

ORDINANCE NO. 17
Series 2013

November 5, 2013: Introduced as Council Bill 16, Series 2013 by Councilor Scott Roswell, seconded by Councilor Mark Griffin and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

November 19, 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 ARTICLE XVII, CHAPTER 16 OF THE
CHERRY HILLS VILLAGE MUNICIPAL CODE CONCERNING
FLOODPLAIN MANAGEMENT REGULATIONS**

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 has authority 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, the City has adopted zoning and land use regulations codified in Chapter 16 of the Municipal Code; and

WHEREAS, the Colorado Water Conservation Board adopted revised Rules and Regulations for Floodplains in Colorado (Rules), effective January 14, 2011, and a three-year transition period to January 14, 2014 was provided for all local communities participating in the National Flood Insurance Program (NFIP) to adopt floodplain management regulations consistent with the Rules and NFIP requirements.

WHEREAS, the Colorado Water Conservation Board has reviewed the proposed amendments to the City's floodplain management regulations herein for compliance with the revised Rules, and

WHEREAS, at a duly noticed public meeting, the Cherry Hills Village Planning and Zoning Commission reviewed and recommended approval of the proposed amendments to the City's floodplain regulations; and

WHEREAS, the City Council desires to update the City's floodplain regulations in order to be in compliance with the Colorado Water Conservation Board Rules and NFIP requirements.

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

Section 1. Section 16-17-30 of the Cherry Hills Village Municipal Code is hereby amended to add, strike, or amend the following definitions with additions shown in underline and deletions shown in strike-through:

Sec. 16-17-30. Definitions.

~~Area of special flood hazard means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.~~

Conditional Letter of Map Revision (CLOMR) means FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

Critical facility means a structure or related infrastructure, but not the land on which it is situated, as further defined and specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado effective January 14, 2011, adopted by the Department of Natural Resources, Colorado Water Conservation Board and adopted herein by reference, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

Development means any man-made change to improved or unimproved real estate, including but not limited to construction or substantial improvement of buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations, or storage of equipment or materials located within the area of special flood hazard special flood hazard area.

Floodplain means the relatively flat or lowland area adjoining a river, stream, watercourse, lake or other body of standing water which has been or may be covered temporarily by floodwater. For the purpose of this Article, the *floodplain* is defined as the area that would be inundated by the base flood, and is used interchangeably with the terms area of special flood hazard special flood hazard area and *flood-prone area*.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot a designated height. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

Floodway Map means an official map of the City, issued by the Federal Emergency Management Agency as part of the Flood Insurance Study, which shows the boundaries of the floodway for the base flood.

Letter of Map Revision (LOMR) means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

Letter of Map Revision Based on Fill (LOMR-F) means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

Mean sea level means, for purposes of the national flood insurance program, the North American Vertical Datum (NAVD) of 1988 National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

Recreational vehicle means a vehicle that is built on a single chassis; four hundred (400) square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and not designed primarily as a permanent dwelling but rather as temporary living quarters for recreational, camping, travel or seasonal use.

Special flood hazard areas means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

Section 2. Subsection (a) of Section 16-17-40 of the Cherry Hills Village Municipal Code is hereby amended in full to read as follows with additions shown in underline and deletions shown in strike-through, other subsections of Section 16-17-40 not being affected by this Ordinance:

Sec. 16-17-40. General provisions.

(a) Jurisdiction. The provisions of this Article shall apply to all floodplain areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the corporate limits of the City.

Section 3. Subsection (c) of Section 16-17-50 of the Cherry Hills Village Municipal Code is hereby amended in full to read as follows with additions shown in underline and deletions shown in strike-through, other subsections of Section 16-17-50 not being affected by this Ordinance:

Sec. 16-17-50. Administration.

(c) Duties and responsibilities of Floodplain Administrator: Duties of the Floodplain Administrator shall include, but not be limited to:

(1) Review all development permit applications to determine that all requirements of this Article have been satisfied.

(2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Paragraph 16-17-70(b)(3) below are met.

(4) Review and coordinate the issuance of building permits with the requirements of this Article.

(5) When base flood elevation data has not been provided in accordance with Subsection 16-17-40(b), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source as a basis for elevating residential structures to a minimum one foot above or above the base flood level, and for floodproofing or elevating non-residential structures to or above a minimum of one foot above the base flood level.

