

DOWNTOWN MESA

OUTDOOR DINING

Information Packet



www.mesaaz.gov

PRIMARY CONTACTS

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ADDITIONAL RESOURCES

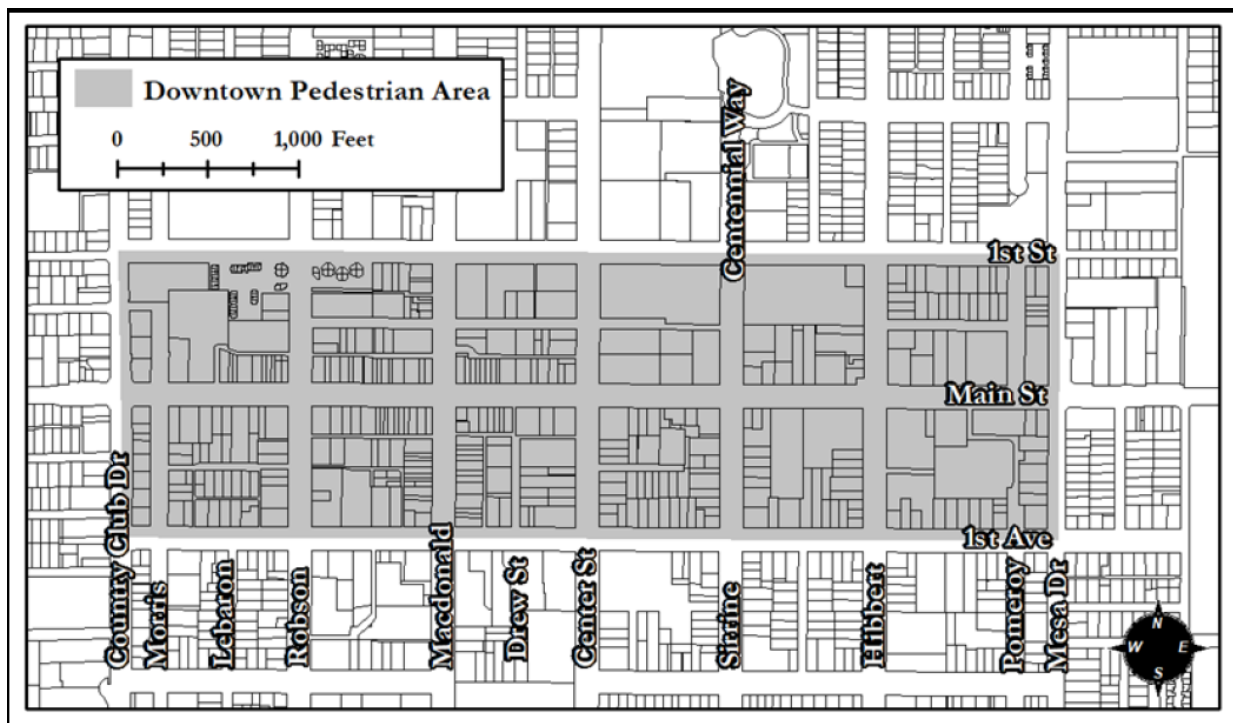
Jeff Robbins

City of Mesa
Downtown Transformation Project Manager
(480) 644-5249

Downtown Mesa Association

City of Mesa Downtown Mesa webpage: <http://mesaaz.gov/business/economic-development/business-districts-maps/downtown-mesa>

ELIGIBLE PATIO AREA



PURPOSE

This submittal guide has been developed to assist downtown business owners wishing to provide an outdoor dining area. There is no grandfathered use and this policy is effective as of January 2019.

The area in front of the buildings located downtown is publicly owned and in the City right-of-way. An Encroachment Permit must be obtained prior to placing any items, such as, tables, chairs, fencing, shade devices, and potted plants, etc., within the right-of-way. Additionally, the Planning Office requires Site Plan Review of proposed outdoor seating areas. This can be processed administratively with staff level review (a public hearing is typically not required).

The Administrative Site Plan Review and Encroachment Permit review and approval is required to allow City staff to review the encroachment against any conflict with public and private utilities, to ensure pedestrian access is adequately provided, and to ensure the items placed in the right-of-way contribute to an active and safe downtown.

GUIDING POLICY

A strong downtown is critical for a successful city. In order to promote an active and vibrant downtown, the City of Mesa created this document to define some of the elements of an inviting, people-friendly outdoor seating space in Downtown Mesa. The City of Mesa grants use of the public right-of-way to businesses that adhere to the following guiding principles and goals regarding outdoor patio seating in public spaces: active use, attractive, and accessible.

