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City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 9, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: CONSIDERATION OF AN ORDINANCE TO PERMIT OUTDOOR DINING ON THE PUBLIC RIGHT-OF-WAY ALONG KING STREET AND ADJOINING STREETS IN OLD TOWN

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**ISSUE:** City Council consideration of an ordinance to permit the approval of sidewalk cafe dining on the public right-of-way along King Street and its intersecting streets in Old Town.

**RECOMMENDATION:** That City Council pass the ordinance on first reading, and schedule it for public hearing, second reading and final passage on Tuesday, June 21.

**DISCUSSION:** In September 2004, City Council passed a temporary pilot program to permit the approval of outdoor dining on the public right-of-way along King Street and its intersecting streets in Old Town. City Council passed an extension to this pilot program in February 2005, which extended the program through the end of 2005. This ordinance under consideration will create a permanent mechanism for outdoor dining within the overlay zone area.

During the course of 2004, the City embarked on a *King Street Retail Strategy*, aimed at strengthening the retail competitiveness of Alexandria's historic main street. Sidewalk cafe dining emerged as a suggestion for adding a favorable new aspect to King Street's retail and restaurant environment – specifically to increase street-level vitality and to create a more interesting retail experience for shoppers and restaurant patrons. These goals are seen as important to King Street, as its retail and restaurant sectors face increased competition from other shopping districts in the region. Many of these other areas are successful at achieving these same goals, and have been and will continue to draw retail and restaurant patronage away from Alexandria if King Street does not provide the amenities and atmosphere that customers have come to expect.

The pilot programs have been very successful – both residents and business owners have been generally enthusiastic about the program, and there is support for continuing such a program on a permanent basis.

The pilot programs have also been instructive to the City for determining the optimal types of standards for sidewalk cafes in order to ensure that a safe and usable public sidewalk is maintained

and health and safety standards are upheld. Many of the conditions drafted into the pilot programs are proposed to be carried forth into this ordinance, such as the number of permitted outdoor seats (20 maximum), hours of service (no later than 11:00 p.m.), and health precautions (no outside food preparation, and a requirement that restaurants participate in an approved rodent control program).

Certain other required standards in the proposed ordinance have been amended from the earlier pilot programs, in order to more accurately reflect the conditions along King Street and to improve pedestrian access and safety. For example:

- To improve pedestrian circulation, restaurants will be required to maintain at least five feet of unobstructed sidewalk space (the pilot program permitted case-by-case reductions to four feet in width).
- To further reduce the possibility of pedestrian hazards, table umbrellas will not be permitted to overhang the outdoor dining area boundaries, whereas such overhanging umbrellas were permitted in the pilot programs.
- To address concerns that sidewalk cafes could obstruct customers' views into adjacent retail establishments, the Director of Planning and Zoning may require adjustments to a cafe's layout, dimensions, or distance from the property line on a case-by-case basis.
- To ensure that outdoor dining furniture and fixtures are visually consistent with the surrounding historic area, the design of outdoor dining areas must comply with any design guidelines approved by the Old and Historic Alexandria Board of Architectural Review for that purpose. These design guidelines which are being developed will recommend a palette of approved types of furniture and fixtures to give restaurateurs maximum flexibility while ensuring quality and appropriate design. Additionally, steps will be taken to keep the outdoor dining areas attractive throughout the year, including:
  - All furniture and fixtures must be readily removable without damage to the surface of the right-of-way.
  - There may be no penetration of the public sidewalk surfaces, except that the City will mark the corners of the approved outdoor dining area with conspicuous markers.
  - Furniture and enclosures must be removed and may not be stored on the public right-of-way for extended periods, such as during the winter months.

Upon approval of the Outdoor Dining Overlay Zone on May 14, 2005, City Council requested that the ordinance take effect as of January 1, 2006, with the pilot program remaining in effect for the remainder of 2005. This will permit the pilot program to expire after the summer and fall seasons, thus giving the City the ability to draft design guidelines and to potentially address unforeseen circulation-related issues prior to the effective date of the permanent ordinance.

