

# Late Material

Item # 15a

Meeting Date: 05/04/17

Summary - Establishes various provisions governing the issuance of an encroachment permit for the downtown mixed-use district (DT-MU).

BILL NO. \_\_\_\_\_

ORDINANCE No. 2017- \_\_\_\_\_

AN ORDINANCE RELATING TO ENCROACHMENTS; AMENDING TITLE 11, HIGHWAYS AND SIDEWALKS, BY ADDING THERETO A NEW CHAPTER 11.35, ENCROACHMENT PERMIT FOR OUTDOOR DINING AND MERCHANDISE DISPLAY, AND ADDING TO THAT NEW CHAPTER: SECTION 11.35.010, PURPOSE AND APPLICABILITY; SECTION 11.35.020, DEFINITIONS; SECTION 11.35.030, ENCROACHMENT PERMIT REQUIRED FOR OUTDOOR DINING AND MERCHANDISE DISPLAY; SECTION 11.35.040, OUTDOOR DINING AND MERCHANDISE DISPLAY ALLOWED IN PUBLIC RIGHT-OF-WAY; SECTION 11.35.050, REQUIREMENTS FOR OUTDOOR DINING; SECTION 11.35.060, REQUIREMENTS FOR MERCHANDISE DISPLAY; SECTION 11.35.070, REQUIREMENTS FOR SIGNAGE; SECTION 11.35.080, GENERAL REQUIREMENTS; SECTION 11.35.090, RESTRICTIONS AS TO ALCOHOLIC BEVERAGES; SECTION 11.35.100, HEALTH STANDARDS; SECTION 11.35.110, SPECIAL CLOSURES; SECTION 11.35.120, ISSUANCE OF PERMIT; AND SECTION 11.35.130, SUSPENSION OR REVOCATION OF PERMIT; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

The Board of Supervisors of Carson City do ordain:

## SECTION I:

That Title 11 (Highways and Sidewalks) is hereby amended by adding thereto a new Chapter 11.35 as follows (**bold, underlined** text is added):

### **Chapter 11.35 – Encroachment Permit for Outdoor Dining and Merchandise Display.**

#### **11.35.010 – Purpose.**

#### **11.35.020 – Definitions.**

#### **11.35.030 – Encroachment Permit Required for Outdoor Dining and Merchandise Display.**

#### **11.35.040 – Outdoor Dining and Merchandise Display Allowed in Public Right-of-Way.**

**11.35.050 – Requirements for Outdoor Dining.**

**11.35.060 – Requirements for Merchandise Display.**

**11.35.070 – Requirements for Signage.**

**11.35.080 – General Requirements.**

**11.35.090 – Restrictions as to alcoholic beverages.**

**11.35.100 – Health standards.**

**11.35.110 – Special Closures.**

**11.35.120 – Issuance of Permit.**

**11.35.130 – Suspension or Revocation of Permit.**

**SECTION II:**

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.010 as follows (**bold, underlined** text is added):

**11.35.010 – Purpose and Applicability.**

**The purpose of the requirements and standards set forth in this chapter is to facilitate increased business and pedestrian traffic by providing safe and visually appealing opportunities for outdoor dining and merchandise display at the discretion of the City Engineer or his or her designee, in accordance with the applicable requirements of CCMC. The provisions of this chapter do not apply to any outdoor use which may be authorized by a special event permit issued pursuant to CCMC Section 4.04.077.**

**SECTION III:**

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.020 as follows (**bold, underlined** text is added):

**11.35.020 – Definitions**

**1. “Clear zone” means the portion of a sidewalk that is intended for pedestrian travel along a street and which is a minimum of six (6) feet in width.**

**2. “Extension zone” means the area that, on a sidewalk which is wider than normal, exists between the clear zone and the street.**

**3. “Store front zone” means the area adjacent to the property line of a business where a transition occurs between a public sidewalk and the space within a building that houses the business.**

SECTION IV:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.030 as follows (**bold, underlined** text is added):

**11.35.030 – Encroachment Permit Required for Outdoor Dining and Merchandise Display.**

**Except as otherwise provided in Title 18 Appendix, Division 6 (Downtown Mixed-Use District), Section 6.6.7(5), an outdoor dining area or merchandise display is prohibited in the downtown mixed-use district (DT-MU), as that term is described in CCMC Section 18.04.125, without an encroachment permit issued pursuant to Section 11.35.120 of this chapter.**

SECTION V:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.040 as follows (**bold, underlined** text is added):

**11.35.040 – Outdoor Dining and Merchandise Display Allowed in Public Right-of-Way.**

**An outdoor dining area or merchandise display that is authorized by a permit issued pursuant to Section 11.35.120 of this chapter must be adjacent to and incidental to the operation of an indoor restaurant or retail business.**

