File #: 260566, **Version:** 0

Authorizing various encroachments in the vicinity of 6238 Bustleton Avenue, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to the owners of the property identified below, currently, SIDNEY LEO and RAMON POSEL (the "Owners"), to install, own, and maintain an encroachment at the Property, as follows:

Encroachment Description

Property: 6238 Bustleton Ave, Philadelphia PA d/b/a Bamboo

A total of twenty-four (24) planters, fourteen (14) tables and twenty-eight (28) seats for a sidewalk café will be located along the property line of 6238 Bustleton Avenue and will encroach a distance of approximately nine feet six inches (9'-6") towards the east along the west footway of Bustleton Avenue starting from a point approximately thirty-two feet nine inches (32'-9") south of the Robbins Street south curbline to a point approximately fifty-one feet eight inches (51'-8") farther south leaving a minimum ten feet six inches (10'-6") of clear unobstructed footway.

SECTION 2. The construction, use and maintenance of the Encroachment 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, the Department of Streets, and the Art Commission, 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, Owners must first obtain or have their 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, Owners shall enter into an agreement ("Agreement") with the appropriate City department or departments, satisfactory to the City Solicitor, to provide that Owners, inter alia:

(a) Maintain and keep in good repair and working order the Encroachment to the satisfaction of the Streets Department;

(b) Agree to remove or relocate any or all of the Encroachment of this Ordinance from the public right-of-way within thirty (30) days after lawful service of notice by the City of Philadelphia. Such notice may be given when:

1. The Department of Streets has determined that the sidewalk café no longer meets the City's placement requirements; the sidewalk café or any portion of the Encroachment must be removed to accommodate a municipal or municipally sponsored public project; or the Streets Department has granted a temporary permit to close the sidewalk; or

2. The Department of Licenses and Inspections has determined that the sidewalk café is no longer being used as such; the restaurant to which the café is accessory has been temporarily or permanently closed for violation of any City, state, or federal law and/or regulation; or the sidewalk café is being operated in violation of any ordinance, rule, or regulation of the City of Philadelphia;

(c) 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;

(d) 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 reason of the construction of the Encroachment;

(e) 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 Owners are self-insured and are 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) Shall ensure that all construction contractors for the Encroachment 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 Solicitor;

(g) 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 Encroachment described in Section 1;

(h) Indemnify and hold harmless the City, its officers, employees and agents from and against any and all loss resulting from injury or death to persons, or damage to property arising out of, resulting from, or in any manner caused by the presence, location, use, operation, installation, maintenance, replacement or removal of the Encroachment. Owners shall also agree to release the City from any and all claims relating to the Encroachment, including if ordered removed or when street, sidewalk or utility construction occurs;

(i) 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 ensure compliance with all the terms and conditions of this Ordinance and the Agreement, or in lieu thereof, submit documentation in a form and content acceptable to the City that Owners self-assume the liabilities and obligations normally covered by the Surety Bond;

(j) Shall adhere to all applicable requirements in The Philadelphia Code, including the requirements set forth in Section 9-208 of the Code;

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(k) Limit the number of seats in the sidewalk café to twenty-eight (28) seats;

(l) Agree to manage the sidewalk café in a manner that prevents nuisance behavior as that term is defined under Chapter 9-4400 of The Philadelphia Code; and

(m) Shall adhere to all applicable requirements in The Philadelphia Code.

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 Owner to install, own, and maintain the Encroachment described in Section 1 shall expire without any further action by the City of Philadelphia if Owner 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.