitted to the City. Generally, meetings of the Board of Adjustments shall be scheduled to coincide with meetings of the Planning and Zoning Commission as is convenient.

Sec. 2-10-30. Compensation.

Each member of the Board of Adjustments shall be paid per meeting for each meeting as determined by ordinance by the Board of Trustees.



Sec. 2-10-40. General Rules.

The Board of Adjustment shall follow the general rules and procedures of the Planning and Zoning Commission. The Board of Adjustments may adopt specific rules which are consistent with the provisions of this ARTICLE 10. The Chairperson and Acting Chairperson of the Board of Adjustments shall be the same as the respective position with the Planning and Zoning Commission. The Chairperson and/or Acting Chairperson may schedule meetings of the Board of Adjustments. The Chairperson or Acting Chairperson may administer oaths and compel the attendance of witnesses by application to the district court. The court upon proper showing, may issue subpoenas and enforce obedience by contempt proceedings. All meetings shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be a public record and immediately filed in the Creede Town Hall.

Sec. 2-10-50. Voting.

The concurring vote of four (4) members of the Board of Adjustments shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance."

Section 3. Amendment to Section 4-8(e) of the Creede Land Use Code. Section 4.8 of the Creede Land Use Code is hereby amended by repealing the following language in Section 4-8(e), which language to be repealed is indicated by ~~strikethrough~~.

~~"Any appeal of the decision of the Board of Adjustments may be made to the District Court as provided by law; provided, however, that such appeal must be made prior to thirty (30) days following the date of the final action taken by the Board of Adjustments, as provided by Rule 106, Colorado Rules of Civil Procedure."~~

Section 4. Amendment to Section 4-8 Appeals and Variances of the Creede Land Use Code. Section 4.8 of the Creede Land Use Code is hereby amended by enacting sub-section 4-8(h) which shall read as follows:

~~"(h) Appeal of Decisions of the Board of Adjustments. Final decisions of the Board of Adjustments may be appealed to the Board of Trustees. To the extent this provision is inconsistent with C.R.S. §31-22-307(1), the Board of Trustees has determined by ordinance to transfer the authority to the Board of Trustees to make a final decision on any Board of Adjustments matter that is subject to review by certiorari by the district court. The appellant must submit a written appeal to the Town Clerk within fourteen (14) days after the date of the final decision. The failure to submit a written appeal to the Town Clerk within fourteen (14) days shall be deemed to be a waiver of any and all rights to appeal the decision of the Board of Adjustments. The Board of Trustees shall hold a public hearing as soon as practical after receipt of a written request for appeal. The Board of Trustees shall utilize the same procedures and requirements for notice and standards for review as the Board of Adjustments, except that the Board of Trustees may~~



affirm or overrule an appeal of a decision by the Board of Adjustments by a simple majority vote of the quorum present. A final decision of the Board of Trustees may be challenged in district court in accordance with Rule 106(a)(4), Colorado Rules of Civil Procedure, provided that such appeal is filed no later than thirty (30) days after the date of the final decision.”

Section 5. Correction of Errors. City Staff is authorized to correct any typographical, grammatical, cross-reference, or other errors which may be discovered in any documents associated with this Ordinance and documents approved by this Ordinance provided that such corrections do not change the substantive terms and provisions of such documents.

Section 6. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Board hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 7. Publication. The City Clerk is ordered to publish this Ordinance by posting notice of adoption of this Ordinance on final reading by title in at least three public places within the City and posting at the office of the City Clerk, which notice shall contain a statement that a copy of the ordinance in full is available for public inspection in the office of the City Clerk during normal business hours.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after following final passage.

INTRODUCED, APPROVED, PASSED ON FIRST READING AND FINAL READING, on November 15, 2011.

BY:

ATTEST:

Deborah Roughton-Miles, Mayor

Randi DePrest, City Clerk

APPROVED AS TO FORM:

Eric J. Heil, Town Attorney