

**ORDINANCE NO. 5
Series 2010**

February 2, 2010: Introduced as Council Bill 2, Series 2010 by Mayor Pro Tem Russell Stewart, seconded by Councilor Harriet Crittenden LaMair, and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

February 16, 2010: Considered in full text on second reading. Passed by a vote of 4 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE,
AMENDING CHAPTER 11 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE
BY ADDING A NEW SECTION 11-1-30, CONCERNING THE MAINTENANCE
OF ANY REAL PROPERTY ABUTTING A PUBLIC RIGHT-OF-WAY, BY ADDING A NEW
SECTION 11-1-40, CONCERNING THE ENCROACHMENT INTO ANY PUBLIC
RIGHT-OF-WAY OR EASEMENT, BY AMENDING SECTION 11-2-40(e), AND BY ADDING A
NEW SECTION 11-2-180, CONCERNING DAMAGE TO PUBLIC RIGHTS-OF-WAY
OR OTHER CITY PROPERTY**

WHEREAS, the City of Cherry Hills Village is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the City of Cherry Hills Village is authorized to adopt and enforce police power regulations in furtherance of the health, safety and welfare of its citizens; and

WHEREAS, Chapter 11, Article I, of the City of Cherry Hills Village Municipal Code provides for the repair and maintenance of sidewalks and streets; and

WHEREAS, the City Council has determined that it should be the responsibility of owners, agents or lessees, of real property abutting a public right-of-way or other City property to provide landscape maintenance; and

WHEREAS, the City Council has determined that except for a limited landscape exception, a permit should be required for any encroachment on a public right-of-way, path, alley, or public easement; and

WHEREAS, Chapter 11, Article II, of the City of Cherry Hills Village Municipal Code provides the principles, standards, and procedures for the placement of facilities, construction, excavation, encroachments and work activities within, under or upon any public-right-of way; and

WHEREAS, the City Council has determined that it should be unlawful for any person to cause or allow to be caused any damage to public rights-of-way or other City property, regardless of whether such work requires a permit.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. That a new Section 11-1-30 of the City of Cherry Hills Village Municipal Code is hereby added to read as follows:

Sec. 11-1-30. Landscape Maintenance.

It shall be the responsibility of the owner, agent, or lessee of any real property abutting a public right-of-way or other City property to provide landscape maintenance including, but not limited to, mowing of all right-of-way area between the property line and the curblin e or edge of roadway or right-of-way; provided however, that the City shall maintain landscaping and shall be responsible for mowing all of the rights-of-way that comprise Quincy Avenue, Clarkson Street, Colorado Boulevard, Holly Street and Happy Canyon Road, and all state rights-of-way. The vegetation in said areas shall be maintained to the same levels required under Section 7-3-20 of this Code.

Section 2. That a new Section 11-1-40 of the City of Cherry Hills Village Municipal Code is hereby added to read as follows:

Sec. 11-1-40. Public Right-of-Way and Public Easement Encroachments Prohibited.

Except as provided in Section 11-2-40 of this Code, no person shall erect or maintain any building, structure, fence, barrier, post, mailbox, landscaping, obstruction, or other

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encroachment within, under, above, or upon any public right-of-way, path, alley, or public easement without first obtaining the required permit(s) from the City.

Section 3. That Section 11-2-40(e) of the Cherry Hills Village Municipal Code shall be amended as follows:

Sec. 11-2-40. Permit Required.

(e) No private improvements are allowed within the City's right-of-way without the approval of the City, with the exception of placing and maintaining limited landscaping, such as sod or grasses, flowers, and no more than four (4) bushes or small trees of a caliper not to exceed two (2) inches, that will not interfere with the public's use of the right-of-way. In no case shall trees or bushes be placed in drainage ditches/areas. All newly planted trees must be at least 10 feet from the actual road surface. Allowing the placement and maintenance of such limited landscaping in the right-of-way shall not be construed to abridge, limit or restrict the City in exercising its right to make full use of the City right-of-way encroached upon as public thoroughfares or public places, nor shall it operate to restrict utility companies or any other licensees in exercising their rights to construct, remove, operate and maintain their installations within the City's right-of-way, having first obtained the proper permits required.

Section 4. That Sections 11-2-180 through 280 of the Cherry Hills Village Municipal Code are renumbered as Sections 11-2-190 Sections 190 through 290, respectively, and that a new Section 180 is added to read as follows:

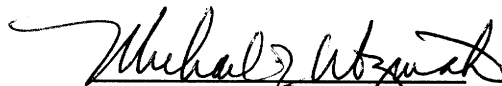
Sec. 11-2-180. Damage to Public Rights-of-Way or Other City Property.

It shall be unlawful for any person to cause or allow to be caused any damage to public rights-of-way or other City property, regardless of whether a City permit is required for work performed that contributes to the damage. A property owner that authorizes work for which a permit is not required, together with the person actually causing the damage, shall be responsible for all damages to the public rights-of-way or other City owned property. The provisions of Section 11-2-270 shall apply to damages caused by work for which a permit is not required or issued, and any notice to a permittee pursuant to that Section shall be provided to the property owner and/or the person causing the damage.

Section 5. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite that fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

Section 6. Effective date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

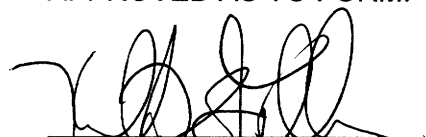
Adopted as Ordinance No. 5, Series 2010, by the City Council of the City of Cherry Hills Village, Colorado, on the 16th day of February, 2010.


Michael J. Wozniak, Mayor

ATTEST:


Laura Smith, City Clerk

APPROVED AS TO FORM:


Kenneth S. Fellman, City Attorney

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**CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 5, SERIES 2010**

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING CHAPTER 11 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE BY ADDING A NEW SECTION 11-1-30, CONCERNING THE MAINTENANCE OF ANY REAL PROPERTY ABUTTING A PUBLIC RIGHT-OF-WAY, BY ADDING A NEW SECTION 11-1-40, CONCERNING THE ENCROACHMENT INTO ANY PUBLIC RIGHT-OF-WAY OR EASEMENT, BY AMENDING SECTION 11-2-40(e), AND BY ADDING A NEW SECTION 11-2-108, CONCERNING DAMAGE TO PUBLIC RIGHTS-OF-WAY OR OTHER CITY PROPERTY.

Copies of the Ordinances are on file at the office of the City Clerk and may be inspected during regular business hours.

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