

ORDINANCE POSTPONED

REVISING TITLE 16, SUBDIVISIONS, TO INCORPORATE REQUIREMENTS FOR PUBLIC NOTICE, HEARINGS AND APPEALS AND CHAPTER 17.04, HISTORIC PRESERVATION REGULATIONS, TO AMEND THE REQUIRED DISTANCE FOR MAILED NOTIFICATION, AND TO ADD THE REQUIREMENT FOR PRE-APPLICATION MEETINGS AND ELECTRONIC SUBMISSIONS IN BOTH TITLE 16 AND CHAPTER 17.04 OF THE MANITOU SPRINGS MUNICIPAL CODE.

WHEREAS, currently the Title 16, Subdivisions, has no requirements for Public Notice, Hearings and Appeals, Pre-Application Conferences, or Electronic Submission of Applications and Materials; and

WHEREAS, currently Chapter 17.04, Historic Preservation Regulations, provides the minimum mailed notification at only 100 feet surrounding the subject property and does not require Pre-Application Meetings, or Electronic Submission of Applications; and

WHEREAS, the Manitou Springs Planning Commission and Historic Preservation Commission have recommended that mailed public notice be provided a minimum of 200' distance surrounding the subject property and the Planning Staff desires to have these limits, requirements and processes be consistent in all applicable codes; and

WHEREAS, the Manitou Springs Planning Department has recommended Pre-Application Meetings be required to help ensure Applicants receive information and direction to help them submit the strongest and most complete requests possible; and

WHEREAS, the Manitou Springs Planning Department has recommended Electronic Submission of Applications and Materials be required as a cost and labor saving effort and a move toward paperless processing; and

WHEREAS, the City Council finds the proposed amendments are in the best interests of the City and therefore desires and directs adoption of the amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

SECTION 1: Chapter 16.40 is hereby added to the Manitou Springs Subdivision Regulations as follows:

Chapter 16.40 - PUBLIC NOTICE, HEARING AND APPEALS

16.40.010 - Purpose.

The purpose of this part is to provide the procedures for public notice, hearings and appeals.

16.40.020 - Public notice.

Public notice shall be required for all applications requiring a public hearing to be held by the City Planning Commission and/or City Council and for those items appealed to the City Council. All public notice shall be required as set forth in this Section.

In calculating the time period for public notice, the first day of publication, posting or mailing, or the day of hearing, shall not be counted toward the total number of days required. Public notice shall consist of the following:

- A. **Publication.** When publication is required, the Planning Department shall publish a public notice in a local newspaper as designated for the purpose by the City Council. Public notice shall include a map indicating the location of the proposal, the type of application, and a brief summary of the request.
- B. **Posting.** The Planning Department may require in any application that the applicant post public notice in the form of a sign upon properties under subdivision consideration. Such posting is intended to provide the opportunity for public notice of owners of surrounding properties and the general public.

All required signage shall be placed along the perimeter of the subject property in locations which are visible from adjacent public rights-of-way where it can be clearly viewed by passing motorists from adjacent streets and/or pedestrians without having to trespass. The physical location of the poster should provide actual public notice to owners and residents of the surrounding properties and the general public that a subdivision or other request per this code is being proposed in the general area. Additional postings may be required outside the actual boundary of the project, if in the opinion of the Planning Director, or designees, the alternative location(s) offer more visibility for public notice. The poster should never be placed on trees within the street right-of-way. It is also forbidden to place a poster on electrical power poles and telephone poles. All posting signage must be removed within thirty days after a final decision has been made, as set forth for each respective application of the Subdivision Regulations. Public notices may be posted for the three following stages of development review:

- 1. **Pre-application.** Posting at this stage of the review process is optional at the discretion of the Planning Director. Property shall be posted for a minimum time period as designated by the Planning Director, after an initial pre-application conference with City Planning. The purpose of this posting is to solicit preliminary public comments regarding the proposal for the property.
 - 2. **Administrative.** Internal review posting at this stage of the review process is optional at the discretion of the Planning Director. Property shall be posted for a minimum time period as designated by the Planning Director after formal submittal of the application. The purpose of this posting is to solicit formal public comments regarding the proposal.
 - 3. **Public Hearing.** Property shall be posted at least ten days prior to the City Planning Commission or City Council public hearing regarding a proposed project. The purpose of the posting is to inform the general public of the specific time, date and location of the public hearing and solicit public comments regarding the development proposal.
- C. **Mailed Public Notification.** When mailed public notification is required, the applicant shall be responsible for mailing letters/informational postcards for specified applications. Public notices are to be sent to surrounding property owners within two hundred feet of the subject property, excluding adjacent rights-of-way, by first class mail with proof of mailing. The Planning Director, or designees, shall have the authority to require the applicant to provide additional mailed notification beyond two hundred feet, to either three hundred fifty feet or five hundred feet, based upon the scope of the potential external impacts of the proposed project. Mailed notification shall, at a minimum, notify the adjacent owners of the nature of the request, the City

Planning Commission or City Council meeting date for which consideration is proposed and direct questions or comments to the Manitou Springs Planning Department.

