

ORDINANCE

AN ORDINANCE OF THE CITY OF MANITOU SPRINGS, COLORADO, AMENDING CHAPTERS 16.40, 17.04 AND 18.44 REGARDING PUBLIC NOTICE, HEARINGS AND APPEALS.

WHEREAS, currently the Title 16, Subdivisions, has no requirements for Public Notice, Hearings and Appeals;

WHEREAS, the City desires to update its public notice, hearings and appeals process in both Titles 17 and 18;

WHEREAS, the City Council finds the proposed amendments are in the best interests of the City.

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

Section 1: Chapter 16.40 of the Manitou Spring Municipal Code is hereby added to read as follows:

16.40 - PUBLIC NOTICE, HEARING AND APPEALS

16.40.010- Public notice.

Public notice, as prescribed in this Section, shall be required for all applications subject to a public hearing before the Planning Commission or the City Council pursuant to this Title 16. In calculating the time period for public notice, the first day of publication, posting or mailing shall not be counted toward the total number of days required, but the day of the hearing shall be counted. The public notice shall unless otherwise specified include the nature of the request, the Planning Commission and City Council, as applicable, meeting location and date, and shall direct questions or comments to the Manitou Springs Planning Department. 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. In addition to the above specified information, publications shall include a map of the proposed development

B. Posting. When posting is required, signage shall be placed on the property in a visibly conspicuous location. Additional postings may be required outside the actual boundary of the subject property, if in the opinion of the Planning Director, the alternative location(s) offer better visibility for public notice. All posting signage must be removed within ten (10) days after a final decision by the City has been made. Posting materials provided by the City shall be returned to the Planning Department. Public notices shall be posted at least ten days prior to the Planning Commission or City Council public hearing regarding the proposed development.

C. Mailed Public Notification. When mailed public notification is required, the applicant shall be responsible for mailing letters/informational postcards. Mailed public notices shall be sent to surrounding property owners within two hundred feet of the subject property, unless otherwise specified in this chapter, excluding adjacent rights-of-way, by first class mail with proof of mailing. The Planning Director may require the applicant to provide additional mailed notification beyond two hundred feet, up to five hundred feet, based upon the scope of the potential external impacts of the proposed project.

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 Planning Commission or City Council adjourns the hearing to a certain date.

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 Planning Commission and City Council shall determine substantial compliance for these public notices.

16.40.020 - Public hearing.

Hearings as provided for in this Title 16 shall be held at the specific date, time, and place as provided for in the public notice. 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.

16.40.030 - Appeals.

A. Appeals of Administrative Decisions.

1. Appeals. Any person aggrieved by an administrative decision made by the Planning Director, or any other administrative official, pursuant to this Title 16, may file a formal appeal application with the Planning Department within ten days from the date of the decision. Publication and posting shall be required per Section 16.40.010. The Planning Commission shall hold a public hearing on the appeal upon the date so scheduled or upon the date to which the same may be postponed or continued.

2. Submittal Requirements for 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; and
- b. Explanation of why the administrative decision is incorrect based on the criteria in Section 16.40.030(A)(3).

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

- a. Code was interpreted or applied erroneously; and
- 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 Planning Commission.

5. Planning Commission's Decision on Appeal. After a public hearing, the Planning Commission shall have the power to affirm, reverse, modify, or remand for additional review of the administrative decision.

6. Failure to Appeal. The failure to appeal an administrative decision within the ten-day period shall

be deemed to be a waiver of the right to appeal to the Planning Commission and a failure to exhaust administrative remedies.

7. **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.

8. **Final Decision.** Planning Commission decisions under this Section 16.40.030(A) shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

B. Appeals of Planning Commission Decisions.

1. **Notice of Appeal.** Except as limited by Section 16.40.030(A)(8), any person may appeal to the City Council any final decision of the Planning Commission in relation to this Title 16, 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. Upon receipt of the notice of appeal required by this subsection A, the City Clerk shall schedule the item for a City Council meeting. Publication and posting shall be required per Section 16.40.010. The City Council shall hold a public hearing on appeals from the Planning Commission upon the date so scheduled or upon the date to which the same may be postponed or continued.

