

ORDINANCE NO. 9
Series 2003

July 15, 2003: Introduced as Council Bill 09-03 by Councilmember Doug Tisdale, seconded by Councilmember Bonnie Blum, and considered by the title only on first reading. Passed unanimously.

August 19, 2003: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 9, Series 2003.

A BILL FOR AN ORDINANCE ADOPTING BY REFERENCE AND ENACTING A NEW CODE FOR THE CITY OF CHERRY HILLS VILLAGE TITLED “CHERRY HILLS VILLAGE MUNICIPAL CODE”; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE ADOPTION OF SECONDARY CODES BY REFERENCE; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village holds all powers of self-government and home rule power possible under the Constitution and laws of the State of Colorado; and

WHEREAS, the City of Cherry Hills Village has adopted regulations and laws; and

WHEREAS, the City of Cherry Hills Village maintains a codification of ordinances approved by the City Council of the City of Cherry Hills Village; and

WHEREAS, the City Council of the City of Cherry Hills Village desires to update, modify the numbering system, and change the form of their City Code and provide their Code in electronic form; and

WHEREAS, the City’s updated code is titled “*Cherry Hills Village Municipal Code*”; and

WHEREAS, the City properly published notice of a hearing for the purpose of considering this Ordinance and such notice was published twice in “The Villager”, a newspaper of general circulation in the City of Cherry Hills Village, once at least fifteen days preceding the hearing and once at least eight days preceding the hearing; and

WHEREAS, the published notice of the hearing stated the time and place of the hearing and also stated that copies of the *Cherry Hills Village Municipal Code* and all secondary codes referenced in the *Cherry Hills Village Municipal Code* are on file with the clerk and are open to public inspection; and

WHEREAS, the City Council of the City of Cherry Hills Village desires the effective date of this Ordinance to be ten (10) days after publication following approval on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

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

Section 1. The primary code entitled the *Cherry Hills Village Municipal Code*, published by Colorado Code Publishing Company, consisting of Chapters 1 through 18, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before the adoption date of this Ordinance, which are inconsistent with the provisions of the *Cherry Hills Village Municipal Code*, to the extent of such inconsistency, are hereby repealed.

Section 3. The repeal established in Section 2 of this Ordinance shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this Ordinance.

Section 4. The repeal established in Section 2 of this Ordinance shall not be construed to repeal “ordinances saved from repeal” as such ordinances are identified and listed in section 1-1-60 of the *Cherry Hills Village Municipal Code*.

Section 5. The following secondary codes were previously adopted by reference and incorporated in the *Cherry Hills Village Municipal Code*. One (1) copy is on file in the City Clerk’s office:

(1) The *Model Traffic Code for Colorado Municipalities*, 1995 edition, published by the Colorado Department of Transportation, as adopted and amended in Section 8-1-20 et seq.;

(2) The *International Building Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-1-10 et seq.;

(3) The *International Residential Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-2-10;

(4) The *International Mechanical Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-3-10 et seq.;

(5) The *International Plumbing Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-4-10 et seq.;

(6) The *International Fuel Gas Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-5-10 et seq.;

(7) The *International Energy Conservation Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-6-10 et seq.;

(8) The *National Electrical Code*, 2002 edition, published by the National Fire Protection Association, as adopted in Section 18-7-10.

(9) The *International Fire Code*, 2000 edition, published by the International Code Council Inc., as adopted and amended in Section 18-8-10 et seq.;

Section 6. The penalties provided by the Cherry Hills Village Municipal Code are hereby adopted as follows:

(1) **Sec. 1-4-20. General penalty for violation. (Article IV, General Penalty)**

(a) Any person who violates or fails to comply with any provision of this Code for which a different penalty is not specifically provided shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment in the City or County jail for a period of not more than one (1) year or by both such fine and imprisonment, except as provided in Section 1-4-30 below. In addition, such person shall pay all costs and expenses in the case, including attorney fees. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge.

(b) Each day such violation continues shall be considered a separate offense.

