

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
ESTABLISHING REGULATIONS PERTAINING TO THE ESTABLISHMENT,
MAINTENANCE, AND OPERATION OF OUTDOOR DINING AREAS IN THE PUBLIC
RIGHT-OF-WAY ON HISTORIC MAIN STREET BETWEEN ACACIA PARKWAY AND
GARDEN GROVE BOULEVARD

City Attorney Summary

This Ordinance amends portions of Titles 9 (Land Use Code) and 11 (Public Property) of the Garden Grove Municipal Code to add new regulations establishing procedures for owners of eating establishments fronting on Main Street between Acacia Parkway and Garden Grove Boulevard to obtain permits to establish and operate incidental and accessory outdoor dining areas in the public right-of-way adjacent to their businesses. The Ordinance provides for Main Street outdoor dining permits and adopts specific requirements pertaining to encroachment permits for such outdoor dining areas in the public right-of-way. Eating establishment owners on Historic Main Street will be required to obtain both a main street outdoor dining permit and an encroachment permit in order to establish and operate an outdoor dining area in the public right-of-way. The encroachment permits must be renewed annually.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, those properties fronting Main Street between Acacia Parkway and Garden Grove Boulevard (i.e., "Historic Main Street") are located within the Civic Center area of the City and are zoned CC-2 (Civic Center Main Street);

WHEREAS, the Land Use Element of the City of Garden Grove General Plan calls for the Civic Center to be the heart and soul of the community, provides that people should be drawn to the Civic Center to become engaged in the community and to experience the place itself, encourages active and inviting pedestrian-friendly street environments and mixed-use designs that create lively streetscapes, and establishes a goal of restoration of the Civic Center as the heart of the City;

WHEREAS, the Civic Center is recognized as the historic City core and a public gathering place, and the stated intent of the CC-2 (Civic Center Main Street) zoning includes bringing energy and vitality to the City during both daytime and after-work hours; facilitating a pedestrian-scaled environment with pedestrian amenities that foster interaction; and preserving and enhancing incidental uses that advance and preserve the Main Street character and charm;

WHEREAS, outdoor dining at eating establishments is currently a permitted incidental and accessory use of property within the CC-2 zone, provided seating areas do not encroach into required paths of travel or public rights-of-way; however,

opportunities for outdoor dining areas that do not encroach into the public right-of-way are limited for many properties fronting Historic Main Street;

WHEREAS, portions of the public sidewalk on Historic Main Street are wide enough to accommodate outdoor dining areas that encroach into the public right-of-way while preserving the required path of travel for pedestrians;

WHEREAS, allowing for and encouraging more outdoor dining areas along Historic Main Street will further the above-referenced General Plan goals and policies and is consistent with the stated intent of the CC-2 (Civic Center Main Street) zone;

WHEREAS, Amendment No. A-022-2018 was initiated by the City of Garden Grove and is a zoning text amendment to Municipal Code Sections 9.18.090.050 (Additional Regulations Specific to the CC-2 Zone) and 9.32.030 (Land Use Actions) establishing application requirements and review procedures for City approval of Main Street outdoor dining permits and associated design and operational requirements for outdoor dining areas in the public right-of-way and dining alcoves along Historic Main Street;

WHEREAS, providing for the issuance of Main Street outdoor dining permits to qualifying eating establishments fronting Historic Main Street pursuant to Amendment No. A-022-2018 is intended to encourage and facilitate more outdoor dining on Historic Main Street in furtherance of the goals and policies of the General Plan and the intent of the CC-2 zone, but is not intended to grant applicants or adjacent property or business owners any property interest in the public right-of-way or any entitlement to continued use of the public right-of-way;

WHEREAS, following a Public Hearing held on September 6, 2018, the Garden Grove Planning Commission adopted Resolution No. 5929-18 recommending approval of Amendment No. A-022-2018;

WHEREAS, pursuant to a legal notice, a Public Hearing regarding Amendment No. A-022-2018 was held by the City Council on September 25, 2018, and all interested persons were given an opportunity to be heard;

WHEREAS, the City Council gave due and careful consideration to the matter;

WHEREAS, the City Council hereby makes the following findings regarding Amendment No. A-022-2018:

- A. The Amendment is internally consistent with the goals, objectives and elements of the City's General Plan;
- B. The Amendment will promote the public interest, health, safety and welfare;

WHEREAS, Chapter 11.12 of the Garden Grove Municipal Code generally requires a person to obtain an encroachment permit from the City in order to erect or maintain any temporary or permanent structures or appliances within the planned right-of-way;

WHEREAS, this Ordinance also establishes specific additional requirements for the issuance of encroachment permits to eating establishments fronting Historic Main Street to establish and maintain outdoor dining areas in the public right-of-way in order to promote the public health, safety and welfare and to ensure the allowance of adequate pedestrian circulation; and

WHEREAS, the City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct.

SECTION 2. Amendment No. A-022-2018 is hereby approved pursuant to the findings set forth herein and the facts and reasons stated in Planning Commission Resolution No. 5929-18, a copy of which is on file in the Office of the City Clerk, and which is incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 3. Section 9.18.090.050 (Additional Regulations Specific to the CC-2 Zone) of Section 9.18.090 (Development Standards Specific to Individual Mixed Use Zones) of Chapter 9.18 (Mixed Use Regulations and Development Standards) of Title 9 of the Garden Grove Municipal Code is hereby amended to add new Subdivision I to read as follows:

I. Outdoor Dining in the Public Right-of-Way on Historic Main Street. Eating establishments located on Main Street between Acacia Parkway and Garden Grove Boulevard may locate and operate incidental and accessory outdoor dining areas on the adjacent public right-of-way, subject to compliance with the provisions of this Subsection I, approval of a Main Street outdoor dining permit by the Director or applicable hearing body pursuant to Chapter 9.32, and issuance of an encroachment permit by the City pursuant to Title 11. The provisions of this Subsection, and not Section 9.18.030.300, shall govern outdoor dining areas in the public right-of-way on Main Street.

