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Introduction and first reading: 12/14/10  
Public hearing: 12/18/10  
Second reading and enactment: 12/18/10

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing the tenant of the property located at 277 South Washington Street in the City of Alexandria, Virginia to construct and maintain an encroachment for outdoor restaurant seating at that location.

Summary

The proposed ordinance permits the restaurant located at 277 South Washington Street to establish outdoor seating in the adjacent sidewalk area.

Sponsor

Staff

Faroll Hamer, Director, Planning & Zoning  
James L. Banks, Jr., City Attorney  
Joanna C. Frizzell, Assistant City Attorney

Authority

§2.04(e), Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE authorizing the tenant of the property located at 277 South Washington Street in the City of Alexandria, Virginia to construct and maintain an encroachment for outdoor restaurant seating at that location.

WHEREAS, Cathal and Meshelle Armstrong are the Tenants (“Tenant”) of the property located at 277 South Washington 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 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. 2010-0003, 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 May 04, 2010, which recommendation was approved by the City Council at its public hearing on May 15, 2010; 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 are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 277 South Washington Street as shown in the attached Encroachment Exhibits (See Exhibits A and B), in the City of Alexandria, said encroachment consisting of outdoor restaurant seating, 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 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

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2 This liability insurance policy shall identify the City of Alexandria as named insured and shall  
3 provide for the indemnification of the City of Alexandria against any and all loss occasioned by  
4 the establishment, construction, placement, existence, use or maintenance of the encroachment.  
5 Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any  
6 other provision herein to the contrary notwithstanding, in the event this policy of insurance  
7 lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization  
8 herein granted to establish and maintain the encroachment shall, at the option of the city,  
9 forthwith and without notice or demand by the city, terminate. In that event, Tenant shall, upon  
10 notice from the city, remove the encroachment from the public right-of-way, or the city, at its  
11 option, may remove the encroachment at the expense and risk of Tenant. Nothing in this section  
12 shall relieve Tenant of their obligations and undertakings required under 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 Tenant's property encroaching into the public right-of-way during  
19 repair, maintenance or replacement of the public right-of-way or any public facilities or utilities  
20 in the area of encroachment.  
21

22 (b) The Tenant 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) A minimum of 7 feet of unobstructed sidewalk shall be maintained.  
26

27 (d) In the event the City shall, in the future, have need for the area of the proposed  
28 encroachment, the applicant shall remove any structure that encroached into the public right-of-  
29 way, within 60 days, upon notification by the City.  
30

31 Section 4. That by accepting the authorization hereby granted to establish and  
32 maintain the encroachment and by so establishing and/or maintaining the encroachment, Tenant  
33 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any  
34 and all liability (including attorneys' fees and litigation expenses) arising by reason of the  
35 establishment, construction, placement, existence, use or maintenance of the encroachment.  
36

37 Section 5. That the authorization herein granted to establish and maintain the  
38 encroachment shall be subject to Tenant maintaining the area of the encroachment at all times  
39 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous  
40 matter.  
41

42 Section 6. That nothing in this ordinance is intended to constitute, or shall be  
43 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any  
44 of its officers or employees.  
45

1 Section 7. That the authorization herein granted to establish and maintain the  
2 encroachment shall be terminated whenever the City of Alexandria desires to use the affected  
3 public right-of-way for any purpose whatsoever and, by written notification, demands from  
4 Tenant the removal of the encroachment. Said removal shall be completed by the date specified  
5 in the notice and shall be accomplished by Tenant without cost to the city. If Tenant cannot be  
6 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall  
7 have the right to remove the encroachment, at the expense of Tenant, and shall not be liable to  
8 Tenant for any loss or damage to the structure of the encroachment or personal property within  
9 the encroachment area, caused by the removal.

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11 Section 8. The term "Tenant" shall be deemed to include Cathal and Meshelle  
12 Armstrong and their respective successors in interest to the tenancy at 277 South Washington  
13 Street.

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

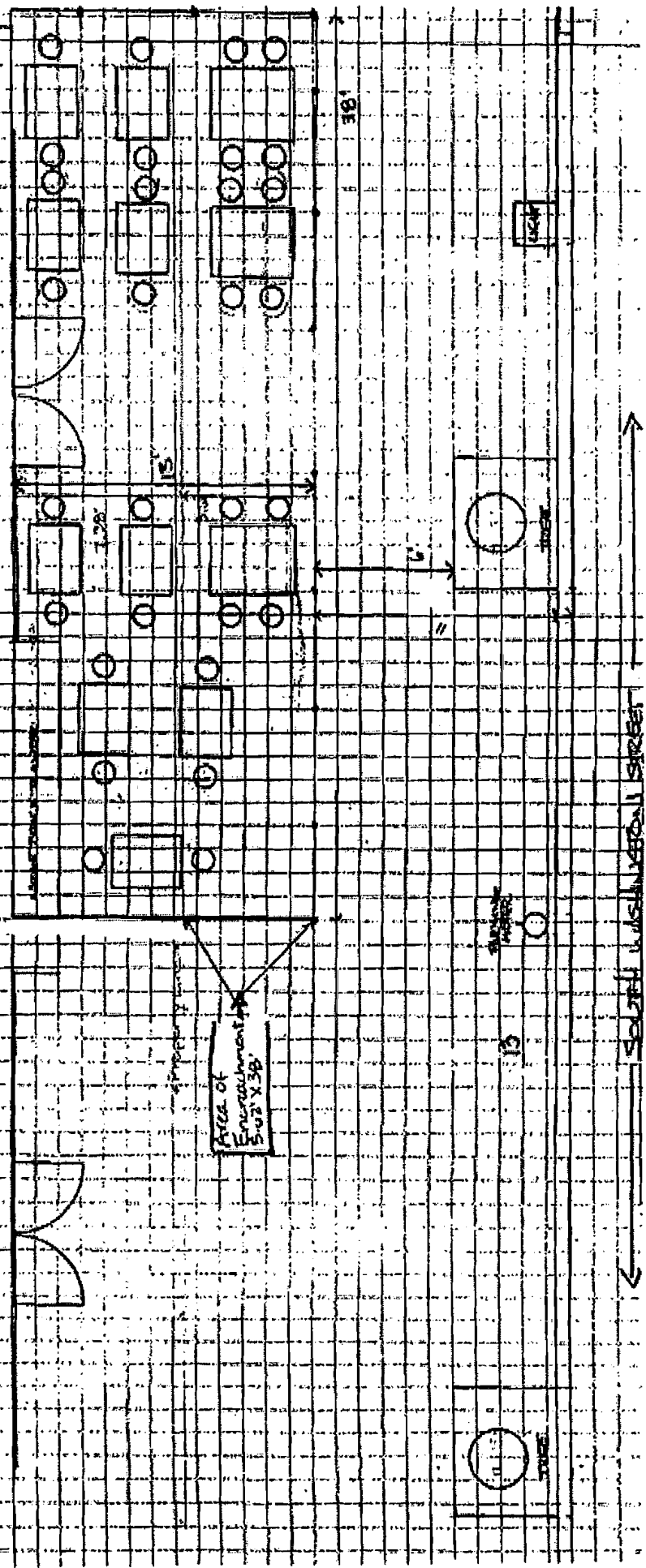
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19 WILLIAM D. EUILLE  
20 Mayor

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22 Attachment: Encroachment Exhibits

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24 Introduction: 12/14/10  
25 First Reading: 12/14/10  
26 Publication:  
27 Public Hearing:  
28 Second Reading:  
29 Final Passage:  
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Plan # 13

Scale 1 square = 1 foot



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