Active Use

Downtown Mesa has been and will continue to be, an economic engine for Mesa as we take advantage of the public investment in light rail. This increasing pedestrian activity must be supported by an inviting, people-friendly public realm. Downtown areas must support active use by pedestrians and customers by providing the comfort needed for regular use. Patio furniture must be reasonably clean, safe for its purpose, high quality, accessible, functional, and used frequently by the business owner's customers. Using encroachment area for activities such as storing furniture, fencing without functional seating and other uses that do not promote activity are prohibited.

In addition, businesses in Downtown Mesa must recognize and respond to the Arizona climate. This includes creating a pedestrian-friendly environment through outdoor amenities like vegetative and/or structural shade solutions. This will promote outdoor patio use year-round active use of the patio.

Attractive

As noted in the Central Main Area Plan, one of the goals for Downtown Mesa is to create a distinct and high-quality built environment that is attractive to existing and new employers, residents, and visitors. Examples of attractive outdoor patio spaces are provided in the design guide starting on page 15. All furniture, seating and amenities should be high quality and made of durable materials. Plastic lawn chairs or other products of a similar quality are not acceptable for either temporary or semi-permanent outdoor dining areas.

Accessible

Many people are drawn to Downtown Mesa because of the special events, festivals, and unique attractions Mesa offers. To accommodate increased pedestrian activity, right-of-way space used for patios, with or without fences, shall be made open and accessible to the general public during events.

Outdoor seating areas that do not support this Guiding Policy will be reviewed and could result in the business owners' privileges being revoked. The City reserves the right to determine, in its sole and unfettered discretion whether a given patio dining area meets the intent and helps to achieve the goals of this Guiding Policy.

SUBMITTAL GUIDE

All submittal information is provided through the City of Mesa e-government portal, DIMES. For DIMES Help please go to: <https://www.mesaaz.gov/business/development-services/dimes-help>

The applicant shall complete and provide the following information in two separate submittals:

Please note: applicants must register an account before making a submittal.

1. Submission #1-Administrative Review Submittal to the Planning Office

Please see step by step directions here: <https://www.mesaaz.gov/home/showdocument?id=26496>

After establishing an account, navigate to the online application system at <https://aca.accela.com/mesa> and log in to start the Administrative Review submittal. Under the “Create” dropdown, select “Submit a Planning Application” and fill in the information as directed. Please use the following bullet points as a guide:

- Select “Administrative Review” at the bottom of the page. Input address *or* parcel number and click ‘search’. Once the system returns possible addresses, select the best match and the remaining fields will populate.
- *If you find that the *Address Search Result List* comes up with no results, try leaving the “City”, “State” and “Zip” fields empty or use the parcel number.
- Select a *Request Type* “Zoning/Site Plan” and a *Sub Process Type* “Site Plan Change” from the dropdown.
 - Attach a written project narrative explaining the request and proposal
 - Attach the following: a site plan, floor plan, elevations, specifications, and any other drawings showing the layout and placement of the tables, chairs, fence, planters, etc. as one PDF.
 - Please Note: The application will not be completed until the *Required Document Types* are uploaded to the submittal. Additional documents may be required based on the type of request, please review the [Administrative Review Guidelines](#) for additional information.
- Continue to Checkout as directed.

2. Submission #2-Permit Submittal to the Development Services Office

Please see step by step directions here: <https://www.mesaaz.gov/home/showdocument?id=22249>

Navigate to the online application system at <https://aca.accela.com/mesa> and log in to start the Permit submittal. Under the “Create” dropdown, select “Apply for a Permit” and fill in the information as directed. Please use the following bullet points as a guide:

- Select “Commercial Permit” at the bottom of the page. Input address *or* parcel number and click ‘search’. Once the system returns possible addresses, select the best match and the remaining fields will populate.
- *If you find that the *Address Search Result List* comes up with no results, try leaving the “City”, “State” and “Zip” fields empty or use the parcel number.
- Provide a *Project Name* and *Description of Work*.
 - Attach the construction documents: a site plan, floor plan, elevations, specifications, and any other drawings showing the layout and placement of the tables, chairs, fence, planters, etc. as one PDF.
 - Attach the Encroachment Application and Encroachment Agreement to the construction documents.
 - Please Note: The application will not be completed until the *Required Document Types* are uploaded to the submittal. Additional documents may be required based on the type of request, please review the XXX for additional information.
- Continue to Checkout as directed.