1. Definitions. The following definitions shall apply to this Section:

- a. "Barrier" means a fabricated physical barrier that is firmly anchored to the ground meant to demarcate an outdoor dining area in the public right-of way.
 - b. "Dining alcove" means an outdoor recess opening out of an eating establishment in conjunction with an outdoor dining area in the public right-of-way.
 - c. "Director" means the Director of Economic and Community Development for the City.
 - d. "Encroachment permit" means a temporary revocable permit issued by the City pursuant to Title 11 authorizing use of a portion of the public right-of-way.
 - e. "Main Street outdoor dining permit" means a permit approved by the City in accordance with this Subsection and Chapter 9.32 authorizing the owner of an eating establishment that fronts on Main Street between Acacia Parkway and Garden Grove Boulevard to establish and maintain an outdoor dining area in the public right-of-way on Main Street immediately adjacent to the eating establishment.
 - f. "Obstruction" means any object or obstacle, which completely or partially blocks a path of travel on a public right-of-way, including, but not limited to, a sign, lamp post, bench, tree, tree grate, table, chair, umbrella, or other object attendant to an outdoor dining area in the public right-of-way.
 - g. "Outdoor dining area in the public right-of-way" means a specific area within the public right-of-way adjacent to an eating establishment that contains seating for patrons of the eating establishment and where food and/or beverage service and other activities related to dining that are incidental and accessory to operation of the eating establishment may occur.
2. Application for Main Street Outdoor Dining Permit. An application for a Main Street outdoor dining permit shall be filed on forms provided by the Director, and submitted under penalty of perjury, and shall be accompanied by a fee in the amount established by the City Council for a Director's Review. The application shall be filed concurrently with an application for an encroachment permit and shall include, without limitation, the following information and documents:
 - a. The name and business address of the eating establishment with which the proposed outdoor dining area in the public right-of-way is associated.

- b. The name, business address, telephone number, and email address of the applicant, which must be the owner of the adjacent eating establishment, and the applicant's responsible managing officer signing the application. An applicant that is a corporation, limited liability company, or partnership shall designate one of its officers, members, managers, or general partners to act as its responsible managing officer to complete and sign the application and to bind the entity in contract, and shall submit evidence acceptable to the Director that such individual is authorized to act on behalf and bind the applicant.
- c. If the applicant is not the legal or beneficial owner of the adjacent property on which the eating establishment is located, include the name and address of the property owner(s) and a written authorization executed by the property owner(s), or the property owner(s) authorized agent, authorizing the applicant to establish and maintain an outdoor dining area in the public right-of-way and to submit the application. If said authorization is executed by an agent of the property owner(s), written authorization of such agency satisfactory to the Director shall also be provided.
- d. Plans, drawings and a description of the proposed outdoor dining area in the public right-of-way and/or dining alcove satisfactory to the Director. At a minimum, the plans shall show in detail the dimensions of the proposed outdoor dining area in the public right-of-way; the locations and dimensions of all existing and proposed obstructions; the proposed locations, number, and arrangement of all barriers, tables, chairs, umbrellas, and other furnishings; and the location and dimensions of the proposed pedestrian path of travel. If construction of a dining alcove is proposed, detailed architectural and building plans for all structural alterations are required. The plans shall also include a description, satisfactory to the Director, of the colors, types, styles, and materials of all barriers, furnishings, umbrellas, and other objects proposed to be utilized within the outdoor dining area in the public right-of-way.
- e. A description of the anticipated periods of use during the year, the proposed hours of daily use, and whether the service of alcoholic beverages is requested.
- f. Sufficient evidence to establish, to the satisfaction of the Director, in his or her sole discretion, that the proposed outdoor dining area in the public right-of-way will not be inconsistent with the underlying dedication for public right-of-way or the City's title or estate in the underlying public right-of-way.

3. Design Requirements. Outdoor dining areas in the public right-of-way shall be subject to the following design and locational standards and requirements:
 - a. An outdoor dining area in the public right-of-way may only be located adjacent to Main Street. No existing trees, lamp posts, or planters may be removed or relocated. Existing benches and trash receptacles may not be removed, but may be relocated subject to approval of the Public Works Director or his or her designee.
 - b. Each approved outdoor dining area in the public right-of-way may only be located adjacent to the storefront of the eating establishment with which it is associated and may not extend across any portion of the storefront of an adjacent business or structure.
 - c. An outdoor dining area in the public right-of-way shall be arranged and located in such a manner that a four-foot (4'-0") minimum unobstructed path of travel for pedestrians along the right-of-way can be maintained at all times. Possible seating arrangements providing for a four-foot (4'-0") minimum path of travel are depicted in Figures 9.18-12a-d, below.
 - d. In accordance with applicable building code requirements, a minimum three-foot (3'-0") clear width of walking surfaces around dining furniture must be maintained, unless a lesser buffer is otherwise permitted. Where no barrier is installed, a three-foot (3'-0") minimum clearance buffer shall also be maintained between all dining furniture and the parallel parking limit line on Main Street.
 - e. All outdoor dining areas in the public right-of-way must be fully accessible to and useable by the physically handicapped in compliance with applicable law.
 - f. The amount of seating that may be permitted within an outdoor dining area in the public right-of-way is subject to applicable occupancy limits set forth in the uniform building codes, requirements of the City's Public Works Department, and any other applicable regulations set forth in this Title.
 - g. The use of removable table umbrellas is encouraged, provided such umbrellas maintain at least seven feet (7'-0") of clearance above the sidewalk level, do not exceed ten feet (10'-0") in height, and do not encroach into parking areas, walkways, or vision clearance areas.
 - h. Portable heating units acceptable to the Fire Department may be utilized.

