

COUNCIL BILL NO. _____

ORDINANCE NO. _____

ORDINANCE

AN ORDINANCE AMENDING SECTION 18.60.010 AND 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;

WHEREAS, the Federal Communications Commission issued an order addressing small cell facilities entitled Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC WT Docket No. 17-79 (Small Cell Order – September 2018), which addressed municipal regulation of small cell facilities including regulation of co-location, the definition of small cell facilities, height limits, aesthetic regulations, fees, undergrounding and spacing, and shot clock approval deadlines;

WHEREAS, the City Council of the City of Manitou Springs now wishes to update the City's procedures for review of applications for the installation of wireless service facilities within the City in compliance with the Act, Section 6409, House Bill 17-1193, and the FCC's Small Cell Order.

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 definitions:

"Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility, including utility or transmission equipment, power supplies, generators, batteries cables, equipment buildings, cabinets and storage shelters or other structures.

"Alternative tower" structure means an existing or proposed wireless facility that is compatible with the natural setting and surrounding structures and that uses camouflage and concealment design techniques to significantly reduce the visual impacts of such facilities and can be used to house or mount antenna. Examples include manmade trees, clock towers, bell steeples, light poles, traffic signals, existing utility poles and transmission towers.

"Antenna" means an exterior transmitting or receiving device used in communications that radiates or captures wireless signals.

"Base station" means a structure or equipment at a fixed location that enables Federal Communications Commission (FCC)-licensed or authorized wireless communications between user equipment and a communications structure. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower. Base station includes:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the city under this chapter, has been reviewed and approved by the city under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks) that, at the time the relevant application is filed with the city under this chapter, has been reviewed and approved by the city under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the relevant application is filed with the city under this section, does not support or house equipment described in subparagraphs 1 or 2, above.

"Camouflage and concealment" design techniques means measures used in the design and siting of wireless facilities with the intent to significantly reduce the visual impacts of such facilities to surrounding uses so that the presence of the wireless communications facility is not readily apparent. A wireless facility utilizes camouflage and concealment design techniques when:

1. The facility is integrated within, or incorporated on, an architectural feature of an existing structure, such as a tower, clock tower, bell steeple, cupola, penthouse, architectural feature or other similar structure and is not readily apparent;

2. The facility is integrated within, or incorporated on, vertical infrastructure located in the right-of-way such as a traffic signal, flag pole, light pole or other similar structure and is not readily apparent; or

3. The facility uses a design which mimics and is consistent with landscaping features (such as artificial rocks, trees, and other vegetation), maintains authenticity in its application and is not readily apparent.

"City administrator" means the city administrator or his or her designee.

"Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Eligible facilities request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment; or
3. Replacement of transmission equipment.

"Eligible support structure" means any tower or base station, provided that it is existing at the time the eligible facilities application is filed with the city.

"Existing" or "pre-existing" means a constructed tower or base station that was reviewed, approved and lawfully constructed in accordance with all requirements of applicable law as of the time of an eligible facilities request, provided that a tower that exists as a legal, non-conforming use and was lawfully constructed, is existing.

"Freestanding wireless facility" means a wireless facility that consists of a stand-alone support structure or tower, antennas and accessory equipment that is not considered an alternative tower structure.

"Micro cell wireless facility" means a small cell wireless facility that is no larger in dimensions than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, that is no more than 11 inches in length.

"Pole-mounted small cell facility" shall mean a small cell facility with an antenna that is mounted and supported on an alternative tower structure, which includes a replacement pole.

"Radio frequency emissions letter" means a letter from the applicant certifying that the proposed wireless facility will comply with federal law on radio frequency emissions.

"Readily apparent." For purposes of determining whether a wireless facility is readily apparent, the phrase means that the facility, in the discretion of the city administrator, will be easily recognizable as a wireless facility to a reasonable person viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular wireless facility will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

"Replacement pole" means an alternative tower structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure in order to support a wireless facility or small cell facility or micro cell facility or to accommodate collocation, and replaces a pre-existing pole or structure.

"Roof-mounted wireless facility" means a wireless facility that is mounted on the roof or any rooftop appurtenance of a legally existing building or structure.

"Site for towers" (other than towers in the right-of-way and eligible support structures) means the current boundaries of the leased or owned property surrounding the tower or eligible support structure and any access or utility easements currently related to the site. A site, for other alternative tower structures, base stations, micro cell facilities, and small cell facilities in the right-of-way, is further restricted to that area comprising the base of the structure and to other related accessory equipment already deployed on the ground.

