

ORDINANCE NO. 3

Series 2024

April 16, 2024: Introduced as Council Bill 2, Series 2024 by Mayor Pro Tem Randy Weil, seconded by Councilor Al Blum and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

May 7, 2024: 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 AMENDING SECTION 16-3-120 OF CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE CONCERNING FENCES, GARDEN WALLS/PERIMETER WALLS, AND ENCLOSURES

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 Article 23, Title 31 of the Colorado Revised Statutes, the City is authorized to regulate the development of land within the City for the purposes of promoting the public health, safety, convenience, and the general welfare of the community; and

WHEREAS, pursuant to the authority outlined herein, the City Council established zoning regulations codified in Chapter 16 of the Cherry Hills Village Municipal Code ("Municipal Code"), which regulations include standards for fences, garden walls, perimeter walls, and enclosures; and

WHEREAS, pursuant to Section 16-7-40(b)(11) of the Municipal Code, and upon the request of City Council, after reviewing and applying Chapter 16, the Community Development Director ("Director") has identified and recommends the amendments proposed herein to provide additional clarity, precision, and consistency in the application of that chapter; and

WHEREAS, at a meeting held on January 9, 2024, pursuant to Section 16-7-370(b) of the Municipal Code, the Planning and Zoning Commission recommended that City Council approve the amendments proposed by the Director; and

WHEREAS, pursuant to Sections 16-7-10(d)(1)b and 16-7-370(a) of the Municipal Code, and in consideration of the health, safety, and welfare of the public, the City Council desires to amend Chapter 16 of the Municipal Code as set forth herein.

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

Section 1. Table 16-3-120, entitled *Fence and Wall Height and Opacity: Residential Lots* of Section 16-3-120 of the Municipal Code, entitled *Fences, garden walls/perimeter walls, and enclosures*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

Table 16-3-120 Fence and Wall Height and Opacity: Residential Lots						
Location (see Figure 16-3- 120.A and 16-3- 120.B)/Standard	Zoning District					
	R-1	R-2	R-3	R-3a	R-4	R-5
Area 1: Within Building Envelope, Behind Front Façade Line						
Max. Height	6 ft.	6 ft.	6 ft.	6 ft.	6 ft.	6 ft.
Max. Opacity	100%	100%	100%	100%	100%	100%

Area 2: Between Front Lot Line and Front Façade Line, Unless Also within Area 5 or 6¹

Max. Height	4 ft	4 ft	4 ft	4 ft	Not Allowed	Not Allowed
Max. Opacity	50%	50%	50%	50%	Not Allowed	Not Allowed

Area 3: Within Rear Setbacks or Interior Side Setbacks, Unless Also within Area 4, 5, 6, or 7¹

Max. Height	6 ft.					
Max. Opacity	50%	100%	100%	100%	100%	100%

Area 4: Within Street Side Setbacks or Rear Setbacks Adjacent to a Street, Unless Also within Area 5 or 6¹

Max. Height	6 ft.	6 ft.	6 ft.	6 ft.	6 ft.	6 ft.
Max. Opacity	<i>Based on Fence Height and Orientation (See Below)</i>					
Generally Parallel to Public Street						
<i>If Height Does Not Exceed 4 ft</i>	60%	60%	60%	60%	100%	100%
<i>If Height Exceeds 4 ft</i>	25%	25%	25%	25%	50% ²	50% ²

Generally Perpendicular to Public Street³

Up to Maximum Height	50%	100%	100%	100%	100%	100%
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Area 5: Within any Setback from a Lot Line that is State Highway Right-of-Way Line

Max. Height	8 ft				
Max. Opacity ⁴	100%	100%	100%	100%	100%

Area 6: Within Any Setback from a Lot Line that is Also a Right-of-Way Line for (1) South Clarkson Street; or (2) East Happy Canyon Road; or (3) north of E. Mansfield Avenue and east of Colorado Boulevard and west of S. Albion Street and south of E. Hampden Avenue, that have lot frontage on both S. Colorado Boulevard and S. Albion Street

Max. Height	6 ft				
Max. Opacity ⁴ <small>(removed, can't see the strikethrough)</small>	100%	100%	100%	100%	100%

Area 7: Within any Setback from a Lot Line that is Adjacent to a Public Trail, Park, or Open Space, Unless Also Within Area 2¹

Max. Height	6 ft				
Max. Opacity	40%	40%	40%	40%	40%

Table Notes:

¹If the fence or wall is also located within one of the specified areas, then the standards for that area apply.