- i. Lighting for an outdoor dining area shall be provided. Lighting may be incorporated into the façade of the building and shall complement the style of the building. Lights on buildings shall not be glaring to pedestrian or vehicular traffic and should illuminate only the outdoor dining area. Battery-operated table lamps or candles, or other lighting sources that do not require electrical wiring, are encouraged.
- j. Barriers. Barriers demarcating an approved outdoor dining area in the public right-of-way may be installed, subject to an encroachment permit. A barrier is required if alcoholic beverages are sold, served, and/or consumed in the outside eating area. The following requirements apply where barriers are installed.
 - i. Barriers shall be fabricated from wrought iron or other sturdy materials approved by the City that are consistent with the aesthetic and architectural character of the Historic Main Street area. Barriers may not be fabricated of chain link, cyclone fencing, plastic, vinyl, or chicken wire and may not include fabric or canvas inserts, spears, spikes, and/or finials. An example of an acceptable type of barrier is shown in Photo 9.18-3a, below.



Photo 9.18-3a: Example of a fabricated wrought iron barrier.

- ii. All barriers shall be firmly anchored to the ground. At the time the barrier is removed, the paving shall be returned to its original condition.
 - iii. A barrier may be no less than three feet (3'-0") and no more than three feet six inches (3'-6") in height.
 - iv. The location of any barrier shall be subject to the approval of the Director or applicable hearing body and the provisions and conditions of the encroachment permit.
- k. Dining Alcoves. Storefronts may be altered to allow for dining alcoves in conjunction with an outdoor dining area that encroaches into the public right-of-way. In addition to all applicable requirements set forth in this Chapter, the following provisions shall apply to dining alcoves:
- i. No new structural portion of the dining alcove shall encroach into the public right-of-way.
 - ii. The outdoor dining area may be located both within the dining alcove on private property and in the public right-of-way, provided the portion of the outdoor dining area in the public right-of-way complies with all requirements of this Subsection I, including, but not limited to, the maintenance of a minimum four-foot (4'-0) pedestrian path of travel.
 - iii. The dining alcove must include an entrance from the public right-of-way to the abutting property storefront.
 - iv. The dining alcove may be no more than one story in height.
 - v. The design of the dining alcove, including storefront systems, barriers, and glazing, shall be consistent with the aesthetic and architectural style of the building.
 - vi. The storefront shall completely enclose the abutting property building area behind, with the exception of doors and operable windows. The building area within shall not be open to the outside.
 - vii. Minimum glazing of the storefront shall be consistent with Section 9.18.100.040.F and Table 9.18-8, Storefront Glazing Calculation. The glazing of the storefront shall be clear and unobstructed, with the exception of the allowance under Section 9.20.040.D, Window Displays, to permit views into the establishment.

- l. Any proposed structural rehabilitation or significant alterations of existing building façades proposed in conjunction with an outside eating area in the public right-of-way, including the construction of dining alcoves, shall be subject to review and recommendation by the Zoning Administrator and the Downtown Commission in accordance with this Section 9.18.090.050.

- m. The area subject to the Main Street outdoor dining permit and the size, number, location, orientation, type, and materials of all barriers, tables, chairs, umbrellas, and other furniture shall be limited to that described in the approved Main Street outdoor dining permit. Any changes not otherwise authorized by the conditions of approval to the Main Street outdoor dining permit shall require the filing of an application for a Modification to Approved Plans pursuant to Chapter 9.32 and shall be subject to review and approval by the Director or applicable hearing body.

