

**ORDINANCE NO. 06  
Series 2007**

March 20, 2007: Introduced as Council Bill 03, Series 2007 by Councilmember Russell Stewart, seconded by Councilmember Klasina VanderWerf, and considered by the title only on first reading. Passed unanimously.

April 4, 2007: Considered in full text on second reading. Passed unanimously.

**A BILL FOR AN ORDINANCE  
OF THE CITY OF CHERRY HILLS VILLAGE  
ADOPTING A NEW CHAPTER 19 OF THE CHERRY HILLS VILLAGE MUNICIPAL  
CODE TO PROVIDE A COMPREHENSIVE STORM WATER MANAGEMENT  
PROGRAM FOR THE PURPOSES OF REDUCING THE DISCHARGE OF  
POLLUTANTS TO AND FROM THE MUNICIPAL STORM SEWER SYSTEM,  
PROTECTING WATER QUALITY, AND SATISFYING THE APPROPRIATE WATER  
QUALITY REQUIREMENTS OF THE COLORADO WATER QUALITY CONTROL  
ACT.**

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, pursuant to Colorado law, the City of Cherry Hills Village is required to have a State of Colorado General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems; and

WHEREAS, in or about March, 2003, the City of Cherry Hills Village applied for a State of Colorado General Permit for Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems and successfully obtained Permit No. 090066 (the "Permit"); and

WHEREAS, as a condition of the Permit, the City is required to adopt an ordinance addressing illicit discharge detection and elimination, construction site stormwater runoff control and post-construction stormwater management; and

WHEREAS, it is in the best interest of the public health and welfare of the residents of the City for the City to be in compliance with the Permit; and

WHEREAS, in order to accomplish this end, the City Council has caused to be prepared a new Chapter 19 of the Cherry Hills Village Municipal Code, entitled "Stormwater Quality and Control."

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

Section 1. That a new Chapter 19 of the Cherry Hills Village Municipal Code is hereby enacted to read as follows:

**CHAPTER 19**

**Stormwater Quality and Control**

**Sec. 19-1-10. Purpose and objectives.**

The purpose of this Chapter is to regulate non-stormwater discharges to the storm drainage system, as required by federal and state law, and to protect and enhance the quality of watercourses, waterbodies and wetlands in a manner consistent with the federal Clean Water Act. The objectives of this Chapter are:

1. To regulate and diminish the introduction of pollutants to the municipal separate storm sewer system;

ABF554

2. To prohibit illicit connections and discharges to the municipal separate storm sewer system;

3. To establish inspection, observation, and monitoring procedures necessary to ensure compliance with this Chapter;

4. To promote public awareness of the hazards involved in the improper discharge of pollutants into the storm drainage system;

5. To require temporary and permanent storm water runoff controls to be constructed along with development to prevent the deterioration of water quality;

6. To establish provisions for the long-term responsibility for and maintenance of structural storm water control facilities and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained, and do not threaten public safety; and

7. To establish timely and appropriate enforcement actions for violations of this Chapter.

**Sec. 19-1-20. Definitions.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Best Management Practices or BMPs* means the specific management practices used to control pollutants in storm water as set forth in the Urban Storm Drainage Criteria Manual. BMPs are of two types: "source controls" (nonstructural) and "treatment controls" (structural). Source or nonstructural controls are practices, that prevent pollution by reducing potential pollutants at their source before they come into contact with storm water. Treatment or structural controls, such as constructed water quality detention facilities, remove pollutants already present in storm water. Best management practices can either be temporary, such as silt fence used during construction activity, or permanent, such as detention facilities, to control pollutants in storm water.

*City* means the City of Cherry Hills Village.

*City Manager* means the Cherry Hills Village City Manager or his duly authorized representative.

*CDPS* means the Colorado Discharge Permit System.

*Clean Water Act (CWA)* means the Clean Water Act, also known as the Federal Water Pollution Control Act, and including amendments thereto by the Clean Water Act of 1977, 33 U.S.C. section 466 *et seq.*, as amended.

*Colorado Water Quality Control Act* means Title 25, Article 8 of the Colorado Revised Statutes, as amended.

