

ORDINANCE NO. 08
Series 2007

April 17, 2007: Introduced as Council Bill 05, Series 2007 by Councilmember Doug Tisdale, seconded by Councilmember Scott Roswell, and considered by the title only on first reading. Passed by a vote of 5 yes and 0 no.

June 5, 2007: 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 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE,
 CONCERNING ZONING, BY: (1) AMENDING SECTIONS 16-5-20, 16-6-20, 16-7-20, 16-8-20,
 16-9-20, 16-10-20, 16-11-30 AND 16-13-20, CONCERNING CONDITIONAL USES IN THE
 VARIOUS ZONE DISTRICTS, AND 16-18-20, 16-18-30, 16-18-50 AND 16-18-60,
 CONCERNING REQUIREMENTS FOR CONDITIONAL USES AND THE APPLICATION AND
 REVIEW PROCEDURES FOR CONDITIONAL USES, AND SUBSECTION 16-12-20(a),
 CONCERNING HEIGHT REGULATIONS IN THE C-1 DISTRICT, AND SUBSECTION 16-13-
 30(a), CONCERNING HEIGHT REGULATIONS IN THE C-2 DISTRICT; AND (2) ADDING
 NEW SECTIONS 16-11-30 AND 16-12-20, CONCERNING CONDITIONAL USES IN THE O-1
 AND C-1 ZONE DISTRICTS, AND 16-16-140, CONCERNING TELEVISION ANTENNAS; AND
 (3) REPEALING AND RE-ENACTING SECTION 16-16-130, CONCERNING WIRELESS
 COMMUNICATION FACILITIES; ALL FOR THE PURPOSE OF ADOPTING
 COMPREHENSIVE REGULATIONS CONCERNING WIRELESS COMMUNICATIONS
 FACILITIES**

WHEREAS, the Federal Government, through the Federal Communications Commission (FCC), has issued wireless communication licenses for personal communication services and other wireless technologies in order for those license holders to provide wireless services throughout the United States of America; and,

WHEREAS, the demand by citizens for new wireless communications services has produced an increased need for installation of wireless antennas and wireless communication facilities to serve the public, including the citizens of the City of Cherry Hills Village; and,

WHEREAS, Wireless Communication Facilities (WCFs) are supportive of the public health, safety and welfare in that they provide useful portable communication services for personal convenience, business and emergency purposes; and,

WHEREAS, the FCC has required license holders to provide coverage to areas where wireless communications licenses have been acquired and this requirement necessitates the construction of WCFs in specified locations and manners determined by engineering standards to achieve such coverage; and,

WHEREAS, the Federal Telecommunications Act of 1996 (TCA) preserves local zoning authority to reasonably regulate WCFs; provided, however, that the TCA mandates that localities may not unreasonably discriminate among FCC license holders and that localities cannot prohibit or have the effect of prohibiting the provision of wireless services and the TCA gives the FCC sole jurisdiction over Radio Frequency emissions of WCFs so long as WCFs meet FCC standards therefor; and,

WHEREAS, additional WCFs are required to provide quality communication services to meet the growing needs of the public for wireless communication and should be accommodated in a manner similar to the manner infrastructure for utilities has been accommodated in the past; and,

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, WCFs should be reasonably regulated to minimize potential aesthetic impacts to the surrounding area; and,

WHEREAS, there is a need to revise the provisions in Chapter XVI of the Municipal Code of the City of Cherry Hills Village to address WCFs;

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

Section 1. That Section 16-5-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-1 zone district, is hereby amended to read as follows:

Sec. 16-5-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-1 District: guardhouse; wireless communication facilities.

Section 2. That Section 16-6-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-2 zone district, is hereby amended to read as follows:

Sec. 16-6-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-2 District: guardhouse; wireless communication facilities.

Section 3. That Section 16-7-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-3 zone district, is hereby amended to read as follows:

Sec. 16-7-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-3 District: guardhouse; wireless communication facilities.

Section 4. That Section 16-8-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-3A zone district, is hereby amended to read as follows:

Sec. 16-8-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-3A District: guardhouse; wireless communication facilities.

Section 5. That Section 16-9-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-4 zone district, is hereby amended to read as follows:

Sec. 16-9-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-4 District: guardhouse; wireless communication facilities.

Section 6. That Section 16-10-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-5 zone district, is hereby amended to read as follows:

Sec. 16-10-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-5 District: guardhouse; wireless communication facilities.