SECTION VI:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.050 as follows (**bold, underlined** text is added):

**11.35.050 – Requirements for Outdoor Dining.**

**1. An outdoor dining area may not exceed the depth approved by the City Engineer, as measured from the front of the building that houses the business with which the outdoor dining area is associated, or exceed the width specified by the City Engineer for the frontage of the building that houses the business with which the outdoor dining area is associated.**

**2. Street furniture may not extend into the clear zone. As used in this subsection, “street furniture” includes, without limitation, benches, trash receptacles, tables and chairs used in outdoor dining areas and other amenities made available for pedestrians.**

**3. Any outdoor dining furnishings which are used by a business for which an encroachment permit has been issued:**

**(a) Must be of commercial grade.**

**(b) Must be designed for outdoor use.**

**(c) Must be properly maintained and cleaned regularly.**

**(d) If the furnishings are tables and chairs used by a particular business, must be of the same or a similar and compatible design.**

**(e) If the furnishings are tables and chairs within the same area of use, must be of the same or compatible color.**

**(f) Must not be composed of plastic or resin tables or chairs, or bright, reflective or fluorescent colors.**

**(g) Must be composed of materials which meet the following descriptions for the following categories of furnishings:**

**(1) Frameworks: Wrought iron, fabricated steel, cast aluminum, cane or teak.**

**(2) Seats of chairs: Wrought iron, fabricated steel, cast aluminum, cane, teak or rattan.**

**(3) Table tops: Solid tops of slate, marble, granite, faux stone, wrought iron, embossed aluminum, teak, tempered glass, and mesh tops of wrought iron and aluminum. Plastic, resin, and plain metal table tops are not allowed.**

**(h) With respect to the size of tables, must be sized appropriately to ensure adequate accommodation of both the usual pedestrian traffic in the area and the operation of the proposed outdoor dining activity, as determined by the City Engineer.**

**(i) With respect to umbrellas:**

(1) Must extend from the center of a table or be freestanding.

(2) Must have a minimum height clearance of not less than seven (7) feet and six (6) inches when erected for use and be secured in the manner prescribed by Carson City development engineering.

(3) Must have panels which are of the same solid color, except that a complementary solid color may be used for trim such as piping.

(4) Must not include patterns such as floral designs and stripes or include fluorescent colors, commercial advertisements or logos.

(5) Must have canopies that are made of canvas.

(6) Must not have canopies that are made of vinyl or plastic.

(7) Must have a stand that is made from cast aluminum, wrought iron, fabricated steel or wood.

(j) With respect to under-umbrella lighting such as directional or tube, and table top lighting such as candles or other low level light sources:

(1) Must create a soft glow directed at the tabletop or cart surface.

(2) Must not create glare or light that falls outside of the area of use.

(3) Must not use bare-bulb neon or emit colored, blinking or flashing lights or lighting commonly known as “chasing” lights.

4. An outdoor dining area may be delineated by planters. Moveable fencing is allowed in the area of the downtown mixed-use district (DT-MU) known as Bob McFadden Plaza. Fencing must be made of wrought iron or other similar metallic material with clear visibility, and open works shaping, and must not exceed a maximum of three (3) feet and six (6) inches in height. Vinyl and plastic fencing is prohibited.

5. Unless not reasonably practicable for use as the result of weather, if an outdoor dining area for which an encroachment permit has been issued is not used for a period of thirty (30) consecutive days, the public works department may request a hearing before the Board of Supervisors to seek a suspension or revocation of the encroachment permit.

6. Any outdoor dining furniture that is left in the public right-of-way during non-business hours may be used by members of the public.

**7. A standing portable propane heater may be used in an outdoor dining area if such use has been reviewed and approved by the Carson City fire department. An electric heater or any other type of heater which uses a fuel other than propane is prohibited in an outdoor dining area.**

SECTION VII:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.060 as follows (**bold, underlined** text is added):

**11.35.060 – Requirements for Merchandise Display.**

**An outdoor merchandise display must:**

- 1. Be located within the store front zone or corresponding extension zone.**
- 2. Not be located within the clear zone.**
- 3. Not be located within an area or in such a manner where it obstructs the line of sight for passing motorists.**

SECTION VIII:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.070 as follows (**bold, underlined** text is added):

**11.35.070 – Requirements for Signage.**

**1. A street frontage may not have, for each business, more than one A-Frame sign, commonly known as a “sandwich board,” and only in accordance with the following requirements:**

**(a) The sign must be placed within the store front zone or within the extension zone, as applicable.**

**(b) The sign may not be placed within the clear zone.**

**(c) Except as otherwise provided in this paragraph, the sign must be manufactured professionally and must not exceed thirty-two (32) inches in width and thirty-six (36) inches in height. A chalkboard frame with erasable letters is allowed.**

