

# City of Philadelphia



(Bill No. 120659)

## AN ORDINANCE

Authorizing KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants (“Owner”) to construct, own and maintain various right-of-way encroachments at 433-441 Chestnut Street, Philadelphia, PA (“Property”) under certain terms and conditions.

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Permission is hereby granted to KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants to construct, own and maintain various right-of-way encroachments (“Encroachments”) at the Property as follows:

#### Planter boxes on Independence Mall East (formerly 5th Street)

A total of eight (8) planter boxes will encroach upon the public right-of-way of the east sidewalk of Independence Mall East (formerly 5th Street) between Chestnut Street and Ranstead Street leaving approximately twelve (12) feet of clear unobstructed footway as follows:

Five (5) planter boxes will be approximately seventy-two (72) inches wide, as measured along the length of the sidewalk, and will be forty-two (42) inches deep and will be placed a maximum of forty-five (45) inches from the Independence Mall East (formerly 5th Street) curb line.

Two (2) planter boxes will be approximately ten (10) feet wide, as measured along the length of the sidewalk, and will be two (2) feet deep and will be placed against the building.

One (1) planter box will be approximately eight (8) feet wide, as measured along the length of the sidewalk, and will be two (2) feet deep and will be placed against the building.

#### Planter box on Chestnut Street

One (1) planter box will partially encroach upon the public right-of-way of the north sidewalk of Chestnut Street between 4th Street and Independence Mall East (formerly 5th Street). This planter box will be approximately eight (8) feet wide, as measured along the length of the sidewalk, and will be two (2) feet deep and

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will be placed against the building leaving approximately sixteen (16) feet of clear unobstructed footway.

SECTION 2. The construction, use and maintenance of the Encroachments described and 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 and the Department of Streets, provided that the Department of Streets, in its sole, unreviewable discretion, may allow minor variations of the dimension limits of Section 1, within standard tolerances of current engineering practice.

SECTION 3. Before exercising any rights or privileges under this Ordinance, KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants must first obtain or have its contractor(s) obtain all required 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, KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants shall enter into an agreement (“Agreement”) with the appropriate City department or departments, satisfactory to the City Solicitor, to provide that KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants, *inter alia*:

- (a) agrees that upon thirty (30) days notice from the City, it shall remove the Encroachments without cost or expense to the City and shall remove the Encroachments 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) shall 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;
- (c) shall 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 Encroachments;
- (d) shall 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 City Solicitor, or in lieu thereof, submit documentation in form and content acceptable to the City that KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants is self-insured and is providing the

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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;

- (e) shall insure that all construction contractors for the Encroachments 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 City;
- (f) shall 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 footway adjacent to the Encroachments described in Section 1; and
- (g) 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 City Solicitor 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 Encroachments described in Section 1 or their removal, or in lieu thereof, submit documentation in form and content acceptable to the City that KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants self-assumes the liabilities and obligations normally covered by the Surety Bond.

SECTION 4. The City Solicitor 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 KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants to construct, own and maintain the Encroachments described in Section 1 shall expire without any further action by the City of Philadelphia if KHP II Chestnut, LLC d/b/a Kimpton Hotels & Restaurants 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 costs thereof, is paid into the City Treasury within sixty (60) days after the date this Ordinance becomes law.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on October 4, 2012. The Bill was Signed by the Mayor on October 17, 2012.



Michael A. Decker  
Chief Clerk of the City Council