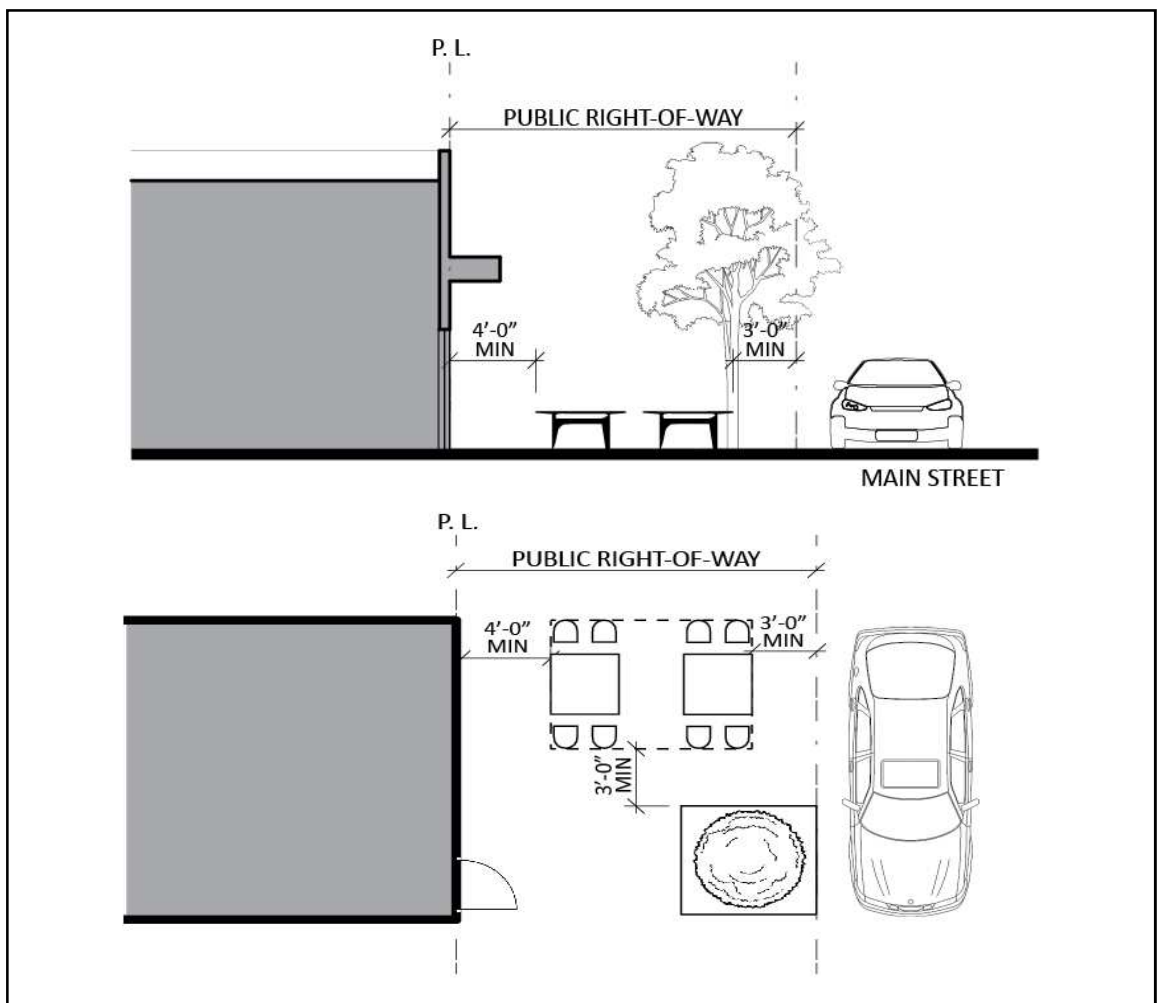


Figure 9.12a: Example of an outdoor dining area in the public right-of-way without a barrier.

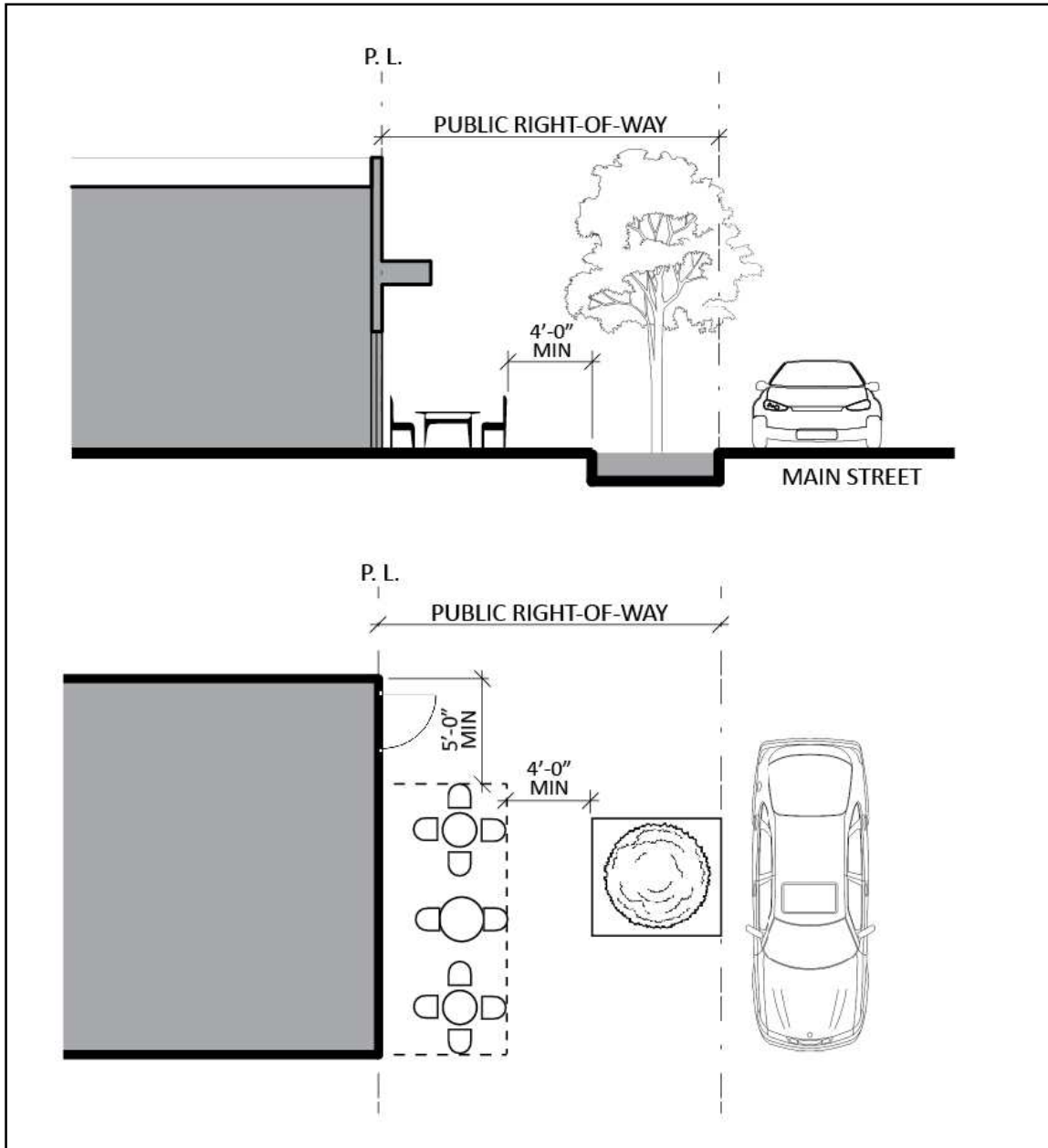


Figure 9.12b: Example of an outdoor dining area in the public right-of-way abutting a storefront wall without a barrier.

