

ORDINANCE NO. 5

SERIES 2001

March 6, 2001: Introduced as Council Bill No. 4 Series of 2001 by Doug Tisdale, seconded by Viola Lahana, and considered by the title only on first reading. Passed unanimously.

March 20, 2001: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 5, Series 2001.

AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE ESTABLISHING A PROCESS FOR THE VACATION OF CERTAIN PUBLIC PROPERTY AND REPEALING SECTION 7-3-10 OF THE CITY CODE FOR THE CITY OF CHERRY HILLS VILLAGE, COLORADO

WHEREAS, state law at Title 43, article 2, part 3, C.R.S., generally 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 process for divesting ownership of public property set forth in Title 43, article 2, part 3, C.R.S., is not declared to be a matter of statewide concern and, therefore, the statute does not preclude home rule municipalities from supplementing the provisions of the state law; and

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village holds all powers of self-government and home rule power possible under the Constitution and laws of the State of Colorado; and

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 C.R.S. § 31-15-713(1)(b) authorizes every municipal corporation of the State of Colorado to sell and dispose of real property owned by the municipality upon such terms and conditions as the municipality's governing body may determine at a regular or special meeting; and

WHEREAS, the City Charter for the City of Cherry Hills Village confers upon the City Council all legislative power of the City and authorizes the City Council to enact ordinances to provide for the health, safety, and welfare of the City; 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, section 7-3-10 of the City Code for the City of Cherry Hills Village provides that the vacation of streets and easements shall be performed in a manner provided by law but does not provide a process for such authorized vacation,

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

Section 1. Section 7-3-10 of the City Code for the City of Cherry Hills Village is hereby repealed in its entirety.

Section 2. Title 8 of the City Code for the City of Cherry Hills Village is hereby amended by the addition of a new Chapter 4 entitled "Vacation of Public Rights-of-way" to read in full as follows:

CHAPTER 4

VACATION OF PUBLIC RIGHTS-OF-WAY

SECTION:

- 8-4-1: Purpose
- 8-4-2: Definitions
- 8-4-3: City Council Authority to Vacate Rights-of-way
- 8-4-4: Petition to Vacate Right-of-way
- 8-4-5: Procedure to Vacate Rights-of-way
- 8-4-6: Effect of Right-of-way Vacation

8-4-1: PURPOSE: The purpose of this Chapter is to establish a uniform procedure for the vacation of interests in rights-of-way owned or otherwise held by the City of Cherry Hills Village and to supplement the procedures for vacation of rights-of-way provided by Title 43, article 2, part 3, C.R.S.

8-4-2: DEFINITIONS:

- A. "Interested person" means the owner of property contiguous to or served by a right-of-way that is the subject of a petition for vacation submitted in accordance with this Chapter.
- B. "Petitioner" means an interested person submitting a petition for vacation of a right-of-way as permitted by this Chapter.
- C. "Right-of-way" includes any platted or designated public street, alley, lane, parkway, avenue, road, easement including utility easements and pedestrian or equestrian trail easements, or other public way, whether or not it has been used as such, owned by the City of Cherry Hills Village, Colorado.

8-4-3: CITY COUNCIL AUTHORITY TO VACATE RIGHTS-OF-WAY:

- A. The City Council is authorized to vacate all or any portion of a right-of-way in accordance with this Chapter upon the petition of any interested person or upon the City's own initiative. The vacation of a right-of-way shall be a legislative and discretionary decision of the City Council.
- B. The City Council may impose reasonable conditions upon the vacation of any right-of-way including, but not limited to: (i) the payment of consideration by the landowner(s) receiving benefit from the vacation; (ii) the approval of a subdivision plat in accordance with Title 7 of the City Code documenting the vesting of the ownership interests resulting from the vacation of a right-of-way; and/or (iii) the imposition of a deed restriction or other form of covenant upon the vacated right-of-way as may be deemed necessary or desirable by the City Council to protect the public health, safety, or welfare.

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- C. The City Council may reserve, except, or otherwise create and retain one or more easements within any right-of-way vacated pursuant to this Chapter.

