

ORDINANCE NO. 4222

AN ORDINANCE authorizing the lessee of the property at 829 South Washington Street to establish and maintain an encroachment for restaurant seating into the public sidewalk right-of-way of 829 South Washington Street, in the City of Alexandria, Virginia.

WHEREAS, Thomas Lally, trading as Perk-Up Coffee Shop (ALessee@) is the lessee of the commercial property located at 829 South Washington Street, in the City of Alexandria, Virginia; and

WHEREAS, Lessee desires to establish and maintain nine seats at three tables for outdoor seating which will encroach into the public sidewalk right-of-way at 829 South Washington Street; and

WHEREAS, the public right-of-way at that point on 829 South 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 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; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Lessee be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way of 829 South Washington Street, in the City of Alexandria, said encroachment consisting of nine seats at three tables, as generally shown on the Encroachment Plan attached hereto, 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 Lessee of liability for any negligence on his 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 be subject to and conditioned upon Lessee maintaining, at all times and at his 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 Lessee as named insureds and shall provide for the indemnification of the City of Alexandria and Lessee 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, Lessee 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 Lessee. Nothing in this section shall relieve Lessee of his obligations and undertakings required under this ordinance.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Lessee, at his own expense, delineating the outdoor seating area with a wrought iron railing and planters similar to the railing and planters used around the outdoor seating areas at Southside 815 and Faccia Luna restaurants; provided, however, that a minimum pedestrian pathway of five feet shall be maintained between the railing and planters and the curb.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Lessee 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 Lessee'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 Lessee 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 Lessee the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Lessee without cost to the city. If Lessee 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 Lessee, and shall not be liable to Lessee 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

Introduction: 10/09/01
First Reading: 10/09/01
Publication: 10/11/01
Public Hearing: 10/13/01
Second Reading: 10/13/01
Final Passage: 10/13/01

Attachment: Encroachment Plan