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

- a. Identify the explicit Code provisions which are in dispute; and
- b. Explanation of why that the Planning Commission decision is incorrect based on the criteria in Section 16.40.030(B)(3).

3. **Criteria for Review of an Appeal of a Planning Commission Decision.**

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

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

5. **Postponement of Items on Appeal to the City Council.** As a matter of course, an appellant may postpone the first scheduled City Council consideration of an appeal from a decision of the Planning Commission, made in accord with this subsection, to the next following regular City Council meeting. Request for any additional postponement shall be only for good cause shown to and found by the City Council.

6. **City Council's Decision on Appeal.** The City Council shall have the power to refer any matter appealed back to the Planning Commission for further consideration or the City Council may affirm, reverse or modify the action of the Planning Commission. The City Council shall limit its

consideration to matters raised on appeal, and shall hear no substantial new evidence from that presented to the Planning Commission. If the City Council determines additional evidence is needed, it shall remand the matter back to the Planning Commission for further hearing and consideration.

7. **Failure to Appeal.** The failure to appeal the decision of the 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.

8. **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 as provided by law, unless the matter is remanded to the Planning Commission.

Section 2: Section 17.04.100 of the Manitou Springs Municipal Code is hereby repealed and reenacted as follows:

17.04.100 – Public notice

Public notice, as prescribed in this Section, shall be required for all applications subject to a public hearing before the Historic Preservation Commission or the City Council pursuant to this Title 17. In calculating the time period for public notice, the first day of publication, posting or mailing shall not be counted toward the total number of days required, but the day of the hearing shall be counted. The public notice shall, unless otherwise specified, include the nature of the request, the Historic Preservation Commission and City Council, as applicable, meeting location and date, and shall direct questions or comments to the Manitou Springs Planning Department. 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. In addition to the above specified information, publication shall include a map of the proposed development.

B. **Posting.** When posting is required, signage shall be placed on the property in a visibly conspicuous location. Additional postings may be required outside the actual boundary of the subject property, if in the opinion of the Planning Director, the alternative location(s) offer better visibility for public notice. All posting signage must be removed within ten (10) days after a final decision by the City has been made. Posting materials provided by the City shall be returned to the Planning Department. Public notices shall be posted at least ten days prior to the Historic Preservation Commission or City Council public hearing regarding the proposed development.

C. **Mailed Public Notification.** When mailed public notification is required, the applicant shall be responsible for mailing letters/informational postcards. Mailed public notices shall be sent to surrounding property owners within two hundred feet of the subject property, unless otherwise specified in the chapter, excluding adjacent rights-of-way, by first class mail with proof of mailing. The Planning Director may require the applicant to provide additional mailed notification beyond two hundred feet, up to five hundred

feet, based upon the scope of the potential external impacts of the proposed project.

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 Planning Commission or City Council adjourns the hearing to a certain date.

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 Planning Commission and City Council shall determine substantial compliance for these public notices.

Section 3: Section 17.04.101 of the Manitou Springs Municipal Code is hereby repealed and reenacted as follows:

17.04.101 – Public Hearing.

Hearings as provided for in this Chapter 17.04 shall be held at the specific date, time, and place as provided for in the public notice. 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.

Section 4: Section 17.04.102 of Manitou Springs Municipal Code is hereby repealed and reenacted as follows:

17.04.102 – Appeals

A. Appeals of Administrative Decisions.

1. Appeals. Any person aggrieved by an administrative decision made by the Planning Director, or any other administrative official, pursuant to this Title 17, may file a formal appeal application with the Planning Department within ten days from the date of the decision. Publication and posting shall be required per Section 17.04.100. The Historic Preservation Commission shall hold a public hearing on the appeal upon the date so scheduled or upon the date to which the same may be postponed or continued.

