

REGULAR MEETING

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. REVIEW AGENDA
- V. CONSENT AGENDA
  - a. Approve/Disapprove September 6 & September 20, 2016 Minutes
  - b. Review/Consent of September 2016 Check Detail Report
  - c. Approve/Disapprove October 4, 2016 Unpaid Bills Report - Available 10/4
- VI. REPORTS & PRESENTATIONS
  - a. Public Works Report - Ben Davis (verbal)
  - b. LWCRCo Report - Catherine Kim (verbal)
  - c. Written Reports (Rec, BI, P&R - no rep, focused on new director) - **Read ONLY**
- VII. PUBLIC HEARINGS AND RELATED ACTIONS
  - a. Approve/Disapprove Ordinance 398 Amending the Creede Development Code by Updating Article 7 on Floodplain Regulations
- VIII. OLD BUSINESS
  - a. Approve/Disapprove Ordinance 399 Amending Chapter 8 of the Creede Development Code Regulating the Operation of OHVs
  - b. Approve/Disapprove Memorandum of Understanding CDOT
  - c. Approve/Disapprove Expenditure OHV Crossing Sign Costs [Covered by donation]
- IX. NEW BUSINESS
  - a. Approve/Disapprove Resolution 2016-10 Authorizing a Corporate Authorization Resolution with Del Norte Bank
  - b. Approve/Disapprove Resolution 2016-11 Authorizing a Corporate Authorization Resolution with Del Norte Bank
  - c. Approve/Disapprove Resolution 2016-12 GOCO
  - d. Approve/Disapprove ½ LWCRCo 2017 Expenses
  - e. Discuss 2017 Proposed Budget & Schedule Work Sessions
- X. MANAGERS REPORT
- XI. ADJOURN

POSTED 9/30/16

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OPEN TO THE PUBLIC

**BOARD OF TRUSTEES**  
**CITY OF CREEDE, COLORADO - A TOWN**  
**September 6, 2016**

REGULAR MEETING

The Board of Trustees of the City of Creede - a Town, County of Mineral, State of Colorado, met in regular session in the Creede Town Hall at the hour of 5:31 p.m. There being present at the call of the roll the following persons:

OFFICIALS PRESENT:           Lori Dooley, Kay Wyley, Catherine Kim, Jeffrey Larson, Teresa Wall,  
Frank Freer, Dana Brink

Mayor Larson, presiding, declared a quorum present.

Those members of staff also present were as follows:

Clyde Dooley, Manager  
Randi Snead, Clerk/Treasurer

REVIEW AGENDA

Lower Willow Creek Restoration Company Fiscal Sponsorship was added to New Business as item b. A presentation from Clay Wade of Merrick & Co. on Rio Grande Avenue was moved to the beginning of the meeting. Trustee Brink moved and Trustee Wall seconded to approve the agenda as amended. The vote was unanimous. Mayor Larson declared the motion carried.

CONSENT AGENDA

The consent agenda contained the following items:

- a. Approve/Disapprove August 2 & August 16, 2016 Minutes
- b. Review/Consent of August 2016 Check Detail Report
- c. Approve/Disapprove September 6, 2016 Unpaid Bills Report

The August 2, 2016 minutes were removed for separate consideration. Trustee Dooley moved and Trustee Brink seconded to approve the consent agenda as presented. The vote was unanimous. Mayor Larson declared the motion carried. A correction was made to the August 2, 2016 minutes. Trustee Brink moved and Trustee Dooley seconded to approve the August 2, 2016 minutes as amended. There were five yes votes and one abstention (Wall). Mayor Larson declared the motion carried.

REPORTS AND PRESENTATIONS

CLAY WADE RIO GRANDE LANE SUBDIVISION

Clay Wade and Manager Dooley presented the progress made on the Rio Grande Subdivision and described the final plat. Manager Dooley asked if anyone on the Board of Trustees has any objection to the direction given by the previous board to proceed with plans to subdivide the property. No one objected to the current direction.

PUBLIC WORKS REPORT

Public Works Director, Ben Davis reported on the following items:

- All events went smoothly this last month.
- Three new meters and a new tap were installed on the water sewer system.
- The crew has been helping with seasonal turn offs and repairs.
- The permanent crosswalks should be going down before the snow falls.
- The Basham Park Revitalization Plan is a great step forward and Ben is available for any assistance needed with it.
- The loader is getting fitted for the V-plow.
- The crew is gathering information on getting the loader fitted with snow chains.
- There has been trouble with volunteer use of the gym combination and the key has gone missing. The combination has been changed, and Ben will follow up with possible alternatives.

## LOWER WILLOW CREEK RESTORATION COMPANY REPORT

Trustee Kim reported that the meeting was rescheduled to September 9, 2016. The company is requesting fiscal sponsorship for grant funding received through the state. Mineral County Fairgrounds has approached the company and the city with plans to dig a ditch to access their water right through the property but has not submitted plans for consideration. The SLV GOCO Inspire group has been working on plans to expand the Multi Use Trail into a loop throughout the property. The trail will eventually fall under ownership and maintenance by the city. Bids for dirt relocating are being considered at the upcoming meeting.

## OLD BUSINESS

### APPROVE/DISAPPROVE RESOLUTION 2016-09 ADMINISTRATIVE APPROVAL OF LIQUOR LICENSE TASKS

Trustee Freer moved and Trustee Dooley seconded to approve Resolution 2016-09 Administrative Approval of Liquor License Tasks as presented. The vote was unanimous. Mayor Larson declared the motion carried.

## NEW BUSINESS

### APPROVE/DISAPPROVE BASHAM PARK REVITALIZATION PROJECT

Trustee Dooley moved and Trustee Wall seconded to approve the Basham Park Revitalization Project as presented. The vote was unanimous. Mayor Larson declared the motion carried.

### APPROVE/DISAPPROVE LWCRCO FISCAL CDPHE 1306 SPONSORSHIP

Trustee Wall moved and Trustee Brink seconded to approve fiscal sponsorship for the LWCRCo CDPHE 1306 grant. The vote was unanimous. Mayor Larson declared the motion carried.

## MANAGER'S REPORT

**3<sup>rd</sup> Street Request:** Dooley was waiting for material to present to the Board about a request to landscape the gravel area between the old school buildings on 3<sup>rd</sup> street and will present it at an upcoming Work Session.

**Floodplain Letter of Map Revision & CDC Update:** Dooley informed the Board that the Floodplain Regulations section of the Creede Development Code will have to be updated to CWCB's standards in order for Creede to qualify for a Letter of Map Revision and possible flume funding. The Planning & Zoning will make a recommendation at their September meeting and the Board of Trustees will consider the revision at the October 4, 2016 meeting.

**Drug Testing:** The Board of Trustees expressed varying positions on whether the current drug testing language in the Employee Handbook was sufficient or whether random drug testing needed to be implemented. The Board directed Clerk Snead to prepare possible language to revise the handbook at the October work session.

## ADJOURN

There being no further business to come before the Board of Trustees at this time, Trustee Wall moved and Trustee Dooley seconded that the meeting be adjourned at 7:09 p.m. The vote was unanimous. Mayor Larson declared the motion carried.

Respectfully submitted:

/Randi Snead/

Randi Snead, City Clerk/Treasurer



CITY OF CREEDE; A COLORADO TOWN

09/30/16

Monthly Check Detail

Accrual Basis

September 2016

Type	Date	Num	Name	Memo	Amount
<b>Sep 16</b>					
Bill Pmt -C...	09/07/2016	90023	Caterpillar Financial Services Co...	VOID:	0.00
Bill Pmt -C...	09/07/2016	90024	Dan Boucher	Gym Electricity July	-433.00
Bill Pmt -C...	09/07/2016	90025	Kentucky Belle Market	Aug Charges/Acct. #15 Tax Exempt	-41.97
Bill Pmt -C...	09/07/2016	90026	Kristeen Lopez	Recreation Instructor	-45.00
Bill Pmt -C...	09/07/2016	90027	Merrick & Company	152449/May/Professional Services	-295.00
Bill Pmt -C...	09/07/2016	90028	Muleys Disposal Service	Sep Trash Svcs/Accts 116, 1197, 1198, 19...	-533.00
Bill Pmt -C...	09/07/2016	90029	Oceans & Rivers, LLC	Aug Fuel Charges	-263.17
Bill Pmt -C...	09/07/2016	90030	Ramona Weber	Building Inspection Services	-244.00
Bill Pmt -C...	09/07/2016	90031	Randi Snead	Travel Expenses: Bank Trips Excluding P...	-287.71
Bill Pmt -C...	09/07/2016	90032	U.S. Postal Service	Annual Post Office Box Rental	-110.00
Bill Pmt -C...	09/07/2016	90033	Caterpillar Financial Services Co...	17298461/Loader Lease Payment	-1,938.71
Bill Pmt -C...	09/07/2016	90034	Tomkins Hardware & Lumber	Acct 580 Aug Charges	-686.61
Bill Pmt -C...	09/14/2016	90050	Ciello	Sep Phone/Internet Service	-295.11
Bill Pmt -C...	09/14/2016	90051	Creede Community Center	2016 VC Funding	-7,987.50
Bill Pmt -C...	09/14/2016	90052	Monte Vista Cooperative	Monthly Propane & Shop Charges	-205.69
Bill Pmt -C...	09/14/2016	90053	Rocky Mountain Home Health S...	724471/Center Pull Towels Parks	-99.98
Paycheck	09/15/2016	90035	Catherine Kim		-153.92
Paycheck	09/15/2016	90036	Dana D Brink		-153.92
Paycheck	09/15/2016	90037	Frank Freer		-153.92
Paycheck	09/15/2016	90038	Jeffrey A Larson		-351.79
Paycheck	09/15/2016	90039	Lori G. Dooley		-153.92
Paycheck	09/15/2016	90040	Merolyn K Wyley		-153.92
Paycheck	09/15/2016	90041	Teresa Wall		-153.92
Paycheck	09/15/2016	90042	Benjamin J Davis		-1,308.13
Paycheck	09/15/2016	90043	Charles A Pilant		-386.28
Paycheck	09/15/2016	90047	Robert B Schlough		-1,167.29
Paycheck	09/15/2016	90044	Clyde E Dooley		-1,759.03
Paycheck	09/15/2016	90045	Eloise T Hooper		-527.78
Paycheck	09/15/2016	90046	Randi L Snead		-1,349.09
Paycheck	09/15/2016	90048	Scott W Leggitt		-917.69
Bill Pmt -C...	09/15/2016	90049	VISA		-370.34
Liability C...	09/19/2016	941-...	United States Treasury	84-6000575	-2,825.54
Liability C...	09/19/2016	AFL...	AFLAC	BJB74	-111.12
Liability C...	09/19/2016	CC...	GWRS (CCOERA)	98721-01/1220	-522.82
Bill Pmt -C...	09/27/2016	90054	SLVREC	Electric Charges	-1,884.00
Bill Pmt -C...	09/27/2016	90055	Town of South Fork	4 Guests, CML Dinner 9/28/16	-132.00
Liability C...	09/29/2016	941-...	United States Treasury	84-6000575	-2,548.58
Liability C...	09/29/2016	90056	Colorado Department of Revenue	07-01555	-2,044.00
Liability C...	09/29/2016	90057	Colorado State Treasurer	133001-00-6-001	-187.81
Liability C...	09/29/2016	90058	CEBT	City of Creede, 32705SG	-3,822.88
Liability C...	09/29/2016	CC...	GWRS (CCOERA)	98721-01/1220	-515.28
Bill Pmt -C...	09/29/2016	90059	Blair and Associates PC	2015 Audit	-7,950.00
Bill Pmt -C...	09/29/2016	90060	Kimball Midwest	4491490/Internal Pipe Supplies	-26.09
Bill Pmt -C...	09/29/2016	90061	McQuitty Plumbing & Heating, L...	1785/Gym Plumbing	-689.36
Bill Pmt -C...	09/29/2016	90062	Rocky Mountain Home Health S...	724555/Tissue & Towels	-291.84
Bill Pmt -C...	09/29/2016	90063	Valley Publishing	Ads	-32.00
Bill Pmt -C...	09/29/2016	90064	Wagner Equipment Co.	S03W0825742/Adapt V-Plow to Loader	-7,514.50
Bill Pmt -C...	09/29/2016	90065	Kelvin Walker	Contract Labor/5.5 hours @ \$15.00/hour	-82.50
Paycheck	09/30/2016	20009	Benjamin J Davis	VOID:	0.00
Paycheck	09/30/2016	20010	Charles A Pilant		-386.28
Paycheck	09/30/2016	20011	Clyde E Dooley		-1,759.02
Paycheck	09/30/2016	20012	Randi L Snead		-1,349.09
Paycheck	09/30/2016	20013	Robert B Schlough		-1,167.29
Paycheck	09/30/2016	9056	Eloise T Hooper		-527.79
Paycheck	09/30/2016	9057	Scott W Leggitt		-917.69
Paycheck	09/30/2016	20015	Benjamin J Davis		-1,235.40
Liability A...	09/30/2016			Adjust to eliminate 11.5k rule	154.30
<b>Sep 16</b>					<b>-60,895.97</b>

VISA								
Credit	08/08/2016	Fraud ...	VISA	Fraudulent Transaction Reimbursement	1200 · Accounts Paya...	1580.50 · Recre...	-76.28	132.39
Bill	08/29/2016	ATV Si...	VISA	ATV Signs	1200 · Accounts Paya...	1530.70 · Street...	74.73	56.11
Bill	09/02/2016	Rec Su...	VISA	Rec Supplies	1200 · Accounts Paya...	1580.50 · Recre...	107.28	130.84
Bill	09/12/2016	112944...	VISA	Rec Supplies	1200 · Accounts Paya...	1580.50 · Recre...	132.22	238.12
Bill Pmt -Check	09/15/2016	90049	VISA		1200 · Accounts Paya...	1000 · General ...	-370.34	370.34
							<b>-132.39</b>	<b>0.00</b>

