

**ORDINANCE NO. 5
Series 2009**

May 5, 2009: Introduced as Council Bill 5, Series 2009 by Mayor Pro Tem Stewart, seconded by Councilmember Scott Roswell, and considered by the title only on first reading. Passed by a vote of 6 yes and 0 no.

June 2, 2009: 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 AMENDING SECTION 16-17-60,
CONCERNING PROCEDURE FOR DEVELOPMENT RELATING TO
BANK STABILIZATION WITHIN THE FLOODPLAIN**

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 City Council has determined that certain bank stabilization projects provide a benefit to the public, including reduced sedimentation, enhanced water quality, and increased safety; and

WHEREAS, the City Council has determined that administrative review procedures for floodplain development projects that are only intended to provide bank stabilization are appropriate, provided adequate public notice is made to adjacent property owners, ~~and that such property owners have the opportunity to request a public hearing prior to approval.~~

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

Section 1. That Section 16-17-60 of the City of Cherry Hills Village Municipal Code 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 Subsection (d) 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.

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(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.

(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) Bank Stabilization: The floodplain administrator 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 Manuel (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 considered granted.

(4) The applicant shall notify all adjacent property owners 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 in writing of the nature of the request. Such written notification must shall be sent by certified mail, return receipt requested. Within a 15-day period after the notice is mailed, any adjacent property owner may make a written request to have the application reviewed by the Planning and Zoning Commission and City Council in accordance with the procedures outlined in this Section and subject to all requirements of this Article.

(5) The floodplain administrator City Manager or his or her designee may, for any reasonable cause, determine that an application be reviewed by the Planning and Zoning Commission and City Council in accordance with the procedures outlined in this Section and subject to all requirements of this Article approve, approve with conditions, or deny an application, or in the administrator's reasonable discretion, present the application for review and decision by the City Council at a public meeting. The floodplain administrator'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 floodplain administrator City Manager or his or her designee may attach conditions to any approval of a floodplain development permit for bank stabilization as he or she deems deemed necessary to further the purpose of this Article.

(d) (e) 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.

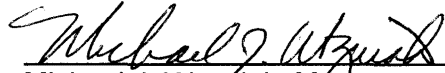
(e) (f) City report to Federal Emergency Management Agency: The City shall maintain, through its City Manager, the records of all appeal and application actions and report any decisions to the Federal Emergency Management Agency upon request.

Section 2. 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.

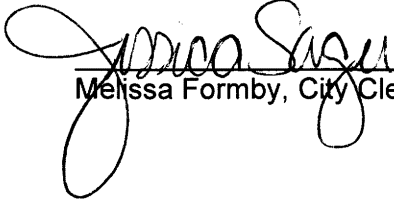
Section 3. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 5, Series 2009, by the City Council of the City of Cherry Hills Village, Colorado this 2nd day of June, 2009.

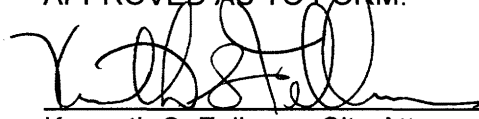
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Michael J. Wozniak, Mayor

ATTEST:


Melissa Formby, City Clerk

APPROVED AS TO FORM:


Kenneth S. Fellman, City Attorney

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**CITY OF CHERRY HILLS VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 05, SERIES 2009**

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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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