

ORDINANCE

AN ORDINANCE REPEALING AND REENACTING CHAPTER 9.46 OF THE MANITOU SPRINGS MUNICIPAL CODE CONCERNING SITTING, LYING, AND STREET PERFORMING

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 while concurrently allowing for street performances in a manner that is compatible with the City's tourist-oriented downtown area, to provide an entertaining environment for visitors;

WHEREAS, the City Council desires to ensure that sidewalks, roadways, and public areas remain safe and accessible for their intended purposes and that people can access entryways and exits of local businesses, parks, and public buildings and facilities;

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;

WHEREAS, prohibiting sitting, kneeling, reclining or lying upon the surface of a sidewalk or other public right-of-way in the City's downtown area and prohibiting the display or arrangement of items on the surface of the right-of-way improves pedestrian safety, thereby making the City's downtown area more hospitable to residents and visitors, limits tripping hazards, and promotes economic vitality;

WHEREAS, limiting street performances to specific designated locations in the City's downtown area during times when the downtown area is most congested preserves the City's sidewalks and roadways for their primary purpose and promotes public safety by allowing for the free flow of vehicular and pedestrian traffic;

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 9.46 of the Manitou Springs Municipal Code is hereby repealed and reenacted to read as follows:

**Chapter 9.46
Conduct in the Downtown Area**

9.46.010 - Purpose.

The City determines that it is necessary and appropriate to create designated areas for the activities of street performers during peak public use hours in the downtown area, and to regulate sitting, lying, or blocking the public right-of-way in the downtown area. The regulations set forth in this Chapter are unrelated to the content of any person's performance or speech and are intended to balance the different uses of public sidewalks, roadways, and other public spaces for pedestrian and vehicular traffic and for free speech activity.

9.46.020 – Definitions

Designated location means an established area designated for use by street performers during the specified time frame, as shown in Exhibit A at the end of this Chapter, or any other location designated by the City Administrator from time-to-time for use by street performers.

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.

Downtown area means the main commercial and retail area of the city as designated in Exhibit A at the end of this Chapter.

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.

Specified time frame means the period between three p.m. on any particular day and one a.m. the following morning.

Street performer means a person who, upon any surface in the downtown area, engages in any form of performing art, including but not limited to posing, acting, dancing or miming, whether in costume or not, the playing of any musical instrument, and singing or vocalizing, with or without accompaniment. The term "street performer" includes persons commonly referred to as "buskers" or those who engage in "busking" activities.

9.46.030 - Prohibited – Sitting and Lying

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.

9.46.040 - Exceptions.

It is not a violation of this chapter for a person to:

- A. Sit, kneel, recline or lie down upon the public right-of-way due to a medical emergency.
- B. As a result of a medically-confirmable disability, utilize a wheelchair, walker or other similar mobility-supporting device to move about the public right-of-way.
- C. Operate or patronize a commercial establishment located in the public right-of-way pursuant to any permit or license issued by the city.
- D. Sit or kneel 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. Sit upon an object intended for sitting in the public right-of-way furnished by the city or by any other public agency.
- F. Arrange items for sale or display pursuant to a permit or license permitting such activity issued by the city.
- G. Sit, kneel, recline or lie down as part of an activity connected to street performing within one of the designated locations outlined in section 9.46.050

9.46.050 Street Performers

- A. Street performers may perform within the downtown area only in accordance with the provisions of this Section.
- B. It is unlawful for a street performer to charge a fee for a performance within the city. For purposes of this chapter, charging a fee for entertainment or for a performance includes requiring a person to pay for the entertainment or performance, whether in advance or after the fact, but does not include the act of soliciting or requesting tips or donations, the act of making available a receptacle for tips or donations, or the act of receiving tips or donations.

- C. A street performer may perform within the downtown area in accordance with the following conditions and limitations:
1. Street performers shall not have the right to "reserve" any space or location.
 2. At no time may a street performer perform:
 - a. Within twenty feet of any building entrance or ATM;
 - b. Within ten feet of the outer perimeter of any outdoor dining area while the area is being used for dining;
 - c. Within twenty feet of any fire lane or crosswalk;
 - d. Within any area of the downtown area that is closed to the public;
 - e. During any sponsored concert, within one hundred feet of the stage on which the concert is taking place; or
 - f. Within forty feet of any other street performer then performing.
 3. Within the specified time frame, street performers may perform only in a designated location;
 4. Street performers may not place objects on the ground unless the objects are within a two-foot radius of the performer; do not obstruct or impede pedestrian traffic or cause a potential risk to passersby; and are integral to the performance (e.g., a hat or container to accept donations).
 5. Street performers may emit sound in connection with their performance, but are subject to all City of Manitou Springs laws and ordinances pertaining sound in the downtown area. This includes City of Manitou Springs laws and ordinances regarding amplified noise in Manitou Springs.

9.46.060 Street Performers – Designated Locations

- A. Street performances may only occur in the downtown area.
- B. During the specified time frame, street performances may only occur in a designated location.
- C. The use of any designated location for performances by street performers within the specified time frame shall be on a first-come-first-serve basis and must be reserved by a receipt issued by any parking kiosk on the northern side of the 800 and 900 block of Manitou Avenue. Any designated location shall be deemed unoccupied and available unless it is physically occupied by a person or allotted in accordance with Subsection (D).
- D. No street performer may use a particular designated location for a performance within the specified time frame for more than two hours at a time. At the top of each odd-numbered hour within the specified time frame, any street performer who has been using a particular designated location for a performance for more than one hour must move to a different designated location to continue that activity or performance, regardless of the amount of time he or she spent in a designated location just before the top of that hour.

9.46.070 Penalties.

Violations of this Chapter shall be punishable by a fine not to exceed \$499.00.

Exhibit A