For questions on the permit or encroachment submittal, please contact or visit Mesa’s Development Services Office.

When recorded, please return to:
CITY OF MESA
REAL ESTATE SERVICES
P.O. Box 1466
Mesa, AZ 85211-1466

**AGREEMENT FOR ENCROACHMENT INTO A PUBLIC
RIGHT-OF-WAY OR PUBLIC EASEMENT FOR PATIO
DINING
(Encroachment Permit)**

This Agreement for Encroachment into a Public Right-Of-Way or Public Utility Easement (this “Agreement”) made and entered into this _____ day of _____ 20_, by and between the CITY OF MESA, an Arizona municipal corporation (“Mesa”), and _____ the property owner(s) (collectively, as applicable, the “Owner”). Mesa and Owner are sometimes referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

- A. Owner owns the following real property (the “Owner’s Property”) in Mesa, Maricopa County, Arizona:

Address: _____
Lot____, _____, according to the plat of record on file in the office of the County Recorder of Maricopa County, Arizona, in Book _____ of Maps, page _____, Parcel Number: _____
Legal Description: _____

- B. The City of Mesa hereby enters into this agreement with the Owner with the expectation that the Encroachment described herein conforms and will continue to conform to the Guiding Policy, that it is an appropriate private use of public space, and that it will enhance Downtown economic activity and create a high-quality environment that is attractive to visitors.

- C. Within a Mesa right-of-way or public utility easement, Owner desires to install or construct the following improvements: _____

(collectively, the “Encroachment”).

The Encroachment is further limited in size, area, or dimension in the Mesa’s right-of-way or public easement as follows:

- D. Under the Mesa City Code (“M.C.C.”), encroachments in Mesa’s rights-of-way and public

easements are prohibited except with the authorization of a right-of-way permit under M.C.C. 9-2-3(A), and this Agreement is intended to be such a permit.

E. Subject to the terms and conditions set forth in the Guiding Policy and the Design Guide, Mesa will permit the installation, construction and public use of the Encroachment subject to the terms and conditions of this Agreement and subject to all applicable conditions, limitations, and requirements of the Mesa City Code.

NOW, THEREFORE, in consideration of the promises and agreements contained in this Agreement, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Permitted Use. Mesa permits Owner to construct or install, and use the Encroachment as described and depicted on the site plan submitted with the application, and only in that portion of Mesa's right-of-way or public easement described in the site plan. This Agreement (including Mesa's permitting the Encroachment) is revocable and nonexclusive and is subject to the terms, conditions, and limitations as set forth herein.

3. Compliance with Laws. Owner shall comply with all applicable Federal, State, and local laws, regulations, and ordinances. Further, Owner shall comply with all applicable City of Mesa Code requirements, ordinances, and regulations. This Agreement does not modify, change, or alter the City of Mesa Code requirements, ordinances, or regulations; accordingly, separate from this Agreement, Owner shall obtain all applicable permits and approvals as required by the City of Mesa for the construction or installation of the Encroachment.

31. Blue Stake. Owner shall call or e-mail Blue Stake (e.g., Azbluestake.com) to request locations of all existing utilities within or adjacent to the right-of-way or public easement that may be affected by the Encroachment. Owner shall not begin construction or installation of the Encroachment until the area is blue staked. Owner acknowledges and agrees that Blue Stake does not always know or correctly identify the location of utilities; and, therefore, Owner agrees to have the Encroachment constructed or installed by experienced and trained professionals using the highest degree of care.

4. Liability and Damages. Owner shall be solely responsible and liable for any and all damages, injuries, and losses arising from, or related to, the design, construction, installation, location, or maintenance of the Encroachment.

5. Commencement of Construction. Owner shall obtain all applicable permits (e.g., construction and right-of-way permits) and commence construction of the Encroachment within

sixty (60) days after the date of execution of this Agreement. Once construction has begun, Owner shall diligently work to complete construction of the Encroachment. If the encroachment is not installed or constructed, and in use, within one hundred and twenty days (120) of the execution of this Agreement, the City may, but is not required to remove any partially-constructed improvements, and this Agreement will be null and void.

6. Maintenance and Repair. Owner, at its sole cost and expense and at all times, shall maintain the Encroachment in a first-class, sound, clean, safe and attractive manner as described in the Guiding Policy.

