



amendment and encroachment fees (Attachment 2) as revised pursuant to Council recommendations following the public hearing on Saturday, April 15, 2023.

**BACKGROUND:** In response to feedback and guidance from the City Council at the April 15, 2023 public hearing, staff has updated the code and, included in this memo, the criteria that staff will use to determine if an encroachment is eligible for administrative approval or should be supported as a special ordinance. The original docket memo is included as Attachment 3 and includes discussion of changes regarding Outdoor Dining and Parklets.

**DISCUSSION:** A permitted encroachment allows for impingement of the public right-of-way but does not involve permanently relinquishing City ownership of the property. The proposed City Code section 5-2-29 lists administratively allowed encroachments, which are minor in scope and nature and includes steps, signs, non-permanent planters, architectural decorations, canopies, awnings, benches or other improvement beyond a property line into a public right-of-way. In addition, the Parklet and Outdoor Dining are among the allowable uses. All other encroachments will be considered on a case-by-case basis and staff will evaluate those using the below criteria and guidance to determine whether they are appropriate to docket for Council consideration.

The staff would use the following criteria to process encroachment applications:

- It is one of the allowed encroachments outlined in the City Code 5-2-29 and is therefore administrative.
  - The allowed encroachments have categories and measurements specified in the City Code that they must fit within.
  - The encroachment is in substantial conformance with the City Code. Sometimes due to the nature of the site, the encroachment such as a front stoop or entrance ramp may need to extend outside of the specified dimensions to make the required grade and landing. In the review of such applications, staff can determine whether these are the minimum necessary, small and comparable in scope and scale, and in substantial conformance with the enumerated list of allowances and then make an appropriate decision with respect to issuance of the permit.
- It is not an administrative encroachment under City Code Section 5-2-29 and City Council Special Ordinance is required. In developing recommendations for City Council for such applications, staff must consider the scope and nature of the proposed encroachment. For a favorable recommendation, at a minimum, the proposed encroachment must be minor and comparable in scope to the list of allowed encroachments outlined in Section 5-2-29 as determined by the directors of Planning and Zoning and Transportation and Environmental Services. Examples include:
  - It is part of a site plan and the encroachment results from a fully designed and reconstructed street front improvement to solve a unique or site constrained issue. Staff will work with the applicant to incorporate any required encroachments into the site plan and streetscape improvements so that all proposed improvements function in harmony. These types of encroachments include things like overhangs, balconies, and exhaust vents for parking garages on retrofitted buildings that may have physical limitations when being outfitted for modern building codes.
  - It is a standalone encroachment that is similar to the allowable list, but for one reason or another, it is not able to fit into the allowable list for size or nature.
  - It is the result of a construction or historical situation that has no other practical remedy. As an example, in a few instances, the actual constructed first floor grades were either lower or higher than the sidewalk. This is a flaw (grade bust) that could not be easily or practically remedied, and typically require short retaining walls so that steps/ramps could be incorporated to access the first floor of the building. These types of corrections are reviewed by staff and solutions explored with the applicant so that the recommendation of an encroachment is made if it is the only practicable solution.
  - Encroachments that appear to privatize large areas of the right-of-way shall not be supported. Other mechanisms such as vacations or leases should be explored for their appropriateness in these cases.
- Regardless of the criteria above, as part of providing a favorable determination, staff must ensure that proposed encroachment does not limit the intended function and reasonable use of the public right-of-way as outlined in proposed section 5-2-29(a)(1) including but not limited to:
  - The location of the encroachment shall not unduly obstruct the public right-of-way, not interfere with access and safety, and not limit future needs for utilities or other infrastructure.
  - The encroachment shall be of such design and construction, so as not to constitute a nuisance or public hazard.
  - 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.

- The encroachment shall be of a design and specifications so that it can be easily removed if City were to determine a need to terminate the encroachment.
- For Parklets, the design must comply with the City of Alexandria Parklet Requirements.  
<<https://www.alexandriava.gov/sites/default/files/2022-06/ParkletRequirementsApril2022Update.pdf>> or as may be updated.
- For Outdoor Dining, the design must comply with the City of Alexandria Outdoor Dining Design Guidelines.  
<<https://www.alexandriava.gov/sites/default/files/2022-11/Outdoor-Dining-Design-Guidelines->> or as may be updated.

In cases or applications where criteria for encroachment is not met or its application is not appropriate, other options such as vacation or a lease can be explored with the applicant to determine their suitability. Encroachments, Vacations or Leases will be docketed only if there is a positive staff recommendation. In some cases, the proposed impingement may be determined to not be appropriate and should not be constructed or may need to be removed from the City's right-of-way.

Alternately, should the City Council desire staff to also docket encroachments that staff deems inappropriate, then subsection (c) of 5-2-29 shall be replaced with the following text: *(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 a special ordinance adopted by city council and is subject to the requirements under subsection (a) above.*

To simplify the annual charge required of encroachments, an updated Council Resolution is required, and the goal of this charge will be a streamlined basis for all types of encroachments including outdoor dining, parklets, and other allowable encroachments as defined by the City Code. The permits will need to be renewed annually along with the payment of any processing fees to ensure continued compliance with the encroachment requirements. Staff intends to present the fee resolution to Council in June.

**Effective date:**

The revised code will become effective July 1, 2023. This will allow time for staff to implement the code changes and bring the required fee resolution for Council's consideration.

**FISCAL IMPACT:** Fiscal impact will be evaluated when the separate fee resolution is considered by Council.

**ATTACHMENTS:**

1. Ordinance Cover
2. Ordinance
3. April 11, 2023 Docket Memo
4. Impingement Flow Chart

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