

CITY COUNCIL OF ALEXANDRIA, VIRGINIA

**Public Hearing Meeting
Saturday, January 12, 2008 - - 9:30 a.m.**

Present: Mayor William D. Euille, Vice Mayor Redella S. Pepper, Members of Council Ludwig P. Gaines, K. Rob Krupicka, Timothy B. Lovain, Paul C. Smedberg and Justin M. Wilson.

Absent: None.

Also Present: Mr. Hartmann, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Ms. Hamer, Director, Planning and Zoning (P&Z); Mr. Josephson, Deputy Director, P&Z; Mr. Culpepper, Deputy Director, Transportation and Environmental Services; Mr. Farner, Division Chief, P&Z; Mr. Mason, Special Assistant to the City Manager, City Manager's Office; Ms. Blackford, Communications Officer, City Manager's Office; Fire Chief Thiel; Mr. Johnson, Director, Office of Management and Budget; Ms. Vosper, Landscape Architect Supervisor, Recreation, Parks and Cultural Activities; Mr. Chesley, Deputy Director, Recreation, Parks and Cultural Activities; Ms. Sun, Urban Planner, P&Z; Mr. Bray, Urban Planner, P&Z; Mr. Geratz, Principal Planner, P&Z; Police Captain Ogden; Mr. Colevas, ITS; and Mr. Lloyd.

Recorded by: Gloria Sitton, Deputy City Clerk and Clerk to Council.

OPENING

1. Calling the Roll.

The meeting was called to order by Mayor Euille, and the Deputy City Clerk called the roll; all the members of Council were present.

2. Public Discussion Period.

(a) Frank Fannon, 1105 Duke Street, spoke about the state of the real estate market in the area and how it might affect Council's decision-making during the budget process. Mr. Fannon suggested that Council be mindful of the economy and the market as they consider the budget this year.

(b) Bert Ely, 200 South Pitt Street, requested that Council consider repealing the requirement that taxicab companies serving Alexandria have an average of two

dispatched calls per cabbie per day.

(c) Heidi Ford, 1022 Oronoco Street, expressed concerns about the Ad Hoc Transportation Task Force amendment recommendations to the City's Master Transportation Management Plan, specifically the proposal to establish a high capacity transit corridor along Patrick and Henry Streets. Ms. Ford stated that she was opposed to the proposal because it would increase the amount of congestion on Patrick and Henry Streets and eliminate some of the on-street parking available. Ms. Ford noted that many of the older, historic homes on Patrick and Henry Streets are being damaged by the heavier vehicles traveling along these corridors.

(d) Robert Grove, 419 North Patrick Street, stated that the Bus Rapid Transit (BRT) is a bad idea because the corridor does not service Alexandrians, but other people using the streets as a pass through route to other metropolitan areas. Mr. Grove noted that Parker-Gray is an historic district with Board of Architectural Review (BAR) requirements. Mr. Grove stated that there was a disconnect when a neighborhood had to get approval for dryer vents and window boxes is considered for placement of a major transportation corridor. Mr. Grove pointed out that by making Route 1 a major transportation corridor, more people would probably start using it, thereby increasing the amount of traffic traveling the route.

(e) Leslie Zupan, 1309 Queen Street, president of the Inner City Civic Association, stated that 50 residents of Patrick and Henry Streets signed a petition protesting using those streets as a transportation corridor. Ms. Zupan stated that the Ad Hoc Transportation Task Force recommendations were a political document and one of the major sources of the debate is who the corridor will serve. Ms. Zupan pointed out that establishing a corridor along this route would service the Pentagon and Fort Belvoir, not citizens of Alexandria.

(f) Mark Freeman, 421 North Patrick Street, stated that he was opposed to the BRT proposal, noting that parking was at capacity for this neighborhood and that placing the corridor on Patrick and Henry Streets would compromise the historic character of the neighborhood. Mr. Freeman stated that the way to address the congestion in the area would be to invest more money into the Metro system.

(g) Collin Lee, 515 North Patrick Street, spoke in opposition to the BRT proposal, noting that it would only increase the amount of traffic along Route 1, eliminate needed on-street parking and pose a safety concern for the residents along the proposed route. Mr. Lee stated that there is a regional responsibility for traffic in the area but he asked Council to consider who the proposed BRT would be serving. Mr. Lee showed a flag that was damaged by the pollution from the traffic along Route 1.

(h) Joe Trahern, 425 North Patrick Street, spoke in opposition to the BRT proposal, noting the proximity of the homes to the proposed dedicated lanes for the buses. Mr. Trahern stated that the proposal would increase the congestion already present on Route 1. Mr. Trahern commended Councilmen Krupicka and Wilson for

their efforts to show the benefits of Metro based approach from Potomac Yard, successful connecting Arlington, Alexandria and Van Dorn Street.

(i) Charlotte Landis, 433 North Patrick Street, spoke in opposition to the proposed Master Plan from the Ad Hoc Transportation Task Force. Ms. Landis noted that at the last Braddock Road charette, it was reported that City Council would be voting on the proposals in February. Ms. Landis stated that she hand-delivered a petition to Council one year ago, which she resubmitted for the record. Ms. Landis stated that Route 1 is not appropriate for BRT and will not benefit residents in the immediate neighborhood.

