

ORDINANCE NO. 3

Series 2021

March 16, 2021: Introduced as Council Bill 3, Series 2021 by Mayor Pro Tem Katy Brown, seconded by Councilor Randy Weil and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

April 20, 2021: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
REPEALING AND RE-ENACTING ARTICLE I OF CHAPTER 8 OF THE CHERRY HILLS
VILLAGE MUNICIPAL CODE ENTITLED MODEL TRAFFIC CODE CONCERNING VEHICLES
AND TRAFFIC, ADOPTING BY REFERENCE THE 2020 EDITION OF THE MODEL
TRAFFIC CODE FOR COLORADO, WITH CERTAIN AMENDMENTS, AND ADOPTING
PENALTIES FOR VIOLATIONS THEREOF**

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 its home rule authority and C.R.S. §§ 31-15-401 and 42-4-110(1)(b), the City is authorized to adopt and enforce police power regulations in furtherance of the health, safety, and welfare of its citizens, and specifically, to adopt a model traffic code that encompasses the rules of the road and vehicle requirements set forth in Article 4 of Title 42, C.R.S.; and

WHEREAS, the City is authorized to adopt any appropriate Colorado statute or any standard published codes pursuant to Section 4.6 of the City's Charter and C.R.S. §§ 31-16-201 *et seq.*; and

WHEREAS, the City Council of Cherry Hills Village previously adopted by reference the 2010 edition of the Model Traffic Code for Colorado, as amended and codified in Article I of Chapter 8 of the Cherry Hills Village Municipal Code; and

WHEREAS, the State of Colorado Department of Transportation has promulgated a 2020 edition of the Model Traffic Code for Colorado (hereinafter "2020 Model Traffic Code"), which the City Council desires to adopt to remain consistent with changes in the Model Traffic Code; and

WHEREAS, the City's Police Department has reviewed and recommends adoption of the 2020 Model Traffic Code, as amended herein; and

WHEREAS, the City Council hereby finds that adoption of the 2020 Model Traffic Code is necessary for the protection of the health, safety, and welfare of the public and desires to adopt such code by reference, as amended and set forth herein, and to adopt penalties for violations thereof; and

WHEREAS, prior to adoption of this Ordinance, a public hearing was duly noticed and held as required by law.

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

Section 1. Article I of Chapter 8 of the Cherry Hills Village Municipal Code, entitled "Model Traffic Code," is hereby repealed in its entirety and re-enacted to read as follows:

ARTICLE I - Model Traffic Code

Sec. 8-1-10. - Short title.

This Article may be known and cited as the *Model Traffic Code*.

Sec. 8-1-20. - Adoption.

Pursuant to Title 31, Article 16, Parts 1 and 2 (Section 31-16-101, *et seq.*, and Section 31-16-201, *et seq.*), C.R.S., there is hereby adopted by reference the 2020 edition of the *Model Traffic Code*, promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 2829 West Howard Place, Denver, CO 80204. The subject matter of the *Model Traffic Code* relates primarily to comprehensive traffic control regulations for the City. The purpose of this Article and the *Model Traffic Code* adopted herein is to provide a

system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the State. At least three (3) copies of the *Model Traffic Code* adopted herein are now filed in the office of the City Clerk and may be inspected during regular business hours.

Sec. 8-1-30. - Deletions and amendments.

The 2020 edition of the *Model Traffic Code* is adopted as if set out at length, save and except the sections or subsections that shall be subject to the following amendments and additions:

- (1) All references to Class 1 and 2 and Class A and B are hereby deleted.
- (2) Because Section 110.5 of the *Model Traffic Code* is codified in state law as Section 42-4-110.5, C.R.S., Section 110.5 of the *Model Traffic Code* is hereby deleted and replaced to read in full as follows:

