

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

AN ORDINANCE authorizing the owners of the property located at 2701 Dewitt Avenue to establish and maintain an encroachment into the public right-of-way at that location along the frontage of Dewitt Avenue and East Randolph Avenue for an existing fence.

WHEREAS, Jesse L. Houck and Rachel G. Houck are the owners (“Owners”) of the property located at 2701 Dewitt Avenue in the City of Alexandria, Virginia; and

WHEREAS, Owners desire to obtain authorization for an existing fence, which will encroach into the public right-of-way at that location along the frontage of Dewitt Avenue and East Randolph Avenue; and

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

WHEREAS, in Encroachment No. 2018-0001, 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 September 4, 2018, which recommendation was approved by the City Council at its public hearing on September 15, 2018, 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 right-of-way at 2701 Dewitt Avenue in the City of Alexandria, as shown on the attached encroachment plat, said encroachment measuring approximately 90 square feet and consisting of an existing fence along the frontage of Dewitt Avenue and East Randolph Avenue, 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, general liability insurance in the amount of \$1,000,000 with a company authorized to transact business in the Commonwealth of Virginia.

This liability insurance policy shall identify the City of Alexandria and Owners as named insureds and shall provide for the indemnification of the City of Alexandria and Owners against any and all loss occasioned by the establishment, construction, placement, existence, use or

1 maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed  
2 with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the  
3 event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in  
4 force and effect, the authorization herein granted to establish and maintain the encroachment  
5 shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In  
6 that event, Owners shall, upon notice from the city, remove the encroachment from the public  
7 right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of  
8 Owners. Nothing in this section shall relieve Owners of their obligations and undertakings  
9 required under this ordinance.

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

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14 a) Neither the City nor any Private utility company will be held responsible for damage to  
15 the private improvements in the public right-of-way during repair, maintenance or  
16 replacement of any utilities that may be located within the area of the proposed  
17 encroachment.  
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19 b) In the event the City shall, in the future, have need for the area of the proposed  
20 encroachment, the applicant shall remove any structure that encroached into the public  
21 right-of-way, within 60 days, upon notification by the City. The Owners shall bear all  
22 costs associated with removal of the encroachments.

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25 Section 4. That by accepting the authorization hereby granted to establish and  
26 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners  
27 shall be deemed to have promised and agreed to save harmless the City of  
28 Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by  
29 reason of the establishment, construction, placement, existence, use or maintenance of the  
30 encroachment.

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

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

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40 Section 7. That the authorization herein granted to establish and maintain the  
41 encroachment shall be terminated whenever the City of Alexandria desires to use the affected  
42 public right-of-way for any purpose whatsoever and, by written notification, demands from  
43 Owners the removal of the encroachment. Said removal shall be completed by the date specified  
44 in the notice and shall be accomplished by Owners without cost to the city. If Owners cannot be

1 found or shall fail or neglect to remove the encroachment within the time specified, the City shall  
2 have the right to remove the encroachment, at the expense of Owners, and shall not be liable to  
3 Owners for any loss or damage to the structure of the encroachment or personal property within  
4 the encroachment area, caused by the removal.

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6 Section 8. The term “Owners” shall be deemed to include Jesse L. Houck and  
7 Rachel G. Houck and their respective successors in interest.

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

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13 ALLISON SILBERBERG  
14 Mayor

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16 Attachment: Encroachment Plat

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18 Introduction: November 13, 2018

19 First Reading: November 13, 2018

20 Publication:

21 Public Hearing: November 17, 2018

22 Second Reading: November 17, 2018

23 Final Passage: November 17, 2018