**ATTACHMENTS:**

Attachment 1. Proposed Ordinance

Attachment 2. Map of Proposed Outdoor Dining Overlay Zone

Attachment 3. Outdoor Dining Overlay Zone

**STAFF:**

Eileen Fogarty, Director, Department of Planning and Zoning

Kimberley Fogle, Chief, Neighborhood Planning and Community Development

Eric Forman, Urban Planner

1	Introduction and first reading:	6/14/2005
2	Public hearing:	6/21/2005
3	Second reading and enactment:	6/21/2005

INFORMATION ON PROPOSED ORDINANCE

Title

10 AN ORDINANCE to amend and reordain the "Official Zoning Map, Alexandria, Virginia,"  
 11 adopted by Section 1-300 (OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES); to  
 12 add a new Section 6-800 (KING STREET OUTDOOR DINING OVERLAY ZONE) to  
 13 Article VI (SPECIAL AND OVERLAY ZONES), of the City of Alexandria Zoning  
 14 Ordinance, in accordance with the said zoning map and text amendments heretofore  
 15 approved by city council as Rezoning No. 2005-0005 and Text Amendment No. 2005-0003.

Summary

18 The proposed ordinance accomplishes the final adoption of Rezoning No. 2005-0005 and  
 19 Text Amendment No. 2005-0003, to implement the King Street outdoor Dining Overlay  
 20 Zone.

Sponsor

24 Department of Planning and Zoning

Staff

28 Eileen P. Fogarty, Director of Planning and Zoning  
 29 Ignacio B. Pessoa, City Attorney

Authority

33 §§ 2.04(w), 9.12, Alexandria City Charter  
 34 § 11-800, City of Alexandria Zoning Ordinance

Estimated Costs of Implementation

39 None

Attachments in Addition to Proposed Ordinance

44 None

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

AN ORDINANCE to amend and reordain the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 (OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES); to add a new Section 6-800 (KING STREET OUTDOOR DINING OVERLAY ZONE) to Article VI (SPECIAL AND OVERLAY ZONES), of the City of Alexandria Zoning Ordinance, in accordance with the said zoning map and text amendments heretofore approved by city council as Rezoning No. 2005-0005 and Text Amendment No. 2005-0003.

WHEREAS, the City Council finds and determines that:

1. In Rezoning No. 2005-0005 and Text Amendment No. 2005-0003, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, on its own motion initiated the comprehensive rezoning of the area comprising the King Street Outdoor Dining Overlay Zone;

2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;

3. The said rezoning is in conformity with the 1992 Master Plan (1998 ed.) of the City of Alexandria, Virginia, as amended, and

4. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 of the City of Alexandria Zoning Ordinance, be, and the same hereby is, amended by establishing the King Street Outdoor Zoning Overlay Zone, as shown on the sketch plan entitled "Proposed King Street Outdoor Dining Overlay Zone, TA #2005-0003, REZ #2005-0005," dated April 5, 2005, Exhibit 1, attached hereto and incorporated fully by reference.

Section 2. That Article 6 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto a new Section 6-800, as shown on Exhibits 2-1 through 2-5, inclusive, attached hereto and incorporated fully by reference.

Section 3. That the director of planning and zoning be, and hereby is, directed to record the foregoing map and text amendments.

Section 4. That the Sheets of the "Official Zoning Map, Alexandria, Virginia," as amended pursuant to Sections 1 of this ordinance and Article 6, as amended pursuant to Section 2 of this ordinance be, and the same hereby are, reordained as part of the City of Alexandria Zoning Ordinance.

1 Section 4. That this ordinance shall become effective on January 1, 2006, and  
2 shall apply to all applications for land use, land development or subdivision approval provided  
3 for under the City of Alexandria Zoning Ordinance which are on such date pending before any  
4 city department, agency or board, or before city council, shall apply to all such applications  
5 which may be filed after such date, and shall apply to all other facts and circumstances subject to  
6 the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article  
7 XII of the Zoning Ordinance.  
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10 WILLIAM D. EUILLE  
11 Mayor  
12

13 Attachments: Exhibit 1 [Page 101, Docket Item No. 8, May 14, 2005 Public Hearing Meeting]  
14 Exhibits 2-1 through 2-5  
15