(j) Jack Sullivan, 4300 Ivanhoe Place, representing the Seminary Hill Association, presented Council with a resolution on the Hunting Terrace site that was passed by the Executive Board of the Association at its January meeting last Thursday. Mr. Sullivan noted that Council adopted language very close to the resolution when it accepted the recommendations of the Mayor's Economic Sustainability Workgroup.

(k) Julie Crenshaw Van Fleet, 26 Wolfe Street, reported that she spoke before Council on December 15 and the Police Chief reviewed the tape of her call to the Police Department and sent her a nice apology from the Police Department, noting she had given more than enough information to respond to the call and the individual had been talked to and sent to additional training. Ms. Crenshaw Van Fleet stated that it actually had a positive benefit to the department and she thanked the Police Chief for the response.

(l) Caston Jarvis, 1020 Oronoco Street, spoke about the concerns of BRT on Route 1, noting that the project would mainly benefit individuals that do not live in the City and it appears that Alexandria residents are being asked to pay the cost that benefits others.

Mayor Euille noted that there will be a joint work session with the Ad Hoc Transportation Task Force on February 12, 2008, at 5:30 p.m. in the Council Work Room.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES

ACTION CONSENT CALENDAR (3-7)

Planning Commission

3. SPECIAL USE PERMIT #2007-0114
540 JOHN CARLYLE STREET (Parcel Address: 520 John Carlyle Street)
ZIKARYET RESTAURANT
Public Hearing and Consideration of a request for an amendment to increase the hours of operation and seating at a restaurant; zoned CDD-1/Coordinated Development District. Applicant: Joyce Abdallah

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 01/12/08, and is incorporated as part of this record by reference.)

4. SPECIAL USE PERMIT #2007-0116
664 SOUTH PICKETT STREET (Parcel Address: 620 South Pickett Street)
EL TIPICO RESTAURANT
Public Hearing and Consideration of a request for an amendment to increase the hours of operation at an existing restaurant; zoned CG/Commercial General.
Applicant: Walter Granados-Lazano

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 01/12/08, and is incorporated as part of this record by reference.)

5. SPECIAL USE PERMIT #2007-0117
1423 POWHATAN STREET UNIT 7
THE BODY IN BALANCE CENTER
Public Hearing and Consideration of a request to operate a wellness and massage therapy establishment; zoned CSL/Commercial Service Low.
Applicant: The Body In Balance Center by Ann Barlett

PLANNING COMMISSION ACTION: Recommend Approval w/amendments
6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 01/12/08, and is incorporated as part of this record by reference.)

6. SPECIAL USE PERMIT #2007-0127
2730 EISENHOWER AVENUE
RESTAURANT
Public Hearing and Consideration of a request to operate a restaurant; zoned OCM/Office Commercial Medium. Applicant: Backstreets, LLC by Ulka Patel, attorney

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 01/12/08, and is incorporated as part of this record by reference.)

7. SPECIAL USE PERMIT #2007-0124
 506 NORTH HENRY STREET (Parcel Address: 525 North Fayette Street)
 RESTAURANT
 Public Hearing and Consideration of a request to operate a restaurant; zoned CRMU-H/Commercial Residential Mixed Use High. Applicant: Diamond Commercial, LLC by David Chamowitz, attorney

PLANNING COMMISSION ACTION: Recommend Approval w/amendments
 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 01/12/08, and is incorporated as part of this record by reference.)

END OF ACTION CONSENT CALENDAR

WHEREUPON, motion by Councilman Gaines, seconded by Vice Mayor Pepper and carried unanimously, City Council adopted the consent calendar, with the exception of docket items #5 and #7, which were considered under separate motions, as follows:

- 3. City Council approved the Planning Commission recommendation.
- 4. City Council approved the Planning Commission recommendation.
- 6. City Council approved the Planning Commission recommendation.

The voting was as follows:

Gaines	"aye"	Krupicka	"aye"
Pepper	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

5. SPECIAL USE PERMIT #2007-0117
 1423 POWHATAN STREET UNIT 7
 THE BODY IN BALANCE CENTER
 Public Hearing and Consideration of a request to operate a wellness and massage therapy establishment; zoned CSL/Commercial Service Low. Applicant: The Body In Balance Center by Ann Barlett

PLANNING COMMISSION ACTION: Recommend Approval w/amendments
 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5;

01/12/08, and is incorporated as part of this record by reference.)

Councilman Wilson inquired what the current massage ordinance required licensees to have on display in an establishment. In response to Councilman Wilson, City Attorney Pessoa stated that the ordinance required the license to be on the premise.

The following person participated in the public hearing:

(a) Ann Bartlett, 1423 Powhatan Street, Unit, applicant, spoke in support of the application and responded to questions from Councilman Wilson about license requirements.

WHEREUPON, upon motion by Councilman Wilson, seconded by Councilman Smedberg and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation, deleting the sentence in condition #6 stating, "Licenses and photos of licensees must be on display in the establishment." The voting was as follows:

Wilson	"aye"	Pepper	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"aye"
	Lovain	"aye"	

7. SPECIAL USE PERMIT #2007-0124
506 NORTH HENRY STREET (Parcel Address: 525 North Fayette Street)
RESTAURANT
Public Hearing and Consideration of a request to operate a restaurant; zoned CRMU-H/Commercial Residential Mixed Use High. Applicant: Diamond Commercial, LLC by David Chamowitz, attorney

PLANNING COMMISSION ACTION: Recommend Approval w/amendments
6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 01/12/08, and is incorporated as part of this record by reference.)

