

ORDINANCE NO. _____

AN ORDINANCE authorizing the owners of the property located at 500 Wolfe Street to construct and maintain an encroachment for a fence at that location.

WHEREAS, Elena and Amanda Delle Donne are the Owners (“Owners”) of the property located at 500 Wolfe Street, in the City of Alexandria, Virginia; and

WHEREAS, Owners desire to establish and maintain a fence which will encroach into the public sidewalk right-of-way at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, in Encroachment No. 2019-0001 the Planning Commission of the City of Alexandria recommended approval to the City Council subject to certain conditions at one of its regular meetings held on June 25, 2019, which recommendation was approved by the City Council at its public hearing on July 9, 2019; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owners be, and the same hereby are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 500 Wolfe Street as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of a fence, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owners of liability for any negligence on their part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owners maintaining, at all times and at their own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

Bodily Injury:	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence
	\$1,000,000 aggregate

1 This liability insurance policy shall identify the City of Alexandria and Owners as named
2 insureds and shall provide for the indemnification of the City of Alexandria and Owners against
3 any and all loss occasioned by the establishment, construction, placement, existence, use or
4 maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed
5 with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the
6 event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in
7 force and effect, the authorization herein granted to establish and maintain the encroachment
8 shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In
9 that event, Owners shall, upon notice from the city, remove the encroachment from the public
10 right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of
11 Owners. Nothing in this section shall relieve Owners of their obligations and undertakings
12 required under this ordinance.

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14 Section 3. That the authorization hereby granted to establish and maintain said
15 encroachment shall in addition be subject to and conditioned upon the following terms:

- 16
- 17 (a) Neither the City of Alexandria nor any public or private utility company shall be
18 responsible for damage to Owners' property encroaching into the public right-of-way
19 during repair, maintenance or replacement of the public right-of-way or any public
20 facilities or utilities in the area of encroachment.
 - 21
 - 22 (b) The Owners shall be responsible for replacement and repairs to the adjacent City
23 right-of-way, including any areas damaged during construction activity.
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 - 25 (c) In the event the City shall, in the future, have need for the area of the proposed
26 encroachment, the Owners shall remove any structure that encroached into the public
27 right-of-way, within 60 days, upon notification by the City.
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 - 29 (d) The fence shall be a maximum of three and one-half feet tall and remain 50% open.
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 - 31 (e) Plantings shall not exceed three and one-half feet in height. The applicant shall take
32 into consideration the proximity of plantings to the sidewalk public right-of-way.
33 Plantings shall not encroach on the sidewalk nor provide a hazard to pedestrians
34 through the presence of sharp thorns, spines, or other similar defenses.
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 - 36 (f) Ten years from the date of the adoption of this ordinance, staff shall review this
37 encroachment and determine whether a vacation is appropriate in the context of the
38 City's Capital Improvement Program.
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40 Section 4. That by accepting the authorization hereby granted to establish and
41 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners
42 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any
43 and all liability (including attorneys' fees and litigation expenses) arising by reason of the
44 establishment, construction, placement, existence, use or maintenance of the encroachment.

1 Section 5. That the authorization herein granted to establish and maintain the
2 encroachment shall be subject to Owners maintaining the area of the encroachment at all times
3 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
4 matter.

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6 Section 6. That nothing in this ordinance is intended to constitute, or shall be
7 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
8 of its officers or employees.

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10 Section 7. That the authorization herein granted to establish and maintain the
11 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
12 public right-of-way for any purpose whatsoever and, by written notification, demands from
13 Owners the removal of the encroachment. Said removal shall be completed by the date specified
14 in the notice and shall be accomplished by Owners without cost to the city. If Owners cannot be
15 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall
16 have the right to remove the encroachment, at the expense of Owners, and shall not be liable to
17 Owners for any loss or damage to the structure of the encroachment or personal property within
18 the encroachment area, caused by the removal.

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20 Section 8. The terms “Owners” shall be deemed to include Elena and Amanda Delle
21 Donne and their respective successors in interest.

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23 Section 9. That this ordinance shall be effective upon the date and at the time of its
24 final passage.

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26
27 JUSTIN WILSON
28 Mayor

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30 Attachment: Encroachment plat

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32 Introduction: 09/10/19

33 First Reading: 09/10/19

34 Publication:

35 Public Hearing: 09/14/19

36 Second Reading: 09/14/19

37 Final Passage: 09/14/19