(6) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zone AE on the City's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than ~~one~~ (1) one-half foot at any point within the City.

Section 4. Subsection (d) of Section 16-17-60 of the Cherry Hills Village Municipal Code is hereby amended in full to read as follows with additions shown in underline and deletions shown in strike-through, other subsections of Section 16-17-60 not being affected by this Ordinance:

Sec. 16-17-60. Procedure for development.

(d) All requests for exceptions shall be subject to the following additional requirements:

(1) ~~Authorization for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places may be issued without regard to the procedures set forth in the remainder of this Section. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.~~

(2) Authorization shall not be issued within the one-hundred-year floodplain if any increase in flood levels during the base flood discharge would result.

(3) Authorizations shall be issued only upon a determination that the same is the minimum necessary, considering the flood hazard, to afford relief.

(4) Authorizations shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the authorization would result in exceptional hardship to the applicant; and

c. A determination that the granting of an authorization will not result in increased floodway elevations, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(5) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 5. Subsection (b) of Section 16-17-70 of the Cherry Hills Village Municipal Code is hereby amended in full to read as follows with additions shown in underline and deletions shown in strike-through, other subsections of Section 16-17-70 not affected by this Ordinance:

Sec. 16-17-70. Provisions for flood hazard reduction.

(b) Specific development standards. In all floodplain areas where base flood elevation data has been provided as set forth in Subsection 16-17-40(b) above, the following provisions are required:

(1) Residential construction. New construction and substantial improvement of any structure shall have the lowest floor, including basement, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to or above the base flood elevation plus one (1) foot.

(2) Nonresidential construction. New construction and substantial improvement of any nonresidential structure (including barns, garages and other structures not used for human habitation) shall either have the lowest floor, including basement, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one (1) foot above elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below one (1) foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Subsection. Such certifications shall be provided to the official as set forth in Subsection 16-17-50(d) above.

(3) Floodways. Located within the floodplain areas established in Subsection 16-17-40(b) above are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

a. Encroachments, including fill, new construction, substantial improvements, landscaping and other development, are prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

b. If Subsection 16-17-70(b)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Section.

(4) Properties removed from the floodplain by fill. A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

a. Residential Construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.

b. Nonresidential construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(5) Critical facilities.

a. Critical Facilities generally. Critical Facilities shall be subject to the provisions of Rule 6 of the Colorado Water Conservation Board Rules and Regulations for Regulatory Floodplains in Colorado, as adopted herein by reference, and exemptions may be authorized by the Floodplain Administrator in accordance therewith.

b. Protection for Critical Facilities. All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be required to meet one of the following:

i. Location outside the Special Flood Hazard Area; or

ii. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.

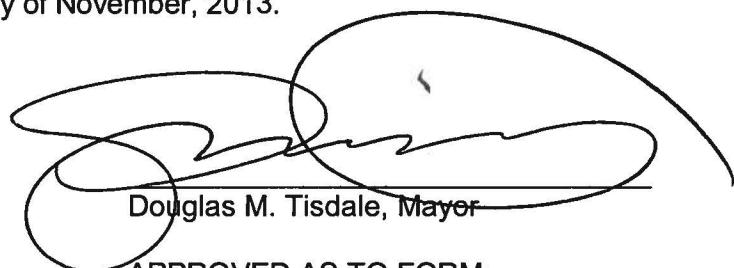
c. Ingress and egress for new Critical Facilities. New Critical Facilities shall, when practicable as determined by the Floodplain Administrator, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

Section 6. 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 would be declared invalid.

Section 7. Effective Date. 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. 17, Series 2013, by the City Council of the City of Cherry Hills Village, Colorado this 19th day of November, 2013.

(SEAL)



Douglas M. Tisdale, Mayor

ATTEST:

APPROVED AS TO FORM:

Laura Smith
Laura Smith, City Clerk

Linda Michow
Linda Michow, City Attorney

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CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 17, SERIES 2013
A BILL FOR AN ORDINANCE OF THE
CITY OF CHERRY HILLS VILLAGE
AMENDING ARTICLE XVII, CHAPTER
16 OF THE CHERRY HILLS VILLAGE
MUNICIPAL CODE CONCERNING
FLOODPLAIN MANAGEMENT REGU-
LATIONS

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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