

INTRODUCED: January 8, 2018

AN ORDINANCE No. 2018-006

To authorize 305 Brook Road, LLC, to encroach upon the public right-of-way with a proposed outdoor dining area encroachment on the east line of Brook Road between West Broad Street and North Adams Street in front of 305 Brook Road, upon certain terms and conditions.

\_\_\_\_\_  
Patron – Mayor Stoney (By Request)

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: JAN 22, 2018 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That 305 Brook Road, LLC, referred to as “Licensee”, is hereby authorized to encroach upon the public right-of-way with a proposed outdoor dining area on the sidewalk in front of a restaurant enclosed by fencing, extending 5.83 feet into the public right-of-way, as shown on a plan prepared by the Department of Public Works, dated December 8, 2017, entitled “Proposed Outdoor Dining Encroachment Located on the East Line of Brook Road between W. Broad St. and N. Adams St (305 Brook Road),” and designated as DPW Drawing No. N-28806, a copy of which is attached to this ordinance and incorporated herein.

AYES:                    9                    NOES:                    0                    ABSTAIN:                    \_\_\_\_\_

ADOPTED:    JAN 22 2018    REJECTED:                    \_\_\_\_\_    STRICKEN:                    \_\_\_\_\_

§ 2. That the grant of authorization for the above-described encroachment shall be subject to the applicable general provisions set forth in sections 24-59 through 24-65 of the Code of the City of Richmond (2015), as amended.

§ 3. That the grant of authorization for the above-described encroachment shall also be subject to the following specific conditions:

(a) The Licensee shall bear all costs incident to the encroachment, including, without limitation, realignment or replacement of street and sidewalk infrastructure, utilities, signs, right-of-way “monumentation,” and maintenance of the encroachment, as directed by City agencies.

(b) Subject to the general requirements of section 24-62(a)(5), the Licensee shall furnish the City evidence of an insurance contract providing either commercial general liability insurance coverage in an amount not less than \$1,000,000 combined single limit or equivalent homeowner’s or renter’s insurance in an amount not less than \$300,000 combined single limit, naming the City as an additional insured, which shall be maintained for the life of the encroachment.

(c) Subject to the general requirements of section 24-62(a)(7), the Licensee shall furnish the City a removal bond with corporate surety, an irrevocable letter of credit or other type of financial guarantee, payable to the City and approved by the City Attorney, in the amount of \$5,000.

(d) The outdoor dining encroachment area shall conform to the requirements of sections 24-248 through 24-250 of the Code of the City of Richmond (2015), as amended, concerning sidewalk cafés, and the design guidelines adopted pursuant to section 24-246 of the Code of the City of Richmond (2015), as amended, except (i) that subsection (b) of section 24-250 of the Code of the City of Richmond (2015), as amended, shall not apply to the outdoor dining encroachment area, (ii) that, all barriers shall comply with the requirements of the design guidelines adopted pursuant to section 24-246 of the Code of the City of Richmond (2015), as

amended, provided that posts for the fence shown on the drawing incorporated into this ordinance by section 1 of this ordinance shall not be encased in the sidewalk and must be attached in a manner which makes them easily removable, and (iii) as otherwise provided by this ordinance. The Director of Public Works may approve changes to the appearance of the enclosure in accordance with the applicable policies and procedures of the Department of Public Works regarding encroachments.

(e) The Licensee shall be subject to an annual Assessor area tax for the encroachment area.

(f) The Licensee, or any successor or assignee thereof, shall bear all costs for repair, relocation or replacement of the encroachment in the event of damage or movement due to, but not limited to, vehicular travel; alterations “in” or “to” or failure of City utilities; or the City’s and the public’s use of the right-of-way.

(g) The Licensee shall secure all proper permits, and all work shall be performed in a manner satisfactory to the Director of Public Works and the Director of Planning and Development Review.

(h) The Licensee shall provide written notification to the City Assessor, the Director of Finance and the Director of Public Works of the new owner’s name and mailing address immediately upon transferring any ownership or encroachment rights to another party.