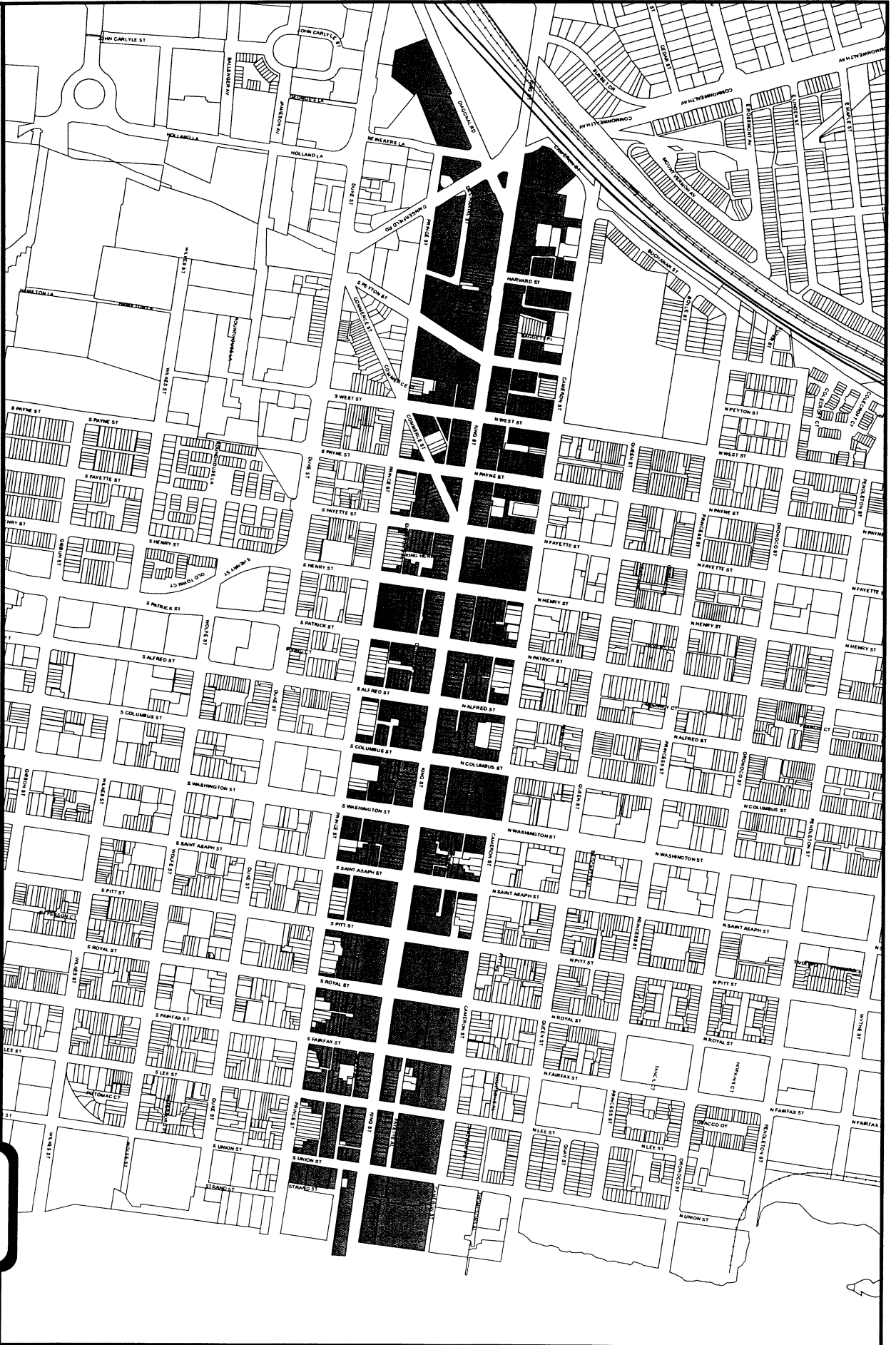
16 Introduction: 6/14/2005  
17 First Reading: 6/14/2005  
18 Publication:  
19 Public Hearing:  
20 Second Reading:  
21 Final Passage:  
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TA #2005-0003  
 REZ #2005-0005

Proposed Outdoor Dining Overlay Zone



ALL-STATE LEGAL®  
 EXHIBIT



1     Sec.   6-800 King Street Outdoor Dining Overlay Zone

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3     6-801 *Purpose.* The King Street Outdoor Dining Overlay Zone is intended to facilitate  
4 outdoor dining in Old Town in order to create an active streetscape, enhance the  
5 economic and social vitality of King Street, and promote pedestrian and retail  
6 friendly activity; to allow for the use of the public right of way for such outdoor  
7 dining; and to expedite the approval of such facilities while ensuring that the  
8 public’s use of the sidewalks will not be significantly impaired by such dining,  
9 and that adjacent commercial and residential uses will be protected from any  
10 adverse impacts from such dining.

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12     6-802 *Application of overlay zone.* The King Street Outdoor Dining Overlay Zone  
13 includes the King Street corridor, from the Potomac River to the intersection of  
14 King Street and Daingerfield Road, and along all streets intersecting therewith,  
15 north to Cameron Street and south to Prince Street, as shown on the map entitled,  
16 “King Street Outdoor Dining Overlay Zone,” dated \_\_\_\_\_(date of  
17 adoption).

