

ORDINANCE NO. 4544

AN ORDINANCE authorizing the tenant of 220 North Lee Street to establish and maintain an encroachment for outdoor restaurant seating at 220 North Lee Street, in the City of Alexandria, Virginia.

WHEREAS, Atlas Partners, LLC (“Tenant”) is the Tenant of the property located at 220 N. Lee Street, in the City of Alexandria, Virginia; and

WHEREAS, Tenant desires to establish and maintain outdoor restaurant seating which will encroach into the public sidewalk right-of-way at 220 North Lee Street; and

WHEREAS, the public sidewalk right-of-way at that point on at 220 North Lee 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 Tenant be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 220 North Lee Street, in the City of Alexandria, said encroachment consisting of outdoor restaurant seating, as generally shown on the diagram 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 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 Tenant 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 Tenant as named insureds and shall provide for the indemnification of the City of Alexandria and Tenant against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment, and demands, suits and all costs related thereto, including attorney fees. 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, 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 Tenant. Nothing in this section shall relieve Tenant of his 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. No food, beverages, or other material shall be stored outside.
- b. Trash and garbage shall be stored inside or in a dumpster.
- c. Trash and garbage shall be collected daily when the business is open, except Sundays.
- d. Employees shall not be allowed to park in the rear of Crilley Warehouse during evening hours, other than to use the two (2) spaces assigned to the Tenant.
- e. Tenant shall maintain and clean the parking lot area and the adjacent alley to keep it free of litter and debris.
- f. All restaurant trash and litter shall be placed directly in the dumpsters located behind the building.
- g. No delivery trucks shall park in or block the alley, but be encouraged to park in the Lee Street "loading zone".
- h. Employees shall not loiter or engage in loud conversation in the alley and parking areas.
- i. Employees shall exit the restaurant only from the Lee Street entrance.
- j. Seating shall be provided for no more than 174 patrons total. Up to 18 seats may be located outside on private property and within the approved area of encroachment.
- k. Tenant shall post the hours of operation at the entrance to the restaurant.
- l. Tenant shall require their employees to use off-street parking.
- m. Loudspeakers shall be prohibited from the exterior of the building, and no amplified sound shall be audible at the property line outside.

n. Meals ordered before the closing hour may be served, but no new patrons be admitted and no alcoholic beverages shall be served after the closing hour, and all patrons shall leave by one hour after the closing hour.

o. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers.

p. Tenant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services.

q. Tenant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all Special Use Permit provisions and requirements, and on how to prevent underage sales of alcohol.

r. Tenant shall encourage its employees to use mass transit or to carpool when traveling to and from work, by posting information regarding DASH and METRO routes, the location where fare passes for transit are sold, and advertising of carpooling opportunities.

s. On site alcohol service is permitted; no off-premise alcohol sales are permitted.

t. Tenant shall provide storage space for solid waste and recyclable materials containers as outlined in the City's *ASolid Waste and Recyclable Materials Storage Space Guidelines@*, or to the satisfaction of the Director of Transportation & Environmental Services.

u. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public.

v. In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant shall remove any structure or projection that encroaches into the public right-of-way, within 60 days, upon notification by the City.

w. Outdoor dining shall end at 10:00 pm, daily.

x. The area of encroachment shall be limited to the width of the restaurant and four feet from the building face.

y. Tenant shall abide by the regulations of the King Street Outdoor Dining Program regarding the design and maintenance of the outdoor seating area.

z. The Director of Planning and Zoning shall review the special use permit after it has been

operational for one year, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community; (b) the director received a request from any person to docket the permit for review as the result of a complaint that rises to the level of a violation of the permit conditions, (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, 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 Tenant'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 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 Tenant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Tenant without cost to the city. If 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 Tenant, and shall not be liable to 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 term "Tenant" shall be deemed to include Atlas Partners, LLC, or any corporation or entity in which Atlas Partners, LLC has a controlling interest, and any 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

Attachment: Encroachment diagram

Final Passage: May 20, 2008