Section 7. That a new Section 16-11-30 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the O-1 zone district, is hereby added and that the existing section 16-11-30 is hereby re-numbered and amended to read as follows:

Sec. 16-11-30. Conditional uses.

The following uses shall be permitted as conditional uses in the O-1 District: wireless communication facilities.

Sec. 16-11-340. Area, height, lot width and yard requirements.

Requirements specified in Subsections 16-5-30(a) through (d) of this Chapter, and the regulations established for the R-1, 2½-Acre Residential District, shall apply to the O-1 Open Space, Park and Recreation Area District.

Section 8. That a new Section 16-12-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the C-1 zone district, is hereby added and that the existing sections 16-12-20 and 16-12-30 are hereby re-numbered to read as follows:

Sec. 16-12-20. Conditional uses.

The following uses shall be permitted as conditional uses in the C-1 District: wireless communication facilities.

Sec. 16-12-230. Height regulations.

(a) No structure shall be less than one (1) story above the ground, nor shall it exceed thirty (30) feet in height.

(b) Radio and television antennas may be built to a reasonable height not to exceed fifty (50) feet above the ground measured vertically.

Sec. 16-12-340. Minimum lot area and yard requirements.

(a) Minimum lot area. One (1) acre (such area may include adjoining public rights-of-way to the centerlines, but such measurement shall not exceed thirty [30] feet from the property line and shall not include the Highline Canal or other irrigation canals under separate ownership). Lots of record at the time the thirty-foot right-of-way restriction was added shall not become nonconforming.

(b) Minimum yard requirements. No structure shall be located less than fifty (50) feet from any street line or less than twenty (20) feet from any nonstreet property line.

Section 9. That Section 16-13-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the C-2 zone district, is hereby amended to read as follows:

Sec. 16-13-20. Conditional uses.

The following uses shall be permitted as conditional uses in the C-2 District: retail uses (the provisions and procedures relating to conditional uses found in Article XVIII of this Chapter shall apply); wireless communication facilities.

Section 10. That Section 16-16-130 of the Cherry Hills Village Municipal Code, concerning wireless communication facilities, is hereby repealed in its entirety and reenacted to read as follows:

Sec. 16-16-130. Wireless communication facilities.

(a) Purpose, intent and applicability: The purpose and intent of this Section 16-16-130 is to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community. The City Council finds that these regulations are necessary in order to (1) facilitate the provision of wireless communication services to the residents and businesses of the City; (2) minimize adverse visual effects of towers through careful design and siting standards; (3) avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and (4) encourage and maximize the use of existing and approved towers, buildings and other structures to accommodate new wireless communication antennas in order to reduce the number of towers needed to serve the community. This Section 16-16-130 shall not govern any tower or wireless communication facilities owned or operated by a federally licensed amateur radio station operator or used exclusively for receive-only antennas, provided all other zoning district requirements are met.

(b) Definitions. The following listed specific words and terms are defined as follows:

Communication site means the site or lot utilized for an unmanned wireless transmission facility that uses radio signals to transmit conversation, visual imagery or data to a user.

Owner means an individual or entity holding an ownership interest in property that is subject to this Section 16-16-130, as well as any other applicant for approval under this Section who is acting with authority of a record owner. Once any approvals are granted pursuant to this Section 16-16-130, any references to "Owner" shall also mean operators, managers or any other person or entity

authorized by an Owner with responsibility for the approved facilities. Any other such person or entity shall be jointly and severally liable with an Owner for any violations of this Code arising out of the approved facilities.

Wireless communication facilities means facilities that transmit and/or receive electromagnetic wireless communications signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development. The following types of facilities are included within this definition:

Alternative communication facility shall mean a communication facility with an alternative design that camouflages or conceals the presence of antennas or towers such as, but not limited to, artificial trees, clock and bell towers and steeples.

Antenna means any exterior apparatus designed for telephonic, radio or television communications through the sending and/or receiving of wireless communications signals.

Freestanding communication facility shall mean a communication facility that consists of a stand-alone support structure or tower, antennas, and accessory equipment.

Roof mounted communication facility shall mean a communication facility that is mounted and supported on the roof or any rooftop appurtenance of a legally existing building or structure.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antenna, including self supporting lattice towers, guy towers, or monopole towers. The term includes, but is not limited to, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers and alternative telecommunication facilities.

