

ORDINANCE NO. _____

AN ORDINANCE authorizing the owner of the property located at 699 Prince Street to construct and maintain an encroachment for a marquee awning at that location.

WHEREAS, J. Street 699 Prince, LLC is the Owner ("Owner") of the property located at 699 Prince Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a marquee 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. 2018-0005 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 October 2, 2018, which recommendation was approved by the City Council at its public hearing on October 13, 2018 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 699 Prince Street as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of a marquee 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 Owner of liability for any negligence on its 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 its 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

1 This liability insurance policy shall identify the City of Alexandria and Owner as named insureds
2 and shall provide for the indemnification of the City of Alexandria and Owner against any and
3 all loss occasioned by the establishment, construction, placement, existence, use or maintenance
4 of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city
5 attorney's office. Any other provision herein to the contrary notwithstanding, in the event this
6 policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and
7 effect, the authorization herein granted to establish and maintain the encroachment shall, at the
8 option of the city, forthwith and without notice or demand by the city, terminate. In that event,
9 Owner shall, upon notice from the city, remove the encroachment from the public right-of-way,
10 or the city, at its option, may remove the encroachment at the expense and risk of Owner.
11 Nothing in this section shall relieve Owner of its obligations and undertakings required under
12 this ordinance.

13
14 Section 3. That the authorization hereby granted to establish and maintain said
15 encroachment shall in addition be subject to and conditioned upon the following terms:

- 16
17 (a) Neither the City of Alexandria nor any public or private utility company shall be
18 responsible for damage to Owners' or Tenant's property encroaching into the public
19 right-of-way during repair, maintenance or replacement of the public right-of-way or
20 any public facilities or utilities in the area of encroachment.
21
22 (b) The Owner shall be responsible for replacement and repairs to the adjacent City
23 right-of-way, including any areas damaged during construction activity.
24
25 (c) In the event the City shall, in the future, have need for the area of the proposed
26 encroachment, the Owner shall remove any structure that encroached into the public
27 right-of-way, within 60 days, upon notification by the City.
28
29 (d) Pursuant to section 5-2-29(h)(2) of the City Code: "The owner or any successor in
30 interest shall remove the encroachment if the City determines that the encroachment
31 interferes with public access or is otherwise inconsistent with the public welfare. In
32 such case, the City shall provide the owner or successor in interest with written
33 notice of the need to remove the encroachment at least 10 days prior to the date on
34 which the removal must be completed. If the owner or successor in interest cannot
35 be found or fails to remove the encroachment within the time specified, the City shall
36 have the right to remove the encroachment, at the expense of the owner or successor,
37 and shall not be liable for any loss or damage to the encroaching structure that may
38 occur as a result of the removal."
39
40 (e) The encroachment ordinance shall be approved prior to the release of the Final Site
41 Plan.
42

43 Section 4. That by accepting the authorization hereby granted to establish and
44 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner
45 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any

1 and all liability (including attorneys' fees and litigation expenses) arising by reason of the
2 establishment, construction, placement, existence, use or maintenance of the encroachment.
3

4 Section 5. That the authorization herein granted to establish and maintain the
5 encroachment shall be subject to Owner maintaining the area of the encroachment at all times
6 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
7 matter.
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9 Section 6. That nothing in this ordinance is intended to constitute, or shall be
10 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
11 of its officers or employees.
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13 Section 7. That the authorization herein granted to establish and maintain the
14 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
15 public right-of-way for any purpose whatsoever and, by written notification, demands from
16 Owner the removal of the encroachment. Said removal shall be completed by the date specified
17 in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be
18 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall
19 have the right to remove the encroachment, at the expense of Owner, and shall not be liable to
20 Owner for any loss or damage to the structure of the encroachment or personal property within
21 the encroachment area, caused by the removal.
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23 Section 8. The terms "Owner" shall be deemed to include J. Street 699 Prince, LLC
24 and its respective successors in interest.
25

26 Section 9. That this ordinance shall be effective upon the date and at the time of its
27 final passage.
28

29
30 ALLISON SILBERBERG
31 Mayor
32

33 Attachment: Encroachment plat
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35 Introduction: 11/13/18

36 First Reading: 11/13/18

37 Publication:

38 Public Hearing: 11/17/18

39 Second Reading: 11/17/18

40 Final Passage: 11/17/18
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