

ORDINANCE NO. _____

AN ORDINANCE authorizing the tenant of the property located at 119 King Street to construct and maintain an encroachment into the public sidewalk right-of-way at that location for a new retractable awning.

WHEREAS, Potomac Restaurants, LLC is the tenant ("Tenant") of the property located at 119 King Street in the City of Alexandria, Virginia; and

WHEREAS, Tenant desires to install and maintain a retractable awning, 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. 2016-0009, 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 January 5, 2017, which recommendation was approved by the City Council at its public hearing on January 28, 2017, 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 119 King Street in the City of Alexandria, as shown on the attached encroachment plat, said encroachment measuring approximately 159.5 square feet and consisting of a retractable awning, 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 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 Tenant maintaining, at all times and at its own expense, general liability insurance in the amount of \$1,000,000 with a company authorized to transact business in the Commonwealth of Virginia.

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. 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

1 policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and
2 effect, the authorization herein granted to establish and maintain the encroachment shall, at the
3 option of the city, forthwith and without notice or demand by the city, terminate. In that event,
4 Tenant shall, upon notice from the city, remove the encroachment from the public right-of-way,
5 or the city, at its option, may remove the encroachment at the expense and risk of Tenant.
6 Nothing in this section shall relieve Tenant of its obligations and undertakings required under
7 this ordinance.
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9 Section 3. That the authorization hereby granted to establish and maintain said
10 encroachment shall in addition be subject to and conditioned upon the following terms:
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- 12 a) Neither the City nor any Private utility company will be held responsible for damage to
13 the private improvements in the public right-of-way during repair, maintenance or
14 replacement of any utilities that may be located within the area of the proposed
15 encroachment.
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17 b) In the event the City shall, in the future, have need for the area of the proposed
18 encroachment, the applicant shall remove any structure that encroached into the public
19 right-of-way, within 60 days, upon notification by the City.
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21 Section 4. That by accepting the authorization hereby granted to establish and
22 maintain the encroachment and by so establishing and/or maintaining the encroachment, Tenant
23 shall be deemed to have promised and agreed to save harmless the City of
24 Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by
25 reason of the establishment, construction, placement, existence, use or maintenance of the
26 encroachment.
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28 Section 5. That the authorization herein granted to establish and maintain the
29 encroachment shall be subject to Tenant maintaining the area of the encroachment at all times
30 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
31 matter.
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33 Section 6. That nothing in this ordinance is intended to constitute, or shall be
34 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
35 of its officers or employees.
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37 Section 7. That the authorization herein granted to establish and maintain the
38 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
39 public right-of-way for any purpose whatsoever and, by written notification, demands from
40 Tenant the removal of the encroachment. Said removal shall be completed by the date specified
41 in the notice and shall be accomplished by Tenant without cost to the city. If Tenant cannot be
42 found, or shall fail or neglect to remove the encroachment within the time specified, the City
43 shall have the right to remove the encroachment, at the expense of Tenant, and shall not be liable
44 to Tenant for any loss or damage to the structure of the encroachment or personal property within
the encroachment area, caused by the removal.

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2 Section 8. That this ordinance shall be effective upon the date and at the time of its
3 final passage.
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6 ALLISON SILBERBERG
7 Mayor
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9 Attachment: Encroachment Plat
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11 Introduction: February 14, 2017

12 First Reading: February 14, 2017

13 Publication:

14 Public Hearing: February 25, 2017

15 Second Reading: February 25, 2017

16 Final Passage: February 25, 2017