Wall mounted communication facility shall mean a communication facility that is mounted and supported entirely on the wall of a legally existing building, including the walls of architectural features such as parapets, chimneys and similar appurtenances.

(c) General Requirements/Location and Design Criteria: In addition to the criteria set forth in Section 16-3-40, all wireless communication facilities and sites shall be designed and located using the criteria set forth in this subsection (c). The City Council may withhold approval of any facility that does not meet any of these criteria.

(1) Applications must contain an applicant's name, address, general contact telephone number, and an emergency number where a representative of the applicant can be contacted twenty-four (24) hours per day, seven (7) days per week. Should any information represented on the application change, the applicant must contact the City in writing, and provide the updated information.

(2) Wireless communication facilities should be co-located with other wireless communication facilities or public utilities whenever possible, and to the extent the total facility remains consistent with the scale of the surrounding structures.

(3) The applicant shall (i) demonstrate how the proposed communication site fits into the overall communication network for the community, to confirm the necessity for the site; (ii) to the extent that it seeks approval to address gaps in coverage or capacity, demonstrate by a preponderance of the evidence that there are no viable alternatives to remedy gaps in the applicant's network; and (iii) to the extent that the applicant provides services under a license granted by a governmental authority, that a failure to approve the application will result in applicant's inability to provide the minimum coverage or capacity it is required to provide pursuant to its license and any applicable law.

(4) The location and development of wireless communication facilities should, to the maximum extent possible, preserve the existing character of the topography and vegetation.

(5) Wireless communication facilities should be designed and located to avoid dominant silhouettes and to preserve view corridors of surrounding areas to the maximum extent possible.

(6) The visual impact of the wireless communication facilities shall be mitigated through the use of compatible architectural elements such as: colors, textures, surfaces, scale and character. The facilities shall be screened with vegetation, structures or topographical features. The facility should be integrated to the maximum extent possible, through its location and design, into the natural setting and the structural environment of the area. Accessory equipment in areas of high visibility shall, where possible, be sited below the ridgeline or designed (e.g., placed underground, depressed, or located behind earth berms or structures) to minimize its profile.

(7) Where possible, wireless communication facilities should be concealed in accessory structures consistent with the architectural scale and character of the area.

(8) Roof and wall mounted facilities shall be architecturally compatible with and colored to match the building or structure to which they are attached. Wall mounted facilities shall be mounted as flush to the building wall as possible. A wall mounted facility may encroach a maximum of thirty (30) inches into the required setback for the building to which it is attached, but shall not extend across the property line.

(9) Freestanding wireless communication facilities shall not be artificially lighted, unless required by the FAA or other applicable governmental authority. If lighting is required, the City may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting must be shielded or directed to the greatest extent possible so as to minimize the amount of light falling onto nearby properties, particularly residences.

(10) Towers shall be designed to allow for co-location to the maximum extent possible.

(11) No portion of any antenna array may extend beyond the property line.

(12) Wireless communications facilities should be screened mitigate visual impacts to the maximum extent practicable.

(13) The use of any portion of a wireless communications facility for signs for promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited. The City may require the installation of signage with safety information.

(14) Fencing should not be used exclusively (it must be supplemented with vegetation and other things) to screen wireless communication facilities. Security fencing should be of a design which blends into the character of the existing environment.

(15) The wireless communication facilities shall be designed, maintained and operated, as required by applicable FCC licenses and regulations.

(16) All wireless communication facilities shall comply with the setbacks within the zone district applicable to accessory structures or a setback equal to the height of the facilities as measured from the natural grade to the highest point of the wireless communication facility, whichever is greater, unless physical characteristics of the property and the facility allow for placement of the facility pursuant to Subsection (c)(6) above. On land where the setback is measured from a property line that is not adjacent to residentially zoned property, the setback shall be the setback required for an accessory structure in that zone district.

(17) Notwithstanding any other provision of this Chapter, Towers shall not exceed fifty (50) feet in height, as measured from the natural grade to the highest point of the wireless communication facility.

(18) All owners and operators of wireless communication facilities shall comply with federal regulations for radio frequency emissions. At the time of application for a wireless communication facility, and thereafter at the request of the City upon complaint (but not more than annually), the owner or operator shall submit a project implementation report that provides cumulative field measurements of radio frequency

emissions of all antennas installed at the subject site, and that compares the results with established federal standards. If, upon review, or at any time any wireless communications facility within the City is operational, the City finds that the facility does not meet federal regulations, the City may require corrective action within a reasonable period of time, and if not corrected, may require removal of the wireless communication facilities at the owner's expense. Any reasonable costs incurred by the City, including reasonable consulting costs to verify compliance with these requirements, shall be paid by the owner.

