

ORDINANCE NO. 06
Series 2006

September 19, 2006: Introduced as Council Bill 04, Series 2006 by Councilmember Russell Stewart, seconded by Councilmember Scott Roswell, and considered by the title only on first reading. Passed unanimously.

October 17, 2006: Considered in full text on second reading. Passed unanimously.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING THE CHERRY HILLS VILLAGE MUNICIPAL CODE BY
REPEALING AND REENACTING ARTICLE X, CONCERNING CONSTRUCTION
PRACTICES, OF CHAPTER 18, CONCERNING BUILDING REGULATIONS

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 building construction practices for property within the boundaries of the City; and

WHEREAS, the City of Cherry Hills Village is experiencing a significant increase in construction activities in areas of the City that are already predominantly developed; and

WHEREAS, the City Council finds that construction activities in areas of the City that are already predominantly developed have an adverse impact on the health, safety and welfare of residents of the City who reside in the vicinity of such activities; and

WHEREAS, the City Council desires to amend the City Code to better balance the rights of individuals to construct improvements on their property against the rights of individuals who reside in the vicinity of construction projects.

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

Section 1. Article X, concerning construction practices, of Chapter 18, concerning building regulations, of the Cherry Hills Village Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

Section 18-10-10. Applicability and intent.

(a) Applicability.

(1) This article shall apply to all construction activity within the City.

(b) Intent.

(1) It is the City's intent by the adoption of this Article to reasonably minimize the detrimental health, safety and general welfare impacts of construction activities on the residents of the community and to ensure that each construction activity is conducted in such a manner so as to avoid unnecessary inconvenience and annoyance to the general public and the occupants of neighboring property

Section 18-10-20. Definitions.

For purposes of this Article and unless the context clearly indicates otherwise, certain terms and words used herein shall be interpreted as follows:

The present tense includes the future tense, the singular number includes the plural and the plural number includes the singular.

“Construction activity” means any site preparation, landscaping, building construction, sign erection, paving, fencing, planting or other improvement or modification of any real property or existing improvement thereon that requires a building or other permit from the City pursuant to this Chapter or Chapter 16 of this Code; provided, however, that any work being conducted pursuant to a permit issued for a project consisting solely of electrical work or plumbing work or mechanical work shall not be considered a construction activity for purposes of Sections 18-10-30 and 18-10-40 of this Article.

“Construction site” means all of a real property, as defined by its boundary lines, over any part of which there is a construction activity, along with the public or private right-of-way adjacent to such property.

“Construction site facilities” means a portable toilet, a trash receptacle or dumpster, and any other structure or facility erected or installed as a job office, material storage facility, or other facility or installation on or within a construction site that is used for or in connection with a construction activity or that is required to be depicted on a construction staging plan pursuant to this Article.

“Construction staging plan” means a site plan of a construction site that shows the location for all construction site facilities and all other items that are required to be shown on such plan pursuant to the requirements of this Article.

“Construction vehicle” means any car, truck, tractor, trailer or other vehicle or equipment of any type that is used to perform any part of a construction activity or to transport equipment, supplies or workers to a construction site.

“Right-of-way” means any street, way, place, alley, easement, median, parkway, or boulevard, whether public or private, the principal purpose of which is the provision of vehicular access to real property.

“Vehicle tracking control” means an effective method or methods of preventing vehicles from tracking soil, mud or gravel from a construction site to a right-of-way, which method or methods may include, but be not limited to, the use of temporary paving or a washing or mud clearing station.

Section 18-10-30. Administration.

(a) A construction staging plan shall be submitted along with the application for a permit for any construction activities. It shall be unlawful to perform, or for the owner of any construction site to allow to be performed, any construction activity prior to (i) the issuance of a building or other permit from the City pursuant to this Chapter or Chapter 16 of this Code, and (ii) the City’s full approval of the construction staging plan.

