

ORDINANCE

AN ORDINANCE OF THE CITY OF MANITOU SPRINGS, COLORADO, REPEALING AND REENACTING CHAPTER 12.24 OF THE CITY OF MANITOU SPRINGS MUNICIPAL CODE RELATED TO THE USE OF PUBLIC PROPERTY, AND REPEALING CHAPTER 9.26 OF THE CODE RELATED TO MUSIC WITHIN PUBLIC PARK GROUNDS AND REENACTING CHAPTER 9.26 TO PROHIBIT SMOKING IN PUBLIC PARKS

WHEREAS, demonstrations and special events on public streets, sidewalks, public rights-of-way and other public property can interfere with vehicular and pedestrian traffic, including emergency responders and interfere the public’s right to use and enjoy those public areas;

WHEREAS, unregulated demonstrations and special events on public streets, sidewalks, public rights-of-way, and other public property have been known to be accompanied by civil unrest and disturbance, accompanied in some cases by significant public injuries and property damage;

WHEREAS, the greater the number of participants, the greater the likelihood that the demonstration or special event will interfere with vehicular and pedestrian traffic and the greater the risk of public unrest;

WHEREAS, use of parks and other public property by large groups can interfere with the use of the parks and other public property by members of the public;

WHEREAS, the City Council, having considered the size and population of the City and the resources available to the City, determines that special events of any size and demonstrations with fifty (50) or more participants should require a permit, so that the City can take appropriate measures to ensure that the public health, safety and welfare is adequately protected;

WHEREAS, courts have recognized the right of municipalities to enact reasonable time, place and manner restrictions related to demonstrations and special events such as those established herein while respecting and protecting the free speech rights of groups and individuals wishing to express their views by such methods; and

WHEREAS, it is reasonable and appropriate for the City to enact the regulations in this ordinance to ensure the delivery of critical emergency services and to protect the public health, safety and welfare while also respecting and ensuring free speech rights.

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

Section 1: Chapter 12.24, “Parks and Playgrounds”, of the City of Manitou Springs Municipal Code, is hereby repealed in its entirety and reenacted as follows:

Chapter 12.24 – Local Events on Public Property

12.24.010 – Purpose

The purpose of this Chapter is to provide for and regulate the use of public property owned by the City, to minimize the impact by large groups and special events and to ensure that public property is reasonably available and safe for use by the public.

12.24.020 – Definitions

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

“Block Party” means a festive gathering on a residential street requiring the closure of a street or a portion thereof to vehicular traffic and the use of the street for the festivity, including but not limited to barbecues, picnics, music or games.

“City Administrator” means the City Administrator of the City or his or her designee.

"Demonstration" means a rally, a gathering of picketers or protestors, a speech, a march, or any other similar gathering that either requires traffic control or has fifty (50) or more participants and occurs on a public street, sidewalk, public right of way or park in the City, for the purpose of communication or expression of views or grievances.

“Major Special Event” means a special event that has either: 1) 200 or more participants, 2) interferes or obstructs a public right-of-way, or 3) requires a liquor permit pursuant to the City’s liquor licensing regulations.

“Minor Special Event” means a special event which does not qualify as a major special event.

"Parade" means a march or procession with individuals, animals or vehicles, or combination thereof, on any public street, sidewalk or public right-of-way in the City but that is not a demonstration.

“Parks” means all developed recreational areas and facilities (including fields and shelters) owned, leased, or operated by the City and open to the public or available for public use.

“Permit” means the written permit issued to the permittee.

“Private Event” means an event that is not open to the general public, but occurring on public property, including but not limited to birthday parties, weddings, reunions, but shall not include demonstrations.

“Public Property” means any property owned or controlled by the City and open to the public or available for public use, including but not limited to public streets, rights-of-way, sidewalks, parks, and public buildings.

“Special Event” means a temporary activity open to the general public and occurring on public property, including without limitation, block parties, parades, soap box derbies, rallies, walks, running or bicycle races, fundraisers, picnics, or sports tournaments, but shall not include demonstrations.

12.24.030 - Permit or Reservation Requirement

- A. Any person desiring to conduct a special event on public property shall first obtain a special event permit from the City.
- B. Any person desiring to hold a demonstration on public property shall first obtain a demonstration permit from the City.
- C. Any person desiring to hold a private event shall obtain appropriate approval from the City. Private events requiring a street closure shall obtain a permit pursuant to this Chapter. Private events not requiring a street closure shall be governed by the City’s Facilities Use Policy. The City Council, by resolution, may designate the specific public property that requires a reservation under this Chapter and such uses shall be governed by the City’s Facilities Use Policy.