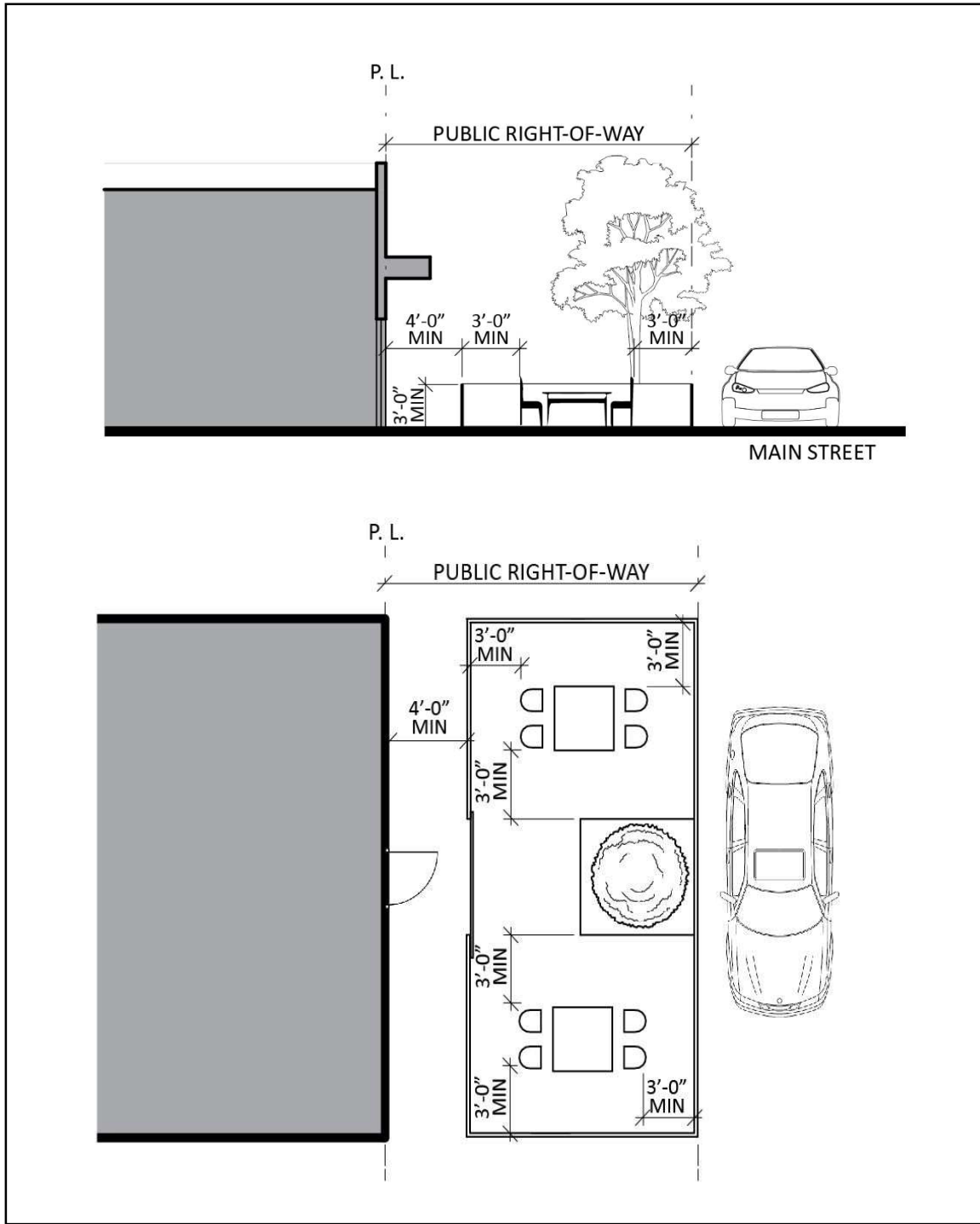


Figure 9.12c: Example of an outdoor dining area in the public right-of-way with a barrier.