- D. Public Notice for Additional Hearing Dates. If the notice set forth in subsection A of this Section has been provided, no further publication is required if the City Planning Commission or City Council adjourns the hearing to a certain date. A revised property posting shall be required.
- E. The degree of accuracy required for the information contained in these public notices shall be that of substantial compliance with the provisions of this Section, and conforming to the Posting Affidavit, available at the Planning Department. The City Planning Commission and City Council shall determine substantial compliance for these public notices.

16.40.030 - Public hearing.

Hearings as provided for in these Subdivision Regulations shall be held at the date, time, and place for which public notice is required in this Section. A hearing may be continued provided that prior to the adjournment or recess of the hearing, a clear announcement is made specifying the date, time, and place to which said hearing will be continued. Any person may present evidence or testimony during a hearing.

16.40.040 - Appeals.

A. Appeals of Administrative Decisions.

1. Scheduling Appeals. Any person aggrieved by an administrative decision made by the Planning Director, or any other administrative official, may file a formal appeal application with the Planning Department within ten days from the date of the decision. The Planning Department shall place the appeal on the agenda of the next regularly scheduled meeting of the City Planning Commission. Publication and posting shall be required per Section 16.40.020. The City Planning Commission shall hold a public hearing on appeals of administrative decisions upon the date so scheduled or upon the date to which the same may be postponed or continued. After a public hearing, the City Planning Commission shall have the power to affirm, reverse, modify, or remand for additional review of these decisions.

2. Submittal Requirements for Review of an Appeal of an Administrative Decision. In the written notice, the appellant must substantiate the following:

- a. Identify the explicit Code provisions which are in dispute;
- b. Show that the administrative decision is incorrect because of one or more of the following:
 - i. It was against the language of this Zoning Code,
 - ii. It was against the expressed intent of this Zoning Code,
 - iii. It is unreasonable,
 - iv. It is erroneous, or
 - v. It is clearly contrary to law.
- c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

3. Criteria for Review of an Appeal of an Administrative Decision.

- a. Code was interpreted or applied erroneously.
- b. Granting the appeal is not a detriment to public health, safety or welfare.

4. Stays of Administrative Decisions. A perfected appeal shall operate as a stay of the administrative decision unless determined otherwise by City Planning Commission.

5. Failure to Appeal. The failure to appeal an administrative decision within the ten-day period shall be deemed to be a waiver of the applicant's, or a party in interest's, right to appeal to the City Planning Commission and a failure to exhaust administrative remedies.

6. Appeal Filing Fee. Any person pursuing an appeal pursuant to this subsection A shall be responsible for the payment of all fees, per the published fee schedule, and for the completion of all forms which may be prescribed by the Planning Director, or designee. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal.

B. Appeals of City Planning Commission Decisions.

1. Notice of Appeal. Any person may appeal to the City Council any action of the City Planning Commission in relation to these regulations, by filing a written notice of appeal with the City Clerk. The notice of appeal shall be filed with the City Clerk no later than ten days after the action from which appeal is taken, and shall briefly state the grounds upon which the appeal is based.

2. Submittal Requirements for Review of an Appeal of a City Planning Commission Decision. In the written notice, the appellant must substantiate the following:

- a. Identify the explicit Code provisions which are in dispute;
- b. Show that the City Planning Commission decision is incorrect because of one or more of the following:
 - i. It was against the language of this Subdivision Code,
 - ii. It was against the expressed intent of this Subdivision Code,
 - iii. It is unreasonable,
 - iv. It is erroneous, or
 - v. It is clearly contrary to law.

3. Stays of City Planning Commission Decisions. A perfected appeal shall operate as a stay of the City Planning Commission unless determined otherwise by City Council.

4. Criteria for Review of an Appeal of a City Planning Commission Decision.

- a. Code was interpreted or applied erroneously.
- b. Granting the appeal is not a detriment to public health, safety or welfare.

5. Action and Procedure by the City Council. Upon receipt of the notice of appeal required by this subsection B, the City Clerk shall schedule the item for a City Council meeting. Publication and posting shall be required per Section 16.40.020. The City Council shall hold a public hearing on appeals from the City Planning Commission upon the date so scheduled or upon the date to which the same may be postponed or continued.

6. Postponement of Items on Appeal to the City Council. As a matter of course, an appellant may postpone the first scheduled Council hearing or consideration of an appeal from a decision of the City Planning Commission, made in accord with this subsection, to the next following regular Council meeting. Request for any additional postponement shall be only for good cause shown to and found by the City Council. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the City Planning Commission for further hearing and recommendations.