Councilman Krupicka noted that the community raised concerns about loitering that could come from the business. Councilman Krupicka expressed concern that amendments the Planning Commission made may have created arbitrary differences between the businesses in the same block. Councilman Krupicka requested that Council review the language and craft language that gave the power to regulate hours to the Planning Director with a specific request or consultation from the Police Chief.

Councilman Smedberg stated that the neighborhood had a real concern about

loitering based on past experience with other businesses.

The following person participated in the public hearing:

(a) Leslie Zupan, 1309 Queen Street, representing the Inner City Civic Association, spoke in support of the amendment to the special use permit made by the Planning Commission and noted that a petition was signed by a majority of the residents affected by the operating hours of the restaurant.

WHEREUPON, upon motion by Councilman Krupicka, seconded Councilman Smedberg and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation, with the addition to condition #2 stating, "After one year, the Planning Director with the concurrence of the Police Chief, may approve a minor amendment to extend the hours for dine-in and carry-out until midnight." The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"aye"
	Wilson	"aye"	

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

None.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

8. DEVELOPMENT SPECIAL USE PERMIT #2007-0005 (A)
SPECIAL USE PERMIT #2007-0051 (B)
800 NORTH HENRY STREET
THE MADISON

Public Hearing and Consideration of a request for a development special use permit, with site plan and modifications to construct a mixed use residential/retail building, a request for a parking reduction and a special use permit request for approval of a transportation management plan (TMP); zoned CRMU-H/Commercial Residential Mixed Use High. Applicant: TC MidAtlantic Development III, Inc., by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8; 01/12/08, and is incorporated as part of this record by reference.)

Ms. Hamer, Director, Planning and Zoning and Mr. Farner, Division Chief, Planning and Zoning, made a brief presentation about the proposed project and responded to questions Council from about the special use permit concerning open space, the transportation management plan and design.

The following persons participated in the public hearing:

(a) Duncan Blair, 524 King Street, attorney for the applicant, gave a brief presentation and spoke in support of the proposed project.

(b) Salena Zellers, 1122 Madison Street, representing the Braddock Lofts Homeowners Association, spoke in support of the application.

(c) Leslie Zupan, 1309 Queen Street, representing the Inner City Civic Association, spoke in support of the application.

WHEREUPON, upon motion by Councilman Smedberg, seconded by Councilman Wilson and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation. The voting was as follows:

Smedberg	"aye"	Pepper	"aye"
Wilson	"aye"	Gaines	"aye"
Euille	"aye"	Krupicka	"aye"
	Lovain	"aye"	

ORDINANCES AND RESOLUTIONS

9. Public Hearing, Second Reading and Final Passage of an Ordinance to Change the Name of Barecroft Place to President Ford Lane.

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 01/12/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 9; 01/12/08, and is incorporated as part of this record by reference.)

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried unanimously by roll-call vote, City Council closed the public hearing and passed an ordinance to change the name of Barecroft Place to President Ford Lane. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"

Euille "aye" Lovain "aye"
Wilson "aye"

The ordinance reads as follows:

ORDINANCE NO. 4513

AN ORDINANCE to amend Section 5-2-62 (CHANGES OF NAMES) of Article C (STREET NAMES), Chapter 2 (STREETS AND SIDEWALKS), Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of the Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new subsection (15) (CHANGES EFFECTIVE JANUARY 12, 2008).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 5-2-62 of the Code of the City of Alexandria, Virginia, 1981 as amended, be, and the same hereby is, amended by adding thereto a new subsection (15) to read as follows:

(15) Change of name as of January 12, 2008:

New Name	Old Name	General Location
President Ford Lane	Barecroft Place	Oak Grove

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

10. Public Hearing, Second Reading and Final Passage of an Ordinance to Extend the Interim Zoning Infill Regulations.

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10; 01/12/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 10; 01/12/08, and is incorporated as part of this record by reference.)

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried unanimously by roll-call vote, City Council closed the public hearing and passed an ordinance to extend the interim zoning infill regulations. The voting was as follows:

Pepper "aye" Gaines "aye"

Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Wilson	"aye"	

The ordinance reads as follows:

ORDINANCE NO. 4514

AN ORDINANCE to extend interim residential infill development regulations as part of Section 7-1002 (RESIDENTIAL SETBACK IN LINE WITH EXISTING DEVELOPMENT), and Subsection (B) of Section 11-1710 (SUBDIVISION REQUIREMENTS-RESUBDIVISIONS), of the City of Alexandria Zoning Ordinance (Text Amendment No. 2007-0007).

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2006-0003, the planning commission initiated an amendment to adopt interim residential infill development regulations, and
2. The City Council approved the adoption of Text Amendment No. 2006-0003, and adopted such regulations on June 27, 2006, by Ordinance No. 4457, to expire December 31, 2006, and subsequently the Planning Commission and City Council revised and extended such regulations, in Text Amendment No. 2006-0004, adopted by Ordinance No. 4457, on June 27, 2006 and to expire on December 31, 2007, and
3. The Planning Commission and City Council have approved Text Amendment No 2007-0007, to extend such interim regulations without substantive change until December 31, 2008, unless sooner amended or repealed by City Council, 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 sunset date set forth in Section 4 of Ordinance No. 4457, be, and the same hereby is, extended from December 31, 2007 until December 31, 2008.

