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**AN ORDINANCE AMENDING CHAPTER 17.04, HISTORIC PRESERVATION, AND CHAPTER 2.52, HISTORIC PRESERVATION COMMISSION, OF THE MUNICIPAL CODE OF THE CITY OF MANITOU SPRINGS, COLORADO.**

**WHEREAS**, the following amendments to the Historic Preservation Regulations of the Manitou Springs Municipal Code have been recommended to the City Council by the Manitou Springs Historic Preservation Commission and the Planning Staff; and

**WHEREAS**, the recommended updates are intended to bring the Code more into conformance with other application procedures followed by the Planning Department and address questions or issues that have arisen since the Historic Preservation Regulations were last updated in 2002; and

**WHEREAS**, the City Council wishes for the above sections of the Municipal Code to be as up to date and consistent with sound Planning practices as possible.

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

**SECTION 1:** Section 17.04.100 is hereby repealed and reenacted to provide as follows:

**17.04.100 - Public notice.**

A. Required. Public notice shall be required for all applications requiring a public hearing to be held by the Historic Preservation Commission and/or City Council and for those items appealed to the City Council. All public notices 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:

1. 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.
2. Posting. The Planning Department may require in any application that the applicant post public notice in the form of a sign upon properties under development 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 Material Change of Appearance 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) offers more visibility for public notice. The poster should never be placed on trees or 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 these regulations.

B. Public notices may be posted for the three following stages of 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 project proposed 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 MCAC 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 Historic Preservation 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 MCAC proposal.

C. Mailed Public Notification. The applicant shall be responsible for mailing letters/informational postcards for all MCAC applications. Public notices are to be sent to surrounding property owners within one 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 hundred feet, to either two hundred fifty feet or five hundred feet, if the scope of the potential external impacts of the proposed project reasonably justify an expanded notification. Mailed notification shall, at a minimum, notify the adjacent owners of the nature of the request, the Historic Preservation Commission and/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 Historic Preservation 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 Historic Preservation Commission and City Council shall determine substantial compliance for these public notices.

**SECTION 2:** A new Section 17.04.101 is hereby enacted to provide as follows:

**17.04.101 - Public hearing.**

Hearings as provided for in these 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.

**SECTION 3:** A new Section 17.04.102 is hereby enacted to provide as follows:

**17.04.102 - Appeals.**

A. To whom. Any person aggrieved by an administrative decision of a matter set forth in Section 17.04.050(A)(3) may appeal the decision to the Historic Preservation Commission by following the procedures set forth in this Section. Any person aggrieved by a Historic Preservation Commission decision may appeal the decision to the City Council by following the procedures set forth in this Section.

B. Notice of Appeal. A formal notice of appeal shall be filed with the City Clerk no later than ten working days from the date of decision in conformance with the requirements of this section. Within three working days of the receipt of the appeal, the City Clerk shall transmit a copy to the Planning Director for review of completeness. Within ten working days of transmittal by the City Clerk, the Planning Director shall examine the appeal and advise the City Clerk if it is complete or not. If the appeal is found to be incomplete, the City Clerk shall return it to the appellant for revision. Appellant shall have five working days to file an amended appeal. Failure to file an amended appeal within said five days will result in the appeal being deemed withdrawn.

B. Scheduling of Appeal. The City Clerk shall schedule a complete appeal for the next regularly scheduled meeting of the Historic Preservation Commission or City Council, as applicable, that allows for publication and posting required per Section 17.04.102, and at which adequate time is available to hear the appeal.

C. Submittal Requirements for Review of an Appeal. In the written notice, the appellant must state:

1. The name, address and telephone number of the appellant or contact person if there are multiple appellants;
2. The specific action objected to;
3. The action appellant requests to be taken;
4. The explicit Code provisions which govern the issue; and
5. The reason why the decision is incorrect.