18  
19     6-803 *Administrative permit availability.* The requirements of obtaining approval of a  
20 special use permit under section 11-500 of this ordinance and of obtaining  
21 approval of an individual encroachment ordinance under section 5-2-29 of the city  
22 code otherwise applicable, shall not apply to outdoor dining facilities that meet  
23 the requirements of this section 6-800 and for which an administrative permit is  
24 approved pursuant to this section.

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26     6-804 *Administrative permit process.*

- 27  
28     A.     An applicant for an outdoor dining permit shall file an application with the  
29 director on such forms and subject to such procedures as the director may  
30 establish for the purpose.  
31  
32     B.     The application shall include a plan with dimensions showing the layout  
33 for the outdoor dining area which accurately depicts the design, location,  
34 size and space of the dining area, chairs, tables, barriers, umbrellas and  
35 other facilities to be located within the outdoor dining area, and such  
36 additional information as the director may reasonably require.  
37  
38     C.     The director shall review the application to determine if the proposed  
39 dining establishment, and any encroachment into the public right of way,  
40 will be reasonable, attractive, and promote pedestrian and retail friendly  
41 vitality in the King Street corridor, and that there is adequate space  
42 remaining within the public right of way to facilitate safe circulation of  
43 pedestrian traffic.  
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2 D. The director may approve, approve with conditions, or deny the  
3 application.

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7 E. No material change to the approved plan shall be made without prior  
8 written approval by the director.

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10 6-805 *Standards for outdoor dining.*

11  
12 A. The outside dining area is to be attractive, and promote pedestrian and  
13 retail friendly vitality in the King Street corridor.

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15 B. The outside dining area shall be located adjacent to the property of an  
16 existing and lawfully operating restaurant and shall be under the  
17 responsible direction and control of the restaurant. It may be located  
18 adjacent to the building or near the curb but shall be contained within the  
19 location delineated by the permit.

20  
21 C. If the outdoor dining area is in a location on the property that is not in the  
22 sidewalk area in front or on the side of the restaurant, it shall be reviewed  
23 to determine whether its location supports the purpose of the zone to  
24 create an active streetscape and to protect residential areas from adverse  
25 impacts.

26  
27 D. The total number of seats (both indoor and outdoors) shall not exceed the  
28 restaurant's previously approved maximum number of seats by more than  
29 20 seats, and the number of seats permitted is dependent on the amount of  
30 space available and on building and fire code requirements. Any increase  
31 in number of seats for outdoor dining in the public sidewalk approved  
32 under this section shall not be deemed by the director to constitute an  
33 intensification of use.

34  
35 E. The outdoor dining area may be open to patrons from 6:00 a.m. to 11:00  
36 p.m. daily.

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38 F. In order to allow adequate pedestrian traffic areas and emergency access  
39 around outdoor dining areas, the following dimensional requirements must  
40 be observed:

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42 (1) At least five feet of unobstructed corridor space must be  
43 maintained past the outside dining area for sidewalk pedestrian  
44 traffic in order to ensure a clear pedestrian passageway along the  
45 sidewalk.  
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- 1 (2) A space at least 44 inches wide for unobstructed ingress/egress  
2 must be maintained between any restaurant doorway and the  
3 pedestrian traffic corridor.
- 4
- 5 (3) Outdoor dining areas located near the sidewalk curb must leave at  
6 least two feet of unobstructed sidewalk depth between the curb and  
7 the outer dimension of the outdoor dining area.
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- 9 (4) An unobstructed clearance of five feet must be maintained between  
10 a fire hydrant and any furniture or fixtures related to outdoor  
11 dining.
- 12
- 13 G. The outside dining area must be kept sanitary, neat and clean at all times.  
14 It shall be free from accumulation of food, litter, snow, ice, and other  
15 potentially dangerous or unsanitary matter. The restaurant must participate  
16 in an approved rodent control program.
- 17
- 18 H. No food preparation is permitted in the outside dining area.
- 19
- 20 I. Tents or awnings are not permitted without obtaining a separate building  
21 permit. Table umbrellas are permitted if they do not have signs or  
22 advertisements on them, if the umbrellas are completely contained within  
23 the outdoor dining area, even when fully extended, and if the lowest  
24 dimension of the umbrella maintains a minimum vertical clearance of  
25 seven feet above the sidewalk to allow for patron and server circulation.
- 26
- 27 J. No signs are permitted in the outside dining area except those signs that  
28 have a valid City permit.
- 29
- 30 K. Loudspeakers outside are prohibited, and amplified sounds from inside the  
31 restaurant must not be audible in any outside dining area on the public  
32 right of way.
- 33
- 34 L. Any door leading into a restaurant may not be positioned to remain open  
35 or otherwise supported in an open position.
- 36
- 37 M. The restaurant must comply with all applicable city, state and federal laws  
38 and regulations.
- 39
- 40 N. In order to serve alcoholic beverages, an application must be approved by  
41 the Virginia Department of Alcoholic Beverage Control (ABC), and it will  
42 require the following:  
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  - 44 (1) The dining area must have a sturdy enclosure.
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  - 46 (2) There must be only one well defined entrance to the outdoor dining

