

## ORDINANCE NO. 9

Series 2021

August 31, 2021: Introduced as Council Bill 8, Series 2021 by Mayor Pro Tem Katy Brown, seconded by Councilor Mike Gallagher and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

October 5, 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, AMENDING CHAPTER 11, ARTICLE I CONCERNING STREETS AND SIDEWALKS AND CHAPTER 11, ARTICLE II CONCERNING PUBLIC RIGHT- OF-WAY PERMITS**

WHEREAS, the City of Cherry Hills Village, Colorado ("City") is a home rule municipality authorized generally pursuant to Article XX of the Colorado Constitution, as well as C.R.S § 31-15-702, to regulate and manage the use, maintenance, and repair of public streets, roads, sidewalks, and public places under its jurisdiction, and such regulation and management is a matter of local concern; and

WHEREAS, pursuant to Section 12.4 of the City's Home Rule Charter, City Council may grant permits for the temporary use or occupation of any street, alley or public place, and establish conditions and compensation to be paid the City therefor; and

WHEREAS, pursuant to the authority outlined herein, the City Council has established regulations regarding maintenance of sidewalks and real property abutting a public right-of-way and has established a public right-of-way permitting program codified in Chapter 11, Articles I and II of the Cherry Hills Village Municipal Code ("Municipal Code"); and

WHEREAS, in consideration of the health, safety, and welfare of the public, the City Council desires to amend the permitting requirements to better protect and preserve the integrity and quality of the public streets, roads, and public rights-of-way under its jurisdiction.

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

**Section 1.** Section 11-1-30 of the Municipal Code, entitled *Landscape maintenance*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

#### **Sec. 11-1-30. - Landscape maintenance.**

It shall be the responsibility of the owner, agent, or lessee of any real property abutting a public right-of-way or other City property to provide landscape maintenance, including but not limited to, mowing of all right-of-way area between the property line and the ~~curbline-curb line~~ or edge of the roadway or right-of-way; provided, however, that the City shall maintain landscaping and shall be responsible for mowing all of the rights-of-way that comprise Quincy Avenue, Clarkson Street, Colorado Boulevard, Holly Street and Happy Canyon Road and all state rights-of-way. The vegetation in said areas shall be maintained to the same levels required under Section 7-3-20 of this Code. Any private improvements made or installed in the rights-of-way that comprise Quincy Avenue, Clarkson Street, Colorado Boulevard, Holly Street and Happy Canyon Road and all state rights-of-way, whether or not approved or permitted by the City pursuant to this Code, shall be maintained by the owner, agent, or lessee of any real property abutting such right-of-way. The City may at its discretion trim any trees, bushes or vegetation that interfere with or restrict the City's ability to maintain streets, trails, or rights-of-way.

**Section 2.** Section 11-1-40 of the Municipal Code, entitled *Public right-of-way and public easement encroachments prohibited*, is hereby amended to read as follows, with additions shown in underline:

#### **Sec. 11-1-40. - Public right-of-way and public easement encroachments prohibited.**

Except as provided in Section 11-2-40 of this Chapter, no person shall erect or maintain any building, structure, fence, barrier, post, mailbox, landscaping, obstruction or other encroachment within, under, above or upon any public right-of-way, path, alley, state rights-of-way, or public easement without first obtaining the required permits from the City. Any such

encroachments installed pursuant to a City permit shall be maintained by the underlying property owner.

Section 3. Section 11-2-20 of the Municipal Code, entitled *Definitions*, is hereby amended to read as follows, with additions shown in underline, with the remainder of Section 11-2-20 to remain intact:

**Sec. 11-2-20. - Definitions.**

*Contractor* means a person, partnership, corporation or other legal entity or its agents or subcontractors which undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate or add to any improvements or facilities in the public right-of-way, or which requires work, workers and/or equipment to be in the public right-of-way in the process of performing the above-named activities.

*Major installation* means work in the public rights-of-way involving an excavation exceeding fifty (50) feet in length or 200 square feet of surface disturbance.

Section 4. Sub-section 11-2-40(a) of the Municipal Code, entitled *Permit required*, is hereby amended to read as follows, with additions shown in underline:

**Sec. 11-2-40. - Permit required.**

(a) No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work in a public right-of-way or place any equipment in a public right-of-way without first obtaining a permit from the City as set forth in this Article. Copies of the permit and associated documents shall be maintained on the worksite and available for inspection upon request by any officer or employee of the City. No person except an employee or official of the City or a person exempted by contract with the City shall undertake or permit to be undertaken any work within or occupation of a right-of-way owned by the Colorado Department of Transportation within the City without first obtaining a permit from the City as set forth in this Article.

