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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 or street conflicts with the use of the right-of-way for its intended purpose;

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(e) Street furniture is not intended to be used for kneeling, reclining or lying down;

(f) Street furniture other than chairs, benches, seat walls, vault vents with concrete bench tops, or other street furniture with dimensions of at least nine (9) inches in depth, twelve (12) inches in width and between eighteen (18) and twenty-two (22) inches in height, is not intended to be used for sitting;

(g) The act of sitting, kneeling, reclining or lying upon street furniture not intended for such use conflicts with the intended use or purpose of the street furniture;

(h) The presence of persons sitting, kneeling, reclining or lying upon the surface of the public right-of-way or on street furniture not intended for such use 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

(i) Sitting, kneeling, reclining and lying down in the public right-of-way and on street furniture not intended for such use 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, or upon street furniture 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. 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 21st Street and 31st 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 23rd Street, and on the west by 28th Street.

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

4. "Street furniture" shall mean any object or piece of equipment installed on the public right-of-way, including but not limited to, traffic barriers, bollards, postal boxes, phone boxes, street lamps, traffic lights, signs, taxi stands, public lavatories, fountains, memorials, public sculptures or artwork, planter walls and boxes, seat walls, waste receptacles, vault vents, parking meters, fences and newspaper dispensers.

C. 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 street furniture 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 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 a chair, bench, seat wall, vault vent with concrete bench top or other street furniture intended for sitting with dimensions of at least nine (9) inches in depth, twelve (12) inches in width and between

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eighteen (18) and twenty-two (22) inches in height, in the public right-of-way furnished 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.

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

D. 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 been notified by a law enforcement officer that the conduct violates this section.

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

Section 3. Any person convicted of a violation of 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, shall be punished as provided in Sections 201 (General Penalty) or 202 (Minor Offenders) of Part 2 (General Penalty) of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended.

Section 4. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 5. 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.

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Introduced, read, passed on first reading and ordered published this ____
day of _____, 2015.

Finally passed: _____
Merv Bennett, Council President

Delivered to Mayor on _____.

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

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:

Sarah B. Johnson, City Clerk