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area and it must be located directly in front of the egress doors.

- (3) Customers are not permitted to carry their own alcohol to the outdoor dining area.
- (4) The dining area must have adequate illumination during evening hours.

O. The design of the outdoor dining facilities which are visible from the public street or way, shall comply with the following:

- (1) All improvements (furniture and fixtures) used in an outdoor dining area on the public right of way must be readily removable without damage to the surface of the right of way.
- (2) An outdoor dining area within the public right of way shall be contained by sturdy barriers in conformity with city standards.
- (3) There shall be no penetration of the public sidewalk surfaces, except that the city will, following issuance of the permit, mark the corners of the approved outdoor dining area with conspicuous markers.
- (4) The design of the area shall comply with any Board of Architectural Review approved design guidelines.
- (5) Furniture and enclosures must be removed and may not be stored on the public right of way for extended periods, such as during the winter months.

P. The director shall, on a case-by-case basis, require adjustments to the layout, dimensions, or distance from the property line of any outdoor dining area in order to ensure pedestrian visibility of the ground floor of buildings that adjoin those with outdoor dining areas.

Q. The applicant shall comply with such additional reasonable terms as the director may include in the permit.

6-806 *Additional encroachment requirements.* An outdoor dining area located within the public right of way shall also comply with the following specific requirements for encroachments:

A. Any such encroachment shall be subject to and conditioned upon the restaurant maintaining liability insurance, with commercially reasonable limits and coverages, including for its operation within the encroachment area, and permission to establish and maintain the encroachment shall not

1 be construed to relieve the restaurant of liability for any negligence on the  
2 restaurant's part on account of or in connection with the encroachment.  
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4 B. By accepting the authorization granted by a permit authorized by this  
5 ordinance to establish and maintain the encroachment and by so  
6 establishing and/or maintaining the encroachment, the restaurant shall be  
7 deemed to have promised and agreed to save harmless the City of  
8 Alexandria from any and all liability (including attorneys' fees and  
9 litigation expenses) arising by reason of the establishment, construction,  
10 placement, existence, use or maintenance of the encroachment.  
11

12 C. The authorization granted by a permit approved under this 6-800 to  
13 establish and maintain the encroachment is not intended to constitute, and  
14 shall not be deemed to be, a waiver of sovereign immunity by or on behalf  
15 of the City of Alexandria or any of its officers or employees.  
16

17 D. Neither the City of Alexandria nor any public utility company shall be  
18 responsible for damage to property encroaching into the public right of way  
19 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 E. The authorization granted by a permit approved under this section to  
23 establish and maintain the encroachment shall be terminated whenever the  
24 City of Alexandria desires to use the affected public right of way for any  
25 purpose whatsoever and, by written notification, demands from the  
26 restaurant the removal of the encroachment. Said removal shall be  
27 completed by the date specified in the notice and shall be accomplished by  
28 the restaurant without cost to the City. If the restaurant shall fail or neglect  
29 to remove the encroachment within the time specified, the city shall have  
30 the right to remove the encroachment, at the expense of the restaurant, and  
31 shall not be liable to the restaurant for any loss or damage to the structure  
32 of the encroachment or personal property within the encroachment area,  
33 caused by the removal.  
34

35 F. No fees or charges imposed pursuant to sections 3-2-81 through 3-2-85 of  
36 the city code shall be applicable to encroachments authorized by this  
37 section 6-800.  
38  
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ORDINANCE NO. 4414

AN ORDINANCE to amend and reordain the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 (OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES); to add a new Section 6-800 (KING STREET OUTDOOR DINING OVERLAY ZONE) to Article VI (SPECIAL AND OVERLAY ZONES), of the City of Alexandria Zoning Ordinance, in accordance with the said zoning map and text amendments heretofore approved by city council as Rezoning No. 2005-0005 and Text Amendment No. 2005-0003.

