

ORDINANCE NO. 4619

AN ORDINANCE authorizing the owner of 315 Madison Street to establish and maintain an encroachment for outdoor restaurant seating at 315 Madison Street, in the City of Alexandria, Virginia.

WHEREAS, Mehran Nayeri (“Owner”) is the Owner of the property located at 315 Madison Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain outdoor restaurant seating which will encroach into the public sidewalk right-of-way at 315 Madison Street; and

WHEREAS, the public sidewalk right-of-way at that point at 315 Madison 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 Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 315 Madison 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 Owner 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 Owner 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 Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner 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, Owner 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. Nothing in this section shall relieve Owner 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. Outdoor seating is permitted subject to a seating layout plan that must be reviewed and approved by the Director of the Department of Planning & Zoning. Owner shall ensure that pedestrian access is provided past the outdoor seating and shall clean and wash the seating area at the close of each day of operation.
- B. In the event the City shall, in the future, have need for the area of the encroachment, the Owner shall remove any structure or projection that encroaches into the public right-of-way, upon notification by the City.
- C. Neither the City nor any private utility company will be held responsible for damage to the private improvements in the public right-of-way during repair, maintenance or replacement of any utilities that may be located within the area of the proposed encroachment.
- D. Owner shall place and maintain landscape planters and/or containers in the outdoor dining area, to the satisfaction of the Director of the Department of Planning & Zoning and the Director of Recreation Parks & Cultural Activities. Said planters or containers shall not obstruct pedestrian access and shall not drain directly onto the sidewalk.
- E. Owner shall abide by the regulations of the King Street Outdoor Dining Program regarding the design and maintenance of the outdoor seating area.

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 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'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 Owner the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner 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, and shall not be liable to Owner 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 "Owner" shall be deemed to include Mehran Nayeri, Nayeri LLC, a La Lucia, or any corporation or entity in which Mehran Nayeri has a controlling interest, and any successors in interest.

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

WILLIAM D. EUILLE
Mayor

Attachment: Encroachment Diagram

Final Passage: September 12, 2009