110.5. Red-light cameras.

- (1) The City is hereby authorized to use red-light cameras at signalized intersections within the City to detect violations of Section 603 of the Model Traffic Code.
- (2) As used in this Section:
 - (a) 'Red-light camera' means a device operated by a peace officer that is placed in a fixed location at a signalized intersection and that is programmed to automatically produce a photograph of any vehicle whose driver has violated Section 603 at that intersection; and
 - (b) 'Peace officer' means an officer of the Police Department or a contractor designated by the City.
- (3) The photograph produced by a red-light camera shall depict the vehicle's location, license plate and driver. Printed on the photograph shall be the date of the violation, the approximate time of the violation and the approximate location of the violation.
- (4) When a peace officer, based on evidence obtained in whole or part by means of a red-light camera, has probable cause to believe that a vehicle has been driven in violation of Section 603, the peace officer may issue, or cause to be issued through a contractor designated by the City, a summons and complaint charging the person in whose name the vehicle is registered with a violation of Section 603. If, however, the vehicle is registered in more than one person's name, the summons and complaint shall be issued to the registrant who the issuing peace officer determines, under all the facts and circumstances, was the person most likely depicted in the photographs produced by the red-light camera. The summons and complaint shall contain the signature, or reasonable facsimile thereof, of the peace officer issuing the summons and complaint.
- (5) To obtain personal jurisdiction in the Municipal Court over the charged person, a copy of the summons and complaint must be personally served upon the charged person, or, in lieu of such personal service, by leaving a copy of the summons and complaint at the charged person's usual place of abode with some person over the age of eighteen (18) years residing therein, or by mailing a copy to the charged person's last known address by certified mail, return receipt requested, within ninety (90) days after the alleged violation occurred and not less than five (5) days prior to the time the charged person is required, pursuant to the summons and complaint, to appear in court. The person charged may waive service of the summons and complaint by voluntarily submitting to the Municipal Court's jurisdiction through payment of a fine or other affirmative act constituting a waiver of service.
- (6) When a person is served with a summons and complaint under this Section, the person shall:
 - (a) If admitting the charge, complete the summons and complaint form by providing his or her driver's license number and other information requested in the form, and return the completed form, together with payment of the fine assessed, to the Municipal Court on or before the time specified in the summons and complaint for the charged person to appear; or
 - (b) If contesting the charge, appear on the date and time specified in the summons and complaint for arraignment.
- (7) Proof that a particular vehicle violated Section 603 as detected by a red-light camera and as shown by the photographs produced by the red-light camera, together with proof that the particular vehicle is registered in the charged person's name, shall raise the evidentiary presumption and constitute *prima facie* evidence of the fact that the

charged person was the person driving the vehicle depicted in the photograph. However, such evidence and presumption may be rebutted by the presentation of any probative and competent evidence that the charged person was not the driver shown in the photograph. The City may not require a registered owner of a vehicle to disclose the identity of a driver who was detected by the use of the red-light camera. However, the owner may be required to submit evidence that the owner was not the driver at the time of the alleged violation.

- (8) In any proceeding under this Section, any photograph produced by a red-light camera concerning the violation shall be admissible in court as *prima facie* evidence of a violation of Section 603, provided that the peace officer who activated and tested the red-light camera prior to the photographs being taken testifies as to the placement of the red-light camera and the accuracy of the scene depicted in the photographs, and further testifies that he or she tested the red-light camera for proper operation within a reasonable period of time both before and after the taking of the photographs. Also, to be admissible, the photographs must be of a sufficient quality to permit identification of the driver of the vehicle.
- (9) In any proceeding under this Section, the Municipal Court may impose as an additional cost the cost of service of the summons and complaint upon the defendant if such service is effected through either certified mail or personal service. If the defendant is personally served, the Municipal Court may only charge the actual costs of service that shall be no more than the amount usually charged for civil service of process.
- (10) The maximum penalty for a violation of Section 603 that is detected by a red-light camera shall be seventy-five dollars (\$75.00), including surcharges, court costs, or any other charges the court may impose.
- (11) The City shall not report to the Department of Revenue: (i) any conviction or entry of judgment; or (ii) for purposes of section 42-2-107(5) or 42-2-118(3), C.R.S., any outstanding judgment or warrant based on a violation of Section 603, which was detected exclusively by means of a red-light camera.
- (12) The City shall post a sign in accordance with section 42-4-110.5, C.R.S. in a conspicuous place at a reasonable distance before the area in which the red-light camera is to be used, notifying the public that a red-light camera is in use immediately ahead.
- (13) If a driver fails to pay a penalty imposed for a violation detected using a red-light camera, the City shall not attempt to enforce such a penalty by immobilizing the driver's vehicle.
- (3) Section 115, entitled, "Information on traffic law enforcement - collection - profiling - annual report -repeal" is hereby deleted and replaced with the following Section 115 to read as follows:

115. Authority of Police Department officers.

Officers of the Police Department, or such special officers as are assigned by the Chief of Police, are hereby authorized to direct all traffic by voice, hand or signal in conformance with state traffic laws and this Code, provided that, in the event of fire or emergency or to expedite traffic or protect pedestrians, officers of the Department, and other special officers as are assigned by the Chief of Police, may direct traffic as conditions may require notwithstanding the provisions of the state traffic laws or this Code.

- (4) Subsections 507(2)(b), 507(2)(b.5) and 507(2)(c) of the *Model Traffic Code* are hereby amended to read as follows:

507. Wheel and axle loads.

- (2)(b) Except as provided in paragraph (b.5) of this subsection (2), when the wheel attached to a single axle are equipped with pneumatic tires, eighteen thousand (18,000) pounds.
- (2)(b.5) When the wheels attached to a single axle are equipped with pneumatic tires and the vehicle is a digger derrick or bucket boom truck operated by an electric utility on a highway, nineteen thousand (19,000) pounds.
- (2)(c) When the wheels attached to a tandem axle are equipped with pneumatic tires, thirty thousand (30,000) pounds
- (5) Subsection 508(1)(a.5) is hereby added to the *Model Traffic Code* to read as follows:

508. Gross weight of vehicles and loads.

(1)(a.5) The gross weight of a vehicle having three or more axles shall not exceed forty-six thousand (46,000) pounds.

(6) A new Section 513 is hereby added to the *Model Traffic Code* adopted in this Article to read as follows:

513. Weight limits on certain streets or parts thereof.

When official signs are erected giving notice thereof, no person shall operate any vehicle with a weight limit in excess of the amounts specified on such signs at any time upon any of the streets or parts thereof or upon any of the bridges or viaducts.

(7) Subsection 901(1)(a) of the *Model Traffic Code* is hereby amended to read in full as follows:

901. Required position and method of turning.

(1)(a) **Right turns.** Both the approach for a right turn and the right turn shall be made as close as practicable to the right-hand curb or edge of the roadway. Unless double-turn lanes are clearly marked by official signs, it shall be unlawful for the driver of a vehicle to make a right turn into any traffic lane other than the right-most lane of traffic of the road onto which the turn is made.

(8) A new Section 1214 is hereby added to the *Model Traffic Code* to read as follows:

1214. Parking for certain purposes prohibited.

(1) No person shall park a vehicle upon a roadway for the principal purpose of:

- (a) Painting, servicing or repairing such vehicle except repairs necessitated by an emergency; or
- (b) Displaying advertising.

(2) As used in this section, the term 'semi-trailer' and the term 'laden truck tractor' shall have the meaning as set forth in the *Model Traffic Code* adopted in this Article.

(3) No laden truck tractor with a total gross vehicle weight of twenty-five thousand (25,000) pounds or more or any truck tractor shall be parked on any street in the City for more than thirty (30) minutes between the hours of 6:00 P.M. and 7:00 A.M.

(4) It shall be unlawful for any person to park or store any semi-trailer in or upon any public street or highway in the City when such semi-trailer is not attached to a truck tractor.

(5) Vehicles for sale.