2. Submittal Requirements for 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; and
- b. Explanation of why the administrative decision is incorrect based on the criteria in Section 17.04.102(A)(3).

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

- a. Code was interpreted or applied erroneously; and
- 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 Historic Preservation Commission.

5. Historic Preservation Commission's Decision on Appeal. After a public hearing, the Historic Preservation Commission shall have the power to affirm, reverse, modify, or remand for additional review of the administrative decision.

6. Failure to Appeal. The failure to appeal an administrative decision within the ten-day period shall be deemed to be a waiver of the right to appeal to the Historic Preservation Commission and a failure to exhaust administrative remedies.

7. 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.

8. Final Decision. Historic Preservation Commission decisions under this Section 17.04.102(A) shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

B. Appeals of Historic Preservation Commission Decisions.

1. Notice of Appeal. Except as limited by Section 17.04.102(A)(8), any person may appeal to the City Council any final decision of the Historic Preservation Commission in relation to this Title 17, 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. 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 17.04.100. The City Council shall hold a public hearing on appeals from the Historic Preservation Commission upon the date so scheduled or upon the date to which the same may be postponed or continued.

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

- a. Identify the explicit Code provisions which are in dispute; and
- b. Explanation of why that the Historic Preservation Commission decision is incorrect based on the criteria in Section 17.04.102(B)(3).

3. Criteria for Review of an Appeal of a Historic Preservation Commission Decision.

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

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

5. Postponement of Items on Appeal to the City Council. As a matter of course, an appellant may

postpone the first scheduled City Council consideration of an appeal from a decision of the Historic Preservation Commission, made in accord with this subsection, to the next following regular City Council meeting. Request for any additional postponement shall be only for good cause shown to and found by the City Council.

6. City Council's Decision on Appeal. The City Council shall have the power to refer any matter appealed back to the Planning Commission for further consideration or the City Council may affirm, reverse or modify the action of the Historic Preservation Commission. The City Council shall limit its consideration to matters raised on appeal, and shall hear no substantial new evidence from that presented to the Historic Preservation Commission. If the City Council determines additional evidence is needed, it shall remand the matter back to the Historic Preservation Commission for further hearing and consideration.

7. Failure to Appeal. The failure to appeal the decision of the Historic Preservation 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.

8. 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 as provided by law, unless the matter is remanded to the Historic Preservation Commission.

Section 5: Chapter 18.44 of the Manitou Springs Municipal Code is repealed and reenacted as follows:

18.44.010 - Public notice.

Public notice, as prescribed in this Section, shall be required for all applications subject to a public hearing before the Planning Commission or the City Council pursuant to this Title 18. In calculating the time period for public notice, the first day of publication, posting or mailing shall not be counted toward the total number of days required, but the day of the hearing shall be counted. The public notice shall, unless otherwise specified, include the nature of the request, a map of the proposed development, the Planning Commission and City Council, as applicable, meeting location and date, and shall direct questions or comments to the Manitou Springs Planning Department. 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. In addition to the above specified information, publications shall include a map of the proposed development.

B. Posting. When posting is required, signage shall be placed on the property in a visibly conspicuous location. Additional postings may be required outside the actual boundary of the subject property, if in the opinion of the Planning Director, the alternative location(s) offer better visibility for public notice. All posting signage must be removed within ten (10) days after a final decision by the City has been made. Public notices shall be posted at least ten days prior to the Planning Commission or City Council public hearing regarding the proposed development.

C. Mailed Public Notification. When mailed public notification is required, the applicant shall be responsible for mailing letters/informational postcards. Mailed public notices shall be sent to surrounding property owners within two hundred feet of the subject property, unless otherwise specified in this chapter, excluding adjacent rights-of-way, by first class mail with proof of mailing. The Planning Director may require the applicant to provide additional mailed notification beyond two hundred feet, up to five hundred feet, based upon the scope of the potential external impacts of the proposed project.