*Commercial* means any business, trade, industry or other activity engaged in for profit.

*Construction* means to make or form by combining or arranging building parts or building elements, including but not limited to road construction and commercial, residential and parks development, and including the initial disturbance of soils associated with clearing, grading, excavating and stockpiling of materials in connection with the same.

*Construction Site* means any location where construction or construction related activity occurs.

**Contaminated** means containing harmful quantities of pollutants that exceed state or federal guidelines.

**Contractor** means any person or firm performing or managing construction work at a construction site or delivering materials to the site, including but not limited to any construction manager, general contractor, subcontractor.

**CDPS Permit** means a permit issued by the State of Colorado under Part 5 of the Colorado Water Quality Control Act (Title 25, Article 8 of the Colorado Revised Statutes) that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable to a person, group or area.

**Development** means any public or private construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure within the jurisdiction of the City, as well as any manmade change or alteration to the landscape, including but not limited to mining, drilling, dredging, grading, paving, excavating and/or filling.

**Discharge** means any addition or release of any pollutant, storm water, subsurface water, groundwater or any other substance whatsoever to the storm drainage system.

**Disturbed Area** means an area of the land's surface disturbed by any work or activity upon the land by means including but not limited to grading; excavating; stockpiling soil, fill, or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include disturbance caused by normal agricultural activities, not including construction activities.

**Domestic Animal Waste** means excrement and other waste from domestic animals, including household pets.

**Domestic Sewage** means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks.

**Drainageway** means any natural or artificial (man-made) channel which provides a course for water flowing either continuously or intermittently to downstream areas.

**Environmental Protection Agency or EPA** means the United States Environmental Protection Agency (USEPA), the regional office thereof, any federal department, agency or commission that may succeed to the authority of the USEPA and any duly authorized official of the USEPA or such successor agency.

**Fertilizer** means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop or a mixture of two or more fertilizers.

**Fire Protection** means any water and any substance(s) or material(s) contained therein, used by any person to control or extinguish a fire or to inspect or test fire equipment.

**Fungicide** means a substance that destroys or inhibits the growth of fungi.

**Garbage** means putrescible animal or vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities and the handling and sale of produce and other food products.

**Groundwater** means any water residing below the surface of the ground or percolating into or out of the ground.

**Harmful Quantity** means the amount of any substance that may cause an adverse impact to the storm drainage system and/or will contribute to the failure of the City to

meet the water quality based requirements of the CDPS/NPDES permit for discharges from the municipal separate storm sewer system.

*Hazardous Substance* means any substance listed in Table 302.4 of 40 CFR Part 302, as amended.

*Hazardous Waste* means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR, Part 261 as amended.

*Herbicides* means a chemical substance used to destroy plants, especially weeds.

*Illegal Discharge* means illicit discharge.

*Illicit Connection* means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system.

*Illicit Discharge* means any discharge to a storm drain system that is not composed entirely of storm water, except discharges pursuant to a CDPS/ NPDES permit, discharges resulting from fire fighting activities, and discharges further exempted by this Chapter.

*Industrial Waste* means any wastes produced as a by-product of any industrial, manufacturing, agricultural, commercial, trade or business activity, as distinguished from domestic or residential waste.

*Mechanical Fluid* means any fluid used in the operation and maintenance of machinery, vehicle(s) and any other equipment including but not limited to lubricants, antifreeze, petroleum products, oil and fuel.

*Mobile Commercial Cleaning* means washing, steam cleaning and any other method of mobile cleaning of vehicles and/or building interiors and/or exterior building surfaces that is engaged in for commercial purposes or related to a commercial activity.

*Municipal Separate Storm Sewer System or MS4* means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the City, that are designed or used for collecting or conveying storm water and that are not a combined sewer or used for collecting or conveying sanitary sewage.

*MSDS* means the Material Safety Data Sheet for hazardous chemicals that is provided at the point of sale of such chemicals under applicable law.

*NPDES* means the National Pollutant Discharge Elimination System under section 402 of the Clean Water Act.

*NPDES Permit* means a permit issued pursuant to EPA authority that allows the discharge of pollutants to navigable waters of the United States or waters of the state, whether the permit is applicable on an individual, group, or area basis.

