



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** February 16, 2017

**Staff Contact:** Darren Schulz, Public Works Director

**Agenda Title:** For Discussion Only: Presentation regarding encroachment permit requirements for outdoor dining and merchandise display. (Danny Rotter; DRotter@carson.org and Stephanie Hicks; SHicks@carson.org)

**Staff Summary:** With nearing completion of the Downtown Streetscape Enhancement Project, downtown businesses are eager to utilize the new streetscape and McFadden Plaza for outdoor dining and merchandise display. There are currently no ordinance provisions for the issuance of an encroachment permit. Staff has prepared a policy document and application checklist for the issuance of such a permit.

**Agenda Action:** Other/Presentation

**Time Requested:** 30 minutes

## **Proposed Motion**

N/A

## **Board's Strategic Goal**

Economic Development

## **Previous Action**

N/A

## **Background/Issues & Analysis**

Outdoor dining and merchandise display areas may be permitted within the public right-of-way areas in the Downtown Mixed-Use District. However, this requires the issuance of an encroachment permit. The purpose of the permit is to ensure that outdoor dining and merchandise display areas comply with Carson City's standards for seating, consumption of alcoholic beverage sales, clean-up facilities, and design and use compatibility.

Furthermore, because these areas are located within City right-of-way, additional requirements apply, including requirements for liability insurance and an encroachment/hold harmless agreement from the City's Public Works Department.

Introduction of the ordinance regarding these encroachment permits will be brought at a future meeting date.

## **Applicable Statute, Code, Policy, Rule or Regulation**

N/A

## **Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number:

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact:

**Alternatives**

N/A

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Vote Recorded By)



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#### ENCROACHMENT PERMIT INFORMATION FOR OUTDOOR DINING & MERCHANDISE DISPLAY

#### GENERAL INFORMATION

This information sheet explains the applicable ordinance and policy provisions which establish permit requirements for outdoor dining and merchandise display within the Carson City right-of-way in downtown Carson City, as well as the McFadden Plaza.

Division 6 of the Carson City Development Standards, which can be found in Title 18 (Appendix) of the Carson City Municipal Code, sets forth Carson City's ordinance provisions relating to the Downtown Mixed-Use District. The purpose of these ordinance provisions governing permit requirements is to ensure that outdoor dining and merchandise display areas comply with Carson City's standards for seating, alcoholic beverage sales, clean-up facilities, and design and use compatibility.

Outdoor dining and merchandise display areas may be permitted on the sidewalk areas in the Downtown Mixed-Use District with approval of an encroachment permit. However, because these areas are located within City right-of-way, additional requirements apply, including requirements for liability insurance and an encroachment/hold harmless agreement from the City's Public Works Department. These requirements are addressed through the permit approval process.

The Outdoor Dining & Merchandise Display Encroachment Permit does not exempt the business operator from having to obtain any other required City, State or Federal permit or license, or from complying with any other applicable law or regulation, including, for example, the Americans with Disabilities Act (ADA).

#### OUTDOOR DINING & MERCHANDISE DISPLAY ENCROACHMENT PERMIT

The Outdoor Dining & Merchandise Display Encroachment Permit is issued by the City's Public Works Department and is generally subject to the following conditions of approval:

#### *Sidewalk Zones*

Outdoor dining and merchandise display amenities should be properly organized to ensure safe and accessible travel. To accomplish this balance, a sidewalk must simultaneously be viewed holistically and through the organizing logic of a set of zones.

- **Store Front Zone:** The area adjacent to the property line where transitions between the public sidewalk and the space within buildings occur.
- **Clear Zone:** The portion of the sidewalk for pedestrian travel along the street. Must be a minimum of 6 feet in width.
- **Extension Zone:** The area where business space may be extended into wider sidewalks.

