

# ORDINANCE NO. 6

## Series 2011

June 21, 2011: Introduced as Council Bill 5, Series 2011 by Councilor LaMair, seconded by Councilor Brown, and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

July 18, 2011: Considered in full text on second reading. Passed by a vote of 5 yes and 0 no.

### **A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE, CONCERNING ZONING, BY THE ADDITION OF SECTION 16-16-170 CONCERNING THE PRESERVATION OF ESTABLISHED TREES**

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 regulate property within the boundaries of the City to further the health, safety and welfare of the citizens of the City of Cherry Hills Village; and

WHEREAS, in order to protect the privacy and aesthetic concerns of the residents and property owners of the City, the City Council has determined that standards regulating the removal of trees during new development is necessary; and

WHEREAS, in order to protect the semi-rural character of the City, the City Council has determined to allow the preservation of certain dead trees for the protection of wildlife habitat; and

WHEREAS, to protect the vision defined in the Master Plan of maintaining the semi-rural character, views and open feel in the Village; while strategically addressing issues and pursuing Village policy in a fiscally sound manner, the City Council has set forth tree protection regulations; and

WHEREAS, the City will utilize all means available in the Code to ensure compliance with these regulations; and

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

Section 1. That Chapter 16 of the City of Cherry Hills Village Municipal Code, concerning zoning, is hereby amended by the addition of Section 16-16-170, to read as follows:

#### **Sec. 16-16-170. Preservation of established trees.**

(a) Purpose and intent. The purpose and intent of this Section is to provide minimum requirements for protecting established trees in order to preserve the semi-rural character of the Village and qualities associated with that character, while protecting the health, safety and general welfare of the community. The City Council finds that these regulations are necessary in order to:

- (1) Preserve privacy and value of existing homes;
- (2) Preserve the semi-rural character of the community;
- (3) Screen nighttime light pollution from roads and adjacent properties; and
- (4) Preserve wildlife habitat and shade.

(b) Definitions.

(1) *Established Tree* means a living tree, the trunk of which measures six inches (6") or more in diameter at a height of forty-eight inches (48") above natural grade. Trees with multiple trunks or branches may be measured around a single trunk at a height of not less than six inches (6") above natural grade. These measurements are referred to herein as the "*Caliper Size*".

(2) *Large Tree* means an Established Tree, the trunk of which is 21 inches or larger in Caliper Size.

(3) *Medium Tree* means an Established Tree the trunk of which is between 11 and 20 inches in Caliper Size.

(4) *Small Tree* means an Established Tree, the trunk of which is between 6 and 10 inches in Caliper Size.

(c) Tree Preservation Requirements.

(1) Any Established Tree removed from within the minimum "Yard" or "Setback" area required for a property by Code Section 16-5-30, 16-6-30, 16-7-30, 16-8-70, 16-9-30, or 16-10-30 or from within the public right-of-way adjacent to the property (a) in conjunction with the (i) development of a new residence or (ii) an expansion of an existing residence that increases the square footage of such residence by 50% or more, or (b) within the twelve (12) months preceding the date upon which a building permit application for such development or expansion was submitted, must be replaced in accordance with the requirements of subsection (2) below. Notwithstanding the forgoing, if an Established Tree is listed on the State of Colorado Noxious Weeds Lists A, B, or C as designated by Colo. Rev. Stat. § 35-5.5-108 (2) (a) as amended, or in Section 7-4-10 of the Cherry Hills Village Municipal Code it may be removed and no replacement tree shall be required.

(2) Established Trees that have been or will be removed must be replaced as follows: (a) each Small Tree must be replaced with a new tree with a Caliper Size of at least two inches (2"); (b) each Medium Tree must be replaced with a new tree or trees with a total Caliper Size of at least six inches (6"); and (c) each Large Tree must be replaced with a new tree or trees with a total Caliper Size of at least ten inches (10").

(3) All replacement trees shall have a minimum Caliper Size of two inches (2") at the time of planting.

(4) No species of tree shall be planted that is listed on the State of Colorado Noxious Weeds Lists A, B, or C as designated by Colo. Rev. Stat. § 35-5.5-108 (2)(a) as amended, or in Section 7-4-10 of the Cherry Hills Village Municipal Code.

(5) Established trees may be transplanted to another location within the same lot without incurring a replacement requirement. However, if such transplanted trees do not survive until the compliance check required in Subsection (d)(4) below they shall be replaced as required by Subsections (c)(2) and (3) above.

(d) Procedures for Development.

(1) The property owner shall submit a tree survey that shall include a tree protection plan to the City as part of the building permit application. The tree survey and tree protection plan shall show:

a. The location of all Established Trees, including Established Trees removed within the past twelve (12) months of the date of submittal of the building permit application, located on the property, in adjacent public rights-of-way and in the vicinity of any other private rights-of-way used for construction access;

b. The diameter of all Established Trees measured in accordance with Subsection (b)(1);

c. Certification as to the survey accuracy by a registered professional land surveyor, engineer, landscape architect, or architect licensed in the State of Colorado.

d. Existing location of all Established Trees to be preserved, transplanted or removed.

e. Proposed location, caliper size, and species of replacement and transplanted trees demonstrating a minimum compliance with this Section;

f. Measures to protect Established Trees from being damaged or destroyed during construction. Such measures may include, but are not limited to, barriers around trees and tree roots and plans to avoid soil compaction over tree roots.

(2) The location of replacement or transplanted trees shall be in conformance with Chapter 11 of this Code and in the general location on the property from where the Established Trees have been removed.

(3) A property owner may apply for an exception to Section 7-4-30 of the Cherry Hills Village Municipal Code to retain a dead or dying tree for the purpose of habitat preservation. An excepted tree shall not count towards the replacement requirements outlined in this Section. The application for an exception must include:

a. Location and height of the tree;

b. The distance to any structure within 50 feet;

c. The distance to adjacent properties and rights-of-way;

d. Certification by a member of the International Society of Arboriculture or equivalent organization that the tree is not diseased; and

e. A mitigation plan indicating how the tree shall be maintained, including but not limited to pruning of dangerous branches, so as not to create a threat to health, safety and welfare.

The City may reject an application or revoke a previous approval for reasons including, but not limited to, tree visibility, safety of people or property, risk of disease, adjacent property owner objections, or recommendations of City departments.

(4) All tree planting requirements listed herein must be completed before a certificate of occupancy is issued. A compliance check will be conducted between twenty-four (24) and thirty-six (36) months after the certificate of occupancy is granted to verify survival and condition of all trees shown on the tree protection plan. The property owner must replace any trees that have not survived within six (6) months following the compliance check based on the requirements of Subsections (c)(2) and (3) above.

(e) Waiver from Replacement Requirements.

(1) The City Manager, or his or her designee, may authorize a waiver from the replacement requirements of Subsection 16-16-170(c)(2) hereof upon the written request of the applicant that demonstrates that the request meets the requirements of Subsection 16-16-170(e)(2).

(2) No waiver shall be authorized unless:

a. The applicant demonstrates that the removal of the Established Tree is beyond the reasonable control of the applicant; or

b. A professional arborist has issued a written recommendation that the Established Tree be removed because of the poor or unhealthy condition of the Established Tree; or

c. The requested waiver of the replacement requirements (i) affords reasonable protections to adjacent properties and (ii) will not cause an undesirable change in the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding property.

Section 2. 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 the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid.

Section 3. Effective Date. This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 6, Series 2011, by the City Council of the City of Cherry Hills Village, Colorado this 18th day of July, 2011.

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Michael J. Wozniak, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Laura Smith, City Clerk

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Kenneth S. Fellman, City Attorney

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