"Small cell wireless facility" means a wireless facility where each antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements that could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are not larger than 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 enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. A small cell facility includes a micro cell wireless facility. Small cells may be attached to alternative tower structures, replacement poles, and base stations.

"Signal interference letter" means a letter from the applicant certifying that the proposed wireless facility will comply with federal law on signal interference.

"Substantial change" means a modification that substantially changes the physical dimensions of an eligible support structure if after the modification, the structure meets any of the following criteria:

1. For towers other than alternative tower structures or towers in the right-of-way, it increases the height of the tower by more than ten percent or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten feet, whichever is greater;
2. For towers other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six feet;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or for towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
4. For any eligible support structure, it entails any excavation or deployment outside the current site;
5. For any eligible support structure, it would defeat the concealment elements of the eligible support structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or
6. For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless 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 paragraphs (1), (2), and (3) of this definition. For purposes of determining whether a substantial change exists, changes in height are

measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

"Tower" means any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC)-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.

"Transmission equipment" means equipment that facilitates transmission for any Federal Communication Commission (FCC)-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with 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.

"Wall-mounted communication facility" means a communication facility that is mounted and supported entirely on the wall of a legally existing building, including the walls of architectural features such as parapets, but does not include mechanical screens, chimneys and similar appurtenances.

"Wireless facility" means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A wireless facility does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A wireless facility includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, base stations, support equipment, and towers. It does not include the support structure to which the wireless facility or its components are attached if the use of such structures for wireless facilities is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this chapter.

Section 2: The definition of "telecommunications services and equipment" is hereby deleted from Section 187.60.010.

Section 3: Chapter 18.88 of the Manitou Springs Municipal Code is hereby repealed in its entirety and reenacted as follows:

Chapter 18.88 – Wireless Service Facilities

18.88.010 – Purposes.

In order to accommodate the communication need of residents and businesses while protecting the public, health, safety, and general welfare, the city council finds that these regulations are necessary to:

- A. Provide for the managed development and installation, maintenance, modification, and removal of wireless facilities infrastructure in the city with the fewest number of wireless facilities to complete a network without unreasonably discriminating against wireless communications providers, including all of those who install, maintain, operate, and remove wireless facilities;
- B. Promote and protect the public health, safety, and welfare by reducing the visibility of wireless facilities to the fullest extent possible through techniques including but not limited to camouflage design techniques and undergrounding of the equipment associated with wireless facilities;
- C. Encourage the deployment of smaller, less intrusive wireless facilities to supplement existing larger wireless facilities;
- D. Encourage design and locations standards so that facilities have a negligible impact to the community;
- E. Encourage the location of towers in non-residential areas in a manner that minimizes the total number of towers needed throughout the community;
- F. Encourage the collocation of wireless facilities on new and existing sites;
- G. Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively and efficiently;
- H. Effectively manage wireless facilities in the right-of-way; and
- I. Manage amateur radio facilities and over-the-air devices in the city.

18.88.020 - Applicability.

- A. The requirements set forth in this section shall apply to all wireless facility applications for base stations, alternative tower structures, towers, micro cells, and small cell wireless facilities, all as defined in section 18.60.010 and further

addressed herein, and all other wireless facilities unless exempt under subsection B. In the event more than one standard set forth herein applies to a proposed wireless facility, the most restrictive standard shall govern.

- B. The requirements set forth in this section shall not apply to:
1. Federally licensed amateur radio antenna, over-the-air receiving device (OTARD), and residential television reception/antenna towers provided that the requirement that the height be no more than the distance from the base of the antenna to the property line is met.
 2. Pre-existing wireless facilities. Any wireless facility for which a building permit or other use approval has been properly issued prior to [insert effective date of ordinance], shall not be required to meet the requirements of this chapter, other than the requirements of section 18.88.030. Changes and additions to pre-existing wireless facilities (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of this chapter.
 3. Miscellaneous antennas. Antennas used for reception of television, multi-channel video programming and radio such as OTARD antennas, television broadcast band antennas, and broadcast radio antennas, provided the height be no more than the distance from the base to the property line and that any generally applicable requirements contained in this title are met.
 4. A temporary wireless facility serving the general health, safety and welfare of the residents of the City of Manitou Springs installed upon the declaration of a state of emergency by the federal, state, or local government or other written determination of need by the federal, state or local government.
 5. A temporary wireless facility installed for the purpose of providing sufficient coverage for a local special event, subject to administrative approval by the city through the local event permit process in Chapter 12.24.
- C. No provisions of this Chapter create a vested right to the placement of a facility in the permitted location and the City may, in the future, require modifications, relocation, or removal of wireless facilities in their permitted locations to the extent permitted by applicable law, including without limitation any amendments to the Federal Communications Commission regulations or other laws relating to the City's authority to regulate such facilities based on human health effects (including without limitation the health effects of radiofrequency energy or radiation).