1:08 PM

09/30/16

Accrual Basis

## Water and Sewer Fund Monthly Check Detail September 2016

Type	Date	Num	Name	Memo	Amount
<b>Sep 16</b>					
Bill Pmt -Check	09/07/2016	3296	Dana Kepner Com...	1433278/Meter Parts/Reimbursable	-731.59
Bill Pmt -Check	09/07/2016	3297	Del Norte Auto Sup...	Wastewater Blowers IND Belt	-259.96
Bill Pmt -Check	09/07/2016	3298	Grand Junction Pipe	Water Tap Supply	-2,948.27
Bill Pmt -Check	09/07/2016	3299	Kentucky Belle Mar...	August Charges/#15 Tax Exempt	-72.79
Bill Pmt -Check	09/07/2016	3300	Merrick & Company	152450/ May Professional Services	-844.00
Bill Pmt -Check	09/07/2016	3301	Oceans & Rivers L...	Monthly Charges/WS Testing	-9.66
Bill Pmt -Check	09/07/2016	3302	Randi Snead	Reimburse for shipping, City card compromised	-57.68
Bill Pmt -Check	09/07/2016	3303	Sangre De Cristo L...	182367/BacT	-60.00
Bill Pmt -Check	09/07/2016	3304	UNCC	RTL Transmissions (1) l#216080219	-1.43
Bill Pmt -Check	09/08/2016	3305	Tomkins Hardware...	Tomkins Charges	-17.79
Bill Pmt -Check	09/14/2016	3306	Accutest Mountain ...	D8-78802/Wastewater	-175.50
Bill Pmt -Check	09/14/2016	3307	CenturyLink	300794269/Aug Phone	-117.64
Bill Pmt -Check	09/14/2016	3308	DPC Industries, Inc.	DDE73000703-16/Chlorine	-36.00
Bill Pmt -Check	09/14/2016	3309	Grand Junction Pipe	Water Sewer Inventory	-630.54
Bill Pmt -Check	09/14/2016	3310	VISA		-318.36
Bill Pmt -Check	09/27/2016	3311	SLVREC	Aug Electricity Charges	-3,341.00
Bill Pmt -Check	09/29/2016	3312	Accutest Mountain ...	Sewer Testing	-822.00
Bill Pmt -Check	09/29/2016	3313	American Business...	Annual Maintenance Subscription/Utility Billing ...	-395.00
Bill Pmt -Check	09/29/2016	3314	Bohannon Huston	95253/Project Needs Assessment Remainder	-625.00
Bill Pmt -Check	09/29/2016	3315	City of Creede	September 2016 Salary Reimbursement	-11,449.87
Bill Pmt -Check	09/29/2016	3316	Del Norte Auto Sup...	Wastewater Blowers IND Belt	-129.98
Bill Pmt -Check	09/29/2016	3317	Front Range Winw...	041925/Meter Materials	-123.00
Bill Pmt -Check	09/29/2016	3318	Sangre De Cristo L...	18328/BacT	-60.00
Bill Pmt -Check	09/29/2016	3319	Southern Colorado...	1362/Contract Work WW Sampling & Paperwork	-726.22
Bill Pmt -Check	09/29/2016	3320	Weaver's Level Be...	Pipe Inventory	-376.00
					<b>-24,329.28</b>

**Sep 16**



<b>Bill Pmt -Check</b>	<b>3310</b>	<b>09/14/2016</b>	<b>VISA</b>		
Bill	ADJ61	08/07/2016		Wastewater Testing/Shipping	-10.50
Bill	671443	08/09/2016		Wastewater Testing/Shipping	-55.02
Bill	10000618	08/18/2016		Wastewater Testing/Shipping	-70.96
Bill	265629	08/24/2016		Wastewater Testing/Shipping	-11.50
Bill	15619	09/02/2016		Wastewater Testing/Shipping	-55.02
Bill	25628	09/02/2016		Wastewater Testing/Shipping	-83.86
Bill	ADJ461	09/12/2016		Wastewater Testing/Shipping	-21.00
Bill	ADJ561	09/12/2016		Wastewater Testing/Shipping	-10.50
<b>TOTAL</b>					<b>-318.36</b>

Town Board of Trustees  
October 4, 2016  
Eloise Hooper

The Summer Carnival was a success. About 100 people, including almost 60 youth played the games and petted the critters. The weather cooperated this year and was pleasant.

Renaissance Kids made fruit, ham, and chees kabobs for a snack and decorated pencil boxes.

Game Nights have been slow because of Volley ball games. However, Movie Nights have had almost 40 people per night. Families are coming instead of just youth. A projector was donated to Rec. I painted a wall on the stage white so we could project the movie onto the wall and have the image be about 6" x 11". A speaker is hooked up to provide the sound. Kristeen Lopez and Brian Mankowski ran the Game Night and Movie Night while I was on vacation. We are going to open Game Night to adults beginning in October

I am starting to plan the Halloween Party that will combine with the Early Learning Center. The party will be Saturday, October 29 from 1- 5 pm with a Chili Supper following the party.

**From:** [Ramona Weber](#)  
**To:** [Randi Snead](#)  
**Subject:** Re: Reports?  
**Date:** Friday, September 30, 2016 11:23:19 AM

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Hi Randi,  
Building Inspector Report for September 2016  
Inspected two foundations  
and one framing inspection

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**From:** Randi Snead <[REDACTED]>  
**Sent:** Friday, September 30, 2016 9:40 AM  
**To:** 'Anne Pizel'; 'Ramona weber'; 'Eloise Hooper'  
**Subject:** Reports?

Hi all:

Reports please?

Thanks,

Randi Snead, CMC  
City of Creede Clerk/Treasurer  
PO Box 457, Creede, CO 81130

[REDACTED], M: 71 [REDACTED]  
cle [REDACTED]

[www.creedetownhall.com](http://www.creedetownhall.com)



Please consider the environment - only print if necessary

# ORDINANCE 398

## AMENDING THE CREEDE DEVELOPMENT CODE BY UPDATING ARTICLE 7 ON FLOODPLAIN REGULATIONS

**WHEREAS**, the authority for the City of Creede (“City”) to adopt regulations concerning the use and development of real property is provided by Article 65.5 Notification of Surface Development; Article 20 Local Government Regulation of Land Use of Title 29; Article Exercise of Municipal Powers; Article 16 Ordinances; Article 23 Planning and Zoning; and other applicable state and federal laws and regulations; and

**WHEREAS**, in accordance with the requirements of C.R.S. § 31-23-304, 305, and 306 the Creede Planning and Zoning Commission held a public hearing and after considering public comments received and testimony and materials provided by City Staff provided a recommendation to the Board of Trustees to amend Article 7 of the Creede Development Code concerning floodplain regulations; and

**WHEREAS**, in accordance with the requirements of C.R.S. § 31-23-304, 305, and 306 and after providing proper notice, the Creede Board of Trustees held a public hearing on October 4, 2016, and considered all public comments received and all testimony and materials provided by City Staff prior to making a decision; and

**WHEREAS**, the Board of Trustees for the City of Creede, a Colorado Town finds that amending Article 7 of the Creede Development Code to update the floodplain regulations in accordance with the Department of Natural Resources and Colorado Water Conservation Board is in the best interest and 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, a Colorado Town 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. Enacted.** Article 7, Floodplain Areas of Chapter 9 in the Creede Development Code, attached as Exhibit A is hereby amended and enacted.

**Section 3. Codification Amendments.** The codifier of the City’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Creede Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such

corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 4. 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 provision or application 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 Board of Trustees 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 City.

**Section 5. Effective Date.** This Ordinance shall take effect thirty days after adoption.

**Section 6. Safety Clause.** The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Creede, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative objective sought to be obtained.

**INTRODUCED, PASSED AND ADOPTED AT A REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, A COLORADO TOWN, ON OCTOBER 4, 2016.**

**BY:**

**ATTEST:**

\_\_\_\_\_  
Jeffery Larson,  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Randi Snead,  
City Clerk

\_\_\_\_\_  
Date

# Article 7

## FLOODPLAIN AREAS

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## **9-07-010 - TITLE AND PURPOSE**

### **SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the State of Colorado has, in Title 29, Article 20 of the Colorado Revised Statutes, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of Trustees of the City of Creede, a Colorado Town, does hereby adopt the following floodplain management regulations:

### **SECTION B. FINDINGS OF FACT**

(1) The flood hazard areas of the City of Creede are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood proofed or otherwise protected from flood damage.

### **SECTION C. STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to critical facilities, infrastructure and other public facilities such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that potential buyers are notified that property is located in a flood hazard area.

## **SECTION D. METHODS OF REDUCING FLOOD LOSSES**

In order to accomplish its purposes, this ordinance uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

DRAFT

## 9-07-020 - DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**100-YEAR FLOOD** - A flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-annual-chance flood). The terms "one-hundred-year flood" and "one percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

**100-YEAR FLOODPLAIN** - The area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

**ADDITION** - Any activity that expands the enclosed footprint or increases the square footage of an existing structure.

**ALLUVIAL FAN FLOODING** - A fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars, and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

**AREA OF SHALLOW FLOODING** - A designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**BASE FLOOD ELEVATION (BFE)** - The elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

**BASEMENT** - Any area of a building having its floor sub-grade (below ground level) on all sides.

**CHANNEL** - The physical confine of stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

**CHANNELIZATION** - The artificial creation, enlargement or realignment of a stream channel.

**CODE OF FEDERAL REGULATIONS (CFR)** - The codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

**COMMUNITY** - Any political subdivision in the state of Colorado that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

**CONDITIONAL LETTER OF MAP REVISION (CLOMR)** - FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

**CRITICAL FACILITY** – A structure or related infrastructure, but not the land on which it is situated, as specified in Article 5, Section H, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. See Article 5, Section H.

**DEVELOPMENT** - Any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**DFIRM DATABASE** - Database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

**DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)** - FEMA digital floodplain map. These digital maps serve as “regulatory floodplain maps” for insurance and floodplain management purposes.

**ELEVATED BUILDING** - A non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the

construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION-**

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEDERAL REGISTER** - The official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

**FEMA** - Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

**FLOOD OR FLOODING** - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of water from channels and reservoir spillways;
2. The unusual and rapid accumulation or runoff of surface waters from any source; or
3. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

**FLOOD INSURANCE RATE MAP (FIRM)** – An official map of a community, on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** - The official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

**FLOODPLAIN OR FLOOD-PRONE AREA** - Any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

**FLOODPLAIN ADMINISTRATOR** - The community official designated by title to administer and enforce the floodplain management regulations.

**FLOODPLAIN DEVELOPMENT PERMIT** – A permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.

**FLOODPLAIN MANAGEMENT** - The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** - Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD CONTROL STRUCTURE** - A physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**FLOODPROOFING** - Any combination of structural and/or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY (REGULATORY FLOODWAY)** - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

**FREEBOARD** - The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE** - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** - Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or;
  - b. Directly by the Secretary of the Interior in states without approved programs.

**LETTER OF MAP REVISION (LOMR)** - FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

**LETTER OF MAP REVISION BASED ON FILL (LOMR-F)** – FEMA’s modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

**LEVEE** – A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

**LEVEE SYSTEM** - A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - The lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.

**MANUFACTURED HOME** - A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

**MATERIAL SAFETY DATA SHEET (MSDS)** – A form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

**NATIONAL FLOOD INSURANCE PROGRAM (NFIP)** – FEMA’s program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**NO-RISE CERTIFICATION** – A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

**PHYSICAL MAP REVISION (PMR)** - FEMA’s action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or planimetric features.

**RECREATIONAL VEHICLE** - means a vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**SPECIAL FLOOD HAZARD AREA** – The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

**START OF CONSTRUCTION** - The date the building permit was issued, including substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation

on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** - A walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "Start of Construction" of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred "Substantial Damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**THRESHOLD PLANNING QUANTITY (TPQ)** – A quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

**VARIANCE** - A grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

**VIOLATION** - The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** - The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

## 9-07-030 - GENERAL PROVISIONS

### **SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES**

The ordinance shall apply to all Special Flood Hazard Areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the City of Creede, a Colorado Town.

### **SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREA**

The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for the City of Creede," dated {effective [ask Kevin about this] date of study}, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this ordinance and may be supplemented by studies designated and approved by the City of Creede. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and/or FBFMs on file and available for public inspection.

### **SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

### **SECTION D. COMPLIANCE**

No structure or land shall hereafter be located, altered, or have its use changed within the Special Flood Hazard Area without full compliance with the terms of this ordinance and other applicable regulations. Nothing herein shall prevent the Board of Trustees from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

### **SECTION E. ABROGATION AND GREATER RESTRICTIONS**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, nor deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

### **SECTION F. INTERPRETATION**

In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

**SECTION G. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes.

This ordinance does not imply that land outside the Special Flood Hazard Area or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION H. SEVERABILITY**

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

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## **9-07-040 - ADMINISTRATION**

### **SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR**

The City Manager is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

### **SECTION B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any flood proofing certificate required by Article 4, Section C.
2. Review, approve, or deny all applications for Floodplain Development Permits required by adoption of this ordinance.
3. Review Floodplain Development Permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
5. Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this ordinance, including proper elevation of the structure.
6. Where interpretation is needed as to the exact location of the boundaries of the Special Flood Hazard Area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
7. When Base Flood Elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and Floodway data available from a Federal, State, or other source, in order to administer the provisions of Article 5.
8. For waterways with Base Flood Elevations for which a regulatory Floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the community.

9. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one-half foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
10. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
11. Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

### **SECTION C. PERMIT PROCEDURES**

Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to Special Flood Hazard Area. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be flood proofed;
3. A certificate from a registered Colorado Professional Engineer or architect that the nonresidential flood proofed structure shall meet the floodproofing criteria of Article 5, Section B(2);
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information in accordance with Article 4, Section B.

Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;

4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
10. The relationship of the proposed use to the comprehensive plan for that area.

#### **SECTION D. VARIANCE PROCEDURES**

1. The Appeal Board, as established by the Community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
7. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance as stated in Article 1, Section C.

8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
  - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - b. Variances shall only be issued upon:
    - i. Showing a good and sufficient cause;
    - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
    - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
11. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a Functionally Dependent Use provided that:
  - a. The criteria outlined in Article 4, Section D (1)-(9) are met, and
  - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

## **9-07-050 - PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **SECTION A. GENERAL STANDARDS**

In all Special Flood Hazard Areas the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage and be located so that any external wall shall be not less than fifteen (15) feet from the outside edge of the flume.
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
6. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
8. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### **SECTION B. SPECIFIC STANDARDS**

In all Special Flood Hazard Areas where base flood elevation data has been provided as set forth in (i) Article 3, Section B, (ii) Article 4, Section B(7), or (iii) Article 5, Section G, the following provisions are required:

#### **1. RESIDENTIAL CONSTRUCTION**

New construction and Substantial Improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air

conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

## 2. NONRESIDENTIAL CONSTRUCTION

With the exception of Critical Facilities, outlined in Article 5, Section H, new construction and Substantial Improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that at one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A registered Colorado Professional Engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. Such certification shall be maintained by the Floodplain Administrator, as proposed in Article 4, Section C.

## 3. ENCLOSURES

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

## 4. MANUFACTURED HOMES

All manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning

equipment and other service facilities (including ductwork), are elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of the above paragraph, shall be elevated so that either:

- a. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are one foot above the base flood elevation, or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

#### 5. RECREATIONAL VEHICLES

All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- a. Be on the site for fewer than 180 consecutive days,
- b. Be fully licensed and ready for highway use, or
- c. Meet the permit requirements of Article 4, Section C, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

### **SECTION C. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES)**

Located within the Special Flood Hazard Area established in Article 3, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

## 1. RESIDENTIAL CONSTRUCTION

All new construction and Substantial Improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

## 2. NONRESIDENTIAL CONSTRUCTION

With the exception of Critical Facilities, outlined in Article 5, Section H, all new construction and Substantial Improvements of non-residential structures, must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified), or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. A registered Colorado Professional Engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section C, are satisfied.

Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures.