*Notice of Violation (NOV)* means a written notice detailing any violations of this Chapter and any action expected of the violator(s).

*Oil* means any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, vegetable or animal fat, grease, sludge, oil refuse and oil mixed with waste.

*Owner* means a person having sufficient interest to convey property or having a possessory interest in property. The term "owner" also includes the owner's agent.

*Part of a larger common plan of development or sale* means a contiguous area where multiple separate and distinct construction activities will be taking place at different

times on different schedules under one plan. An example would be a commercial development with multiple separate buildings constructed over the course of multiple construction schedules.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or its legal representative(s), agent(s), or assign(s), including all federal, state and local governmental entities.

*Pesticide* means a substance or mixture of substances intended to prevent, destroy, repel or mitigate any pest.

*Petroleum Product* means a product that is obtained from distilling and processing crude oil that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including motor oil, gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and #1 and #2 diesel.

*Pollutant* means any substance to which water pollution may be attributable, including but not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, septic waste, sewage sludge, rubbish, garbage, solid waste, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, rock, dirt, sand, mud, soil, industrial, municipal and agricultural waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, domestic animal waste, mechanical fluid, oil, motor oil, used oil, grease, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances and hazardous waste.

*Pollution* means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property or public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

*Potable Water* means water that has been treated to federal Safe Drinking Water Act standards and/or is safe for human consumption.

*Private Drainage System* means all privately owned grounds, improved surfaces, structures or systems, excluding the municipal separate storm sewer system, that contribute to or convey storm water, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface.

*Qualified Person* means a person who possesses the required certification, license and appropriate competence, skills, and ability as demonstrated by sufficient education, training and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity and who may, for certain duties, be required to be a professional engineer licensed in the State of Colorado or as required under § 12-25-101, *et seq.*, C.R.S.

*Release* means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the Storm Drainage System.

*Receiving waters* means creeks, streams, rivers, lakes, estuaries or other bodies of water into which surface water and/or treated or untreated waste are discharged, either naturally or in man-made systems.

*Rubbish* means nonputrescible solid waste, excluding ashes that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves and similar materials; and (B) noncombustible

waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

*Sanitary Sewage* means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to the sewage treatment plant for treatment.

*Sanitary Sewer System* means the system of pipes, conduits and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant (and to which storm water, surface water and groundwater are not intentionally admitted).

*Sediment* means soil, mud, dirt, gravel and rocks that have been disturbed, eroded and/or transported naturally by water, wind or gravity, and/or mechanically by any person, vehicle or equipment.

*Septic Tank Waste* means any domestic sewage from holding tanks such as vessels, grease interceptors, chemical toilets, campers, trailers, septic tanks and aerated tanks.

*Site* means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

*Solid Waste* means any garbage, rubbish, refuse, yard waste and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations or from residential, community and institutional activities.

*Storm Drainage System* means all surfaces, structures and systems that contribute to or convey storm water, including private drainage systems, to the municipal separate storm sewer system, and any non-municipal drain or pipe, channel or other conveyance, including natural and man-made washes and ditches for conveying water, groundwater, drainage water or unpolluted water from any source, excluding sewage and industrial wastes, to waters of the state and United States.

*Storm Water* means surface runoff resulting from precipitation and other storm events.

*Storm Water Management Plan or SWMP* means a specific individual construction plan that describes the best management practices (BMPs), as set forth in the Volume 3 of the 1999 Urban Storm Drainage Criteria Manual, as amended, or its successor, that will be implemented at a site to prevent or reduce the discharge of pollutants. The purpose of a SWMP is to identify possible pollutant sources to storm water and to set out BMPs that, when implemented, will reduce or eliminate any possible water quality impacts.

*Urban Storm Drainage Criteria Manual or USDCM* means Volumes 1, 2, and 3 of the 1999 Urban Storm Drainage Criteria Manual, as amended, or its successor, produced by the Urban Drainage and Flood Control District, with volumes 1 and 2 providing guidance for planning and design of drainage way channels and hydraulic structures, and with volume 3 providing guidance for the selection and design of stormwater quality best management practices.

