

ORDINANCE NO. 12
Series 2003

November 18, 2003: Introduced as Council Bill 16 Series of 2003 by Viola Lahana, seconded by John Love, and considered by the title only on first reading. Passed unanimously.

December 16, 2003: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 12, Series 2003.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE AMENDING SECTION 16-16-100
PERTAINING TO CONSTRUCTION OF EARTHEN BERMS

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 land uses for property within the boundaries of the City; and

WHEREAS, the City has regulated the use and size of earthen berms; and

WHEREAS, it has been demonstrated that the mounding of earth upon building sites in order to raise the grade level and to maximize the use of the site can impair the residential character of neighborhoods and result in an incompatibility of lots and structure massing within neighborhoods; and

WHEREAS, the control and regulation of the size of berms can protect the health, safety, and welfare of residents of the City of Cherry Hills Village;

WHEREAS, the City Council desires to amend certain sections of the City Code to regulate the use and size of berms,

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

Section 1. Section 16-16-100 of the City Code for the City of Cherry Hills Village, entitled "Construction of Earthen Berms" is hereby amended to read in full as follows:

16-16-100: CONSTRUCTION OF ~~EARTHEN~~ BERMS:

A. The construction of ~~earthen~~ berms ~~for noise, privacy or other property protection~~ is permitted ~~in the city only in accordance with this section following issuance of a berm permit.~~ ~~Before such construction is begun, the property owner or his representative shall obtain a building permit which shall be issued only if it is determined that the construction of the earthen berm is in conformance with accepted engineering standards, is constructed of soil, rock or other suitable building materials as may be approved by the building inspector, does not exceed six feet (6') in height measured from the ground level, except that a berm parallel and adjacent to a highway owned by the state of Colorado may not exceed eight feet (8') in height, has a maximum slope of three (3) units horizontal to one unit vertical (3:1), does not interfere with any flood plain or historic drainage area, does not obstruct the sight distance of the traveling motorist at road intersections as set forth in section 6-15-3 of this chapter and does not otherwise interfere with the health, safety and welfare of the community. To eliminate soil erosion, the property owner shall maintain and landscape the berm so that no barren areas of soil are exposed to weather, except as required for the germination of native grasses, and no furrows of six inches (6") in depth or greater evidencing the flow of water occur on the berm. Native grasses, sod and rock are all permitted landscape materials, plus others which meet this section shall apply only to berms constructed after the date hereof. The maintenance and landscaping requirements of this section shall apply to all berms with the city, whether constructed before or after the date hereof.~~



B. Before commencing construction of any berm, the property owner shall submit to the City an application for a berm permit and information deemed sufficient by the City to demonstrate or describe the following:

1. The location of the proposed berm(s);
2. The height of the pre-construction grade of the property along all points of the proposed berm(s);
3. The width, height, and length of the proposed berm(s) along all points of the proposed berm;
4. A description and source of the materials used to form the berm(s);
5. A description of the type and location of grasses, groundcovers, shrubs, trees, and other landscaping materials to be installed on the berm(s);and
6. A description of any potential modification or redirection of the pre-construction or historic surface drainage patterns as the result of the proposed berm(s).

C. The City shall issue a berm permit where the City finds that the proposed berm(s) will meet the following standards and criteria:

1. Berms shall not exceed six (6) feet in height at any point as measured from the pre-construction grade.
2. Berms shall not exceed the maximum slope of three (3) units horizontal to one (1) unit vertical (3:1).
3. Berms shall not exceed forty-two (42) feet in width measured at the base of the berm along the pre-construction grade.
4. Berms shall be prohibited within any floodplain, unless otherwise authorized by City issued floodplain development permit.
5. Berms shall be prohibited within the sight triangle of any intersection.
6. No buildings or structures of any kind or type shall be permitted upon or within any berm.
7. All areas of the berm(s) shall be covered with grasses, groundcovers, rock, mulch, or other landscaping materials sufficient to prevent erosion.
8. Berms shall not be designed to collect, redirect, or release surface water upon adjacent property in a manner inconsistent with the historic or pre-construction conditions or applicable law without the written consent of the adjacent landowner.

D. Variances may be granted to the standards and criteria of this section in accordance with section 16-3-50 of this Code.

E. The City may impose one or more conditions upon the issuance of a berm permit where such condition(s) are reasonably necessary to implement the requirements of the City Code or to protect the health, safety, or welfare of the public.

Section 2. Section 16-1-10 of the City Code for the City of Cherry Hills Village, entitled "Definitions" is hereby amended by the amendment of the definition for "Earthen Berm" and the addition of a new definition for "Pre-Construction Grade" and "Sight Triangle" as follows:

EARTHEN-BERM:

A mound, pile, hill, or bank constructed of soil, or rock or combination of earth materials other suitable building material as approved by the building inspector exceeding three (3) feet (3') in height as measured from the historic grade the pre-construction grade usually constructed for the purpose of noise mitigation, privacy, surface drainage control, or landscaping amenity. Also referred to as an "earthen berm."

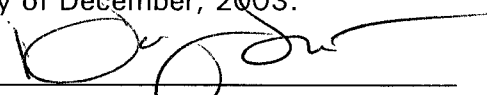


PRE-CONSTRUCTION GRADE: The elevation of the ground surface in its natural or historic state at a given point, before grading, grubbing, or other form of man-made alteration.

SIGHT TRIANGLE: The triangular area bounded on two (2) sides by the edge of pavement lines and a line joining points along said lines fifty (50) feet from the point of the edge of pavement line intersection. Nothing shall be constructed, placed, planted or allowed to grow in such a manner as to materially impede vision between a height of two and one-half (2 1/2) feet and ten (10) feet above the center line grades of the adjacent streets.

Section 3. 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 or unconstitutional.

Adopted as Ordinance No. 12 Series 2003, by the City Council of the City of Cherry Hills Village, Colorado this 16th day of December, 2003.



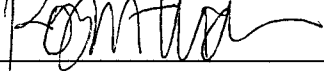
Douglas Scott, Mayor

ATTEST:



Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:



Robert C. Widner, City Attorney

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