(19) To ensure the structural integrity of towers and any other freestanding communications facilities upon which other wireless communications facilities may be mounted, the owner of such structure shall ensure that it is of sufficient structural strength to accommodate reasonable co-location, if required, and is maintained in compliance with standards contained in applicable City building codes, the applicable standards for towers that are published by the Electronic Industries Alliance, as amended from time to time (presently TIA/EIA-222-G as of January 1, 2006), and all other applicable codes of the City. In addition to any other applicable standards and requirements, the following shall apply to all structures upon which wireless communication facilities are located:

- a. Sufficient anti-climbing measures must be incorporated into each facility to reduce potential for trespass and injury.
- b. No guy wires employed may be anchored within the area in front of any principal building or structure on a parcel.
- c. All wireless communication facilities shall comply with the power line clearance standards set forth by the Colorado Public Utilities Commission.
- d. All wireless communication facilities must be structurally designed and physically sited so that they do not pose a potential hazard to nearby residences or surrounding properties or improvements. Any tower or freestanding communication facility shall be designed and maintained to withstand without failure maximum forces expected from wind, tornadoes, hurricanes, and other natural occurrences, when the facility is fully loaded with antennas, transmitters, other wireless communication facilities and camouflaging. Initial demonstration of compliance with this requirement shall be provided via submission of a report to the City Manager and/or designee prepared by a structural engineer licensed in the State of Colorado describing the structure, specifying the number and type of antennas it is designed to accommodate, providing the basis for the calculations done, and documenting the actual calculations performed. Proof of ongoing compliance shall be provided upon request.

If, upon inspection, the City concludes that a wireless communication facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of a wireless communication facility, the owner shall have thirty (30) days to bring such facility into compliance with such standards. Upon good cause shown by the owner, the City Manager and/or designee may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such facility into compliance within said time limit, the City may remove such facility at the owner's expense.

(20) The fee and any additional application requirements for wireless communication facilities shall be the same as those for conditional uses contained in Section 16-18-50 of this Code.

(d) Approval Process:

(1) Wireless communication facilities may be allowed as accessory structures on private property, or public property owned by an entity other than the City, within all zone districts, if specifically authorized as a conditional use after public hearing by the City Council after recommendation from the Planning and Zoning Commission.

(2) Wireless communication facilities may be allowed as accessory structures on property owned by the City, in any zone district, if approved by the City Council as a conditional use after a public hearing.

(3) Notwithstanding any provisions of this subsection (d), applications for some wireless communication facilities may be approved administratively. Applications for alternative communication facilities and wall mounted communication facilities shall be determined by the City Manager or his designee in accordance with the criteria set forth in this subsection (d) and Section 16-3-40. Upon receipt of an application for administrative approval of an alternative communication facility, the City shall schedule a meeting to discuss the application with the applicant and interested parties. The applicant shall be responsible for providing written notice to all adjacent property owners to the proposed wireless communication facility or 500 feet from the wireless communication facility if such facility is located within a public right-of-way ("Affected Property Owners"). Such notice shall occur at least fifteen (15) days prior to the meeting date and shall be sent by certified mail, return receipt requested, and must include the time and place of the meeting and a description of the application. Within five (5) days after such meeting, provided no Affected Property Owner makes a written request that the matter be considered by the Planning and Zoning Commission and City Council as a conditional use, the City Manager or his designee may approve or deny the application administratively. Denial of an application may be appealed to the City Council. If an Affected Property Owner makes a written request that the matter be heard by the Planning and Zoning Commission and City Council, it shall proceed as a request for a conditional use pursuant to subsection (d)(1) above.

(e) Wireless communications facilities in public rights-of-way: Subject to the City's permitting process, wireless communications facilities located solely within public rights-of-way shall be permitted by administrative action, based upon the following criteria:

(1) The facilities must be placed on existing poles, upon replacement poles of the same dimensions, or upon replacement poles of a dimension that would otherwise be permitted under existing regulations for any utility operating in the City.

(2) Any necessary wiring or cabling shall be located within the pole.

