

ORDINANCE NO. 5

Series 2024

August 26, 2024: Introduced as Council Bill 6, Series 2024 by Councilor Earl Hoellen, seconded by Mayor Pro Tem Randy Weil, and considered in full text as an emergency ordinance. Passed by a vote of 4 yes and 0 no.

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY A MEASURE AMENDING THE HOME RULE CHARTER REGARDING THE MANAGEMENT AND PROTECTION OF QUINCY FARM IN ACCORDANCE WITH APPLICABLE LAW AND THE CONSERVATION EASEMENT AT THE COORDINATED ELECTION TO BE HELD NOVEMBER 5, 2024

WHEREAS, the City of Cherry Hills Village ("City") is a home rule municipality of the State of Colorado with all powers granted by Article XX of the Colorado Constitution and the City's Home Rule Charter ("Charter"); and

WHEREAS, Quincy Farm is a 17.5-acre property located at 4400 and 4450 E. Quincy Avenue that spans both sides of the High Line Canal that was gifted to the City by its previous owner, Catherine ("Cat") H. Anderson, subject to a Deed of Conservation Easement dated December 14, 2007 and recorded in the Arapahoe County Clerk and Recorder's Office on December 18, 2007 at Reception Number B7157828 (the "Easement"); and

WHEREAS, the Easement is a 28-page agreement established for the purpose of preserving and protecting in perpetuity the Conservation Values of Quincy Farm and with the intent to permit all uses of that property that are not inconsistent with such values or expressly prohibited by the Easement; and

WHEREAS, the Easement grants solely to Colorado Open Lands, a Colorado nonprofit corporation, the right to prevent, correct, or require correction of violations of the terms and purposes of the Easement; and

WHEREAS, Section 3.9 of the Charter, entitled "Bridle Paths, Parks, Trails, Open Space and Recreation Programs," currently authorizes City Council to provide for and fund recreational areas and facilities in the City and requires the City to hold, protect, and maintain open space, including Quincy Farm, in public trust for the use, benefit, and enjoyment of the public; and

WHEREAS, a citizen petition was submitted to the City Clerk on July 18, 2024 to place a Charter amendment on the ballot for the November 5, 2024 election to be coordinated by Arapahoe County (the "Petition"), and such Petition was submitted to the City Clerk with signatures affixed thereto on August 7, 2024, which signatures are currently subject to the City Clerk's verification of petition validity and sufficiency; and

WHEREAS, City Council believes that the Petition seeks to amend Section 3.9 of the Charter to: (1) prohibit public access to the West Area of Quincy Farm without City supervision; (2) attempt to authorize City residents to enforce the terms of the Easement through legal action in addition to Colorado Open Land's existing authority to enforce the Easement; and (3) in addition to the constraints imposed on Quincy Farm by the Easement, and regardless of any measures that may be necessary to protect the general health, safety, and welfare of the public, require the City to repair, maintain and preserve to an unknown standard all City-owned or controlled structures, ponds, and areas listed on the United States Department of the Interior National Register of Historic Places unless otherwise approved in advance by a majority of the City's registered electors; and

WHEREAS, based on the foregoing, and pursuant to the Charter, the Colorado Constitution, and C.R.S. Section 31-2-210, the City Council has determined to submit to the registered electors of the City of Cherry Hills Village a proposed amendment to Section 3.9 of the Charter as an alternative to the citizen-initiated Petition for the November 5, 2024 election ("Election"), to read in full as set forth in **Attachment A** to this ordinance and to include ballot language indicating that the proposed amendment receiving the most votes shall prevail and void any approval of the other proposal; and

WHEREAS, because the deadline to submit a Charter amendment ballot question to Arapahoe County for the Election is September 6, 2024, the City Council finds and determines that submitting the amendment to Section 3.9 of the Charter proposed herein is necessary for the immediate preservation of the public peace, health and safety; and

WHEREAS, upon adoption of this ordinance, City Council's proposed Charter amendment and ballot title shall be submitted to a vote of the registered electors in the Election; and

WHEREAS, to the extent that City Council determines it necessary to submit additional ballot measures for the November 5, 2024 election, it will provide for the order of the ballot titles for such measures via resolution at its September 3, 2024 regular meeting.

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

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council for all purposes.

