

**ORDINANCE**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 18.88 OF THE MANITOU SPRINGS MUNICIPAL CODE CONCERNING THE REGULATION OF WIRELESS SERVICE FACILITIES**

**WHEREAS**, pursuant to the Telecommunications Act of 1996 (the "Act"), local governments are provided authority over decisions regarding the placement, construction, and modification of personal wireless service facilities; provided that any such regulation does not unreasonably discriminate among providers of functionally equivalent services, or prohibit, or have the effect of prohibiting the provisions of personal wireless services;

**WHEREAS**, such regulation is also subject to Section 6409 ("Section 6409") of the Middle Class Tax Relief and Job Creation Act of 2012, which requires a local government to approve any eligible facilities request for a modification of an existing wireless tower or base station that does not "substantially change" the physical dimensions of such tower or base station;

**WHEREAS**, the Colorado General Assembly passed House Bill 17-1193 (C.R.S. §§ 29-27-401 – 29-27-404; 38-5.5-102 – 38-5.5-108), which also provides certain mandatory procedural requirements and regulations for installation of small cell facilities within a municipality's right-of-way; and

**WHEREAS**, the City Council of the City of Manitou Springs now wishes to establish a procedure for review of applications for the installation of wireless service facilities within the City in compliance with the Act, Section 6409 and House Bill 17-1193.

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

**Section 1:** Chapter 18.88 of the Manitou is hereby repealed in its entirety and reenacted as follows:

**Chapter 18.88 – Wireless Service Facilities**

**18.88.010 – Purposes**

The purposes of this Chapter are: to allow the location of wireless service facilities ("WSF") in the City while protecting the public health, safety, and general welfare of the community; to act on applications for the location of WSFs within a reasonable period of time; to encourage co-location of WSFs; and to prevent unreasonable discrimination among providers of functionally equivalent services.

## **18.88.020 – Definitions**

"Accessory equipment for a WSF" means equipment, including buildings and structures, used to protect and enable radio switching equipment, back up power and other devices incidental to a WSFs, but not including antennae.

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless service.

"Base station" means a structure or equipment, other than a tower, at a fixed location that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term includes any equipment associated with wireless communications services, including radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks). The term includes any structure, other than a tower, to which any of the equipment described hereof is attached.

"Building roof-mounted WSFs" means a WSF that is mounted and supported entirely on the roof of a legally existing building or structure.

"Eligible telecommunications facility request" means a request for approval of the modification of an existing tower or base station that involves the co-location of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

"Equipment storage shelter" means buildings, storage shelters, and cabinets used to house WSF equipment.

"Freestanding WSF" means a WSF that consists of a stand-alone support structure such as a tower or monopole, and antennae and accessory equipment.

"Microwave antenna" means a disk-type antenna used to link communication sites together by wireless voice or data transmission.

"Micro Wireless Facility" means a WSF that is no larger in dimensions than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that have an exterior antenna, if any, that is no more than eleven (11) inches in length.

"Public right-of-way" means all roads, streets and alleys and all other dedicated rights-of-way, access and utility easements of the City, the state, or any district, utility or roadway.

"Small cell facility" means either a personal wireless service facility as defined by the federal Telecommunications Act of 1996, or a WSF where:

- A. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
- B. Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

A small cell facility includes a micro wireless facility.

"Small cell network" means a collection of interrelated small cell facilities designed to deliver wireless service.

"Substantial change" means a modification to an existing tower or base station under the following circumstances:

- A. A substantial change in the height of an existing tower or base station occurs as follows:
  - 1. For a tower outside of a public right-of-way, when the height of the tower is increased by more than ten percent (10%), or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater.
  - 2. For a tower located in a public right-of-way or for a base station, when the height of the structure increases by more than ten percent (10%) or by more than ten (10) feet, whichever is greater.
- B. Changes in height are measured as follows:
  - 1. When deployments are separated horizontally, changes in height shall be measured from the original support structure, not from the height of any existing telecommunications equipment.
  - 2. When deployments are separated vertically, changes

in height shall be measured from the height of the tower or base station, including any appurtenances, as the tower or base station existed on February 22, 2012.

C. A substantial change in the width of an existing tower or base station occurs as follows:

1. For a tower outside of public rights-of-way, when the addition of an appurtenance to the body of the tower protrudes from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
2. For a tower in a public right-of-way or a base station, when the addition of an appurtenance to the body of the structure would protrude from the edge of the structure by more than six (6) feet.

D. A substantial change also occurs for an existing tower in a public right-of-way or an existing base station as follows:

1. When the change involves the installation of any new equipment cabinets on the ground, if no ground cabinets presently exist; or
2. When the change involves the installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets.

E. A substantial change also occurs for any existing tower or base station when any of the following are found:

1. When the change involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than four (4) new cabinets, whichever is less.
2. When the change entails any excavation or deployment outside the current site.
3. When the change would defeat the concealment elements of the eligible support structure.
4. When the change does not comply with conditions associated with the original siting approval of the construction or modification of the tower, base station or base station equipment. This limitation

does not apply if the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in subsections (A) through (E)(2), hereof.

