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CITY OF CHERRY HILLS VILLAGE
2450 EAST QUINCY AVENUE
CHERRY HILLS VILLAGE, CO 80113

ORDINANCE
07/25/2022 08:35 AM RF: \$63.00 DF: \$0.00
Arapahoe County Clerk, CO
Page: 1 of 11
Joan Lopez, Clerk & Recorder

E2078421

ORDINANCE NO. 12
Series 2022

April 5, 2022: Introduced as Council Bill 7, Series 2022 by Mayor Pro Tem Katy Brown, seconded by Councilor Al Blum and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

June 7, 2022: 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 VACATING THE CITY'S INTEREST IN A
PORTION OF THE CREST ROAD RIGHT-OF-WAY LOCATED WITHIN THE CITY OF
CHERRY HILLS VILLAGE, ARAPAHOE COUNTY, STATE OF COLORADO

WHEREAS, Article V of Chapter 11 of the Cherry Hills Village Municipal Code ("Code") sets forth a uniform procedure for the vacation of interests in right-of-way owned or held by the City of Cherry Hills Village ("City"), and supplements the procedures for vacation of rights-of-way provided by Title 43, Article 2, Part 3 of the Colorado Revised Statutes; and

WHEREAS, Jordon and Kimberly Laycob ("Petitioners"), the owners of a property within the City known as 3 Crest Road (the "Property"), submitted to the City a petition to vacate the City's interests in a portion of the Crest Road right-of-way abutting the Property, as further described herein; and

WHEREAS, at its regular meeting on November 17, 2020, City Council determined that the preliminary petition submitted by Petitioners possessed sufficient merit to justify Petitioners' submission of a formal petition for processing in accordance with Article V, Chapter 11 of the Code; and

WHEREAS, on March 3, 2021, Petitioners submitted a formal petition for the City to vacate a portion of the Crest Road right-of-way abutting the Property, as legally described in **Exhibit 1-A** and illustrated on the Improvement Survey Plat in **Exhibit 1-B**, copies of which are attached hereto and incorporated herein (the "Crest Road Right-of-Way"); and

WHEREAS, if the proposed vacation is approved, a portion of the remaining, unvacated right-of-way of Crest Road (the "Remnant ROW Portion") will, due to its narrowness and general configuration, be more easily and efficiently maintained by the Petitioners; and

WHEREAS, at its regular meeting held on February 8, 2022, the Planning and Zoning Commission considered the formal petition for vacation and recommended that City Council approve the proposed vacation subject to conditions that the Petitioners execute a maintenance agreement for the Remnant ROW Portion that will run with the Property in perpetuity and that City Council take into account additional consideration to be consistent with historic city practices; and

WHEREAS, City staff has negotiated with the Petitioners an agreement and license between the City and Petitioners for maintenance of the Remnant ROW Portion that conforms to the recommendation of the Planning and Zoning Commission, a copy of which is attached hereto as **Exhibit 2**; and

WHEREAS, as directed by City Council consistent with Sections 11-5-30(b) and 11-5-40(b)(2) of the Code, City staff has negotiated with the Petitioners a reasonable amount of consideration the Petitioners will pay the City in exchange for the benefit they will receive from the proposed vacation; and

WHEREAS, the Petitioners have provided public notice of the public meetings and public hearings regarding the proposed vacation of the Crest Road Right-of-Way in accordance with applicable law; and

WHEREAS, City Council conducted a public hearing on the proposed vacation of the Crest Road Right-of-Way as required by Section 11-5-50(d) of the Code; and

WHEREAS, City Council finds that vacating the Crest Road Right-of-Way will enhance the City's ability to maintain Crest Road more efficiently and therefore finds, in accordance with Section 11-5-50(f)(1) of the Code, that the vacation of the Crest Road Right-of-Way serves the public interest; and

WHEREAS, City Council desires to approve the vacation of the Crest Road Right-of-Way subject to the conditions set forth herein.

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

Section 1. The recitals set forth above are incorporated herein.

Section 2. Contingent upon Petitioners: (1) paying the City of Cherry Hills Village consideration in the amount of Fifty Thousand Twenty-Eight Dollars and No Cents (\$50,028.00); and (2) executing the agreement and license for maintenance of the city-owned Remnant ROW Portion in substantially the form attached hereto as **Exhibit 2**, the Crest Road Right-of-Way, as legally described in **Exhibit 1-A** and illustrated on the Improvement Survey Plat in **Exhibit 1-B**, and located entirely within the boundaries of the City of Cherry Hills Village, is hereby vacated. The Mayor is authorized to sign the license and maintenance agreement on behalf of the City.