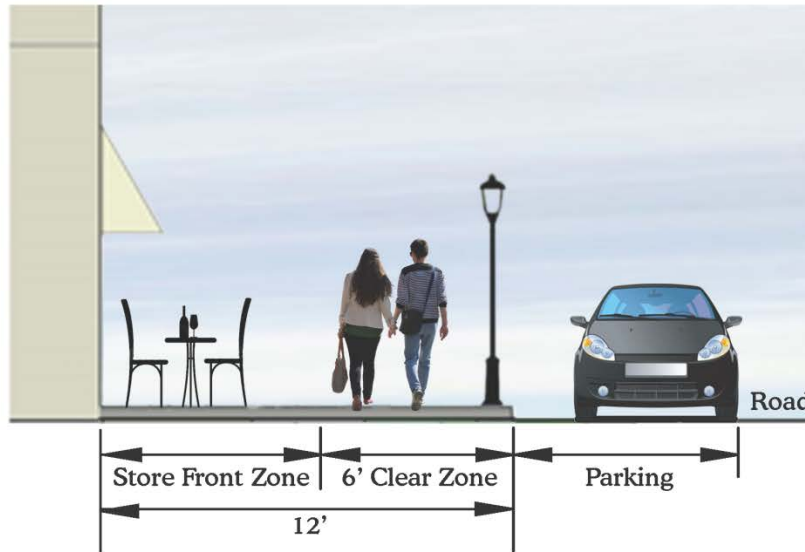


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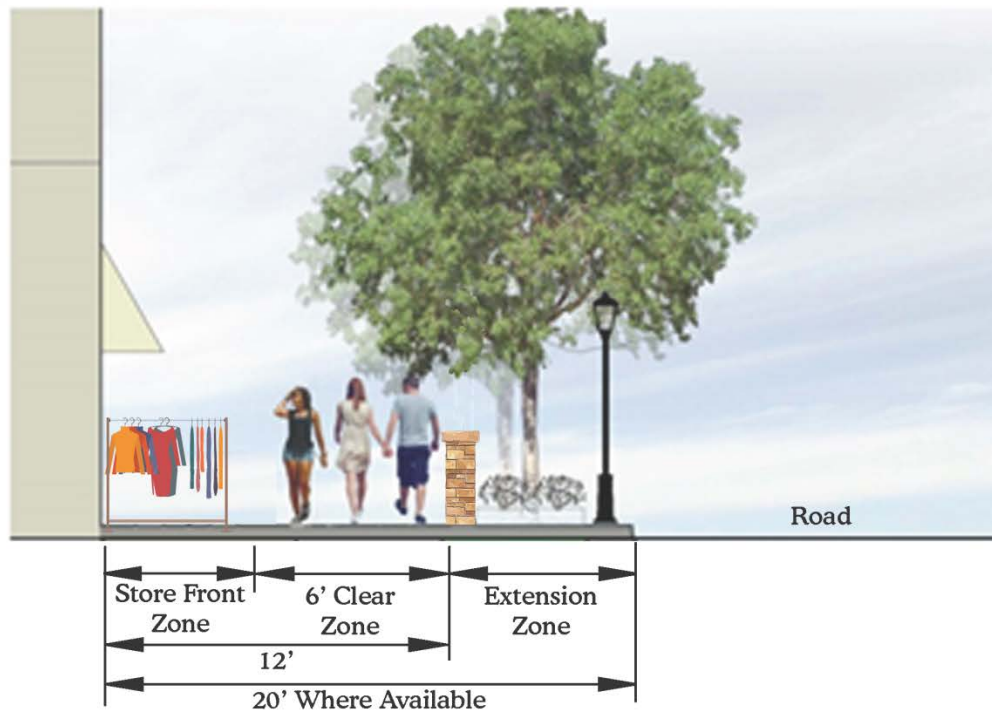
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## SIDEWALK ZONES