61 Repairs. Owner shall repair any and all damage to the Encroachment, including but not limited to, damage caused by third parties, vehicles, vandalism, and damage caused by the City of Mesa, its employees, or contractors or utility companies while working in the right-of-way or public easement. Without limiting the foregoing, Owner is responsible for repairing damage caused by the City or Mesa, its employees, agents or contractors while working on or in the right-of-way or public easement, including but not limited to maintenance, repair, or installation of street lights, storm water drains, sewer lines, water lines, gas lines, power lines, pavement, sidewalk, or landscaping.

62 Completion of Repairs. Owner shall complete the repairs not later than ten (10) calendar days after the damage occurred or at such later date as agreed to in writing by Mesa; except, if any damage involves, or may involve, a health or safety issue or the ability of a utility provider to provide a utility service, Owner shall immediately begin repairing such damage, shall continuously work to repair such damage until it is repaired, and shall use best efforts to expedite the completion of the repairs.

63 Reimburse for Failure to Repair. If Owner fails to maintain or repair the Encroachment as required by this Permit, Mesa may maintain or repair the Encroachment, and Owner shall reimburse Mesa for all costs incurred by Mesa for the maintenance or repair of the Encroachment, including administrative fees and legal fees incurred to collect the reimbursement. Owner shall reimburse Mesa within 30 days of invoice from Mesa.

64 No Obligation on Mesa. Mesa has no maintenance or repair obligations for the Encroachment.

7. Indemnification. To the fullest extent permitted by law, Owner shall indemnify, defend, and hold harmless the City of Mesa, its officials, officers, agents, representatives and employees, individually and collectively, from and against all fines, suits, claims, demands, actions and liability, loss, damage, costs, taxes, or expenses (including reasonable attorneys' fees and costs) arising, or related, in whole or in part from: (i) the design, construction, installation, location, or maintenance of the Encroachment; (ii) Owner's, or Owner's employees, representatives, agents, or contractors', failure to comply with or fulfill the terms and obligations of this Agreement; or (iii) Owner's, or Owner's employees, representatives, agents, or contractors', use of Mesa's right-of-way or public easement for the Encroachment. The indemnity, duty to defend, and hold

harmless requirements stated herein shall include, but is not limited to, any and all claims for injury to persons, loss of life, or damage to property.

7.1 Mesa's Termination in the Public Interest. If Mesa's City Engineer determines that the Encroachment needs to be removed in the interest of the public (which includes but is not limited to safety issues, utility conflicts, design or maintenance issues, roadway or utility expansions or relocations or inactivity or failure to use the Encroachment area as defined in the Guiding Policy), Mesa may terminate this Agreement, upon not less than fifteen (15) calendar days prior notice to Owner; and, after such notice is sent, Owner shall remove the Encroachment and restore the right-of-way or public easement property where the Encroachment is located prior to the termination of the Agreement and satisfy and comply with all of the removal and restoration requirements in Section 9 of this Agreement. Notwithstanding the foregoing, if Mesa's City Engineer determines that the Encroachment should be removed in the interest of the public, Mesa may immediately, and without notice, remove the Encroachment and restore the right-of-way or public easement property; and in such event, Owner shall reimburse Mesa for the cost for the removal and restoration within 30 days of invoice from the Mesa.

7.2 Termination for Cause. If there is a breach of any term, condition, or requirement of this Agreement by Owner that Owner does not fully cure within five (5) calendar days of Mesa's notice to Owner of such breach, Mesa may terminate this Agreement. Within ten (10) calendar days of a termination under this sub-section 8.4, Owner shall remove the Encroachment and restore the right-of-way or public easement property where the Encroachment is located and satisfy and comply with all of the removal and restoration requirements in Section 9 of this Agreement.

7.3 Remedies. In the event of any breach of this Agreement by Mesa, Owner's sole and exclusive remedy shall be to seek specific performance. Owner expressly waives any and all right to seek damages of any kind or nature as a remedy against Mesa. In the event of a breach of this Agreement by Owner, Mesa shall have and may seek all remedies available to Mesa, including, but not limited to, damages, costs (including collection costs and attorney's fees), all remedies in law and equity, and the right to lien Owner's Property.

7.4 Continuing Obligations. Termination of this Agreement does not terminate Owner's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination. By way of example, and without limiting the foregoing, Owner's indemnity obligations and obligations to remove the Encroachment restore the right-of-way or public easement as provided in this Agreement shall survive the termination of this Agreement.

7.5 No Liability for Termination. Mesa shall incur no expense or liability for terminating the Agreement.

8. Removal and Restoration. Prior to the termination of this Agreement or at such later time as may be allowed under Section 8 of this Agreement, Owner shall remove the Encroachment and restore the right-of-way or public easement property where the Encroachment was located to a condition equal to or better than the right-of-way property immediately adjacent to where the Encroachment was located. Additionally, Owner's removal and restoration will not be complete until it is approved by Mesa, and such approval will not be unreasonably denied.