8-4-4: PETITION TO VACATE RIGHT-OF-WAY:

A. Preliminary Petition for Vacation.

1. Any interested person may submit to the City Manager a written preliminary petition requesting that the City Council consider the vacation of a right-of-way located within the City of Cherry Hills Village. At a minimum, the petition shall include the name, address, and telephone number of the petitioner together with a general description or illustration of the right-of-way proposed for vacation and all properties contiguous to, or served by, such right-of-way. A preliminary petition shall not be required for a City-initiated vacation.
2. The City Manager shall inform the City Council of the Manager's receipt of a preliminary petition at a regular meeting of the Council. The Council shall, following an administrative review of the preliminary petition, determine whether the requested vacation possesses sufficient merit to justify the petitioner's preparation and submission of a formal petition and the processing of such formal petition in accordance with this Chapter. The Council's decision that a preliminary petition lacks sufficient merit to justify further consideration shall constitute a legislative finding that the requested vacation is not in the public interest and that the petition is rejected. The Council's decision that a preliminary petition possesses sufficient merit to justify further consideration shall only authorize the further processing of a formal petition for vacation; such decision shall not constitute a finding or imply that the vacation will be approved following such further consideration.

B. Formal Petition for Vacation.

1. In the event that the City Council determines that a preliminary petition possesses sufficient merit to justify further consideration, the petitioner may prepare and submit a formal petition for vacation to the City, at the petitioner's cost and expense, containing the following:
 - a. An application letter signed by the petitioner requesting the City's approval of the right-of-way vacation and generally describing the reasons for the vacation; and
 - b. A non-refundable application fee of one hundred dollars (\$100.00). In addition, the petitioner shall deposit with the City ten thousand dollars (\$10,000.00) or such other amount determined by the City Manager based upon the Manager's estimate of the City's cost and expense associated with the processing of the petition. The deposit shall be applied toward the petitioner's payment of the City's planning and engineering review services, attorney review fees, plat recordation fees, appraisal fees, and other costs and expenses incurred by the City and made necessary as a result of the City's processing of the petition. The deposit shall be administered in accordance with the provisions of section 7-3-2 (B) of the City Code; and
 - c. A complete legal description of the right-of-way proposed for vacation; and

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- d. A survey of the right-of-way proposed for vacation and of all property located within 250 feet of the boundaries of such right-of-way prepared by a Colorado licensed land surveyor. The survey shall include a written certification signed by the surveyor certifying to the City of Cherry Hills Village the survey's accuracy and conformance with applicable law. Such survey shall illustrate or include a description of:
 - (i) both the existing right-of-way and the resulting vesting of the ownership of such right-of-way pursuant to section 8-4-6 in the event the vacation is approved by the City Council; and
 - (ii) all easements within the right-of-way and the location of all existing utilities within, above, or below the right-of-way; and
 - (iii) the location of all physical improvements within the right-of-way and, where applicable, the portion of the right-of-way used by the petitioner, other owners of property served by the right-of-way, and the general public.

- e. A current commitment for title insurance ("title commitment") identifying the current ownership interests in the right-of-way proposed for vacation together with liens, encumbrances, and restrictions thereon, if any, prepared by a Colorado title insurance company. The title commitment shall be accompanied by a copy of each recorded lien, encumbrance, and restriction identified in the title commitment. The petitioner may be required by the City to obtain a policy of title insurance based on the title commitment as a condition of approval of the requested vacation; and

- f. A written description, including sketch drawing(s), of the planned use of the right-of-way proposed for vacation and a description of the means of access to all properties affected by the proposed vacation; and

- g. A list of the names and mailing addresses of all owners of property within 500 feet of the right-of-way proposed for vacation as their names and addresses appear of record with the Arapahoe County Assessor's Office. The list shall be accompanied by a statement signed by the petitioner certifying that: (i) the list was prepared not more than 30 days prior to the date of submission of the formal petition to the City; and (ii) the list accurately identifies the information concerning ownership available from the Arapahoe County Assessor's Office.

- 2. The City Manager may commission the preparation of a written appraisal of the fair market value of the right-of-way proposed for vacation prepared by a Colorado licensed real estate appraiser. The expense of such appraisal shall be paid from the petitioner's deposit required by section 8-4-4(B)(1)(b) unless otherwise directed by the City Council.