7. City Council's Powers Upon Appeal. The City Council shall have the power to refer any matter appealed back to the City Planning Commission for further consideration or Council may affirm, reverse or modify the action of the City Planning Commission. City Council may limit the hearing to matters raised on appeal, or may hear the appeal de novo, except in cases of substantial new information or additional evidence. In such cases, the City Council may remand the request back to the City Planning Commission for further hearing and consideration.

8. Failure to Appeal. The failure to appeal the decision of the City Planning Commission within the ten-day period shall be deemed to be a waiver of the applicant's or a party in interest's right to appeal to the City Council for failure to exhaust administrative remedies.

9. Appeal Filing Fee. The filing fee shall be per the published fee schedule. Failure to pay the fee according to the published fee schedule shall be deemed to be a waiver of the applicant's or a party in interest's right to appeal.

C. Appeals of City Council Decisions. On such appeals, the decision of the City Council shall be final, and shall be subject to review by the courts pursuant to applicable rules and statutes, unless the matter is remanded to the City Planning Commission.

SECTION 2: Section **16.04.062 - Pre-Application Meetings** shall hereby be created and contain the following information:

16.04.062 Pre-Application Meetings

Pre-application meetings with the Planning Staff are required before submission of any request requiring hearing before the Planning Commission or City Council unless waived by the Planning Director. Pre-application meetings shall be scheduled no less than 10 working days before the submittal deadline for the anticipated commission meeting date as shown on the annual meeting schedule as published by the Planning Department.

SECTION 3: The following shall be added to Section **16.04.070 - Application for subdivision**, as items E. and F., the existing items E. through G. currently found in this section shall be re-lettered as items G, H, and I:

E. Submittal Requirements

Applications for approval under these regulations shall be made on a form provided by the Planning Department and accompanied by the fee established by resolution of the City Council. Information as outlined for each application type as stated in these regulations and as may be provided on the Submittal Checklist for the request shall be required by the submittal deadline on the schedule published by the Planning Department.

F. Electronic submission of the completed application form and accompanying information for administrative requests or those heard by the Planning Commission are required unless otherwise waived by the Planning Director. Upon approval, all final plats and plans shall be submitted in format compatible with ARCGIS along with the final copy for filing.

SECTION 4: Section **17.04.100.C Public Notice** of the Manitou Springs Historic Preservation Regulations is hereby replaced in its entirety as follows:

C. Mailed Public Notification. When mailed public notification is required, the applicant shall be responsible for mailing letters/informational postcards for specified applications. Public notices are to be sent to surrounding property owners within ~~one~~ two hundred feet of the subject property, excluding adjacent rights-of-way, by first class mail with proof of mailing.

The Planning Director, or designees, shall have the authority to require the applicant to provide additional mailed notification beyond ~~one~~ two hundred feet, to either ~~two~~ three hundred fifty feet or five hundred feet, based upon the scope of the potential external impacts of the proposed project. Mailed notification shall, at a minimum, notify the adjacent owners of the nature of the request, the City Planning Commission or City Council meeting date for which consideration is proposed and direct questions or comments to the Manitou Springs Planning Department.

SECTION 5: Section **17.04.045 Pre-Application Meetings** shall hereby be created and contain the following information:

16.04.062 Pre-Application Meetings

Pre-application meetings with the Planning Staff are required before submission of any request requiring hearing before the Historic Preservation Commission or City Council unless waived by the Planning Director. Pre-application meetings shall be scheduled no less than 10 working days before the submittal deadline for the anticipated commission meeting date as shown on the annual meeting schedule as published by the Planning Department.

SECTION 6: Section **17.04.050.B.1.** shall be replaced in its entirety as follows:

1. Submittal Requirements

Applications, and required materials, for Proposed Projects which require an MCAC under these regulations shall be submitted with a form provided by the Planning Department and accompanied by the fee established by resolution of the City Council. Information as outlined for each application type as stated in these regulations and as may be provided on the Submittal Checklist for the request shall be required by the submittal deadline on the schedule published by the Planning Department.

Electronic submission of the completed application form and accompanying information for administrative requests or those heard by the Historic Preservation Commission are required unless otherwise waived by the Planning Director.

The following information shall accompany the application:

(Existing Items a-m and the remainder of this Section shall follow.)

SECTION 7: Section **17.04.080.C.5.** shall be replaced in its entirety as follows:

5. Submittal Requirements

Applications, and required materials, for proposed demolitions under these regulations shall be submitted with a form provided by the Planning Department and accompanied by the fee established by resolution of the City Council. Information as outlined in these regulations and as may be provided on the Submittal Checklist for the request shall be required by the submittal deadline on the schedule published by the Planning Department.

Electronic submission of the completed application form and accompanying information for administrative requests or those heard by the Historic Preservation Commission are required unless otherwise waived by the Planning Director.

The following information shall accompany the application:

(Existing Items a-h and the remainder of this Section shall follow.)

SECTION 8: If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

SECTION 9: The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

SECTION 10: This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

SECTION 11: This ordinance shall take effect five (5) days after final approval on second reading and publication.