## **SECTION D. FLOODWAYS**

Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State of Colorado has adopted Floodway standards that are more stringent than the FEMA minimum standard (see definition of Floodway in Article 2). Located within Special Flood Hazard Area established in Article 3, Section B, are areas designated as Floodways. Since the Floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory Floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (requires a No-Rise Certification) in flood levels within the community during the occurrence of the base flood discharge.
2. If Article 5, Section D (1) above is satisfied, all new construction and substantial improvements shall comply with applicable flood hazard reduction provisions of Article 5.

3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations, provided that the community first applies for a CLOMR and floodway revision through FEMA.

#### **SECTION E. ALTERATION OF A WATERCOURSE**

For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:

1. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
2. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
3. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.
4. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
5. All activities within the regulatory floodplain shall meet all applicable Federal, State and {community name} floodplain requirements and regulations.
6. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the community first applies for a CLOMR and Floodway revision in accordance with Section D of this Article.
7. Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

#### **SECTION F. PROPERTIES REMOVED FROM THE FLOODPLAIN BY FILL**

A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

##### **1. RESIDENTIAL CONSTRUCTION**

The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.

##### **2. NONRESIDENTIAL CONSTRUCTION**

The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to

one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

## **SECTION G. STANDARDS FOR SUBDIVISION PROPOSALS**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.
2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this ordinance.
3. Base Flood Elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section B of this ordinance.
4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

## **SECTION H. STANDARDS FOR CRITICAL FACILITIES**

A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

### **1. CLASSIFICATION OF CRITICAL FACILITIES**

It is the responsibility of the Board of Trustees for the City of Creede to identify and confirm that specific structures in their community meet the following criteria:

Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services.

- a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

These facilities consist of:

- i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
- ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors' offices, and non-urgent care medical structures that do not provide these functions);
- iii. Designated emergency shelters;
- iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
- v. Public utility plant facilities for generation and distribution ( hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
- vi. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.

Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Board of Trustees for the City of Creede that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Board of Trustees for the City of Creede on an as-needed basis upon request.

- b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.

These facilities may include:

- i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
- ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
- iii. Refineries;
- iv. Hazardous waste storage and disposal sites; and
- v. Above ground gasoline or propane storage or sales centers.

Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the

Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation “Designation, Reportable Quantities, and Notification,” 40 C.F.R. § 302 (2010) and OSHA regulation “Occupational Safety and Health Standards,” 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this ordinance, but exclude later amendments to or editions of the regulations

Specific exemptions to this category include:

- i. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
- ii. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
- iii. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.

- c. At-risk population facilities include medical care, congregate care, and schools.

These facilities consist of:

- i. Elder care ( nursing homes);
- ii. Congregate care serving 12 or more individuals ( day care and assisted living);
- iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);

- d. Facilities vital to restoring normal services including government operations.

These facilities consist of:

- i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);

- ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the Board of Trustees for the City of Creede that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Board of Trustees for the City of Creede on an as-needed basis upon request.

## 2. PROTECTION FOR CRITICAL FACILITIES

All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this ordinance, protection shall include one of the following:

- a. Location outside the Special Flood Hazard Area; or
- b. Elevation of the lowest floor or flood proofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.

## 3. INGRESS AND EGRESS FOR NEW CRITICAL FACILITIES

New Critical Facilities shall, when practicable as determined by the Board of Trustees for the City of Creede, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

**CITY OF CREEDE, COLORADO  
ORDINANCE NO. 399**

AN ORDINANCE OF THE CITY OF CREEDE, COLORADO  
AMENDING SECTION G OF ARTICLE 3 OF CHAPTER 8 OF THE  
CREEDE MUNICIPAL CODE REGULATING THE OPERATION OF OFF-  
HIGHWAY VEHICLES (OHVs) WITHIN THE TOWN OF CREEDE.

WHEREAS, the City of Creede has approved and adopted Ordinance 397 Repealing Resolution 2014-04 and Adding Article 3 to Chapter 8 Of The Creede Municipal Code Regulating The Operation Of Off-Highway Vehicles (OHVs) Within The Town Of Creede.; and

WHEREAS, the Board of Trustees of the City of Creede has determined that it is in the best interests of the citizens of Creede to amend those regulations to 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, Colorado, as follows:

**Section 1:** Section “g” of Article 3 of Chapter 8 of the Creede Municipal Code is hereby amended to read as follows:

**Article 3**

**OHV Regulations**

\* \* \*

- g) It shall be unlawful for any person to operate an off-highway vehicle on any public road at a speed greater than ~~fifteen miles per hour (15 m.p.h.)~~ the regularly posted speed limit.

**Section 3. Codification Amendments.** The codifier of the City’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Creede Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such

corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 4. 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 Board of Trustees 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 City.

**Section 5. Effective Date.** This Ordinance shall take effect on the thirty-first (31) day after publication of notice of adoption.

**Section 6. Safety Clause.** The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Creede, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 7. No Existing Violation Affected.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of

sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 8. Publication.** The Town Clerk is ordered to publish this Ordinance in a newspaper of general circulation in the City of Creede.

INTRODUCED AND ADOPTED by the Board of Trustees of the City of Creede, Colorado, on October 4, 2016.

CITY OF CREEDE, COLORADO

\_\_\_\_\_  
Jeffrey Larson, Mayor

ATTEST:

\_\_\_\_\_  
Randi Snead, City Clerk

# MEMORANDUM

Region 5, Traffic and Safety Unit  
3803 N. Main Ave., Ste. 100  
Durango, Colorado 81301  
Phone 970-385-8360  
Fax 970-385-8361



## **Memorandum of Understanding (MOU) between the City of Creede and CDOT Regarding SH 149 OHV/ATV Crossing & Signs**

The City of Creede (City) has applied to install an OHV/ATV (OHV) highway crossing of State Highway 149 at MM 21.65, adjacent to and east of the abandoned Railroad tracks, per CRS 33-14.5-110. The City has provided a copy of the City Ordinance 397, permitting use of OHV's in City limits and accessing to City streets, City ped trails and Forest Service access roads. This OHV highway crossing is deemed necessary to connect the City with trails and access roads, and to complete the Creede OHV trail system. The City has provided Right of Way (ROW) determination in the form of City plats showing the City's ownership of the access streets and off road trail this highway crossing will now connect.

CDOT ROW, Traffic/Access, and Enviro departments have provided clearances for the OHV crossing at this SH 149 location.

As with all proposed new pedestrian crossings or crosswalks placed in Region 5, there shall exist joint responsibilities for purchasing materials, installing an OHV crossing, and maintaining OHV crossings into the future.

City agrees to do the following: Purchase all Traffic signs, posts, devices, and materials, per a CDOT Traffic design, that are determined to be necessary and appropriate for the installation of the SH 149 OHV crossing. Any signs that are located off of the highway on the OHV trail system are solely the responsibility of the City. CDOT has designed the OHV crossing and has compiled a materials cost estimate for the City's participation (attached). Upon signing this MOU by the City, CDOT will place the materials order and send the Materials invoice to the City for payment. A CDOT OHV crossing design for SH 149 will be submitted to the City for comment.

After payment of the Materials Invoice, CDOT agrees to do the following: Install the OHV crossing and maintain forever all Traffic signs, devices, and materials, per CDOT Traffic design, which are located on the highway.

The CDOT installation work has no set completion date and is dependent on materials delivery and many other projects across the Region. The installation work will be done by CDOT Traffic crews when time, mobilization, and weather allows.

CDOT'S intention is to complete the installation work before the winter season 2016, however, other Traffic & Safety priorities may preclude this work until spring 2017.

\_\_\_\_\_  
City of Creede representative

\_\_\_\_\_  
CDOT Traffic & Safety Engineer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**City of Creede – OHV Crossing of SH 149 – Preliminary Materials Cost Estimate**

CDOT’s policy is, similar to new Ped crossings in City/cities, the requesting municipality pays for materials and CDOT pays all labor and truck time for the highway traffic devices installations. CDOT also covers all future maintenance and replacements of highway OHV Crossing highway devices.

Creede OHV Xing Scope: 30mph zone - Two signs at the OHV crossing, along with dashed inlaid pavement markings, two advance warning signs, and 4 signs to direct OHV’s to not use highway and directing OHV’s to use only approved City streets or trails.

Material Costs For the proposed Creede OHV Hywy crossing: (see sign layouts)

2 Advance OHV warning signs approx 200’ in advance + 2 OHV crossing signs at the Xing + 2 OHV Trail signs = 6 signs

6 Sign/post installs – 4 hywy sign/post install have 3 panels on 1 post:

30 sq ft CL 1 panels = \$330 + 40 sq ft CL 2 = \$520 for panels Total for sign panels = \$850

4 slipbase (2.5”) posts & bases \$140 ea + 2 (2”) PozLok post/base \$85 ea = \$730

Pave Markings – 2 Cross hatching lines - 8 sq ft Inlaid Tape x \$5.50/sq ft = \$44

Total Hywy Materials cost estimate for City budgeting: **\$ 1624**

CDOT will order & store all required Hywy traffic devices & materials - City will be invoiced for actual material costs with no mark up, per a signed MOU. Payment will be submitted prior to the installation work, within 30 days of receipt of CDOT Invoice. CDOT’s share of costs is estimated to be approximately \$4000.

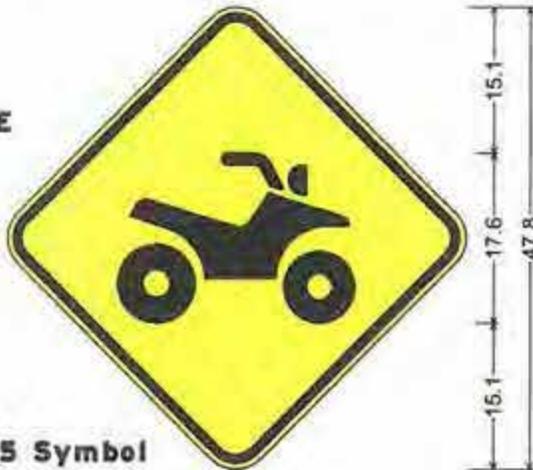
All OHV crossings signs & pavement markings materials will be installed by CDOT. CDOT will maintain the signs and pavement markings into the future. (CDOT will also remove the old, no longer needed RR crossing pavement markings at this location)

City’s local law enforcement shall enforce “no OHV use of highway” on SH 149.

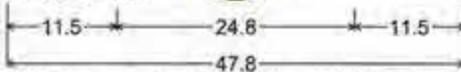
CDOT OHV Contact: Rick Routh, PE Region 5 Traffic & Safety – 970 385-3629 rick.routh@state.co.us

**OHV XINGS USING  
TOWN STREETS**

**36" MIN SIZE**

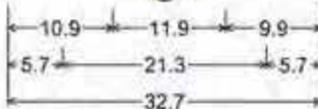
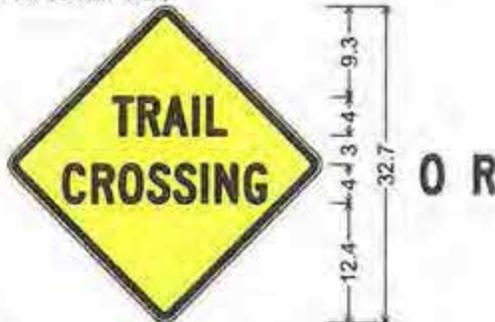


**SPEC RS-095 Symbol**



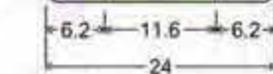
36.0" across sides 3.8" Radius, 0.9" Border, 0.6" Indent, Black on Yellow,  
Symbol All-Terrain Trail;

**SPEED LIMIT ABOVE 45MPH**



W11-15a\_24x24;

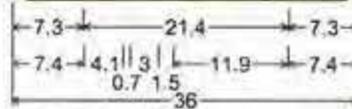
24.0" across sides 1.5" Radius, 0.6" Border, 0.4" Indent, Black on Yellow;



W16-7pL\_24x12;

1.5" Radius, 0.6" Border, 0.4" Indent, Black on Yellow;  
Standard Arrow Custom 12.6" X 8.1" 210";

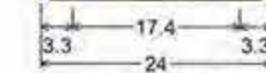
**OR**



W11-15P\_36x30;

1.9" Radius, 0.8" Border, 0.5" Indent, Black on Yellow;

**AND**



W16-9P\_24x12;

1.5" Radius, 0.6" Border, 0.4" Indent, Black on Yellow;  
"AHEAD" C 2K specified length;

**Resolution No. 2016-10**  
City of Creede, a Colorado Town

**A RESOLUTION AUTHORIZING A CORPORATE  
AUTHORIZATION RESOLUTION WITH DEL NORTE BANK**

**WHEREAS**, the City of Creede, A Colorado Town wishes to open bank accounts to conduct regular business transactions; and,

**WHEREAS**, the City of Creede, A Colorado Town wishes to utilize Del Norte Bank as an official depository of the City of Creede, A Colorado Town

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES  
OF THE CITY OF CREEDE, THAT;**

**SECTION 1:** The above and foregoing recitals are incorporated herein and adopted as findings and determinations of the Board of Trustees.

**SECTION 2:** The Board of Trustees hereby authorizes the Mayor to execute the Corporate Authorization Resolution with Del Norte Bank, attached as **Exhibit A**.

**APPROVED AND ADOPTED** by the Board of Trustees this 4<sup>th</sup> day of October, 2016.

**City of Creede, a Colorado Town**

**Attest:**

\_\_\_\_\_  
Jeffrey Larson                      Date  
Mayor

\_\_\_\_\_  
Randi Snead                      Date  
City Clerk

**CORPORATE AUTHORIZATION RESOLUTION**

DEL NORTE BANK

By: City of Creede, A Colorado Town

705 GRAND AVE  
DEL NORTE CO 81132

Referred to in this document as "Financial Institution"

Referred to in this document as "Corporation"

I, Randi Snead, certify that I am Secretary (clerk) of the above named corporation organized under the laws of the State of Colorado, Federal Employer I.D. Number 84-6000575, engaged in business under the trade name of City of Creede, A Colorado Town, and that the resolutions on this document are a correct copy of the resolutions adopted at a meeting of the Board of Directors of the Corporation duly and properly called and held on October 4, 2016 (date). These resolutions appear in the minutes of this meeting and have not been rescinded or modified.

**AGENTS** Any Agent listed below, subject to any written limitations, is authorized to exercise the powers granted as indicated below:

Name and Title or Position	Signature	Facsimile Signature (if used)
A. <u>Randi Snead, City Treasurer</u>	X _____	X _____
B. <u>Clyde Dooley, City Manager</u>	X _____	X _____
C. <u>Jeffrey Larson, Mayor</u>	X _____	X _____
D. <u>Kay Wyley, Trustee</u>	X _____	X _____
E. <u>Board of Trustees by majority board action</u>	X <u>Mayor + Clerk Attest</u>	X _____
F. _____	X _____	X _____

**POWERS GRANTED** (Attach one or more Agents to each power by placing the letter corresponding to their name in the area before each power. Following each power indicate the number of Agent signatures required to exercise the power.)

