

ORDINANCE NO. 4160

AN **ORDINANCE** authorizing Chicken Out, Inc., to establish and maintain an encroachment into the public right-of-way at 701 South Washington Street, in the City of Alexandria, Virginia.

WHEREAS, Chicken Out, Inc., operates a restaurant at 701 South Washington Street in the City of Alexandria, Virginia; and

WHEREAS, Chicken Out, Inc., desires to establish and maintain outdoor restaurant seating which will encroach into the public right-of-way at 701 South Washington Street; and

WHEREAS, the public right-of-way at this point on Washington 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; 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 Chicken Out, Inc., be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way at 701 South Washington Street in the City of Alexandria, for so long as Chicken Out, Inc., operates a restaurant at the said location, said encroachment consisting of outdoor restaurant seating, as shown on the attached sketch plan, 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 Chicken Out, Inc., 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 following conditions:

- (a) the outdoor seating area shall not protrude beyond the existing planting beds.
- (b) the area of permitted encroachment shall be permitted to be adjusted to be consistent with the approved site plan, if necessary to meet special use permit conditions.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Chicken Out, Inc., 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 Chicken Out, Inc., as named insureds and shall provide for the indemnification of the City of Alexandria and Chicken Out, Inc., 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, Chicken Out, Inc., 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 Chicken Out, Inc. Nothing in this section shall relieve Chicken Out, Inc., 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, Chicken Out, Inc., 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 Chicken Out, Inc., 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 Chicken Out, Inc., 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 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 Chicken Out, Inc., the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Chicken Out, Inc., without cost to the city. If Chicken Out, Inc., 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 Chicken Out, Inc., and shall not be

liable to Chicken Out, Inc., 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
Mayor

Attachment: Encroachment Sketch Plan

Introduction: 9/12/00
First Reading: 9/12/00
Publication: 9/14/00
Public Hearing: 9/16/00
Second Reading: 9/16/00
Final Passage: 9/16/00