

**ORDINANCE NO. 18**  
**Series 2008**

August 19, 2008: Introduced as Council Bill 17, Series 2008 by Councilmember Harriet LaMair, seconded by Councilmember Klasina VanderWerf, and considered by the title only on first reading. Passed by a vote of 4 yes and 0 no.

September 16, 2008: 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 A PORTION OF THE CITY'S INTEREST, IF ANY, TO AN EASEMENT**  
**FOR A NON-MOTORIZED PUBLIC TRAIL LOCATED IN LOT 1,**  
**THE BUELL SUBDIVISION, FILING NO. 4, LOCATED IN THE N.W. ¼**  
**OF SECTION 1, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M.,**  
**CITY OF CHERRY HILLS VILLAGE, COLORADO**

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village is expressly authorized to own, possess, and hold real property and to sell and dispose of such real property; and

WHEREAS, Colorado state statutes, at Title 43, article 2, part 3, C.R.S., authorize every municipal governing body to divest the municipality's interest in platted or designated public streets, roads and other public ways in accordance with the municipality's charter and laws; and

WHEREAS, the vacation and disposition of municipal interests in public rights-of-way and other public property is identified by the appellate courts of the State of Colorado as a legislative and discretionary function of the local governing body; and

WHEREAS, pursuant to its Home Rule Charter and state law, the City Council holds the power and authority to specify the terms and conditions under which the City will consider and dispose of public interests in rights-of-way, easements and other property; and

WHEREAS, the vacation of public rights-of-way are governed by Article V of Chapter 11 of the City Code; and

WHEREAS, the owners of property identified as Lot 1, The Buell Subdivision, Filing No. 4, (Sch. #2077-01-2-16-001) have petitioned the City Council for the City's vacation of a slightly irregularly shaped easement for a non-motorized public trail located in Lot 1, which is approximately 2 feet wide and 505 feet in length, for a total area to be vacated of approximately 1,009 square feet, and

WHEREAS, in exchange for such vacation, the owners wish to dedicate to the City an easement for a substitute non-motorized public trail approximately 2 feet wide and 284 feet in length, for a total area to be dedicated of approximately 567 square feet, which shall be located entirely on Lot 1; and

WHEREAS, the vacation and new dedication will change the existing trail on the south side of Lot 1 from one that narrows from 20 feet to 16 feet, to a trail that is approximately 18 feet wide along the full length of the southern lot line; and

WHEREAS, the property has been appraised by Roger Price, SRA, of The Appraisal Company, 1720 South Bellaire Street, Suite 305, Denver, Colorado, and pursuant to the appraisal report dated May 28, 2008 and attached as **Exhibit C** the appraised value of the property to be vacated is \$11,099.00; and

WHEREAS, in that same appraisal report, the appraised value of the property to be dedicated to the City is \$6,237.00; and

WHEREAS, because the vacation of that portion of the easement described herein, and the dedication of the new easement for a non-motorized public trail results in a decrease in the total amount of 442 square feet of public trails in the City, the

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petitioners have agreed to pay to the City the fair market value of that reduction, in the amount of \$4,862.00; and

WHEREAS, the City provided public notice of the proposed vacation in accordance with law; and

WHEREAS, having received a favorable recommendation from the Parks, Trails and Recreation Commission, the Planning and Zoning Commission considered the petition for vacation, found that the vacation will serve the public interest and recommended the proposed vacation be approved; and

WHEREAS, the City desires to vacate the easement for the non-motorized public trail identified in the petition and to accept the easement and payment for a substitute non-motorized public trail as described herein.

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

Section 1. The City Council finds that the easement for a non-motorized public recreational trail on the southerly boundary of the owner's property, would better serve the public if it were a consistent width from one end of the lot to the other, that the vacation of a portion of the easement 2 feet in width, more particularly described and depicted in **Exhibit A**, below, for the non-motorized public trail serves the public interest and is in the best interest of the City of Cherry Hills Village. Based upon such findings, the City's title or claim to ownership of that portion of the easement 2 feet in width described in and depicted in **Exhibit A** for the non-motorized public recreational trail is hereby vacated.

Section 2. The City Council accepts the dedication by petitioners, John J. and Anna M. Sie, of the substitute easement for non-motorized public trail, more particularly described in and depicted in **Exhibit B**, below, subject to the conditions stated in Section 3, below.

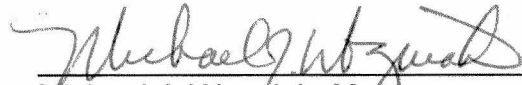
Section 3. In accordance with Section 11-5-30(b) of the City Code for the City of Cherry Hills Village, the City Council conditions the vacation and dedication approved by this Ordinance upon the satisfaction of the following events:

The payment to the City in the amount of \$4,862.00, which represents the fair market value of the reduction of 442 square feet of public trails in the City, as a result of the vacation of the easement referenced herein, and the dedication of the substitute easement.

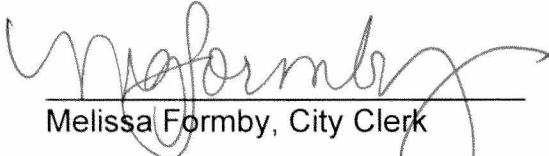
Section 4. Ownership of the City's interest in the portion of the easement for non-motorized public trail vacated by this Ordinance shall vest in accordance with Section 11-5-60 of the City Code and Section 43-3-302, C.R.S. only upon satisfaction of the conditions of approval. Satisfaction of the conditions of approval shall be deemed conclusive upon the City's recording of the following documents with the Arapahoe County Clerk and Recorder's Office: (a) this Ordinance, and (b) the easement for non-motorized public trail.

Section 5. No Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall render the remaining portions or applications of this Ordinance invalid. It is the express intent and declaration of the City Council that the Council would not approve the vacation of the easement vacated hereby without all provisions of this Ordinance being valid and effective.


Adopted as Ordinance No. 18 Series 2008, by the City Council of the City of Cherry Hills Village, Colorado this 16<sup>th</sup> day of September, 2008.

  
Michael J. Wozniak, Mayor

ATTEST:

  
Melissa Formby, City Clerk

APPROVED AS TO FORM:

  
Kenneth S. Fellman, City Attorney

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CITY OF CHERRY HILLS VILLAGE  
ADOPTION OF ORDINANCE  
ORDINANCE 18, SERIES 2008  
  
A BILL FOR AN ORDINANCE OF THE  
CITY OF CHERRY HILLS VILLAGE  
VACATING THE CITY'S INTEREST, IF  
ANY, TO AN EASEMENT FOR A NON-  
MOTORIZED PUBLIC TRAIL LOCATED  
IN LOT 1, THE BUELL SUBDIVISION,  
FILING NO. 4, LOCATED IN THE N.W. 1/4  
OF SECTION 1, TOWNSHIP 5 SOUTH,  
RANGE 88 WEST OF THE 6<sup>TH</sup> P.M.,  
CITY OF CHERRY HILLS VILLAGE,  
COLORADO  
  
Copies of the Ordinances are on file at  
the office of the City Clerk and may be  
inspected during regular business hours.  
  
Published in The Villager  
Published: September 25, 2008  
Legal # 1695