D. Criteria for Review of an Appeal. Appeals shall be reviewed on the basis of the record of the administrative action or the Historic Preservation meeting to determine the following:

1. If the Design Guidelines were adhered to; and
2. If the Code was interpreted or applied erroneously.

E. Stays of Decisions. A perfected appeal shall operate as a stay of the decision unless determined otherwise by the Historic Preservation Commission or City Council, as applicable.

F. Once scheduled, an appeal may only be postponed by the aggrieved party upon a showing of good cause.

G. Powers upon Appeal. The Historic Preservation Commission or the City Council, as applicable, shall have the power to affirm, reverse, modify or remand for additional review the action under appeal. The hearing shall be limited to matters raised on appeal. No new evidence shall be admitted at an appeal.

H. Failure to Appeal. The failure to appeal a 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 for failure to exhaust administrative remedies.

I. 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.

**SECTION 4:** A new Section 17.04.103 is hereby enacted to provide as follows:

**17.04.103 - Appeals of City Council Decisions.**

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 Historic Preservation Commission.

**SECTION 5:** Existing Sections 17.04.110, 17.04.120, and 17.04.130 shall be renumbered 17.04.120, 17.04.130, and 17.04.140 respectively.

**SECTION 6:** A new Section 17.04.110 shall be added to provide as follows:

**17.04.110 - Citizen Participation Plan**

A. Required. The Planning Director may require a Citizen Participation Plan and Report if the potential external impacts of the proposed project are of a nature or magnitude that expanded citizen participation is reasonably justified.

B. Citizen Participation Plan. The Citizen Participation Plan is not intended to produce complete consensus on all applications; rather, it is intended to encourage applicants to be good neighbors and to allow for informed decision making. The purpose of the Citizen Participation Plan is to:

1. Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community;
2. Ensure that the citizens and property owners of Manitou Springs have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process;
3. Facilitate ongoing communication between the applicant, interested citizens and property owners, City Staff, and elected officials throughout the application review process.

C. At a minimum, the Citizen Participation Plan shall include the following:

1. Which residents, property owners, or other interested parties, including Homeowner's Associations that may be affected by the application;
2. How those interested in and potentially affected by an application will be notified that an application has been made. At a minimum, mailed notification conforming to the requirements specified in Section 17.04.102.C, Mailed Public Notification, is required;
3. How those interested and potentially affected parties will be informed of the action proposed by the application and/or substantive changes or amendment to the proposal;
4. How those affected or otherwise interested will be provided an opportunity to discuss the applicant's proposal with the applicant and express any concerns, issues, problems, or support they may have regarding the proposal in advance of the public hearing. Hosting a neighborhood meeting may be required by the Planning Director;
5. How the applicant will respond to any affected party's questions, concerns, and issues during the process. Hosting at least one follow-up neighborhood meeting, or sending written summaries and responses may be required by the Planning Director;
6. The applicant's schedule for completion of the Citizen Participation Plan; and
7. How the applicant will keep the Planning Department informed of the status of their citizen participation efforts.

D. The level of citizen interest and involvement will vary depending on the nature of the application and the location of the site. The target area for early notification will be determined by the applicant after consultation with the Planning Department. At a minimum, the target area shall include the following:

1. Property owners within the public hearing notice area required by Section 17.04.102.C, Mailed Public Notification; and

2. The head of any Homeowners Associations (HOA's) or registered neighborhood within the public notice area required by Section 17.04.102, Public Notice.

E. These requirements apply in addition to public notice provisions required in Chapter 17.04.100, Public Notice, Hearing and Appeals.

F. The applicant may submit a Citizen Participation Plan and begin implementation prior to formal application at their discretion. This shall not occur until after the required pre-application meeting and consultation with the Planning Department Staff.

G. The submitted Citizen Participation Plan will be reviewed by the Planning Director and may be accepted, accepted subject to modifications, or rejected.

H. Neighborhood Meetings. An approved Citizen Participation Plan will usually include a requirement that a neighborhood meeting be held to discuss proposed projects. The purpose of a neighborhood meeting is to allow neighborhood residents to communicate directly with the applicant regarding any issues, concerns or comments that they might have on a proposed project. Neighborhood meeting(s) may be required, at the Planning Director's discretion, during the pre-application stage, administrative internal review stage, and/or prior to the public hearing final disposition stage.

