

ORDINANCE NO. 3722

AN ORDINANCE authorizing Michael Elmendorf, the operator of Kofi Hous, to establish and maintain an encroachment into the public parking lot behind the building at 102 South Patrick Street, in the City of Alexandria, Virginia, for the purpose of constructing and maintaining an exposed metal chimney stack.

WHEREAS, Michael Elmendorf is the operator of Kofi Hous, the current occupant of the property located at 102 South Patrick Street, in the City of Alexandria, Virginia; and

WHEREAS, Mr. Elmendorf desires to construct and maintain a metal chimney stack, 17 feet 6 inches in height, which will encroach approximately two feet into the right-of-way of a public parking lot located immediately to the east of the building at 102 South Patrick Street; and

WHEREAS, the public parking lot at that point behind the building at 102 South Patrick 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 Michael Elmendorf (hereafter the "Applicant") be, and the same hereby is, authorized to establish and maintain a metal chimney stack encroachment into the right-of-way of the public parking lot located immediately to the east of the property at 102 South Patrick Street in the City of Alexandria, said chimney stack measuring approximately two feet in diameter and 17 feet 6 inches in height, 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 Applicant, or Kofi House, 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 at all times be subject to the condition that, if requested by the City of Alexandria after six months following the enactment of this ordinance, Applicant shall paint the chimney or take any other

steps identified by the city to alter the visual appearance of the chimney.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon the Applicant, or Kofi Hous, 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 as a named insured and shall provide for the indemnification of the City of Alexandria 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, Applicant 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 Applicant or Kofi Hous. Nothing in this section shall relieve Applicant or Kofi Hous of his or 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, Applicant and Kofi Hous 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 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to Applicant and Kofi Hous 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 or any of its officers or employees.

Section 7. That Applicant or Kofi Hous 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 Applicant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Applicant without cost to the city. If Applicant 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 Applicant, and shall not be liable to Applicant 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 14, 1994