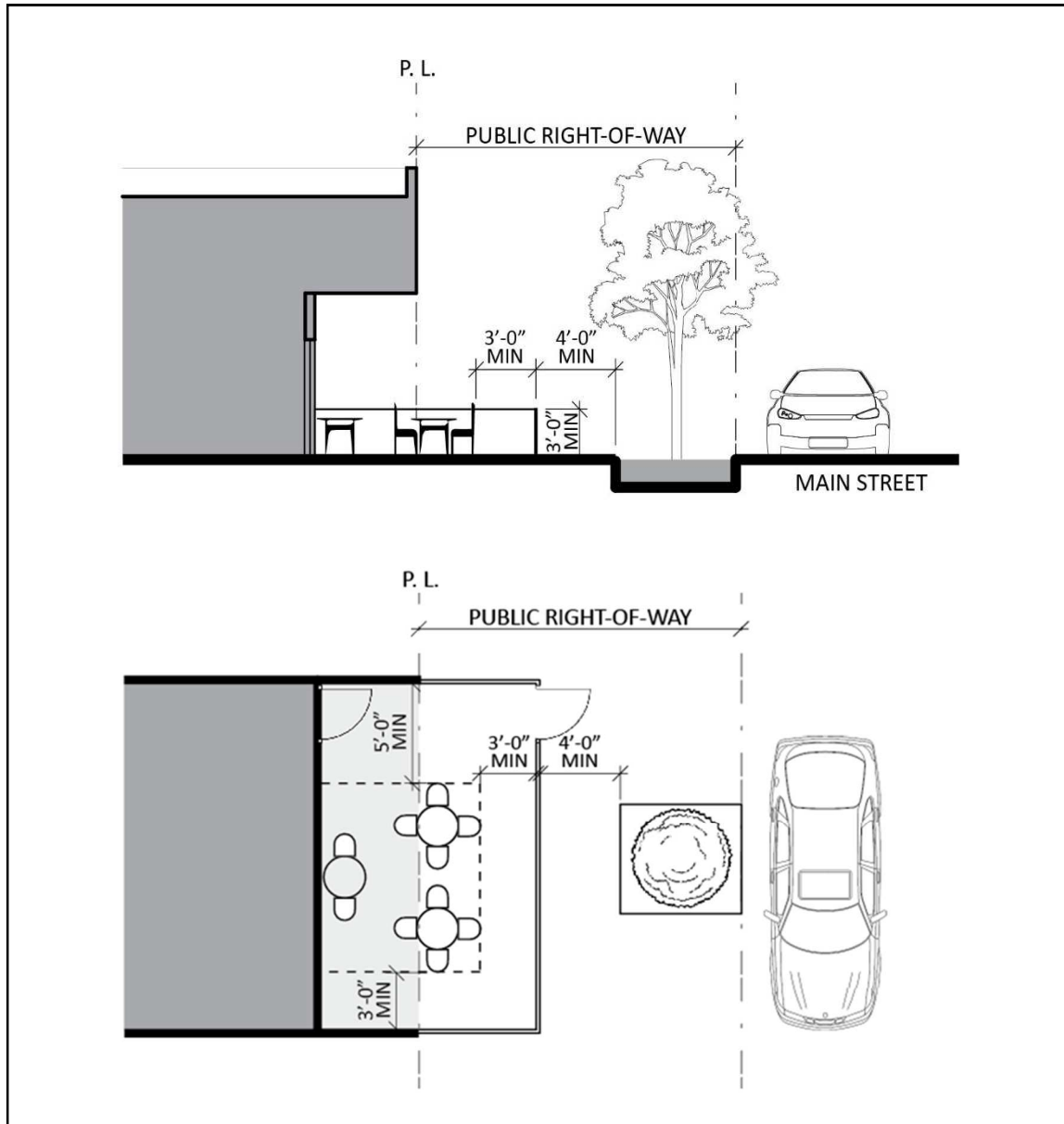


Figure 9.18-12d: Example of a dining alcove in conjunction with an outdoor dining area in the public right-of-way with a barrier.

4. Operational Requirements. All outdoor dining areas in the public right-of-way shall be subject to the following operational standards:
 - a. The business owner and operator shall comply with all provisions of this Subsection I and all conditions of approval of the encroachment permit, the Main Street outdoor dining permit and any applicable conditional use permit at all times. Failure to comply with any applicable Municipal Code or permit provisions or applicable conditions of approval may result in suspension or revocation of the Main Street outdoor dining permit.

- b. Hours of operation of an outdoor dining area in the public right-of-way shall not extend beyond 10:00 p.m. during any day of the week.
 - c. Tables, chairs, table lamps, umbrellas, portable heaters, and other furniture and related items may not be stored within the public right-of-way and shall be removed and stored inside the building when the business is closed or the outdoor dining area in the public right-of-way is not in operation. Approved barriers do not need to be removed except as otherwise required pursuant to the encroachment permit.
 - d. Outdoor dining areas shall be kept in a good state of repair and maintained in a clean, safe, and sanitary condition and in accordance with applicable Orange County Health Department regulations.
 - e. All building entryways and the required pedestrian path of travel shall remain clear and unobstructed at all times.
 - f. All outdoor dining areas shall be used for sit-down food and beverage service only; no stand-up service is permitted.
 - g. No entertainment shall be permitted within an outdoor dining area.
 - h. The use of mist systems or other devices spraying water over the public right-of-way is prohibited, unless the spraying of water is confined to seating located directly adjacent to the storefront or within a dining alcove. Overspray onto the required path of travel is prohibited.
 - i. All plans and permits for an outdoor dining area in the public right-of-way and/or dining alcove shall be kept on the premises of the eating establishment for inspection at all times the establishment is open for business.
5. Sale and/or Service of Alcoholic Beverages. The service of alcoholic beverages and its consumption by customers in an outdoor dining area in the public right-of-way shall comply with Section 9.18.060 (Alcohol Beverage Sales) and furthermore, shall be restricted as follows:
 - a. The sale, service, and/or consumption of alcoholic beverages within an outdoor dining area is prohibited unless authorized pursuant to a conditional use permit approved by the City and a valid license issued by the Department of Alcoholic Beverage Control. All provisions and conditions of such permits and licenses shall be complied with at all times.

- b. A barrier acceptable to the City and the Department of Alcoholic Beverage Control is required.
- c. The service of food shall accompany any sale or service of alcoholic beverages.
- d. All alcoholic beverages shall be served, delivered, and removed to and from the outdoor dining area by the staff of associated eating establishment.

SECTION 4. Subdivision D (Land Use Action Procedures) of Section 9.32.030 (Land Use Actions) of Chapter 9.32 (Procedures and Hearings) of Title 9 of the Garden Grove Municipal Code is hereby amended to add new Subsection 14 to read as follows:

14. Main Street Outdoor Dining Permit for Outdoor Dining Areas in the Public Right-of-Way on Historic Main Street.

a. Applicability. Approval of a Main Street outdoor dining permit pursuant to this Subsection 14 shall be required for any eating establishment located along Historic Main Street within the CC-2 zone to establish and maintain an outdoor dining area in the public right-of-way pursuant to the provisions of Section 9.18.090.050 of this Chapter, Additional Regulations Specific to the CC-2 Zone. It shall be a condition of each Main Street outdoor dining permit that the applicant also obtain and maintain an encroachment permit from the City pursuant to Title 11 of the Garden Grove Municipal Code and comply with all conditions of such encroachment permit. Approval of a Main Street outdoor dining permit pursuant to this Subsection 9.32.030.D.14 shall not constitute approval of said encroachment permit.

b. Review authority.

- i. Director's Review. The Department Director is vested with the authority to approve, conditionally approve, or deny applications for Main Street outdoor dining permits, provided the applicant is not proposing the sale, service or consumption of alcoholic beverages within the outdoor dining area and approval of a discretionary action by the Zoning Administrator, Planning Commission, or City Council is not otherwise required.
- ii. Review by Hearing Body. Where an outdoor dining area in the public right-of-way is proposed in conjunction with another land use action that requires discretionary review pursuant to this Chapter, the application for a Main Street outdoor dining permit shall be processed in conjunction with said land use action and reviewed by the applicable hearing body in conjunction with such discretionary review.