Section 2. That this ordinance shall become effective on the date and at the time of its final passage, and shall apply, *nunc pro tunc*, to all applications for land use, land development or subdivision approval provided for under the City of Alexandria Zoning Ordinance which are on January 1, 2008, 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; provided, however, that this ordinance shall expire on December 31, 2008.

11. Public Hearing, Second Reading and Final Passage of an Ordinance to Approve an Encroachment For a Hotel Marquee at 480 King Street.

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11; 01/12/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 11; 01/12/08, and is incorporated as part of this record by reference.)

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously by roll-call vote, City Council closed the public hearing and passed an ordinance to approve an encroachment for a hotel marquee at 480 King Street. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

The ordinance reads as follows:

ORDINANCE NO. 4515

AN ORDINANCE authorizing CLPF - Old Town, L.P., and Kimpton Hotels and Restaurants, and their successors in interest, to establish and maintain an encroachment for an entrance marquee over the public right-of-way.

WHEREAS, CLPF - Old Town, L.P. (AOwner@) is the Owner of the property located at 480 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Kimpton Hotels and Restaurants (ATenant@) is the tenant of the property located at 480 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner and Tenant desire to establish and maintain an entrance marquee which will encroach over the public sidewalk right-of-way along the King Street facade of the building at 480 King Street; and

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

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; 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 over the public right-of-way in the City of Alexandria, said encroachment consisting of an entrance marquee, approximately thirty-one inches in length, extending approximately eight feet and two inches over the public sidewalk right-of-way of King Street, on the facade of the building at 480 King Street, as generally shown on the drawings attached hereto, 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 or Owner 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
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Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate
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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 utility company shall be responsible for damage to Owner 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.

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 AOwner@ and ATenant@ shall be deemed to include

CLPF - Old Town, L.P., and Kimpton Hotels and Restaurants, 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.

- 12. Public Hearing, Second Reading and Final Passage of an Ordinance to Permit Hotels To Offer Massage Services To Registered Guests, Subject To Licensing and Regulation By The City.

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12; 01/12/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 12; 01/12/08, and is incorporated as part of this record by reference.)

City Attorney Pessoa noted that the Commonwealth Attorney's Office does not support allowing massages in hotel rooms until 11:00 p.m.

Mayor Euille inquired what was the rationale for the Commonwealth Attorney's objection to extending the hours and he wanted to know why there was not a representative from the Commonwealth Attorney's office present at the public hearing. In response to Mayor Euille, City Attorney Pessoa stated that the Commonwealth Attorney rationale was that there was more likely to be an intoxicated guest at a later hour.

City Manager Hartmann reported that the Police Chief was in support of the extending the hours to 11:00 p.m.

The following person participated in the public hearing:

- (a) M. Catharine Puskar, 2200 Clarendon Boulevard, representing Kimpton Hotels, spoke in support of the amendments to the proposed ordinance.

WHEREUPON, upon motion by Councilman Wilson, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing. The voting was as follows:

Wilson	"aye"	Pepper	"aye"
Gaines	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

WHEREUPON, upon motion by Councilman Wilson, seconded by Councilman Krupicka and carried unanimously by roll-call vote, City Council passed an ordinance, with amendments as outlined by the City Attorney, to permit hotels to offer massage services to registered guests, subject to licensing and regulation by the City. The voting was as follows:

Wilson	"aye"	Pepper	"aye"
Krupicka	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

The ordinance reads as follows:

ORDINANCE NO. 4516

AN ORDINANCE to amend and reordain Chapter 4.2 (MESSAGE REGULATIONS) of Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 4.2 of Title 11 of the Code of the City of Alexandria, Virginia, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-4.2-1 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning given below, except in those instances when the context clearly indicates a different meaning.

(1) *Care facility*. Any place or building in which (i) medical, surgical, nursing or other health services are furnished by duly licensed individuals for the prevention, diagnosis or treatment of human disease, pain, injury or other physical condition to two or more unrelated sick, injured, disabled or aged persons, or (ii) convalescent or similar care is furnished by duly licensed individuals to two or more unrelated sick, injured, disabled or aged persons.

(2) *Director*. The director of public health of the city or his duly authorized representative.

(3) *Massage*. The treatment of the external parts of the human body for comfort or the general well-being of the body, consisting of rubbing, stroking, kneading, tapping or vibrating one or more parts of the body with hand, or any instrument, for compensation.

(4) *Massage establishment*. Any establishment in the city where massages are provided or administered, or which holds itself out to the public as a place where massages are provided or administered; provided, that this definition shall not include a

hotel, hospital, nursing home or medical clinic, a care facility, the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath, barbershop or a beauty salon.

(5) *Massage therapist.* Any person possessing a valid massage therapist permit issued pursuant to this chapter.

(6) *Police chief.* The chief of police of the city or his duly authorized representative.

(7) *Public gathering.* Any event occurring in the city that is open to the general public and involves more than 50 persons.

(8) *Residence.* A place which an individual considers his permanent abode and in which he either has resided during at least the prior six months or intends to reside during at least the next six months; this term shall not include any place which provides transient lodging such as hotels, inns, apartment house hotels, hostelrys, tourist homes or houses, motels, and rooming houses.

(9) *Seated massage.* A massage provided to the upper human body while the massage recipient is fully clothed and seated in a chair.

(10) *Sexual or genital part.* The genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

Sec. 11-4.2-2 Provision of massages.

(a) Except as provided in subsection (b), it shall be unlawful for any person to provide or administer a massage at any location in the city.

