

ORDINANCE NO. 3839

AN ORDINANCE authorizing the owner of 2300 Mount Vernon Avenue to establish and maintain an encroachment into the public rights-of-way of 2300 Mount Vernon Avenue and the 100 block of East Del Ray Avenue, in the City of Alexandria, Virginia.

WHEREAS, Scott Mitchell is the owner of the property located at 2300 Mount Vernon Avenue in the City of Alexandria, Virginia; and

WHEREAS, Mr. Mitchell desires to establish and maintain a space for outdoor restaurant seating and for a canopy, which space will encroach into the public rights-of-way at 2300 Mount Vernon Avenue and the 100 block of East Del Ray Avenue;

WHEREAS, the public rights-of-way at those points on 2300 Mount Vernon Avenue and the 100 block of East Del Ray Avenue 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; 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 Scott Mitchell (hereinafter the "Owner") be, and the same hereby is, authorized to establish and maintain an encroachment into the public rights-of-way of 2300 Mount Vernon Avenue and the 100 block of East Del Ray Avenue in the City of Alexandria, said encroachment consisting of space for outdoor restaurant seating and a canopy, which space extends approximately 13 feet in width and 21 feet in length into the public right-of-way at 2300 Mount Vernon Avenue, and approximately 10 feet in width and 60 feet in length along the public right-of-way of East Del Ray Avenue, 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 said encroachment shall at all times be subject to the following conditions:

- (a) that a minimum pedestrian pathway of five feet be maintained at all times on Mount Vernon Avenue and East Del Ray Avenue,
- (b) that the proposed canopy have a minimum vertical clearance of seven feet between its lowest point and the sidewalk,
- (c) that food being served in the outdoor seating area be protected to the point of service and all openings to such area be protected against the entrance of rodents and insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, vestibules or other means, and
- (d) that the applicant comply with the City of Alexandria's Noise Control Code, Section 11-5-1 et seq., of the Alexandria City Code, which sets the maximum permissible noise levels as measured at the property line.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall 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) 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 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 or any of its officers or employees.

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.

KERRY J. DONLEY  
Vice-Mayor

Final Passage: January 20, 1996