

ORDINANCE NO. 16

Series 2013

October 1, 2013: Introduced as Council Bill 15, Series.2013 by Councilor Russell Stewart, seconded by Councilor Alex Brown and considered in full text on first reading. Passed by a vote of 4 yes and 0 no.

November 5, 2013: 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 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 the use of public streets located within the City; and

WHEREAS, the City Council has established a public right-of-way permitting program codified in Chapter 11, Article II of the 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 its streets.

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

Section 1. The following definitions in Section 11-2-20, entitled *Definitions*, of Chapter 11 of the Municipal Code are hereby amended or newly added to read as follows, with strike-through text to show deletions and double underline to show new text:

Construction and Excavation Standards means the document entitled *Construction, ~~and~~ Excavation Standards ~~and Permit Fees~~ for Work in Public Rights-of-Way*, as adopted by resolution of the City Council and amended from time to time.

Major installation means work in the public rights-of-way involving an excavation exceeding ~~three hundred~~ (300) fifty (50) feet in length.

Minor installation means work in the public rights-of-way that is not deemed a major installation.

Section 2. Section 11-2-60, entitled *Permit application*, of Chapter 11 of the Municipal Code is hereby amended to delete subparagraph (f) in its entirety, with the remainder of Section 11-2-60 to remain intact:

~~(f) In all cases, the applicant for a public right-of-way permit and the eventual permittee shall be the owner of the facilities to be installed, maintained or repaired, rather than the contractor performing the work.~~

Section 3. Subsection (d)(7) of Section 11-2-70, entitled *Blanket maintenance permits*, of Chapter 11 of the Municipal Code is hereby amended to read as follows, with strike-through text to show deletions:

(7) The applicable permit fee as set by the adopted fee schedule *Construction and Excavation Standards*.

Section 4. Subsection (f) of Section 11-2-70, entitled *Blanket maintenance permits*, of Chapter 11 of the Municipal Code is hereby amended to read as follows, with strike-through text to show deletions and double underline to show new text:

(f) ~~A blanket maintenance permit shall not may require a performance bond, letter of credit or warranty.~~ Work performed pursuant to a blanket maintenance permit shall not be subject to the specific inspections set forth in Section 11-2-140 of this Article, but may be subject to random inspection by the City to ensure compliance with the terms of the blanket maintenance permit and applicable provisions of the Construction and Excavation Standards.

Section 5. Section 11-2-90, entitled *Permit Fees*, of Chapter 11 of the Municipal Code is hereby amended to read as follows with strike-through text to show deletions and double underline to show new text:

(a) Before a public right-of-way permit is issued, the applicant shall pay to the City a permit fee, which shall be determined by City Council in accordance with the fee schedule adopted by Resolution and available in the City Clerk's office contained herein. Permit fees shall be reasonably related to the costs incurred by the City in providing services relating to the granting or administration of permits pursuant to this Article and future repair and maintenance costs related to a permittee's work in the City's rights-of-way. These costs include, but are not limited to, the costs of issuing right-of-way permits, verifying right-of-way occupation, mapping right-of-way occupation, inspecting work and administering this Article and future repair and maintenance of City-owned rights-of-way related to a permittee's work.

FEE SCHEDULE

The minimum permit fee for asphalt paved streets	\$480.00
The minimum permit fee for gravel streets	838.00
The minimum permit fee for city trails	480.00
Right-of-way occupancy fee (no cutting in ROW)	300.00

(b) Pavement Restoration fees. Pavement restoration fees shall be applied and collected as set forth in the Construction and Excavation Standards and adopted fee schedule.

(1) ~~Restoration fees shall only be charged to the applicant if the City chooses to allow the applicant to not perform the required restoration of the public right-of-way to the City's standards, rendering the City responsible for performing any required restoration. The City shall decide at the time of application whether the applicant will perform any required restoration, and the City's decision shall be final.~~

(2) ~~Restoration fees will be charged for all excavations within streets that are of a gravel surface. This fee will cover the cost to restore the street back to its original condition. Under no circumstances will this fee be waived for any reason if the work is within the gravel portion of the street. This fee may be charged for work outside of the gravel portion of the right-of-way if the City determines that the nature of the work will have an impact on the gravel surface of the street.~~

(3) ~~No restoration fees shall be required for a public right-of-way permit which does not include excavation unless the City determines that the nature of the work being performed under the permit will have an impact on the street.~~

(4) ~~Restoration fees collected by the City shall be placed in a separate account for general street maintenance and construction.~~

(5) ~~Restoration fees may be waived in the City's discretion when additional circumstances exist which would make restoration unnecessary, such as poor street quality and/or proposed street resurfacing or construction by the City. These circumstances are outlined in more detail in the section of the Construction and Excavation Standards addressing permit fees.~~

Section 6. The following subsections of Section 11-2-120, entitled *Performance bonds and letters of credit*, of Chapter 11 of the Municipal Code are hereby amended or deleted to read as follows with strike-through text to show deletions and double underline to show new text:

(a) Before a public right-of-way permit is issued, the applicant shall file with the city a bond or letter of credit, at the applicant's choice in a form approved by the City, in favor of the City in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any facilities being installed, or five thousand dollars (\$5,000.00), whichever is greater. For trail permits, the bond or letter of credit shall be a minimum of ten thousand dollars (\$10,000.00). The bond or letter of credit shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the State. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of City ordinances, resolutions and regulations, and upon payment of all judgments and costs rendered against the applicant for any violation of any City resolution, regulation or ordinance or state law arising out of any negligent or wrongful act of the applicant in the performance of work pursuant to the permit.

(d) A ~~blanket bond of sufficient amount to cover all proposed work during the upcoming year may be filed with the City on an annual basis in lieu of the project specific performance bonds or letters of credit required by Subsection (a) above. The form and amount of the blanket bond shall be subject to the prior review and approval of the City. Should the blanket bond be deemed insufficient by the City based on the work to date, the City may require additional, project specific performance bonds or letters of credit pursuant to Subsection (a) above.~~

(ed) The performance bond, ~~blanket bond~~ or letter of credit shall remain force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.

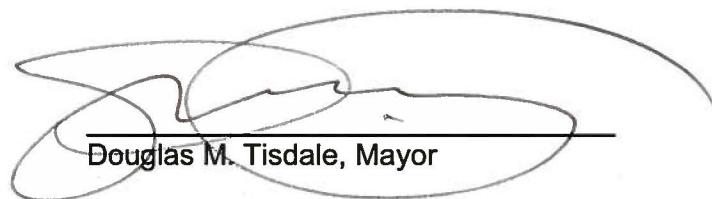
Section 7. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining 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. 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. 16 Series 2013, by the City Council of the City of Cherry Hills Village, Colorado this 5th day of November, 2013.

(SEAL)



Douglas M. Tisdale, Mayor

ATTEST:

Laura Smith
Laura Smith, City Clerk

Approved as to form:

Linda C. Michow
Linda C. Michow, City Attorney

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