Indicate A, B, C, D, E, and/or F	Description of Power	Indicate number of signatures required
<u>A</u>	(1) Exercise all of the powers listed in this resolution.	<u>2</u>
<u>A</u>	(2) Open any deposit or share account(s) in the name of the Corporation.	<u>2</u>
<u>A, B, C, D</u>	(3) Endorse checks and orders for the payment of money or otherwise withdraw or transfer funds on deposit with this Financial Institution.	<u>2</u>
<u>E</u>	(4) Borrow money on behalf and in the name of the Corporation, sign, execute and deliver promissory notes or other evidences of indebtedness.	<u>2</u>
<u>E</u>	(5) Endorse, assign, transfer, mortgage or pledge bills receivable, warehouse receipts, bills of lading, stocks, bonds, real estate or other property now owned or hereafter owned or acquired by the Corporation as security for sums borrowed, and to discount the same, unconditionally guarantee payment of all bills received, negotiated or discounted and to waive demand, presentment, protest, notice of protest and notice of non-payment.	<u>2</u>
<u>E</u>	(6) Enter into a written lease for the purpose of renting, maintaining, accessing and terminating a Safe Deposit Box in this Financial Institution.	<u>2</u>
_____	(7) Other _____	_____

**LIMITATIONS ON POWERS** The following are the Corporation's express limitations on the powers granted under this resolution.

RESOLUTIONS

The Corporation named on this resolution resolves that,

- (1) The Financial Institution is designated as a depository for the funds of the Corporation and to provide other financial accommodations indicated in this resolution.
(2) This resolution shall continue to have effect until express written notice of its rescission or modification has been received and recorded by the Financial Institution.
(3) The signature of an Agent on this resolution is conclusive evidence of their authority to act on behalf of the Corporation.
(4) All transactions, if any, with respect to any deposits, withdrawals, rediscounts and borrowings by or on behalf of the Corporation with the Financial Institution prior to the adoption of this resolution are hereby ratified, approved and confirmed.
(5) The Corporation agrees to the terms and conditions of any account agreement, properly opened by any Agent of the Corporation.
(6) The Corporation acknowledges and agrees that the Financial Institution may furnish at its discretion automated access devices to Agents of the Corporation to facilitate those powers authorized by this resolution or other resolutions in effect at the time of issuance.
(7) The Corporation acknowledges and agrees that the Financial Institution may rely on alternative signature and verification codes issued to or obtained from the Agent named on this resolution.

Pennsylvania. The designation of an Agent does not create a power of attorney; therefore, Agents are not subject to the provisions of 20 Pa.C.S.A. Section 5601 et seq. (Chapter 56; Decedents, Estates and Fiduciaries Code) unless the agency was created by a separate power of attorney.

EFFECT ON PREVIOUS RESOLUTIONS This resolution supersedes resolution dated N/A . If not completed, all resolutions remain in effect.

CERTIFICATION OF AUTHORITY

I further certify that the Board of Directors of the Corporation has, and at the time of adoption of this resolution had, full power and lawful authority to adopt the resolutions on page 2 and to confer the powers granted above to the persons named who have full power and lawful authority to exercise the same. (Apply seal below where appropriate.)

I If checked, the Corporation is a non-profit corporation.

In Witness Whereof, I have subscribed my name to this document and affixed the seal of the Corporation on October 4, 2016 (date).

Attest by One Other Officer

Secretary

FOR FINANCIAL INSTITUTION USE ONLY

Acknowledged and received on (date) by (initials) I This resolution is superseded by resolution dated

Comments:

**Resolution No. 2016-11**  
City of Creede, a Colorado Town

**A RESOLUTION AUTHORIZING AN ACH ORIGINATION  
AGREEMENT WITH DEL NORTE BANK**

**WHEREAS**, the City of Creede, A Colorado Town wishes to open bank accounts to conduct regular business transactions; and,

**WHEREAS**, the City of Creede, A Colorado Town wishes to utilize Del Norte Bank as an official depository of the City of Creede, A Colorado Town

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES  
OF THE CITY OF CREEDE, THAT;**

**SECTION 1:** The above and foregoing recitals are incorporated herein and adopted as findings and determinations of the Board of Trustees.

**SECTION 2:** The Board of Trustees hereby authorizes the Mayor to execute the ACH Origination Agreement with Del Norte Bank, attached as **Exhibit A**.

**APPROVED AND ADOPTED by the Board of Trustees this 4<sup>th</sup> day of October, 2016.**

**City of Creede, a Colorado Town**

**Attest:**

\_\_\_\_\_  
Jeffrey Larson                      Date  
Mayor

\_\_\_\_\_  
Randi Snead                      Date  
City Clerk

## ACH ORIGINATION AGREEMENT

This agreement is made this 4<sup>th</sup> of October, 2016, by and between: **City of Creede, A Colorado Town (City)** and **Del Norte Bank** (“Del Norte Bank”).

The City has requested that Del Norte Bank permit it to initiate electronic signals for paperless entries through Del Norte Bank to accounts maintained at Del Norte Bank and at other financial institutions, by means of Automated Clearing House (“ACH”). Del Norte Bank has agreed to do so on the terms of the agreement.

Now, therefore, The City and Del Norte Bank agree as follows:

### 1. Rules

The City acknowledges receipt of a copy of the operating rules of NACHA (as amended from time to time, the “Rules”). The City agrees to comply with and be bound by the rules. Del Norte Bank will provide The City with a NACHA Rules Book and provide each one with an ID and password. The City accepts responsibility for reviewing the website for updates throughout the year for revisions to the rules. The City will not make any entries that violate the laws of the United States.

### 2. Transmission of Entries: Security Procedures

The City will transmit all debit/credit entries to Del Norte Bank at the location, on or before the deadlines, described on Attachment 1 to the agreement. The City will confirm all entries to the format, content and specifications contained in the rules, except as provided with the security procedures described in Attachment 1 and to the agreement. The City authorized Del Norte Bank to transmit all entries received by the institution from The City in accordance with the terms of the agreement and to credit/debit entries of the specified account.

### 3. Del Norte Bank Obligations

In a timely manner and in accordance with The Rules, Del Norte Bank will process, transmit, and settle for the entries received from The City, which comply with the terms of the agreement, including security procedures.

### 4. Warranties

The City warrants to Del Norte Bank all warranties Del Norte Bank is deemed by the rules to make with respect to entries originated by The City. Without limiting the foregoing, The City warrants and agrees that (a) each entry is accurate, is timely, has been authorized by the party whose account will be credited/debited and otherwise complies with the rules; (b) each debit entry is for a sum which, on the settlement date with respect to it, will be owed to The City from the party whose account will be debited, is for a sum specified by such party to be paid to The City, or is a correction of a previously transmitted erroneous credit; (c) The City has complied with all pre-notification requirements of the rules; (d) The City will comply with the terms of the Electronic Funds Transfer Act if applicable, or Uniform Commercial Code Article 4A (UCC4A) if applicable and shall otherwise perform its obligations under this agreement in accordance with all applicable laws and regulations. The City will retain the original or copy of the customer authorization record as

required by the rules for a period of not less than two (2) years after termination or revocation of such authorization and will, upon request of Del Norte Bank, furnish such original or copy to Del Norte Bank. The City shall indemnify Del Norte Bank against any loss, liability or expense (including attorney's fees expenses) resulting from or arising out of any breach of any or of the foregoing warranties or agreements.

#### 5. Provisional Credit

The City acknowledges that the rules make provisional any credit given for any entry until Del Norte Bank crediting the account specified in the entry receives final settlement. If Del Norte Bank does not receive final settlement, it is entitled to a refund from the credited party and the originator of the entry shall not be deemed to have paid the party.

#### 6. Settlement

The City will maintain an account with Del Norte Bank at all times during the term of the agreement. The City will maintain in the account as of the applicable transaction date immediately available funds sufficient to cover all credit entries initiated by it. The City authorizes Del Norte Bank to debit its account on the applicable settlement date in the amount representing the total transactions settled. Two business days prior to the applicable settlement date, the Bank will place a hold immediately on available funds sufficient to cover all credit entries initiated by The City. The City understands that these funds will no longer be available to cover other debit entries on The City's accounts that may be processed in the two business days prior to the applicable settlement date.

#### 7. Cancellation or Amendment

The City shall have no right to cancel or amend any entry/file after its receipt by Del Norte Bank. However, Del Norte Bank shall use reasonable efforts to act on a request by The City to cancel an entry/file before transmitting it to the FRB or crediting an on-us entry. Any such request shall comply with the security procedures described in Attachment 1 to the agreement. Del Norte Bank shall have no liability if it fails to effect the cancellation. If The City discovers that any entry it has initiated was in error, it may notify the bank of such error and the bank will utilize its best effort on behalf of The City, consistent with the rules, to correct the entry.

#### 8. Rejection of Entries

Del Norte Bank shall reject any entry, including an on-us entry, which does not comply with the requirement of Section 1 of the Agreement and may reject any entry if The City is not otherwise in compliance with the terms of the agreement. Del Norte Bank shall notify The City by telephone of such rejection not later than the business day such entry would otherwise have been transmitted by Del Norte Bank to the FRB, or in the case of an on-us entry, its effective entry date. Del Norte Bank shall have no liability to The City by reason of the rejection of any entry or the fact that such notice is not given at an earlier time than that provided for herein, Del Norte Bank shall retain the right to reject any on-us transaction for any valid reason such as but not limited to insufficient funds or revoked authorization.

#### 9. Notice of Returned Entries

Del Norte Bank shall notify The City by telephone or fax of the receipt of a returned entry from the ACH no later than one business day after the business day of such receipt. Del Norte Bank shall have no obligation to retransmit a returned entry if Del Norte Bank complied with the terms of this agreement with respect to the original entry. If a customer of The City returns any transaction, then it is The City's responsibility to collect any funds that are owed. Del Norte Bank has no obligation to originate where authorization has been revoked.

#### 10. Reversals

The City may initiate a reversing entry or file of entries as permitted by the rules.

#### 11. Periodic Statement

The periodic statement issued by Del Norte Bank for The City's account will reflect entries credited/debited to The City's account. The City agrees to notify Del Norte Bank within reasonable time not to exceed (15) days after The City receives a periodic statement of any discrepancy between The City's records and the information in the period statement.

#### 12. Fees

The City agrees to pay Del Norte Bank for services provided under the agreement in accordance with the schedule of charges attached to this agreement as Attachment 3. Del Norte Bank may change its fees from time to time upon notice to The City.

#### 13. Liability

(a) Del Norte Bank shall be responsible only for performing the services expressly provided for in the agreement and shall be liable only for its negligence in performing those services. Del Norte Bank shall not be responsible for The City's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorizations of any entry received from The City) or those of any other person, including without limitation any Federal Reserve Financial Institution or transmission or communications facility, any receiver or receiving depository financial institution (including without limitation the return of an entry by such receiver or receiving depository financial institution), and no such person shall be deemed Del Norte Bank's agent. The City agrees to indemnify Del Norte Bank against any loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any claim of any person that Del Norte Bank is responsible of any act or omission of The City or any other person described in this section 13(a).

(b) In no event shall Del Norte Bank be liable for any consequential, special, punitive or indirect loss or damage which The City may incur or suffer in connection with agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from Del Norte Bank's acts or omissions pursuant to this agreement.

(c) Without limiting the generality of the foregoing provisions, Del Norte Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Del Norte Bank's control. In addition, Del Norte Bank shall be excused from failing to transmit or delay in transmitting an entry if

such transmittal would result in Del Norte Bank having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Del Norte Bank's otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. Government regulatory authority.

(d) Subject to the foregoing limitations, Del Norte Bank's liability for loss shall be limited to general monetary damages not to exceed the total amount paid by The City for the affected ACH service, as performed by Del Norte Bank under this agreement for the preceding 30 calendar days. In no event shall Del Norte Bank be liable for any consequential, special, or indirect loss or damage which City may incur or suffer in connection with agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting the bank's act or omissions pursuant to this agreement.

(e) Del Norte Bank from time to time may supply documentation, including printouts of the web site screens and explanations of what the customer is supposed to input, as well as documentation provided by a third parties. Said documentation is provided by the Bank solely to assist the customer in using the On-line Fiserv Solutions System. ANY DOCUMENTATION SUPPLIED BY DEL NORTE BANK, WHETHER PRODUCED BY DEL NORTE BANK OR BY A THIRD PARTY, IS PROVIDED "AS IS". DEL NORTE BANK DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO DOCUMENTATION PROVIDED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MARKETABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FOR ITS ORDINARY PURPOSE. THE CITY AGREES THAT IT WILL NOT RELY ON ANY OF THE DOCUMENTATION PROVIDED BY DEL NORTE BANK. DEL NORTE BANK SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS SUPPLYING SAID DOCUMENTATION TO THE CITY.

#### 14. Inconsistency of Name and Account Number

The City acknowledges that, if any entry describes the receiver inconsistently by name and account number, payment of the entry may be made on the basis of the account number even if it identifies a person different from the name receiver.

#### 15. Data Retention

The City shall retain data on file adequate to permit remaking of entries for two (2) years following the date of their transmittal to Del Norte Bank as provided herein and shall provide such date to Del Norte Bank upon its request.

#### 16. Termination

Customer may terminate this Agreement at any time and without cause by tendering to Del Norte Bank an authenticated writing requesting termination. Such termination shall be effective on the three business day following the day of Del Norte Bank receipt of written notice of such termination or such later date as is specified in that notice. Del Norte Bank may terminate this Agreement immediately if Customer violates any other agreement between Customer and Del Norte Bank,

including without limitation, any account agreement or the Del Norte Bank Online Business User Agreement, the NACHA rules or if Customer or Del Norte Bank closes the Account. Any termination of this Agreement shall not affect any of Del Norte Bank rights and Customer's obligations with respect to entries initiated by Customer prior to such termination, or the payment obligations of Customer with respect to services performed by Del Norte Bank prior to termination, or any other obligations that survive termination of this Agreement.

#### 17. Authority to Audit ACH Origination Activity.

Customer shall allow financial institution access to premises where ACH Origination activity takes place to review security practices, authorization files and any other paper or process that relates to ACH Origination. Audits shall be scheduled with consideration of staffing availability and convenience.

#### 18. Entire Agreement

This agreement (including the schedule attached hereto), together with the account agreement, is the complete and exclusive statement of the agreement between Del Norte Bank and The City with respect to the subject matter hereof and supersedes any prior agreement(s) between Del Norte Bank and The City with respect to such subject matter. In the event of any inconsistency between the terms of this agreement and the account agreement, the terms of this agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this agreement would result in a violation of any present or future statute, regulation, or government policy to which Del Norte Bank is subject and which governs or affects the transactions contemplated by this agreement, then this agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, or policy and Del Norte Bank shall incur no liability to The City as a result of such violation or amendment.

#### 19. Non-Assignment

The City may not assign the agreement or any of the rights or duties thereunder to any person without Del Norte Bank's prior written consent.

#### 20. Binding Agreement Benefit

This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors. This agreement is not for the benefit of any other person, and no other person shall have any right against Del Norte Bank or The City thereunder.

#### 21. Headings

Headings are used for reference purposes only and shall not be deemed a part of this agreement.

#### 22. Governing Law

This agreement shall be construed in accordance with and governed by the laws of the state of Colorado and the NACHA rules.