- iii. Alcohol sales. The sale, service and/or consumption of alcohol within an outdoor dining area in the public right-of-way shall also require approval of a new or amended Conditional Use Permit pursuant to the provisions of Section 9.18.060, Alcoholic Beverage Sales.
 - c. Required Findings. The Department Director or applicable hearing body may approve an application for a Main Street outdoor dining permit only if all of the following findings are made:
 - i. The proposed outdoor dining area in the public right-of-way is consistent with the City's General Plan, all applicable development standards and Building Code requirements, and all other applicable Title 9 provisions;
 - ii. The proposed outdoor dining area in the public right-of-way will be complimentary to, and not inconsistent with, the underlying dedication for public right-of-way or the City's title or estate in the underlying public right-of-way;
 - iii. The applicant has demonstrated a satisfactory ability and willingness to comply with the Garden Grove Municipal Code and pertinent conditions to previously issued permits, licenses, and City land use approvals with respect to operation of the adjacent eating establishment;
 - iv. The proposed outdoor dining activity will not be materially detrimental to the public health, safety or general welfare and will not injure or unreasonably interfere with the property or improvements of other persons located in the vicinity of the proposed outdoor dining area; and
 - v. The City Engineer is prepared to issue an encroachment permit to the applicant for the establishment and maintenance of an outdoor dining area in the public right-of-way pursuant to Title 11.
 - d. Notice and Review.
 - i. Upon receipt of an application for a Main Street outdoor dining permit that is subject to review by the Department Director, a notice shall be sent to all owners of property with frontage on Historic Main Street between Acacia Parkway and Garden Grove Boulevard describing the nature of the request and advising that any comments should be submitted no later than ten (10) days from the date of the notice. If one or more property owners object to the application, the Director may refer review of the request to the Zoning Administrator or Planning Commission,

where a public hearing will be noticed and held in accordance with the public hearing provisions of Chapter 9.32.

- ii. The Planning staff shall transmit the Department Director's notice of the decision, with any appropriate conditions of approval, to the applicant. The decision of the Department Director shall be final and binding unless an appeal is filed within 10 days from the date of the decision.
- iii. Any decision of the Department Director or Zoning Administrator may be appealed to the Planning Commission, and the provisions of Sections 9.32.110 through 9.32.150 shall apply, except as to the timeframe for appeal.
- iv. Any decision of the Planning Commission may be appealed to the City Council, and the provisions of Sections 9.32.110 through 9.32.150 shall apply.

e. Conditions, Transferability and Scope of Rights.

- i. The Department Director or hearing body is empowered to impose any conditions of approval on a Main Street outdoor dining permit determined to be necessary to ensure that the proposal complies with all local, state and federal laws, and satisfies the required findings.
- ii. It shall be a condition of each Main Street outdoor dining permit that the applicant also obtain and maintain an encroachment permit from the City pursuant to Title 11 of the Garden Grove Municipal Code and comply with all conditions of such encroachment permit. Approval of a Main Street outdoor dining permit pursuant to this Subsection 9.32.030.D.14 shall not constitute approval of said encroachment permit.
- iii. It shall be a condition of each Main Street outdoor dining permit that the scope, nature, and character of use of the adjacent eating establishment remain substantially the same as at the time approved. In the event there are significant changes to the scope, nature, or character of use of the adjacent eating establishment, all rights conferred by a Main Street outdoor dining permit for that eating establishment shall cease, and the owner(s) of the eating establishment shall be required to apply for and obtain a new Main Street outdoor dining permit, if eligible to do so.
- iv. In the event of a change of ownership of the adjacent outdoor eating establishment, where the scope, nature, and character of use of the adjacent eating establishment does not significantly

change, a Main Street outdoor dining permit may be automatically transferred to the new owner(s) of the eating establishment upon written notice to the City, issuance of a new encroachment permit pursuant to Title 11, and execution by each owner of a written acknowledgment and agreement to comply with the conditions of approval of the permit in a form acceptable to the Department Director.

- v. Approval of a Main Street outdoor dining permit pursuant to this Subsection shall not be construed to grant the applicant or adjacent property or business owner any property interest in the public right-of-way or any entitlement to continued use of the public right-of-way.
- vi. Following investigation, written notice, and an opportunity to respond, a Main Street outdoor dining permit may be revoked or suspended by the Department Director: (a) in the event of suspension, revocation, expiration, or non-renewal of the encroachment permit; (b) upon failure of the business owner and/or operator to comply with the conditions of approval and/or applicable legal requirements; or (c) if one or more of the required findings for approval of the permit can no longer be made with respect to the outdoor dining area in the public right-of-way. If the Department Director revokes a Main Street outdoor dining permit, the procedures for notice and appeal set forth in Subsection (d) (ii) – (iv), above, shall apply.

SECTION 5. Chapter 11.12 (Structures in Streets) of Title 11 of the Garden Grove Municipal Code is hereby amended to add new Section 11.12.330 to read as follows:

11.04.175 Encroachment Permits for Outdoor Dining Areas in the Public Right-of-Way on Historic Main Street.

- A. Purpose. The purpose of this Section is to establish specific additional requirements for the issuance of encroachment permits to dining establishments located on Historic Main Street to establish and maintain outdoor dining areas in the public right-of-way. The provisions of this Section are in addition to, and not in lieu of, the provisions of Section 11.04.170 and the other provisions of this Chapter, including, but not limited to, Section 11.12.010. In addition to satisfying the requirements herein, the applicant shall secure approval of a Main Street outdoor dining permit pursuant to Title 9 of the Garden Grove Municipal Code prior to operating or maintaining an outdoor dining area in the public right-of-way.
- B. Encroachment Permit Required. No person shall establish or maintain any outdoor dining area, including any chairs, tables, barriers, or other objects, in the public right-of-way on Historic Main Street without an encroachment permit

approved by the City specifically authorizing such person to do so. In addition to the following requirements, the provisions of Section 11.12.010 shall apply to any such encroachment permit.