(b) Only the following persons, under the following conditions, may provide or administer a massage in the city:

(1) *massage therapists:*

(i) at or within a massage establishment;

(ii) at the regular place of business of the massage recipient between the hours of 9:00 a.m. and 6:00 p.m.; provided, that a therapist may only provide a seated massage at this location and may do so only if he possesses his massage therapy permit while performing the seated massage;

(iii) at a public gathering; provided, that the therapist possesses his massage therapy permit while performing massages at such a gathering;

(iv) at a care facility; provided, that the therapist possesses his massage therapy permit while performing massages at this location; and

(v) at the residence of the massage recipient between the hours of 6:00 a.m. and 9:00 p.m.; provided, that the therapist holds a valid home massage permit issued pursuant to this chapter, possesses that permit and his massage therapy permit while performing massages in a residence, and provides massages at the residence only to individuals identified in his home massage permit.

(vi) at a hotel having 45 or more guest rooms, which offers massage services to its registered overnight guests in the normal course of the hotel's business, either in the hotel room of the guest receiving the massage, or at a salon, day spa, fitness center or like facility located within the hotel, between the hours of 6:00 a.m. and 9:00-11:00 p.m.; provided, that the therapist carries his

massage therapy permit on his person while performing massages in guest rooms.

(2) *persons who are certified as a massage therapist by, and are in good standing with, the Virginia Board of Nursing:*

(i) at the regular place of business of the massage recipient between the hours of 9:00 a.m. and 6:00 p.m.; provided, that the board certified therapist may only provide a seated massage at this location and may do so only if he possesses a picture identification while performing the seated massage; and

(ii) at a public gathering; provided, that the board certified therapist possesses a picture identification while performing massages at such a gathering; and

(3) *persons:*

(i) at a hospital, nursing home or medical clinic, or at the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath; or

(ii) at a barbershop or beauty salon; provided, that, at this location, the person may only provide a massage to the scalp, face, neck or shoulders of the massage recipient.

Sec. 11-4.2-3 Massage therapists; issuance of massage therapist permits.

(a) Any person who desires to provide or administer massages in the city as a massage therapist shall possess a valid massage therapist permit issued in accordance with this section. A person possessing a massage therapist permit issued under this section who, following receipt of the permit, does not continue to meet the requirements set out in subsection (b) below shall not be considered to be in possession of a valid massage therapist permit.

(b) In order to be eligible for a massage therapist permit, the applicant shall:

(1) be certified as a massage therapist pursuant to sections 54.1-3000 and 54.1-3029 of the Code of Virginia (1950), as amended, by, and be in good standing with, the Virginia Board of Nursing, or have a valid provisional certificate to practice massage therapy which has been issued by the Board of Nursing pursuant to its regulations;

(2) own, or be employed at or under contract (*including employees of a contractor*) with (i) a massage establishment for which a permit has been issued under section 11-4.2-5, or (ii) a hotel in the City of Alexandria described in section 11-4.2-2(b)(1)(vi) of this code; and

(3) not have been convicted of, or pleaded nolo contendere or suffered a forfeiture in relation to, any of the offenses identified in sections 18.2-344 through 18.2-361 or sections 18.2-372 through 18.2-387 of the Code of Virginia (1950), as amended, which sections relate to sexual offenses, prostitution, obscenity and similar offenses, or any similar offenses under the laws of another jurisdiction.

(c) All applicants for a massage therapist permit shall apply to the director. The application shall be on a form prepared by the director and shall be accompanied by an application fee of \$50, payable to the director of finance. The application shall contain the name, address, telephone number, date of birth, place of birth, and height and weight of the applicant, the applicant's Virginia Board of Nursing certified massage

therapist number or provisional certification number, and the address and telephone number of the massage establishment or hotel which the applicant owns, is employed at, or is under contract with. The applicant shall also state on the application all criminal offenses for which he has been convicted or in relation to which he has pleaded nolo contendere or suffered a forfeiture, including the offenses identified in subsection (b).

(d) The application to be filed under this section shall state thereon, "It is unlawful for any person to make a false statement on this application and the discovery of a false statement shall constitute sufficient grounds, in and of itself, for the denial of an application or revocation of a permit, or for the imposition of a fine or imprisonment or both." It shall be unlawful for a person to make a false statement on an application filed under this section.

(e) The director shall refer the applicant to the chief of police to be photographed and fingerprinted. The photograph and fingerprints shall constitute part of the application. The chief of police shall, to the extent permitted by law, forward the applicant's fingerprint cards to the Virginia state police for purposes of conducting a review of the applicant's criminal history. After he has completed his investigation of the applicant, the chief of police shall return the application to the director, together with the results of his investigation.

(f) The director shall deny any application for a massage therapist permit if the director finds that the applicant does not satisfy the requirements set out in subsection (b). The making of a false statement on an application shall also be grounds for denial of the application.

(g) The decision of the director on an application under this section shall be conveyed to the applicant in writing, and shall be sent by certified mail to the applicant's last known address. If the director denies the application, he shall state in his written decision the grounds for the denial and shall notify the applicant of his right to request a hearing, as provided in subsection (h). If the director approves the application, he shall issue, or cause to be issued, a massage therapist permit to the applicant.