Section 3. In accordance with Section 11-5-60(1) of the Code, ownership of the Crest Road Right-of-Way shall vest with the then-current owners of the Property, as their ownership interests may appear.

Section 4. Following the effective date of this Ordinance, the City Clerk shall file a certified copy of this Ordinance in the real property records of Arapahoe County, Colorado.

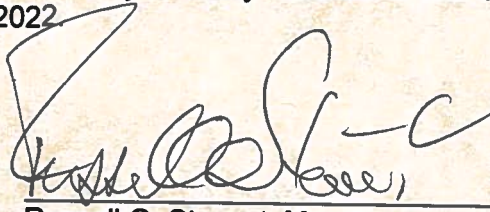
Section 5. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining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

Section 6. Safety. This Ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 7. 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. 12 Series 2022, by the City Council of the City of Cherry Hills Village, Colorado this 7th day of June, 2022

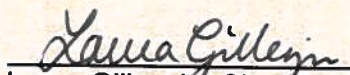
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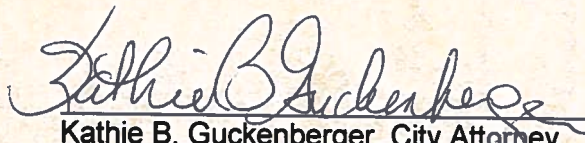


Russell O. Stewart, Mayor

ATTEST:

Approved as to form:



Laura Gillespie, City Clerk

Kathie B. Guckenberger, City Attorney

Published in the Villager
Published: 6-16-22
Legal #: 10808

CITY OF CHERRY HILLS VIL-
LAGE
ADOPTION OF ORDINANCE
ORDINANCE 12, SERIES 2022

A BILL FOR AN ORDINANCE OF
THE CITY OF CHERRY HILLS
VILLAGE VACATING THE CITY'S
INTEREST IN A PORTION OF
THE CREST ROAD RIGHT-OF-
WAY LOCATED WITHIN THE CITY
OF CHERRY HILLS VILLAGE,
ARAPAHOE COUNTY, STATE OF
COLORADO

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

Published in The Villager
Published: June 16, 2022
Legal # 10808

EXHIBIT 1-A

PARCEL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF EAST JEFFERSON ROAD (ALSO KNOWN AS CREST ROAD) AS SHOWN ON THE PLAT OF CHERRY HILLS ANNEX RECORDED AT ARAPAHOE COUNTY, COLORADO IN PLAT BOOK 10 AT PAGE 6 UNDER RECEPTION NO. 457181, SITUATED IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 11, CHERRY HILLS ANNEX, THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 11, SAID LINE ALSO BEING THE NORTH LINE OF EAST JEFFERSON ROAD AS VACATED BY ORDINANCE NO. 5 - SERIES OF 1958, RECORDED IN BOOK 1059 AT PAGE 98, A DISTANCE OF 195.00 FEET MORE OR LESS TO A POINT 100.00 FEET EAST OF THE WEST LINE OF SAID LOT 11, CHERRY HILLS ANNEX, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH ALONG A LINE 100.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 11, CHERRY HILLS ANNEX, AND THE WEST LINE OF VACATED CHERRY LANE DRIVE AS DESCRIBED IN BOOK 1059 AT PAGE 98, A DISTANCE OF 55.00 FEET TO A POINT 5.00 FEET NORTH OF THE NORTH LINE OF LOT 10, CHERRY HILLS ANNEX; THENCE WEST THE FOLLOWING TWO (2) COURSES; 1) THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 86°36'46", A DISTANCE OF 73.35 FEET; 2) THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 08°43'45", A DISTANCE OF 27.37 FEET TO A POINT, SAID POINT BEING ON THE WEST LINE OF SAID LOT 11, CHERRY HILLS ANNEX EXTENDED SOUTH; THENCE NORTH ON A DEFLECTION ANGLE TO THE RIGHT OF 102°06'59" ALONG SAID WEST LINE OF LOT 11, CHERRY HILLS ANNEX EXTENDED SOUTH, A DISTANCE OF 60.50 FEET TO THE SOUTHWEST CORNER OF LOT 11, CHERRY HILLS ANNEX; THENCE ALONG THE SOUTH LINE OF SAID LOT 11, CHERRY HILLS ANNEX THE FOLLOWING TWO (2) COURSES; 1) THENCE EAST ALONG A CURVE TO THE RIGHT, THE TANGENT OF SAID CURVE IS ON AN ANGLE TO THE RIGHT OF 79°17'46" FROM THE LAST DESCRIBED COURSE, ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 191.00 FEET, A CENTRAL ANGLE OF 09°37'14" A DISTANCE OF 32.07 FEET; 2) THENCE EAST A DISTANCE OF 68.13 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING, COUNTY OF ARAPAHOE, STATE OF COLORADO.