WHEREAS, the City Council finds and determines that:

1. In Rezoning No. 2005-0005 and Text Amendment No. 2005-0003, the planning commission, having found that the public necessity, convenience, general welfare and good zoning practice so require, on its own motion initiated the comprehensive rezoning of the area comprising the King Street Outdoor Dining Overlay Zone;
2. The City Council in adopting this ordinance expressly adopts, ratifies, affirms and concurs in the finding and action of the Planning Commission above stated;
3. The said rezoning is in conformity with the 1992 Master Plan (1998 ed.) of the City of Alexandria, Virginia, as amended, and
4. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the "Official Zoning Map, Alexandria, Virginia," adopted by Section 1-300 of the City of Alexandria Zoning Ordinance, be, and the same hereby is, amended by establishing the King Street Outdoor Zoning Overlay Zone, as shown on the sketch plan entitled "Proposed King Street Outdoor Dining Overlay Zone, TA #2005-0003, REZ #2005-0005," dated April 5, 2005, Exhibit 1, attached hereto and incorporated fully by reference.

Section 2. That Article 6 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto a new Section 6-800, as shown on Exhibits 2-1 through 2-5, inclusive, attached hereto and incorporated fully by reference.

Section 3. That the director of planning and zoning be, and hereby is, directed to record the foregoing map and text amendments.

Section 4. That the Sheets of the "Official Zoning Map, Alexandria, Virginia," as amended pursuant to Sections 1 of this ordinance and Article 6, as amended pursuant to Section 2 of this ordinance be, and the same hereby are, reordained as part of the City of Alexandria Zoning Ordinance.

Section 4. That this ordinance shall become effective on January 1, 2006, and shall apply to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which are on such date pending before any city department, agency or board, or before city council, shall apply to all such applications which may be filed after such date, and shall apply to all other facts and circumstances subject to the provisions of the City of Alexandria Zoning Ordinance, except as may be provided in Article XII of the Zoning Ordinance.

WILLIAM D. EUILLE  
Mayor

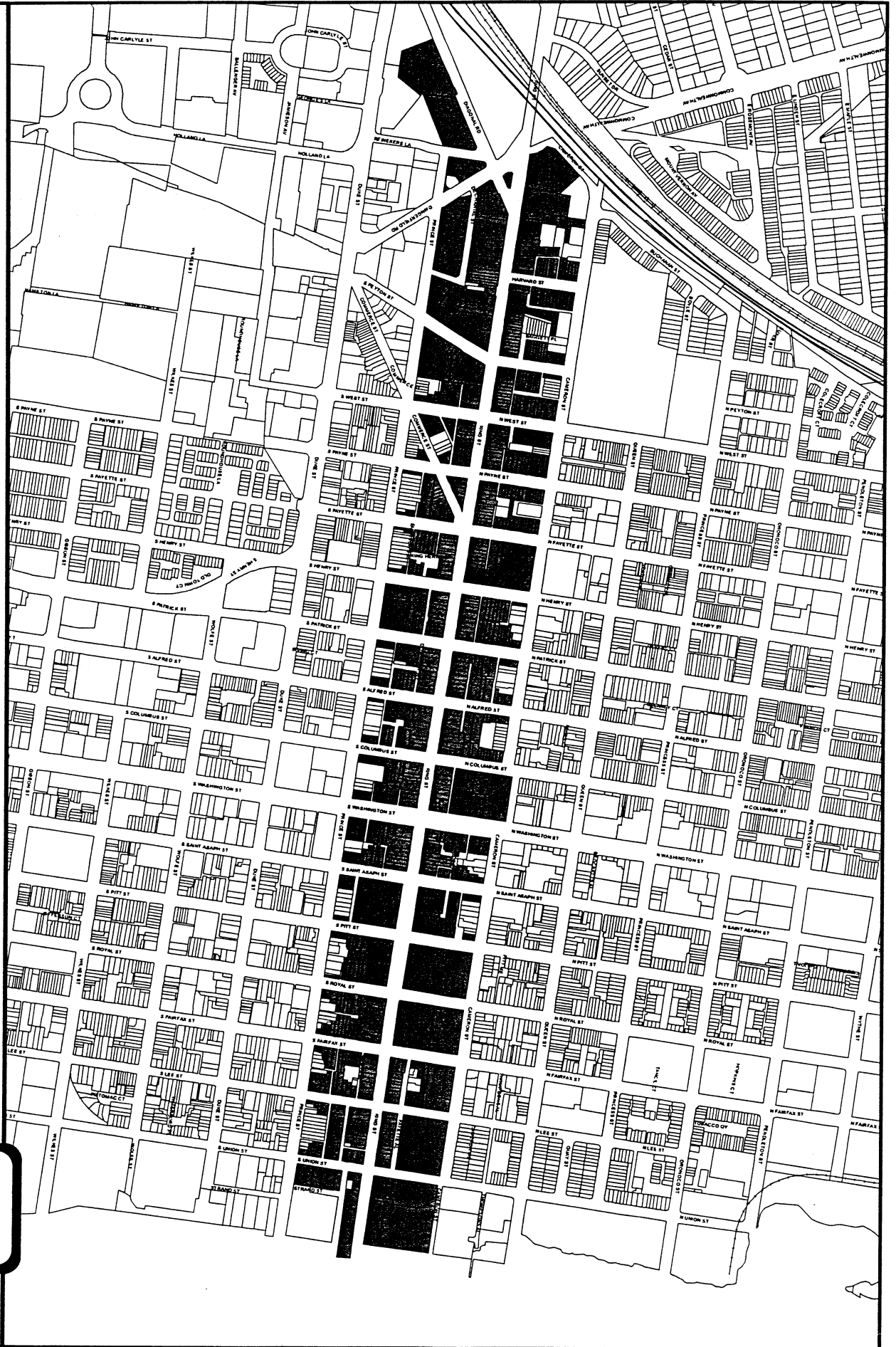
Attachments: Exhibit 1  
Exhibits 2-1 through 2-5