"Tower" means a structure built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

"Whip antenna" means an array of antennae that is cylindrical in shape.

"Wireless service" means data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as all of these terms are defined by federal law and regulations.

"Wireless service facility" or "WSF" means a facility for the provision of wireless services, including a small cell facility; except that "wireless service facility" does not include coaxial or fiber-optic cable that is not immediately adjacent to, or directly associated with, a particular antenna.

#### **18.88.030 – Standards for all WSFs**

- A. Applicability. The standards contained in this Chapter apply to all applications for WSFs in the City. The applicant shall demonstrate in writing that its proposed WSF meets all applicable standards of this Chapter and any other required provisions of the Code.
- B. Co-Location. The City encourages co-location of WSFs when feasible to minimize the number of WSF sites. To further the goal of co-location:
  - 1. No WSF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the City, the owner or operator shall provide evidence explaining why co-location is not possible at a particular facility or site; and
  - 2. If a telecommunications competitor attempts to co-locate a WSF on an existing or approved WSF or location, and the parties cannot reach an agreement, the City may require a third-party technical study to be completed at the expense of either or both parties

to determine the feasibility of co-location.

- C. Consent given to a telecommunications provider or broadband provider to erect or construct any poles, or to locate or co-locate communications and WSF on vertical structures in a right-of-way, does not extend to the co-location of new facilities or to the erection or construction of new poles in a right-of-way not specifically referenced in the grant of consent.
- D. Permitted zoning districts. WSFs shall be considered a permitted use in all zoning districts subject to administrative review as provided in this Chapter.
- E. Compliance with FCC standards. All WSFs shall meet the current standards and regulations of the FCC and any other agency of the federal government with the authority to regulate WSFs. Upon a request by the City at any time, WSF owners and operators shall verify that:
  - 1. The WSF complies with the current FCC regulations prohibiting localized interference with reception of television and radio broadcasts; and
  - 2. The WSF complies with the current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields.
  - 3. By adopting this Section, the City is not attempting to regulate radio frequency power densities or electromagnetic fields, which are controlled by the FCC.
- F. Abandonment. If the WSF ceases operation for any reason for one hundred eighty (180) consecutive days:
  - 1. The owner or operator shall remove the WSF; and
  - 2. Any permit issued for operation of a WSF shall expire.
- G. Height Limit. Notwithstanding any other height limitations in this Chapter, in no case shall a WSF located on property owned by the City or in any public right-of-way exceed forty (40) feet in height.

**18.88.040 – Freestanding WSFs**

- A. Minimum setbacks.
  - 1. A freestanding WSF located more than two hundred fifty

(250) feet of any property zoned for residential use shall be set back from each property line one (1) foot of distance for every foot of facility height; and

2. A freestanding WSF facility located more than two hundred fifty (250) feet from property zoned for residential use shall meet the minimum setback requirements for buildings and structures of the underlying zoning district.
- B. Maximum height. A freestanding WSF, including antennae, shall not exceed the maximum structure height limit in the zone district in which the facility is located. In no case shall a freestanding WSF, including its appurtenances, exceed one hundred (100) feet in height.
- C. Design standards. A freestanding WSF shall meet the following design standards to minimize impacts:
1. The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area.
  2. Existing land forms, vegetation, and structures shall be used to screen the facility from view and blend in the facility with the surrounding environment to the extent practicable.
  3. Existing vegetation shall be preserved or enhanced.
  4. The total area of any equipment storage shelters shall not exceed four hundred (400) square feet for each WSF.
  5. Equipment storage shelters shall be grouped as closely together as technically possible.
  6. No equipment storage shelter shall exceed fifteen (15) feet in height.
  7. All freestanding WSFs shall accommodate co-location of facilities, unless co-location is technically unfeasible as set forth in section 18.88.030 (B).
  8. All applicable landscape regulations shall be observed. A landscape plan prepared by a professional landscape architect may be required to demonstrate that such landscape appropriately shields the base and security fencing from view if the base of the facility is otherwise visible from adjacent rights-of-way.
  9. Any equipment that could be dangerous to persons or

wildlife shall be adequately covered or fenced.

10. The diameter of a microwave dish antenna shall not exceed four (4) feet.
11. No lighting of a facility or accessory equipment shall be permitted.

**18.88.050 – Building roof or wall-mounted WSFs**

- A. A building wall-mounted WSF shall adhere to the following design standards to minimize impacts:
  1. The facility shall be screened from view and/or colored to match the building or structure to which it is attached.
  2. The mounting of antennae shall be as flush to the building wall as possible, and in no case shall the antennae extend more than three (3) feet out from the building wall.
  3. A facility mounted on the wall of a building with a pitched roof shall not extend above the roof line of the building.
  4. A facility mounted on the wall of a building with a flat roof shall not extend above the highest point of the building, including already existing facilities on the roof.
- B. A building roof-mounted WSF shall adhere to the following design standards to minimize impacts:
  1. A building roof-mounted WSF, including antennae, shall not extend more than twelve (12) feet above the height of the building on which the facility is mounted.
  2. The facility shall be screened from view and/or colored to match the building or structure to which it is attached.
  3. Antennae, support structures, accessory equipment and all other roof-mounted appurtenances shall not exceed an aggregate total of twenty-five percent (25%) of the total surface area of the building roof.
  4. The diameter of a microwave dish antenna shall not exceed four (4) feet.