12.24.040 – Application.

- A. Any person desiring to sponsor or conduct a private event, special event or demonstration shall apply for a private event, special event or a demonstration permit, as applicable, by filing an application with the City on a form supplied by the City.
- B. At a minimum, the application shall include the following information:
 - 1. The applicant's name, address, and phone number and if applicable, the main contact for the special event or demonstration;
 - 2. The date and time of the private event, special event or demonstration, including the estimated set-up period, the start time, the end time, and the estimated break-down and clean-up period;
 - 3. A map showing the proposed location of the private event, special event or demonstration, including a detailed map of the route of the special event or demonstration, if applicable;
 - 4. The nature of the private event, special event or demonstration;
 - 5. The estimated number of participants and animals, if any;
 - 6. The estimated number of vehicles;
 - 7. A waste disposal and clean-up plan;

8. A parking plan, if the number of participants is anticipated to be 100 or more;
 9. A list of vendors and business license numbers, if items will be sold at the special event;
 10. A list of any previous private event, special event or demonstration permits issued by the City;
 11. A statement as to whether the applicant has ever applied for and been denied, or had revoked, a private event, special event, demonstration or similar permit by the City or any other jurisdiction and the grounds therefor;
 12. A description of any planned amplified noise;
 13. A statement as to whether the private event, special event or demonstration will involve hazardous, combustible or flammable materials and, if so, the safeguards planned; and
 14. Any other information requested by the City relevant to either the criteria set forth in Section 12.24.050 or the possible conditions that may be imposed pursuant to Section 12.24.060 that will aid the City in deciding whether to issue the private event, special event or demonstration permit and under what conditions.
- C. Except as otherwise required in this Chapter, demonstration permit applications shall be submitted not less than two (2) business days nor more than one (1) year before the date for the demonstration. The City shall, upon a showing of good cause, consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain necessary police services for the demonstration. Good cause may be demonstrated by a showing that the circumstance that gave rise to the application did not reasonably allow the applicant to file within the time prescribed. If the City refuses to consider a late application, the City shall inform the applicant in writing of the reasons therefor, and of the applicant's right of appeal.
- D. Applications for major special events must be filed with the City not less than six (6) months nor more than one (1) year prior to the event.
- E. Applications for minor special events must be filed with the City at not less than ninety (90) days nor more than one (1) year prior to the event.
- F. Applications for private events, requiring a permit shall be filed with the City at least thirty (30) days prior to the private event.

- G. The Events Coordinator can waive the application deadlines in Subsections D, E, and F above for good cause demonstrated by the applicant. Good cause shall not include circumstances where the applicant had the opportunity to apply by the applicable deadline but failed to do so without a reasonable basis.
- H. Each application shall be accompanied by a nonrefundable application fee as set by City Council which fee shall defray the costs of processing the application.
- I. Each application shall also be accompanied by any applicable deposit as set by City Council. Any deposits shall be refunded if the application is denied.
- J. Each application shall be included a signed statement that the applicant acknowledges the imposition of additional fees by the City for services provided by City staff at the demonstration or event.
- K. Each application shall be accompanied by an indemnification agreement stating that the applicant, in exchange for issuance of the special event or demonstration permit, agrees to reimburse the City for any costs incurred by the City in repairing damages to public property caused by the sponsors of the special event or demonstration or the participants in the event or demonstration, or by actions that the sponsors directed, authorized, or ratified, and also agreeing to defend the City against, and indemnify and hold the City harmless from, any liability to any person or property that arise from or are related to the special event or demonstration.

12.24.050 - Criteria for denial.

- A. The City shall approve an application for a private event, special event or demonstration permit unless the City determines, upon consideration of the application and other pertinent information, that:
 - 1. Information contained in the application or supplemental information obtained from the applicant is found to be false in any material detail;
 - 2. The applicant has failed to complete the application after having been notified of any additional information or documents required;
 - 3. Another private event, special event or demonstration permit has already been issued, or an application has been received prior in time, to hold another private event, special event or demonstration on the same date and time, or so close in time and place as to cause undue vehicular or pedestrian traffic congestion, or as to burden the City's ability to meet the needs of Public Services, police, fire or other emergency services to the remainder of the City;