**12' Cross Section**



**20' Cross Section**

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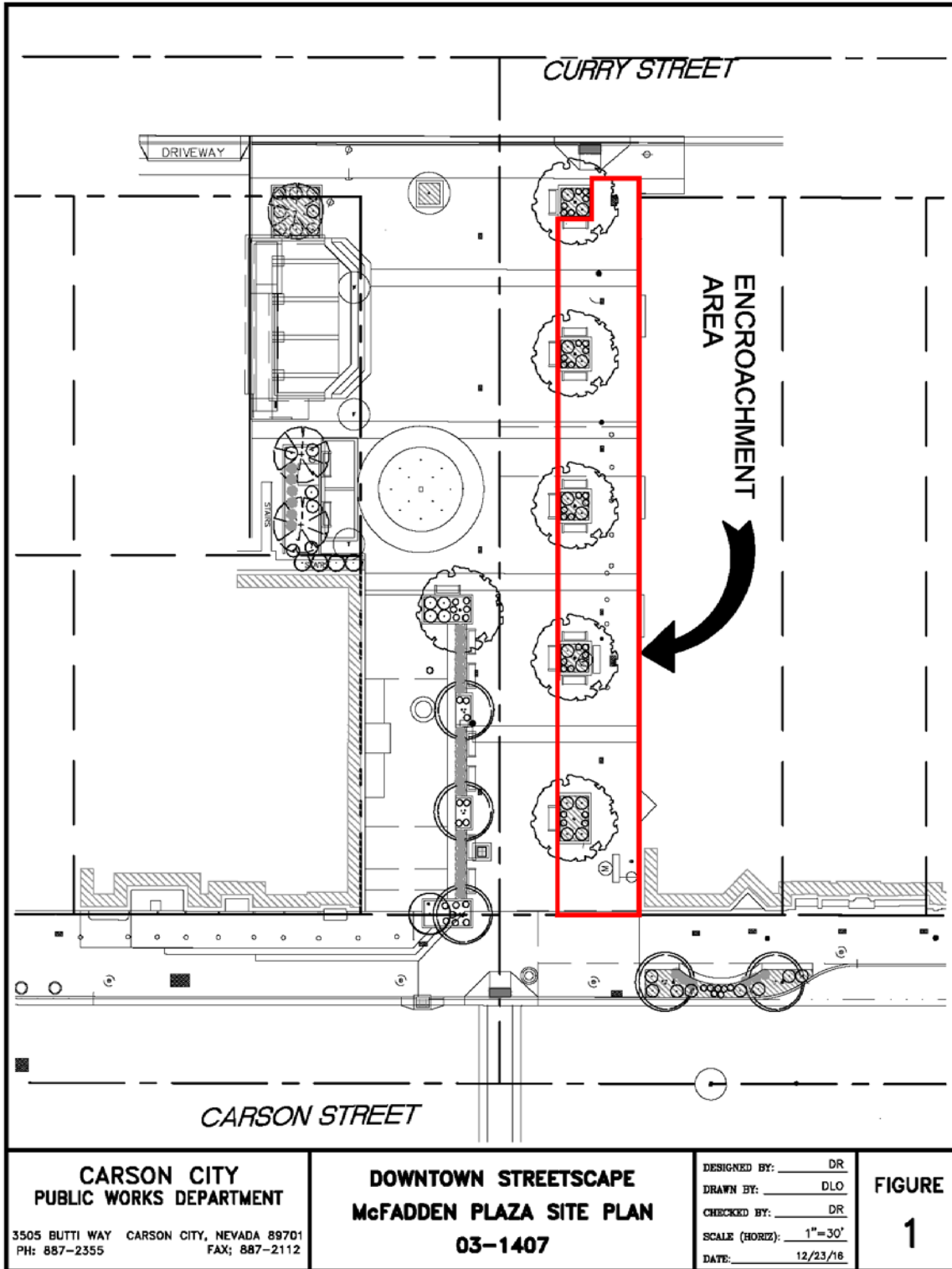
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#### Outdoor Dining

- The outdoor dining area must not exceed the approved depth from the front of the building or exceed the specified width of the building frontage.
- Street furniture shall not extend into the clear zone. Street furniture includes, but is not limited to benches, trash receptacles, outdoor dining areas and other pedestrian amenities.
- Umbrellas are allowed; however, umbrellas must not contain any commercial advertising or logos, and must have a minimum height clearance of 7 feet, 6 inches.
- A permittee is required to maintain at all times, and at its sole cost and expense, the common areas within 12 feet of the premises to be free and clear of the food and beverages sold by the permittee, including trash, debris, and spillage, or unconsumed or unattended food and beverages. The permittee is responsible for power washing concrete and all other cleaning within their designated, permitted sidewalk area.
- It is the responsibility of the permittee to pick up and police areas downwind of their permit area if the trash comes from their business.
- To minimize litter and debris, where table wait service is provided or food is served to the customer on a tray to be taken and eaten on site in the outdoor dining area, plates, glasses, cups, and silverware made of permanent (non-disposable) materials such as glass, ceramic, and metal, and cloth napkins shall be required. The use of disposable food containers, utensils, and napkins is permitted only where food is served to the customer “to go” only.
- If an outdoor dining use offers alcoholic beverage service, the permittee must have the applicable liquor license for on-site consumption, including proof of where alcohol was purchased. Additionally, any restaurant providing such service must maintain liquor liability coverage in the restaurant’s general liability policy.
- All outdoor dining furnishings must be of commercial grade and designed for outdoor use. All furnishings must be properly maintained and cleaned regularly.
  - Tables and Chairs for Outdoor Dining  
Tables and chairs shall be of the same or a similar and compatible design. Plastic or resin tables and chairs are prohibited. All tables and chairs within a use area shall be of the same or compatible color. Bright, reflective, and fluorescent colors are prohibited.