81 If Owner fails to remove the Encroachment and restore the property as required by the above Section 9 of this Agreement, Owner shall reimburse Mesa for all costs incurred by Mesa for the removal and restoration, and Mesa may remove and dispose of the Encroachment in any manner Mesa chooses. Owner hereby releases Mesa from all damages as a result of the removal and disposal of the Encroachment.

82 The provisions of Sections 9 and 9.1 shall survive the expiration or any termination of this Agreement.

9. General Provisions.

91 Nonexclusive Rights. This Agreement is a revocable, nonexclusive license and nothing herein shall be construed to prevent or restrict, in any way, Mesa from using or granting others the right to use the right-of-way or public easement property where the Encroachment is located

92 Existing Easements and Licenses. This Agreement is subject to all existing licenses, permits, leases, and all encumbrances of record. It shall be Owner's obligation and responsibility to ascertain the rights of all third parties in the property.

93 Entire Agreement. This Agreement constitute the entire agreement among the Parties pertaining to the subject matter hereof and shall not be changed or added to except in writing signed by all Parties. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, pertaining to the subject matter hereof are hereby superseded.

94 Waiver. The Parties agree that no waiver of any default of breach of any of the terms or conditions of this Agreement shall be construed to be a waiver of any succeeding breach or default.

95 A.R.S. § 38-511 Notice. This Agreement may be subject to cancellation pursuant to A.R.S. § 38-511.

96 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona without regard to choice of law rules. Mesa has not waived its claims procedures as respects to this Agreement. The Parties agree that the only venue for any action regarding this Agreement shall be in Maricopa County, Arizona.

97 Modification. Any modifications of this Agreement shall be in writing and approved by the Parties.

98 Severability. If any terms, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

99 Interpretation. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder.

9.10 Notice of Service. All notices and demands required or permitted by this Agreement shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) to the respective address below or to such other address furnished by either Party to the other pursuant to this section; or (ii) delivered personally to the Parties hereto.

Notice to Owner

At the address for Owner's
Property as listed in
Recital A to this

Notice to Mesa

Attn: City Attorney
City of Mesa
P.O. Box 1466

(and)

Notice to Mesa

Attn: City Engineer
City of Mesa
P.O. Box 1466

Agreement:

Mesa, AZ 85211-1466

Mesa, AZ 85211-1466

1.1 Assignment; Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Owner may not assign its rights under this Agreement without the prior written consent of Mesa which may be given or withheld in Mesa's sole discretion and any assignment without consent shall be void.

1.2 Surviving Provisions. All warranties, representations, and duties to indemnify, defend, and hold harmless shall survive the termination, cancellation, or expiration of this Agreement. Additionally, all obligations to remove the Encroachment and restore the property shall survive the termination or expiration of this Agreement as well as any other section which reasonably should survive shall survive.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF MESA, a municipal corporation

Beth Huning, City Engineer

OWNER

OWNER

[OWNERS' SIGNATURES TO BE NOTARIZED – SEE FOLLOWING PAGE]

STATE OF ARIZONA)
) SS
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_, by _____, who executed the foregoing instrument for the purposes therein contained.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) SS
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_, by _____, who executed the foregoing instrument for the purposes therein contained.