4. The time, route or size of the private event, special event or demonstration will substantially interrupt the safe and orderly movement of vehicular or pedestrian traffic on or contiguous to the site or route or will disrupt the use of a public street at a time when it is usually subject to traffic congestion;
5. The size, nature or location of the private event, special event or demonstration will present a substantial risk to the health or safety of the public or participants in the private event, special event, demonstration or other persons;
6. The size of the private event, special event or demonstration will require diversion of so great a number of police officers or firefighters to ensure that participants stay within the boundaries or route of the private event, special event or demonstration, or to protect participants in the private event, special event or demonstration, as to prevent normal protection to the rest of the City; provided that nothing herein authorizes denial of a permit because of the need to protect participants from the conduct of others, if reasonable permit conditions can be imposed to allow for adequate protection of participants with the number of police officers available to police the private event, special event or demonstration;
7. The location of the private event, special event or demonstration will substantially interfere with any construction or maintenance work scheduled to take place on or near a public street, sidewalk or public right-of-way or with any previously issued public right-of-way permit;
8. The private event, special event or demonstration will occur at a time when a school is in session at a location near the school, and the noise created by the activities of the private event, special event or demonstration would substantially disrupt the educational activities of the school;
9. The private event, special event or demonstration involves the use of hazardous, combustible or flammable materials which create a fire or safety hazard;
10. The private event, special event or demonstration, as described in the application, would violate any applicable law;
11. The applicant has failed to pay costs, fees or deposits for any previous private event, special event or demonstration permit; or

12. The applicant has failed to abide by the terms or conditions of any previous private event, special event or demonstration permit.
- B. When the grounds for denial of an application can be corrected by altering the date, time, duration, route or location of the private event, special event or demonstration, the City shall, instead of denying the application, conditionally approve the application upon the applicant's acceptance of appropriate corrective conditions. The permit shall not be issued until the applicant has accepted the conditions in writing. If the applicant does not accept the conditions, the application shall be considered denied.

12.24.060 - Conditions.

- A. The City may impose reasonable conditions on any permit necessary to protect the safety of persons and property and the control of traffic, including but not limited to the following:
1. Alteration of the date, time, duration, frequency, route or location of the private event, special event or demonstration;
 2. Conditions concerning the area of assembly and disbanding of other private events, special events or demonstrations occurring along a route;
 3. Conditions concerning accommodation of available parking, pedestrian or vehicular traffic, including restricting the private event, special event or demonstration to only a portion of a street or right-of-way;
 4. Requirements for the use of traffic cones, barricades or other traffic-control devices to be provided, placed and removed by the permittee at its expense;
 5. Requirements for provision of emergency access and first aid or sanitary facilities;
 6. Requirements for arrangement of City staff to be present at the private event, special event or demonstration at the permittee's expense;
 7. Requirements to use third party vendors for cleanup and security;
 8. Requirements for providing notice of permit conditions to participants;
 9. Restrictions on the number and type of vehicles, animals or structures at the private event, special event or demonstration and

inspection and prior approval of floats, structures and decorated vehicles for fire safety;

10. Requirements for use of trash receptacles, cleanup and restoration of property;
11. Restrictions on use of amplified sound;
12. A requirement that notice be provided to the residents of dwellings, and businesses along any affected streets;
13. Compliance with any applicable law and obtaining any other legally required permits or licenses; and
14. Designation of a contact person with decision making authority who will be continuously available to law enforcement personnel and present at the special event or demonstration.

12.24.070 - Issuance.

- A. The City Administrator shall designate an individual responsible for reviewing applications and issuing private, minor special event and demonstration permits under this Chapter, who shall be referred to as the Events Coordinator.
- B. Within twenty-four (24) hours of receipt of a complete demonstration permit application, the Events Coordinator shall consider the criteria in Section 12.24.050 and approve, conditionally approve or deny the application.
- C. Within ten (10) days of the receipt of a complete private event permit application, the Events Coordinator shall consider the criteria in Section 12.24.050 and approve, conditionally approve or deny the application.
- D. Within thirty (30) days of the receipt of a complete minor special event permit application, the Events Coordinator shall consider the criteria in Section 12.24.050 and approve, conditionally approve or deny the application. If Events Coordinator determines that the minor special event may have similar impacts as a major special event, the Events Coordinator may refer the application to City staff within thirty (30) days of receipt of the complete application.
- E. Within thirty (30) days of receipt of a complete major special event permit application or referral of a minor special event permit by the Events Coordinator, the City shall review the application and the criteria in Section 12.24.050. The City shall approve, approve with conditions or deny the application.

- F. If any application is denied, the City shall inform the applicant in writing of the grounds for denial and the applicant's right of appeal. If the application is approved, the Events Coordinator shall issue the permit, including any conditions.

12.24.080 – Insurance –Special Events and Demonstrations.