#### Materials - Permitted:

- Framework: Wrought iron, fabricated steel, cast aluminum, cane or teak.
- Chair Seat: Wrought iron, fabricated steel, cast aluminum, cane, teak or rattan.
- Table Top: Solid tops of slate, marble, granite, faux stone, wrought iron, embossed aluminum, teak, tempered glass, and mesh tops of wrought iron and aluminum are permitted. Plastic, resin, and plain metal table tops are not permitted.

#### Size:

- Tables must be sized appropriately to ensure adequate accommodation of both the usual pedestrian traffic in the area and the operation of the proposed activity.



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#### ○ Umbrellas and Umbrella Stands

Table center and freestanding umbrellas are permitted. All umbrellas must be secured. (See Development Engineering for guidelines and approved methods of securing.) All umbrella panels shall be of the same solid color. A complementary solid color may be used for trim (such as piping). Patterns (floral, stripes, etc.) and fluorescent colors are prohibited.

#### Materials - Permitted:

- Umbrellas: Canvas only. Vinyl or plastic umbrellas are prohibited.
- Stands: Cast aluminum, wrought iron, fabricated steel, or wood.

#### ○ Lighting

Under umbrella lighting (directional or tube) and table top lighting (candles or other low level light sources) are permitted. Lighting shall create a soft glow directed at the tabletop or cart surface. Lighting shall not create glare or fall outside of the use area. Bare bulb neon, colored lights, blinking or “chasing” lights are prohibited. All lighting must comply with Carson City Development Standards.

- Outdoor dining areas may be delineated by planters. Moveable fencing is allowed in the McFadden Plaza. Fencing must be wrought iron or other ornamental with clear visibility (open works) and shall not exceed 3.5 feet in height. No vinyl or plastic fencing is allowed.
- If the outdoor dining area is not utilized for a period of thirty (30) consecutive days, the Public Works Division may bring the encroachment permit to the Board of Supervisors for suspension or revocation.
- Outdoor dining furniture left in the public right-of-way during non-business hours may be utilized by the public.
- Standing portable propane heaters are permitted subject to review and approval by the Fire Department. Electric or fuel heaters other than propane are prohibited.

#### Merchandise Display

- Outdoor merchandise displays must be placed within the store front zone.
- Outdoor merchandise displays must be in compliance with Clear Zone provisions, as specified in Carson City Development Standards, Section 6.6.7(4).
- No outdoor merchandise display may be located where it obstructs the line of sight for passing motorists.

#### Signage

- One A-Frame (“Sandwich-Board”) sign is permitted per business per street frontage without an encroachment permit pursuant to Division 6.6.3(g) of Division 6 for the Downtown Mixed-Use District Development Standards.
  - Signs must be placed within the store front zone or within the extension zone where applicable.
  - Signs may not be placed within the clear zone.



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- Signs must be professionally manufactured and must not exceed 32 inches in width and 36 inches in height. However, chalkboard frames with erasable letters are also appropriate.
- All signs must be in good repair and neatly painted. No attachments to signs are permitted.
- Signs may not be displayed during non-business hours.
- No sign may be located where it obstructs the line of site for passing motorists.
- Businesses may affix signage on tables that states that tables are for patrons only during business hours