*Surface Water* means water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channeled flow and runoff.

*Toxic* means a substance that is harmful or poisonous according to the MSDS standards.

*Uncontaminated* means not containing harmful quantities of pollutants that exceed state or federal guidelines.

*Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance because of factors beyond reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment, lack of preventive maintenance, or careless or improper operation.

*Wastewater* means any water or other liquid, other than uncontaminated storm water, discharged from a facility or the community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions and industrial establishments, together with any incidental groundwater, surface water and storm water that may be present.

*Waters of the state* means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the state and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

*Waters of the United States* means all waters which are currently used, have been used in the past, or are susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "Waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds or lagoons designed to meet the requirements of the federal Clean Water Act.

*Wetland* means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

*Yard Waste* means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

#### **Sec. 19-1-30. Prohibitions.**

(1) No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated storm water, except as allowed by section 19-3-20. Common storm water contaminants which cannot be released into the storm drainage system include herbicides and lawn chemicals, construction debris and wastes, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, dirt and toxic substances, including but not limited to substances defined above as "pollutants."

(2) The construction, use, maintenance or continued existence of illicit connections to the storm drainage system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) No person shall connect a line conveying sanitary sewage, domestic sewage or industrial waste to the storm drainage system or allow such a connection to continue. Any existing connection shall be removed.

(4) No person shall maliciously damage, destroy or interfere with any best management practices implemented pursuant to this Chapter.

**Sec. 19-1-40. Exemptions.**

The following non-storm water discharges are exempt from the prohibitions established by this Chapter. Meeting exemptions identified in this section does not imply or determine that a CDPS permit is not required.

- (1) Intermittent uncontaminated discharge from landscape irrigation, lawn watering, or irrigation return flows.
- (2) Uncontaminated discharge from foundation, footing or crawl space drains and sump pumps. (Commercial air conditioning condensation and water from commercial cooler drains shall be discharged to the sanitary sewer system only.)
- (3) Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs.
- (4) Diverted stream flows and natural riparian habitat or wetland flows.
- (5) Uncontaminated discharges from the occasional noncommercial or charity washing of vehicles or occasional not-for-profit car washing events.
- (6) De-chlorinated and uncontaminated swimming pools and hot tubs.
- (7) Discharges approved by the authorized public agency as being necessary to protect property and/or public health and safety, such as flows from firefighting.
- (8) Waterline flushing and other infrequent discharges from potable water sources and waterline repair work as necessary to protect public health and safety.
- (9) Street wash water after mechanical cleanup (sweeping) has taken place.
- (10) A discharge authorized by and in compliance with a CDPS or NPDES permit, other than the CDPS permit for discharges from the Municipal Separate Storm Sewer System, provided that written approval has been granted by the City prior to any discharge to the storm drainage system.
- (11) Runoff associated with normal agricultural activities, not including construction activities

**Sec. 19-1-50. Requirements Applicable to Certain Dischargers.**

Process waters generated from any industrial or commercial source, including but not limited to carpet and rug cleaners and mobile commercial cleaning operations, shall not discharge to the storm drainage system without a valid CDPS discharge permit. In the absence of a CDPS discharge permit, substances used in mobile commercial cleaning operations shall be reclaimed via wet vacuum sweeping or other type of containment before they enter the storm drainage system.

**Sec. 19-1-60. Release Reporting and Cleanup.**

Notwithstanding any other requirement of law, as soon as any person responsible for any premises, facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drainage system, the municipal separate storm sewer system, or waters of the state, that person shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City Manager in person or by telephone no later than 24 hours after the release. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the City

Manager within 5 calendar days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

**Sec. 19-1-70. Best Management Practices.**

The owner or operator of a commercial or industrial establishment or of a disturbed area shall provide, at their own expense, reasonable protection from the accidental discharge of pollutants into the municipal separate storm sewer system or waters of the state through the use of structural and non-structural best management practices. Further, any person responsible for premises, which are, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural best management practices to prevent the further discharge of pollutants to the municipal separate storm sewer system.

