

# DRAFT

ORDINANCE NO. 15-\_\_\_\_\_

AN ORDINANCE CREATING A NEW SECTION 112 (SITTING OR LYING DOWN IN COMMERCIAL DISTRICTS) OF ARTICLE 2 (OFFENSES AFFECTING PUBLIC SAFETY) OF CHAPTER 9 (PUBLIC OFFENSES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO SITTING OR LYING DOWN IN COMMERCIAL DISTRICTS, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

WHEREAS, the City Council is committed to advancing the public health, safety, general welfare, economic vitality and access to and enjoyment of the commercial districts of downtown Colorado Springs and Old Colorado City due to their concentrations of civic, commercial, historic, residential and recreational properties, which attract large number of residents, customers, workers and visitors.

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

Section 1. The City Council finds and determines that:

(a) The surface of a public sidewalk is primarily intended to be used for passage of pedestrians, the surface of a public trail is primarily intended to be used for pedestrian and other recreational travel, and the surface of a public street, alley or transit way is primarily intended to be used for the passage of vehicles;

(b) The act of sitting, kneeling, reclining or lying upon the surface of a sidewalk, trail, street, or other public right-of-way poses a safety hazard, both to the person sitting, kneeling, reclining or lying upon the surface, as well as to persons using the right-of-way for its intended purpose;

(c) Prohibiting sitting, kneeling, reclining or lying upon the surface of a sidewalk, trail or other public right-of-way in commercial districts increases pedestrian safety, thereby making the commercial districts more hospitable to customers and residents and promoting economic vitality;

(d) The act of sitting, kneeling, reclining or lying upon the surface of a sidewalk, trail, street or other public right-of-way conflicts with the use of the right-of-way for its intended purpose;

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- (e) The interior of a planter is intended for plants, shrubs and trees;
- (f) Plants, shrubs and trees are grown in the planters in the commercial districts of downtown Colorado Springs and Old Colorado City year-round;
- (g) The act of sitting, kneeling, reclining or lying inside a planter can damage the plants in the planter;
- (h) The act of sitting, kneeling, reclining or lying inside a planter conflicts with the intended use of the planter;
- (i) The presence of persons sitting, kneeling, reclining or lying upon the surface of the public right-of-way or inside planters in the commercial districts of downtown Colorado Springs and Old Colorado City creates a sense of public disorder and tends to deter people from coming to these districts; and
- (j) Sitting, kneeling, reclining and lying down in the public right-of-way and inside planters in the commercial districts of downtown Colorado Springs and Old Colorado City constitutes a threat to the public health, safety and general welfare and to the districts' economic vitality.

Section 2. A new Section 112 (Sitting or Lying Down in Commercial Districts) of Article 2 (Offenses Affecting Public Safety) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, is created to read as follows:

## **9.2.112: SITTING OR LYING DOWN IN COMMERCIAL DISTRICTS:**

A. It shall be unlawful for any person to sit, kneel, recline or lie down in the Downtown Commercial District or in the Old Colorado City Commercial District upon the surface of any public right-of-way, or upon any bedding, chair, stool, or any other object placed upon the surface of the public right-of-way, between the hours of 7:00 a.m. and 10:00 p.m. daily and between the hours of 10:00 p.m. and 3:00 a.m. on Friday and Saturday nights.

B. It shall be unlawful for any person to sit, kneel, recline or lie down inside a planter in the Downtown Commercial District or in the Old Colorado City Commercial District.

C. Definitions:

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

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1. "Downtown Commercial District" shall be defined as the area bordering on or included within the area bordered on the north by St. Vrain Street, on the south by Cimarron Street, on the east by Wahsatch Avenue and on the west by Interstate Highway 25.

2. "Old Colorado City Commercial District" shall mean the area bordered on or included within Colorado Avenue between 21<sup>st</sup> Street and 31<sup>st</sup> Street and the area bordered on or included within the area bordered on the north by West Pikes Peak Avenue, on the south by West Cucharas Street, on the east by 23<sup>rd</sup> Street, and on the west by 28<sup>th</sup> Street.

3. "Public right-of-way" shall mean any street, sidewalk, trail, path, alley, parkway, curb, median, traffic island, or any other publicly owned property intended or used for pedestrian, recreational or vehicular travel.

4. "Planter" shall mean any container or unpaved area in which plants, shrubs or trees are grown.

D. It is an affirmative defense to a violation of this section that a person:

1. Sits, kneels, reclines or lies down upon the public right-of-way or inside a planter due to a medical emergency.

2. 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.

3. Is operating or patronizing a commercial establishment located in the public right-of-way pursuant to any permit or license issued by the City.

4. Sits or kneels on the public right-of-way when attending a parade, festival, performance, rally, demonstration, meeting, or similar special event conducted in the public right-of-way pursuant to any permit or license issued by the City.

5. Sits upon an object or piece of equipment installed on the public right-of-way by the City, by any other public agency, or by the abutting private property owner pursuant to any permit or license issued by the City.

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6. Sits upon a public sidewalk at or near a transit stop while waiting for public transportation.

E. No law enforcement officer shall issue a citation, make an arrest or otherwise enforce this section against any person unless the person engages in conduct prohibited by this section after having first been notified by a law enforcement officer that the conduct violates this section.

F. The City may post signs as appropriate to notify individuals of this ordinance.

G. Penalties:

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

2. Upon conviction for a second or subsequent offense for violating this section, 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 both.

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2015.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Merv Bennett, Council President

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Delivered to Mayor on \_\_\_\_\_.

## **Mayor's Action:**

- ☐ Approved on \_\_\_\_\_.
- ☐ Disapproved on \_\_\_\_\_, based on the following objections:

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John W. Suthers, Mayor

## **Council Action After Disapproval:**

- ☐ Council did not act to override the Mayor's veto.
- ☐ Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- ☐ Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Merv Bennett, Council President

ATTEST:

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Sarah B. Johnson, City Clerk