Notary Public

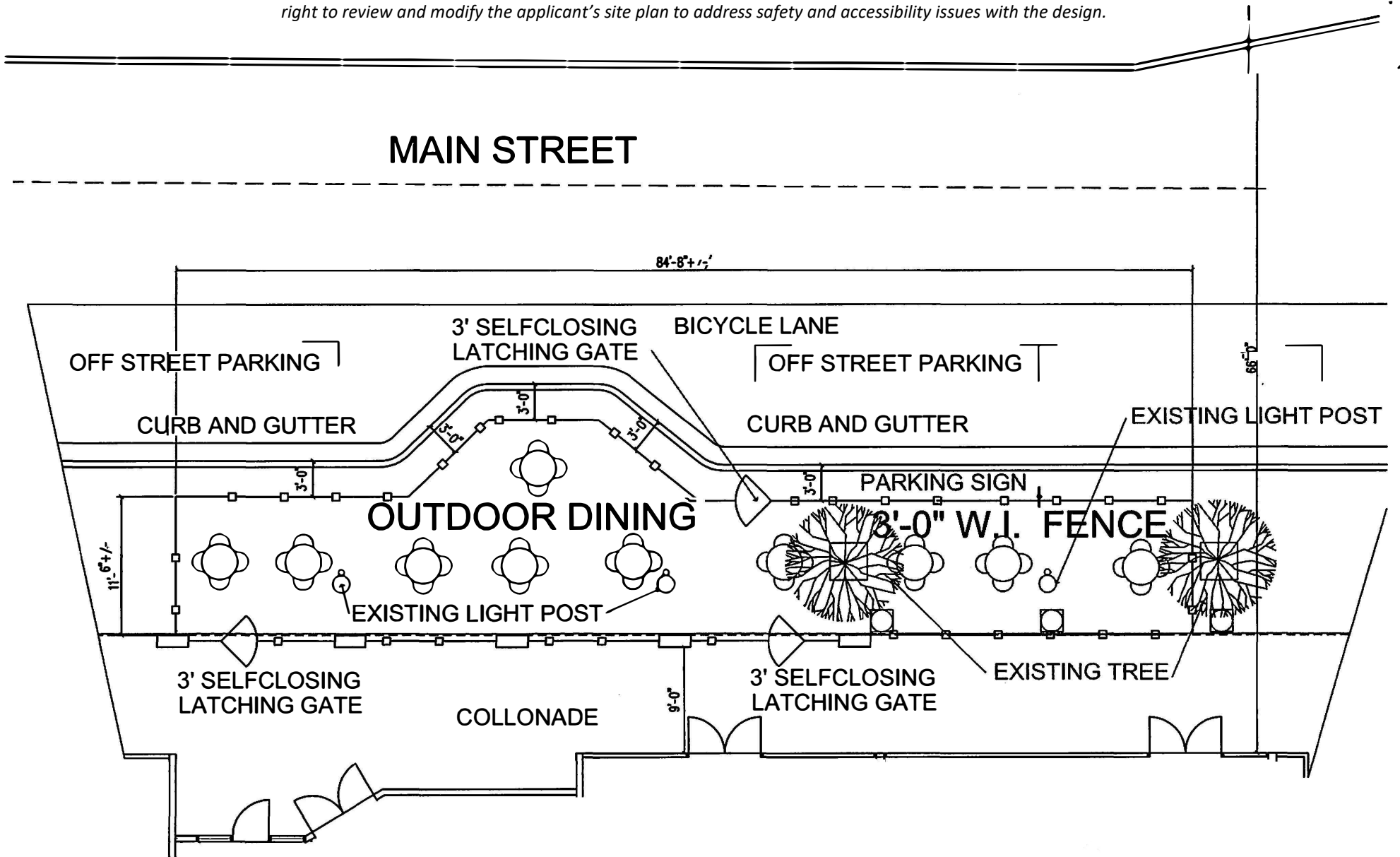
My Commission Expires:

SITE PLAN EXAMPLE

3'-0" distance from curb of Main Street to fence

9'-0" wide pedestrian sidewalk from fence to building face (unless patio abuts building façade)

**Note: Please indicate patio dimensions (in feet and inches) on site plans and the locations of any shade devices, planters or other fixed improvements. The City reserves the right to review and modify the applicant's site plan to address safety and accessibility issues with the design.*





PATIO DESIGN GUIDE

This design guide provides several excellent examples of patio designs. The images below are provided expressly as examples of many acceptable designs and design elements. Each submitted site plan will be reviewed individually and may offer acceptable design solutions not displayed in the examples below.

Awnings mounted on the building façade, as depicted in some images below, require separate permitting, agreements and approval.



Mix of bench, stool and traditional seating with umbrellas. Trimmed planters facing street to provide curb appeal.

Note: this particular design would not allow for the use of alcoholic beverages due to the unsecured, open entrance



Low-height planter enclosure with matching metal chairs and tables.

Note: Approved plans will likely require seating and activation potential than what is shown above.



Enclosed space with matching, quality chairs and tables. Fabric shade canopy. Diverse planters.



Cozy enclosed space offering a mix of movable wooden chairs and fixed benches with metallic shade canopy. Trees to provide shade and ambiance.



Enclosed space accessible from pedestrian area. Matching tables and chairs with umbrella. Menu sign away from walkway path.

Note: a gate would be required to serve alcohol. This particular A-frame style sign would not be compatible with the City's sign code.



Quality wrought iron with wood trim enclosed space. Durable chairs, tables, and umbrellas. Attractive, yet simple flower planters.