I agree to the terms of the ACH Origination Agreement.

City

ACH Requested Credit Limit: \$ 20,000

ACH Requested Debit Limit: \$ 20,000

**City of Creede, A Colorado Town**

Authorized Signer:

Authorized Signature: \_\_\_\_\_

Title: Mayor

Authorized Signer:

Authorized Signature: \_\_\_\_\_

Title: City Clerk

**Del Norte Bank**

Employee Name: Wanda Rue

Signature: \_\_\_\_\_

Title: Cashier

Training Performed By: Wanda Rue

Approval for ACH Credit limit: \$

Approval for ACH Debit limit: \$

Approval for ACH transaction on Attachment 4

CFO Name: Shawn Jensen

CFO Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT 1

### Security Procedures

Del Norte Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an authorized representative, and any such communication shall be deemed to have been signed by such person.

### Personal Computer File Transmission

The City's authorized representative will access the ACH system by utilizing the prearranged log on procedures, user ID and password. The City is responsible for operator security procedures. The City is solely responsible for access by its employees of the files.

The City is solely responsible for the accurate creation, modification, and deletion of the account information. The City agrees to comply with written procedures provided by Del Norte Bank for the creation, maintenance, and initiation of money transfers.

### Delivery & Cutoff

All files must be received 48 hours in advance of the settlement date. Entries must be received prior to 1:00pm to be processed same day.

### **Procedures for City/Financial Institution ACH Agreement**

The City and customer of Del Norte Bank will request to initiate entries to accounts maintained at Del Norte Bank and other financial institutions by means of the Automated Clearing House (the "ACH").

An agreement will be made and signed by Del Norte Bank and the City.

A NACHA formatted balance file will be sent via a secure website.

An e-mail with the totals of the file will be sent to the authorized persons at Del Norte Bank . Upon receiving the e-mail, verification will be made that the monies are in the account that is to be debited and a phone call will be initiated to the person the City has authorized to release information verifying the credits or debits for the transmittal.

An e-mail or phone call will be made to the department to release and transmit all entries received in accordance with terms of the agreement and to credit or debit such entries to the specified accounts in a timely manner and in accordance with the rules of the agreement.

Del Norte Bank will e-mail the City that the reports balance with the initial file and all paperwork will be filed.

Del Norte Bank shall notify the City by phone of the receipt of a returned entry from the ACH no later than one business day after the business day of such receipt.

ATTACHMENT 2

ACH AUTHORIZED SIGNATURE FORM

Date October 4, 2016

Originating Entity Name City of Creede, A Colorado Town

The two(2) signatures below are the signatures of employees granted authorization with full authority to transmit ACH files.

NAME OF USER	USER LIMIT	SIGNATURE
Randi Snead	\$20,000	
Clyde Dooley	\$20,000	

The two (2) signatures below are the signatures of employees granted authorization to verify and approve the release of the transmitted ACH files.

NAME OF USER	USER LIMIT	SIGNATURE
Randi Snead	\$20,000	
Clyde Dooley	\$20,000	

**Files Originations Limits:**

Maximum Daily ACH Debit Limit \$10,000

Maximum Daily ACH Credit Limit \$10,000

File Submittal Frequency

Customer agrees it will not originate IAT (International ACH Transactions). IAT entries are defined as transactions that process through a financial institution not located within the territorial jurisdiction of the United States.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_  
Mayor

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_  
Clerk

## ATTACHMENT 3

### Fee Schedule

Monthly Maintenance	\$0.00
Per Transmission of File	None
Per Transaction Originated	\$ .00
Return Items/Notification of Change	\$ .00

ATTACHMENT 4

	Allowed Yes / No
<u>PPD</u> - Preauthorized Payment and Deposit Entry (consumer application)	Yes
<u>RCK</u> - Re-presented Check Entry (consumer application)	No
<u>TEL</u> - Telephone-Initiated Entry (consumer application)	No
<u>WEB</u> - Internet-Initiated Entry (consumer application) requires special monitoring	No
<u>CCD</u> - Corporate Credit or Debit (corporate application)	No
<u>CTX</u> - Corporate Trade Exchange (corporate application)	No
<u>ARC</u> - Accounts Receivable Entry (permitted for both consumer and non-consumer)	No
<u>BOC</u> (Back Office Conversion Entry) -- (corporate application)	No
IAT (International ACH Transaction) -- Not currently allowed per Bank Policy	No
POP (Point of Purchase Entry) -- Not currently allowed per Bank Policy	No

## Addendum for ACH Security Framework

**The new ACH Security Framework requires the following to establish, implement, and as appropriate, update security policies, procedures and systems related to the initiation, processing and storage of ACH entries by the originators.**

Security policies, procedures and systems must:

- Protect confidentiality and integrity of protected information
- Protect against anticipated threats or hazards to the security or integrity of protected information
- Protect against unauthorized use of protected information that could result in substantial harm to a natural person

### Definition of “ Protected Information “

- the non-public personal information, including financial information, of a natural person used to create, or contained within, an Entry and any related Addenda Record
- Includes non-financial information (such as health information or bill payment information) that may be in the entry or a related addenda record
- Does not prohibit applying data security practices to both consumer and non-consumer data

We \_\_\_\_\_ the originator by signing below will certify that in order to protect all “Protected Information” per previous definition from unauthorized access and use, we will use security measures that comply with the banks requirements. These measures include computer safeguards and secured files and building.

Company Name:

Authorized Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

# **Resolution No. 2016-12**

## **City of Creede, a Colorado Town**

### **A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND AND THE COMPLETION OF BASHAM PARK REVITALIZATION PROJECT.**

WHEREAS, the City of Creede, A Colorado Town supports the Great Outdoors Colorado grant application for the Basham Park Revitalization Project. And if the grant is awarded, the City of Creede, A Colorado Town supports the completion of the project.

WHEREAS, the City of Creede, A Colorado Town has requested forty-five thousand dollars from Great Outdoors Colorado to rebuild a structure and replace pathways at Basham Park.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, A COLORADO TOWN THAT:

- Section 1: The Board of Trustees of the City of Creede, A Colorado Town strongly supports the application and has appropriated matching funds for a grant with Great Outdoors Colorado.
- Section 2: If the grant is awarded, the Board of Trustees of the City of Creede, A Colorado Town strongly supports the completion of the project.
- Section 3: The Board of Trustees of the City of Creede, A Colorado Town authorizes the expenditure of funds necessary to meet the terms and obligations of any Grant awarded.
- Section 4: The project site is owned by the City of Creede, A Colorado Town and will be owned by City of Creede, A Colorado Town for the next 25 years.
- Section 5: The Board of Trustees of the City of Creede, A Colorado Town recognizes that as the recipient of a Great Outdoors Colorado Local Government grant the project site must provide reasonable public access.
- Section 6: The Board of Trustees of the City of Creede, A Colorado Town will continue to maintain the Basham Park Revitalization Project in a high quality condition and will appropriate funds for maintenance in its annual budget.
- Section 7: If the grant is awarded, the Board of Trustees hereby authorizes the Mayor of the City of Creede, A Colorado Town to sign the grant agreement with Great Outdoors Colorado.
- Section 8: This resolution to be in full force and effect from and after its passage and approval

**APPROVED AND ADOPTED by the Board of Trustees this 4<sup>th</sup> day of October, 2016.**

**City of Creede, a Colorado Town**

**Attest:**

\_\_\_\_\_  
Jeffrey Larson                      Date  
Mayor

\_\_\_\_\_  
Randi Snead                      Date  
City Clerk

DRAFT



Lower Willow Creek Restoration Company  
2017 Anticipated Expenses

City of Creede Staff and CRI Staff,

Below are the expenses anticipated for 2017 for the Lower Willow Creek Restoration Company.

CDPHE SWMP Permit	\$540
DRMS Permit	\$323
990 Filing	\$975.00
LWCRCO Insurance	\$5801.99

The total is \$7640 based on a 3% increase for all requirements. I would suggest a approval for a not to exceed amount of \$8000 based on the 220% increase in the CDPHE SWMP permit from 2016 to 2017.

If you have any questions, please let me know.

Guinevere Nelson Freer  
guineverenelson@gmail.com

# Manager's Report

To: Mayor and Board of Trustees  
Date: October 4, 2016  
From: Clyde Dooley

## **Ordinance 398 and Floodplain Regulations Update - recommendation**

As I mentioned last month, Bohannon Huston is still going over the 1986 Flood Hazard Study done by the Colorado Water Conservation Board and our elevation topo map from Davis Engineering to aid them with a new flood hazard study to help us work with Kevin Houck [CWCB] to get a revised floodplain for Creede. The attached memo explains the problem we've ran into along with the quickest fix.

The Planning Commission held a public hearing and considered the updated floodplain regulations on the 13<sup>th</sup> of September. The Planning Commission requested we move forward and recommended the Board of Trustees hold a public hearing and consider approving this at your meeting tonight. Ed Vita had some good questions about the new regulations that were answered by Stephanie DiBertitto at CWCB and I've attached a copy of her comments. Ed's questions are very similar to the one's we brought up when we were reviewing the new Development Code and the variance provisions convinced us we could make this work in Creede and so far it has.

Ordinance 398 and the new floodplain regulations to be included in Chapter 7 of our Development Code are listed separately on the agenda for your review and discussion. **I recommend the Board of Trustees approve Ordinance 398 amending the Creede Development Code by updating Article 7 on Floodplain Regulations on the condition the date of the flood study is confirmed with CWCB.**

## **Flume Funding – update**

Randi and I met with Christy Culp with the Department of Local Affairs on the 22<sup>nd</sup> of last month. We took Christy to a couple of the bad spots on the flume to help convey our urgency of this project. Then we came back to the office and talked numbers. Christy put us in for 31% match which makes the project affordable using our Capital Improvement Fund balance. Christy mentioned a concern about the length of time between the grant award and construction, but once we explained our flows, tourist, and construction season, she had a better understanding. Christy mentioned that out of a possible score of 15, we scored 10, but may be able to improve that to 12, if we can get the National Pollutant Discharge Elimination System permit started and/or done. I emailed Alandren at BHI saying we wanted to get that done as soon as possible and waiting to hear back from her.

DOLA will hold their Review/Executive Summary meetings the second week in October and hearings will be held the 14<sup>th</sup> thru the 17<sup>th</sup> in November. Randi and I will attend our hearing on the 16<sup>th</sup> or 17<sup>th</sup> in Lamar. There's a possibility Christy can arrange for us to attend our hearing in Durango via video, which we'll likely opt for if possible.

## **2017 Proposed Budget – Direction**

Attached is the 2017 proposed budget and is the preliminary draft we'll work with until it's approved at our December 6<sup>th</sup>, 2016 meeting. Per statute, the governing body shall cause to be published a notice containing the date & time of the hearing when the final budget will be considered. The notice also needs to state the proposed budget is available

for inspection by the public with a statement that any interested elector of the local government may file objections prior to the final adoption of the budget.

**With your direction I'd like to schedule a public hearing on November 15<sup>th</sup> for the budget to be considered and I'll publish the attached notice.**

**2017 Budget Process – Recommendation**

I've attached a one page memo recommending our budget process this year. Please let me know if these date's work for everyone as soon as possible.

**House Bill 16-1309 – FYI**

I've attached a copy of a memo from the Colorado Municipal League concerning House Bill 16-1309. This bill requires municipal courts to provide defense counsel at the first appearance if the offense involves jail time and is expected to increase costs on local governments.

**Rio Grande Street/Avenue Subdivision – update**

I've been able to talk with the five property owners along the east side of Rio Grande Street between 3<sup>rd</sup> & 5<sup>th</sup> and they are interested in our proposal. Toby and Clay are working on the property descriptions that will allow me to start on the boundary line agreements, ordinance, and deeds. The properties will also need to be replatted and I'm checking with Libby to get her preference from the assessor's point of view.

**Budget Fund Balances – FYI**

Attached is a list of our budget fund balances at the end of 2015. Although we took a \$233,019 hit in our Virginia Christensen Fund, we still moved from being up 45% to 48%.

**August Finances – FYI**

<u>Budget</u>		<u>YTD</u>
General Fund	7,778	86,059
Capital Improvement Fund	14,088	46,812
Conservation Trust Fund	3	1,766
Virginia Christensen Fund	47	(148,987)
Water & Sewer Fund	<u>7,052</u>	<u>18,181</u>
Net	28,966	3,831

**City Sales Tax:** total \$93,046 through the end of August. That's down \$2,928 for the same period last year and down \$642 compared to last August.

**City Funds** total \$2,549,682 through the end of August. That's up \$254,401 for the same period last year and up \$44,680 from last month. [This is the tool I use to keep track of the funds we have in the bank. I use this spreadsheet to not only keep track of our short term financial stability, but also the long term fiscal sustainability. Fiscal sustainability strategies build the capability of a government to consistently meet its financial responsibilities, both in the short term by adjusting spending to revenues and revenues to spending, and in the long term by protecting future capital improvement plans and future generations of fiscal abilities.]

**Budget Fund Balances:** Budget fund balances are provided to us once a year after our audit. Please let me know if you'd like to see the spreadsheets &/or audits.

*Clyde  
Notice Paper ✓*

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# FLOODPLAIN REG'S

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**TO:** Mayor and Board of Trustees/Planning & Zoning Commission  
**FROM:** Clyde  
**SUBJECT:** NEW FLOODPLAIN REGULATIONS  
**DATE:** August 25, 2016

Stephanie DiBertitto, with the Colorado Water Conservation Board (CWCB) contacted me last month to notify us, we needed to update our Floodplain Regulations. When Kevin Houck (CWCB) was here the end of June this year, I gave him a copy of the floodplain regulations we recently approved in our new Development Code. He took them back to Denver only to find out they needed to be updated as soon as possible because we are one of 12 NFIP Communities out of compliance in Colorado.

Stephanie sent a copy of the required regulations we need and asked us to approve them as soon as we can. Per Section 9-03-040 this update requires a public hearing with the Planning & Zoning Commission and another with the Board of Trustees.

The quickest schedule I can think of is to have the PZC public hearing on Sept. 13<sup>th</sup> [post & publish as soon as possible] and then present it to the Trustees on Oct. 4<sup>th</sup> for their public hearing and consideration. I've sent Eric a draft of the update and if he says "okay", I'll publish the PZC public hearing for 9/13 on the 1<sup>st</sup> of September and post it immediately. After their meeting and recommendation we'll have more time to publish & post the notice for our October meeting.

*10 NFIP 1968  
11  
12  
23  
27  
29  
31 T-  
5*

*Add this to draft ordinance  
last pg of 2010 Basis + Purpose (28)*

*9/19/16  
Stephanie says okay  
9/20/16  
sent list to Eric - Ed's questions +  
kept schedule as planned,*

Hello Clyde,

As I stated in the last P& Z meeting I see a few issues of concern with regards to these new regulations. I will state that not a lot of time was given to properly dissect this document and determine it's ability to fit within the current state of the Town of Creede.