**(d) The sign must be in good repair and neatly painted or drawn with chalk, as applicable, and may not include an attachment thereto.**

**(e) A sign described in this section may not be displayed during non-business hours.**

**(f) A sign may not be located in an area or in such a manner where it obstructs the line of sight of passing motorists.**

**2. A business may, only during business hours, affix signage on a table that is owned by the business and which is located in the area subject to a valid encroachment permit issued under the provisions of this chapter, to indicate that the table is reserved for use by patrons of the business.**

## SECTION IX:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.080 as follows (**bold, underlined** text is added):

### **11.35.080 – General Requirements.**

**1. The portion of a right-of-way that is subject to an encroachment permit is taxable pursuant to NRS 361.157 for the portion of the property used and the percentage of the time during the fiscal year that the property is used. A copy of the encroachment permit will be forwarded to the Carson City Assessor to determine taxation.**

**2. 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 by the business whose store front zone corresponds to the length of that clear zone.**

**3. Outdoor dining areas and merchandise displays are prohibited within ten (10) feet of a fire hydrant, fire department standpipe connection, fire escape, bus stop, mailbox, any doorway indicated for use as an exit, loading zone or traffic signal stanchion.**

**4. The holder of an encroachment permit issued pursuant to Section 11.35.120 of this chapter may not make or cause to be made a permanent change to any portion of a sidewalk or the public right-of-way within the area of the downtown mixed-use (DT-MU) district known as Bob McFadden Plaza. Any damage to property owned by the City as the result of such a change must be repaired or replaced at the sole cost of the holder of the encroachment permit and to the satisfaction of the City.**

- 5. Any outdoor dining furnishing and merchandise display must be maintained in a safe and clean condition. Furnishings may not be stacked outside at any time.**
- 6. A planter or movable container made of terra cotta, concrete or ceramic may be placed in a store front zone if it is maintained by the owner or tenant of the property in front of which it is placed. Any species of plant intended for use in a planter or movable container must be drought tolerant and a perennial or annual.**
- 7. Any application for an outdoor display of art must be reviewed by the Public Art Project Panel for approval.**
- 8. The use of any loud speaker, television, radio or other similar device capable of projecting sound or images outdoors is prohibited without the approval of the City.**
- 9. The use of an electrical receptacle in a public right-of-way:**
  - (a) Is prohibited without the approval of the City.**
  - (b) May only be allowed during a special event.**
- 10. Any proposed change to an outdoor dining area or merchandise display may be submitted to the Public Works Department as an addendum to the original application without additional cost by the holder of the encroachment permit.**
- 11. An encroachment permit is valid during the period of ownership of the business by the holder of the permit at the location for which the permit was issued, and may not be assigned or transferred to any other party.**

#### SECTION X:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.090 as follows (**bold, underlined** text is added):

#### **11.35.090 – Restrictions as to alcoholic beverages.**

- 1. If an outdoor dining establishment offers service of alcoholic beverages, the holder of the encroachment permit issued for the establishment must have the applicable liquor license for on-site consumption, including proof of the name and location of the business from which the alcohol was purchased.**
- 2. Any restaurant that provides such service must maintain liquor liability coverage as part of its general liability policy.**



SECTION XI:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.100 as follows (**bold, underlined** text is added):

**11.35.100 – Health standards.**

**1. The holder of an encroachment permit issued pursuant to the provisions of this chapter shall:**

**(a) Maintain at all times at his or her sole cost and expense the common areas within twelve (12) feet of any encroachment boundary adjacent to his or her business for which the permit was issued to ensure that such areas are free and clear of items sold, provided or generated by the holder, including, without limitation, trash, debris, and spillage or unconsumed or unattended food and beverages.**

**(b) Provide for power washing concrete and any other necessary cleaning within the sidewalk area for which he or she holds an encroachment permit.**

**(c) Provide for the removal of trash, and the policing or monitoring of areas downwind of the location for which he or she holds an encroachment permit to ensure the removal of trash that may have originated from his or her business.**

**2. To minimize litter and debris where table service is provided or where food is served to a customer to be taken and eaten on site within the outdoor dining area:**

**(a) Plates, glasses, cups, and silverware must be made of non-disposable materials such as glass, ceramic or metal.**

**(b) Napkins must be made of non-disposable materials such as cloth.**

**3. The use of disposable food containers, utensils, and napkins is prohibited unless the food or beverage is served or packaged in a manner to be consumed off-site as carryout.**

SECTION XII:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.110 as follows (**bold, underlined** text is added, [~~stricken~~] text is deleted):