18.88.030 – Standards for all wireless facilities.

- A. Federal requirements. All wireless facilities shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communication Commission (FCC) and any other agency of the federal government with the authority to regulate wireless facilities. If such standards and regulations are changed, then the owners of the wireless facility shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the facility at the owner's expense.
- B. Operation and maintenance. To ensure the structural integrity of wireless facilities, the owner of a wireless facility shall ensure it is maintained in compliance with the standards contained in the international building codes and national electric code, as applicable and adopted by the city from time to time. The owner of a wireless facility shall ensure ongoing compliance, operation and maintenance consistent with the city's approval, including but not limited to the upkeep of site landscaping, paint and surface treatments, litter removal, fence or screening repair, and general maintenance to assure a clean, well-kept wireless facility.
- C. Abandonment and removal. If a wireless facility has not been in use for a period of three months, the owner of the wireless facility shall notify the city of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any wireless facility that is not operated for a continuous period of six months shall be considered abandoned. The city, in its sole discretion, may require an abandoned wireless facility to be removed. The owner of such wireless facility shall remove the same within 30 days of receipt of written notice from the city. If such wireless facility is not removed within said 30 days, the city may remove it at the owner's expense and any approved permits for the wireless facility shall be deemed to have expired. Additionally, the city, in its sole discretion, shall not approve any new wireless facility application until the applicant who is also the owner or operator of any such abandoned wireless facility has removed such wireless facility or payment for such removal has been made to the city. Nothing in this subsection shall limit an applicant for applying for an eligible facility request on an existing eligible support structure.
- D. Order of Preference. All wireless facilities shall be located in the following order of preference:
 - 1. First: Collocated on existing structures such as buildings, communication towers, flagpoles, church steeples, cupolas, ball field lights,

nonornamental/antique street lights such as highway lighting, etc.

2. Second: In locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.
3. Least: On vacant ground or highly visible sites without significant visual mitigation and where screening/buffering is difficult.

Before a location of lesser preference is permitted, the applicant shall provide evidence satisfactory to the City that a more preferred location is not available or feasible from a technology standpoint.

- E. Collocation. No wireless facility owner or operator shall unreasonably exclude a wireless competitor from using the same facility or location. Upon request by the city administrator, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site.
- F. Undergrounding utilities. All utilities serving wireless facilities shall be underground, unless the applicant demonstrates that it is not feasible from a construction, design, and engineering perspective.
- G. Lighting. Wireless facilities shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the wireless facility is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the city may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences. The City shall have the right to require the applicant to install an LED street light on the small cell pole and operate and maintain that street light.
- H. Eligible facilities and small cell facilities. In all zoning districts, eligible facilities requests and small cell wireless facilities shall be considered a use by right subject to administrative review pursuant to section 18.88.060. All eligible facilities request applications shall be reviewed and approved in compliance with federal rules in effect at the time the application is received.
- I. Historic district. All wireless facilities within a historic district or within 250 feet of the boundary of a historic district must be located or camouflaged so that they are not readily apparent from any public right of way or residential property; nor shall new installations be located on a structure that is designated as a contributing structure pursuant to the City's historic preservation regulations or as a National Historic Landmark listed in the National Register.

J. Buffering and landscaping. All wireless facilities shall meet the following requirements:

1. Sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel.
2. Landscaped with a buffer of plant materials that effectively screen the view of the facility from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
3. Located where the visual impact of the facility is minimal.
4. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as wireless facilities sited on large, wooded lots, natural growth around the site perimeter may be sufficient to buffer.
5. No trees larger than four inches in diameter measured at four and one-half feet high on the tree may be removed, unless authorized by the city administrator. To obtain such authorization the applicant shall show that tree removal is necessary, the applicant's plan minimizes the number of trees to be removed, and any trees removed are replaced at a ratio of two to one.

