

ORDINANCE NO. 3422

AN ORDINANCE AMENDING PART OF CHAPTER 32 OF THE CITY OF GRAND JUNCTION CODE OF ORDINANCES RELATING TO DOWNTOWN SIDEWALK PERMITS.

Recitals.

Since its inception, the City of Grand Junction Downtown Development Authority (“DDA”) has exercised delegated authority from the City Council, pursuant to Ordinance No. 1989 adopted in 1981. The DDA has been responsible for regulating the use of the City’s right-of-way in the area of Main Street between First and Seventh Streets.

The City’s Traffic Engineering staff have walked the area and reviewed the request. It is noted that some merchants are currently using City right-of-way. Anecdotal information is that such usage has occurred for many years, including before the DDA began its permitting program authorized by Ordinance 1989. The DDA experience, supplemented with current information, is that the provisions of this ordinance pose no undue risks for pedestrian and other users of the City’s sidewalk areas, so long as a minimum of eight feet (8’) of unobstructed pedestrian way is maintained.

For these reasons, the City Council finds that there are no obvious detriments, while there are clear benefits, if the existing ordinance, and the DDA permitting program, is expanded beyond the permitting of tables and chairs, sidewalk vendors and mobile vending carts in this downtown right-of-way.

It is the Council’s intent to delegate to the DDA Board of Directors the City Council’s powers and related duties, liabilities and obligations, pursuant to § 127 of the City Charter, except as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

That Chapter 32, sections 61 through 67, inclusive, of the Code of Ordinances of the City of Grand Junction is hereby repealed, renumbered and reenacted as follows:

Section 32-61. Purpose.

The purpose of this ordinance shall be to:

- (1) Control the type and manner of activities conducted in the Downtown Shopping Park.
- (2) Enhance the environment in the Downtown Shopping Park and to provide the maximum possible usage, subject to appropriate restrictions of the Downtown Shopping Park.

Section 32-62. Definitions.

Area Wide Permit is a permit which allows the permitted use within the entire Downtown Shopping Park, rather than at a specific location.

ASCAP is a national organization of artists and musicians that gives permission to use the music or art, in exchange for monetary consideration. For this ordinance, use of the term "ASCAP" includes similar organizations and efforts to control the unauthorized use of copyright and similar rights.

City is the City of Grand Junction, acting through the City Council or the City Manager.

Conducting Business means the act of offering to sell or selling goods, merchandise, food or services of any type whatsoever.

DDA is the Downtown Development Authority of Grand Junction, Colorado, acting through its Board of Directors. The Board may delegate to its employee, the executive director. The state statute authorizing development authorities refers to the executive director as the director.

Downtown Shopping Park or *Downtown Park* means that portion of the City right-of-way of Main Street: bounded on the west by the east intersection line of First Street; on the east by the west intersection line of Seventh Street; and on the north and south by that portion of Main Street that lies between the respective north and south property lines of the properties abutting Main Street.

Kiosks are small, relatively light structures that are stationary, may be permanent or seasonal in nature, and are constructed in accordance with guidelines for design as determined by the DDA.

Location means that particular portion of the Downtown Park for which a general, specific or special use permit has been issued and which is stated upon the permit.

Mobile Vending Cart is a structure with at least two operational wheels that is easily moved and is used for vending.

Pedestrian Vendor is an individual operating without the use of a mobile vending cart or kiosk and with a minimum of equipment, (e.g., balloons, portrait artist, shoeshine).

Permit means the City or DDA issued document that allows the use of right-of-way of the Downtown Park for the permittee's tables, chairs, clothing rack, bicycle rack, or other items of a moveable nature which are not included in any other permit category. If all other necessary permits are obtained and all state and local laws are met, the City may issue a permit for the use of the specific portion of the Downtown Park.

DDA Plan of Development means the plan adopted by the Grand Junction City Council for the development and preservation of the properties within the DDA, as amended from time-to-time.

Sidewalk café means the extension of the food and beverage service area of a restaurant or a café, located in the Downtown Park.

Special Use Permit means a permit issued by the DDA or City for three (3) or fewer days for unique or charitable uses of the Downtown Park for which no other permit is appropriate. A special use permit may be granted to the sponsor of an activity rather than the specific individuals conducting business within the Downtown Park.

Section 32.63. Permit fees.

(a) *Fees for permits.* The maximum that the DDA may charge per annum for the permits and documents authorized by this ordinance is as follows:

- (1) Each sidewalk café, restaurant or kiosk . . . \$300.00
- (2) Mobile vending cart \$200.00
- (3) Special use permit \$100.00
- (4) Pedestrian vendor \$ 50.00

The City Council may amend such fees and charges by resolution.