(2) **Sec. 1-4-30. Application of penalties to juveniles. (Article IV, General Penalty)**

(a) Notwithstanding any provision of this Code to the contrary, any person who is at least ten (10) years of age but under the age of eighteen (18) years of age as of the date of the violation shall be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation or count and shall not be subject to imprisonment in a jail, lock-up or other place used for the confinement of adult offenders, but may be held in a juvenile detention facility operated or contracted by the Department of Institutions or a temporary holding facility operated by or under contract with the City, which shall receive and provide care for such child, unless such imprisonment is for failure to comply with the lawful order of the court or for contempt of court.

(b) Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge.

(c) In no event shall the confinement of the person under eighteen (18) years of age for failure to comply with the lawful order of the court or for contempt of court exceed forty-eight (48) hours.

(3) **Sec. 1-4-40. Altering or tampering with Code; penalty. (Article IV, General Penalty)**

(a) It is unlawful for any person to alter, change, replace or deface in any way any section or any page of this City Code in such a manner that the meaning of any phrase or order may be changed or omitted. The Code books, while in actual possession of officials and other interested persons, shall be and remain the property of the City and shall be returned to the office of the City Clerk when directed so to do by order of the City Council.

(b) Any person who shall alter, change or amend this Code, except in the manner prescribed in this Article, or who shall alter or tamper with this Code in any manner so as to cause the ordinances of the City to be misrepresented thereby, shall, upon conviction thereof, be punishable as provided by Section 1-4-20 hereof.

(4) Sec. 1-4-50. Penalty for violations of ordinances adopted after adoption of Code. (Article IV, General Penalty)

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in this Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-4-20 unless another penalty is specifically provided for the violation.

(5) Sec. 2-4-100. Contempt power. (Article IV, Municipal Court)

(a) When the Court finds any person to be in contempt, the Court may vindicate its dignity by imposing on the contemnor a fine not to exceed one thousand dollars (\$1,000.00) and imprisonment not to exceed a term of ninety (90) days.

(b) In cases of indirect contempt, the alleged contemnor shall have all the rights, privileges, safeguards and protections of a defendant in a petty offense case, including but not limited to a formal written complaint, arraignment and trial by jury. (Ord. __, 2003)

(6) Sec. 4-4-390. Notice of deficiency, recovery, penalty, interest. (Article IV, Retail Sales Tax)

(a) All sums of money paid by the purchaser to the vendor as taxes imposed by this Article shall be and remain public money, the property of the City, in the hands of such vendor, and he shall hold the same in trust for the sole use and benefit of the City until paid to the City. For failure to so pay to the City, such vendor shall be punished as provided by Subsection 4-4-380(b).

(b) If a person neglects or refuses to make a return in payment of the tax as required by this Chapter, the City shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent; and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate of one percent (1%) per month from the date when due. Promptly thereafter, the City shall send to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be served personally or by certified mail. Such estimate shall thereupon become a notice of deficiency.

(c) The City may treat any such taxes, penalties or interest due and unpaid as a debt due the City from the taxpayer. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes and interest, in such County or District Court of the County having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the City, as herein provided, shall be prima facie proof of the amount due.

(d) The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Article, and, for this purpose only, interest imposed in excess of eight percent (8%) per annum shall be deemed a penalty.

(7) Sec. 4-4-410. Penalties for certain underpayment, nonpayment or extensions of time for payment of taxes. (Article IV, Retail Sales Tax)

If any part of the deficiency in payment of the sales tax is due to negligence or intentional disregard of this Code, or of authorized rules and regulations of the City with knowledge, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency as a penalty; and interest on such penalty in such case shall be collected at the rate imposed under Section 4-4-400, in addition to the interest provided by Section 4-4-430 on the amount of such deficiency from the time the return was due from the person required to file the return, which interest and penalty shall become due and payable ten (10) days after written notice and demand by the City Treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency as a penalty; and, in such case, the whole amount of the tax unpaid, including the penalty, shall become due and payable ten (10) days after written notice and demand by the City.

(8) Sec. 4-5-120. Interest for neglect or refusal to pay. (Article V, Use Tax)

If a person neglects or refuses to pay any use tax as required, the City Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes

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due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) and interest on such delinquent taxes at the rate imposed under Section 4-5-140 below, plus one-half of one percent (.5%) per month from the date when due.

