

ORDINANCE NO. 5218

AN ORDINANCE authorizing the Owner and Tenant of the property located at 600 Montgomery Street to construct and maintain an encroachment for outdoor seating at a restaurant at that location.

WHEREAS, 600 Montgomery Street, LLC, is the Owner (“Owner”) of the property located at 600 Montgomery Street, in the City of Alexandria, Virginia; and

WHEREAS, Hank’s Pasta Bar, LLC, is the Tenant (“Tenant”) of the property located at 600 Montgomery Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner and Tenant desire to establish and maintain outdoor seating at a restaurant which will encroach into the public sidewalk right-of-way at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, in Encroachment No. 2018-0012 the Planning Commission of the City of Alexandria recommended approval to the City Council subject to certain conditions at one of its regular meetings held on March 5, 2019, which recommendation was approved by the City Council at its public hearing on March 16, 2019 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 into the public sidewalk right-of-way at 600 Montgomery Street as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of outdoor seating at a restaurant, 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 or Tenant 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 or private utility company shall be responsible for damage to Owner's 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.
- (c) In the event the City shall, in the future, have need for the area of the proposed encroachment, the Owner or Tenant shall remove any structure that encroached into the public right-of-way, within 60 days, upon notification by the City.
- (d) The 22-seat outdoor dining area at the restaurant in the area of encroachment shall comply with all requirements and conditions of SUP #2018-0093.
- (e) The tree located within the area of encroachment shall be preserved and protected. If the tree becomes severely damaged by natural causes it shall be replaced to the satisfaction of the Director of Planning and Zoning.
- (f) The applicant shall maintain a minimum 6' wide unobstructed sidewalk.

- (g) The owner shall obtain and maintain a policy of general liability insurance in the amount of \$1,000,000, which will indemnify the owner (and all successors in interest) and the City of Alexandria, as Additional Insured, against claims, demands, suits and all related costs, including attorneys' fees, arising from any bodily injury or property damage which may occur as a result of this encroachment.

Please submit Insurance Certificate:

City of Alexandria

T&ES

ATTN: Heather Diez

301 King Street, Room 4130

Alexandria, VA 22314

- (h) The applicant shall bear all the cost associated with the removal of the encroachments.

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 "Owners and "Tenant" shall be deemed to include 600 Montgomery Street, LLC, and Hank's Pasta Bar, LLC, 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.

JUSTIN M. WILSON
Mayor

Attachment: Encroachment plat

Final Passage: April 13, 2019