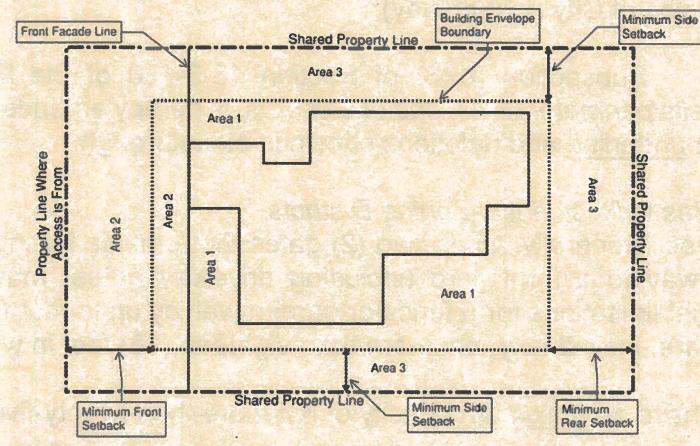
²Opacity may be increased to up to 100% if the setback and landscaping requirements of subsection (b)(2), below are met.

³E.g., a connection from a fence within Area 4 that is parallel to a street to a fence within Area 1 or Area 3.

⁴Subject to the requirements of subsection (b)(2), below.

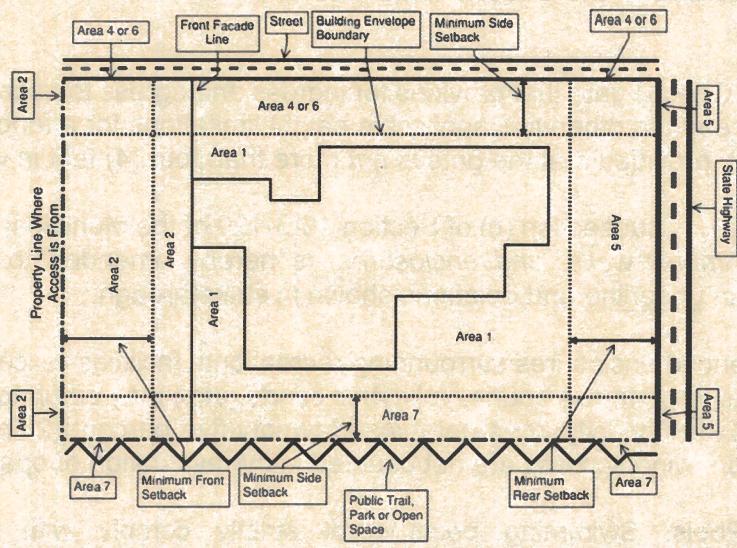
Section 2. Figure 16-3-120.A titled *Fence Locations for Interior Lots* is hereby added immediately after Table 16-3-120 titled *Fence and Wall Height and Opacity: Residential Lots*, with additions shown in underline:

Figure 16-3-120.A – Fence Locations for Interior Lots



Section 3. Figure 16-3-120.B titled *Fence Locations for Lots Adjacent to Roads, Highways, or Parks and Trails* is hereby added immediately after Figure 16-3-120:

Figure 16-3-120.B – Fence Locations for Lots Adjacent to Roads, Highways, or Parks and Trails



Section 4. Subsection (b)(2) of Section 16-3-120 of the Municipal Code, entitled *Fences, garden walls/perimeter walls, and enclosures*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

