

ORDINANCE NO. 26

Series 2010

October 19, 2010: Introduced as Council Bill 26, Series 2010 by Mayor Pro Tem Russell Stewart, seconded by Councilor Harriet Crittenden LaMair, and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

November 16, 2010: Considered in full text on second reading. Passed by a vote of 5 yes and 0 no.

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE,
CONCERNING ZONING, BY AMENDING ARTICLE XVII,
CONCERNING FLOODPLAIN MANAGEMENT REGULATIONS**

WHEREAS, the City of Cherry Hills Village is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution; and

WHEREAS, the City of Cherry Hills Village is authorized to regulate development within floodplain areas on property within the boundaries of the City; and

WHEREAS, the City of Cherry Hills Village has established floodplain management regulations for flood prevention and control pursuant to the authority contained in, among others, Title 24, Article 65.1; Title 29, Article 20; and Title 31, Article 23, C.R.S., and as authorized by the City Charter; and

WHEREAS, the City's floodplain management regulations have been established to promote the public health, safety and general welfare, to minimize flood losses in areas subject to flood hazards so as to minimize future flood blight areas and prolonged business interruptions and to promote the wise use of floodplain areas; and

WHEREAS, the Federal Emergency Management Agency has approved a scientific and engineering study entitled "The Flood Insurance Study for Arapahoe County and Incorporated Areas" dated December 17, 2010, with accompanying Flood Insurance Rate Maps (FIRM); and

WHEREAS, the City Council desires to amend the City's Floodplain Management Regulations to adopt "The Flood Insurance Study for Arapahoe County and Incorporated Areas" dated December 17, 2010, with accompanying Flood Insurance Rate Maps (FIRM) and any revisions thereto, as well as make several other amendments to the Floodplain Management Regulations so that they are in compliance with the requirements of the National Flood Insurance Program.

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

Section 1. That Section 16-17-30 of the Cherry Hills Village Municipal Code, concerning floodplain development regulations definitions, is hereby amended to read as follows:

Sec. 16-17-30. Definitions.

Historic structures means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a State of Colorado inventory of historic places if the State has an historic preservation program which has been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places if Cherry Hills Village maintains historic preservation programs that have been certified either:
 - a) by an approved state program as determined by the Secretary of the Interior or;

(b) directly by the Secretary of the Interior if Colorado has no such approved programs.

Recreational vehicle means a vehicle that is built on a single chassis; 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.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Violation means the failure of a structure or other development to be fully compliant with the City's floodplain management regulations.

Water surface elevation means the height, in relation to the National Geodetic North American Vertical Datum (NGVD NAVD) of 1929 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Section 2. That Subsection 16-17-40(b) of the Cherry Hills Village Municipal Code, concerning general provisions for floodplain development, is hereby amended to read as follows:

Sec. 16-17-40. General provisions.

(b) Basis for establishing the floodplain areas. In determining whether any particular real property is located within the floodplain of the City, reference may shall be made to either of the Urban Drainage studies and the FIRM as referenced below; and, if such property is located within the area of special flood hazard on either or any of said maps, the most detailed information shall be used to determine whether said property is located within a floodplain of the City and subject to all rules, regulations, restrictions or laws relating thereto. The Community Development Director shall determine which document shall be considered with respect to any individual application. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled, "The Flood Insurance Study for Arapahoe County and Incorporated Areas" dated December 17, 2010, with accompanying Flood Insurance Rate Maps (FIRM) and any revisions thereto. This report and maps, and any revision thereto are hereby adopted by reference and declared to be a part of this ordinance.

(1) The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "The Flood Insurance Study for the City of Cherry Hills Village," dated August 16, 1995, along with any subsequent revisions thereto approved and adopted by FEMA, with an accompanying flood insurance rate map (FIRM), is hereby adopted by reference and declared to be a part of this provision. The Flood Insurance Study and FIRM are on file in the City's Community Development Department.

(2) The areas of special flood hazard within the City are also defined in the Little Dry Creek Drainage Basin General Map of the Urban Drainage and Flood Control District, revised on May 1, 1974, as adopted by the Colorado Water Conservation Board, June 21, 1974, which map is incorporated herein by reference, a copy of which is available for public inspection in the City's Community Development Department.

(3) The areas of special flood hazard within the City are also defined in the "Flood Hazard Area Delineation - Little Dry Creek (ARAPCO) and Tributaries" study dated August 2003, conducted by WRC Engineering on behalf of the Urban Drainage and Flood Control District, which study is incorporated herein by reference, a copy of which is available for public inspection in the City's Community Development Department.

