

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend and reordain Sections 3-2-82 and 3-2-85 of Article G (FEE FOR PROCESSING REQUESTS FOR VACATION OF PUBLIC RIGHTS AND REQUESTS FOR ENCROACHMENTS AND CHARGE FOR COMMERCIAL ENCROACHMENTS) of Chapter 2 (TAXATION) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) and Section 5-2-29 of Article A (GENERAL PROVISIONS) of Chapter 2 (STREETS AND SIDEWALKS) of Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of the Code of the City of Alexandria, Virginia, 1981, as amended.

## THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Sections 3-2-82 and 3-2-85 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby are, amended by deleting the current sections in their entirety and inserting new language, as follows:

Sec. 3-2-82 Processing fee for encroachments.

A fee shall be charged to process each request to be allowed to encroach upon any public way or right including, but not limited to, streets, alleys, sidewalks and public places; provided, however, that no fee shall be charged to process a request received after January 1, 1987, which involves an encroachment by residential property that existed as of December 31, 1986, and which seeks permission for the same or a lesser encroachment to continue to encroach upon a public way or right. Notwithstanding the first sentence of this section, the city manager or the manager's designee is authorized to grant a waiver of the fee when it is determined that the fee constitutes an undue hardship to the person requesting the encroachment or is disproportionate to the value of the requested encroachment or that a waiver of the fee is otherwise in the public interest. The amount of the fee shall be established by council resolution.

Sec. 3-2-85 Annual charge for encroachments.

The owner, tenant, or permit holder or owners of property which encroaches over, under or in any street, alley, sidewalk, or other public place, whether or not such encroachment has been authorized by the city, shall annually compensate the city for such encroachment by payment as established by council resolution.

Section 2. That Section 5-2-29 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by deleting the current section in its entirety and inserting new language, as follows:

Sec. 5-2-29 Street encroachments.

(a) Encroachment Requirements: Encroachments into a public right-of-way are subject to the following:

1 (1) Permits: A permit for an encroachment must be obtained from the director of the  
2 department of transportation and environmental services or designee. The director may  
3 establish rules and procedures for processing permits and administering this section. After a  
4 permit has been granted, it may be revoked, and the encroachment removed from the right-  
5 of-way whenever the applicant fails to comply with any permit conditions. An  
6 encroachment permit application will be reviewed by the director to determine compliance  
7 with the following:

8 a. The location of the encroachment shall not unduly obstruct the public right-of-way  
9 and shall not interfere with access and safety.

10 b. The encroachment shall be of such design and construction, so as not to constitute a  
11 nuisance or public hazard.

12 c. The encroachment shall be of a design, material and color which is generally  
13 recognized as intended for and suitable for the public right-of-way in an urban  
14 environment, the character is compatible with the character of the surrounding area,  
15 and, if located in an historic district, is compatible with the streetscape in the district  
16 and is consistent with the applicable design guidelines adopted by the board of  
17 architectural review.

18 d. The owner of any nonpermanent encroachment must move the encroachment  
19 whenever the city requires access to the encroachment location or as set out in  
20 subsection (a)(4) below.

21 (2) Fees: Fees for encroachments shall be established pursuant to sections 3-2-82 and 3-2-  
22 85 of this code.

23 (3) Insurance: The permit holder shall be required to maintain, in force, insurance as  
24 required and approved by the city for the duration of the encroachment.

25 (4) Removal: The permit holder shall remove the encroachment if the director determines  
26 that the encroachment interferes with public access or is otherwise inconsistent with the  
27 public welfare. In such case, the director shall provide the permit holder with written notice  
28 of the need to remove the encroachment at least 10 days prior to the date on which the  
29 removal must be completed. If the permit holder cannot be found or fails to remove the  
30 encroachment within the time specified, the director shall have the right to remove the  
31 encroachment, at the expense of the permit holder, and shall not be liable for any loss or  
32 damage to the encroaching structure that may occur as a result of the removal.

33  
34 (b) Encroachments in substantial conformance with the following may be authorized by permit  
35 as set out in subsection (a) above:

36 (1) Non-Permanent Encroachments Upon Public Sidewalks or Rights-of-Way: Non-  
37 permanent, moveable encroachments upon public spaces may be approved subject to the  
38 following:

39 a. Planters: Planters which are nonpermanent may be located in a right-of-way subject  
40 to the following:

41 1. A nonpermanent planter is a portable container that is light enough to be  
42 transported by two people when empty of soil and plants.

43 2. A nonpermanent planter on a sidewalk may not project into a public right-of-  
44 way more than steps would be allowed to project under subsection (2) below and

1 may not exceed 30 inches in height. There is no limit to the number of planters  
2 permitted as long as the planters are maintained in good condition. Planters in  
3 outdoor dining areas must comply with the requirements of the City of Alexandria  
4 Outdoor Dining Design Guidelines.

5 3. A nonpermanent planter must be located so as to maintain a path for public  
6 travel at least five feet in width at all points, along any adjacent sidewalk.

7 b. Benches and Street Furniture. Benches and similar street furniture may be placed in  
8 a public right-of-way, subject to the following:

9 1. Unless located within a parklet, the bench or street furniture shall be located  
10 immediately adjacent to the closest building wall, touch the wall along the length  
11 of the bench or street furniture, and not project from the wall more than 30 inches.

12 2. The bench or street furniture shall not be used as part of a business for  
13 advertising or for making sales or providing services to customers and shall be  
14 available for use by the general public.

15 c. Parklet: Parklets are intended to create additional public space, support an active  
16 and safe streetscape, enhance the economic and social vitality of a neighborhood, and  
17 promote business friendly activity through the creation of new spaces for commercial  
18 uses, such as outdoor dining and retail display. Parklets, may be placed in a public  
19 right-of-way, subject to the following:

20 1. Parklets must comply with the parklet requirements as approved by the traffic  
21 and parking board and which address the allowed locations, design requirements,  
22 safety, and maintenance responsibilities.