Section 2. Council-Referred Charter Amendment. The City Council hereby approves and refers the following ballot question for submission to the registered electors of the City and to appear on the ballot at the November 5, 2024 election in substantially the following form to serve as the ballot title and content for the Council-referred Charter amendment set forth in **Attachment A** to this ordinance:

Shall Section 3.9 of the Home Rule Charter for the City of Cherry Hills Village be amended to include a requirement that the City manage and protect the property known as Quincy Farm in accordance with applicable law and the Conservation Easement, and as may be necessary to protect the general health, safety, and welfare of the public, as more particularly set forth in Attachment A to Ordinance No. ____, and if both this Ballot Question ____ and the citizen-initiated Ballot Question ____ are approved, shall the question receiving more votes prevail and the other question be deemed void and not effective?

YES ____

NO ____

Section 3. Ballot Title. This ordinance shall serve to set the title and content for the question submitted herein, and the ballot title for such question shall be the text of the question itself. In connection with the fixing of the ballot title for the question submitted herein, the City Council finds and determines as follows:

- A. The general understanding of the effect of a "yes" or "no" vote on the ballot question will be clear to the electors.
- B. The ballot title for the ballot question correctly and fairly expresses the true intent and meaning of the measure.

Section 4. The City Clerk is authorized to correct typographical errors and omissions and to cause to be entered the appropriate ballot question number or letter upon designation of the ballot number or letter by the appropriate election official.

Section 5. The Mayor, City Attorney, and City Clerk are hereby authorized and directed to take all necessary and appropriate action to effectuate the provisions of this ordinance including all reasonable and necessary action to cause such approved ballot question to be printed and placed on the ballot for the election.

Section 6. 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 7. Emergency Declared. The City Council hereby finds and declares that the passage of this ordinance is necessary for the immediate preservation of the public peace, health and safety. Specifically, the passage of this ordinance as an emergency ordinance is necessary to facilitate the timely submission of the Charter amendment proposed herein for consideration by the electorate in the November 5, 2024 election.

Section 8. Effective Date. In accordance with Section 4.5 of the Charter, this emergency ordinance shall require only one reading, shall not require a public hearing or publication before final passage, and shall be effective immediately upon passage. Publication of this ordinance shall be as soon as reasonably possible after final passage.

Adopted as Ordinance No. 5, Series 2024, by the City Council of the City of Cherry Hills Village, Colorado this 26th day of August, 2024.

Kathleen Brown, Mayor

ATTEST:

Approved as to form:

Laura Gillespie, City Clerk

Kathie Guckenberger, City Attorney

Published in the Villager: _____
Legal # _____

Attachment A

Text of the Council-Referred Charter Amendment

(existing Charter language is in plain text, new language is underlined, and deleted language is ~~struck through~~):

Section 3.9. - Bridle Paths, Parks, Trails, Open Space and Recreation Programs:

The Council may provide by ordinance for the planning, financing and supervision of community bridle paths, parks and recreation programs. The Council may provide for equipping, financing and maintaining City-owned or controlled bridle paths, parks, recreational areas and facilities, by ordinance, both in and outside the corporate limits of the City. The City may cooperate with other public authorities, special districts, organizations or individuals in or outside the City to implement the operation of these programs. All parks, trails, and open space located within the corporate limits of the City, in which the City has or hereafter acquires a property interest, shall be held, protected, and maintained in public trust for the use, benefit, and enjoyment of the public, and shall not be pledged, vacated, granted, transferred, or conveyed, directly or indirectly (except as set forth below), without a majority vote of registered electors voting on the question. A lease and/or license of land or improvements within a park or open space which does not exceed five years inclusive of renewals shall not be subject to the above requirement of a majority vote of registered electors, provided that both the provisions of the license or lease and the use by the licensee/lessee would not materially diminish the public's opportunity to use and enjoy the respective park and/or open space during the term of the lease or license. The City shall manage and protect Quincy Farm: (1) in accordance with applicable law and with the Conservation Easement dated December 14, 2007 as may be amended; (2) as necessary to protect the health, safety, and general welfare of the public; and (3) in accordance with all powers set forth in Section 1.2 of this Charter.

For the purposes of this Section 3.9, "open space" shall mean land in which the City has or hereafter acquires a property interest for the use and enjoyment of members of the public, including but not limited to ~~the property known as Quincy Farm~~. The term "open space" shall exclude (i) the residential property known as 90 Meade Lane and (ii) streets and right of way, exclusive of that portion of either containing a public trail.

In the event of a conflict between this Section 3.9 and any other provision hereof, the terms of this Section 3.9 shall prevail.