- (a) No person shall park a vehicle upon private property for the principal purpose of displaying such vehicle for sale.
- (b) It shall be unlawful for the owner of any property located within Cherry Hills Village to allow vehicles owned by others to be parked on such property for the principal purpose of being offered for sale.
- (c) Whenever a parked vehicle displays a sign or message indicating that it is being offered for sale, such display shall be prima facie evidence that the vehicle is parked for the principal purpose of being displayed for sale.
- (d) For purposes of this section 1203(5) only, the term 'vehicle' shall include any device capable of being moved from place to place upon wheels or tracks, as well as devices capable of being moved on or through water or air, such as boats and airplanes.
- (e) No person shall park a vehicle upon a roadway, street, alley, sidewalk or sidewalk area, in a park or in any publicly owned parking area within Cherry Hills Village for the principal purpose of displaying such vehicle for sale.

(6) No person shall park any vehicle upon a street or highway in such a manner or under such conditions as to interfere with the free movement of vehicular traffic or proper street or highway maintenance.

(7) It shall be unlawful for any person to park or stand a vehicle, whether occupied or not, other than temporarily for the purpose of, and while actually engaged in, loading or unloading in a private driveway or on private property without the express or implied consent of the owner or person in lawful possession of such driveway or property.

(8) Parking of travel homes.

- (a) It shall be unlawful for any person to park or store one or more travel homes in

the front yard area of property or on any public street, highway, road, alley or other right-of-way for a period of time in excess of twenty-four (24) hours. It is lawful to park or store travel homes, trailers or boats in other areas of the property if they are screened from view from public thoroughfares. Screening may be in the form of fencing, landscaping or other opaque materials. For purposes of this section, 'travel home' shall mean and shall include, but not be limited to, a vehicular portable structure built on a chassis, either towed or self-propelled, designed to be used as a temporary dwelling for travel and recreational purposes, having a body width not exceeding eight (8) feet.

- (b) It shall be unlawful for any person to relocate or otherwise move a travel home to a new location from the travel home's original parked location in an attempt to circumvent or evade the provisions of (8)(a) above.

- (9) A new Section 1215 is hereby added to the *Model Traffic Code* adopted in this Article to read as follows:

1215. Presumption in reference to illegal parking.

In any prosecution charging a violation of any provision of this *Model Traffic Code* governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such regulation, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

- (10) Section 1406(5) of the *Model Traffic Code* is hereby deleted.

- (11) Section 1701 of the *Model Traffic Code* is hereby deleted.

- (12) Section 1705 of the *Model Traffic Code* is deleted and replaced with the following:

1705. Person arrested for violation.

Whenever any person is arrested by a police officer for any violation of this code, the Cherry Hills Village Police Department will follow its policies and procedures and this code as they pertain to summons and complaint and bond issues.

- (13) Section 1707 of the *Model Traffic Code* is deleted and replaced with the following:

1707. Summons and complaint for traffic violations.

- (1) Whenever a person commits a violation of this Article or any statute and such person is not required by the provisions of section 1705 to be arrested and taken without unnecessary delay before a municipal judge, the peace officer may issue and serve upon the defendant a summons and complaint which shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the *Model Traffic Code* section alleged to have been violated, a brief description of the offense, the date and approximate location thereof, and the date the summons and complaint is served on the defendant; shall direct the defendant to appear in or otherwise respond to the City Municipal Court, at a specified time and place; shall be signed by the peace officer; and shall contain a place for the defendant to execute a written promise to appear at the time and place specified in the summons portion of the summons and complaint.
- (2) The City of Cherry Hills Village may offer or extend to a defendant the opportunity for the defendant to pay a penalty assessment for a non-criminal traffic infraction prior to the date and time scheduled for the defendant's appearance in the City Municipal Court. Whenever a penalty assessment is made available for a traffic infraction, the defendant shall be required to execute a signed acknowledgment of guilt and shall pay the penalty prescribed by the City within a specified period of time, as well as provide such other information as may be required by the City. Payment of a penalty assessment notice by the person to whom the notice is tendered shall constitute an acknowledgement of guilt by such person of his or her violation of the offense stated in such notice and shall be deemed a complete satisfaction for the violation, and the City, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof, if requested.