(9) **Sec. 5-3-40. Failure to pay tax. (Article III, Telephone Occupation Tax)**

If any person required to pay the tax levied by this Article shall fail to pay such tax as herein provided, the full amount thereof shall become immediately due from and payable by such person, together with any interest thereon at the rate of one percent (1%) per month, or fraction thereof, from the date when due and payable, and a penalty equal to ten percent (10%) of the amount of taxes due and payable. The total amount of such tax, penalty and interest is further declared to be a debt due and owing from such person to the City. The City Attorney, upon direction of the City Council, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect such debt in the name of the City.

(10) **Sec. 6-2-140. Violations; penalty. (Article II, Nuisances)**

(a) Penalties for violations of this Article shall be as provided for in Section 1-4-20 of this Code and shall be in addition to any special penalty provided for in this Article.

(b) Notwithstanding any other penalty that may be levied, any licensee, or his manager or agent, who violates the terms of this Article shall be subject to suspension or revocation of his liquor license pursuant to Section 12-47-110, C.R.S. (Prior code 3-8-13; Ord. __, 2003)

(11) **Sec. 7-4-50. Assessment of costs; notice. (Article IV, Weeds, Brush and Rubbish)**

The costs of removing the weeds, brush or rubbish from the property shall be chargeable against the delinquent owner and against the property. In addition to the actual out-of-pocket costs incurred by the City, the costs shall include an additional amount equal to five percent (5%) or twenty-five dollars (\$25.00), whichever is more, or the out-of-pocket costs to cover inspection and other incidental costs to the City. The City may either remove the weeds, brush or rubbish or hire an independent contractor for that purpose. (Ord. 9, 1968; 1980 Code; prior code 4-2-5)

(12) **Sec. 7-6-610. Prosecution for violations. (Article VI, Animals)**

(a) It shall be a violation of this Article to:

(1) Fail to comply with any provision of this Article;

(2) Fail to comply with any lawful order of an animal control officer or police officer unless such order is lawfully stayed or reversed;

(3) Intentionally interfere with, hinder, harass, molest, injure or obstruct any animal control officer or police officer in the discharge of his official duties under this Article or other applicable law;

(4) Fail to comply with any special sanctions imposed pursuant to Subsection (e) below, or pay any fines, civil penalties or costs imposed by the Municipal Court or any fees and charges imposed by the animal shelter or impoundment facility arising from impoundment of an animal.

(b) Penalty. The owner of an animal shall be subject to escalating penalties, as provided below, for each violation of this Article, whether the subject animal is the same animal, a different animal or various animals belonging to the said owner. The maximum fine shall not exceed one thousand dollars (\$1,000.00) for any one (1) offense, each day constituting a separate offense. Except as otherwise provided herein, any violation of this Article shall be punishable by a fine of not less than twenty-five dollars (\$25.00) for the first violation, not less than fifty dollars (\$50.00) for the second violation, and a mandatory court appearance and fine of not less than seventy-five dollars (\$75.00) for the third and each subsequent violation for the same offense. Notwithstanding the foregoing, any violation for an aggressive dog (Section 7-6-340(b)); vicious dog (Section 7-6-340(c)); prohibited animal (Section 7-6-50(a)); restricted animal (guard dog) (Section 7-6-50(b)); cruelty (Section 7-6-110(a)); neglect (Section 7-6-110(b)); or poisoning (Section 7-6-110(e)) shall require a court appearance and shall be punishable by imprisonment not exceeding the limit established in Section 1-4-20(A) of the Code and/or a fine of not less than one hundred dollars (\$100.00) for the first violation, not less than two hundred fifty dollars (\$250.00) for the second violation, and not less than five hundred dollars (\$500.00) for the third and each subsequent violation for the same offense. As part of any penalty for a third violation of a vicious dog offense, where each offense concerns the same dog, the Court shall order destruction of the dog in addition to,

and not in lieu of, any fine imposed. No portion of any minimum fine may be suspended or held in abeyance by the Municipal Court. The Municipal Court is authorized to adopt a fine schedule in accordance with this Section.

(c) Strict liability. For the purpose of prosecution for violations of any Section of this Article, it shall not be necessary in order to obtain a conviction to prove notice on the part of the owner or keeper of the animal in question that said animal was violating any provision of this Article at the time and place charged, it being the purpose of this Section to impose strict liability upon the owner or keeper of any animal.