**Sec. 19-1-80. General Permit Requirements.**

(1) Permit required. It shall be unlawful for any person to conduct any activity resulting in any of the following total disturbed areas without first obtaining a permit pursuant to this section:

- (a) One acre or more
- (b) Less than one acre if such activities are part of a larger common plan of development or sale.
- (c) The City shall also require a permit regardless of the size of the total disturbed area in conjunction with approval of a final subdivision plat, special use permit, building permit or expanded use permit, if the construction activities are adjacent to a watercourse or wetlands..

(2) The following activities are exempt from this section:

- (a) Agricultural land management activities, not including construction activities.
- (b) Maintenance and repair of any stormwater facility, irrigation ditch, watercourse, or related practice deemed necessary by the City Manager.
- (c) Emergency repairs to streets, water, sanitary sewer or other facilities deemed necessary by the City Manager.

(3) Permit application. Applications for permits shall be filed on a form prescribed by the City.

- (a) In support of the application, the applicant shall submit all information required on the City's form and any additional information requested by the City.
- (b) The application shall be signed by all persons responsible for compliance with the permit throughout the permit's validity.
- (c) The application shall include a Storm Water Management Plan (a "SWMP") which must (i) include an erosion and sediment control plan; (ii) include a detailed description of the best management practices to be implemented at the site; and (iii), comply with all standards set forth in this Chapter.

(4) Land disturbance activities shall not proceed until permit approval is received from the City.

(5) **Waste Disposal.** Solid waste, industrial waste, yard waste, rubbish, discarded building materials, chemicals, sanitary wastes and any other pollutants or waste on any construction site shall be controlled through the use of best management practices. Waste containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste, rubbish and other pollutants or toxins that may blow, wash or otherwise be released from the site are prohibited.

(6) Ready-mixed concrete or any materials resulting from the washing or cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained in a designated area on construction sites for proper disposal. All washing-out of concrete mixer truck bowls and chutes and release of these materials in to storm drains is prohibited.

(7) **Erosion and Sediment Control.** Best management practices shall be implemented to prevent the release of sediment from construction sites and development. Disturbed area(s) shall be minimized and disturbed soil, including but not limited to that on construction sites and entrances and exits therefrom, shall be managed to prevent tracking, blowing and fugitive emissions release. Any water used in cleaning operations shall not be disposed into the storm sewer system. Sediment, dirt and mud tracked onto streets shall be removed immediately by sweeping, scooping and shoveling at the owner's expense. Sediment not removed within the specified time limits as stated in a notification will be removed by the City or designated contractor. Such removal costs will be billed to the property owner and, if not paid, become a lien on the property.

(8) **Permit issuance or denial.** The permit may be denied if the applicant fails to provide the information required by this Chapter. If a permit is denied, the applicant shall be notified in writing of the grounds for denial and of the corrective actions that must be taken to obtain a permit.

(9) **Fees.** Fees for any permit required by this Chapter shall be paid per the schedules on the permit form. No permit shall be issued until and unless the fees have been paid in full.

**Sec. 19-1-90. Technical standards and specifications.**

All best management practices designed to meet the requirements of this Chapter shall comply with the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3, as amended, or its successor.

**Sec. 19-1-100. Storm Water Management Plan.**

(1) The Storm Water Management Plan (SWMP) shall be prepared in accordance with the requirements of the most recent SWMP guidance document prepared by Colorado Department of Public Health and Environment.

(2) The area included in the SWMP shall be presumed to include the entire property area, unless the SWMP specifically excludes certain areas from disturbance.

(3) The SWMP must address all phases of development, including but not limited to sanitary sewer and storm drainage system construction, waterline, street and sidewalk construction, grading, installation of other utilities, and the construction of all buildings and landscaping.

(4) The SWMP shall be prepared under the direction of a qualified person, as defined in section 19-1-20 of this Chapter.

(5) The SWMP shall provide the name, address and phone number of the project owner for purposes of correspondence and enforcement.

(6) The SWMP shall specifically describe and provide construction and operational details concerning all best management practices necessary to meet the requirements of this Chapter.

**Sec. 19-1-110. Implementation of Approved Storm Water Management Plans.**

(1) The best management practices set forth in an approved Storm Water Management Plan shall be installed and maintained by a qualified person, as defined in section 19-1-20 of this Chapter.