- C. Accessory equipment for a building roof or wall-mounted WSF shall be placed inside the building if feasible. All equipment storage shelters shall be grouped as closely as technically possible, and the total area of all accessory equipment, including storage shelters, shall not exceed four hundred (400) square feet per WSF.

**18.88.060 – Small cell facilities**

- A. A telecommunications provider or broadband provider may locate or co-locate small cell facilities or small cell networks on light poles, light standards, traffic signals, or utility poles in the right-of-way owned by the City, subject to the following:
  - 1. A small cell facility or a small cell network shall not be located or mounted on an apparatus, pole, or signal with tolling collection or enforcement equipment attached.
  - 2. The construction, installation, operation and maintenance of a small cell facility must comply with applicable federal and state law and the provisions of this Chapter. If upon inspection, the City concludes that a wireless service facility fails to comply with such laws and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the small cell facility, the owner shall have thirty (30) days from the date of the notice to bring such facility into compliance. Upon good cause shown by the owner, the City may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such facility into compliance within said time period, the City may remove such facility at owner's expense or prohibit future, noncompliant use of the light pole, light standard, traffic signal or utility.
- B. Micro wireless facilities. No application or permit shall be required for the installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on cable operator-owned cables or lines that are strung between existing utility poles in compliance with the national safety code, subject to the following:
  - 1. The City may require a permit for installation, placement, operation, maintenance, or replacement of micro wireless facilities where the installation, placement, operation, maintenance, or replacement of micro wireless facilities does any of the following, upon determination of the City:
    - a. Involves working within a highway travel lane or requires the closure of a highway travel lane;

- b. Disturbs the pavement or a shoulder, roadway, or ditch line;
- c. Includes placement on limited access rights-of-way; or
- d. Requires any specific precautions to ensure the safety of the traveling public; the protection of public infrastructure; or the operation of public infrastructure; and such activities either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, the approval terms of the existing permit for the facility or structure upon which the micro wireless facility is attached.

#### **18.88.070 – Application and approval procedures**

- A. An application for approval of a proposed WSF shall include all information regularly required for other development applications, in addition to the following:
  - 1. A written, narrative statement describing in detail, how the proposed WSF will comply with each of the applicable design standards set forth in this Chapter.
  - 2. If requested by the City, photographic simulations showing the proposed facility and, if applicable, the structure on which it will be attached.
- B. Consolidated applications for small cell facilities. A telecommunications provider or broadband provider may file a consolidated application to receive a single permit for small cell networks involving multiple individual small cell facilities within the City. However, each small cell facility within the consolidated application individually remains subject to review for compliance with the requirements provided in this Chapter.
- C. Incomplete applications.
  - 1. When an application is incomplete, the City shall provide written notice to the applicant within thirty (30) days, specifically identifying all missing documents or information.
  - 2. If an application remains incomplete after a supplemental submission, the City shall notify the applicant within ten

(10) days. Second or subsequent notices of incompleteness may not require the production of documents or information that were not requested in the original notice of incompleteness.

D. Expedited review.

1. An eligible WSF application, including an application for location or co-location of a small cell facility or small cell network or replacement or modification of a small cell facility or facilities or small cell network request shall be approved or denied by the City within sixty (60) days of the date of the City's receipt of the completed application. This time period may be tolled only by mutual agreement or when an application is incomplete.
2. If the City fails to approve or deny an eligible WSF request within the sixty (60) days of the date of the City's receipt of the completed application (accounting for any tolling), the request shall be deemed granted; provided that this automatic approval shall become effective only upon the City's receipt of written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

E. Review.

1. Criteria for approval or denial of application. In considering an application for location or co-location of a WSF, the City shall base the decision as to the approval or denial of the application on whether the proposed WSF meets the applicable design standards as outlined in this Chapter.
2. Approval.
  - a. The City shall approve an eligible WSF request that does not substantially change the physical dimensions of a tower or base station.
  - b. The City may approve an eligible WSF request that substantially changes the physical dimensions of a tower or base station if it complies with the remainder of this Code.
  - c. The City may condition the approval of any eligible WSF request on compliance with generally

applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety.

3. Denial. A final decision by the City to deny any application under this Chapter shall be in writing and supported by substantial evidence contained in a written record.

**Section 2:** 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 3:** 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 21<sup>st</sup> day of November, 2017.

/s/ Donna Kast  
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the December 5, 2017, City Council meeting. The meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: November 22, 2017 (in full)  
*City's Official Website and City Hall*

Passed on second reading and approved by Council this 5<sup>th</sup> day of December, 2017.

/s/ Nicole Nicoletta  
Mayor, Nicole Nicoletta

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

Ordinance Published: December 7, 2017 (in full)  
*City's Official Website and City Hall*