#### General Requirements

- Outdoor dining and merchandise display use is a privilege. The City has the right and absolute authority to prohibit the operation of an outdoor dining and merchandise display area at any time because of anticipated or actual problems and conflicts in the use of the public right-of-way area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, repairs to the street or sidewalk or from demonstrations or emergencies occurring in the area. To the extent possible, the permittee will be given prior written notice of any time period during which the operation of the outdoor dining or merchandise display area will be prohibited by the City.
- A clear zone that is unobstructed by any permanent or nonpermanent street furniture, outdoor merchandise displays, benches, trash receptacles, outdoor dining areas and other pedestrian amenities is required to be maintained. The clear zone must be a minimum of 6 feet in width.
- Outdoor dining or merchandise displays are not allowed within 10 feet of a fire hydrant, fire department standpipe connection, fire escape, bus stop, any doorway posted as an exit, loading zone, mail boxes, or traffic signal stanchions.
- Permanent changes to the sidewalk or plaza area are not permitted. Any sidewalk, plaza, City improvements or utilities damaged or destroyed by the outdoor dining or merchandise display use must be replaced to City Standards with the cost to be borne by the use operator.
- All the outdoor dining furnishings and merchandise displays must be maintained in a safe and clean condition. Furnishings may not be stacked outside at any time.
- Planters and movable containers made of terra cotta, concrete or ceramic are allowed in the store front zone. Plant species chosen must be drought tolerant, perennials and annuals. Planters must be maintained by the property owners.
- Applications for art must be reviewed by the Public Art Project Panel. Contact the Arts and Culture Coordinator for more information.
- Loud speakers, televisions, radios or other similar devices will be reviewed on a case-by-case basis by the City.
- Use of electrical receptacles in the public right-of-way is only permitted during special events and will be reviewed on a case-by-case basis.
- Approval, if granted, is for the seating and/or merchandise display as indicated on the submitted site diagram and subject to the specified requirements and conditions of approval of a permit. Any changes to seating or merchandise display must be submitted (free of charge) as an addendum to the Public Works Division for review and approval.
- Approval of an encroachment permit/hold harmless agreement from the City Public Works Department is required.

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- An encroachment permit is valid for the life of the business at that location. Encroachment permits are not assignable or transferable.
- An applicant must maintain and annually provide evidence of liability insurance naming Carson City as an additional insured. If an outdoor dining use offers alcoholic beverage service, liquor liability coverage must be included in the general liability policy.
- The City reserves the right to amend or supplement these rules and regulations and to adopt or add new rules and regulations applicable to encroachment permits. Notice of such changes will be provided to permittees and permittees agree to comply with all such rules and regulations upon receipt of notice.
- A permit may be suspended or revoked by the Board of Supervisors following notice to the permittee and a noticed public meeting. The permit may be suspended or revoked if the Board finds that one or more conditions of the permit have been violated or that the permitted area is being operated in a manner which constitutes a nuisance, or that the operation of the outdoor dining or merchandise display area unduly impedes or restricts the movement of pedestrians past the outdoor service area.

#### Street and Sidewalk Vending

- Applications for street and sidewalk vending are reviewed by the Redevelopment Advisory Citizens Committee which also serves as the Vending Review Board. Contact the Community Development Department at 887-2180 for more information regarding sidewalk vending permits.
- The City has designated busking and free speech areas.

The Public Works Department may: (1) require setbacks from adjoining land uses and streets; (2) require performance bonds or other surety measures to ensure site maintenance; (3) limit the hours of operation; and (4) apply conditions to regulate factors such as light and glare, dirt and dust and noise odors and permit violations. Please refer to Division 6 of Title 18 (Appendix) of the Carson City Municipal Code for additional information concerning outdoor dining areas and merchandise displays.

#### SUBMITTAL REQUIREMENTS FOR ENCROACHMENT PERMIT FOR OUTDOOR DINING & MERCHANDISE DISPLAY

The items listed in the "Encroachment Permit for Outdoor Dining & Merchandise Display Checklist" must be submitted as part of the application package in order for the application to be complete for processing. The checklist must also be submitted with the application. The application will not be accepted if all of the items listed are not submitted.



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#### Encroachment Permit for Outdoor Dining & Merchandise Application

Business Name: \_\_\_\_\_ Project Site APN: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Application Number (to be filled out by City staff) \_\_\_\_\_

**Applicant must fill out the checklist below by placing a check mark in the boxes listed under Column A (for Applicant) and signing below. Column S is for staff to verify that your submittal requirements have been met.**