G. Antenna limitations. No antenna for any wireless facility shall be located:

1. Lower than 20 feet above existing grade on or adjacent to sidewalks, trails, walkways, paths, or similar routes upon which pedestrians or cyclists travel;
or
2. Closer than 50 feet without city approval to the exterior of any residence or business unless the facility is roof or wall-mounted.

H. Alternative energy sources. All wireless facilities shall be powered by alternative sources of renewable energy (such as solar or wind) when reasonably feasible and when such requirements do not materially inhibit an operator's ability to deploy such facilities. Applicants shall provide the City with a description of the power sources used for all wireless facilities and shall provide a basis for not using alternative sources of renewable energy when such forms of energy will not be used.

18.88.040 – Wireless facilities in the right-of-way.

Wireless facilities may be permitted within the public right-of-way, after submittal of an application from an applicant, review and approval pursuant to section 18.88.060 by the city and adherence to the following standards:

- A. Non-small cell facilities are discouraged in the right-of-way. Applicants requesting approval of a new non-small facility shall obtain approval pursuant to this chapter and demonstrate that:
 - 1. There are exceptional circumstances which prohibit installation of a small cell facility; and
 - 2. There are no feasible alternatives to locate the wireless facility outside of the right-of-way.

- B. Attachment of small cell facilities on an existing or replacement traffic light pole, street light standard, or other vertical infrastructure shall be permitted following administrative review by the city administrator for conformance with this chapter, and provided that:
 - 1. The facility utilizes camouflage and concealment design techniques; and
 - 2. The facility does not exceed the height of the existing infrastructure on which it is mounted by more than five feet.

- C. A new alternative tower structure shall be permitted for non-small cell facilities following administrative review by the city administrator for conformance with this chapter, provided that:
 - 1. The new structure is architecturally compatible with the surrounding area through application of camouflage and concealment design techniques; and
 - 2. The facility height is not more than:
 - i. 30 feet when the facility is within 250 feet of a property, as measured from the property line, containing a single-family or multi-family residential use, or the facility is within 250 feet of the boundary of a historic district or a structure that is designated as a National Historic Landmark or listed or eligible for listing in the National Register;
 - ii. 35 feet when the facility is within 250 of a property, as measured from the property line, zoned open space; or
 - iii. 40 feet in all other areas.
 - 3. The facility is separated from all other freestanding wireless facilities within right-of- way by a distance of at least 600 feet, unless the facility replaces an existing traffic signal, street light pole, or similar structure as determined by the city administrator.

4. When placed near a residential property, the facility shall be placed adjacent to a common property line between adjoining residential properties, such that the facility minimizes visual impacts equitably among adjacent properties, unless landscaping, topography, other structures, or other considerations minimize visual impacts to a greater extent at a different location.
 5. The facility does not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way or interfere with the Americans with Disabilities Act regulations.
 6. No alternative tower structure may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the right-of-way that disrupts or interferes with its use by the city, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.
- D. All ground based accessory equipment shall be installed in an underground vault, collocated within a traffic cabinet, or integrated into an alternative tower, unless the applicant demonstrates that it is not feasible. If applicant demonstrates that such installations are not feasible, ground based accessory equipment may be installed above ground with nothing projecting more than 36 inches above grade; provided that ground based accessory equipment shall meet the requirements for alternative towers set forth in Subsections (C)(5) and (C)(6) above. All above grade ground based accessory equipment shall be setback from trails and sidewalks a minimum of two feet.
- E. Any necessary wiring or cabling shall be located within the pole or, if not technically feasible, located within a fully enclosed sheathing attached to the pole. Such sheathing shall be the same color as the pole, shall be limited in size to that necessary to cover the wiring or cabling and may not extend out from the pole more than four inches.
- F. The city administrator may allow a reduction in the separation requirement or an increase in the maximum height requirement if the applicant demonstrates through technical network documentation that the requirement cannot result in a feasible network. The city may require that a city-retained technical consultant complete a

study at the applicant's expense to evaluate the applicant's technical network documentation and provide an independent opinion regarding the impact on network feasibility. The request must also result in a facility that meets the following criteria:

1. The request will not alter the essential character of the neighborhood or district in which the facility is located, nor substantially or permanently impair the appropriate use or development of adjacent property.
 2. Approval of the request is warranted by the design incorporated in the proposal and the benefit provided to the city.
- G. License agreement. At the city's option, the applicant may be required to execute a license agreement before the installation of a wireless facility within the right-of-way. The city administrator shall be authorized to execute said license agreements on behalf of the city.
- H. Approval expiration. Unless otherwise set forth in the license agreement between the city and applicant, a permit for a wireless facility in the right-of-way shall expire twelve months after approval unless construction of the permitted structure has been initiated. The applicant shall have 60 days from start of construction to complete installation of the small cell. If not installed the City can stop any work and require the removal and restoration of the site. The applicant will be required to reapply for a permit and pay a new permit fee and all restoration fees.

