

ORDINANCE

AN ORDINANCE OF THE CITY OF MANITOU SPRINGS, COLORADO, REPEALING CHAPTER 5.16 AND ADDING A NEW CHAPTER 9.46 TO THE MANITOU SPRINGS MUNICIPAL CODE RELATING TO PEDESTRIAN ACCESS TO THE PUBLIC SIDEWALKS AND RIGHTS-OF-WAY IN DOWNTOWN

WHEREAS, the United States District Court for the District of Colorado, in the case of *Browne v. City of Grand Junction*, Civil Action No. 14-CV-00809-CMA-KLM (D. Colo. Sept. 30, 2015), invalidated a municipal panhandling ordinance containing provisions similar in nature to those in Chapter 5.16 of the City of Manitou Springs' Municipal Code;

WHEREAS, in response to the *Browne* case, the City Council desires to repeal Chapter 5.16 of the Manitou Springs Municipal Code;

WHEREAS, the City Council desires to adopt regulations unrelated to the content of an individual's speech, which will preserve the use of public rights-of-way for safe, unimpeded vehicular and pedestrian traffic;

WHEREAS, the surface of a public sidewalk is primarily intended to be used for passage of pedestrians and the surface of a public street, alley or transit way is primarily intended to be used for the passage of vehicles;

WHEREAS, the act of sitting, kneeling, reclining or lying upon the surface of a sidewalk, street, or other public right-of-way and the act of displaying or arranging items on the surface of the right-of-way poses a safety hazard to the person sitting, kneeling, reclining or lying upon the surface; to the person displaying or arranging items on the surface of the right-of-way; and to people using the right-of-way for its intended purpose;

WHEREAS, the act of placing or arranging items for display or sale on the surface of the right-of-way obstructs portions of the right-of-way and impedes the free flow of pedestrian traffic upon the public right-of-way;

WHEREAS, prohibiting sitting, kneeling, reclining or lying upon the surface of a sidewalk or other public right-of-way in the Downtown Area and prohibiting the display or arrangement of items on the surface of the right-of-way increases pedestrian safety, thereby making the Downtown Area more hospitable to residents and visitors and promoting economic vitality;

WHEREAS, the act of sitting, kneeling, reclining or lying upon the surface of a sidewalk, street or other public right-of-way, and the act of arranging items for sale or display on those same surfaces conflicts with the use of the right-of-way for its intended purpose;

WHEREAS, the presence of persons sitting, kneeling, reclining or lying upon the surface of the public right-of-way and the presence of items placed for sale or display on the surface of the public right-of-way in the Downtown Area creates a sense of public disorder and deters people from staying, shopping and visiting;

WHEREAS, sitting, kneeling, reclining and lying down in the public right-of-way or placing or displaying items in the public right-of-way in the Downtown Area constitutes a threat to the public health, safety and general welfare and a threat to the City's economic vitality;

WHEREAS, City Council is committed to advancing the public health, safety, general welfare, economic vitality and access to and enjoyment of the Downtown Area due to the concentrations of commercial, historic, and recreational properties that attract a large number of residents and visitors and the unique importance of the Downtown Area to the City's economy; and

WHEREAS, City Council finds it is in the best interests of the public health, safety, and welfare to enact this ordinance.

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

Section 1: Chapter 5.16, "Panhandling-Soliciting-Street Performances," within Title V of the City of Manitou Springs Municipal Code, "Business Licenses and Regulations," is hereby repealed in its entirety.

Section 2: A new Chapter 9.46, titled, "Restrictions on Use of the Public Right of Way in the Downtown Area" within Article V (Offenses Against Property) of Title 9 (Public Peace, Morals and Welfare) of the City of Manitou Springs Municipal Code, is created to read as follows:

Chapter 9.46 - SITTING OR LYING DOWN IN THE DOWNTOWN AREA

9.46.010 – Definitions.

For purposes of this Chapter, the terms below shall have the following meaning:

A. "*Display*" means to present items, regardless of whether the items are offered for sale, in return for donations, or for no remuneration, in a manner that is subject to the view of individuals passing by. The term "display" does not apply to setting down handbags, shopping bags, packs, or items a person may be carrying.

B. "*Downtown Area*" means the main commercial and retail area of the City as designated in Exhibit A following this section.

C. “*Public right-of-way*” means any street, sidewalk, path, alley, parkway, plaza, curb, median, traffic island, or any other publicly owned property intended or used for pedestrian, recreational or vehicular travel.

9.46.020 – Prohibitions.

The following activities shall be unlawful between the hours of 6:00 a.m. and 10:00 p.m. daily and between the additional hours of 10:00 p.m. and 3:00 a.m. commencing on Friday and Saturday nights:

- A. For any person to sit, kneel, recline or lie down in the Downtown Area upon the surface of any public right-of-way.
- B. For any person to sit, kneel, recline or lie down upon any blanket, clothing, bedding, chair, stool, or any other object placed upon the surface of the public right-of-way.
- C. For any person to place or arrange items for sale or display upon the surface of any public right-of-way, or upon any bench, chair, or other similar surface intended for public seating that is located within a public right-of-way.

9.46.030 – Exceptions.

It is not a violation of this Chapter that a person:

- A. Sits, kneels, reclines or lies down upon the public right-of-way due to a medical emergency.
- B. As a result of a medically-confirmable disability, utilizes a wheelchair, walker or other similar mobility-supporting device to move about the public right-of-way.
- C. Is operating or patronizing a commercial establishment located in the public right-of-way pursuant to any permit or license issued by the City.
- D. Sits or kneels on the public right-of-way when attending a parade, festival, performance, or similar special event conducted in the public right-of-way pursuant to any permit or license issued by the City.
- E. Sits upon an object intended for sitting in the public right-of-way furnished by the City or by any other public agency.
- F. Arranges items for sale or display pursuant to a permit or license permitting such activity issued by the City.

9.46.040 – Penalties.

A. Upon conviction for a first offense for violating this Chapter, the court shall impose a fine of not more than five hundred dollars (\$500.00), or a sentence of probation, or both.

B. Upon conviction for a second or subsequent offense for violating this Chapter, the court shall impose a fine of not more than five hundred dollars (\$500.00); or imprisonment in jail for a period of not more than ninety (90) days; or a sentence of probation; or a combination of fine, imprisonment, and a sentence of probation.

Passed on first reading and ordered published this 19th day of July, 2016.

/s/ Donna Kast
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the August 2, 2016 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: July 21, 2016 (in full)
City's Official Website and City Hall

Passed on second reading and ordered published this 2nd day of August, 2016.

/s/ Nicole Nicoletta
Mayor, Nicole Nicoletta

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

Ordinance Published: August 4, 2016 (in full)
City's Official Website and City Hall