

ORDINANCE NO. 4494

AN EMERGENCY ORDINANCE to amend and reordain Section 6-800 (KING STREET OUTDOOR DINING OVERLAY ZONE), of Article VI (SPECIAL AND OVERLAY ZONES), of the City of Alexandria Zoning Ordinance, in accordance with the text amendment heretofore approved by city council as Text Amendment No. 2007-0004.

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2007-0004, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, on its own motion initiated an amendment to the regulations for the King Street Outdoor Dining Overlay Zone;

2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;

3. An emergency exists by virtue of the fact that the amended regulations are required to be adopted and in force and effect during the busy Summer 2007 season in order to secure the appropriate balance between competing uses in and along the public right-of-way, and, absent the adoption of this emergency ordinance, this balance cannot be maintained and enforced during the Council=s summer recess, and

4. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 6-800 of the City of Alexandria Zoning ordinance, be, and the same hereby is, amended to read as follows:

Sec. 6-800 King Street Outdoor Dining Overlay Zone

6-801 *Purpose.* The King Street Outdoor Dining Overlay Zone is intended to facilitate outdoor dining in Old Town in order to create an active street scape, enhance the economic and social vitality of King Street, and promote pedestrian and retail friendly activity; to allow for the use of the public right of way for such outdoor dining; and to expedite the approval of such facilities while ensuring that the public's use of the sidewalks will not be significantly impaired by such dining, and that adjacent commercial and residential uses will be protected from any adverse impacts from such dining.

6-802 *Application of overlay zone.* The King Street Outdoor Dining Overlay Zone includes the King Street corridor, 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, "King Street Outdoor Dining Overlay Zone," dated June 21, 2005.

6-803 *Administrative permit availability.* The requirements of obtaining approval of a special use permit under section 11-500 of this ordinance and of obtaining approval of an individual encroachment ordinance under section 5-2-29 of the city code otherwise applicable, shall not apply to outdoor dining facilities that meet the requirements of this section 6-800 and for which an administrative permit is approved pursuant to this section.

6-804 *Administrative permit process.*

- A. An applicant for an outdoor dining permit shall file an application with the director on such forms and subject to such procedures as the director may establish for the purpose.

- B. The application shall include a plan with dimensions showing the layout for the outdoor dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions, as well as design, location, size and space of the dining area, chairs, tables, barriers, umbrellas and other facilities to be located within the outdoor dining area, and such additional information as the director may reasonably require.
- C. The director shall review the application to determine if the proposed dining establishment, and any encroachment into the public right of way, 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.
- D. The director may approve, approve with conditions, or deny the application. The approved plan and permit shall be posted at the restaurant premises, and visible to customers and the public.
- E. No material change to the approved plan shall be made without prior written approval by the director.
- F. The outdoor dining permit shall be valid only between April 1 and the Monday before Thanksgiving of each calendar year, and shall be renewed on an annual basis. A permit fee, established pursuant to section 11-104 of this ordinance, and based on the gross square feet

of outdoor dining area, plus a minimum processing fee, shall be assessed annually.

6-805 Standards for outdoor dining.

- A. The outside dining area is to be attractive, and promote pedestrian and retail friendly vitality in the King Street corridor.
- B. The outside dining area shall be located adjacent to the property of an existing and lawfully operating restaurant and shall be under the responsible direction and control of the restaurant. It may be located adjacent to the building or near the curb but shall be contained within the location delineated by the permit.
- C. If the outdoor dining area is in a location on the property that is not in the sidewalk area in front or on the side of the restaurant, it shall be reviewed to determine whether its location supports the purpose of the zone to create an active street scape and to protect residential areas from adverse impacts.
- D. The total number of seats (both indoor and outdoors) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats, and the number of seats permitted is dependent on the amount of space available and on building and fire code requirements. Any increase in number of seats for outdoor dining in the public sidewalk approved under this section shall not be deemed by the director to constitute an intensification of use.
- E. The outdoor dining area may be open to patrons from 6:00 a.m. to

11:00 p.m. daily.

F. In order to allow adequate pedestrian traffic areas and emergency access around outdoor dining areas, the following dimensional requirements must be observed:

- (1) At least five feet, or such additional space as the director deems necessary, of unobstructed corridor space must be maintained past the outside dining area for sidewalk pedestrian traffic in order to ensure a clear pedestrian passageway along the sidewalk. In locations where the sidewalk provides additional width or where there are fewer obstructions, the director may require more than five feet. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face and curb line, for the entire length of the dining area. The director may require additional measures that contribute to maintaining a straight and unobstructed pedestrian passageway along the entire block face.
- (2) A space at least 44 inches wide for unobstructed ingress/egress must be maintained between any restaurant doorway and the pedestrian traffic corridor.
- (3) Outdoor dining areas located near the sidewalk curb must leave at least two feet of unobstructed sidewalk depth between the curb and the outer dimension of the outdoor dining area.
- (4) An unobstructed clearance of five feet must be maintained between a fire hydrant and any furniture or fixtures related to

outdoor dining.

