

ORDINANCE NO. 3415

AN ORDINANCE authorizing Marco's Cafe, Inc. to establish and maintain an encroachment into the public right-of-way of South Washington Street in the City of Alexandria, Virginia.

WHEREAS, Marco's Cafe, Inc. operates a restaurant on the property located at 817 South Washington Street in the City of Alexandria, Virginia; and

WHEREAS, Marco's Cafe, Inc. desires to establish and maintain a sidewalk cafe which will encroach into the public right-of-way 18 feet across the front of the property and extend nine feet out from the front of the property into the public right-of-way at 817 South Washington Street, which area will contain approximately 162 square feet; and

WHEREAS, the public right-of-way at that point on South Washington Street will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Marco's Cafe, Inc. (hereafter the "Cafe") be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way at 817 South Washington Street in the City of Alexandria, said encroachment consisting of an outdoor cafe on the sidewalk adjoining 817 South Washington Street which will encroach into the public right-of-way nine feet out from, and 18 feet along, the front of 817 South Washington Street in an area of approximately 162 square feet, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve the Cafe of liability for any negligence on its part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon the Cafe maintaining, at all times and at its own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business

in the Commonwealth of Virginia and with minimum limits as follows:

Bodily Injury:	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence
	\$1,000,000 aggregate

This liability insurance policy shall identify the City of Alexandria and the Cafe as named insureds and shall provide for the indemnification of the City of Alexandria and the Cafe against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, terminate forthwith and without notice or demand by the city. In that event, the Cafe shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of the Cafe. Nothing in this section shall relieve the Cafe of its obligations and undertakings required under this ordinance.

Section 3. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the Cafe shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 4. That the authorization herein granted to establish and maintain the encroachment shall be subject to the condition that the Cafe at all times maintain the area of the encroachment unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 5. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria.

Section 6. That the Cafe shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in § 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

Section 7. That the authorization herein granted to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from the Cafe the removal of the encroachment. Said removal shall be completed within 60 days of notification and shall be accomplished by the Cafe without cost to the city. If the Cafe shall fail or neglect to remove the encroachment within the time 60 days, the city shall have the right to remove the encroachment, at the expense of the Cafe, and shall not be liable to the Cafe for any loss or damage to the structure of the encroachment caused by the removal.

Section 8. That this ordinance shall be effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.  
Mayor

Final Passage: November 18, 1989