

ARTICLE IV

Trees

Sec. 7-4-10. Prohibited trees.

- (a) It is unlawful to sell or import into the City, or to plant or cause to be planted within the corporate limits of the City, any female box-elder tree (*Acer negundo*).
- (b) The owner of any property within the City, upon which any female box-elder tree has been planted after the effective date of this Article, shall cut and remove such tree from his property after being given two (2) days' written notice to do so by the City.
- (c) In case of the failure of any owner of such property to cut and remove such box-elder tree planted after the effective date of this Article, the City shall cut and remove such box-elder tree.
- (d) It is unlawful and deemed a nuisance to sell or import into the City or plant or cause to be planted any female cottonwood trees (*Populus spices*), Siberian elm (*Ulmus pumila*) or other undesirable plants as designated by ordinance upon any property within the City, and the planting or setting out of these certain plants is declared to be a menace to public health, safety and welfare and a public nuisance. (Ord. 9 §1, 2003)

Sec. 7-4-20. Trees and limbs in public right-of-way.

It shall be the duty of the owner of any property adjacent to the public right-of-way to remove any trees or limbs located in or above the public right-of-way when such trees or limbs constitute a danger to public safety. Such trees and limbs shall constitute a nuisance. For the purposes of this Section, a danger to public safety shall include all trees and limbs which hinder visibility or which may otherwise affect public health, safety and welfare, and trees and limbs which present a structural defect which may cause the tree or limb to fall on a person or on property of value. (Ord. 9 §1, 2003)

Sec. 7-4-30. Control of trees and shrubs.

- (a) Trees, shrubs and other vegetation which are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to people or property within the City are hereby declared a nuisance.
- (b) The City shall give written notice to the owner or occupant of any property abutting City rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way or **Cherry Hills Village Municipal Code 7-19**

other public property with such unsafe condition. The City shall correct any such unsafe condition immediately upon the expiration of the notice period specified in the notice of abatement.

(c) It is unlawful and deemed a nuisance for any person to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plant upon access-controlled arterials or other public parks and greenbelts within the City, unless authorized or directed by the City.

(d) It is unlawful and deemed a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the City, except any person who notifies the City of such injury, damage or destruction and makes arrangements to repair or replace such vegetation or pay for the cost of such repair or replacement. (Ord. 9 §1, 2003)

Sec. 16-16-170. Preservation of established trees.

(a) Purpose and intent. The purpose and intent of this Section is to provide minimum requirements for protecting established trees in order to preserve the semi-rural character of the Village and qualities associated with that character, while protecting the health, safety and general welfare of the community. The City Council finds that these regulations are necessary in order to:

- (1) Preserve the privacy and value of existing homes; **Cherry Hills Village Municipal Code 16-81**
- (2) Preserve the semi-rural character of the community;
- (3) Screen nighttime light pollution from roads and adjacent properties; and
- (4) Preserve wildlife habitat and shade.

(b) Definitions.

Established tree means a living tree, the trunk of which measures six (6) inches or more in diameter at a height of forty-eight (48) inches above natural grade. Trees with multiple trunks or branches may be measured around a single trunk at a height of not less than six (6) inches above natural grade. These measurements are referred to herein as the *caliper size*.

Large tree means an established tree, the trunk of which is twenty-one (21) inches or larger in caliper size.

Medium tree means an established tree the trunk of which is between eleven (11) and twenty (20) inches in caliper size.

Small tree means an established tree, the trunk of which is between six (6) and ten (10) inches in caliper size.

(c) Tree preservation requirements.

(1) Any established tree removed from within the minimum yard or setback area required for a property by Section 16-5-30, 16-6-30, 16-7-30, 16-8-70, 16-9-30, or 16-10-30 of this Chapter, or from within the public right-of-way adjacent to the property: (a) in conjunction with the (i) development of a new

residence or (ii) an expansion of an existing residence that increases the square footage of such residence by fifty percent (50%) or more; or (b) within the twelve (12) months preceding the date upon which a building permit application for such development or expansion was submitted, must be replaced in accordance with the requirements of Paragraph (c)(2) below. Notwithstanding the forgoing, if an established tree is listed on the State of Colorado Noxious Weeds Lists A, B or C as designated by Section 35-5.5-108(2)(a), C.R.S. as amended, or in Section 7-4-10 of this Code it may be removed and no replacement tree shall be required.

