

ORDINANCE NO. 3536

AN ORDINANCE authorizing the operator of the restaurant at 112 North St. Asaph Street, in the City of Alexandria, Virginia, to establish and maintain an encroachment into the public right-of-way of North St. Asaph, said encroachment consisting of an awning approximately five feet in width which extends into the public street right-of-way to a depth of approximately six feet.

WHEREAS, Ralph Capobianco operates a restaurant named "King Street Blues" on the property located at 112 North St. Asaph Street in the City of Alexandria, Virginia; and

WHEREAS, Mr. Capobianco desires to establish and maintain an awning over the front door of his restaurant building which will be approximately five feet in width and will encroach into the public right-of-way of North St. Asaph Street to a depth of approximately six feet;

WHEREAS, the public right-of-way at that point on North St. Asaph 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 Ralph Capobianco and his successors operating the King Street Blues restaurant located at 112 North St. Asaph Street in the City of Alexandria (hereinafter collectively the "Operator") be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way of North St. Asaph Street, said encroachment consisting of an awning, approximately five feet in width, over the front door of the restaurant building extending approximately six feet into the public right-of-way of North St. Asaph Street, 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 Operator of liability for any negligence of the Operator 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 Operator 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 Operator as named insureds and shall provide for the indemnification of the City of Alexandria and the Operator 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 terminate. In that event, the Operator 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 Operator. Nothing in this section shall relieve the Operator 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 Operator 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) arising 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 Operator maintaining the awning and the area of the encroachment at all times 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 or any of its officers or employees.

Section 6. That the Operator 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 Operator the removal of the encroachment. Said removal shall be completed within 60 days of receipt of the notice and shall be accomplished by the Operator without cost to the city. If the Operator 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 the Operator, and shall not be liable to the Operator for any loss or damage caused by the removal.

Section 8. That the authorization herein granted to establish and maintain the encroachment shall be subject to the Operator conforming the design of the awning to that approved by the City Council.

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: September 14, 1991