TYHUUT NO.

12-14-10

Introduction and first reading: 12/14/10 Public hearing: 12/18/10 Second reading and enactment: 12/18/10 INFORMATION ON PROPOSED ORDINANCE <u>Title</u> AN ORDINANCE authorizing the tenant of the property located at 818 North St. Asaph Street (parcel address 600 Montgomery Street) in the City of Alexandria, Virginia to construct and maintain an encroachment for outdoor restaurant seating at that location. **Summary** The proposed ordinance permits the restaurant located at 818 North St. Asaph Street (parcel address 600 Montgomery Street) to establish outdoor seating in the adjacent sidewalk area. **Sponsor** Staff Faroll Hamer, Director, Planning & Zoning James L. Banks, Jr., City Attorney Joanna C. Frizzell, Assistant City Attorney **Authority** §2.04(e), Alexandria City Charter Estimated Costs of Implementation None Attachments in Addition to Proposed Ordinance and its Attachments (if any) None

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1	ORDINANCE NO			
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3	AN ORDINANCE authorizing the tenant of the property located at 818 North St. Asaph Street			
4	(parcel address 600 Montgomery Street) in the City of Alexandria, Virginia to construct and			
5	maintain an encroachment for outdoor restaurant seating at that location.			
6	WITTED TAG 3.5 ' O '11 ' 41 Th			
7	WHEREAS, Maria Quilla is the Tenant ("Tenant") of the property located at 818			
8	North St. Asaph Street (parcel address 600 Montgomery Street) in the City of Alexandria,			
9	Virginia; and			
10	WHIPPEAC TO A 1 1 A A 11 1 1 1 A 1 A 1 A A A A A			
11	WHEREAS, Tenant desires to establish and maintain outdoor restaurant seating			
12	which will encroach into the public sidewalk right-of-way at that location; and			
13	WHEREAS the mublic sides wells might of way at that leastion will not be			
14	WHEREAS, the public sidewalk right-of-way at that location will not be			
15	significantly impaired by this encroachment; and			
16	WHEREAS, in Encroachment No. 2010-0006, the Planning Commission of the City			
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20	Council at its public hearing on October 16, 2010; and			
21	Council at its public hearing on October 10, 2010, and			
22	WHEREAS, it has been determined by the Council of the City of Alexandria that			
23	this encroachment is not detrimental to the public interest; now, therefore,			
24	and one cooling to her destination to the pacific interest, new, increase,			
25	THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:			
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27	Section 1. That Tenant be, and the same hereby are, authorized to establish and			
28	maintain an encroachment into the public sidewalk right-of-way 818 North St. Asaph Street			
29	(Parcel Address: 600 Montgomery Street) as shown in the attached Encroachment Exhibit			
30	(Exhibit A), in the City of Alexandria, said encroachment consisting of outdoor restaurant			
31	seating, until the encroachment is removed or destroyed or the authorization to maintain it is			
32	terminated by the city; provided, that this authorization to establish and maintain the			
33	encroachment shall not be construed to relieve Tenant of liability for any negligence on their part			
34	on account of or in connection with the encroachment and shall be subject to the provisions set			
35	forth below.			
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37	Section 2. That the authorization hereby granted to establish and maintain said			
38	encroachment shall be subject to and conditioned upon Tenant maintaining, at all times and at			
39	their own expense, liability insurance, covering both bodily injury and property damage, with a			
40	company authorized to transact business in the Commonwealth of Virginia and with minimum			
41	limits as follows:			
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43	Bodily Injury: \$1,000,000 each occurrence			
44	\$1,000,000 aggregate			
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This liability insurance policy shall identify the City of Alexandria as named insured and shall provide for the indemnification of the City of Alexandria 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, 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 Tenant. Nothing in this section shall relieve 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 or private utility company shall be responsible for damage to 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 Tenant shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.

(c) Outdoor dining at the restaurant shall comply with all requirements and conditions of SUP#2010-0046.