CONTAINING 5,728 SQUARE FEET OR 0.131 ACRE MORE OR LESS.

EXHIBIT 2

AN AGREEMENT AND LICENSE BY AND BETWEEN THE CITY OF CHERRY HILLS VILLAGE AND JORDON S. LAYCOB AND KIMBERLY H. LAYCOB FOR MAINTENANCE OF CITY-OWNED RIGHT-OF-WAY

1.0 PARTIES. The parties to this Agreement are the CITY OF CHERRY HILLS VILLAGE, COLORADO, a Colorado home rule municipality (the "City"), and JORDON S. LAYCOB and KIMBERLY H. LAYCOB (individually and together, the "Licensees"). This Agreement is effective upon execution by the Licensees and following execution by the Mayor on the date indicated below.

2.0 RECITALS AND PURPOSE.

2.1. The City is the owner of certain property located in the City of Cherry Hills Village, Arapahoe County, Colorado, commonly known as the right-of-way of Crest Road (the "City's Property"). Upon application and request of the Licensees, the City has recently approved an ordinance vacating a portion of the City's Property adjacent to property owned by the Licensees, said private property being addressed as 3 Crest Road and legally described as Lot 11, Cherry Hills Annex, County of Arapahoe, State of Colorado (the "Licensees' Property"). In accordance with the Cherry Hills Village Municipal Code and Colorado statutes, title to the vacated portion of the City's Property has vested or will vest in the Licensees by operation of such law.

2.2. As a result of the vacation, a portion of the remaining, unvacated right-of-way of Crest Road (the "Licensed Right-of-Way") will, due to its narrowness and general configuration, be more easily and efficiently maintained by the Licensees, and the responsibility of the Licensees, and their successors and assigns, to so maintain the Licensed Right-of-Way, was made an express condition of the City's vacation. The Licensed Right-of-Way is more specifically depicted in Exhibit A, attached hereto and incorporated herein.

2.3. Certain improvements (not owned by the Licensees) - to wit, a vinyl fence - have been previously installed and currently exist upon a portion of the City Property, adjacent to the Licensed Right-of-Way, in the vicinity of the Licensees' Property (collectively, the "Private Improvements"), which Private Improvements serve to demarcate, in part, the boundaries of the Licensed Right-of-Way for purposes of this Agreement.

2.4. The City is willing to grant a revocable license to the Licensees under the terms and conditions as hereinafter specified in this Agreement.

3.0 TERMS AND CONDITIONS.

3.1. In consideration of the City's vacation of a portion of the City's Property, as referenced above, the Licensees' maintenance of the Licensed Right-of-Way, and other good and sufficient consideration herein acknowledged, the parties agree as follows.

