

ORDINANCE NO. 4515

AN ORDINANCE authorizing CLPF - Old Town, L.P., and Kimpton Hotels and Restaurants, and their successors in interest, to establish and maintain an encroachment for an entrance marquee over the public right-of-way.

WHEREAS, CLPF - Old Town, L.P. (AOwner@) is the Owner of the property located at 480 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Kimpton Hotels and Restaurants (ATenant@) is the tenant of the property located at 480 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner and Tenant desire to establish and maintain an entrance marquee which will encroach over the public sidewalk right-of-way along the King Street facade of the building at 480 King Street; and

WHEREAS, the public right-of-way at that location 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 Owner and Tenant be, and the same hereby are, authorized to establish and maintain an encroachment over the public right-of-way in the City of Alexandria, said encroachment consisting of an entrance marquee, approximately thirty-one inches in length, extending approximately eight feet and two inches over the public sidewalk right-of-way of King Street, on the facade of the building at 480 King Street, as generally shown on the drawings 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 Tenant or Owner of liability for any negligence on their 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 Owner and/or Tenant maintaining, at all times and at their 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 and/or Tenant as named insureds and shall provide for the indemnification of the City of Alexandria and Owner and/or Tenant 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 and Tenant 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 and Tenant. Nothing in this section shall relieve Owner and Tenant of their obligations and undertakings required under this ordinance.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall in addition be subject to and conditioned upon the following terms:

- (a) Neither the City of Alexandria nor any public utility company shall be responsible for damage to Owner or Tenant's 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.
- (b) The Owner and Tenant shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner and Tenant 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 Owner and Tenant 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 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 Owner or Tenant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner or Tenant without cost to the city. If Owner or Tenant 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 or Tenant, and shall not be liable to Owner or Tenant for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.

Section 8. The terms AOwner@ and ATenant@ shall be deemed to include CLPF - Old Town, L.P., and Kimpton Hotels and Restaurants, and their respective successors in interest.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: January 12, 2008