§ 4. This ordinance shall be in force upon adoption and shall become effective only when, within 12 months of the date of adoption, the Licensee furnishes the required insurance and bond forms and files a written statement in a form satisfactory to the City Attorney to the effect that the Licensee agrees to be bound by and to comply with the terms and conditions upon which the encroachment authorization is granted. The Licensee shall be responsible for providing the

Division of Permits and Inspections of the Department of Planning and Development Review, the Division of Right of Way Management of the Department of Public Works, and the Office of the City Clerk with written evidence that all conditions of the ordinance have been satisfied within the time period established by this ordinance.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST
4-7320
DEC 12 2017
Office of the Chief Administrative Officer

O&R REQUEST

RECEIVED
JAN 05 2018
OFFICE OF CITY ATTORNEY

DATE: December 8, 2017
TO: The Honorable Members of City Council
THROUGH: The Honorable Levar M. Stoney, Mayor (By Request)
THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer
THROUGH: Robert Steidel Deputy Chief Administrative Officer
THROUGH: Bobby Vincent, Director, Department of Public Works
THROUGH: M.S. Khara, P.E., City Engineer, Department of Public Works
THROUGH: Brian Copple, Right of Way Manager, Department of Public Works
FROM: Marvin Anderson, Surveys Supt., Department of Public Works
RE: PROPOSED ENCROACHMENT INTO A CITY SIDEWALK WITHIN THE PUBLIC RIGHT OF WAY OF AN OUTDOOR DINING AND ASSOCIATED APPURTENANCES AT 305 BROOK ROAD.

ORD. OR RES No. \_\_\_\_\_

PURPOSE: To allow encroachments into the public right of way of an outdoor dining area and its amenities which will occupy an area of 436 square feet of public right of way in front of 305 Brook Road and further detailed on a plan prepared by the Department of Public Works and designated as DPW Drawing. No. N-28806 dated 12/08/17 and entitled "PROPOSED OUTDOOR DINING ENCROACHMENT LOCATED ON THE EAST LINE OF BROOK ROAD BETWEEN W. BROAD ST. AND N ADAMS ST."

REASON: A request/application for encroachment was received from Liz Kincaid. Chief Operating Officer of RVA Hospitality which includes Max's on Broad. The owner in interest, 305 Brook Road, LLC, seeks approval of an outdoor dining space located adjacent to the existing improvements at 305 Brook Road. The outdoor dining space will be used by Max's on Broad restaurant located at the property.

RECOMMENDATIONS: The Department of Public Works offers no objections to the proposed encroachments, and requests that any approvals be subject to, and including without limitation, the following terms and conditions:

1. All incidental costs to the encroachment are the responsibility of the property owner, including without limitation, realignment or replacement of street and sidewalk infrastructure, utilities, signs, right-of-way monumentation, maintenance of the encroachment, etc., as directed by City agencies.
2. The property owner(s)/successor(s) shall provide liability insurance as required or established by the City, and shall maintain the liability insurance in effect for the life of the encroachment.
3. The property owner(s)/successor(s) shall provide a \$5000.00 removal bond as required or established by the City.
4. The outdoor Dining Encroachment is subject to the certain Sidewalk Cafe requirements found or referenced in City Code Sections 24-248 thru 24-250, excluding 24-250(b) in its entirety and excluding reference to barriers in 24-250(c), if they are securely attached to sidewalk.
5. Posts for the fence cannot be encased in the sidewalk and must be attached in a manner which would make them easily removable if necessary/
6. An annual Assessor area tax shall be assessed to the owner(s)/successor(s) for the encroachment area.
7. The property owner(s)/successor(s) is responsible for all costs for repair, relocation, or replacement of the encroachments in the event of damage or movement due to, but not limited to, vehicular travel, alterations or failure of City utilities, or due to the public's use of the right-of-way.
8. The applicant(s)/owner(s)/successor(s) shall secure the proper permits. A Work In Street (WISP) is required to construct these improvements. The encroachment shall be maintained and operated in a manner satisfactory to best management/construction practices and as directed by the Directors of Public Works and Planning and Development Review.
9. The property owner(s)/successor(s) shall provide written notification to the Assessor, Director of Finance and the Director of Public Works of any change in the ownership of the property or restaurant; immediately upon transferring ownership or encroachment rights to another individual or party. Notification should include the new owner's name and mailing address and any other contact information
10. The applicant(s)/owner(s)/successor(s) shall have the sole responsibility to provide the Department of Planning and Development Review and the Department of Public Works- Division of Right of Way Management with written evidence that all conditions of the ordinance have been satisfied. Should this written evidence not be submitted to the said offices prior to the expiration date, twelve months after final approval of ordinance, and the ordinance will become null and void automatically.