- (14) Subsection (3) of Section 1709 is hereby deleted.

Sec. 8-1-40. - Application.

This Article shall apply to every highway, street, road, avenue, alley, sidewalk, driveway, park and to every other public place or public parking area, either within or outside of the corporate limits of the City, the use of which the City has jurisdiction and authority to regulate. Any other provision of the *Model Traffic Code* adopted in Section 8-1-20 notwithstanding, the provisions of Sections 606, 1211, 1401, 1402, and 1413 of the adopted *Model Traffic Code*, respectively display of unauthorized signs or devices, limitations on backing, concerning reckless driving-penalty, careless driving- penalty, and eluding or attempting to elude a police officer, shall apply not only to public places and ways but also throughout the City.

Sec. 8-1-50. - Interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the local traffic regulations contained herein. Article and section headings of this Article and the adopted *Model Traffic Code* shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

Sec. 8-1-60. – Violation; penalty.

Any person who commits a violation of any provision stated in or adopted by this Article and classified as a traffic infraction shall be subject to a fine as set forth in Section 1-4-20 of the Cherry Hills Village Municipal Code. Any person who commits a violation of any provision stated in or adopted by this Article and classified as a traffic offense shall be subject to a fine and/or imprisonment as set forth in Section 1-4-20 of the Cherry Hills Village Municipal Code. Any person who violates this Article may also be subject to penalties set forth in Section 1717 of the *Model Traffic Code*, which reads as follows:

1717. Conviction - attendance at driver improvement school.

- (1) Except as otherwise provided in subsection (2) of this section, whenever a person has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court, in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for a violation other than a traffic infraction, may require the defendant, at the defendant's own expense, if any, to attend and satisfactorily complete a course of instruction at any designated driver improvement school located and operating in the county of the defendant's residence and providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. Such school shall be approved by the court.
- (2) Whenever a minor under eighteen years of age has been convicted of violating any provision of this Code or other law regulating the operation of vehicles on streets or highways, the court may require the minor to attend and satisfactorily complete a course of instruction at any designated driver improvement school providing instruction in the traffic laws of this state, instruction in recognition of hazardous traffic situations, and instruction in traffic accident prevention. The court may impose the driver improvement school requirement in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for the violation. The minor, or the minor's parent or parents who appear in court with the minor in accordance with section 1716(4), of this Code, shall pay the cost of attending the designated driver improvement school. The court shall make available information on scholarships and other financial assistance available to help minors or their parents offset the costs of driver improvement school. Such school shall be approved by the court.

Section 2. Repeal. Existing ordinances or parts thereof covering the same matters as embraced in this ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are hereby repealed provided, however, that 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 further provided that this repeal 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.

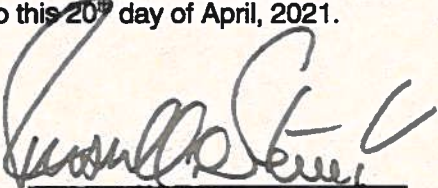
Section 3. Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining 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. Codification Amendments. The codifier of the City's Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Cherry Hills Village Municipal Code.

Section 5. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 3, Series 2021, by the City Council of the City of Cherry Hills Village, Colorado this 20th day of April, 2021.

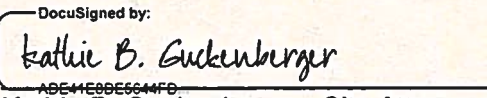
(SEAL)


Russell O. Stewart, Mayor

ATTEST:


Laura Gillespie, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Kathie B. Guckenberger, City Attorney

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CITY OF CHERRY HILLS
VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 3, SERIES 2021

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