(h) An applicant whose application under this section has been denied may request a hearing before the director. Such request, which shall not stay the effect of the director's initial decision, shall be in writing and shall be filed with the director within 10 days of the date on which the director's decision was sent to the applicant. The director shall schedule a hearing on a date and at a time that is mutually convenient to the applicant and the director, and shall notify the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the director shall send a copy of his decision by certified mail to the applicant at his last known address. This decision shall be final and conclusive. In the event an applicant does not timely request a hearing on the director's initial decision to deny his application, or requests but does not attend the hearing, the initial decision shall be final and conclusive.

(i) If, following the issuance of a massage therapist permit, a massage therapist intends to provide or administer massages at a massage establishment or hotel that is different from the establishment or hotel identified on his application, the therapist shall immediately notify the director in writing of this different establishment or hotel.

(j) A permit issued under this section shall be valid for a period of two years, and it may be renewed for additional two-year periods upon the filing of a new application with the director, along with a \$50 fee payable to the director of finance. In applying for

the renewal of a permit, the applicant shall demonstrate that he continues to meet the requirements of subsection (b). Every permit issued under this section shall contain a serial number as determined by the director, and each renewal application filed, and each renewal permit issued, shall continue to utilize the same serial number. The provisions of this section that apply to initial applications for massage therapist permits shall apply to applications for permit renewals.

(k) Every person to whom a massage therapist permit has been issued shall carry the permit on his person, or shall display the permit in a conspicuous place in the massage establishment or hotel at which he provides or administers massages.

Sec. 11-4.2-4 Same--issuance of home massage permits.

(a) Any massage therapist desiring to provide or administer a massage in the residence of massage recipients, pursuant to section 11-4.2-2(b)(1)(v), shall possess a valid home permit issued in accordance with this section. A person possessing a home massage permit issued under this section who, following receipt of the permit, does not continue to meet the requirements set out in subsection (b) below shall not be considered to be in possession of a valid home massage therapist permit.

(b) In order to be eligible for a home massage permit, the applicant shall possess a valid massage therapist permit issued under section 11-4.2-3, and propose to provide or administer massages only to individuals who reside in residences in the city and only at the residences of such individuals;

(c) All applicants for a home massage permit shall apply to the chief of police. The application shall be on a form prepared by the chief, and shall be accompanied by an application fee of \$25, payable to the director of finance. The application shall contain the applicant's name and address, his Virginia Board of Nursing certified massage therapist number, the number of the massage therapist permit issued to him under section 11-4.2-3 and, as to each residence at which he wishes to provide massages, the address of the residents who will receive massages.

(d) The application to be filed under this section shall state thereon, "It is unlawful for any person to make a false statement on this application and the discovery of a false statement shall constitute sufficient grounds, in and of itself, for denial of an application or revocation of a permit, after the imposition of a fine or imprisonment or both." It shall be unlawful for a person to make a false statement on an application filed under this section.

(e) The chief of police shall deny any application for a home massage permit if the chief finds that the applicant does not satisfy the requirements set out in subsection (b). The making of a false statement on an application shall also be grounds for denial of the application.

(f) The decision of the chief of police on an application under this section shall be conveyed to the applicant in writing, and shall be sent by certified mail to the applicant's last known address. If the chief denies the application, he shall state in his written decision the grounds for the denial and shall notify the applicant of his right to request a hearing, as provided in subsection (g). If the chief approves the application, he shall issue, or cause to be issued, a home massage permit to the applicant_which, among other things, shall state the address of each residence at which the therapist is

authorized to provide massages.

(g) An applicant whose application under this section has been denied may request a hearing before the chief of police. Such request, which shall not stay the effect of the chief's initial decision, shall be in writing and shall be filed with the chief within 10 days of the date on which the chief's decision was sent to the applicant. The chief shall schedule a hearing on a date and at a time that is mutually convenient to the applicant and the chief, and shall notify the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the chief shall send a copy of his decision by certified mail to the applicant at his last known address. This decision shall be final and conclusive. In the event an applicant does not timely request a hearing on the chief's initial decision to deny his application, or requests but does not attend the hearing, the initial decision shall be final and conclusive.

(h) If, following the issuance of a home massage permit, a massage therapist wishes to provide or administer massages at residences other than those identified in the permit, the therapist shall request the chief of police to amend the permit to include the address of such other residences at which the therapist may provide massages. No massages shall be provided in such other residences until an appropriate permit amendment has been issued by the chief.

(i) A permit issued under this section shall be valid for a period of one year, and it may be renewed for additional one-year periods upon the filing of a new application with the chief of police, along with a \$25 fee payable to the director of finance. In applying for the renewal of a permit, the applicant shall demonstrate that he continues to meet the requirements of subsection (b) and has, since the issuance of the permit, complied with section 11-4.2-2(b)(1)(v). Every permit issued under this section shall contain a serial number as determined by the chief of police, and each renewal application filed and each renewal permit issued shall continue to utilize the same serial number.

(j) Every person to whom a home massage permit has been issued shall carry the permit on his person when providing or administering massages in a residence.

(k) A home massage permit shall not be required for provision of massages at a hotel pursuant to section 11-4.2-2(b)(1)(vi).

Sec. 11-4.2-5 Massage establishments; required licenses and permits.

(a) It shall be unlawful for any person to establish, maintain or operate a massage establishment in the city without an appropriate business license under title 9 of this code and a valid massage establishment permit issued under this section.

(b) Every person to whom a massage establishment permit has been issued shall display the permit in a conspicuous place in the massage establishment so that it may be readily seen by persons entering the establishment.

Sec. 11-4.2-6 Same--application for massage establishment permit; renewal.