(b) The construction staging plan shall be subject to the review and approval of the City Manager or his/her designee. Such review shall be conducted to ensure that the construction activities will be conducted in compliance with the requirements of this Article; provided, however, that if the City Manager or his/her designee determines that a deviation of a construction staging plan from the requirements from this Article will result in no greater adverse impacts on adjacent properties than would occur if the plan were to fully comply with the provisions of this Article, then the City Manager or his/her designee may approve the plan in his/her reasonable discretion.

(c) The City Manager or his/her designee may impose reasonable conditions upon any approval of a construction staging plan to ensure that the construction activities will be conducted in compliance with the requirements of this Article.

(d) A construction staging plan may be modified or amended upon the written approval of the City Manager or his/her designee. Any modification to or

amendment of a construction staging plan shall be reviewed and approved under the same standards, and shall be subject to the same conditions, as are set forth in this section for the review and approval and conditioning of the initial construction staging plan.

Section 18-10-40. Construction staging plan.

(a) The construction staging plan shall include all of the following information:

(1) a to-scale, accurate depiction of all existing and proposed improvements;

(2) a to-scale, accurate depiction of the location of all construction site facilities and, when applicable, a description of construction site facilities, including but not limited to the following:

a. Portable toilets.

1. Except for construction sites that contain an operable, permanent toilet that is made available for the use of every construction worker, at least one portable toilet shall be provided on each construction site and the location of such portable toilet shall be shown on the construction staging plan. For a residential construction site, no more than one (1) portable toilet may be located on the site.

2. A portable toilet shall not be located within any right-of-way.

3. Every portable toilet shall be reasonably screened from the view of adjacent properties and right-of-ways and in no event shall a portable toilet be located within ten (10) feet of any property line.

4. Every portable toilet shall at all times be maintained in a sanitary and odor-free condition.

b. Trash receptacles and dumpsters.

1. A trash receptacle and/or dumpster of a size adequate to contain the construction waste materials anticipated in connection with a construction activity shall be provided on each construction site to contain solid waste materials and the location of such trash receptacle and/or dumpster shall be shown on the construction staging plan. Liquid and hazardous waste materials shall be disposed of at a proper waste depository.

2. Trash receptacles or dumpsters shall not be located within any right-of-way and in no event shall a trash receptacle or dumpster be located within five (5) feet of any side or rear property line.

3. Trash receptacles and dumpsters shall at all times be maintained in an odor-free condition and in such a manner as to prevent waste materials from being blown out of them. Trash receptacles and dumpsters shall be emptied on a regular basis so as to comply with the requirements of this subsection.

c. Construction trailers.

1. Temporary construction trailers shall be permitted, operated and maintained in accordance with the provisions of Section 16-16-70 of this Code. If a temporary construction trailer is to be used on a construction site, its location shall be depicted on the construction staging plan.

d. Vehicle tracking control.

1. No construction vehicle shall track soil, mud or gravel off of a construction site and onto a right-of-way. Vehicle tracking control shall be used at ingress and egress points on all construction sites that have the potential for construction vehicles to track soil, mud or gravel off of a construction site and onto a right-of-way.

2. The construction staging plan shall depict the location for, and describe the type of, vehicle tracking control that will be utilized for the construction site.

e. Silt fencing.

1. Silt fencing shall be placed downgrade of all areas of a construction site that are to be disturbed and that have the potential for sediment to be transported off of a construction site by run-off and the location and type of such silt fencing shall be shown on the construction staging plan.

2. A minimum of nine inches (9") of the bottom of the silt fence shall be anchored using gravel or dirt.

f. Parking. For purposes of this subsection, "gross lot area" shall have the meaning set forth in Section 16-1-10 of this Code for the terms "Lot, gross area."

1. The locations of all parking and loading/unloading areas for construction vehicles associated with a construction site shall be shown on the required construction staging plan.

2. For any lot, parcel or other real property that contains one (1) or more acres of gross lot area, the parking of construction vehicles shall occur only within the boundaries of such lot, parcel or other real property. It shall be unlawful for any construction vehicle associated with any lot, parcel or other real property that contains one (1) or more acres of gross lot area to be parked within a right-of-way.