(2) The owner or its representative shall have the CDPHE approved Storm Water Management Plan on site at all times during construction and shall be prepared to respond to the maintenance requirements of the best management practices required by the Storm Water Management Plan.

(3) The owner or its representative shall inspect all best management practices at least every 14 days, and within 24 hours after any precipitation or snow melt event that causes surface runoff, and when specifically requested by the City. Inspections of best management practices shall be conducted by a qualified person, as defined in section 19-1-20 of this Chapter.

(4) Based upon inspections performed by the owner or by authorized City personnel, modification of the Storm Water Management Plan shall be required if at any time the specified best management practices do not meet the objectives of this Chapter.

(5) If a modification is required, the owner or its representative shall meet and confer with authorized City personnel to determine the nature and extent of modification(s). All approved modification(s) shall be completed in a timely manner, but in no case more than seven (7) calendar days after the inspection showing that modification is needed. All modification(s) shall be recorded on the owner's copy of the Storm Water Management Plan.

(6) Upon completion of a construction project and before a certificate of occupancy or other final approval of the City's Building Official shall be granted, the City shall be provided a written certification signed by a qualified person stating that the completed project is in compliance with the approved Storm Water Management Plan. All applicants are required to submit "as built" plans for any permanent best management practices after final construction is completed. A digital copy of the as-built plans is required in current AutoCAD format. A final inspection by the City is required before the release of any performance securities may occur.

**Sec. 19-1-120. Post-Construction Requirements for Permanent Best Management Practices.**

(1) Owners that are subject to the requirements of this Chapter and that are required to address stormwater runoff quality through the use of permanent best management practices shall maintain those best management practices in perpetuity and in accordance with the requirements of this section.

(a) All permanent best management practices of any site including, without limitation, detention basins, retention basins, ponds, inlets, outlets, outfall ditches, and structures for which the owner thereof or his or her predecessor-in-interest obtained approval from the City for the construction or establishment, shall be maintained in good repair and in substantially the form, condition and nature which was represented at the time they were constructed. It is the intention of this section that such permanent best management practices, having once been approved for construction or development, shall not be allowed to deteriorate to a condition which is in any respect inferior to the condition or state upon which the original approval for construction or development was based.

For purposes of this section, either or both the owner or tenant of the structure or real property shall be considered the responsible party.

- (b) Maintenance of all permanent best management practices shall be ensured through the creation of a formal maintenance covenant that must be approved by the City and recorded against the title of the subject property. The covenant shall be binding on all subsequent owners of land served by the permanent best management practices. As part of the covenant, a schedule shall be developed, detailing when and how often maintenance will occur to ensure proper function of the permanent best management practices. The covenant shall also include plans for periodic inspections by the City to ensure proper performance of the facility between scheduled cleanouts. The covenant shall provide for access to the facility at reasonable times for periodic inspection or any required maintenance by the City, or its contractor or agent, and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Chapter. The covenant shall be memorialized on the subdivision plat, annexation plat, development agreement or other instrument, or in a separate form acceptable to the City and shall be recorded in the office of the county clerk and recorder.
- (2) Inspections of permanent best management practices.
- (a) All permanent best management practices must undergo, at the minimum, periodic inspections by the City, as deemed appropriate by the City Manager, to document maintenance and repair needs and ensure compliance with the requirements of this Chapter and accomplishment of its purposes. These needs may include but are not limited to: the removal of silt, litter and other debris from all catch basins, inlets, ponds and detention/ retention basins, outlet structures and drainage pipes; grass cutting and vegetation removal; and necessary replacement of landscape vegetation. Any maintenance needs found by City inspection or otherwise must be addressed in a timely manner, as determined in writing by the City Manager. The inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the permanent best management practices.
- (b) Inspection programs may be established by the City on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the CDPS stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.
- (c) Parties responsible for the operation and maintenance of a permanent best management practice shall make records of its installation and of all maintenance and repairs, and shall retain the records for at least 2 years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request.