Final Passage: June 21, 2005



TA #2005-0003  
 REZ #2005-0005

Proposed Outdoor Dining Overlay Zone



ALL-STATE LEGAL®

EXHIBIT

1



Sec. 6-800 King Street Outdoor Dining Overlay Zone

- 6-801 *Purpose.* The King Street Outdoor Dining Overlay Zone is intended to facilitate outdoor dining in Old Town in order to create an active streetscape, enhance the economic and social vitality of King Street, and promote pedestrian and retail friendly activity; to allow for the use of the public right of way for such outdoor dining; and to expedite the approval of such facilities while ensuring that the public's use of the sidewalks will not be significantly impaired by such dining, and that adjacent commercial and residential uses will be protected from any adverse impacts from such dining.
- 6-802 *Application of overlay zone.* The King Street Outdoor Dining Overlay Zone includes the King Street corridor, from the Potomac River to the intersection of King Street and Daingerfield Road, and along all streets intersecting therewith, north to Cameron Street and south to Prince Street, as shown on the map entitled, "King Street Outdoor Dining Overlay Zone," dated 6/21/05 (date of adoption).
- 6-803 *Administrative permit availability.* The requirements of obtaining approval of a special use permit under section 11-500 of this ordinance and of obtaining approval of an individual encroachment ordinance under section 5-2-29 of the city code otherwise applicable, shall not apply to outdoor dining facilities that meet the requirements of this section 6-800 and for which an administrative permit is approved pursuant to this section.
- 6-804 *Administrative permit process.*
- A. An applicant for an outdoor dining permit shall file an application with the director on such forms and subject to such procedures as the director may establish for the purpose.
  - B. The application shall include a plan with dimensions showing the layout for the outdoor dining area which accurately depicts the design, location, size and space of the dining area, chairs, tables, barriers, umbrellas and other facilities to be located within the outdoor dining area, and such additional information as the director may reasonably require.
  - C. The director shall review the application to determine if the proposed dining establishment, and any encroachment into the public right of way, will be reasonable, attractive, and promote pedestrian and retail friendly vitality in the King Street corridor, and that there is adequate space remaining within the public right of way to facilitate safe circulation of pedestrian traffic.



- D. The director may approve, approve with conditions, or deny the application.
- E. No material change to the approved plan shall be made without prior written approval by the director.