(b) All fees, charges or other receipts obtained by the DDA or its employees or agents pursuant to this ordinance shall be first deposited with the City, on account of the DDA.

(c) If the DDA desires to waive all or a portion of one or more permit term or fees, including for charitable and eleemosynary activities, it shall only do so pursuant to adopted written rules and policies, consistent with the provisions of this ordinance and other City rules and requirements. Any such waiver shall only be valid if decided by the DDA Board in a meeting that complies with the Open Records Act, or any City rules to like effect. Such DDA regulations shall provide that each such waiver shall be requested in writing and shall be accompanied by proof that the proceeds from the special use permit will be used for a charitable or equivalent entity that has tax exempt status under the Internal Revenue Code, as amended from time to time.

Section 32-64. Permit Requirements.

(a) *Length of permits.* Permits pursuant to this ordinance may be issued for not longer than the following lengths of time, unless the DDA Board approves a different length.

- (1) Pedestrian vendor permits - thirty (30) days.

- (2) Mobile vending carts - six (6) months.
- (3) Special use permits - three (3) days.
- (4) All other permits - one (1) year.

(b) *Applications for permits.* All applications for a permit for the Downtown Park, including renewals, shall be made to the DDA on a DDA form on which the applicant provides at least the following:

- (1) Name and address of applicant.
- (2) Name, addresses and emergency telephone number of at least two persons who will be available during the activity or event, so that the DDA or the City may quickly contact a person with authority.
- (3) Names, addresses, telephone numbers and email addresses of each owner of the applicant and each individual and entity owning or controlling ten percent (10%) or more of the applicant and entity or group.
- (4) Type of business to be conducted, including a description of the merchandise to be sold or displayed.
- (5) Copy of current City sales tax license.
- (6) The applicant's signed statement that the applicant has the authority to and does bind the permittee to hold harmless and indemnify: the City of Grand Junction and the DDA (and the officers, officials and employees of each); with respect to and relating to any claim(s) or charge for damage to persons and/or property or injury to persons which were, or were alleged, to be occasioned by the permit (including permittee action or inaction).
- (7) (a) Permittee shall furnish and maintain such public liability, food products' liability, products' liability, and other insurance as will protect permittee, the City of Grand Junction and the DDA (and the officers, officials and employees of the City and the DDA), from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith.
(b) Such insurance shall: provide coverages that are consistent with the City's practices or the provisions of the Governmental Immunity Act, whichever the DDA determines from time-to-time. Until the DDA Board adopts different limits, permittee insurance shall provide coverage of not less than \$150,000 for bodily injury on each person, \$600,000 for each occurrence, and not less than \$600,000 for

property damage per occurrence; be without prejudice to coverage otherwise existing therein; and shall name as additional insureds the City, the DDA (and the officers, officials and employees of each); provide that the policy shall not terminate or be canceled prior to the completion of the contract without thirty (30) days written notice to the DDA.

- (8) Description of the building, structure, kiosk, mobile vending cart, or other improvement(s) to be used in connection with conducting business, including blueprints, drawings, sketches and such other information or details as the DDA shall require.
- (9) The location for which the permit is requested.
- (10) A description of how the business will be conducted, including hours of operations.
- (11) A description of how the use or activity should enhance the Downtown Park, and how the use or activity conforms with the DDA plan of development.
- (12) A list of all necessary or applicable permits that the applicant must obtain, and the current status of each, before the use or activity is lawfully begun.
- (13) If the DDA requires, in order to determine if the permit should be issued, drawings and diagrams of facilities to be used in addition to those supplied with the permit application.
- (14) Description of the hours and specific locations of proposed street or sidewalk closures or traffic controls with the boundaries of the DDA. Note: The City Engineer must issue such right-of-way closures or sidewalk restrictions for all City right-of-way including those within the Downtown Park.
- (15) Description of the activities related to any street closures or other activities required to be done by the applicant or others.
- (16) How the applicant will provide any required security.
- (17) A listing of each sponsor for the use and/or activity.
- (18) How/to whom the net proceeds gained from the use or activity will be distributed.

