



City of Philadelphia

Philadelphia, PA 19107

BILL NO. 041003

Introduced November 18, 2004

Councilmember DiCicco

**Referred to the
Committee on Streets and Services**

AN ORDINANCE

Authorizing Vesuvio Restaurant & Bar, 736-38 South 8th Street, Philadelphia PA. 19147, to construct, own and maintain building encroachments consisting of a vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café located on the southwest corner of South 8th and Fitzwater Streets, under certain terms and conditions.

WHEREAS, Michael D'Addesi is the owner of Vesuvio Restuarant and Bar located at 736-38 S. 8th Street, Philadelphia PA. 19147 ; and

WHEREAS, Vesuvio Restuarant and Bar has requested permission to construct, own and maintain building encroachments consisting of a vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café located on the southwest corner of South 8th and Fitzwater Streets; now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Vesuvio Restuarant and Bar, its successors and assigns, is hereby authorized to construct, own and maintain the following structures:

Building Encroachments

Vestibule:

The proposed vestibule is approximately eleven feet (11') long, varies in height from approximately seven feet six inches (7'-6") to ten feet six inches (10'-6") and projects approximately four feet six inches (4'-6") onto the south footway on Fitzwater Street leaving approximately seven feet six inches (7'-6") of clear footway. The centerline of the vestibule is located approximately thirty-two feet six inches (32'-6") west of the west curbline of S. 8th Street.

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Rigid Canopy:

The proposed canopy is approximately ten feet (10') wide, varies in height from approximately nine feet (9') at the sides to eleven feet (11') at the ridge. The canopy projects approximately ten feet six inches (10'-6") onto the south footway of Fitzwater Street leaving approximately one foot six inches (1'-6") clear from the curbline. The centerline of the canopy is located approximately sixty-six feet six inches (66'-6") west of the west curbline of S. 8th Street.

Masonry Fence Wall:

The proposed fence wall, which will act as a windbreak adjacent to a building entrance, is approximately eight feet (8') in height, approximately eight inches (8") thick and projects approximately four feet (4') onto the west footway of S. 8th Street leaving approximately eight feet (8') of clear footway. The centerline of the fence wall is located approximately forty-eight feet six inches (48'-6") south of the south curbline of Fitzwater Street.

Sidewalk Café

The proposed open-air sidewalk café, located at the southwest corner of S. 8th & Fitzwater Streets, will consist of seven (7) tables to accommodate twenty-eight (28) occupants. No rails will be used. The tables are approximately four feet (4') long by two feet (2') wide.

Three (3) tables with twelve (12) chairs encroaching approximately four feet (4') onto the west footway of S. 8th Street leaving eight feet (8') of clear footway. The approximate table locations are as follows: thirteen feet six inches (13'-6") south of the south curbline of Fitzwater Street, seventeen feet (17') south of the south curbline of Fitzwater Street and twenty feet six inches (20'-6") south of the south curbline of Fitzwater Street.

Four (4) tables with sixteen (16) chairs encroaching approximately four feet (4') onto the south footway of Fitzwater Street leaving eight feet (8') of clear footway. The approximate table locations are as follows: fifteen feet (15') west of the west curbline of S. 8th Street, eighteen feet six inches (18'-6") west of the west curbline of S. 8th Street, twenty-three feet (23') west of the west curbline of S. 8th Street and forty feet (40') west of the west curbline of S. 8th Street.

SECTION 2. The construction, use and maintenance of the vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café listed in Section 1 shall be in accordance with the laws, rules and regulations of the City of Philadelphia, and specifically those of the Department of Licenses and Inspections, the Department of Streets and the Art Commission.

SECTION 3. Before exercising any rights or privileges under this Ordinance, Vesuvio Restuarant and Bar must first obtain or have their contractor(s) obtain all required

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permits, licenses and approvals from all appropriate departments, boards, agencies or commissions. No such department, board, agency or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted, it being the express intent of this Ordinance not to supersede any other provision of law governing the issuance of such permits, licenses or approvals. In addition, before exercising any rights and privileges under this Ordinance, Vesuvio Restuarant and Bar shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in a form satisfactory to the Law Department, to provide that Vesuvio Restuarant and Bar shall, *inter alia*:

- (a) agree that upon one hundred and eighty (180) days notice from the City, it shall remove the vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café without cost or expense to the City and shall restore the cartway and footways aforesaid at no cost and expense to the City of Philadelphia when given written notice to do so by the City of Philadelphia to accommodate a municipal or municipal-sponsored construction project;
- (b) furnish the City with either a bond with corporate surety in an amount required by the Department of Streets and in a form satisfactory to the Law Department to insure the compliance with all the terms and conditions of this Ordinance and the Agreement, and to protect and indemnify the City from and against all damages or claims for damages which may arise directly or indirectly as a result of the construction, maintenance or use of the vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café or their removal, or in lieu thereof, submit documentation in a form and content acceptable to the City that Vesuvio Restuarant and Bar self-assumes liabilities and obligations normally covered by Surety Bond;
- (c) secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the City as may be required by regulation or law. No such department, board, agency or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted;
- (d) assume the costs of all changes and adjustments to, and relocation or abandonment of City utilities and City structures wherever located as may be necessary by the reason of the construction of the vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café;

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- (e) carry public liability and property damage insurance, co-naming the City of Philadelphia as an insured party, in such amounts as shall be satisfactory to the Law Department, or in lieu thereof, submit documentation in form and content acceptable to the City that Vesuvio Restuarant and Bar is self-insured and is providing the City of Philadelphia the same coverage and benefits had the insurance requirements been satisfied by an insurance carrier authorized to do business in the Commonwealth of Pennsylvania;
- (f) insure that all construction contractors for the vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café carry public liability and property damage insurance, naming the City of Philadelphia as an insured party in such amounts as shall be reasonably satisfactory to the Law Department; and
- (g) give the City and all public utility companies the right of access, ingress and egress for the purpose of inspection, maintenance, alteration, relocation or reconstruction of any of their respective facilities which may lie within the public right-of-way of any affected streets aforesaid.

SECTION 4. The Law Department shall include in the Agreement such other terms and conditions as shall be deemed necessary to protect the interests of the City.

SECTION 5. The permission granted to Vesuvio Restuarant and Bar to construct, own and maintain the vestibule, rigid frame canopy, masonry fence wall and an open-air sidewalk café described in Section 1 shall expire without any further action by the City of Philadelphia if Vesuvio Restuarant and Bar has not entered into an Agreement and satisfied all requirements of the Agreement that are listed in Section 3 of this Ordinance within one (1) year after this Ordinance becomes law.

SECTION 6. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward the costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.