**Sec. 19-1-130. Enforcement.**

(1) Whenever the City Manager has cause to believe that there exists, or potentially exists, in or upon any private premises, any condition that constitutes a violation of this Chapter or any permit issued pursuant to this Chapter, the City Manager shall have the right to request entry upon the private premises at any reasonable time to investigate whether the owner or occupant of the premises is complying with all requirements of this Chapter or such permit. In the event that the owner or occupant refuses entry after a request to enter has been made, the City Manager is hereby empowered to seek assistance from the City Attorney and the Municipal Court in obtaining such entry. Investigation may include, but is not limited to, the following: the sampling of any suspected discharge, the taking of photographs, interviewing of any person having any knowledge related to the suspected discharge or violation and access to any and all facilities or areas within the premises that may have any effect on the discharge or alleged violation.

(2) Whenever the City Manager or his designee finds that any person has violated any provision of this Chapter or any permit issued pursuant to this Chapter, the City Manager may order compliance by written notice of violation. Within the time specified after the date of such notice, the person shall submit to the City Manager evidence of the satisfactory correction of the violation. In addition to or in lieu of the issuance of a written notice of violation, whenever the City Manager or his designee determines that any activity is occurring which is not in compliance with the requirements of this Chapter or any permit issued pursuant to this Chapter, the City Manager may order the activity stopped upon service of written notice upon the responsible owner and/or operator. The owner and/or operator shall immediately stop all activity until authorized in writing by the City Manager to proceed. If the owner and/or operator cannot be located, the notice to stop activity shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any owner and/or operator to fail to comply with any order of the City Manager made pursuant to this subsection.

(3) In the event that a violation of this Chapter or of any permit issued pursuant to this Chapter constitutes an immediate danger to the public health or safety, the City Manager or his designee is authorized to enter upon the subject property, without giving notice, to take any and all measures reasonably necessary to abate the violation.

(4) If the City abates a violation of this Chapter, within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs, by personal delivery or by mail to the last known address of the owner as shown in the records of the county assessor. The notice shall be effective upon the date of mailing or personal delivery. The property owner may file a written protest to the City Manager objecting to the amount of the abatement costs within 15 days of the effective date of the notice.

(5) If no protest is filed, then the charges shall be come due and payable on the date set forth in the notice, which date shall be after the expiration of the time in which to file a protest.

(6) In the event a protest is filed, a hearing considering such protest shall be held before the City Manager or his designee within 30 days from the date of receipt of the written protest. The property owner shall be given notice of the hearing in the manner set forth in subsection (4) of this section. Hearings shall be conducted informally. Rules of civil procedure and evidence shall not determine the conduct of the hearing or the admissibility of evidence. All testimony shall be given under oath, and a tape recording or other evidence of the verbatim content of the hearing shall be made. The burden of persuasion in the hearing shall be upon the protester. The standard of proof to be utilized by the City Manager or his designee in making findings and decisions shall be that of competent evidence. If any charges are upheld upon completion of such hearing, then such charges shall become due and payable 10 days after the issuance of the decision of the City Manager or his designee. The City

Manager's or his designee's decision with respect to any protest may be appealed pursuant to the provisions of subsection (8) of this section.

(7) If the amount due is not paid within 10 days after the decision of the City Manager or his designee or after the expiration of the time in which to file a protest under this Chapter, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The assessment shall be certified by the City Treasurer to the office of the county treasurer for collection in the same manner as the collection of general property taxes.

(8) The City Manager may order City representatives to terminate an illicit connection to the municipal separate storm sewer system. Any expense related to such action by the City or its contractor(s) or agent(s) shall be fully reimbursed by the property owner. If the City terminates an illicit connection, within 30 days after such termination, the owner of the property will be notified of the cost of termination, including administrative costs, by personal delivery or by mail to the last known address of the owner as shown in the records of the county assessor. The notice shall be effective upon the date of mailing or personal delivery. If the property owner fails to pay such cost within the time period stated in the notice, which time period shall not be less than fifteen (15) days after the effective date of the notice, then the charges shall become a special assessment against the property and shall constitute a lien on the property in the amount of the assessment. The assessment shall be certified by the City Treasurer to the office of the county treasurer for collection in the same manner as the collection of general property taxes.