1. The maximum size for an RV should be lifted from 400 sq. ft. up to 450 sq ft. Many models exist up to and over this square footage size.
2. We do not have a classification of a tiny home as of yet and currently may be interpreted as an RV due to the wheels on a trailer. Therefore an RV cannot be a permanent dwelling within these regulations. In one part the RV would need to have anchoring.
3. Mobile homes seem to be herein classified as an Manufactured Home and thereby need having a permanent foundation, anchoring, etc.
4. Substantial improvement or substantial damage will require a permit and I would hope we would not want to burden a person whom has experienced substantial damage with a permit fee and/or variance process in getting their home repaired. Substantial damage cases should have all fees waived in my humble opinion.
5. The penalty section was removed however there is language still allowing the BOT to levy lawful action to prevent a violation. This document is hereby placing a good portion of the town in violation with its adoption. Penalty section was removed but BOT can still take action which is just not fair or morally right to do so since this document is a copy/paste from other communities.
6. Most of this document allows for the "flood plain administrator" (The City manager) to grant or approve variances. Since a good portion of the town will be in violation as of the adoption of this document I feel that we could burden the City Administrator and Appeals Board unnecessarily.
7. In one place within the document it states that RV's meet permitting requirements for elevation and anchoring and other criteria of a manufactured home. Cannot be used a a permanent dwelling either... tiny homes may fall into this category.
8. The entire section of "Alteration of a Watercourse" would seem to deem our flume system as a violation under the terms of this document. I'm still having trouble processing that we will receive money to fix the flume when it is a violation of these Colorado guidelines. I understand that this document could be considered a "step in the right direction" or a "necessary step in the process" or even that the CWCB is shoving this down our proverbial throats to pass.
9. Facilities that deal with hazardous materials, AKA the trash company, would be deemed a violation under this document.
10. Insurance companies could use the adoption of these flood plain regulations to alter coverages and costs for coverage to existing businesses and structures thereby creating a situation whereby simply adopting this document to "get it out of the way" or "to proceed with progress" will be financially burdensome to some.

**Commented [SED1]:** 44 CFR 59.1 defines RVs as less than 400 sq ft so this cannot be bumped up to 450 sq ft and still be compliant with NFIP minimums.

**Commented [SED2]:** Mobile homes that serve as permanent residence must meet the requirements if they are located in the SFHA.

CFR requirements for manufactured homes:  
60.3(c)(6) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites  
(i) Outside of a manufactured home park or subdivision,  
(ii) In a new manufactured home park or subdivision,  
(iii) In an expansion to an existing manufactured home park or subdivision, or  
(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

CFR requirements for RVs:  
60.3 (c) (14) Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either  
(i) Be on the site for fewer than 180 consecutive days,  
(ii) Be fully licensed and ready for highway use, or  
(iii) Meet the permit requirements of paragraph (b)(1) of this section and the elevation and anchoring requirements for "manufactured homes" in paragraph (c)(6) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

**Commented [SED3]:** Up to the community

**Commented [SED4]:** Variances pertain to new development, including substantial improvement, and can only be granted if the variance criteria is met.

**Commented [SED5]:** If a tiny home meets the definition of an RV it can be treated as such.

**Commented [SED6]:** Sets standards for new development, will not impact existent structures until substantially improved or substantially damaged

**Commented [SED7]:** Sets standards for new development, will not impact existent structures until substantially improved or substantially damaged

**Commented [SED8]:** Only the Flood Insurance Rate Map has the ability to determine insurance rates- local regulations do not.

## **Notice of Budget**

The proposed 2017 budget for the City of Creede was presented to the Governing body at their October 4<sup>th</sup> meeting. Notice is hereby given that the Board of Trustees will conduct a public hearing on November 15<sup>th</sup>, 2016, 5:30 PM at Town Hall located at 2223 N. Main Street to consider the proposed budget for 2017. Copies of the budget are available at Town Hall for inspection and any interested elector of the local government may file objections prior of the final adoption planned for Dec. 6<sup>th</sup>, 2016.

### **Notice of Budget**

The proposed 2017 budget for the City of Creede was presented to the Governing body at their October 4<sup>th</sup> meeting. Notice is hereby given that the Board of Trustees will conduct a public hearing on November 15<sup>th</sup>, 2016, 5:30 PM at Town Hall located at 2223 N. Main Street to consider the proposed budget for 2017. Copies of the budget are available at Town Hall for inspection and any interested elector of the local government may file objections prior of the final adoption planned for Dec. 6<sup>th</sup>, 2016.

**Budget Message**  
(Pursuant to § 29-1-103(1)(e))

The attached 2017 Proposed Budget for the City of Creede includes these features.

The governmental activities to be provided during the budget year include general government administration, public works, public safety, and recreation. The business-type activities of the city include water and sewer utilities.

The budgetary basis of accounting timing measurement method used by the City of Creede is the modified accrual basis.

  
\_\_\_\_\_  
Clyde Dooley  
City Manager

# 2017 Proposed Budget

9/30/2016

1 <b>GENERAL FUND</b>		2015	2016	2016	2017
2 Revenues		Actual	Proposed	Revised	Proposed
3 General Property Tax	1410.10	77,325	82,000	85,000	85,000
4 Delinquent Taxes	1410.20	173	125	-	-
5 Delinquent Interest	1410.30	290	250	300	300
6 Specific Ownership Tax	1410.50	7,541	7,000	8,000	8,000
7 1/2 City Sales Tax	1410.61	105,730	92,000	92,000	100,000
8 County Sales Tax	1410.62	151,142	125,000	125,000	140,000
9 Franchise Tax	1410.80	20,991	12,500	25,000	25,000
10 Liquor Licenses	1440.30	6,584	4,000	4,000	5,000
11 Building Permits	1440.40	7,294	6,500	3,500	5,000
12 Building User Tax	1440.50	6,559	8,000	7,600	8,000
13 Highway User's Tax	1450.10	21,407	19,000	20,000	20,000
14 Motor Vehicle Sales Tax	1450.20	428	100	150	200
15 Cigarette Tax	1450.30	1,328	1,200	1,100	1,200
16 Motor Vehicle Fees	1450.40	2,789	2,400	2,500	2,500
17 Severance Tax	1450.50	21,780	10,000	6,397	6,000
18 Mineral Lease Royalty	1450.60	421	300	231	200
19 Road and Bridge	1450.70	3,930	3,800	4,000	4,000
20 Fuel Tax Refund	1450.80	311	275	275	300
21 Grants	1450.90	-	-	-	-
22 Court Fines	1460.00	-	-	-	-
23 Interest Income	1470.00	463	300	900	900
24 Recreation Fees	1480.10	5,146	3,500	8,000	8,000
25 Recreation Grants	1480.20	-	-	-	-
26 Recreation Donations	1480.30	4,472	3,000	500	500
27 Recreation Misc.	1480.90	-	-	-	-
28 Activities Lease - Gym	1420.22	-	12,000	-	-
29 Activities Fees	1420.21	-	1,300	-	-
32 Miscellaneous	1490.90	22,055	10,000	30,000	
33 <b>Operating Revenues</b>		468,159	404,550	424,453	420,100

## 2017 Proposed Budget

9/30/2016

34 GENERAL FUND		2015	2016	2016	2017	
35 Expenses		Actual	Proposed	Revised	Proposed	
36	Administrative Salaries	1510.10	48,115	47,842	51,000	57,000
37	Payroll Taxes	1510.21	3,811	3,500	4,000	4,500
38	Benefits	1510.23	9,773	9,911	10,500	11,500
39	Operating Supplies	1510.31	4,515	4,000	2,500	4,000
40	Postage	1510.32	239	600	300	500
41	Telephone	1510.33	2,868	3,200	2,600	3,000
42	Dues & Subscriptions	1510.34	2,643	3,000	250	300
43	Printing & Advertising	1510.35	1,446	3,000	1,500	1,500
	Donations	1510.36	-	5,000	-	5,000
44	Building & Plant	1510.40	1,635	2,000	1,500	2,000
45	Insurance & Bonds	1510.50	5,689	8,500	10,500	10,800
46	Professional Services	1510.60	20,360	35,000	30,000	35,000
47	Training [Travel-Lodging-Fees]	1510.70	1,065	5,000	2,000	2,000
48	Board of Trustees	1511.00	17,812	18,000	18,350	18,000
49	Judicial	1512.00	-	1,500	-	-
50	Elections	1513.00	-	3,000	1,300	-
51	Treasurers Fees	1514.00	1,556	2,500	2,000	2,500
52	Miscellaneous (+1519)	1519.00	15,260	15,000	7,500	10,000
53	Emergency Management	1520.50	-	10,000	10,000	10,000
54	<b>PUBLIC WORKS</b>					
55	Public Works Payroll	1530.10	48,871	52,524	52,524	58,000
56	Payroll Taxes	1530.21	3,395	3,910	4,100	4,600
57	Benefits	1530.23	13,998	13,132	15,000	16,500
58	Operating Expenses	1530.31	5,488	6,250	4,000	5,000
59	Telephone	1530.33	585	1,000	1,000	1,000
60	Repairs & Maintenance	1530.40	3,420	6,000	3,000	5,000
61	Insurance & Bonds	1530.50	5,179	6,500	6,500	6,500
62	Streets & Alleys	1530.70	15,798	15,000	22,000	20,000
	Cat Lease	1530.71	-	-	24,000	24,000
63	Electricity	1530.81	11,140	16,000	16,000	17,000
64	Propane	1530.82	1,201	14,000	5,000	7,000
65	Miscellaneous	1530.90	423	5,000	5,000	5,000
66	<b>Parks &amp; Recreation</b>					
67	Park Payroll	1540.10	19,260	17,850	15,000	15,000
68	Park Taxes	1540.20	1,507	1,360	1,300	1,400
70	Park Maintenance	1540.50	11,791	20,000	20,000	20,000
71	Rec. Salaries	1580.10	23,983	17,550	27,000	27,000
72	Rec. Taxes	1580.21	1,626	1,367	2,200	2,500
73	Recreation Supplies	1580.50	14,951	15,000	6,500	10,000
74	Activities Expenses	1550.10	1,798	25,000	-	-
75	Activities Tax	1550.21	-	1,500	-	-
76	Activities Benefit	1550.22	-	10,000	-	-
77	Donations	1580.60	10,000	5,000	-	-
78	Hatchery Utilities	1580.80	1,626	2,000	-	-
79	Operating Expenses		332,827	436,496	385,924	423,100
80	<b>Operating Income/Loss</b>					
81	Operating Revenues		468,159	404,550	424,453	420,100
82	Operating Expenses		332,827	436,496	385,924	423,100
83	Operating Income/Loss		135,332	(31,946)	38,529	(3,000)

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# 2017 Proposed Budget

9/30/2016

84 <b>GENERAL FUND (Cont.)</b>		2015	2016	2016	2017
85 Non-Operating		Actual	Proposed	Revised	Proposed
86 Transfer In [Parks -from VC]	1498.00	20,000	16,000	16,000	25,000
87 Transfer in [Recreation - from VC]	1499.00	20,000	16,000	16,000	25,000
88 Transfer in [Activities - from VC]	1498.30		22,000	22,000	-
89 <b>Non-Operating Revenues</b>		40,000	54,000	54,000	50,000
90 Transfer Out (to CI)	1598.20	-	-	-	-
91 <b>Non-Operating Expenses</b>		-	-	-	-

92 <b>Total Revenues</b>		508,159	458,550	478,453	470,100
93 <b>Total Expenses</b>		332,827	436,496	385,924	423,100
94 <b>Net Income/Loss</b>		175,332	22,054	92,529	47,000
95 <b>Fund Balance Beginning of Year</b>		892,114	1,067,446	1,067,446	1,153,347
96 <b>Fund Balance End of Year</b>		1,067,446	1,089,500	1,159,975	1,200,347

97 <b>CAPITAL IMPROVEMENT</b>		2015	2016	2016	2017
98 Revenues		Actual	Proposed	Revised	Proposed
99 1/2 City Sales Tax	2410.00	105,730	92,000	92,000	100,000
100 Interest	2470.00	1,075	500	1,500	1,500
101 <b>Total Revenues</b>		106,805	92,500	93,500	101,500

102 Expenses					
103 Capital Improvements	2510.00	55,050	70,000	70,000	75,000
104 New Gazebo		-	25,000	-	15,000
105 Flume Repair - PER	2501.00	25,000	-	-	465,000
106 <b>Total Expenses</b>		80,050	95,000	70,000	555,000

107 <b>Operating Revenues</b>		106,805	92,500	93,500	101,500
108 <b>Operating Expenses</b>		80,050	95,000	70,000	555,000
109 <b>Operating Income/Loss</b>		26,755	(2,500)	23,500	(453,500)

110 Non-Operating					
111 Transfer in (VC)	2420.00	50,000	40,000	40,000	40,000
112 Transfer from Fund Balance + Grants	2497.00	-	-	-	465,000
113 <b>Non-Operating Revenues</b>		50,000	40,000	40,000	505,000

114 <b>Non-Operating Expenses</b>		-	-	-	-
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115 <b>Total Revenues</b>		156,805	132,500	133,500	606,500
116 <b>Total Expenses</b>		80,050	95,000	70,000	555,000
117 <b>Net Income/Loss</b>		76,755	37,500	63,500	51,500
118 <b>Fund Balance Beginning of Year</b>		491,756	568,511	568,511	167,011
119 <b>Fund Balance End of Year</b>		568,511	606,011	632,011	218,511

## 2017 Proposed Budget

9/30/2016

120 VIRGINIA CHRISTENSEN		2015	2016	2016	2017
121 Revenues		Actual	Proposed	Revised	Proposed
122	Trust Revenue	8460.00	106,565	183,000	183,000
123	Market Adjust / Interest	8470.00	(155,499)	1,000	1,000
124	Operating Revenues		(48,934)	185,000	184,000
125 Expenses					
126	Willow Creek Reclamation			-	-
127	Distributions / Grants 8512.00	8510.00	59,864	57,000	55,416
128	Management Fee		34,221	32,000	34,500
129	Operating Expenses		94,085	89,000	89,916
130 Operating Revenues			(48,934)	185,000	184,000
131 Operating Expenses			94,085	89,000	89,916
132 Operating Income/Loss			(143,019)	96,000	94,084
133 Non-Operating					
134	Non-Operating Revenues		-	-	-
135	Transfer to Capital Improvement	8520.00	50,000	40,000	40,000
136	Transfer to Parks	8540.00	20,000	16,000	16,000
137	Transfer to Arts & Recreation	8550.00	20,000	16,000	16,000
138	Transfer to Activities			22,000	-
139	Non-Operating Expenses		90,000	94,000	94,000
140 Total Revenues			(48,934)	185,000	184,000
141 Total Expenses			184,085	183,000	183,916
142 Net Income/Loss			(233,019)	2,000	84
143 Fund Balance Beginning of Year			4,372,158	4,139,139	4,139,139
144 Fund Balance End of Year			4,139,139	4,141,139	4,139,223