- G. The outside dining area must be kept sanitary, neat and clean at all times. It shall be free from accumulation of food, litter, snow, ice, and other potentially dangerous or unsanitary matter. The restaurant must participate in an approved rodent control program.
- H. No food preparation is permitted in the outside dining area.
- I. Tents or awnings are not permitted without obtaining a separate building permit. Table umbrellas are permitted if they do not have signs or advertisements on them, if the umbrellas are completely contained within the outdoor dining area, even when fully extended, and if the lowest dimension of the umbrella maintains a minimum vertical clearance of six feet, eight inches above the sidewalk to allow for patron and server circulation.
- J. No signs are permitted in the outside dining area except those signs that have a valid City permit.
- K. Loudspeakers outside are prohibited, and amplified sounds from inside the restaurant must not be audible in any outside dining area on the public right of way.
- L. Any door leading into a restaurant may not be positioned to remain open or otherwise supported in an open position.
- M. The restaurant must comply with all applicable city, state and federal laws and regulations.

N. In order to serve alcoholic beverages, an application must be approved by the Virginia Department of Alcoholic Beverage Control (ABC), and it will require the following:

- (1) The dining area must have a sturdy enclosure.
- (2) There must be only one well defined entrance to the outdoor dining area and it must be located directly in front of the egress doors.
- (3) Customers are not permitted to carry their own alcohol to the outdoor dining area.
- (4) The dining area must have adequate illumination during evening hours.

O. The design of the outdoor dining facilities which are visible from the public street or way, shall comply with the following:

- (1) All improvements (furniture and fixtures) used in an outdoor dining area on the public right of way must be readily removable without damage to the surface of the right of way.
- (2) An outdoor dining area within the public right of way shall be contained by sturdy barriers in conformity with city standards.
- (3) There shall be no penetration of the public sidewalk surfaces, except that the city will, following issuance of the permit, mark the corners of the approved outdoor dining area with conspicuous markers.

- (4) The design of the area shall comply with any Board of Architectural Review approved design guidelines. The Board=s guidelines shall provide reasonably objective guidance as to acceptable colors.
- (5) Furniture and enclosures may not be stored on the public right of way for extended periods, and must be removed from the right-of-way between the Monday before Thanksgiving and March 31 of the following calendar year.
- (6) No tables which are higher than 32 inches above the ground, or seating or stools for tables which are higher than 32 inches above the ground, shall be permitted in the public right-of-way. This paragraph shall be effective April 1, 2008.

- P. The director shall, on a case-by-case basis, require adjustments to the layout, dimensions, or distance from the property line of any outdoor dining area in order to ensure pedestrian visibility of the ground floor of buildings that adjoin those with outdoor dining areas.
- Q. The applicant shall comply with such additional reasonable terms as the director may include in the permit.
- R. The restaurant operator shall not permit smoking in outdoor dining areas located in the public right-of-way.

6-806 *Additional encroachment requirements.* An outdoor dining area located within the public right of way shall also comply with the following specific requirements for encroachments:

- A. 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.
- B. 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.
- C. The authorization granted by a permit approved under this 6-800 to establish and maintain the encroachment is not intended to constitute, and shall not 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.
- D. 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.
- E. The authorization granted by a permit approved under this section 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.

- F. 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 section 6-800, but the fee established pursuant to section 6-804(F) shall be applicable.

6-807 Section controlling. In order to establish a uniform set of regulations for outdoor dining in the public right-of-way, the provisions of this section 6-800 shall supercede and preempt conflicting provisions applicable in the public right-of-way, which are included in any encroachment ordinance, special use permit or administrative permit approved prior to June 26, 2007; provided, however, that nothing in this section 6-807 shall be deemed to reduce the number of seats approved by any such ordinance or permit.

Section 2. That Section 6-800 as amended by this ordinance be, and the same hereby is, reordained as part of the City of Alexandria Zoning Ordinance.

Section 4. That this ordinance shall become effective on the date and at the time of its final passage, and shall apply to all applications for land use, land

development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which are on such date pending before any city department, agency or board, or before city council, shall apply to all such applications which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of the Zoning Ordinance; provided, however, that this emergency ordinance shall expire on December 31, 2007.

WILLIAM D. EUILLE
Mayor

Final Passage: June 26, 2007