

## ORDINANCE NO. 5485

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

- a. The location of the encroachment shall not unduly obstruct the public right-of-way and shall not interfere with access and safety.
- b. The encroachment shall be of such design and construction, so as not to constitute a nuisance or public hazard.
- c. The encroachment shall be of a design, material and color which is generally recognized as intended for and suitable for the public right-of-way in an urban environment, the character is compatible with the character of the surrounding area, and, if located in an historic district, is compatible with the streetscape in the district and is consistent with the applicable design guidelines adopted by the board of architectural review.
- d. The owner of any nonpermanent encroachment must move the encroachment whenever the city requires access to the encroachment location or as set out in subsection (a)(4) below.

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

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

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

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

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

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

- 1. A nonpermanent planter is a portable container that is light enough to be transported by two people when empty of soil and plants.
- 2. A nonpermanent planter on a sidewalk may not project into a public right-of-way more than steps would be allowed to project under subsection (2) below and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The outdoor dining area shall be cleared and washed at the close of each business day that it is in use.
6. Any dining areas and furniture associated with this subsection must allow for a minimum of five feet clearance on the sidewalk for pedestrian traffic.
- e. *Outdoor Retail Displays and Sales in the Public Right of Way:* Outdoor retail display and sales associated with an adjacent retail business is permitted immediately in front of an associated storefront on the public sidewalk and/or in a parklet subject to the following:
  1. Outdoor retail display and sales are only permitted during business operational hours.
  2. Any displays or activities associated with this must allow for a minimum of five feet clearance on the sidewalk for pedestrian traffic.
- f. *Rental Bicycle.* Bicycles offered for rent may be displayed and rented from areas of right-of-way pursuant to section 7-2400 of the zoning ordinance and this section.
- (2) *Stationary Encroachments Upon Public Sidewalks or Rights-of-Way:* Stationary encroachments upon public sidewalks and rights-of-way must be compliant with the following guidelines and measurements:
  - a. *Steps/Stoops/Ramps:* Steps not more than 12 feet in width, including the required landings, may project beyond the street facing lot line. The term "steps" in this subsection includes ramps and similar structures necessary to provide required accessibility improvements. The projection may be up to five feet on streets with a right-of-way width of 100 feet or more, up to four feet on streets with a right-of-way width between 66 and 100 feet, up to three feet on streets and alleys with a right-of-way width less than 66 feet and, notwithstanding the above, up to 20 inches on Union Street and on King Street between the Potomac River and Union Street.
  - b. *Parker-Gray Historic District Front Fences:* Within the Parker-Gray Historic District, retaining walls less than two feet in height above the lower adjacent grade or fences at the height and location otherwise permitted in a front yard may be constructed in the public right-of-way.
  - c. *Projections Upon Architecture:* The following decorations and other projections may be affixed upon buildings within the city pursuant to the following categories and guidelines:
    1. *Architectural Decorations and Features:* Belt courses, lintels, sills, architraves, pediments and similar architectural decorations and building features, including elements associated with environmental sustainability may project up to one foot beyond the street facing lot line when less than 10 feet above the curb level, and up to four feet beyond the street lot line when ten feet or more above the curb level and extending to no more than one foot from the established curb line.
    2. *Signs and Art Features:* A sign or art feature, that complies with the zoning ordinance, may be erected or displayed flat against a building wall or at an angle thereto, so long as the sign or art feature does not project more than four feet from the building wall or within one foot of an established curb line and the bottom of the sign is at least eight feet above a sidewalk or parking area and at least 14.5 feet above an alley.

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

(c) Except as authorized under subsection (b) above, any encroachment into a public street, alley, sidewalk or other right-of-way may be authorized only by special ordinance adopted by city council and is subject to the requirements under subsection (a) above.

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

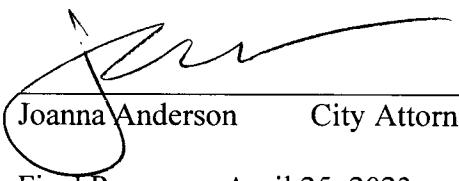
Section 4. That this ordinance shall become effective on July 1, 2023.

  
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**JUSTIN M. WILSON**  
Mayor

ATTEST:

  
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Gloria A. Sittor, CMC City Clerk

Approved as to Form:

  
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Joanna Anderson City Attorney

Final Passage: April 25, 2023