

ORDINANCE NO. 4360

AN ORDINANCE to establish a pilot program for the administrative approval of outdoor dining or sidewalk cafe dining along the King Street corridor, from the Potomac River to the King Street Metro Station.

WHEREAS, the King Street Retail Advisory Committee has identified outdoor dining or sidewalk cafe dining as an important component in promoting pedestrian and retail friendly vitality in the King Street corridor from the Potomac River to the King Street Metro Station; and

WHEREAS, the fall 2004 Festival of the Arts, during which outdoor dining or sidewalk cafe dining along portions of King Street, demonstrated the desirability and feasibility of such outdoor dining; and

WHEREAS, current law requires that the City Council approve a site-specific encroachment ordinance to authorize outdoor dining in the public sidewalk right-of-way; and

WHEREAS, the City Council finds and determines that the public interest would be served by the establishment of a pilot program to permit more expeditious approval of outdoor dining or sidewalk cafe dining, which will promote pedestrian and retail friendly vitality, ensure that the public's use of the sidewalks will not be significantly impaired by such seating, and ensure that adjacent commercial and residential uses will be protected from any adverse impacts from such seating; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That outdoor dining shall be permitted to encroach into the public sidewalk right-of-way along King Street, from the Potomac River to the intersection of King

Street and Daingerfield Road, and along all streets intersecting therewith, north to Cameron Street, and south to Prince Street, as shown on the map entitled "Proposed Boundary for Outdoor Dining Pilot Program," attached hereto, until December 31, 2004; provided, that such permission shall be subject to the provisions set forth below.

Section 2. That no such encroachment shall be permitted unless and until an application therefor, which shall consist of a dimensional plan for the area which reasonably depicts the location, size and space of the seating area, chairs, tables and other facilities to be located in the public right-of-way, and such additional information as the Director may reasonably require, has been approved by the Director of Planning and Zoning, after determining that the proposed encroachment will be reasonable, attractive, and promote pedestrian and retail friendly vitality in the King Street corridor, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic. No material change to the approved plan shall be made without prior written approval by the Director.

Section 3. That any such encroachment shall be subject to the following terms and conditions:

(A) The seating area shall be adjacent to the property of an existing and lawfully operating restaurant, and outdoor dining shall be under the responsible direction and control of such restaurant.

(B) The total number of seats (both outdoor and indoor) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats. Any temporary increase in number of seats for outdoor dining in the

public sidewalk right-of-way authorized pursuant to this ordinance shall not be deemed by the Director to constitute intensification of use.

- (C) Hours of operation for the outdoor dining area shall not exceed 6:00 a.m to 11:00 p.m., seven days per week. All patrons must leave the outdoor dining area by the closing hour.
- (D) Loudspeakers shall be prohibited, and amplified sounds from inside the restaurant shall not be audible, within the encroachment area.
- (E) All furniture and fixtures placed in the right-of-way shall be temporary and shall be readily removable without any damage to the surface of the right-of-way.
- (F) The restaurant shall maintain the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other similar matter.
- (G) The restaurant shall comply with all applicable city, state and federal laws and regulations.
- (H) Such additional, reasonable terms and conditions as the Director may include in the written approval for the encroachment.

Section 4. That any such encroachment shall be subject to and conditioned upon the restaurant maintaining liability insurance, with commercially reasonable limits and coverages, including for its operation within the encroachment area, and permission to establish and maintain the encroachment shall not be construed to relieve the restaurant of liability for any negligence on the restaurant's part on account of or in connection with the encroachment.

Section 5. That by accepting the authorization granted by a permit authorized by this ordinance to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the restaurant 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 6. That the authorization granted by this ordinance to establish and maintain the encroachment is not 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. Neither the City of Alexandria nor any public utility company shall be responsible for damage to property encroaching into the public right-of-way during repair, maintenance or replacement of the public right-of-way or any public facilities or utilities in the area of encroachment.

Section 8. That the authorization granted by this ordinance 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 the restaurant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by the restaurant without cost to the city. If the restaurant 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 the restaurant, and shall not be liable to the restaurant for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.

Section 9. That no fees or charges imposed pursuant to Sections 3-2-81 through 3-2-85 of the City Code shall be applicable to encroachments authorized by this ordinance.

Section 10. That this ordinance shall be effective upon the date and at the time of its final passage, and shall expire on December 31, 2004.

WILLIAM D. EUILLE

Mayor

Attachment: Map depicting Boundary for Outdoor Dining Pilot Program

Final Passage: September 28, 2004

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