32. The above Recitals are incorporated herein as terms and conditions, as if fully set forth herein as such.
33. To provide for and facilitate the Licensees' obligation to maintain the Licensed Right-of-Way, the City hereby grants to the Licensees a revocable license on, over, and across the Licensed Right-of-Way for the limited purpose of maintaining the Licensed Right-of-Way, and the Licensees expressly agree to, and confirm their obligation to, so maintain the Licensed Right-of-Way at no cost or expense to the City.
34. For purposes of this Agreement, "maintaining" the Licensed Right-of-Way shall mean and include mowing, trimming, and providing regular and customary care to, as applicable, any vegetation thereon, as well as removing and disposing of any trash or other debris that may accumulate on the Licensed Right-of-Way, all to a level equivalent to the City's maintenance of the remaining City Property adjacent or proximate to the Licensed Right-of-Way.
35. Except for the encroachment and occupation of the Private Improvements referenced herein, no other encroachment, structure, improvement, vehicle, fence, wall, landscaping, or any other real or personal property shall be erected, installed, constructed, parked, stored, kept, or maintained in any way or fashion on the Licensed Right-of-Way or any other portion of the City Property.
36. The license granted herein, and the Licensees' obligation to maintain the Licensed Right-of-Way, shall continue from the date of this Agreement to the time that this Agreement is terminated by the City, by written notice to the Licensees.
37. The City may, but is not obligated to, require an encroachment license agreement (with maintenance, indemnification/hold harmless, and insurance requirements as, or similar to those, set forth herein) for any private encroachment on any portion of the City's Property from the owner(s) thereof, including the owner(s) of the Private Improvements located adjacent to the Licensed Right-of-Way.
38. The Licensees expressly agree to, and shall, indemnify and hold harmless the City and any of its officers, agents, or employees from any and all claims, damages, liability, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, to the extent caused by the presence or actions (including any omission or act of commission) of the Licensees or their contractors, agents, invitees, or guests on the Licensed Right-of-Way, except for any claims, damages, liability, or court awards arising out of or related to the City's negligence or willful misconduct, for which the City shall remain solely responsible.

39. The Licensees agree that the City is not liable, and will not assume any liability, responsibility, or costs for any damage, maintenance, or repair of the Licensed Right-of-Way or Private Improvements under this Agreement, except for damage resulting from the City's negligence or willful misconduct.
- 3.10 The Licensees agree to procure and maintain, at their own cost, a policy or policies of insurance protecting against injury, damage or loss occurring on the Licensed Right-of-Way in the minimum amount of \$600,000.00 per occurrence. Such policy or policies shall name the City as an "additional insured". However, the Licensees' failure to take such steps to insure the premises shall not waive, affect, or impair any obligation of the Licensees to indemnify or hold the City harmless in accordance with this Agreement.
- 4.0 ASSIGNMENT. This Agreement shall not be assigned by the Licensee without the prior written consent of the City which may withhold its consent for any reason; provided that the City encourages the Licensees to inform any purchaser(s) of the Licensees' Property of the existence of this Agreement and the City will thereafter reasonably consider any request by the Licensees for assignment of this Agreement to such purchaser(s). Notwithstanding the foregoing, this Agreement shall constitute a covenant running with Licensees' Property, in accordance with Paragraph 9.0.
- 5.0 NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or if sent by nationally recognized overnight courier service, certified mail, or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail or overnight courier service or when actually received if personally served.

LICENSEES:

Jordon and Kimberly Laycob
3 Crest Road
Cherry Hills Village, CO 80113

CITY:

City Manager's Office
City of Cherry Hills Village
2450 Quincy Avenue
Cherry Hills Village, CO 80113

with copy to:

Michow Cox & McAskin LLP
6530 S. Yosemite St., Suite 200
Greenwood Village, CO 80111
Attn: Kathie B. Guckenberger

- 6.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.
- 7.0 GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of Colorado and venue for any action arising under this agreement shall be in the appropriate court for Arapahoe County, Colorado.
- 8.0 WAIVER OF BREACH. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
- 9.0 BINDING EFFECT. This Agreement shall constitute a covenant running with the Licensees' Property and shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.
- 10.0 UNDERLYING INTENT AND SCOPE. It is the intent of this Agreement that the City shall incur no cost or expense attributable to or arising from the maintenance of the Licensed Right-of-Way, and that, in all instances, the risk of loss, liability, obligation, damages, and claims associated with such shall be borne by the Licensees, except for loss, liability, obligation, damages, or claims arising out of or related to the City's negligence or willful misconduct. This Agreement does not confer upon the Licensees any other right, permit, license, approval, or consent other than that expressly provided for herein and this Agreement shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance, except as expressly provided herein.

DATED THIS _____ DAY OF _____, 2022.

CITY OF CHERRY HILLS VILLAGE:

By: _____
 Russell O. Stewart, Mayor

ATTEST:

APPROVED AS TO FORM:

 Laura Gillespie, City Clerk

 Kathie Guckenberger, City Attorney

LICENSEES:

Jordon S. Laycob

Kimberly H. Laycob

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022,
personally by Jordon S. Laycob.

Notary Public

(SEAL) My Commission expires: _____

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022,
personally by Kimberly H. Laycob.

Notary Public

(SEAL) My Commission expires: _____

Exhibit A