(3) The area of the facilities on any pole may not exceed eight-fifteen (815) square feet, the facilities add no more than ten (10) feet of additional height to the pole, and do not project outward in any direction a distance of more than twenty-four (24) inches.

(4) Any ground equipment shall be buried or screened by landscaping approved by the City. The owner of the facilities shall maintain such landscaping.

(5) Notwithstanding the administrative approval set forth in this subsection, if an applicant is proposing to add to the total number of poles located in the area impacted by its application, or if the request does not otherwise meet the criteria contained in this subsection, the request shall require a conditional use permit.

(f) Co-location: The shared use of existing towers or other freestanding communication facilities upon which wireless communications facilities can be mounted shall be preferred to the construction of new facilities. As a condition of approval of any tower or other freestanding communications facilities, the applicant shall be required to allow co-location on such facilities in the future if the facility is capable of supporting co-location, the entity wishing to co-locate is willing to pay fair market value for the space, and the City requests such co-location. The application for any wireless communication facility involving a new tower or other freestanding communication facility shall include evidence that reasonable efforts have been made to co-locate within or upon an existing wireless communication facility within a reasonable distance of the proposed site, regardless of municipal boundaries. The applicant must demonstrate that the proposed wireless communication facility cannot be accommodated on existing facilities due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of existing and approved wireless telecommunications facilities, considering existing and planned use for those facilities;

(2) The planned equipment, if co-located, would cause radio frequency interference with other existing or planned equipment, or exceed radio frequency emission standards which cannot be reasonably prevented;

(3) Existing or approved wireless communications facilities do not have space on which proposed equipment can be placed so it can function effectively and reasonably;

(4) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures;

(5) The land owner or owner of the existing wireless communication facility refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates;

(6) No existing wireless communication facilities upon which the applicant's facilities can be mounted are located within the geographic area required to meet the applicant's engineering requirements;

(7) Existing wireless communication facilities are not of sufficient height to meet the applicant's engineering requirements;

(8) Existing wireless communication facilities upon which the applicant's facilities can be mounted do not have sufficient structural strength to support applicant's proposed antennas and related equipment.

(9) Any other reason, in the reasonable discretion of the City Manager or his or her designee.

(g) Decision: The decision on whether to approve or deny an application to construct or erect a wireless communication facility shall be in writing, based upon evidence presented to the City.

(h) Abandonment/Removal of wireless communication facilities:

(1) At the time of submission of the application for a wireless communication facility, the applicant shall execute an agreement in a form acceptable to the City, to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower or freestanding communication facility used as a wireless communications facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than one hundred and eighty (180) days. Upon removal, the land shall be restored, including but not limited to the landscaping of exposed soils.

(2) If upon inspection, the City concludes that a wireless communication facility fails to comply with any applicable conditions of approval, or constitutes a danger to persons or property, then upon written notice, the owner, shall have thirty (30) days to bring such facility into compliance. If the owner fails to bring such facility into compliance within said thirty (30) days, the City may remove the facility at the owner's expense.

(3) Any wireless communication facility that is not operated for a continuous period of one hundred eighty (180) days shall be considered abandoned. The City, in its sole discretion, may require any abandoned wireless communication facility to be removed within ninety (90) days of receipt of notice from the City notifying the owner of such abandonment. Upon removal, the site shall be restored or re-vegetated to blend with the surrounding environment. If such removal is not completed within said ninety (90) days, the City may consider the facility a nuisance under Section 7-1-30(12)(c) of the Code, and the City may remove and dispose of the same at the owner's expense. If there are two or more users of a structure upon which wireless communication facilities are mounted, then this provision shall not become effective until all users cease using the structure.

(i) Application to Existing Wireless Communications Facilities: Any wireless communications facilities approved before the effective date of the amendments to this Section 16-16-130 and related sections of this Code, shall comply with all applicable sections herein with respect to modification of such facilities. All previously approved wireless communications facilities must comply with Sections 16-16-130(c)(15), (20) and (21), and (h).

Section 11. That a new Section 16-16-140 of the City of Cherry Hills Village Municipal Code, concerning television antennas, is hereby added to read as follows:

Sec. 16-16-140. Television Antennas.

(a) For purposes of this Section, "television antenna" means an antenna used for private television reception for a single-family home.

(b) A television antenna may extend five (5) feet above the top ridgeline on the house. Television antennas shall in no instance be over thirty-five (35) feet in height as measured from the natural grade to the highest point of the antenna.