18.88.050 – Wireless facilities not in the right-of-way.

Wireless facilities may be permitted outside of the public right-of-way, after submittal of an application from an applicant, review and approval pursuant to section 18.88.060 by the city and adherence to the following standards:

- A. In residential zone districts or residentially developed property, wireless facilities are permitted only on institutional structures or multi-family structures containing eight or more dwelling units. Towers are not permitted in residential zone districts.
- B. Design standards. All wireless facilities shall be located and designed to be compatible and blend in with surrounding buildings and existing or planned uses in the area through the use of camouflage and concealment design techniques.
 1. Wall-mounted communication facility.
 - i. Such facilities shall be architecturally compatible with and textured and colored to match the building or structure to which they are attached.

- ii. The antenna shall be mounted as flush to the wall as technically possible. The maximum protrusion of such facilities from the building or structure face to which they are attached shall be two feet.
- iii. Panel antenna shall not extend above the building wall or parapet to which they are attached.
- iv. Wall-mounted antenna are not subject to a maximum mounting height above grade, provided they meet the standards above.
- v. Wall-mounted facilities meeting the standards above meet the camouflage and concealment design requirement.

2. Roof-mounted communication facility.

- i. All roof-mounted wireless facilities and accessory equipment shall be fully screened from view with existing parapets or with the addition of architecturally compatible screening walls or other structures as viewed at ground level at all adjacent property boundaries, including property lines across adjacent rights of way.
- ii. Any screen walls shall be set back from the parapet or roof edge so that visibility from the street or adjacent residential properties is minimized to the greatest extent possible.
- iii. Roof-mounted communication facilities and accessory equipment shall not be permitted on a sloped roof, unless it can be demonstrated that it is not visible from the street or adjacent residential areas.
- iv. Roof-mounted communication facilities are subject to the following height regulations:
 - a. Roof-mounted antenna and equipment are not subject to a maximum height when proposed on an existing structure, provided that the applicant can demonstrate that all roof-mounted antenna and accessory equipment can be located behind an existing parapet or existing screen wall that is at least as tall as the antenna and accessory equipment. Expansions to existing screen walls may be authorized by the city administrator, if the applicant can demonstrate that any expansion does not result in any additional height and is in compliance with the design standards above.

- b. Roof-mounted antenna and accessory equipment not meeting the standard above are subject to the maximum building height for the zoning district or applicable design standards, whichever is stricter.
 - c. Roof-mounted panel antenna shall not extend more than six feet above the roof parapet.
 - d. Roof-mounted whip antenna shall not extend more than ten feet above the building to which they are mounted.
- 3. Freestanding and alternative tower communication facilities.
 - i. The applicant shall demonstrate that freestanding wireless facilities are necessitated by exceptional circumstances which prohibit the installation of a wall or roof mounted structure or alternative tower structure and that the visual impact of a freestanding wireless facility is negligible from surrounding properties and streets.
 - ii. Freestanding wireless facilities shall not be permitted between the principal structure and the street.
 - iii. The minimum setback from property lines for freestanding and alternative tower structures shall be the lesser of the following:
 - a. The facility height, when the facility is within 250 feet of an existing residential structure;
 - b. The setback applicable to principal structures in the zoning district; or
 - c. An alternative setback, approved by the city administrator, for alternative tower structures where the facility replaces or proposes an accessory structure to an established principal use, to include, but not limited to, signs, light poles, and flagpoles, where it is evidenced that the siting and location of the alternative tower structure allows for camouflage and concealment design techniques to a greater extent than would be achieved by application of the principal structure setback.
 - iv. Freestanding and alternative tower structures are subject to the maximum building height for principal structures for the zoning district or applicable design standards, whichever is stricter.