(2) Established trees that have been or will be removed must be replaced as follows:

- a. Each small tree must be replaced with a new tree with a caliper size of at least two (2) inches;
- b. Each medium tree must be replaced with a new tree or trees with a total caliper size of at least six (6) inches; and
- c. Each large tree must be replaced with a new tree or trees with a total caliper size of at least ten (10) inches.

(3) All replacement trees shall have a minimum caliper size of two (2) inches at the time of planting. **Cherry Hills Village Municipal Code 16-82**

(4) No species of tree shall be planted that is listed on the State of Colorado Noxious Weeds Lists A, B or C as designated by Section 35-5.5-108(2)(a), C.R.S. as amended, or in Section 7-4-10 of this Code.

(5) Established trees may be transplanted to another location within the same lot without incurring a replacement requirement. However, if such transplanted trees do not survive until the compliance check required in Paragraph (d)(4) below, they shall be replaced as required by Paragraphs (c)(2) and (3) above.

(d) Procedures for development.

(1) The property owner shall submit a tree survey that shall include a tree protection plan to the City as part of the building permit application. The tree survey and tree protection plan shall show:

- a. The location of all established trees, including established trees removed within the past twelve (12) months of the date of submittal of the building permit application, located on the property, in adjacent public rights-of-way and in the vicinity of any other private rights-of-way used for construction access;
- b. The diameter of all established trees measured in accordance with Paragraph (b)(1) above;
- c. Certification as to the survey accuracy by a registered professional land surveyor, engineer, landscape architect or architect licensed in the State of Colorado.
- d. Existing location of all established trees to be preserved, transplanted or removed.
- e. Proposed location, caliper size and species of replacement and transplanted trees demonstrating a minimum compliance with this Section;

f. Measures to protect established trees from being damaged or destroyed during construction. Such measures may include, but are not limited to barriers around trees and tree roots and plans to avoid soil compaction over tree roots.

(2) The location of replacement or transplanted trees shall be in conformance with Chapter 11 of this Code and in the general location on the property from where the established trees have been removed.

(3) A property owner may apply for an exception to Section 7-4-30 of this Code to retain a dead or dying tree for the purpose of habitat preservation. An excepted tree shall not count towards the replacement requirements outlined in this Section. The application for an exception must include:

a. Location and height of the tree;

b. The distance to any structure within fifty (50) feet;

c. The distance to adjacent properties and rights-of-way; **Cherry Hills Village Municipal Code 16-83**

d. Certification by a member of the International Society of Arboriculture or equivalent organization that the tree is not diseased; and

e. A mitigation plan indicating how the tree shall be maintained, including but not limited to pruning of dangerous branches, so as not to create a threat to health, safety and welfare.

The City may reject an application or revoke a previous approval for reasons including but not limited to tree visibility, safety of people or property, risk of disease, adjacent property owner objections or recommendations of City departments.

(4) All tree planting requirements listed herein must be completed before a certificate of occupancy is issued. A compliance check will be conducted between twenty-four (24) and thirty-six (36) months after the certificate of occupancy is granted to verify survival and condition of all trees shown on the tree protection plan. The property owner must replace any trees that have not survived within six (6) months following the compliance check based on the requirements of Paragraphs (c)(2) and (3) above.

(e) Waiver from replacement requirements.

(1) The City Manager may authorize a waiver from the replacement requirements of Paragraph 16-16-170(c)(2) above upon the written request of the applicant that demonstrates that the request meets the requirements of Paragraph 16-16-170(e)(2).

(2) No waiver shall be authorized unless:

a. The applicant demonstrates that the removal of the established tree is beyond the reasonable control of the applicant; or

b. A professional arborist has issued a written recommendation that the established tree be removed because of the poor or unhealthy condition of the established tree; or

c. The requested waiver of the replacement requirements (i) affords reasonable protections to adjacent properties and (ii) will not cause an undesirable change in the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding property. (Ord. 6 §1, 2011)