#### A S

- |                          |                          |    |  |
|--------------------------|--------------------------|----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. | Signed application for Encroachment Permit for Outdoor Dining & Merchandise Display.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. | Cover Letter describing the following:   |
| <input type="checkbox"/> | <input type="checkbox"/> | a. | Layout of proposed seating area or merchandise display (number of tables and chairs, access to seating area from the restaurant and the street, etc.)  |
| <input type="checkbox"/> | <input type="checkbox"/> | b. | Colors, materials, and dimensions for proposed tables, chairs, and displays.   |
| <input type="checkbox"/> | <input type="checkbox"/> | c. | Description of any proposed umbrellas and method of securing (no commercial advertising or logos allowed; must meet height requirement of 7' 6").  |
| <input type="checkbox"/> | <input type="checkbox"/> | d. | Proposed dates and hours of operation.   |
| <input type="checkbox"/> | <input type="checkbox"/> | e. | Proposed maintenance plan.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. | Site Plan Requirements – One copy of a site plan must be submitted with the application. The site plan must be of sufficient scale to show all information clearly; the information on the site plan must be readable and understandable. If the plan is not legible, the application will not be accepted. The site plan must include the following information:  |
| <input type="checkbox"/> | <input type="checkbox"/> | a. | Location and dimensions of proposed seating area or merchandise display.   |
| <input type="checkbox"/> | <input type="checkbox"/> | b. | Location and dimensions of required pedestrian walkway (either a 6-foot wide sidewalk or the width from the approved outdoor dining area or display to the street, whichever is greater).  |
| <input type="checkbox"/> | <input type="checkbox"/> | c. | Location, dimension and type/use of adjacent buildings and structures on the property.   |
| <input type="checkbox"/> | <input type="checkbox"/> | d. | Location and dimensions of proposed tables and chairs, umbrellas, and displays.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. | Proof of Insurance – The applicant has provided evidence of liability insurance naming Carson City as an additional insured in the amount of at least one million dollars (\$1,000,000) in single occurrence and two million dollars (\$2,000,000) in the aggregate. If an outdoor dining use offers alcoholic beverage service, liquor liability coverage is also included in the general liability policy. A Certificate of Liability Insurance must be provided to the City annually. |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. | Hold Harmless Agreement – The applicant has provided the signed hold harmless agreement.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. | Application Fee of \$100.00.   |

Applicant Signature / Printed Name: \_\_\_\_\_

I certify that I have completed and have included all material checked above in the attached application submittal.

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#### **Encroachment Permit for Outdoor Dining & Merchandise Display Insurance Requirements & Hold Harmless and Indemnification**

The permittee agrees to purchase and maintain, for the duration of this permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of any activity or conduct relating to the permit by the permittee, the permittee's officers, employees, agents, or assigns.

**Minimum Scope of Insurance:** Commercial General Liability Coverage.

**Minimum Limits of Insurance:** Liability insurance naming Carson City as an additional insured in the amount of at least one million dollars (\$1,000,000) in single occurrence and two million dollars (\$2,000,000) in the aggregate. If an outdoor dining use offers alcoholic beverage service, liquor liability coverage must be included in the general liability policy.

**Other Insurance Provisions:** The general liability policy must contain, and be endorsed to contain, the following provisions:

1. Carson City, its officials, employees, agents and designated volunteers are to be covered as insured in respect to liability arising out of the activities performed by or on behalf of this permit. The coverage must not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers.
2. For any claims to the permit, the permittee's insurance must be primary insurance for the City, its officials, employees, agents, or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers must be in excess of the permittee's insurance and must not contribute to it.
3. Any failure to comply with reporting or other provisions of the permittee's policies, including breaches of warranties, must not affect coverage provided to the City, its officials, employees, agents, or volunteers.
4. The permittee's insurance must apply separately to each insured against whose claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause must be endorsed to state that the coverage will not be reduced, suspended, voided or canceled unless thirty (30) days' written notice by certified mail, return receipt, has been provided to the City's Risk Management Coordinator.

**Verification of Coverage:** Permittee shall furnish to the City's Development Engineering the original Certificate of Insurance and endorsements affecting coverage required by this permit. All certificates and endorsements must be received before the permit becomes effective.

**Hold Harmless and Indemnification:** The permittee agrees to indemnify, defend and hold harmless Carson City and any of its officers, employees and agents, from any and all claims, actions, suits, procedures, costs, expenses, damages and liabilities, including, without limitation, attorney's fees, resulting from the conduct or performance of activities by the permittee which relates to or arises from the issued permit.

Permittee's name – PRINTED \_\_\_\_\_

Permittee's Signature \_\_\_\_\_ Date \_\_\_\_\_