Section 12. That Section 16-18-20 of the City of Cherry Hills Village Municipal Code, concerning requirements and conditions for specific uses as conditional uses, is hereby amended by the addition of a new subpart "(c)" to read as follows:

(c) Wireless communication facilities. In addition to meeting all other requirements of this Article, wireless communication facilities must meet the requirements of Section 16-16-130.

Section 13. That Section 16-18-30 of the City of Cherry Hills Village Municipal Code, concerning requirements and conditions for all conditional uses, is hereby amended to read as follows:

Sec. 16-18-30. Requirements and conditions for all conditional uses.

(a) Permit required. Except as hereinafter provided, no conditional use shall be constructed, reconstructed, enlarged, relocated or otherwise established within the corporate limits of the City without a conditional use permit issued in accordance with the requirements of this Article.

(b) Conditional uses. Conditional uses shall, to the maximum extent possible, be located, designed, constructed and operated to minimize impacts upon any adjacent property and land use.

(c) Planning and Zoning Commission. All applicable requirements of this Code shall be met and are deemed the minimum required. The Planning and Zoning Commission shall impose such other conditions and limitations as it, in its sole discretion, may determine to be necessary to fulfill the purpose and intent of this Article as stated in Section 16-18-10 above.

(d) Termination. Any one (1) of the following shall terminate the right to operate a conditional use:

(1) Failure to initiate operation of the conditional use within twelve (12) months from the date approved by the City Council. Upon request of the applicant, and for good cause shown, the City Manager may grant a six-month extension of the approved conditional use, but shall not grant more than two (2) such extensions.

(2) Changing to a use permitted by right in the governing zone district.

(3) Discontinuance of the conditional use for a period of at least twelve (12) months, except for wireless communication facilities, which are governed by Section 16-16-130(g).

(4) Violation of, or failure to comply with, the terms and conditions of the approved conditional use permit after reasonable notice to comply has been given by the City. In addition, the penalties and remedies of Section 1-4-20 of this Code may be applied.

(e) Approved plan. Unless a phased development plan is approved with the application, once any portion of the conditional use is utilized, all specifications and conditions pertaining to the conditional use become immediately effective.

(f) Reinstatement process: The process for reinstatement of any conditional use that has been terminated under the terms of Subsection (d) above shall be the same as for original approval.

Section 14. That Section 16-18-50 of the City of Cherry Hills Village Municipal Code, concerning application procedures for conditional uses, is hereby amended to read as follows:

Sec. 16-18-50. Application procedures.

The official application form for a conditional use permit shall be provided by the Community Development Department which shall generally contain the requirements specified below and elsewhere in this Chapter. Actual requirements will be dependent upon the type and nature of the conditional use being requested. An application for a conditional use permit is separate and distinct from any requirement to file an application for a rezoning or a subdivision

plat as may be required elsewhere in this Code. An applicant for a conditional use permit may, however, include with the application for conditional use an application for a variance to be considered by the Planning Commission and the City Council together with the conditional use permit application. General application requirements shall include:

(1) Supplemental information. The conditional use permit application shall also include the existing land use and a written description of the proposed use detailing the nature of the proposed structure, including its function and, where appropriate, hours of operation and traffic generation. Other requirements as specified in the official application form shall be provided to enable thorough and accurate analysis of the request.

(2) Fees. Persons applying for a conditional use permit shall pay for planning and engineering review services and other consultant fees, including, without limitation, legal fees and other direct expenses incurred on behalf of the City and made necessary as a result of said application. The applicant shall pay an initial fee of five hundred dollars (\$500.00) and make an initial deposit of one thousand dollars (\$1,000.00) into a non-interest-bearing escrow account held by the City at the time the application is filed with the City. The City shall have the right and authority to make disbursements from said escrow account at its sole discretion to cover the City's cost for planning and engineering review services, attorney and other consultant fees, and other direct expenses incurred with regard to said application. Any balances remaining in the escrow account at the conclusion of said application, such as approval, denial or withdrawal, shall be returned to the applicant without interest. In the event said funds are exhausted before completion of said application, the applicant will make a supplemental deposit to said escrow account in an amount determined by the City Manager. Failure to make necessary supplemental deposits shall cause the application process to cease until the required deposits are made.