Setback and Landscape Requirements in Residential Zoning Districts. This subsection applies as set out in Table 16-3-120, *Fence and Wall Height and Opacity: Residential Lots*. Fences that are subject to this subsection shall:

- Be setback not less than four (4) feet from right-of-way lines, with the area between the fence or garden wall and the street planted with not less than two (2) trees or evergreen shrubs per one hundred (100) linear feet; or
- Be set back less than four (4) feet (including zero (0) feet), but with regular offsets of not less than four (4) feet, running for distances of not less than fifteen (15) nor more than twenty-five (25) feet, such that not less than twenty-five percent (25%) of the length of the fence along each street right-of-way line is so offset; and with the street-side area of each offset planted with at least two (2) trees or evergreen shrubs; or
- Be designed and constructed to meet two (2) of the following three (3) criteria:
 - A setback of twenty-five (25) feet from the edge of the pavement of the adjacent paved street or forty (40) feet from the centerline of the adjacent unpaved street.
 - A landscaped area between the street and the fence is provided, with trees planted at a density of one (1) tree for every twenty (20) to thirty (30) linear feet of fence as determined by the Director given the type and planting size proposed (note that compliance with this

criterion may include use of the City right-of-way if such use of the right-of-way is approved by the City Manager and the trees are subject to an ongoing maintenance agreement acceptable to the City).

- iii. A landscaped area between the street and fence is provided, and planted such that at least twenty-five percent (25%) of the face of the fence is screened from view from the street within three (3) growing seasons (note that compliance with this standard shall not involve the use of City right-of-way).

Section 5. Subsection (b)(3) of Section 16-3-120 of the Municipal Code, entitled *Fences, garden walls/perimeter walls, and enclosures*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

Exceptions for Gates in Residential Zoning Districts.

- a. **Front yard Gates, Generally.** Up to two (2) gates that provide for ingress and egress from a street right-of-way to a front yard (including driveway gates) may exceed the otherwise applicable height limitations for a fence or garden wall by up to four (4) feet, provided that:
 - i. The gates are, individually, not more than eighteen (18) feet in width; and
 - ii. The gates have an maximum opacity of ~~not more than~~ twenty-five percent (25%).
- b. **Driveway Gate Stacking Area.** Driveway gates must be located such that a minimum driveway area of nine (9) feet wide by eighteen (18) feet deep is provided in front of and perpendicular to the gates, as measured from the street right-of-way line, front lot line, or back edge of the sidewalk, whichever provides more setback from the flowline of the street. For a property with a driveway located on a cul-de-sac or dead-end street, the Director may allow a reduction in the required setback if the Director finds that the reduction will not have an impact on public safety.
- c. **Other Gates.** One (1) gate that provides for ingress and egress to each yard other than a front yard may exceed the otherwise applicable height limitations for a fence or garden wall by up to two (2) feet, provided that the gate is not more than four (4) feet in width.

Section 6. Subsection (c) of Section 16-3-120 of the Municipal Code, entitled *Fences, garden walls/perimeter walls, and enclosures*, is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~:

- (1) **Generally.** Fenced enclosures surrounding recreational facilities (except swimming pools) on residential lots (e.g., tennis courts, volleyball courts, etc.) may be up to ten (10) feet in height, provided that their opacity does not exceed twenty-five percent (25%). For the purposes of this subsection, wind screens are not counted in the evaluation of opacity.
- (2) **Swimming Pools.** Swimming pools shall strictly comply with Section 305, Barrier Requirements, 2018 International Swimming Pool and Spa Code. Variances to this requirement shall not be allowed.

Section 7. **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 8. **Safety.** This Ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 9. **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 10. **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. 3 Series 2024, by the City Council of the City of Cherry Hills Village, Colorado this 7th day of May, 2024.

(SEAL)

Kathleen Brown
Kathleen Brown, 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 3, SERIES 2024

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING SECTION 16-3-120. – FENCES, GARDEN WALLS/PERIMETER WALLS, AND ENCLOSURES OF THE MUNICIPAL CODE

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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Published: May 16, 2024
Legal # 11521