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- 3. The City Manager or the City Council may modify or waive all or any requirement of a formal petition imposed by section 8-4-4(B)(1) and may request additional information deemed necessary by the City to permit the City's thorough review of the merits of the proposed right-of-way vacation.
- 4. The City may initiate a petition for vacation by motion or resolution of the City Council. Prior to processing a City-initiated petition for vacation of a right-of-way, the City Council shall consider and decide the applicability of the requirements of a formal petition as provided in section 8-4-4(B)(1). A City-initiated petition shall be processed in accordance with section 8-4-5.

8-4-5: PROCEDURE TO VACATE A RIGHT-OF-WAY:

- A. Following the City's receipt of a complete formal petition for vacation of a right-of-way, the City Manager shall schedule the petition for administrative consideration by the Planning and Zoning Commission. The Planning and Zoning Commission shall provide to the City Council a recommendation concerning the proposed vacation including, where appropriate, recommendations for the imposition of conditions necessary or desirable to protect the public health, safety, and welfare. When a right-of-way proposed for vacation involves a pedestrian or trail easement, the Planning and Zoning Commission shall obtain a recommendation from the Parks and Trails Committee prior to rendering a recommendation to the City Council.
- B. Following the Planning and Zoning Commission's consideration of the petition, the City Attorney shall prepare an ordinance to vacate the right-of-way. Where the Commission recommends approval or conditional approval of the petition, the ordinance shall be in a form consistent with the Commission's recommendation.
- C. Following the issuance of a recommendation by the Planning and Zoning Commission, the City Manager shall schedule the ordinance for first reading before the City Council. If approved on first reading, the ordinance, together with the petition, shall be scheduled for second reading and consideration at a public hearing before the City Council. Notice of the public hearing shall be made by the posting of at least one notice in a conspicuous location within or near the right-of-way described in the petition for vacation not less than fifteen (15) days prior to the date of the hearing. The posted notice shall bear a caption "NOTICE OF PUBLIC HEARING" or similar language with each letter of the caption at least two inches (2") in height and shall also include the date, time, and place of the public hearing together with a general description or illustration of the right-of-way proposed for vacation. A notice of the public hearing shall also be deposited by the petitioner in the U.S. Mail, certified with return receipt requested, not less than twenty (20) days prior to the date of the hearing addressed to all owners of property within 500 feet of the right-of-way proposed for vacation as their names and addresses appear upon the list of owners submitted to the City by the petitioner as part of the petition for vacation. All mailed notices shall identify, at a minimum, the date, time, and place of the hearing together with a statement that the petitioner has requested the City's vacation of a right-of-way and a brief description or general illustration of the segment of right-of-way subject to the petition for vacation. The petitioner shall deliver all returned postal receipt cards to the City prior to the hearing.

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- D. Following the conclusion of the public hearing, the City Council shall either reject or approve the ordinance, as it may be amended by the Council. The Council may continue the public hearing and/or the final decision as necessary to ensure that sufficient information is prepared and made available to the City Council regarding the proposed vacation and the vacation's impact upon the City.
- E. No ordinance vacating a right-of-way shall be approved unless the City Council finds, at a minimum, the following:
 - 1. For the vacation of any right-of-way, the vacation serves the public interest; and
 - 2. For the vacation of a right-of-way that provides *vehicular* access to property, the vacation will not leave such property without an established public road or private access easement connecting such property with another established public road.

8-4-6: EFFECT OF VACATION OF RIGHT-OF-WAY:

For any right-of-way vacated in accordance with this Chapter, the ownership of the City's vacated interest in a right-of-way shall vest as follows:

- A. For a *roadway* as such term is defined by C.R.S. § 43-2-301(3), ownership of the City's vacated interest shall vest in accordance with the provisions of C.R.S. § 43-2-302; or
- B. For an *easement* not within the definition of C.R.S. § 43-2-301(3), ownership of the City's vacated interest shall vest with the then-current owner(s) of the underlying fee simple estate, as their ownership interest(s) may appear.

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.

Adopted as Ordinance No. 5 Series 2001, by the City Council of the City of Cherry Hills Village, Colorado this 20TH day of March, 2001.

Viola Lahana
Mayor Pro-Tem Viola Lahana

ATTEST:

Darlene French
Darlene French, City Clerk

APPROVED AS TO FORM:

Robert C. Widner
Robert C. Widner, City Attorney

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