145 CONSERVATION TRUST		2015	2016	2016	2017
146 Revenues		Actual	Proposed	Revised	Proposed
147	Lottery Funds	3410.00	2,810	2,700	2,600
148	Interest	3470.00	14	12	34
149	Operating Revenues		2,824	2,712	2,634
150 EXPENDITURES:					
151	Park Supplies	3500.40	-	2,500	-
152	Operating Expenses		-	2,500	-
153 Total Revenues			2,824	2,712	2,634
154 Total Expenses			-	2,500	-
155 Net Income/Loss			2,824	212	2,634
156 Fund Balance Beginning of Year			9,458	12,282	12,282
157 Fund Balance End of Year			12,282	12,494	14,916

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## 2017 Proposed Budget

9/30/2016

158 WATER AND SEWER		2015	2016	2016	2017
159 Revenues		Actual	Proposed	Revised	Proposed
160 Water Lease	6405.00	35,000	-	-	-
161 Water Revenues	6410.00	186,703	190,158	190,500	195,000
162 Sewer Revenues	6420.00	86,261	86,149	87,000	91,000
163 Drainage Revenues	6440.00	6,970	6,500	6,600	8,000
164 Miscellaneous	6450.00	6,848	5,000	6,000	6,000
165 W/S Finance Charge	6460.00	2,489	2,500	2,500	2,500
166 Water Meters	6480.00	396	6,000	3,200	4,000
167 <b>TOTAL OPERATING REVENUES</b>		324,667	296,307	295,800	306,500
168 <b>Expenses</b>					
169 W/S Administrative Salaries	6500.11	48,116	46,389	51,000	57,000
170 W/S Salaries	6500.12	48,819	53,257	79,900	88,000
171 Taxes	6500.21	7,257	7,250	8,100	8,900
172 Benefits	6500.23	23,768	22,273	25,300	28,000
173 Office Supplies	6500.31	893	2,000	1,000	1,500
174 Postage	6500.32	863	3,000	1,000	1,500
175 Telephone	6500.33	701	800	700	800
176 Sewer Supplies	6500.35	1,492	5,000	3,000	4,000
177 Water Supplies (& meters)	6500.36	2,567	8,000	7,000	8,000
178 Repair & Maintenance	6500.41	6,282	7,000	6,000	7,000
179 Sewer Testing	6500.42	10,993	5,000	13,000	15,000
180 Water Testing	6500.43	1,576	5,000	2,500	3,000
181 Insurance	6500.50	5,179	6,500	6,300	6,900
182 Professional Services	6500.60	24,584	15,000	13,250	15,000
183 Travel	6500.70	-	1,000	1,000	250
184 Electricity - Sewer Plant	6500.81	9,097	11,000	12,000	13,000
185 Propane - Water Plant	6500.85	531	1,500	1,500	1,500
186 Electricity - Water Plant	6500.86	27,461	31,000	36,000	37,000
187 Capital Improvements	6540.00	11,633	-	-	-
188 Sewer Miscellaneous	6500.91	76	3,000	4,000	4,000
189 Water Miscellaneous	6500.92	1,026	5,000	3,000	5,000
190 Miscellaneous/Contingency	6500.93	6,897	8,000	4,000	8,000
191 <b>TOTAL OPERATING EXPENSES</b>		239,811	246,969	279,550	313,350
182 Operating Revenues		324,667	296,307	295,800	306,500
183 Operating Expenses		239,811	246,969	279,550	313,350
184 Operating Income/Loss		84,856	49,338	16,250	(6,850)
185 <b>NON-OPERATING:</b>					
186 Capital Contributions (Tap SD fees)	6430.00	74,850	20,000	18,000	24,000
187 Loans / Impact Fees / Grants	6450.8+9	-	-	-	-
188 Interest Income	6470.00	2,625	1,000	100	100
189 <b>Non-Operating Revenues</b>		77,475	21,000	18,100	24,100
190 <b>Transfers out (Capital Improvement)</b>					
191 Loans Principal	6515+6.2	37,833	33,000	40,000	40,000
192 Loans Interest	6515+6.1	20,710	35,000	23,000	23,000
193 <b>Non-Operating Expenses</b>		58,543	68,000	63,000	63,000
194 <b>Total Revenues</b>					
195 Total Expenses		402,142	317,307	313,900	330,600
196 Net Income/Loss		298,354	314,969	342,550	376,350
197 Fund Balance Beginning of Year		103,788	2,338	(28,650)	(45,750)
198 Fund Balance End of Year		482,566	586,354	586,354	557,704
		586,354	588,692	557,704	511,954

# 2017 Proposed Budget

9/30/2016

a LWCR = 4,000

## Recreation Departments

Parks & Recreation Director	1540.01				25,000
Taxes	1540.03				1,500
Benefits	1540.05				10,000
Park Payroll	1540.10	16,975	17,000	17,000	17,850
Park Taxes	1540.20	1,329	1,300	1,300	1,360
Park Expenses	1540.50	7,691	20,000	12,000	20,000
Arts & Recreation Director	1580.10	16,224	16,715	16,715	17,550
Taxes	1580.21	1,329	1,340	1,340	1,367
Recreation Expenses	1580.50	10,172	20,000	20,000	15,000
Donations	1580.60	<u>10,037</u>	<u>10,000</u>	<u>10,000</u>	<u>5,000</u>
Hatchery Utilities	1580.80	<u>1,519</u>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>



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# 2017 BUDGET PROCESS

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**TO:** Trustees & Mayor  
**FROM:** Clyde  
**SUBJECT:** 2017 Budget  
**DATE:** August 21, 2016

Are there any questions about the budget memo I presented to you last month?

As I mentioned we begin the Certification of Valuation from Libby. She'll send me another around the end of November for our final calculations.

We may have the mill levy calculation estimates from the state in time for our meeting, but haven't received them as of this writing. We're currently calculating a mill levy of 15.09 with revenues of \$87,708. As you can see I budgeted \$85,000 in property taxes for 2017, because I have a habit of always trying to underestimate revenues and overestimate expenses. It just makes breathing a little easier throughout the year.

Meeting budget deadlines always makes for a busy end of year. As we do every year we'll have separate budget work sessions to be able to discuss the different funds more thoroughly to get it ready for our December meeting.

1. October 18<sup>th</sup> for General Fund.
2. October 25<sup>th</sup> for Capital Improvement, Virginia Christensen and Conservation Funds.
3. November 1<sup>st</sup> (after our meeting) for Water and Sewer Fund.
4. November 15<sup>th</sup> to go over entire budget as a whole and hold a public hearing. By this meeting I should have Libby's final CV and be able to confirm our mill levy for the year. (Randi and I will be going to Lamar or Durango on the 16<sup>th</sup> or 17<sup>th</sup>.)
5. December 6<sup>th</sup> we'll approve a resolution for the revised 2016 budget, certify the 2017 mill levy to the county and approve the resolution for the 2017 budget.

It will be a tricky couple of months as we place a new Recreation Director in October and plan for the best with the flume rehabilitation funding application. We also need to be prepared for Eloise's retirement the end of the year. I'm hoping our new Recreation Director will be able to help us with direction as we won't be teaching art classes at the school as Eloise did.



## THE VOICE OF COLORADO'S CITIES AND TOWNS

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To: Interested Municipal Officials  
From: Meghan Dollar, CML Legislative & Policy Advocate  
Date: September 6, 2016  
Subject: HB 16-1309 Moving Forward

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*This information is of a general nature and should not be interpreted as legal advice. Local facts determine what laws may apply and how. You should always consult your municipal attorney before proceeding.*

HB 16-1309 became law without Gov. John Hickenlooper's signature on June 11. The effective date is May 1, 2017. The legislation requires a municipal court to provide defense counsel at the first appearance if the defendant is in custody and the offense could carry jail time. The passage of HB 16-1309 has led to questions and concerns going into the 2017 budget year. This document is intended to outline an assessment of possible implementation options for the 175 member municipalities with municipal courts.

Before describing options to implement HB 16-1309, it should be noted that the Governor submitted a letter dated June 11, 2016 to the General Assembly expressing a "concern that the law imposes costs on local governments." The governor directed his Office of State Planning & Budgeting (OSPB) "to work with municipalities to determine the costs and savings that will result" from the bill's enactment. The governor stated OSPB would evaluate options, "including a potential request" in the next state budget "to offset the costs for local governments." The governor fell short of making a commitment to request full funding for the entirety of the unfunded mandate. CML will pursue funding in the 2017 legislative session.

### **HB 16-1309 is an unfunded mandate**

This document was developed around one important tenant: HB 16-1309 is an unfunded mandate in contradiction to state statute and the Taxpayers Bill of Rights (TABOR). C.R.S. 29-1-304.5(1) provides:

*No new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service. In the event that such additional moneys for reimbursement are not provided, such mandate or increased level of service for an existing state mandate shall be optional on the part of the local government. (Emphasis added.)*

By requiring appointment of counsel at first appearance, HB 16-1309 requires a level of service beyond what is currently required by law and the U.S. Constitution, as interpreted in the decision Rothgery v. Gillespie County, Tex., 554 U.S. 191 (2008). Rothgery is a narrow decision in which the U.S. Supreme Court held that the defendant's 6<sup>th</sup> Amendment right attaches after the defendant's initial appearance before a judicial officer where he learns of the charges against him and his liberty is subject to restraint. The court also found that this right requires that counsel be appointed within a reasonable time after

the right to counsel attaches. The court determined that a reasonable time must be a time period "to allow for adequate representation at any critical stage before trial, as well as the trial itself." *Rothgery* at 212. Accordingly, *Rothgery* does not mandate that an indigent defendant have an attorney present at the advisement/bond hearing, just that counsel be appointed at a reasonable time after first appearance and before any critical stage in the proceedings.

The court in *Rothgery* did not adopt a strict timeline after a defendant's first appearance for appointment of counsel, based on its earlier holdings on the attachment of right to counsel in *Michigan v. Jackson*, 475 U.S. 625 (1986) (overruled on unrelated grounds) and *Brewer v. Williams*, 430 U.S. 387 (1977). *Rothgery* at 199-212. Rather, the court applied a common sense standard that when an accusation prompts arraignment and places restrictions on the accused's liberty, the government has committed to its prosecution. *Rothgery* at 207-8.

For Colorado's municipal courts, having a reasonable time period to appoint counsel for indigent defendants is important. The continuum of sizes of municipal jurisdictions and the variation in municipal courts necessitates flexibility in implementing the 6th Amendment right to counsel. For large municipalities, a reasonable time might be different than in a small municipality where the court meets periodically. However, regardless of the court's holding in *Rothgery* and the practical and fiscal challenges of implementing HB 16-1309, the amendments CML proposed to allow for a reasonable time period for appointment of counsel (softening the mandate) or to provide state funds for a state-mandated change were not accepted. Given that the legislation was not amended to follow *Rothgery*, and municipal courts already do what is constitutionally required, the state clearly passed an increased level of service on municipal courts.

In combination with the statutory language in C.R.S. 29-1-304.5(1) (cited above), TABOR provides an additional defense against state mandates. Specifically, TABOR §9 provides that "a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration." However, this provision has been limited by a pair of decisions from the Colorado Supreme Court: *Romer v. Bd. Of Cnty. Comm'rs of Weld Cnty.*, 897 P.2d 779 (Colo. 1995) and *Colorado v. Bd. Of Cnty. Comm'rs of Weld Cnty.*, 897 P.2d 788 (Colo. 1995) (determining that, since counties were an arm of state government, it was impossible for them to end or reduce funding for state programs). It is uncertain how this pair of decisions would apply to municipalities, because the case law dealt with narrow issues affecting county governments. Erring in favor of separate legal constitutional authority for home rule municipal courts is the provision in Colo. Const. Art. XX, §6, which provides:

[S]uch city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control: ...

c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof; ...

Regardless, it is difficult to know how a court might interpret the application of TABOR's defense against state mandates on municipalities. For further discussion, see CML's publication *TABOR: a Guide to the Taxpayer's Bill of Rights*, August 2011 update..

## Suggestions on Implementation

While CML staff has concluded that HB 16-1309 requires appointment of defense counsel before it is constitutionally required under the 6th Amendment, we encourage you to consult with your municipal attorneys for advice on implementing this legislation.

For your consideration, we have developed some general options below that may help as you consider the best approach for your municipality.

### 1. Treat the mandate as "optional," as allowed by law

There is precedent in legislation that shows a local government can ignore a mandate if funding is not provided. In the past, the legislature has agreed to fund a program fully understanding that if the funding is discontinued that the program becomes optional.

This language is specifically included in C.R.S. 29-5-302(12), which provides:

*If, at any time, the funding provided for the benefit required by this section is insufficient to cover the cost of the benefit, then the requirements of this section shall become optional pursuant to 29-1-304.5.*

While that specific language is not included in HB 16-1309, there are repeated instances in the legislative record that if the legislation conflicts with C.R.S. 29-1-304.5, the unfunded mandate statute applies. Additionally, given the local authority to end subsidies for state programs in TABOR §9 (as discussed above), there may be an argument that a municipality could simply provide the state with notice that it will not be implementing HB 16-1309.

The drawback to a municipality's refusal to implement HB 16-1309 could be a potential lawsuit to compel compliance. While there could be issues of standing to file suit, the American Civil Liberties Union (ACLU) has demonstrated that they are able to use the Open Records Act as a discovery tool to locate individuals willing to be represented in such impact litigation. The potential outcome is an opportunity for a municipality to test both § 9 of TABOR and C.R.S. unfunded mandate provision in the courts.

### 2. Seek declaratory relief

As stated above, given the potentially unnecessary expense of providing defense counsel at first appearance, HB 16-1309 provides an opportunity for a municipality to test the state's ability to mandate programs without funding in the courts. As a defendant in a case, a municipality may not have the ideal fact pattern depending on the plaintiff. However, a declaratory judgement allows a municipality to frame the issue. In order to gain statewide applicability several municipalities could join together in seeking declaratory relief.

### 3. Comply with the mandate

CML's research has shown that funding additional defense counsel will vary widely depending on the size of the municipality. Smaller jurisdictions will need to budget around \$12,000 to comply with HB 16-1309, and medium to larger jurisdictions vary widely. Factors that could drive your municipality's cost to

implement is the case load in your court, the size of the first appearance docket, the frequency that your court meets, and the cost of contracting for or employing public defenders. There may be municipalities that can implement this law within their existing framework, but that may reduce money from other programs that are just as important. Depending on the ultimate cost for a municipality, one option to fund the implementation of HB 16-1309 is to raise court fees. Raising court fees may result in negative feedback from groups such as the ACLU or potentially the legislature. That being said, nothing prohibits municipal courts from determining their court fees. Determining court fees is also within the clear authority of courts in home rule cities.

4. Hold court less often

*we've got this down*

To reduce the cost of providing defense counsel at first appearance, some jurisdictions may choose to hold court less frequently. There are municipal courts that are choosing to move forward with this option. Whereas before the enactment of HB 16-1309 some municipal courts met three or four times a week, those same jurisdictions may now meet twice a week. The drawback is a defendant may incur a longer period in jail than before HB 16-1309. However, the proponents of the bill and the Legislature were made aware of that possibility. In smaller jurisdictions that only meet once a month, meeting even less frequently is not a likely option.