- (19) If any music, vocalization, or mechanical musical presentation is to be broadcast or presented, the application shall so state. The applicant shall particularly describe the time, place, manner, means and mode of such presentation. Each applicant agrees to comply with ASCAP requirements, including the payment of fees. Each applicant and permittee, by accepting the benefits and terms of any DDA permit or consent, agrees to hold harmless and indemnify the DDA and the City (and the officials, officers and employees of each) with respect to claims or activities for which money is owed to ASCAP or consent must be obtained.

(c) *Renewal.* A Downtown Park permit may be renewed, if all other requirements of this ordinance have been met and if:

- (1) No violations of the permit restrictions or a City ordinance or requirement have occurred during the prior permit period or one calendar, whichever is longer;
- (2) The permit holder did not cease to conduct business under the prior permit during the time the permit was in force;
- (3) The applicant affirms in writing that all the information on the original application is correct and true, except as modified in writing at the time of the application for the renewal; and
- (4) All fees are paid.

Section 32-65. Review of permit application.

- (a) The DDA shall promptly review each application and shall determine if:
 - (1) The application is complete.
 - (2) All other permits, licensees or permissions have been or will be obtained prior to the beginning date of the permit.
 - (3) Required insurance has been obtained.
 - (4) It is in accordance with the goals and objectives in the plan of development.
 - (5) The proposed use or activity would enhance the Downtown Park according to such plan of development.

(6) More than one application is received for the same use in the same location, the complete and sufficient application which was first received by the DDA shall be issued.

(b) If the DDA finds that the application is not complete or in order, it shall deny the application and give the reasons in writing to the applicant.

(c) If the DDA finds that the application is proper and complete, and is in accordance with the DDA and City rules and requirements, the DDA shall forward to the City Clerk who shall issue the permit, with or without conditions.

(d) The City Clerk may delegate the duty to issue the permits pursuant to an intergovernmental agreement or pursuant to an administrative regulation.

(e) An applicant may appeal the denial of such a permit, or a condition of a permit, to the DDA Board by submitting a letter to the director of the DDA or any DDA board member within ten calendar days of the mailing of the denial. The DDA Board shall decide the appeal within thirty days of receipt of the appeal.

Section 32-66. Types of Permits.

(a) The types of permits which may be issued are for:

- (1) Pedestrian Vendors.
- (2) Mobile Vending Carts.
- (3) Kiosks.
- (4) Sidewalk Cafés.
- (5) Special Use Permits.

Section 32-67. General Provisions.

(a) The permittee may conduct business on the public right-of-way within the Downtown Park but only subject to and in compliance with the following:

- (1) Each permittee pursuant to this ordinance shall pick up and properly dispose of any paper, cardboard, wood or plastic containers, wrappers and other litter which is deposited or is located on the sidewalk within twenty five feet (25') of the permittee's use, activity or location.

- (2) Each permittee shall provide readily accessible container(s) and facilities for the collection of litter, debris and trash, and shall properly dispose of all litter, debris and trash collected.
- (3) No permittee shall sell or give any food, object or other item to any person who is located in the part of the Downtown Park available for motor vehicle usage, including parking areas, unless such vehicular portion of the Downtown Park has been closed by the City Engineer.
- (4) The permittee shall not offer to sell or sell except within the location designated by the permit.
- (5) A permittee shall not leave his equipment or merchandise unattended, except for a sidewalk café or kiosk and only when the café or kiosk is secured.
- (6) The permittee shall not conduct the any business, use or activity between the hours of 12:00 a.m. (midnight) and 6:00 a.m.
- (7) A permittee shall not offer to sell or sell merchandise that is not described in the application.
- (8) No permittee may hold more than one permit at any one time, unless approved by the DDA Board.
- (9) The permittee shall only locate tables, chairs, benches, and/or other personal property in the portion of the adjacent Main Street right-of-way to the permittee's restaurant or café that is within the area bounded by the extension of the property lines, up to two feet from the nearest parking space or motor vehicle travel area; Except that the permittee shall maintain an unobstructed and unoccupied pedestrian way that is at least eight feet (8') wide, between the extension of the property lines, and beginning two feet from the property line that is closest to and parallels Main Street (See, diagram, below).

(b) An amended permit may be issued in an expedited manner without additional fees if the permittee has remained (while all prior permits were in effect) in compliance with all applicable requirements and laws.

(c) Each permittee shall forthwith obey every lawful order of the DDA and any City official, including police officers, such as an order to move to a different location (if needed, for example, to avoid congestion or obstruction of a sidewalk) or an order to forthwith remove all personal property from the Downtown Park (in case of congestion or public safety or similar concerns).

(d) No permittee shall make unlawful noise or any continuous noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his use, business or merchandise.

