

ORDINANCE NO. 3516

AN ORDINANCE authorizing Sutton Place Gourmet, Inc. to establish and maintain an encroachment into the public right-of-way of 600 Franklin Street, in the City of Alexandria, Virginia.

WHEREAS, the property located at 600 Franklin Street is currently occupied by the Sutton Place Gourmet, Inc. and other retail and commercial uses; and

WHEREAS, the Sutton Place Gourmet, Inc. desires to establish and maintain three freestanding signs which will encroach into the public right-of-way at 600 Franklin Street; and

WHEREAS, the public right-of-way at that point on 600 Franklin 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 City Council of Alexandria that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the Sutton Place Gourmet, Inc. (hereafter the "Owner") be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way of 600 Franklin Street in the City of Alexandria, said encroachment consisting of three freestanding signs which will direct the public to underground parking and will advertise uses at the Sutton Place building, as follows:

- (a) One freestanding sign with two face panels erected on a concrete pad. The sign face panel shall measure no more than 3 feet in width and 6 feet 9 1/2 inches in height and shall total no more than 23.80 square feet of area. The overall sign height shall be no more than 9 feet 6 inches. The sign shall be installed an estimated 6.00 feet into the public right-of-way at the corner of South Washington Street and Franklin Street and shall be adjacent to the entrance to the outdoor terrace area for the Sutton Place cafe. The precise location of the sign shall be approved by the director of the department of transportation and environmental

services.

- (b) Two pole signs each measuring no more than 2 feet in width by 1 foot 11 inches in height and totaling no more than 3 feet 5 inches in area. Each pole sign shall be no more than 8 feet 5 inches in height. One sign shall be installed 4.00 feet into the public right-of-way an estimated 22.00 feet east of the South Saint Asaph and Franklin Street corner. The other pole sign shall be installed an estimated 2.00 feet into the public right-of-way of South Saint Asaph Street near the entrance to an underground parking facility. The precise location of each sign shall be approved by the director of the department of transportation and environmental services.

Owner shall be permitted to maintain the encroachment 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 owner 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 the encroachment shall be subject to the following conditions and shall, at the option of the city, discontinue if any condition is not satisfied:

- (a) that the signs be located behind the sidewalk;
- (b) that the applicant remove any illegal signs before the issuance of a sign permit for the three new signs; and
- (c) that the property at 600 Franklin Street be occupied by the Sutton Place Gourmet, Inc.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall also be subject to and conditioned upon Owner 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 Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner 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, forthwith and without notice or demand by the city, terminate. In that event, Owner 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 Owner. Nothing in this section shall relieve Owner of its obligations and undertakings required under this ordinance.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner 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 5. That the authorization herein granted to establish and maintain the encroachment shall also be subject to Owner's maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. 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 7. That Owner 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 8. 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 Owner the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment caused by the removal.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

PATRICIA S. TICER
Mayor

Final Passage: May 18, 1991