(9) Where necessary or desirable for the reasonable implementation of this Chapter, the City Manager may, by written notice, order any owner of a construction site or subdivision development to post surety, in a form approved by the City Attorney and not to exceed a value determined by the City Manager to be reasonably necessary to achieve consistent compliance with this Chapter. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such surety has been filed with the City.

(10) Except as set forth in subsections (4) and (6) with respect to protests of an amount of abatement costs, any person wishing to appeal any decision, action, assessment, determination or order made and issued by the City Manager or his designee in interpreting, enforcing or implementing the provisions of this Chapter shall file an appeal to the City Board of Adjustment and Appeals within thirty (30) days of the decision, action, assessment, determination or order of the City Manager. Any such appeal shall be determined pursuant to the provisions of section 16-3-30 of this Code.

#### **Sec. 19-1-140. Penalties.**

(1) It is unlawful and an offense for any person to do or perform, or cause or permit to be done or performed, any act which is prohibited or declared to be unlawful by this Chapter or to fail to do or perform, or cause or permit a failure to do or perform, any act required by this Chapter. Further, it is unlawful and an offense for an owner to fail to comply with the requirements of any permit issued pursuant to this Chapter or any order of the City Manager made pursuant to the provisions of section 19-1-130. Violators shall be punishable as provided in Chapter 1, section 1-4-20 of this Code. Each day or part of a day during which any violation occurs or continues shall constitute a separate offense.

(2) Any condition caused or permitted to exist in violation of any of the provisions of this Chapter, or in violation of the provisions of any permit or order issued under this Chapter, is a threat to public health, safety, and welfare and is declared and deemed a public nuisance. Any court of competent jurisdiction may enjoin violations of this Chapter upon proof of such violations. If any person violates any provision of this Chapter or the orders or permits issued hereunder, or discharges into the storm drainage system or into state waters contrary to the provisions of this Chapter, the City may commence an action in a court of record for appropriate legal and equitable relief.

In such action, the City may recover from the defendant reasonable attorney fees, court costs, deposition and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Chapter shall become liable to the City for any expense, loss, or damage to the City or to the storm drainage system occasioned by such violation.

(3) Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan, or other document filed or required to be maintained pursuant to this Chapter, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples permitted or required under this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$1,000.00 per day for each violation and/or imprisonment not to exceed one year or both.

(4) The remedies provided for in this Chapter are cumulative and the exercise of any one or more remedies shall not prejudice any other remedies that may otherwise be pursued for a violation of this Chapter or any order or permit issued under this Chapter. The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**Sec. 19-1-150. Upset condition.**

(1) An upset condition determination constitutes an affirmative defense to an action brought for noncompliance with this Chapter, or with any order or permit issued under this Chapter, when the terms of this Chapter or any order or permit issued under this Chapter are met. An owner who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

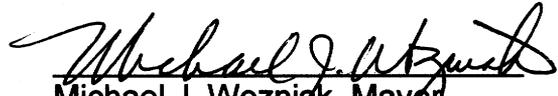
- a. an upset occurred and that the cause(s) of the upset can be identified;
- b. the facility or operation was at the time being properly operated;
- c. notice of the upset was submitted as required in § 19-1-60; and
- d. remedial measures were complied with as required.

(2) Burden of proof. In any enforcement proceeding the one seeking to establish the occurrence of an upset has the burden of proof.

**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 take effect in accordance with the City of Cherry Hills Village Home Rule Charter.

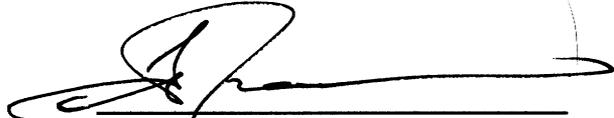
Adopted as Ordinance No. 06, Series 2007, by the  
City Council of the City of Cherry Hills Village,  
Colorado this 4<sup>th</sup> day of April, 2007.

  
Michael J. Wozniak, Mayor

ATTEST:

  
\_\_\_\_\_  
Karen C. Losier, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Thad W. Renaud, City Attorney

Published in The Villager  
Published \_\_\_\_\_  
Legal # \_\_\_\_\_