

ORDINANCE NO. 4048

AN ORDINANCE authorizing the current owner of the property at 1508 Mount Vernon Avenue to encroach, for purposes of providing parking for employee or customer use, into the right-of-way of the public alley which is located behind the property, and which runs between East Monroe and East Nelson Avenues, in the City of Alexandria, Virginia.

WHEREAS, Barbara Mancini (AOwner@) is the owner of the commercial property at 1508 Mount Vernon Avenue in the City of Alexandria Virginia (AProperty@); and

WHEREAS, the Property is currently developed and used as a restaurant; and

WHEREAS, Owner desires to establish and maintain parking, for use by the restaurant's employees and customers, in the right-of-way of the public alley which is located behind the Property and which runs between East Monroe and East Nelson Avenues; and

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

WHEREAS, it has been determined by the city council that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the Owner only be, and the same hereby is, authorized to establish and maintain an encroachment into the right-of-way of the public alley which is located behind the Property and which runs between East Monroe and East Nelson Avenues, said encroachment consisting of one or more parking spaces (as determined by the director of transportation & environmental services pursuant to Section 2 of this ordinance) that may only be used by the employees and customers of the restaurant that is presently operating at the Property, 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:

(a) the number of parking spaces authorized by this ordinance to be placed in the public alley which runs between East Monroe and East Nelson Avenues shall be determined by the director of transportation and environmental services, and further, Owner shall locate said space or spaces only at a location in the alley that is approved by the director; and

(b) the dumpster which Owner has been maintaining in the right-of-way of the public alley behind the Property shall, within 30 days of the enactment of this ordinance, be relocated to the location shown on the attachment to the March 31, 1999,

memorandum to the city council from the city manager, submitted as part of docket item no. 16 at the council's April 17, 1999, meeting, which attachment is attached hereto and incorporated by reference herein; and

(c) Owner shall maintain, 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 3. 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 4. 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 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 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, Virginia, 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

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

KERRY J. DONLEY
Mayor

Introduction: 5/11/99
First Reading: 5/11/99
Publication: 05/12/99; 05/13/99
Public Hearing: 05/15/99
Second Reading: 05/15/99
Final Passage: 05/15/99