Section 3. That Subsections 16-17-50 (b) and (c) of the Cherry Hills Village Municipal Code, concerning administration for floodplain development, is hereby amended to read as follows:

Sec. 16-17-50. Administration.

(b) Designation of Floodplain Administrator. The City Manager is hereby appointed to administer and implement this Article by issuing permits in accordance with its provisions.

(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 Subsection 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 Section 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 or above the base flood level, and for floodproofing or elevating non-residential structures to or 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 foot at any point within the City.

Section 4. That Section 16-17-60 of the Cherry Hills Village Municipal Code, concerning procedures for development in the floodplain, is hereby amended to read as follows:

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

(a) No structure or land shall hereafter be constructed, located, extended, converted, altered or improved within the floodplain, unless specifically authorized by the City Council as an exception to this Article after a public hearing before it, except as outlined in Subsections (d) e and (f) below. No filling or excavation shall be permitted, except upon specific authorization by the City Council. No storage of materials which are buoyant, flammable or explosive, or which in times of flooding could be injurious to human, animal or plant life, are permitted. No use shall be permitted which would result in any increase in the base flood elevation within the floodway. Those aggrieved by the decision of the City Council, or any taxpayer, may appeal such decisions to the District Court, as provided in Title 31, Article 23, C.R.S. In passing upon any application or appeal, the City Council shall consider all technical evaluations, all relevant factors, all standards specified in other Sections of this Article and:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (4) The importance of the services provided by the proposed facility to the community.
- (5) The necessity to the facility of a waterfront location, where applicable.
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (7) The compatibility of the proposed use with existing and anticipated development.

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

(b) Public hearing. At a public hearing, the City Council, after review and recommendation by the Planning and Zoning Commission, shall hear and decide all requests for an exception to allow construction within the floodplain, and shall hear and decide all appeals when it is alleged that there is an error in any requirement, decision or determination made by the City Manager in the enforcement or administration of this Article. Any person alleging such an error shall file his appeal to the City Council in writing within thirty (30) days from the determination of the City Manager, in which he shall set forth in detail the basis for such alleged error.

(c) Upon consideration of the factors in Subsection (a) above and the purposes of this Article, the City Council may attach such conditions to authorizing construction as it deems necessary to further the purposes of this Article.

(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.

(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.

~~(d) e) Bank stabilization:~~ The City Manager or his or her designee may administratively approve an application for a floodplain development permit that is exclusively for bank stabilization within an existing drainageway. Such approval shall be in accordance with the following procedures:

(1) Bank stabilization design shall follow all applicable regulations of the Arapahoe County Stormwater Management Manual (ACSMM) and Urban Drainage and Flood Control District (UDFCD) criteria, as may be amended from time to time.

(2) The applicant shall be required to submit a hydraulic analysis, prepared by a professional engineer, for review and approval by the City Engineer. Floodplain hydraulics shall be analyzed in accordance with Section 12.2.6 of the ACSMM, and the applicant shall demonstrate that the bank stabilization will not alter the floodplain boundary or increase base flood elevations.

(3) All required permits shall be obtained by the applicant from those applicable federal, state or local governmental agencies before administrative approval will be granted.

(4) The applicant shall provide written notification of the request to all owners of property that are adjacent to the bank stabilization request and with floodplain intersecting the property. Such written notification shall be sent by certified mail.

(5) The City Manager or his or her designee may approve, approve with conditions or deny an application or, in the City Manager's reasonable discretion, present the application for review and decision by the City Council at a public meeting. The City Manager's discretion includes, but is not limited to, applications that may negatively impact other properties. The City Council review shall be based on the procedures and criteria outlined in this Subsection.

(6) The City Manager or his or her designee may attach conditions to any approval of a floodplain permit for bank stabilization as deemed necessary to further the purpose of this Article.

(e f) Dredging of ponds and lakes: The City Manager or his or her designee may administratively approve an application for a floodplain development permit that is exclusively for dredging of ponds or lakes within an ineffective flow area. Such approval shall be in accordance with the following procedures and criteria:

(1) Dredging procedures shall follow all applicable regulations of the Arapahoe County Stormwater Management Manuel (ACSM) and Urban Drainage and Flood Control District (UDFCD) criteria, as may be amended from time to time.

(2) The applicant shall be required to submit a hydraulic analysis, prepared by a professional engineer, for review and approval by the City Engineer. The applicant shall demonstrate that the dredging will not alter the floodplain boundary or increase base flood elevations.

(3) All required permits shall be obtained by the applicant from those applicable federal, state or local governmental agencies before administrative approval will be granted.

(4) The applicant shall provide written notification of the request to all owners of property that are adjacent to the property that is the subject of the request and with floodplain intersecting the property. Such written notification shall be sent by certified mail, return receipt requested.