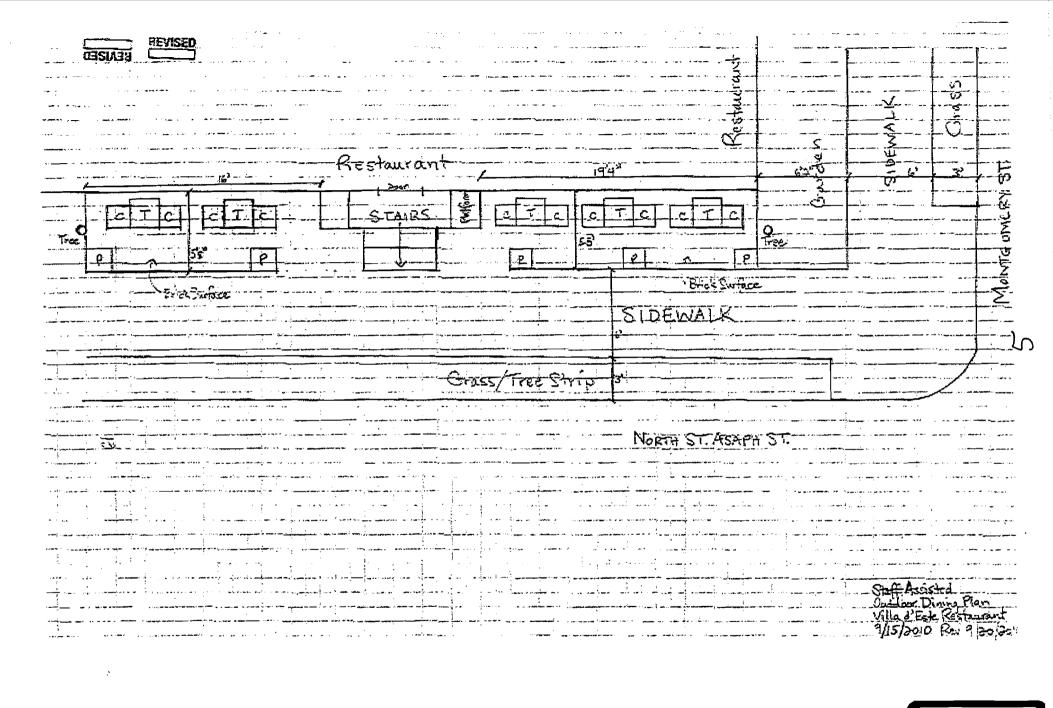
(d) The applicant shall maintain a minimum 6' wide unobstructed sidewalk.

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

(f) The brick surface material proposed for the encroachment area shall be approved by the Director of Transportation & Environmental Services and shall be flush with the existing sidewalk.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, 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 1 encroachment shall be subject to Tenant maintaining the area of the encroachment at all times 2 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous 3 4 matter. 5 Section 6. That nothing in this ordinance is intended to constitute, or shall be 6 7 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees. 8 9 Section 7. That the authorization herein granted to establish and maintain the 10 encroachment shall be terminated whenever the City of Alexandria desires to use the affected 11 public right-of-way for any purpose whatsoever and, by written notification, demands from 12 Tenant the removal of the encroachment. Said removal shall be completed by the date specified 13 in the notice and shall be accomplished by Tenant without cost to the city. If Tenant cannot be 14 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall 15 have the right to remove the encroachment, at the expense of Tenant, and shall not be liable to 16 Tenant for any loss or damage to the structure of the encroachment or personal property within 17 the encroachment area, caused by the removal. 18 19 Section 8. The term "Tenant" shall be deemed to include Maria Quilla and her 20 respective successors in interest to the tenancy at 818 North St. Asaph Street (parcel address 600 21 Montgomery Street). 22 23 Section 9. That this ordinance shall be effective upon the date and at the time of its 24 25 final passage. 26 27 28 WILLIAM D. EUILLE Mayor 29 30 31 Attachment: Encroachment Exhibits 32 Introduction: 12/14/10 33 34 First Reading: 12/14/10 Publication: 35 Public Hearing: 36 Second Reading: 37 Final Passage: 38 39 40 41 42 43 44 45 46



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