Section 5. Sub-section 11-2-40(e) of the Municipal Code, entitled *Permit required*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

**Sec. 11-2-40. - Permit required.**

(e) No private improvements are allowed within the City's public right-of-way without the approval of the City, with the exception of placing and maintaining limited landscaping, such as sod or grasses, flowers and no more than four (4) bushes or small trees of a caliper not to exceed two (2) inches, that will not interfere with the public's use of the right-of-way. In no case shall trees or bushes be placed in drainage ditches/areas. All newly planted trees must be at least ten (10) feet from the actual road surface. Installation of any private improvement or landscaping that impairs or interferes with the use or maintenance of the public right-of-way, including on-street parking where permitted, is prohibited. Allowing the placement and maintenance of such limited landscaping or other private improvements in the public right-of-way shall not be construed to abridge, limit or restrict the City in exercising its right to make full use of the City public right-of-way encroached upon as public thoroughfares or public places, nor shall it operate to restrict utility companies or any other licensees in exercising their rights to construct, remove, operate and maintain their installations within the City's right-of-way, having first obtained the proper permits required.

Section 6. Sub-section 11-2-60(b)(2) of the Municipal Code, entitled *Permit application*, is hereby amended to read as follows, with additions shown in underline:

**Sec. 11-2-60. - Permit application.**

(b) (2) Copy of a site stormwater drainage quality assurance plan to keep sedimentation from entering any stormwater system within the City, including roadside ditches. No engineering is required, but instead a plan of what BMPs will be used for water quality during the project and until vegetation has been reestablished within the areas disturbed by the work. No stormwater quality assurance plan shall be required when the permitted work in the right-of-way will have no impact on stormwater quality. If the City determines that the project creates the potential for an unauthorized discharge into the City's municipal separate storm sewer system, the application shall also include a stormwater plan.

Section 7. Sub-section 11-2-60(e) of the Municipal Code, entitled *Permit application*, is hereby repealed and replaced to read as follows:

(e) Reserved.

Section 8. Sub-section 11-2-80(c) of the Municipal Code, entitled *City review and approval*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~, with the remainder of Section 11-2-80 to remain intact:

**Sec. 11-2-80. - City review and approval.**

(c) At the conclusion of the review period, the City shall either approve the permit, approve the permit with conditions or deny the permit. If the permit is denied, the City shall send a written notice of denial to the permittee ~~via email or first-class mail, postage prepaid~~ at the address listed on the application, ~~via first-class mail, postage prepaid~~. The notice shall include the reasons for denial.

Section 9. Sub-section 11-2-130(d) of the Municipal Code, entitled *Warranty*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~, with the remainder of Section 11-2-130 to remain intact:

**Sec. 11-2-130. - Warranty.**

(d) At any time prior to completion of the warranty period, the City may notify the permittee in writing of any needed repairs. If the defects are determined by the City to be an imminent danger to the public health, safety and welfare, the permittee shall begin repairs within twenty-four (24) hours of receipt of the written notice and continue the repairs until completion. Nonemergency repairs shall be completed within ~~thirty (30)~~ ten (10) days after notice.

Section 10. Sub-section 11-2-280(c) of the Municipal Code, entitled *Permit revocation and stop work orders*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~, with the remainder of Section 11-2-280 to remain intact:

**Sec. 11-2-280. - Permit revocation and stop work orders.**

(c) A suspension, revocation or stop work order shall take effect immediately upon delivery of written notice to the person performing the work or to the permittee. If neither the person performing the work nor the permittee can be located on the work site on the day of issuance of the suspension, revocation or stop work order, the suspension, revocation or stop work order shall take effect upon ~~mailing of the written notice via first-class mail, postage prepaid, to the permittee's last known address~~ delivery of written notice via email at the email address listed on the application for the related permit.

Section 11. **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.

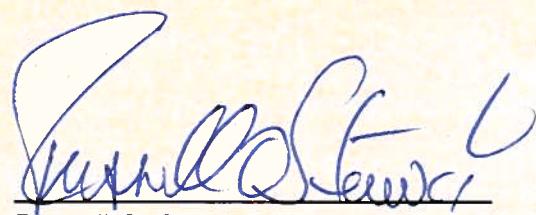
Section 12. **Safety.** This Ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 13. **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 14. **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. 9 Series 2021, by the City Council of the City of Cherry Hills Village, Colorado this 5<sup>th</sup> day of October, 2021.

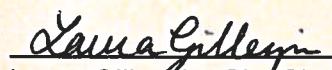
(SEAL)



Russell O. Stewart

Russell O. Stewart, Mayor

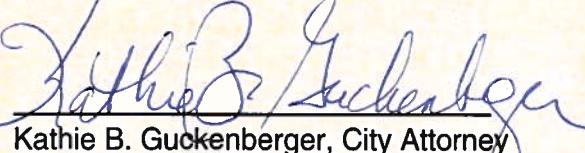
ATTEST:



Laura Gillespie

Laura Gillespie, City Clerk

APPROVED AS TO FORM:



Kathie B. Guckenberger

Kathie B. Guckenberger, City Attorney

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**CITY OF CHERRY HILLS  
VILLAGE**

**ADOPTION OF ORDINANCE**

**ORDINANCE 9, SERIES 2021**

**A BILL FOR AN ORDINANCE OF  
THE CITY OF CHERRY HILLS  
VILLAGE, AMENDING CHAPTER  
11, ARTICLE I CONCERNING  
STREETS AND SIDEWALKS  
AND CHAPTER 11, ARTICLE II  
CONCERNING PUBLIC RIGHT-  
OF-WAY PERMITS**

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

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