(d) Separate offense. Each separate day or any portion thereof during which a violation of this Article occurs or continues shall constitute a separate offense and, upon conviction thereof, shall be punishable as herein provided.

(e) Special sanctions. The animal control officer, or the City Attorney or his designee, may recommend that one (1) or more special sanctions be levied against any animal owner or keeper convicted of any violation of this Article or pursuant to a deferred judgment or deferred prosecution. This recommendation may be presented to the Municipal Court as a proposed condition of sentencing upon conviction or as a condition of deferred judgment or deferred prosecution, and may be in lieu of or in addition to the penalties specified herein. The Municipal Court may take into consideration the severity of the incident, the prior history of the owner or keeper, and the recommendation of the animal control officer or City Attorney. Special sanctions include, but are not limited to, the following:

- (1) Confinement of an animal in a secure enclosure in compliance with the zoning ordinance;
- (2) Spaying or neutering of the animal;
- (3) Obedience training/behavior modification for the animal;
- (4) Responsible pet ownership class for the owner or keeper;
- (5) Community service work for the owner or keeper;
- (6) Microchipping of the animal;
- (7) Euthanasia of the animal;
- (8) Ban on owning or maintaining other animals in the City for a specified period;
- (9) Use of humane training devices for behavior modification of the animal;
- (10) Inspections of premises where the animal is kept in cases of neglect or cruelty;
- (11) Restitution for costs of care rendered or shelter given at the City's designated animal shelter, costs of veterinary care and costs of medical treatment; and
- (12) Treatment or counseling programs for the animal or owner.

The provisions of this Section shall not in any way limit the power of the Municipal Court, on its own motion, to impose any other sanction or measure, as it deems appropriate. (Ord. 5 §2, 2003)

(13) **Sec. 8-1-20. Amendments. (Article I, Model Traffic Code)**

The Model Traffic Code is adopted as if set out at length subject to the modifications and additions provided in the following subsections:

(8) "613. Designation of Highway Maintenance, Repair or Construction Zones — Signs — Increase in Penalties for Speeding Violations.

"(1) If maintenance, repair, or construction activities are occurring or will be occurring within four hours on a state highway or municipal street, the department of transportation or the City Manager or the City Manager's designee may designate such portion of the highway or street as a highway or street maintenance, repair, or construction zone. Any person who commits a speeding violation in a maintenance, repair, or construction zone that is designated pursuant to the provisions of this section is subject to doubled penalties and charges.

"(2) The department of transportation or the City Manager or the City Manager's designee shall designate by appropriate signs that a maintenance, repair, or construction activity is taking place within four hours. Such sign shall notify the public that increased penalties for speeding violations are in effect in such zone. The department of transportation or local authorities shall erect or place a second sign after such zone indicating that the increased penalties for speeding violations are no longer in effect. A maintenance, repair, or construction zone begins at the location of the sign indicating that increased penalties are in effect and ends at the location of the sign indicating that the increased penalties are no longer in effect.

"(3) Signs used for designating the beginning and end of a maintenance, construction, or repair zone shall conform to department of transportation requirements. The department of transportation or the City Manager or the City Manager's designee may display such signs on any fixed, variable, or moveable stand. The department of transportation or the City Manager or the City Manager's designee may place such a sign on a moving vehicle if required for certain activities, including, but not limited to, highway painting work."

(9) "614. Designation of School Zones — Signs — Increase in Penalties for Speeding Violations.

"(1) Any person who commits a speeding violation on a portion of the state highway or municipal street designated as a school zone pursuant to the provisions of this Chapter is subject to doubled penalties and charges.

"(2) The department of transportation or the City Manager or the City Manager's designee shall designate a school zone by appropriate signs. Such sign shall notify the public that increased penalties for speeding violations are in effect in such zone. The department of transportation or the City Manager or the City Manager's designee shall erect or place a second sign after such school zone indicating that the increased penalties for speeding violations are no longer in effect. A school zone begins at the location of the sign indicating that increased penalties are in effect and ends at the location of the sign indicating that the increased penalties are no longer in effect.

"(3) Signs used for designating the beginning and end of a school zone shall conform to department of transportation requirements. The department of transportation or the City Manager or the City Manager's designee may display such signs on any fixed, variable, or moveable stand."