(5) The applicant shall provide written verification from the Office of the State Engineer demonstrating compliance with all applicable water rights and dam safety requirements.

(6) The City Manager or his or her designee may approve, approve with conditions, or deny an application, or in the City Manager's reasonable discretion, present the application for review and decision by the City Council. The City Manager's discretion includes, but is not limited to, applications that may be reasonably considered to negatively impact other properties. City Council proceedings to address the application shall be quasi-judicial, with decisions rendered after considering evidence presented at a public hearing. The City Council review shall be based on the procedures and criteria outlined in this Subsection.

(7) The City Manager or his or her designee may attach conditions to any approval of a floodplain development permit for dredging as deemed necessary to further the purpose of this Article.

(f g) Modification or waiver: The City Council may, at its discretion and in such manner as is consistent with the public health, safety and welfare, modify or waive any of the conditions of this Article, if it can be clearly demonstrated that such conditions are not required to protect public health, safety, convenience and general welfare. If such modification or waiver would result in the lowest floor elevation of the structure being below the base flood elevation, the applicant to whom the modification or waiver is granted shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(g h) City Floodplain Administrator report to Federal Emergency Management Agency: The ~~City~~ Floodplain Administrator shall maintain, ~~through its~~ City Manager, the records of all appeal and application actions and report any decisions to the Federal Emergency Management Agency upon request.

Section 5. That Subsection 16-16-17(a) of the Cherry Hills Village Municipal Code, concerning provisions for flood hazard reduction, is hereby amended to read as follows:

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

(a) General development standards. In all floodplain areas, the following standards are required:

(1) Anchoring. All new construction and substantial improvement shall be anchored to prevent flotation, collapse or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.

(2) Construction materials and methods. All new construction and substantial improvements (including prefabricated buildings) shall:

a. Be constructed with materials and utility equipment resistant to flood damage.

b. Be constructed using methods and practices that minimize flood damage.

c. Be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Utilities.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) Subdivision proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

d. Base flood elevation data shall be generated for proposed developments, including the placement of manufactured home parks and subdivisions, that are greater than 50 lots or 5 acres, whichever is lesser.

(5) Prohibited materials; exception. Earth fill or other materials are not to be used to raise the elevation of the land, unless the fill proposed does not restrict the flow of water and unduly increase flood height and hazard, as determined by the City Council upon recommendation by the Planning and Zoning Commission based upon an engineering report prepared by a licensed engineer at the expense of the landowner.

(6) Compliance. Improvements shall be in compliance with all other requirements, conditions, restrictions and limitations set forth in this Article.

(7) Certification of occupancy. No land shall be occupied or used and no building which is hereafter erected, placed, moved or structurally altered shall be used or changed in use until the Building Inspector approves a certificate of occupancy stating compliance with the provisions of this Article.

(8) Manufactured homes, trailers. No manufactured homes of a temporary or permanent nature, and no trailers or structures temporarily used during construction of any authorized structures, may be placed in the floodplain.

(9) Fencing. Fencing greater than fifty percent (50%) open shall be allowed in the floodplain except that wire mesh, chain link and other like fencing materials greater than fifty percent (50%) open shall be allowed in the floodplain as long as:

a. The fencing is generally parallel to the direction of flow; and

b. In the opinion of the Community Development Director after review by the City Engineer, or other qualified professional approved by the City, no damming effect will result from the placement of the fence.

(10) Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

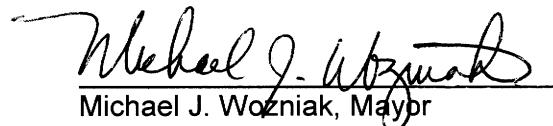
c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(11) Recreational Vehicles. All recreational vehicles in Zone AE shall be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use. Recreational vehicles shall not be allowed in Zone AE beyond the 180 day period.

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. 26, Series 2010, by the City Council of the City of Cherry Hills Village, Colorado this 16th day of November, 2010.


Michael J. Wozniak, Mayor

ATTEST:


Laura Smith, City Clerk

APPROVED AS TO FORM:


Kenneth S. Fellman, City Attorney

Published in the Villager

Published 11-25-10

Legal # 1011

**CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 26, SERIES 2010**

A BILL FOR AN ORDINANCE OF THE
CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 16 OF THE
CHERRY HILLS VILLAGE MUNICIPAL
CODE CONCERNING ZONING, BY
AMENDING ARTICLE XVII CONCERN-
ING FLOODPLAIN MANAGEMENT REG-
ULATIONS

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

Published in The Villager
Published: November 25, 2010
Legal # 1011