(a) Any person desiring to own or operate a massage establishment in the city and every salon, day spa, fitness center or like facility, but not guest rooms, located in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall

obtain a massage establishment permit from the director. An application for a massage establishment permit shall be on a form prepared by the director and shall be accompanied by an application fee of \$25, payable to the director of finance. Each application shall contain the name, address and telephone number of the owner and operator of the massage establishment, and the address and telephone number of the establishment. The applicant shall also state on the application all criminal offenses for which the owner and operator have been convicted or in relation to which either has pleaded nolo contendere or suffered a forfeiture, including the offenses identified in section 11-4.2-3(b).

(b) The application shall state that no person may provide or administer a massage at the massage establishment for which the permit is sought without a massage therapist permit issued under this chapter, and that the applicant has read and understands this statement. The application shall also state thereon, "It is unlawful for any person to make a false statement on this application and discovery of a false statement shall constitute sufficient grounds, in and of itself, for denial of an application or revocation of a permit, or for the imposition of a fine or imprisonment or both." It shall be unlawful for the applicant to make a false statement on any application filed pursuant to this section.

(c) Upon receipt of an application, the director shall forward a copy to the chief of police for his review, and shall cause an investigation to be made of the massage establishment named in the application to determine whether it will comply with the provisions of section 11-4.2-7. If the director is satisfied from such investigation that the massage establishment will so comply, he shall issue, or cause to be issued, a massage establishment permit authorizing the establishment, maintenance and operation of the massage establishment. If the director is not so satisfied, he shall deny the application.

(d) The decision of the director on an application under this section shall be conveyed to the applicant in writing, and shall be sent by certified mail to the address given by the applicant in the application. If the director denies the application, he shall state in his written decision the grounds for the denial and shall notify the applicant of his right to request a hearing, as provided in subsection (e).

(e) An applicant whose application under this section has been denied may request a hearing before the director. Such request, which shall not stay the effect of the director's initial decision, shall be in writing and shall be filed with the director within 10 days of the date on which the director's decision was sent to the applicant. The director shall schedule a hearing on a date and at a time that is mutually convenient to the applicant and the director, and shall notify the applicant in writing of the date, time and place of the hearing. Within 10 days of the hearing, the director shall send a copy of his decision by certified mail to the applicant at his last known address. This decision shall be final and conclusive. In the event an applicant does not timely request a hearing on the director's initial decision to deny his application, or requests but does not attend the hearing, the initial decision shall be final and conclusive.

(f) A massage establishment permit issued under this section shall be valid for a period of one year, and it may be renewed for additional one-year periods upon the filing of a new application. The provisions of this section that apply to initial applications shall apply to renewal applications.

Sec. 11-4.2-7 Same--minimum standards.

Every massage establishment in the city and every salon, day spa, fitness center or like facility, but not guest rooms, located in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall, at all times, comply with the following minimum health and safety standards:

(1) Massages may only be provided or administered by a massage therapist who possesses a valid massage therapist permit issued under this chapter.

(2) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(3) Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which container's or cabinets shall be kept separate from the clean storage areas.

(4) Clean linen and towels shall be provided for each massage patron. No common use of towels or linens shall be permitted.

(5) All massage tables shall have surfaces which may be readily disinfected. The floor areas, depending on the material covering the floor surface, shall have surfaces which may be readily disinfected. This provision shall be applicable to bathtubs, showers, stalls, steam or bath areas, if applicable.

(6) Oils, creams, lotions or other preparations used in administering massages shall be kept in clean, closed containers or cabinets.

(7) Adequate dressing facilities shall be provided for the patrons to be served at any given time. Adequate toilet facilities as required by law shall be furnished.

(8) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities, where provided, shall be in good repair and maintained in a clean and sanitary condition. All facilities shall be thoroughly cleaned each day the business is in operation, and all massage tables and bathtubs and showers, where furnished, shall be thoroughly cleaned after each use. When carpeting is used on any floor area, it shall be kept dry.

(9) The premises shall be equipped with a service sink for custodial services, if applicable.

Sec. 11-4.2-8 Same--hours of operation.

Massage establishments *shall not operate before 6:00 a.m. or after 9:00 p.m.* and salon, day spa, fitness center or like-facility facilities, and in-room massage services located or provided in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), shall not operate or be offered before 6:00 a.m. or after ~~9:00~~ 11:00 p.m. Massage establishments and salon, day spa, fitness center or like facility, and in-room massage services located or provided in a hotel at which massages are provided pursuant to section 11-4.2-2(b)(1)(vi), may be opened or offered seven days a week.

Sec. 11-4.2-9 Same--right of entry of chief of police and director.

The chief of police and the director may enter, examine and survey any premises in the city for which a massage establishment permit has been issued to enforce the provisions of this chapter. Such inspections shall be made in a reasonable manner during business hours only. Every holder of a massage establishment permit shall be deemed, by virtue of the application for and utilization of such permit, to have consented and agreed to all of the provisions of this chapter, including the right of entry and inspection set forth in this section.

Sec. 11-4.2-10 Suspension or revocation of massage therapist, home massage or massage establishment permit.

