

**ORDINANCE NO. 16
Series 2008**

August 5, 2008: Introduced as Council Bill 13, Series 2008 by Councilmember Klasina VanderWerf, seconded by Councilmember Marcia Frew, and considered by the title only on first reading. Passed by a vote of 6 yes and 0 no.

August 19, 2008: Considered in full text on second reading. Passed by a vote of 4 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
ADDING A MANDATORY GASOLINE SURCHARGE FOR VIOLATIONS OF CHERRY
HILLS VILLAGE MUNICIPAL CODE REGULATIONS**

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

WHEREAS, pursuant to Article XX, §6(c) of the Colorado Constitution and Article VII, § 7.1(c) of the Cherry Hills Village Charter, the City shall provide for the powers and duties relating to the municipal court; and

WHEREAS, the City Council passed Ordinance 11 §1 (series of 2007) adopting in part and amending in part the 2003 edition of the Model Traffic Code for Colorado ("MTC") and simultaneously adopting a modified penalty schedule for traffic violations, codified in the Cherry Hill Village Municipal Code (the "City Code") at § 8-1-10, *et. seq.*; and

WHEREAS, pursuant to Section 1701(3) of the MTC, as amended in the City Code, and C.R.S. § 24-4.2-109, the City may impose charges through ordinance that will be assessed on fines imposed for violations of local ordinances; and

WHEREAS, the powers of the municipal court, including the power to assess costs and fees, are set forth in § 2-4-80 of the municipal code; and

WHEREAS, in its provision of public safety services throughout the City, the City of Cherry Hills Village Police Department uses vehicles and incurs costs associated fueling the vehicles with gasoline; and

WHEREAS, as a result of the increased cost of gasoline, the City Council desires to add a gasoline surcharge to the City's schedules of fines imposed for municipal code violations, including violations of traffic regulations; and

WHEREAS, the gasoline surcharge is to be assessed and paid for by any person found in violation of offense within the jurisdiction of the municipal court; and

WHEREAS, the gasoline surcharge will help the City recover the costs associated with increased gasoline prices and, as a result, will help the City provide for the efficient delivery of public safety services to residents, visitors, and travelers; and

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

Section 1. That subsections (5), (6) and (7) of § 2-4-80 of the City Code be renumbered as subsections (6), (7) and (8), respectively, and that a new subsection (5) be added to § 2-4-80 to read as follows:

(5) A gasoline surcharge of ten dollars (\$10.00) shall be imposed for all violations of the City Charter, the City Code or any ordinances of the City, resulting in a conviction, a deferred prosecution, a deferred judgment and sentence, or a plea of guilty or, nolo contendere. When ever a fine is doubled as specified in the City Code, the surcharge shall also be double the amount specified in this subsection. This gasoline surcharge shall be mandatory and be in addition to any other surcharge, fine, or cost imposed by this Code or the court. The surcharge levied by this subsection may not be suspended or waived by the court unless the court determines that the defendant is indigent. As gasoline prices may change over time, the City Council may modify the amount of the surcharge specified in this subsection by resolution.

Section 2. That the following be added to § 8-1-30 of the Cherry Hills Village Municipal Code concerning the deletions and amendments to the MTC:

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1701. Traffic Offenses and infractions classified - penalties

(3.5) (a) A gasoline surcharge of ten dollars (\$10.00) shall be imposed for all violations of the City's traffic regulations, as stated in the City Code and in the MTC, as amended, resulting in a conviction, a deferred prosecution, a deferred judgment and sentence, or a plea of guilty or, nolo contendere.

(b) When ever a fine is doubled as specified in the City Code or the MTC, as amended, the surcharge shall also be double the amount specified in 3.5(a) of this section.

(c) As gasoline prices may change over time, the City Council may modify the amount of the surcharge specified in 3.5(a) of this section by resolution.

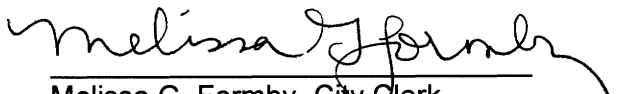
Section 3. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining 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 4. Effective date and time. This Ordinance shall become effective at 12:00 a.m. on the eleventh (11th) day 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. 16 Series 2008, by the City Council of the City of Cherry Hills Village, Colorado this 19th day of August, 2008.


Michael J. Wozniak, Mayor

ATTEST:


Melissa G. Formby, City Clerk

APPROVED AS TO FORM:


Kenneth S. Fellman, City Attorney

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