- A. In addition to any other condition allowed by Section 12.24.060, the City may require the applicant to possess public liability insurance to protect against loss from liability imposed by law for damages for bodily injury or property damage arising from the special event or demonstration. The City shall determine whether to require such insurance and the amount of insurance that shall be required based upon the considerations routinely taken into account by the City in evaluating loss exposures, including, without limitation, whether the special event or demonstration poses a substantial risk of damage or injury due to the anticipated number of participants, the nature of the special event or demonstration involved and the physical characteristics of the proposed site or route. Such insurance shall name the City and its officers, employees and agents as additional insureds.
- B. If insurance coverage is required, a copy of the policy or a certificate of insurance along with all necessary endorsements shall be filed with the Events Coordinator no less than ten (10) days before the special event. Endorsements for demonstrations shall be filed with the Events Coordinator prior to issuance of the permit.
- C. The insurance requirement may be waived by the Events Coordinator if the applicant signs a verified statement that the cost of obtaining insurance is so financially burdensome that it would constitute an unreasonable burden on the right of First Amendment expression, or that it has been impossible to obtain insurance coverage. The statement shall include the name and address of at least one insurance agent or other source for insurance coverage contacted to determine insurance premium rates for insurance coverage.
- D. Failure to maintain insurance coverage as required by this Section may result in revocation of the permit or may constitute ground for denial of future permit application.

12.24.100 - Deposit.

- A. The applicant shall provide a deposit at the time of the application. The deposit shall be in the amount established by the Events Coordinator, consisting of a base amount established by Council and any additional amount the Events Coordinator finds is appropriate based upon an estimate of the actual costs, above the base amount, to be incurred by the City in the

clean-up of a private event, special event or demonstration of like nature and size.

- B. The deposit shall be refunded after the private event, special event or demonstration if the property used for the private event, special event or demonstration has been cleaned and restored to the same condition as existed prior to the special event or demonstration.
- C. If the property used for the private event, special event or demonstration has not been properly restored, the deposit, or a portion thereof, shall be applied toward payment of the actual costs incurred by the City in restoring the property.
- D. If after the City uses the deposit, or a portion thereof, for restoring the property, the City shall refund any remaining amount of the deposit to the applicant.
- E. Any refund under this Section shall be made within thirty (30) days of the conclusion of the private event, special event or demonstration. If the public property has been damaged to the extent that it will take longer than thirty (30) days for the City to determine the costs of such damage, the City may keep the deposit until such costs are determined and the property is restored.

12.24.110 - Duties of permittee.

- A. The permittee shall comply with all terms and conditions of the permit.
- B. The permittee shall ensure that the person leading or in charge of the private event, special event or demonstration is familiar with every provision of the permit and this Chapter and carries the permit on his or her person for the duration of the private event, special event or demonstration.
- C. Immediately following the completion of the private event, special event or demonstration, the permittee shall ensure that the area used for the private event, special event or demonstration is cleaned and restored to the same condition as existed prior to the private event, special event or demonstration.

12.24.120 - Revocation.

- A. The City may, at any time prior to a private event, special event or demonstration, revoke or terminate a permit that has been issued for the private event, special event or demonstration if conditions change so that the application could have been denied in the first instance.
- B. The City may revoke a permit during the course of the private event, special event or demonstration if continuation of the private event, special event or

demonstration presents a clear and present danger to the participants or the public health, safety or welfare.

- C. The City may revoke the permit and terminate the private event, special event or demonstration during the course of the private event, special event or demonstration for noncompliance with any term or condition of the permit.
- D. A decision to revoke a permit may be made by the City Administrator, Police Chief, Fire Chief, Public Services Director or Events Coordinator.

12.24.130 – Fee Reductions, Grants and Noise Variances

- A. An applicant may apply for a fee reduction from the City at the time of filing its application for a permit. In determining whether to grant a fee reduction, the Events Coordinator shall consider the following criteria, as applicable:
 - 1. Whether the applicant has had any violations of other special event or demonstration permits previously issued from the City.
 - 2. The event is compatible with Plan Manitou and the Council's Strategic Goals.
 - 3. Fee reductions do not apply to application fees or deposits.
 - 4. There is a limit of one (1) fee reduction per organization per year.
 - 5. The sponsoring organization is a nonprofit corporation and proof of that status is provided.
 - 6. There is a direct benefit to City programs, activities or facilities as a result of the special event or demonstration.
 - 7. The sponsoring organization is located within the City's zip code.
 - 8. The event is a long-occurring and frequent event within the City.
 - 9. There is a significant potential to attract visitors to the City and encourage tourist activity.
 - 10. The ability of applicant to provide an in-kind or other contributions of goods, services, or programs that will benefit the City or its residents. The in-kind or other contribution must be equal to or exceed the value of the reduced fee.
- B. An applicant may request that the City provide a grant for a special event. The applicant shall file an application for a grant request at the same time

as the application for the special event. City Council will consider and decide all grant requests, based upon the following criteria:

1. Grants shall not be granted to individuals, unincorporated organizations or groups, or recipients of any other financial or other type of assistance from the City (except for a fee reduction) in the same calendar year.
 2. The potential of a special event to spur economic development within the City, engage local community, cultural or historical benefit, and attract visitors to the City.
 3. The special event aligns with the City's community priorities.
 4. The fiscal stability of organization, if applicable, including a demonstration that the event will be become sustainable within 2 to 5 years of the inaugural event.
 5. Whether the applicant has had any violations of other special event or demonstration permits previously issued by the City.
- C. If an applicant requires a noise variance related to a special event or demonstration, the applicant shall also file an application with the City pursuant to Section 6.08.020 of the Code at the same time as filing for an application for private event, special event or demonstration permit. The Events Coordinator shall consider and decide all noise variance applications.

12.24.140 - Appeals.

- A. Any denial of the Events Coordinator relating to a private event or minor special event permit application under this Chapter may be appealed by the applicant to the City Administrator by filing a written notice of appeal, setting forth the grounds for appeal, within five (5) days after the decision. Any denial of on a major special event permit application under this Chapter may be appealed by the applicant to the City Council by filing a written notice of appeal, setting forth the grounds for appeal, within five (5) days after the decision. The decision of the City Administrator or the City Council, as applicable, shall be final, subject only to judicial review.
- B. For denials of a private and special event permit applications, the City Administrator or City Council, as applicable, shall review the appeal and issue a written decision no later than thirty (30) days after the filing of the appeal. The applicant and the City may present written evidence or written argument to assist in review. The decision shall be final, subject only to judicial review.

- C. Any denial of a demonstration permit application by the Events Coordinator may be appealed by the applicant to the City Administrator by filing a written notice of appeal, setting forth the grounds for appeal, within five (5) days after the decision. The City Administrator shall review the appeal and issue a written decision no later than one (1) day after the filing of the appeal. The applicant and the City may present written evidence or written argument to assist in the review. In the event that a notice of appeal is filed in accordance with this Section, but less than one (1) day prior to the requested date for a demonstration for which the permit has been denied and the City Administrator is unable to review the appeal prior to the requested date, the City Administrator shall notify the appealing applicant that circumstances do not permit a determination of the appeal, and said applicant is entitled to seek judicial review of the permit denial with no further administrative review. The City Administrator's decision shall be final, subject only to judicial review.
- D. Filing of an appeal does not stay the decision of the application and does not require the City to reserve the date(s) and time(s) requested in the application on appeal.

12.24.150 - Violation; penalty.

- A. It is unlawful for any person to sponsor or conduct a special event or demonstration without a permit issued under this Chapter. It is unlawful for any person to participate in a special event or demonstration without a permit with knowledge that the sponsor of the special event or demonstration has not been issued a permit.
- B. It is unlawful for any person to interfere with or disrupt a lawful special event or demonstration.
- C. It is unlawful for a permittee to violate the terms and conditions of a permit, or for any participant with knowledge thereof to knowingly violate the terms and conditions of the permit.
- D. Any person convicted of a violation of this Chapter shall be subject to the penalties set forth in Chapter 1.16 of this Code.

Section 2: Chapter 9.26 “Music Within Public Park Grounds”, of the City of Manitou Springs Municipal Code, is hereby repealed in its entirety and reenacted as follows:

9.26 - Smoking prohibited in city parks.

- A. When used in this section, smoke or smoking is defined to mean the possession of a lighted cigarette, cigar or pipe containing tobacco or other organic burning matter, regardless of its composition, or the lighting of such cigarette, cigar or pipe by any person.

- B. No person shall smoke in the public parks within the limits of the city.
- C. To advise the public that smoking is prohibited in city parks, signs with letters no less than one inch high or symbols of no less than three inches high shall be posted at the entrances of all city parks. The sign shall use the words "No Smoking" or the international no-smoking symbol.
- D. Any individual guilty of a violation of this section shall be subject to the penalties set forth in Section 1.01.100 of this Code.

Section 3: 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 4: 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 25th day of July, 2017.

/s/ Donna Kast
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the August 15, 2017, 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 27, 2017 (in full)
City's Official Website and City Hall

Passed on second reading and adopted by Council this 15th day of August, 2017.

/s/ Nicole Nicoletta
Mayor, Nicole Nicoletta

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

Ordinance Published: August 17, 2017 (in full)
City's Official Website and City Hall