(3) Site plan. In addition to the official permit application form, the applicant shall submit a site plan. The site plan shall show all contiguous real property ownership or interests of the applicant. For purposes of this Section, public rights-of-way shall not be considered to interrupt this requirement. A site plan shall include, at a minimum:

- a. An area map showing existing ownership of the subject property and all abutting property; and showing existing zoning and land use of the subject property and all property lying within five hundred (500) feet;
- b. Historic, existing and proposed contours expressed in one-foot increments based upon the USGS datum;
- c. Location of existing improvements, within one-tenth (0.1) foot of actual location;
- d. Location of proposed improvements;
- e. Location of existing and proposed streets and City rights-of-way within one-tenth (0.1) foot of actual location;
- f. Location of existing easements of record within one-tenth (0.1) foot of actual location;
- g. Adjacent lots;
- h. Professional land surveyor stamp;
- i. Landscaping; and
- j. Parking.

(4) Architectural drawings. Typical elevation drawings of each structure included within the site, showing: the architectural style; the general dimensions and gross floor area of each; the specifications of all exterior building materials to be used on each structure, including types of siding and roofing materials and their textures and color; and the location of all mechanical equipment and an indication as to how such equipment will be screened from adjacent properties.

(5) Materials required to accompany permit application. If no subdivision of the proposed development site is required, and if it is determined by the City Manager to be in the best interest of the City, one (1) or more of the following may be required:

a. A soils report.

b. An agreement between the applicant and the City that provides the City with whatever it deems necessary to assure that the proposed facility will be constructed as proposed and that the future operation and maintenance of the facility is properly provided for both as to management and funding. Such agreement may require approval of covenants, escrow deposits, performance and payment bonds or any other method of assurance required by the City.

c. Any other information pertinent to the application that addresses issues raised during the review process, or which the applicant feels is necessary.

(6) For wireless communication facilities, any of the information required in Section 16-16-130(c), (d) or (f), as applicable.

(76) Additional material required. Additional written and graphic materials may be required by the City Manager to accurately establish conformity of an application with the intent and standards of this Article, other applicable provisions of this Code and the Master Plan.

(87) Where an applicant for a proposed conditional use permit also requests a variance to a standard imposed by this Chapter, the applicant shall include with the application all information and materials identified in Section 16-3-70 sufficient to permit the Planning and Zoning Commission and the City Council to review the request for a variance for conformance with the criteria of Section 16-3-50.

Section 15. That Section 16-18-60 of the City of Cherry Hills Village Municipal Code, concerning review procedures for conditional uses, is hereby amended as follows:

Sec. 16-18-60. Review procedures.

Applications for conditional use permits shall be subject to the following review and approval procedures:

(1) Planning and Zoning Commission review procedure.

a. Upon receipt of a complete permit application, fee and escrow deposit and after determining that no further information is necessary, the City Manager shall refer the application for conditional use to the Planning and Zoning Commission, by setting the same on the next available Planning and Zoning Commission agenda. The Planning and Zoning Commission shall hold a public hearing preceded by public notice thereof as provided in Subsection 16-2-40(c) above.

b. The Planning and Zoning Commission shall determine whether the application meets the statement of legislative purpose set forth in Section 16-18-10 above and is based on the evidence and testimony presented at the public hearing. The Planning and Zoning Commission may recommend approval, approval with conditions or denial of the application. The Planning and Zoning Commission may table the matter to a date certain pending the provision of further information.

c. The Planning and Zoning Commission may recommend conditions other than the minimum requirements and conditions established in Sections 16-18-20 and 16-18-30 above and deemed reasonably essential for the health, safety and general welfare of the public.

d. The Planning and Zoning Commission shall consider applications for wireless communication facilities in accordance with the criteria set forth in Section 16-16-130, and may make any recommendations for approval, approval with conditions or denial, consistent with that Section and applicable law.

ed. The Planning and Zoning Commission shall have the authority to hear and make recommendation to the City Council regarding any requests for variances to this Chapter brought in conjunction with the application process outlined in this Article. In hearing such requests, the Planning and Zoning Commission will utilize the criteria contained in Paragraphs 16-3-50(b)(1) through (9) of this Chapter.