(e) During a community event, as determined by the City or the DDA, each permittee shall be subject to overriding rules, requirements, and even prohibitions, during the community event. For example, a permittee for a mobile vending cart, a kiosk, or a pedestrian vendor may be limited in hours, location and/or type of goods or foods.

Section 32-68. Special Rules for Mobile Vending Carts.

(a) The following provisions shall apply to mobile vending carts:

- (1) A mobile vending device shall not: be greater than sixteen square feet (16^2 feet) in area; longer than four feet (4') in width, excluding wheels; be greater than six feet (6') in length or depth, including any handle; be greater than five feet (5') in height, excluding a canopy, umbrella or transparent enclosure.
- (2) A permittee shall not locate a mobile vending device on a public sidewalk within the boundaries of a crosswalk, nor in a location that will restrict the flow of way designated or used for motor vehicles, unless specifically permitted as part of a use or activity for which the right-of-way is closed to motor vehicles.
- (3) A permittee shall not sell from a mobile vending device that is located within three feet of any right-of-way designated or used for motor vehicles, unless specifically permitted as part of a use or activity for which the right-of-way is closed to motor vehicles.

Section 32-69. Rules for Sidewalk Cafés and Restaurants.

(a) The following provisions shall apply to sidewalk restaurants and cafés:

- (1) During such times as an adjacent owner consents in writing, the permittee may also occupy an additional area in front of such consenting owner's property that begins two (2) feet from the permittee's property line and extends outward (from the permittee's property at a forty-five (45) degree angle, subject to the overriding limits regarding pedestrian ways and proximity to parking areas. Such additional area is depicted as the shaded area of the diagram below.
- (2) The DDA Board may vary the foregoing rules so long as pedestrian movement is maintained in a safe manner.

Section 32-69. Suspension or revocation of permit.

(a) The DDA or the City may summarily suspend any permit if the permittee's use or activity is the source of unreasonable or excessive noise, is in violation of any permit term, or does not comply with City and/or DDA rules and requirements.

(b) In an emergency needed to protect the public health or safety, the executive director of the DDA, the Director of Public Works of the City, or the City's Police or Fire Chief, may summarily suspend a permit or impose conditions needed immediately to protect the public, the City or the DDA.

(c) If a permit is summarily suspended, the applicant may request that the suspension be lifted by so stating in writing the next business day. The DDA Board shall hear the question at its next available regular meeting.

(d) The DDA may revoke any permit issued under this ordinance if the DDA Board finds by a preponderance, that the permittee, or its agents or employee:

- (1) Has violated any of the provisions of this ordinance or the permit, or has supplied inaccurate or false information to the DDA;
- (2) Does not have in full effect at all times, each current required health permit and every other required license or permit.
- (3) Does not have in place a insurance policy in the minimum amounts as described herein that is effective during all periods of the permit.

(e) The violation of any provision of this ordinance by any permittee or other person is declared to be a public nuisance. The DDA Board or the DDA director may request that the City Attorney prosecute and abate any such nuisance in the municipal or other court.

PASSED for first reading this 17th day of April, 2002.

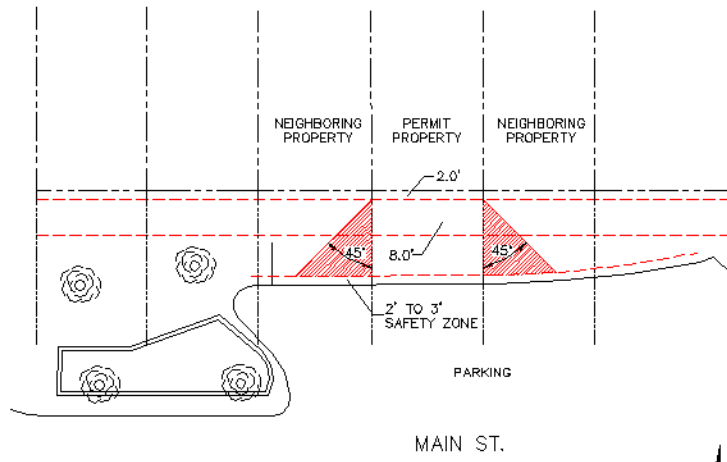
PASSED AND ADOPTED this 1st day of May, 2002 on Second Reading.

/s/ Cindy Enos-Martinez
President of the Council

Attest:

/s/ Stephanie Tuin
City Clerk

SIDEWALK CAFE ORDINANCE



SCALE: 1" = 20'