- C. Application. An application for an encroachment permit for the establishment and maintenance of an outdoor dining area in the public right-of-way on Historic Main Street shall be submitted to the City's Public Works Department on the form provided by the City and shall be accompanied by all information, documents, and plans requested by the City in order to evaluate the application. The applicant must be the owner of the adjacent dining establishment with which the proposed outdoor dining area is associated. The application shall be submitted at the same time as the application for approval of a Main Street outdoor dining permit pursuant to Title 9 is submitted, and shall be accompanied by all applicable fees. If work or construction in the right-of-way is required, the owner or operator's contractor shall obtain a separate encroachment permit pursuant to this Chapter governing such work or construction.
- D. Findings. The Director of Public Works, or his or her designee, may issue an encroachment permit pursuant to this Section based upon the following findings:
 - a. The applicant is the owner of an adjacent eating establishment located on Main Street, between Acacia Parkway and Garden Grove Boulevard;
 - b. All conditions set forth in this Section are or will be satisfied; and
 - c. The City has approved a Main Street outdoor dining permit for the proposed outdoor dining area in the public right-of-way pursuant to Title 9.
- E. Duration of Permit; Annual Renewal Required. Each encroachment permit issued pursuant to this Section shall expire twelve (12) months following issuance of the permit and must be renewed on an annual basis. The applicant shall file an application for renewal of the encroachment permit with the Public Works Department at least ninety (90) days prior to the permit's expiration date. The renewal application shall be submitted to the City's Public Works Department on the form provided by the City and shall be accompanied by all information, documents, and plans requested by the City in order to evaluate the application, along with the annual encroachment permit fee and other applicable fees and evidence of the insurance required by this Section. Failure to pay applicable fees and/or provide evidence of insurance coverage or other required documents prior to the permit filing deadline shall cause the encroachment permit to expire and the right to operate and maintain an outdoor dining area in the public right-of-way to terminate. In such event, a new application for an encroachment permit must be filed and approved in order for the eating establishment owner to operate and maintain an outdoor dining area in the public right-of-way.
- F. Conditions. In addition to any other conditions imposed by the City in order to promote the public health, safety and welfare and to allow for adequate

pedestrian circulation, every encroachment permit issued pursuant to this Section shall be subject to the following conditions:

- a. The area covered by the encroachment permit, the number and location of any tables and chairs permitted, and the location of any authorized barriers shall be specifically limited to that shown on the exhibit attached to, or made part of, the encroachment permit.
- b. A four-foot (4'-0") foot minimum unobstructed pedestrian path of travel along the public sidewalk shall be maintained at all times.
- c. On corner lots or properties adjacent to driveways, no portion of an outdoor dining area shall be located within the triangular area formed by measuring twenty-five (25) feet along the curb lines to prevent obscuring corner vision clearance from any driveway or street.
- d. The outdoor dining area shall be located and arranged in a manner which will not interfere with visibility, vehicular or pedestrian mobility, or access to City or other public facilities. This determination shall be made at the time of application by the City Engineer, in his or her sole discretion, based on the characteristics of the site.
- e. The permittee shall comply with the terms and conditions of the encroachment permit, shall maintain the portion of the right-of-way covered by the permit in a clean and safe condition for pedestrian travel, and shall immediately clear the right-of-way when ordered to do so by the City Engineer or other appropriate City officer.
- f. Bond. Prior to the issuance of the encroachment permit, the applicant shall post a bond with the City to cover the cost of restoring the right-of-way to its original condition, where the applicant proposes modifications to the public surfaces, such as borings for recessed sleeves or post holes. The bond amount shall be determined by the City Engineer. On termination of the encroachment permit, the bond shall be released upon restoration of the right-of-way to the satisfaction of the City Engineer.
- g. Insurance. The applicant shall, prior to the issuance or renewal of the encroachment permit, procure, and shall thereafter maintain in full force and effect while the permit is in effect, (a) commercial general liability insurance in a form and amount specified by the City's Risk Manager sufficient to cover potential claims for bodily injury, death, or disability and for property damage which may arise from or be related to the use of the public right-of-way for an outdoor dining area, naming the City, its officers, agents, and employees as additional insureds under the terms of the policy; and (b) workers compensation insurance, in the amount required by California law, which includes a waiver of subrogation. The specific requirements for such insurance will be provided to the applicant by the City with the application materials. All required endorsements and certificates evidencing such

insurance must be provided to the City prior to issuance or renewal of an encroachment permit and immediately upon any policy renewal of or change in insurance coverage.

- h. Indemnity. The applicant shall execute and deliver to the City an agreement, in writing and acknowledged by the applicant, in a form acceptable to the City, forever to indemnify, defend, and hold and save the City free and harmless from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any persons by reason of or related to the operation and maintenance of the outdoor dining area in the public right-of-way.
- i. Permission to encroach upon a portion of the public right-of-way with an outdoor dining area through issuance of an encroachment permit under this Section shall not constitute a deed or grant of an easement by the City. The permit may be revoked at any time pursuant Section 11.12.010.
- j. The City shall have the right to temporarily suspend or prohibit the operation of an outdoor dining area in the public right-of-way at any time if necessary to safeguard the public health, safety and welfare or to avoid interference with special events, street or sidewalk improvements or cleaning, or similar activities. To the extent possible, the City will give prior written notice of any time period during which the operation of the outdoor dining area in the public right-of-way must be suspended.
- k. Each encroachment permit issued shall be personal to the permittee and is not transferrable, delegable or assignable. Any attempted transfer, delegation or assignment of the permit shall be void. In the event the owner or owners of the business with which the encroachment permit is associated changes, the existing encroachment permit shall automatically terminate and become null and void and the new owner(s) shall obtain a new encroachment permit pursuant to this Section.
- l. It shall be a condition of each encroachment permit issued pursuant to this Section that the applicant also obtain and maintain a Main Street outdoor dining permit pursuant to Title 9 and comply with all conditions of approval of said permit. Approval of an encroachment permit pursuant to this Section shall not constitute approval of a Main Street outdoor dining permit pursuant to Title 9.
- m. Upon termination of the encroachment permit, the permittee shall remove, at its own expense, all personal property, furnishings, and equipment from the right-of-way. All barriers shall be removed and the sidewalk returned to its original condition.
- n. The City may impose such other conditions on the encroachment permit as deemed necessary to promote the public health, safety and welfare and to allow for adequate pedestrian circulation.

SECTION 6. Any eating establishment that currently conducts outdoor dining in the public right-of-way on Historic Main Street, whether legally permitted or not, shall come into compliance with all provisions of this Ordinance no later than one hundred eighty (180) days following its effective date.

SECTION 7. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 8. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.