**11.35.110 – Special Closures.**

**1.—The operation of an outdoor dining area or the use of a merchandise display pursuant to an encroachment permit is a privilege under the provisions of this chapter. The City has the right and absolute authority to prohibit the operation of an outdoor dining area or the use of an outdoor merchandise display at any time as the result of anticipated or actual problems and conflicts in the use of the public right-of-way area. Such problems and conflicts may arise from other uses including, without limitation, scheduled festivals and similar events or parades or marches, repairs to the street or sidewalk or demonstrations or emergencies occurring in the area. To the extent possible, the holder of an encroachment permit whose business may be affected will be given prior written notice of any period during which the operation of the outdoor dining area or outdoor merchandise display will be prohibited by the City, but the failure or inability of the City to issue such notice does not under any circumstance constitute a waiver or surrender of the City’s lawful authority to require the temporary or permanent removal of an outdoor dining area or outdoor merchandise display.**

**2. Notwithstanding any prohibition on the operation of an outdoor dining area or the use of an outdoor merchandise display pursuant to subsection 1, the holder of an encroachment permit is not entitled to a reimbursement or apportionment of any tax assessment for the period of prohibition for so long as the permit is maintained.**

#### SECTION XIII:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.120 as follows (**bold, underlined** text is added):

#### **11.35.120 – Issuance of Permit.**

**1. A person shall not use the public right-of-way for outdoor dining or merchandise display without an encroachment permit. A person may request an encroachment permit by submitting to the City Engineer a completed application in a form prescribed by the City and which may be obtained in person at 108 E. Proctor Street.**

**2. The City Engineer shall examine or cause to be examined an application or amendment thereto as soon as reasonably practicable after the application is received. The denial of an application must be made in writing and include the reasons for the denial.**

**3. An encroachment permit may be issued upon such terms, conditions and fees as deemed appropriate by the City. Any design or signage terms or conditions must also**

satisfy the minimum standards for the downtown mixed-use district (DT-MU) as set forth in Division 6 of Title 18, Appendix.

4. The City Engineer shall not issue an encroachment permit unless, at a minimum, the following conditions are satisfied:

(a) The applicant has paid the required application fee, which may be an amount established by the City.

(b) The applicant has executed a hold harmless agreement in a form acceptable to the City.

(c) 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) for a 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 also be included in the general liability policy. A certificate of liability insurance must be provided to the City annually.

(d) The applicant has agreed to such other conditions as are required by the City Engineer as necessary for public safety or to protect public improvements.

(e) The applicant has agreed to any other conditions necessary to restore the appearance of the sidewalk upon expiration, suspension or revocation of the encroachment.

#### SECTION XIV:

That Title 11 (Highways and Sidewalks), Chapter 11.35 (Encroachment Permit for Outdoor Dining and Merchandise Display) is hereby amended by adding thereto a new Subsection 11.35.130 as follows (**bold, underlined** text is added):

#### **11.35.130 – Suspension or Revocation of Permit.**

**1. A permit may be suspended or revoked by the Board of Supervisors following notice to the holder of the permit and a noticed public hearing. A notice issued pursuant to this subsection must be delivered by certified mail, postage prepaid and return receipt requested, or hand delivered not less than ten (10) business days before the date of the hearing. Except for good cause or by consent of the holder of the permit, a public hearing pursuant to this subsection must be held**

**not more than twenty (20) business days after the date on which the notice was served.**

**2. An encroachment permit may be suspended or revoked if the Board determines that:**

**(a) One or more condition of the permit has been violated;**

**(b) The area subject to the encroachment permit is being operated or used in a manner which constitutes a nuisance under CCMC Chapter 8.08; or**

**(c) The operation of the outdoor dining area or area for merchandise display unduly impedes or restricts the movement of pedestrians.**

**3. The holder of an encroachment permit issued pursuant to the provisions of this chapter may voluntarily surrender his or her permit at any time.**

Section XV:

**If any clause, sentence, section, provision or part of this chapter of CCMC is determined to be unconstitutional or invalid for any reason by a court of competent jurisdiction, such judgment does not invalidate, impair or affect the remainder of this chapter of CCMC.**

Section XVI:

**That no other provisions of Title 11 of the Carson City Municipal Code are affected by this ordinance.**

PROPOSED on \_\_\_\_\_[month]\_\_\_\_\_ [day], 2017.

PROPOSED by \_\_\_\_\_.

PASSED on \_\_\_\_\_[month]\_\_\_\_\_ [day], 2017.

VOTE:                      AYES: SUPERVISORS: \_\_\_\_\_  
\_\_\_\_\_

NAYS: SUPERVISORS:

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ABSENT: SUPERVISORS:

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Robert L. Crowell, Mayor

ATTEST:

\_\_\_\_\_  
SUE MERRIWETHER  
CLERK/RECORDER

This ordinance shall be in force and effect from and after the \_\_\_\_\_ day of the month of \_\_\_\_\_ of the year 2017.