**SECTION 7:** A new Section 17.04.111 shall be added to provide as follows:

**17.04.111 - Citizen Participation Report.**

A. This Section applies only when a Citizen Participation Plan is required by this Code.

B. The applicant shall provide a written report on the results of their citizen participation effort prior to the notice of public hearing, as required by Section 17.04.101. This report will be attached to the Planning Department's Staff report.

C. At a minimum, the Citizen Participation Report shall include the following information:

1. Details of techniques the application used to involve the public, including:
  - a. Content, dates mailed, and numbers of mailings, including letters, meeting notices, newsletters and other publications;
  - b. A contact list for residents, property owners, and interested parties receiving notices, newsletters, or other written materials; and
  - c. The number of people that participated in the process.
2. A summary of concerns, issues and problems expressed during the process, including:
  - a. The substance of the concerns, issues, and problems;

- b. How the applicant has addressed or intends to address concerns, issues and problems expressed during the process; and
- c. Concerns, issues and problems the applicant is unwilling or unable to address and why.

**SECTION 8:** Section 17.04.050.B shall be amended by the insertion of a new item “i.”, and the re-lettering of the remaining items as “j. through m.” with the new item “i.” to read as follows:

- i. A list of the applicable design guidelines and the applicant’s evaluation of compliance with the Guidelines or addressing why compliance is not proposed.

And by amending re-lettered item m. to provide as follows:

- m. Applications for commercial or residential properties that require a Major or Minor Development Plan per the provisions of the Zoning Code shall provide additional information or documentation as required by the Planning Department such as a photo simulation, massing model, streetscape elevation, streetscape or building perspective and extended site plan incorporating the existing Resources surrounding the proposed construction which demonstrates its overall compatibility in relation to siting, scale, height and massing.

**SECTION 9:** Section 17.04.050(A)(3) is hereby amended to read as follows:

- a. When the application is for a permit to make interior Alterations only to a privately-owned Structure.
- b. When the application is for a permit to do Ordinary Maintenance and Repairs only.
- c. When any measures of Construction or Alteration are necessary to correct the unsafe or dangerous condition of any Structure, so long as only that Construction or Alteration necessary to correct the condition is performed.
- d. Installation of signs which conform with the Sign Ordinance and Sign Design Guideline regulations.
- e. Minor amendments to a previously approved MCAC which conforms to the Design Guidelines and has no impact on the approved design.
- f. Additions or Alterations to Noncontributing resources which increase the floor area by twenty-five percent or less, will not result in the structure being visually or architecturally intrusive and which do not require Planning permission.
- g. All projects which, upon Planning Director review, are determined to have no significant or detrimental impacts on the resource or Historic District and do not require Planning permission.
- h. Construction of secondary structures which do not exceed one hundred twenty square feet, do not have a permanent foundation, are not located in the front of the property and do not require Planning permission.

**SECTION 10:** Section 2.52.050 is hereby repealed and Sections 2.52.060 and 2.52.070 are hereby renumbered to Sections 2.52.050 and 2.52.060, respectively.

**SECTION 11:** 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 12:** 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 13:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**SECTION 14:** This ordinance shall take effect five (5) days after final approval and adoption on second reading.

Passed on First Reading and Ordered Published this 7th day of June, 2011.

/s/ Donna Kast  
City Clerk

A Public Hearing on will be held at the June 21, 2011 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: June 9, 2011.  
*Pikes Peak Bulletin*

Passed on Second Reading and Ordered Published this 21<sup>st</sup> day of June 2011.

Approved: /s/ Marc A. Snyder  
Mayor and City Council

Attest: /s/ Donna Kast  
City Clerk

Approved for Council Action: /s/ Jack Benson  
City Administrator

Approved as to form: /s/ Jeff Parker  
City Attorney

Published: June 23, 2011  
*Pikes Peak Bulletin*