5. Ask law enforcement to write cases with potential jail time into county court

Since the state already provides funding for the Office of the State Public Defender in county court, a smaller municipality may choose to write cases that involve a jailable offense into county courts rather than municipal court. For a smaller municipal court that could potentially see a substantial increase in their costs due to HB 16-1309, writing these cases into county courts is a more viable option than the monetary and logistical implications of implementing the law. This is particularly the case in rural areas where defense counsel may not be readily available. That being said, for purposes of public safety for our communities, there is an important caveat that should be mentioned to this option. Municipal courts, particularly in higher population areas, fill an important gap in public safety. County courts are extremely full and often do not have the docket space to try lower level cases. Municipal courts often play an important role by taking cases important to public safety such as domestic violence or theft. This is something a community should seriously weigh when planning the implementation of HB 16-1309.

6. Eliminate jail as an option for certain municipal violations

HB 16-1309 applies specifically to cases involving jailable offenses. Narrowing the number of violations that hold potential jailtime may reduce the cases that require defense counsel at first appearance. It should be noted that the proponents cited eliminating jailable offenses often when pursuing the adoption of HB 16-1309. It remains the opinion of CML that sentences for violations remains a purely municipal concern. The Colorado General Assembly, like much of the country, has decriminalized several offenses in the past few legislative sessions. Municipalities may desire to follow suit and the adoption of HB 16-1309 may provide an opportunity to update sentences for certain municipal violations if they so choose.

In conclusion, there are options afforded to municipalities for the possible implementation of HB 16-1309. The options vary between fully funding the law, changing specific municipal court operations, or doing what is statutorily allowed and **treating the mandate as optional**. Which option a municipality decides to utilize will likely depend on resources and the availability of defense counsel in their area. As stated above, CML will work with the governor's office to find the necessary monies to fund the mandate, and that remains a top priority. In the meantime, CML has convened a municipal court subcommittee made up of municipal judges, attorneys, and court administrators to discuss additional legislative options CML may pursue in 2017.

*Please contact Legislative & Policy Advocate Meghan Dollar ([mdollar@cml.org](mailto:mdollar@cml.org)) for more information. Additional material can also be found on [www.cml.org](http://www.cml.org).*

Clyde Dooley

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**From:** Eric Heil <ericeillaw@gmail.com>  
**Sent:** Monday, September 19, 2016 10:22 AM  
**To:** Clyde Dooley  
**Subject:** Re: HB 16-1309

Hi Clyde, not for Creede. It only comes up if (1) Creede has municipal court, (2) the person brought in is incarcerated, and (3) the penalty includes potential jail time. Eric

Eric J. Heil, Esq., A.I.C.P.  
Heil Law & Planning LLC  
1022 Summit Drive  
Dillon, CO 80435

Office: (970) 468-0635  
Cell: (303) 518-4678

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**From:** Clyde Dooley <[manager@creedetownhall.com](mailto:manager@creedetownhall.com)>  
**Date:** Sunday, September 18, 2016 at 1:00 PM  
**To:** Eric Heil <ericeillaw@gmail.com>  
**Subject:** HB 16-1309

Hi Eric,  
Is this something we need to be concerned about?  
Clyde

# Budget Fund Balances

9/29/2016

Year	General Fund		
Ending	Beginning		Ending
2003	\$ 196,850	\$ (18,132)	\$ 178,718
2004	\$ 178,718	\$ 25,042	\$ 203,760
2005	\$ 203,760	\$ (13,551)	\$ 190,209
2006	\$ 190,209	\$ 20,724	\$ 210,933
2007	\$ 210,933	\$ 11,009	\$ 221,942
2008	\$ 221,942	\$ 32,076	\$ 254,018
2009	\$ 254,018	\$ 110,992	\$ 365,010
2010	\$ 365,010	\$ 46,442	\$ 411,452
2011	\$ 411,452	\$ 138,242	\$ 549,694
2012	\$ 549,692	\$ 67,580	\$ 617,272
2013	\$ 617,272	\$ 120,311	\$ 737,583
2014	\$ 737,583	\$ 154,532	\$ 892,115
2015	\$ 892,115	\$ 175,332	\$ 1,067,447

Year	Capital Improvement Fund		
Ending	Beginning		Ending
2003	\$ 266,675	\$ (166,905)	\$ 99,770
2004	\$ 99,770	\$ 39,913	\$ 139,683
2005	\$ 139,683	\$ 55,200	\$ 194,883
2006	\$ 194,883	\$ 98,311	\$ 293,194
2007	\$ 293,194	\$ 122,606	\$ 415,800
2008	\$ 415,800	\$ (55,347)	\$ 360,453
2009	\$ 360,453	\$ 192,623	\$ 553,076
2010	\$ 553,076	\$ 5,975	\$ 559,051
2011	\$ 559,051	\$ 80,420	\$ 639,471
2012	\$ 639,471	\$ (414,267)	\$ 225,204
2013	\$ 225,204	\$ 135,419	\$ 360,623
2014	\$ 360,623	\$ 131,133	\$ 491,756
2015	\$ 491,756	\$ 76,755	\$ 568,511

Year	Virginia Christensen Fund		
Ending	Beginning		Ending
2003	\$ 612,181	\$ 33,499	\$ 645,680
2004	\$ 3,645,680	\$ 182,400	\$ 3,828,080
2005	\$ 3,828,080	\$ 101,714	\$ 3,929,794
2006	\$ 3,929,794	\$ 273,505	\$ 4,203,299
2007	\$ 4,203,299	\$ 201,621	\$ 4,404,920
2008	\$ 4,404,920	\$ (1,006,941)	\$ 3,397,979
2009	\$ 3,397,979	\$ 453,657	\$ 3,851,636
2010	\$ 3,851,636	\$ 238,218	\$ 4,089,854
2011	\$ 4,089,854	\$ (75,083)	\$ 4,014,771
2012	\$ 4,014,771	\$ 90,562	\$ 4,105,333
2013	\$ 4,105,333	\$ 252,606	\$ 4,357,939
2014	\$ 4,357,939	\$ 14,219	\$ 4,372,158
2015	\$ 4,372,158	\$ (233,019)	\$ 4,139,139

Year	Conservation Trust Fund		
Ending	Beginning		Ending
2003	\$ 5,080	\$ (940)	\$ 4,140
2004	\$ 4,140	\$ (569)	\$ 3,571
2005	\$ 3,571	\$ 1,769	\$ 5,340
2006	\$ 5,340	\$ (996)	\$ 4,344
2007	\$ 4,344	\$ (154)	\$ 4,190
2008	\$ 4,190	\$ 369	\$ 4,559
2009	\$ 4,559	\$ 2,388	\$ 6,947
2010	\$ 6,947	\$ 229	\$ 7,176
2011	\$ 7,176	\$ (65)	\$ 7,111
2012	\$ 7,110	\$ (604)	\$ 6,506
2013	\$ 6,506	\$ 3,125	\$ 9,631
2014	\$ 9,631	\$ (3,127)	\$ 6,504
2015	\$ 9,458	\$ 2,824	\$ 12,282

Year	Water & Sewer Fund		
Ending	Beginning		Ending
2003	\$ 194,636	\$ 7,318	\$ 201,954
2004	\$ 1,165,714	\$ (71)	\$ 1,165,643
2005	\$ 1,165,643	\$ (3,744)	\$ 1,161,899
2006	\$ 1,161,899	\$ 98,997	\$ 1,260,896
2007	\$ 1,260,896	\$ 201,008	\$ 1,461,904
2008	\$ 1,461,904	\$ 8,190	\$ 1,470,094
2009	\$ 1,470,094	\$ 61,404	\$ 1,531,498
2010	\$ 1,742,915	\$ 74,148	\$ 1,817,063
2011	\$ 424,825	\$ 40,924	\$ 465,749
2012	\$ 475,167	\$ (164,754)	\$ 310,413
2013	\$ 310,413	\$ 103,865	\$ 414,278
2014	\$ 414,278	\$ 68,288	\$ 482,566
2015	\$ 482,566	\$ 103,788	\$ 586,354

	2015	2003	Diff.
GF	\$ 1,067,447	\$ 196,850	\$ 870,597
CI	\$ 568,511	\$ 266,675	\$ 301,836
VC	\$ 4,139,139	\$ 3,645,680	\$ 493,459
CT	\$ 12,282	\$ 5,080	\$ 7,202
WS	\$ 586,354	\$ 194,636	\$ 391,718
<b>Total</b>	<b>\$ 6,373,733</b>	<b>\$ 4,308,921</b>	<b>\$ 2,064,812</b>
		<u>Up</u>	<u>48%</u>



# City Sales Tax

2011

Jan.	5,450	3.23%
Feb	8,740	5.18%
Mar	4,832	2.86%
Apr	4,314	2.55%
May	6,314	3.74%
Jun	4,018	2.38%
Jul	10,445	6.19%
Aug	23,934	14.18%
Sep	33,657	19.93%
Oct	31,996	18.95%
Nov	25,118	14.88%
Dec	10,028	5.94%
	168,846	100.00%

19.94%

80.06%

2012

Jan.	8,814	3.99%
Feb	7,926	3.59%
Mar	6,868	3.11%
Apr	6,839	3.10%
May	6,056	2.74%
Jun	10,718	4.86%
Jul	14,456	6.55%
Aug	35,718	16.18%
Sep	47,628	21.58%
Oct	32,142	14.56%
Nov	33,402	15.13%
Dec	10,186	4.61%
	220,753	100.00%

21.39%

78.61%

2013

Jan.	7,330	3.93%
Feb	9,102	4.88%
Mar	6,480	3.48%
Apr	6,730	3.61%
May	7,954	4.27%
Jun	6,314	3.39%
Jul	13,944	7.48%
Aug	25,228	13.54%
Sep	32,472	17.43%
Oct	30,964	16.62%
Nov	28,614	15.36%
Dec	11,214	6.02%
	186,346	100.00%

23.56%

76.44%

2008

Jan.	6,822	4.27%
Feb	9,034	5.65%
Mar	7,454	4.67%
Apr	5,158	3.23%
May	5,886	3.68%
Jun	5,812	3.64%
Jul	12,866	8.05%
Aug	21,214	13.28%
Sep	31,794	19.90%
Oct	24,112	15.09%
Nov	19,268	12.06%
Dec	10,360	6.48%
	159,780	100.00%

25.14%

74.86%

2009

Jan.	6,726	4.16%
Feb	9,018	5.58%
Mar	7,700	4.76%
Apr	7,804	4.83%
May	4,932	3.05%
Jun	5,108	3.16%
Jul	9,608	5.94%
Aug	21,708	13.42%
Sep	35,686	22.07%
Oct	23,400	14.47%
Nov	23,158	14.32%
Dec	6,876	4.25%
	161,724	100.00%

25.53%

74.47%

2010

Jan.	6,784	4.33%
Feb	7,028	4.49%
Mar	4,498	2.87%
Apr	5,888	3.76%
May	4,722	3.02%
Jun	4,516	2.88%
Jul	9,422	6.02%
Aug	22,658	14.47%
Sep	37,060	23.67%
Oct	24,106	15.40%
Nov	21,926	14.01%
Dec	7,934	5.07%
	156,542	100.00%

21.36%

78.64%

# City Sales Tax

2007		2006		2005	
Jan.	11,116	7.28%	Jan.	7,728	5.56%
Feb	7,682	5.03%	Feb	6,476	4.66%
Mar	4,482	2.94%	Mar	4,836	3.48%
Apr	4,714	3.09%	Apr	6,624	4.76%
May	5,476	3.59%	May	4,384	3.15%
Jun	4,544	2.98%	Jun	5,648	4.06%
Jul	9,922	6.50%	Jul	11,178	8.04%
Aug	19,274	12.63%	Aug	15,146	10.89%
Sep	32,296	21.16%	Sep	29,228	21.01%
Oct	23,688	15.52%	Oct	20,936	15.05%
Nov	19,916	13.05%	Nov	20,006	14.38%
Dec	9,536	6.25%	Dec	6,920	4.97%
	152,646	100.00%		139,110	100.00%

24.90%

75.10%

25.66%

74.34%

25.52%

74.48%

2004		2003			
Jan.	5,966	4.36%	Jan.	5,012	3.84%
Feb	7,598	5.56%	Feb	6,172	4.73%
Mar	5,392	3.94%	Mar	4,086	3.13%
Apr	4,264	3.12%	Apr	4,172	3.20%
May	5,596	4.09%	May	4,336	3.32%
Jun	4,014	2.94%	Jun	5,562	4.26%
Jul	8,764	6.41%	Jul	8,658	6.63%
Aug	18,268	13.36%	Aug	16,868	12.93%
Sep	30,978	22.66%	Sep	25,758	19.74%
Oct	19,900	14.56%	Oct	22,072	16.91%
Nov	19,340	14.15%	Nov	21,008	16.10%
Dec	6,618	4.84%	Dec	6,794	5.21%
	136,698	100.00%		130,498	100.00%

24.02%

75.98%

22.48%

77.52%

## City Funds by account

<b>2016</b>		Acct. No.	1/31/16	2/29/16	3/31/16	4/30/16	5/31/16	6/30/16	7/31/16	8/31/16	9/31/16	10/31/16	11/30/16	12/31/16
1	ColoTrust	548001	204,415	204,492	204,583	204,676	204,775	204,876	204,985	205,106				
2	Conservation Trust	204498	12,285	12,287	12,960	12,963	14,038	14,041	14,044	14,710				
3	Capital Improvement	200263	597,081	601,273	594,365	592,932	597,458	602,200	592,935	607,021				
4	WS Checking	204501	398,347	376,099	400,814	407,787	418,926	417,999	434,320	436,502				
5	WS Savings	360422	22,183	22,182	22,192	22,192	22,192	22,201	22,201	22,201				
6	Deep Creek (Res)	360430	54,758	54,758	54,778	54,778	54,778	55,724	55,724	55,724				
7	Virginia Christensen	254010	470,961	277,184	277,243	277,300	220,354	221,983	222,030	222,078				
8	WS 2% Savings	360449	47,900	47,900	49,307	49,307	49,307	49,791	49,791	49,791				
10	CD 4/5/04	651232	69,832	70,686	69,849	69,858	69,866	69,875	69,884	69,893				
11	Gen. Fund Checking	204188	781,336	788,719	815,559	820,701	829,837	853,995	839,088	866,656				
<b>Total Funds</b>			2,659,098	2,455,581	2,501,650	2,512,494	2,481,531	2,512,685	2,505,002	2,549,682				

**City funds are up \$254,401 (2,549,682 - 2,295,281) for the same period last year  
and up \$44,680 (2,549,682 - 2,505,002) from last month**

	Beginning	Ending
2004	446,511	111,953
2005	558,464	98,003
2006	656,467	236,172
2007	892,639	115,643
2008	1,008,282	15,514
2009	1,023,796	253,316
2010	1,277,112	220,242
2011	1,497,354	183,356
2012	1,680,710	(312,026)
2013	1,368,684	349,128
2014	1,717,812	463,337
2015	2,181,149	317,167
2016	2,498,316	51,366
		<u>2,103,171</u>

Paving

**446,511**      2,549,682

Up      571%

Performance