(a) One or more violations of the provisions of this chapter by the permittee named in a massage therapist, massage establishment or home massage permit shall be grounds for the director, in the case of massage therapist and massage establishment permits, or the chief of police, in the case of home massage permits, to suspend or revoke the permit. Prior to a permit suspension or revocation, the director or chief shall provide written notice of the proposed action to the permittee, of the reasons for the proposed action, and of the opportunity for a hearing before the director or chief. The notice shall be mailed by certified mail to the last known address of the permittee. The permittee shall request a hearing before the director or chief by filing a request in writing within 10 days after notice of the director's or chief's proposed action has been mailed to the permittee. The director or chief shall schedule a hearing on a date and at a time that is mutually convenient to all parties. The director or chief shall give written notice of the date, time and place of the hearing to the permittee. Within 10 days of the hearing, the director or chief shall send a copy of his decision by certified mail to the permittee at his last known address. This decision shall be final and conclusive.

(b) If a permittee does not request a hearing, the action proposed by the director or chief shall be effective, and shall be final and conclusive, at the close of the tenth day following the day on which notice of the proposed action was mailed to the permittee. If the permittee requests but does not participate in the hearing, the action proposed by the director or chief shall be immediately effective, and shall be final and conclusive.

(c) One or more violations of the provisions of this chapter at a hotel which offers massage services pursuant to section 11-4.2-2(b)(1)(vi) of this code shall be grounds for the director to suspend or revoke the authorization to offer massage services by the hotel. Prior to such suspension or revocation, the director shall provide written notice of the proposed action to the hotel, of the reasons for the proposed action, and of the opportunity for a hearing before the director. The notice shall be mailed by certified mail to the hotel. The hotel may request a hearing before the director by filing a request in writing within 10 days after notice of the director's proposed action has been mailed. The director shall schedule a hearing on a date and at a time that is mutually convenient to all parties. The director shall give written notice of the date, time and place of the hearing to the hotel. Within 10 days of the hearing, the director shall

send a copy of his decision by certified mail to the permittee at his last known address. This decision shall be final and conclusive.

Sec. 11-4.2-11 Specific unlawful acts.

(a) It shall be unlawful for any person to provide or administer a massage in the city except as specifically authorized by section 11-4.2-2(b).

(b) It shall be unlawful for any person in a massage establishment, or in any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered, to place his hand or hands upon, to touch with any part of his body, to fondle in any manner, or to massage a sexual or genital part of another person.

(c) It shall be unlawful for any person, in a massage establishment, or in any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered, to expose a sexual or genital part, or any portion thereof, of his own to any other person, or to cause to be exposed a sexual or genital part, or any portion thereof, of any other person.

(d) It shall be unlawful for any person, while in the presence of any other person in a massage establishment, or in any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered, to fail to conceal with a fully opaque covering the sexual or genital parts of his body.

(e) It shall be unlawful for any person owning, operating or managing a massage establishment or any of the other locations and facilities identified in section 11-4.2-2(b) at which massages may be provided or administered knowingly to cause, allow or permit in or about the establishment, location or facility any agent, employee or other person under his control or supervision to perform any of the acts described above in subsection (a), (b), (c) or (d).

Sec. 11-4.2-12 Penalties.

Any person violating any of the provisions of this chapter shall, upon conviction, be guilty of a class 1 misdemeanor and shall be punished by a fine not exceeding \$2,500 or imprisonment not exceeding twelve months, or both. Violations of the provisions of this chapter may also be restrained, prohibited or enjoined by appropriate action or proceeding. Notwithstanding the above, no provision of this chapter shall apply to employees or agents of the United States, the Commonwealth of Virginia or the city, or of any agency or department of these governmental units, including city police officers, while in the performance of official duties.

Sec. 11-4.2-13 Records required for massage services in hotel guest rooms.

(a) (a) Each hotel which offers massage services in hotel guest rooms pursuant to this chapter shall maintain a written record for a period of not less than two years of each massage provided, including the date and time of service, identity of massage therapist and name of guest.

(b) Each massage therapist who provides massage services in hotel guest rooms

pursuant to this chapter shall maintain a written record for a period of not less than two years of each massage provided at the hotel, including the date and time of service and name of guest.

(c) Failure to maintain the records required by this section shall be a Class 3 civil violation.

(d) Records maintained pursuant to this section shall be produced on written demand by the director or the chief of police.

Section 2. That this ordinance shall become effective on the date and at the time of final passage.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

DEFERRAL/WITHDRAWAL CONSENT CALENDAR (13-14)

Planning Commission (continued)

13. SPECIAL USE PERMIT #2007-0115
510 SECOND STREET
HOLIDAY INN - COFFEE SHOP
Public Hearing and Consideration of a request to operate a restaurant within an existing hotel; zoned CD/Commercial Downtown. Applicant: Carr Hospitality by Hammad Shah

PLANNING COMMISSION ACTION: Deferred

14. TEXT AMENDMENT #2007-0117
KING STREET OUTDOOR DINING
Public Hearing and Consideration of a request to amend Section 6-800 of the Zoning Ordinance, the King Street Outdoor Dining Overlay Zone. Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION: Deferred (Staff's request)

END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR

City Council noted the deferrals.

THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED, upon motion by Councilman Gaines, seconded by Vice Mayor Pepper and carried unanimously, City Council adjourned the public hearing meeting of January 12, 2008, at 11:15 a.m. The voting was as follows:

Gaines	"aye"	Krupicka	"aye"
Pepper	"aye"	Lovain	"aye"

Euille "aye" Smedberg "aye"
Wilson "aye"

APPROVED BY:

WILLIAM D. EUILLE MAYOR

ATTEST:

Gloria A. Sitton, CMC Deputy City Clerk