(2) City Council review procedure.

a. The application for a conditional use permit along with the Planning and Zoning Commission's recommendation are considered by the City Council at a public hearing. Notice shall be given of the public hearing pursuant to the requirements of Subsection 16-2-40(c) above.

b. The City Council shall determine if the application meets the statement of legislative purpose set forth in Section 16-18-10 above based on the evidence and testimony presented at the public hearing. The City Council may recommend approval, approval with conditions or denial of the application. The City Council may table the matter to a date certain pending the provision of further information.

c. The City Council may require conditions other than the minimum requirements and conditions established in Sections 16-18-20 and 16-18-30 above and deemed reasonably essential for the health, safety and general welfare of the public.

d. The City Council shall determine whether applications for wireless communication facilities meets the criteria set forth in Section 16-16-130, and may approve, approve with conditions or deny any application, consistent with that Section and applicable law.

ed. The City Council shall have the authority to hear and decide any requests for variances to this Chapter brought in conjunction with the application process outlined in this Article. In hearing such requests, the City Council will utilize the criteria contained in Paragraphs 16-3-50(b)(1) through (9) of this Chapter. A majority vote of a quorum of the City Council present and voting shall be required to approve any variance brought in conjunction with the application process outlined in this Article.

Section 16. That Subsection 16-12-20(a) of the City of Cherry Hills Village Municipal Code, concerning height regulation for the C-1, Community District, is hereby amended to read as follows:

a. No structure shall be less than one (1) story above the ground, nor shall it exceed thirty (30) feet in height measured from the natural grade at the midpoint of the structure to the highest point of the roof surface.

Section 17. That Subsection 16-13-30(a) of the City of Cherry Hills Village Municipal code, concerning height regulations in the C-2, Limited Commercial District, is hereby amended to read as follows:

a. Height regulations. No structure shall exceed forty-five (45) feet in height measured from the natural grade at the midpoint of the structure to the highest point of the roof surface. No structure shall be less than one (1) story above the ground. Chimneys and roof-mounted mechanical equipment may be built to a height of five (5) feet above the highest point of the roof. ~~Wireless communications facilities may be built to a reasonable height not to exceed fifty (50) feet above existing grade.~~

Section 18. 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 19. Repeal. The repeal of any ordinance or parts of ordinances of the City of Cherry Hills Village shall not revive any other section of any ordinance or ordinances hereto before

repealed or superseded and the repeal set forth in this Ordinance shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 20. Effective Date. This ordinance shall take effect in accordance with the City of Cherry Hills Village Home Rule Charter.

Adopted as Ordinance No. 08, Series 2007, by the City Council of the City of Cherry Hills Village, Colorado this 5th day of June, 2007.


Michael J. Wozniak, Mayor

ATTEST:


Karen C. Losier, City Clerk

APPROVED AS TO FORM:


Thad W. Renaud, City Attorney

Published in the Villager
Published 6/14/07
Legal # 9405

**CITY OF CHERRY HILLS VILLAGE
PUBLIC NOTICE**

The following Ordinance was passed on second reading by the City Council of Cherry Hills Village, Colorado on Tuesday, June 5, 2007:

ORDINANCE NO. 08, Series 2007

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: (1) AMENDING SECTIONS 16-5-20, 16-6-20, 16-7-20, 16-8-20, 16-9-20, 16-10-20, 16-11-30 AND 16-13-20, CONCERNING CONDITIONAL USES IN THE VARIOUS ZONE DISTRICTS, AND 16-18-20, 16-18-30, 16-18-50 AND 16-18-60, CONCERNING REQUIREMENTS FOR CONDITIONAL USES AND THE APPLICATION AND REVIEW PROCEDURES FOR CONDITIONAL USES, AND SUBSECTION 16-12-20(a), CONCERNING HEIGHT REGULATIONS IN THE C-1 DISTRICT, AND SUBSECTION 16-13-30(a), CONCERNING HEIGHT REGULATIONS IN THE C-2 DISTRICT; AND (2) ADDING NEW SECTIONS 16-11-30 AND 16-12-20, CONCERNING CONDITIONAL USES IN THE O-1 AND C-1 ZONE DISTRICTS, AND 16-16-140, CONCERNING TELEVISION ANTENNAS; AND (3) REPEALING AND RE-ENACTING SECTION 16-16-130, CONCERNING WIRELESS COMMUNICATION FACILITIES; ALL FOR THE PURPOSE OF ADOPTING COMPREHENSIVE REGULATIONS CONCERNING WIRELESS COMMUNICATIONS FACILITIES

The full text of the ordinance is available for inspection and acquisition at the office of the City Clerk during regular business hours.

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