23 2. Unless approved for private commercial use pursuant to this subsection, the  
24 parklet shall be available for use by the general public.

25 3. The director shall review any parklets and approve it if the director finds that it  
26 complies with the parklet requirements and will create new public space or space  
27 for commercial uses that support an active streetscape.

28 d. Outdoor Dining in Public Right of Way: Outdoor dining may be placed on the  
29 sidewalk or within a parklet in the public right-of-way subject to the following:

30 1. Outdoor dining areas must comply with the City of Alexandria Outdoor Dining  
31 Design Guidelines.

32 2. The directors of transportation and environmental services and planning and  
33 zoning or designees shall review any outdoor dining requests and may at their  
34 discretion approve it if they find that it complies with the requirements of City of  
35 Alexandria Outdoor Dining Design Guidelines and will create space for  
36 commercial uses that support an active streetscape.

37 3. Within the NR Zone and the Mount Vernon Avenue Urban Overlay Zone areas,  
38 outdoor dining shall be closed and cleared of all customers by 10:00 p.m. Sunday  
39 through Thursday and by 11:00 p.m. on Friday and Saturday. Within the Old  
40 Town Small Area Plan, outdoor dining shall be closed and cleared of all  
41 customers by 11:00 p.m. In all other locations in the city, outdoor dining areas  
42 shall be closed and cleared of all customers by 11:00 p.m.

43 4. No live entertainment shall be permitted in the outdoor seating area.

1           5. The outdoor dining area shall be cleared and washed at the close of each  
2           business day that it is in use.

3           6. Any dining areas and furniture associated with this subsection must allow for a  
4           minimum of five feet clearance on the sidewalk for pedestrian traffic.

5           e. *Outdoor Retail Displays and Sales in the Public Right of Way:* Outdoor retail  
6           display and sales associated with an adjacent retail business is permitted immediately  
7           in front of an associated storefront on the public sidewalk and/or in a parklet subject to  
8           the following:

9           1. Outdoor retail display and sales are only permitted during business operational  
10           hours.

11           2. Any displays or activities associated with this must allow for a minimum of  
12           five feet clearance on the sidewalk for pedestrian traffic.

13           f. *Rental Bicycle.* Bicycles offered for rent may be displayed and rented from areas of  
14           right-of-way pursuant to section 7-2400 of the zoning ordinance and this section.

15           (2) *Stationary Encroachments Upon Public Sidewalks or Rights-of-Way:* Stationary  
16           encroachments upon public sidewalks and rights-of-way must be compliant with the  
17           following guidelines and measurements:

18           a. *Steps/Stoops/Ramps:* Steps not more than 12 feet in width, including the required  
19           landings, may project beyond the street facing lot line. The term "steps" in this  
20           subsection includes ramps and similar structures necessary to provide required  
21           accessibility improvements. The projection may be up to five feet on streets with a  
22           right-of-way width of 100 feet or more, up to four feet on streets with a right-of-way  
23           width between 66 and 100 feet, up to three feet on streets and alleys with a right-of-  
24           way width less than 66 feet and, notwithstanding the above, up to 20 inches on Union  
25           Street and on King Street between the Potomac River and Union Street.

26           b. *Parker-Gray Historic District Front Fences:* Within the Parker-Gray Historic  
27           District, retaining walls less than two feet in height above the lower adjacent grade or  
28           fences at the height and location otherwise permitted in a front yard may be  
29           constructed in the public right-of-way.

30           c. *Projections Upon Architecture:* The following decorations and other projections  
31           may be affixed upon buildings within the city pursuant to the following categories and  
32           guidelines:

33           1. *Architectural Decorations and Features:* Belt courses, lintels, sills, architraves,  
34           pediments and similar architectural decorations and building features, including  
35           elements associated with environmental sustainability may project up to one foot  
36           beyond the street facing lot line when less than 10 feet above the curb level, and  
37           up to four feet beyond the street lot line when ten feet or more above the curb  
38           level and extending to no more than one foot from the established curb line.

39           2. *Signs and Art Features:* A sign or art feature, that complies with the zoning  
40           ordinance, may be erected or displayed flat against a building wall or at an angle  
41           thereto, so long as the sign or art feature does not project more than four feet from  
42           the building wall or within one foot of an established curb line and the bottom of  
43           the sign is at least eight feet above a sidewalk or parking area and at least 14.5  
44           feet above an alley.

1                    3. Canopies, Awnings, and Marquees: Canopies, awnings and marquees  
2                    suspended from a building or structure with no ground supports, having a  
3                    clearance of at least eight feet above a sidewalk, extending no more than four feet  
4                    beyond the front property line, and extending to no more than one foot from the  
5                    established curb line, may be erected.

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7                    (c) The directors of planning and zoning and transportation and environmental services may  
8                    recommend for council consideration an encroachment if the applicant demonstrates a unique  
9                    condition or site design issue that warrants an exception from the encroachment limitations of  
10                   this section. The encroachment may be authorized only by special ordinance adopted by city  
11                   council and is subject to the requirements under subsection (a) above.

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13                   Section 3. That Sections 3-2-82, 3-2-85, and 5-2-29 as amended pursuant to  
14                   Sections 1 and 2 of this ordinance, be, and the same hereby are, reordained as part of the City of  
15                   Alexandria City Code.

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17                   Section 4. That this ordinance shall become effective on July 1, 2023.

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19                   JUSTIN WILSON  
20                   Mayor

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23                   Introduction: 04/11/23  
24                   First Reading: 04/11/23  
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26                   Public Hearing: 04/15/23  
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