3. For any lot, parcel or other real property that contains less than one (1) acre of gross lot area, the parking of construction vehicles shall occur only within the boundaries of such lot, parcel or other real property if reasonably feasible.

4. In the event that the parking of construction vehicles within the boundaries of lot, parcel or other real property containing less than one (1) acre of gross lot area is not reasonably feasible, the construction staging plan may provide:

i. That the parking area shall be located within the right-of-way area that is immediately adjacent to the subject property and not adjacent to any other property; and

ii. That vehicular access on the right-of-way shall be maintained at a minimum width of twenty feet (20') (for emergency response purposes) assuming the contemporaneous use of the right-of-way for the parking of vehicles immediately across the right-of-way from the area in which the construction vehicles are to be parked. In the event that such minimum width cannot be maintained, the parking of construction vehicles shall not occur within the right-of-way.

It shall be unlawful for any construction vehicle associated with such lot, parcel or other real property to be parked within a right-of-way except to the extent that the parking within a right-of-way is in conformance with the approved construction staging plan.

5. The construction staging plan shall make provision for parking at remote locations that are not within a right-of-way within the City in the event that the number of anticipated construction vehicles exceeds the parking capacity of the site.

g. Temporary construction fencing.

1. Any temporary construction fencing shall be shown on the required construction staging plan.

2. Temporary construction fencing shall be provided for any below-grade construction in excess of thirty inches (30") that is unattended or open overnight.

3. Temporary construction fencing shall not exceed six feet (6') in height and may be opaque so as to provide additional screening of the construction site.

4. Temporary construction fencing may not be located in a right-of-way.

h. Construction material storage.

1. Construction material storage areas shall be designated on the required construction staging plan.

2. Construction materials shall not be stored in any right-of-way.

3. Construction materials shall be reasonably screened from view of adjacent properties and right-of ways

4. In no event shall construction materials be stored within five feet (5') from any property line.

i. Storage of fill or excavated dirt.

1. The location of storage sites for any fill or excavated dirt shall be indicated on the construction staging plan.

2. Any fill or excavated dirt shall be maintained in a manner so as to prevent dust from blowing on adjacent properties, which manner may include, but need not be limited to, the periodic watering of the piles.

3. Silt fencing around piles of fill or excavated dirt may be required under the provisions of subpart e of this Section.

4. All excess fill or excavated dirt shall be removed promptly upon completion of the project; and

(3) Photographs of all improved portions of any public right-of-way that are within five hundred (500) feet of any point of vehicular access to a construction site.

Section 18-10-50. Construction site maintenance and operation and duty to repair public right-of-ways.

(a) Contractors, subcontractors, and persons holding permits to perform construction activities, and the owners of construction sites, shall cause the construction site to be maintained in a neat and orderly condition that is free from any debris, garbage, junk, used or discarded construction materials, trash, or any other foreign substance produced as a result of the construction project other than debris, garbage, junk, trash or other foreign substance deposited into and contained within a trash receptacle or trash dumpster.

(b) Notwithstanding any provision of this Article, all construction activities and construction sites shall be subject to the provisions of Chapter 7 of this Code, including, but not limited to, those provisions concerning noise.

(c) Contractors, subcontractors, persons holding permits to perform construction activities, and the owners of construction sites shall, at the direction of the City Manager or his/her designee, either repair or reimburse the City for its costs incurred to repair, any damage to any public right-of-way that is caused by a construction vehicle.

Section 18-10-60. Construction times.

(a) Construction work may be performed with the following restrictions:

(1) Construction work shall be performed only between the hours of 7:00 a.m. and 6:00 p.m. during the weekdays, Monday through Friday.

(2) Construction work shall be performed only between the hours of 8:00 a.m. and 4:00 p.m. on Saturdays. There shall be no construction work of any kind outside of fully enclosed areas on Sundays or Federal legal holidays. Construction work within a fully enclosed area on Sundays or Federal legal holidays shall be performed only between the hours of 8:00 a.m. and 4:00 p.m.

