

POSTPONED

COUNCIL BILL NO. 4315

ORDINANCE NO. 1715

ORDINANCE

AN ORDINANCE OF THE CITY OF MANITOU SPRINGS, COLORADO, AMENDING TITLE 18 OF THE MANITOU SPRINGS MUNICIPAL CODE TO CONFORM TO SECTION 6409(A) OF THE SPECTRUM ACT CONCERNING NON-SUBSTANTIAL CHANGES TO TELECOMMUNICATIONS FACILITIES

WHEREAS, Title 18 of the Manitou Springs Municipal Code (the “Code”) contains provisions governing the review of land use applications for the modification of telecommunications facilities;

WHEREAS, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Spectrum Act”) prohibits the City from denying land use applications that would not substantially change the physical dimensions of certain telecommunications facilities;

WHEREAS, Section 6409(a) of the Spectrum Act restricts the City’s review process for certain telecommunications facilities, including the information and documentation the City may require; and

WHEREAS, the City Council desires to amend Title 18 of the Code to conform to Section 6409(a) of the Spectrum Act.

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

Section 1: Section 18.60.010 of the Manitou Springs Municipal Code is hereby amended by the addition of the following terms, which shall appear alphabetically in the existing text of this section:

18.60.010 Definitions.

“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 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 a structure, other than a tower, to which any of the equipment described herein is attached.

“Eligible Telecommunications Facility Request” means a request for a land use approval for the modification of an existing tower or base station that involves the collocation of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

“Tower” means any structure built for the sole or primary purpose of supporting Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including without limitation private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Section 2: A new Chapter 18.88 entitled “Eligible Telecommunications Facility Requests” is hereby added to Title 18 of the Manitou Springs Municipal Code, and shall provide as follows:

18.88.010 - Special review procedures for eligible telecommunications facility requests.

The provisions of this Chapter 18.88 apply to the review of all land use applications for eligible telecommunications facility requests, including requests for conditional use, minor development plan and major development plan approval.

18.88.020 - Expedited review.

Upon receipt of an application for an eligible telecommunications facility request pursuant to this Chapter, the City shall review such application to determine whether the application so qualifies. All eligible telecommunications facility requests shall be approved or denied by the City within sixty (60) days of the application filing. This time period may be tolled only by mutual agreement or where an application is incomplete.

In the event the City fails to approve or deny an eligible telecommunications facility request within the time frame for review (accounting for any tolling), the request shall be deemed granted. This automatic approval shall become effective only upon the City’s receipt of a written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

18.88.030 - Application materials.

A. Applicants under Chapter 18.88 shall submit only such documentation and information as is reasonably necessary to determine whether a proposed modification would substantially change the physical dimensions of an eligible tower or base station.

1. The City shall prepare, and from time to time revise, and make available an application form which shall be limited to the information necessary for the City to consider whether an application would substantially change the physical dimensions of an eligible telecommunications facility request. Such information may include, without limitation, whether the project: (1) would result in a substantial change; and (2) violates a generally applicable law, regulation, or other rule reasonably related to public health and safety. The

application may not require the applicant to demonstrate a need or business case for the proposed modification or collocation.

- B. Incomplete Applications. When an application is incomplete, the City shall provide written notice to the applicant within thirty (30) days, clearly and specifically identifying all missing documents or information. If an application remains incomplete after a supplemental submission, the local government has ten (10) days to once again notify the applicant. Second or subsequent notices of incompleteness may not require the production of documents or information that was not requested in the original notice of incompleteness.
- C. Denials. Any decision to deny an eligible telecommunications facility request shall be in writing and shall provide a description of reasons for the denial.

18.88.040 - Criteria for review of eligible telecommunications facility requests.

- A. Notwithstanding any conflict with other provisions of the Code, the City shall approve any land use application pertaining to an eligible telecommunications facility request that does not substantially change the physical dimensions of a tower or base station.
- B. The City may condition the approval of an eligible telecommunications facility 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.
- C. The City may approve an eligible telecommunications facility request for a modification of an existing tower or base station which substantially changes the physical dimensions of such tower or base station if it conforms to all applicable provisions of Title 18 of the Code.
- D. A substantial change in the height of an existing tower or base station occurs where any of the following criteria are found:
 - 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 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 and for base stations, when the height of the structure increases by more than ten percent (10%) or by more than ten (10) feet, whichever is greater.
- E. Changes in height are to be measured as follows:
 - 1. When deployments are separated horizontally, changes in height shall be measured from the original support structure and 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.

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- F. A substantial change in the width of an existing tower or base station occurs when any of the following criteria are found:
 - 1. For a tower outside of a public right-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.

- G. For an existing tower in a public right-of-way or an existing base station, a substantial change also occurs when any of the following criteria are found:
 - 1. When the change involves the installation of new equipment cabinets on the ground, if no ground cabinets presently exist.
 - 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.

- H. A substantial change also occurs for an existing tower or base station when one or more of the following criteria are found:
 - 1. When the change involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets.
 - 2. When the change entails 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 when a modification is non-compliant with such conditions only in a manner that would not exceed the thresholds identified in subsections (D) through (H)(2) of this Section 18-88-040.