6-805 *Standards for outdoor dining.*

- A. The outside dining area is to be attractive, and promote pedestrian and retail friendly vitality in the King Street corridor.
- B. The outside dining area shall be located adjacent to the property of an existing and lawfully operating restaurant and shall be under the responsible direction and control of the restaurant. It may be located adjacent to the building or near the curb but shall be contained within the location delineated by the permit.
- C. If the outdoor dining area is in a location on the property that is not in the sidewalk area in front or on the side of the restaurant, it shall be reviewed to determine whether its location supports the purpose of the zone to create an active streetscape and to protect residential areas from adverse impacts.
- D. The total number of seats (both indoor and outdoors) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats, and the number of seats permitted is dependent on the amount of space available and on building and fire code requirements. Any increase in number of seats for outdoor dining in the public sidewalk approved under this section shall not be deemed by the director to constitute an intensification of use.
- E. The outdoor dining area may be open to patrons from 6:00 a.m. to 11:00 p.m. daily.
- F. In order to allow adequate pedestrian traffic areas and emergency access around outdoor dining areas, the following dimensional requirements must be observed:
  - (1) At least five feet of unobstructed corridor space must be maintained past the outside dining area for sidewalk pedestrian traffic in order to ensure a clear pedestrian passageway along the sidewalk.
  - (2) A space at least 44 inches wide for unobstructed ingress/egress must be maintained between any restaurant doorway and the pedestrian traffic corridor.
  - (3) Outdoor dining areas located near the sidewalk curb must leave at least two feet of unobstructed sidewalk depth between the curb and the outer dimension of the outdoor dining area.

- (4) An unobstructed clearance of five feet must be maintained between a fire hydrant and any furniture or fixtures related to outdoor dining.
- G. The outside dining area must be kept sanitary, neat and clean at all times. It shall be free from accumulation of food, litter, snow, ice, and other potentially dangerous or unsanitary matter. The restaurant must participate in an approved rodent control program.
- H. No food preparation is permitted in the outside dining area.
- I. Tents or awnings are not permitted without obtaining a separate building permit. Table umbrellas are permitted if they do not have signs or advertisements on them, if the umbrellas are completely contained within the outdoor dining area, even when fully extended, and if the lowest dimension of the umbrella maintains a minimum vertical clearance of seven feet above the sidewalk to allow for patron and server circulation.
- J. No signs are permitted in the outside dining area except those signs that have a valid City permit.
- K. Loudspeakers outside are prohibited, and amplified sounds from inside the restaurant must not be audible in any outside dining area on the public right of way.
- L. Any door leading into a restaurant may not be positioned to remain open or otherwise supported in an open position.
- M. The restaurant must comply with all applicable city, state and federal laws and regulations.
- N. In order to serve alcoholic beverages, an application must be approved by the Virginia Department of Alcoholic Beverage Control (ABC), and it will require the following:
  - (1) The dining area must have a sturdy enclosure.
  - (2) There must be only one well defined entrance to the outdoor dining area and it must be located directly in front of the egress doors.
  - (3) Customers are not permitted to carry their own alcohol to the outdoor dining area.
  - (4) The dining area must have adequate illumination during evening hours.

- O. The design of the outdoor dining facilities which are visible from the public street or way, shall comply with the following:
- (1) All improvements (furniture and fixtures) used in an outdoor dining area on the public right of way must be readily removable without damage to the surface of the right of way.
  - (2) An outdoor dining area within the public right of way shall be contained by sturdy barriers in conformity with city standards.
  - (3) There shall be no penetration of the public sidewalk surfaces, except that the city will, following issuance of the permit, mark the corners of the approved outdoor dining area with conspicuous markers.
  - (4) The design of the area shall comply with any Board of Architectural Review approved design guidelines.
  - (5) Furniture and enclosures must be removed and may not be stored on the public right of way for extended periods, such as during the winter months.
- P. The director shall, on a case-by-case basis, require adjustments to the layout, dimensions, or distance from the property line of any outdoor dining area in order to ensure pedestrian visibility of the ground floor of buildings that adjoin those with outdoor dining areas.
- Q. The applicant shall comply with such additional reasonable terms as the director may include in the permit.

6-806 *Additional encroachment requirements.* An outdoor dining area located within the public right of way shall also comply with the following specific requirements for encroachments:

- A. Any such encroachment shall be subject to and conditioned upon the restaurant maintaining liability insurance, with commercially reasonable limits and coverages, including for its operation within the encroachment area, and permission to establish and maintain the encroachment shall not be construed to relieve the restaurant of liability for any negligence on the restaurant's part on account of or in connection with the encroachment.
- B. By accepting the authorization granted by a permit authorized by this ordinance to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the restaurant 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.

- C. The authorization granted by a permit approved under this 6-800 to establish and maintain the encroachment is not intended to constitute, and shall not 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.
- D. Neither the City of Alexandria nor any public utility company shall be responsible for damage to 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.
- E. The authorization granted by a permit approved under this section 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 the restaurant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by the restaurant without cost to the City. If the restaurant 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 the restaurant, and shall not be liable to the restaurant for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.
- F. No fees or charges imposed pursuant to sections 3-2-81 through 3-2-85 of the city code shall be applicable to encroachments authorized by this section 6-800.