(3) Construction vehicles or construction delivery trucks shall not park and leave their engines idling between the hours of 6:00 p.m. and 8:00 a.m.

Section 18-10-70. Enforcement.

(a) Upon a complaint or observation by the City of a violation of this Article, or upon a determination by the City that a construction site is not being maintained or operated in strict conformance with the provisions of an approved construction staging plan, the City shall provide written notice to the contractor or person performing the work on the construction site, as well as mailed notice to the owner of record of the construction site, specifying the specific conditions that are deemed in violation of this Article or the approved construction staging plan and demanding that the construction site be brought into compliance with this Article or such plan within twenty-four (24) hours; provided, however, that no such notice is required if the City Manager or his/her designee determines that the immediate cessation of the violation or failure to comply with an approved construction staging plan is necessary to preserve health or safety.

(b) In the event of a violation of any provision of this Article, or in the event that the City determines that a construction site is not being maintained or operated in strict conformance with the provisions of an approved construction staging plan, or in the event that reasonable steps have not been undertaken within the twenty-four (24) hour period referenced in subsection (a) above to bring a site into compliance with any provision of this Article or such plan after notice as provided in subsection (a) above, or without prior notice in the event of a second violation of the same provision of this Article or a second failure to operate in strict conformance with the same provision of an approved construction staging plan, the City may, at its discretion:

- (1) Issue a stop work order;
- (2) Withhold any certificate of occupancy for any improvement on the construction site;
- (3) Withhold any required construction or building inspection approvals;
- (4) Reject any necessary acceptance by the City of construction or improvements;
- (5) Prosecute the violation in accordance with the City's laws governing nuisances or as a violation of this Code pursuant to Section 1-4-10 of this Code; and/or
- (6) Remedy the conditions that are deemed in violation of this Article or the approved construction staging plan and assess the costs incurred by the City to bring the construction site into compliance with this Article as a lien against the subject property, subject to collection in the same manner as unpaid property taxes.

(c) In the event that the City remedies the conditions deemed in violation of this Article or the approved construction staging plan, the cost for the City to perform such work shall be five hundred dollars (\$500), exclusive of any costs attributable to vehicle or equipment time, or the actual cost of remediation of the violation, whichever is greater. The failure to pay an assessment imposed by the City for City costs incurred to bring the construction site into conformance with this Article or such plan within seven (7) days shall cause all building permits for the construction site to expire. Provided that full payment of such assessment is made and all other applicable requirements for the issuance of a building permit are satisfied, a new permit may be obtained upon application and payment of the building permit fee calculated on the valuation of the remaining work.

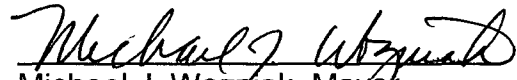
(d) Any and all construction site facilities shall have been removed from the construction site at such time as the subject improvement is issued a certificate of occupancy or completion, or within 10 days after the construction activity has ceased, whichever first occurs.

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 be declared invalid.


Section 3. Repeal. The repeal of any ordinance or parts of ordinances of the City of Cherry Hills Village shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and the repeal set forth in this Ordinance shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 4. 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 2006, by the City Council of the City of Cherry Hills Village, Colorado, and signed and approved by its Mayor and Presiding Officer this 17th day of October, 2006.

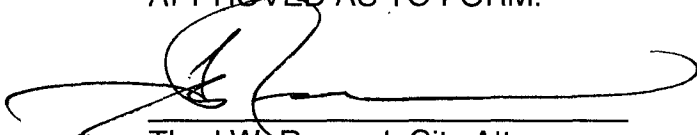

Michael J. Wozniak, Mayor

ATTEST:



Karen Losier, CMC, City Clerk

APPROVED AS TO FORM:



Thad W. Renaud, City Attorney

Published in the Villager
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