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 Planning Commission or City Council adjourns the hearing to a certain date.

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 Planning Commission and City Council shall determine substantial compliance for these public notices.

18.44.020 - Public hearing.

Hearings as provided for in this Title 18 shall be held at the specific date, time, and place as provided for in the public notice. 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.

18.44.030 - Appeals.

A. Appeals of Administrative Decisions.

1. Appeals. Any person aggrieved by an administrative decision made by the Planning Director, or any other administrative official, pursuant to this Title 18, may file a formal appeal application with the Planning Department within ten days from the date of the decision. Publication and posting shall be required per Section 18.44.010. The Planning Commission shall hold a public hearing on the appeal upon the date so scheduled or upon the date to which the same may be postponed or continued.
2. Appealable Administrative Decisions. Administrative decisions that are appealable to the City Planning Commission are contained in Chapter 18.80.
3. Submittal Requirements for 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; and
 - b. Explanation of why the administrative decision is incorrect based on the criteria in Section 18.44.030(A)(4).
4. Criteria for Review of an Appeal of an Administrative Decision.
 - a. Code was interpreted or applied erroneously; and
 - b. Granting the appeal is not a detriment to public health, safety or welfare.
5. Stays of Administrative Decisions. A perfected appeal shall operate as a stay of the administrative

decision unless determined otherwise by Planning Commission.

6. **Planning Commission's Decision on Appeal.** After a public hearing, the Planning Commission shall have the power to affirm, reverse, modify, or remand for additional review of the administrative decision.

7. **Failure to Appeal.** The failure to appeal an administrative decision within the ten-day period shall be deemed to be a waiver of the right to appeal to the Planning Commission and a failure to exhaust administrative remedies.

8. **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.

9. **Final Decision.** Planning Commission decisions under this Section 18.44.030(A) shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

B. Appeals of Planning Commission Decisions.

1. **Notice of Appeal.** Except as limited by Section 18.44.030(A)(9), any person may appeal to the City Council any final decision of the Planning Commission in relation to this Title 18, 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. 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 18.44.010. The City Council shall hold a public hearing on appeals from the Planning Commission upon the date so scheduled or upon the date to which the same may be postponed or continued.

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

- a. Identify the explicit Code provisions which are in dispute; and
- b. Explanation of why that the Planning Commission decision is incorrect based on the criteria in Section 18.44.030(B)(3).

3. **Criteria for Review of an Appeal of a Planning Commission Decision.**

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

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

5. **Postponement of Items on Appeal to the City Council.** As a matter of course, an appellant may postpone the first scheduled Council consideration of an appeal from a decision of the 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.

6. City Council's Decision on Appeal. The City Council shall have the power to refer any matter appealed back to the Planning Commission for further consideration or the City Council may affirm, reverse or modify the action of the Planning Commission. The City Council shall limit its consideration to matters raised on appeal, and shall hear no substantial new evidence from that presented to the Planning Commission. If the City Council determines additional evidence is needed, it shall remand the matter back to the Planning Commission for further hearing and consideration.

7. Failure to Appeal. The failure to appeal the decision of the 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.

8. 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 as provided by law, unless the matter is remanded to the Planning Commission.

Section 6: Sections 18.16.020 and 17.04.103 of the Manitou Springs Municipal Code are hereby repealed.

Section 7: 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 8: 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 9: This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Passed on first reading and ordered published this 18 day of April, 2017.

/s/ Donna Kast
City Clerk, Donna J. Kast

A Public Hearing on this ordinance will be held at the May 2, 2017, City Council meeting. The Council Meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: April 20, 2017 (in full)
City's Official Website and City Hall

Passed on second reading and approved by City Council this 2 day of May, 2017.

/s/ Nicole Nicoletta
Mayor, Nicole Nicoletta

Attest: /s/ Donna Kast
City Clerk, Donna Kast

Ordinance Published: May 4, 2017 (in full)
City's Official Website and City Hall