**BACKGROUND:** The portion of Brook Road which fronts on this property was previously closed to vehicular traffic by Ordinance 2015-251-245 to facilitate the construction of the Maggie Walker Plaza. The final plan for the plaza (UDC 2016-28) was approved by Planning Commission on 7/18/2016 with the general understanding that outdoor seating was to be installed by the business immediately adjacent/internal to the plaza.

Max's on Broad is located at 305-307 Brook Road, and is currently offering this al fresco dining option under the permissions granted via a Sidewalk Café permit. They are now requesting to gain approval for outdoor dining through an encroachment ordinance which will permit a fence and some dining amenities to remain within the public right of way during non-business hours.

**FISCAL IMPACT/COST:** None

**FISCAL IMPLICATIONS:** None.

**BUDGET AMENDMENT NECESSARY:** No amendment necessary.

**REVENUE TO CITY:** \$1000 application & processing fee; 436 square feet of encroachments @ \$0.25 per sq. ft. = approximately \$109.00 annual Assessor area tax received.

**DESIRED EFFECTIVE DATE:** Upon Adoption.

**REQUESTED INTRODUCTION DATE:** January 8, 2018

**CITY COUNCIL PUBLIC HEARING DATE:** January 22, 2018

**REQUESTED AGENDA:** Consent Agenda.

**RECOMMENDED COUNCIL COMMITTEE:** None

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** Land Use, Housing and Transportation Committee.

**AFFECTED AGENCIES:** Public Works; Law Department; Planning and Development Review; Public Utilities; Economic and Community Development; Assessor; Budget and Strategic Planning; Fire Department; Police Department, Mayor's Office, CAO's Office, Finance, Public Utilities

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None

**REQUIRED CHANGES TO WORK PROGRAM(S):** None.

**ATTACHMENTS:** Letter of Request, DPW Dwg. No. N-28806

**STAFF:**

Prepared for Bobby Vincent, Jr

Prepared by Marvin Anderson

Research and Drawing Coordinated By: Jane Amory

Department of Public Works

646-0435







# Max's

ON BROAD • RICHMOND

August 25, 2017

**Mr. Bobby Vincent, Jr., Interim Director  
Department of Public Works  
City of Richmond  
900 E Broad Street, Suite 701  
Richmond, VA 23219**

**Dear Mr. Vincent,**

**We would like this letter to serve as our "letter of request" to initiate the process for an outdoor dining encroachment at Max's on Broad, 305 Brook Road, Richmond, VA 23220, in the Richmond Arts & Culture District.**

**We have prepared a full submittal package for this encroachment and will include a copy of this letter in the package.**

**We thank you for your consideration and look forward to serving the local community better with this *al fresco* dining option. I am available at any time to discuss this opportunity for our restaurant, staff and guests. I can be reached at 804-525-0486.**

**Sincerely,  
Liz Kincaid  
Chief Operating Officer  
RVA Hospitality  
Including Max's on Broad  
305 Brook Road  
305 BROOK ROAD LLC  
ONE WEST BROAD ST,  
RICHMOND, VA 23220  
[Liz@RVAhospitality.com](mailto:Liz@RVAhospitality.com)**