4. Ground based accessory equipment. All ground based accessory equipment that is associated with freestanding, alternative tower structures, roof-mounted or wall-mounted facilities are subject to the following requirements:
 - i. Ground based accessory equipment shall be subject to the accessory structure setback requirements in the underlying zone district or the applicable design standards, whichever is stricter.
 - ii. Ground based accessory equipment or buildings constructed for the primary purpose of containing accessory equipment shall not exceed 12 feet in height.
 - iii. Ground based accessory equipment not fully enclosed in a building shall be fully screened with landscaping from adjacent residential property and public rights-of-way with a screen wall constructed of high-quality materials to be architecturally compatible with existing structures on the property and character of the neighborhood.
 - iv. Buildings containing ground based accessory equipment shall be architecturally compatible with the existing structures on the property and character of the neighborhood.

18.88.060 – Application and approval procedures.

- A. No new wireless facility shall be constructed, and no collocation or modification to any wireless facility may occur except after a written request from an applicant, reviewed and approved by the city in accordance with this section. That review process varies according to the type and location of the proposed facility. The review process is intended to ensure that the facility will be designed and sited in a manner that complies with the provisions on this chapter, and in such a way to minimize negative impacts on surrounding property.
- B. An application for approval of a proposed wireless facility shall include all information regularly required for other development applications, in addition to the following:
 1. Application form.
 2. Application fee(s) and, if required by the city administrator, a deposit for the estimated fees of any expert consultants required by the City to review the application.
 3. Written authorization from the owner of the property or infrastructure.

4. A written, narrative statement describing in detail, how the proposed wireless facility will comply with each of the applicable design standards set forth in this Chapter.
5. Signal interference letter.
6. Radio Frequency–Electromagnetic Energy (RF-EME) Compliance Report.
7. Scaled site plan with GPS coordinates for each facility.
8. Photo simulations.
9. Scaled elevations.
10. Power source.
11. Neighbor notice. Written notice to all owners of property located within a 500-foot radius of every wireless facility that is the subject of the application. The notice shall be in a form approved by the city planning department and shall include without limitation: a map showing the location of the facility(ies), a description of the facilities, and information regarding how to submit comments to the City.
12. Other supporting documentation, including location and dimension of all improvements, including topography, radio frequency coverage, tower height, setbacks, drives, parking, fencing, landscaping, adjacent uses, drainage, and other information deemed necessary by the city administrator to assess compliance with this chapter.

The city administrator may waive any of the above-referenced requirements upon determination that they are not necessary to assess compliance with this Chapter.

- C. 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. Applicant shall limit consolidated applications to 20 locations in any thirty-day period.
- D. 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.

E. Review procedures and deadlines.

1. Small cell wireless facilities.
 - a. Collocation/Replacement/Modification. Applications for the collocation of a small cell wireless facility or for the replacement or modification of a small cell wireless facility shall be approved or denied by the city administrator within sixty (60) days of the date of the city's receipt of the completed application.
 - b. New Site. Applications for a small cell wireless facility at a new site shall be approved or denied by the city administrator within ninety (90) days of the date of the city's receipt of the completed application.
2. Non-small cell wireless facilities.
 - a. Eligible facilities. Eligible facilities requests for non-small cell wireless facilities shall be approved or denied by the city administrator within ninety (90) days of the date of the city's receipt of the completed application.
 - b. Non-eligible facilities. Applications for non-small cell wireless facilities at new sites shall be reviewed under the city's conditional use review procedures and shall approved or denied by the city within one hundred fifty (150) days of the date of the city's receipt of the completed application.

F. Review.

1. Criteria for approval or denial of application. In considering an application for location or co-location of a wireless facility, the city shall base the decision as to the approval or denial of the application on whether the proposed wireless facility meets the applicable standards set forth in this chapter.

2. 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.

G Tolling. The timeframe for review of an application commences upon the filing of an application and may be tolled only by mutual agreement of the city and the applicant, or in cases where the city determines that the application is incomplete and provides written notice of same to the applicant.

Section 4: 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 5: This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6: This ordinance shall take effect five (5) days after final approval on second reading and publication.

Passed on first reading and ordered published this ____ day of _____, 2019.

Acting City Clerk, Judy Egbert

A Public Hearing on this ordinance will be held at the _____, 2019, 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: _____, 2019.

City's Official Website and City Hall

Passed on second reading and adopted by Council this ____ day of _____, 2019.

Mayor, Ken Jaray

Attest: _____

Acting City Clerk, Judy Egbert

Published: _____, 2019 _____ (by title or in full)

City's Official Website and City Hall