(18) "1701. Traffic Offenses and Infractions Classified — Penalties.

"(1) Except as set forth herein, it is a traffic infraction for any person to violate any of the provisions stated or adopted in this Chapter. Such a traffic infraction shall constitute a civil matter. The Colorado Rules of Municipal Procedure shall apply to traffic infraction proceedings, except that no bench warrant for arrest shall be issued for a defendant's failure to appear when the only violation charged is a non-criminal traffic infraction. Instead, the court may enter judgment of liability by default against the defendant for failure to appear, assess any penalty and costs established by law and report the judgment to the Colorado Department of Revenue, Motor Vehicle Division, or to the motor vehicle department of any other state which participates in the Interstate Non-resident Violator Compact, as codified at C.R.S. § 24-60-2101, which may assess points against the defendant's driver's license and may take appropriate action to ensure that the judgment is satisfied. There is no right to trial by jury for any non-criminal traffic infraction.

"(3) Traffic infractions shall be subject to the following penalties:

"Minimum Penalty	Maximum Penalty
"Fine of \$10.00	Fine of \$1,000.00

"Court costs as authorized by state law shall be added to the fine.

"(4) Criminal traffic offenses shall be subject to the following sentences upon conviction:

"Minimum Sentence	Maximum Sentence
"1 day imprisonment, or a fine of \$10.00, or both.	1 year imprisonment, or a fine of \$1,000.00, or both

"Court costs as authorized by state law shall be added to the fine."

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(20) "1707. Summons and Complaint for Traffic Violations.

"(3)(a) The City of Cherry Hills Village may offer or extend to a defendant the opportunity for the defendant to pay a penalty assessment for a non-criminal traffic infraction prior to the date and time scheduled for the defendant's appearance in the Cherry Hills Village Municipal Court, or Arapahoe County Court. Whenever a penalty assessment is made available for a traffic infraction, the defendant shall be required to execute a signed acknowledgment of guilt and shall pay the penalty prescribed by the City within a specified period of time as well as provide such other information as may be required by the City. Payment of a penalty assessment notice by the person to whom the notice is tendered shall constitute an acknowledgment of guilt by such person of his or her violation of the offense stated in such notice and shall be deemed a complete satisfaction for the violation, and the City, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof, if requested."

(22) "1710. Failure to Pay Penalty for Traffic Offenses Procedures.

"(4) If judgment is entered against a violator, the violator shall be assessed an appropriate penalty and surcharge thereon. If the violator is provided an opportunity to pay a penalty assessment, the penalty shall be assessed pursuant to Section 1701."

(14) Sec. 18-9-20. Violations. (Article IX, Violations and Enforcement)

Persons who violate a provision of this Chapter or any provision of any code adopted within this Chapter, or who erect, install, alter or repair a structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be guilty of a misdemeanor. Misdemeanors are punishable by:

(1) A fine of not more than one thousand dollars (\$1,000.00) for any one (1) offense, each day after a ticket is given constituting a separate offense, or

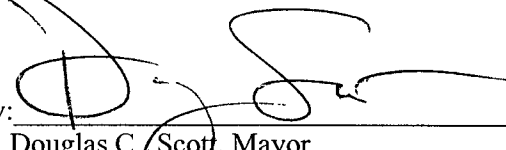
(2) By imprisonment in the County jail for a period of not more than ninety (90) days or by both such fine and imprisonment.

Section 7. Additions or amendments to the Code, when passed in the form as to indicate the intention of the City Council to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

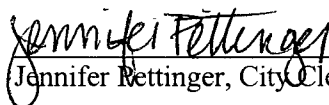
Section 8. Ordinances adopted after this Ordinance that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to those provisions of the Code.

Section 9. 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. 09, Series 2003, by the City Council of the City of Cherry Hills Village, Colorado, and signed and approved by its Mayor and Presiding Officer this 19th day of August, 2003.

By: 
Douglas C. Scott, Mayor

ATTEST:


Jennifer Rettinger, City Clerk

(SEAL)

APPROVED AS TO FORM:


Robert C. Widner, City Attorney

Published in The Villager
Published on 8/28/03
Legal # 5498

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