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TRACY K. BAKER  
ARAPAHOE COUNTY

ORDINANCE 5  
SERIES 2002

November 20, 2001: Introduced as Council Bill 22 Series of 2001 by Jan Steiert, seconded by John Love, and considered by the title only on first reading. Passed unanimously.

January 15, 2002: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 5, Series 2002.

**A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE VACATING THE CITY'S INTEREST, IF ANY, TO A ROADWAY EASEMENT ADJACENT TO FAIRFAX STREET AND WITHIN LOT 1, TAMBLYN SUBDIVISION.**

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village is expressly authorized to own, possess, and hold real property and to sell and dispose of such real property; and

WHEREAS, state law at Title 43, article 2, part 3, C.R.S., authorizes every municipal governing body to divest the municipality's interest in platted or designated public streets, alleys, lanes, parkways, roads, and other public ways in accordance with the municipality's charter and laws; and

WHEREAS, the vacation and disposition of municipal interests in public rights-of-way and other public property is identified by the appellate courts of the State of Colorado as a legislative and discretionary function of the local governing body; and

WHEREAS, pursuant to its Home Rule Charter and state law, the City Council holds the power and authority to specify the terms and conditions under which the City will consider and dispose of public interests in rights-of-way and other property; and

WHEREAS, the City is authorized to exercise its legislative power to vacate all or any portion of a right-of-way in accordance with Chapter 4 of Title 8 of the City Code for the City of Cherry Hills Village; and

WHEREAS, the City Council determines that neither a preliminary nor formal petition for vacation is necessary for this vacation and the vacation may be processed without conformance with the application requirements of Chapter 4 of Title 8 of the City Code for the City of Cherry Hills Village; and

WHEREAS, the City entered into an Easement Agreement dated June 12, 1989, concerning, in part, the dedication and operation of a "Roadway Easement" (as fully described in the Easement Agreement) located adjacent to the Fairfax Street right-of-way and within Lot 1, Tamblyn Subdivision, such agreement having been recorded on or about June 15, 1989, at Book 5710, Page 544 in the office of the Clerk and Recorder for Arapahoe County, Colorado; and

WHEREAS, the Easement agreement expressly recognizes that the City may abandon its interests in the Roadway Easement; and

WHEREAS, a portion of the Roadway Easement is not necessary for use by the public; and

WHEREAS, the City desires to vacate the entire Roadway Easement in accordance with Chapter 4 of Title 8 of the City Code and Part 3, Article 2, Title 43, C.R.S.

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

Section 1. The City Council finds that the property described below in this Section 1 is no longer necessary for use by the public and that no land would, by such

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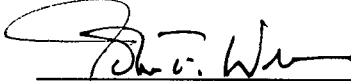
CHERRY HILLS VILLAGE, CO.

vacation of right-of-way, be left without access (via public or private drive or thoroughfare) to an established public road. The Council further finds that the vacation of the property described in this Section 1 serves the public interest of the City of Cherry Hills Village. Based upon such findings, the City's title or claim to ownership of the following property is hereby vacated:

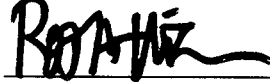
A semi circular easement having a radius of thirty feet (30'), in the northwest portion of Lot 1, Tamblyn Subdivision, Arapahoe County, Colorado, defined as the "Roadway Easement" and depicted on the map attached as Exhibit B to that Easement Agreement recorded on or about June 15, 1989, at Book 5710, Page 544 in the office of the Clerk and Recorder for Arapahoe County, Colorado; provided, however, that nothing in this Ordinance shall vacate or abandon any other form of easement granted by such Easement Agreement or vacate any part or portion of the Fairfax Street right-of-way.

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.

Adopted as Ordinance No. 5 Series 2002,  
by the City Council of the City of Cherry Hills Village,  
Colorado this 15<sup>TH</sup> day of January, 2002.

  
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John F. Welborn, Mayor

ATTEST:  
  
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Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:  
  
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Robert C. Widner, City Attorney

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