



Legislation Details (With Text)

File #: 23-0993 **Name:**

Type: Ordinance **Status:** Agenda Ready

File created: 4/3/2023 **In control:** City Council Legislative Meeting

On agenda: 4/15/2023 **Final action:**

Title: Public Hearing, Second Reading and Final Passage of an Ordinance to amend Sections 3-2-82 and 3-2-85 (Encroachment fees) Article G of Chapter 2 of Title 3 (Finance, Taxation and Procurement) and Section 5-2-29 (Street Encroachments) Chapter 2 (Streets and Sidewalks) of Title 5 (Transportation and Environmental Services). [ROLL-CALL VOTE]

Sponsors:

Indexes:

Code sections:

Attachments: 1. 23-0993_Ordinance Cover, 2. 23-0993_Encroachment ordinance, 3. 23-0993_Presentation

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 4, 2023

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES F. PARAJON, CITY MANAGER /s/

FROM: TARRENCE MOORER, INTERIM DIRECTOR, TRANSPORTATION AND ENVIRONMENTAL SERVICES

DOCKET TITLE:

Public Hearing, Second Reading and Final Passage of an Ordinance to amend Sections 3-2-82 and 3-2-85 (Encroachment fees) Article G of Chapter 2 of Title 3 (Finance, Taxation and Procurement) and Section 5-2-29 (Street Encroachments) Chapter 2 (Streets and Sidewalks) of Title 5 (Transportation and Environmental Services). [ROLL-CALL VOTE]

ISSUE: Should City Council adopt certain policy updates to the Section 5-2-29 (street encroachment ordinance) with the goal of simplifying review and approval process and make corresponding changes to Sections 3-2-82 and 3-2-85 (encroachment fees) to enable updating the fees with council resolution.

RECOMMENDATION: That City Council approve the street encroachment ordinance amendment and encroachment fees amendment (Attachment 2) on first reading and schedule it for second reading, public hearing and final passage on Saturday, April 15, 2023.

BACKGROUND: In response to City Council requested review of the encroachment ordinance, staff has proposed ordinance changes to clarify and simplify the applicable code sections. A permitted encroachment allows for impingement of the public right-of-way but does not involve permanently relinquishing City ownership of the property. City Code section 5-2-29 lists allowed encroachments and the encroachments listed are minor in scope and nature and includes steps, signs, non-permanent planters, architectural decorations, canopies, awnings, benches, or other improvement that extend beyond a property line into a public right-of-way. A brief discussion on proposed changes is provided below:

Reorganization and consolidation:

An update in 2021 amended the Street Encroachments ordinance to include parklets, retail sales, and displays with an administrative review as allowed encroachments. With other changes being proposed at this time, it made sense to reorganize and consolidate the code section making it more logical in its organization and therefore easier to understand and administer. It is now broadly divided into two sections, the first one being general encroachment requirements and the second one to address encroachment categories which are divided into three broad categories.

Consolidating outdoor dining permit into Street encroachments:

An amendment to this section of Code allows outdoor dining in the public right-of-way on sidewalks as permitted encroachments in the proposed Section 5-2-29. Including outdoor dining on the sidewalk in the public right-of-way in Section 5-2-29 represents a shift from regulating it in Zoning Ordinance Section 6-800 for the King Street Outdoor Dining Overlay and through individual City Council reviews at public hearings for all other areas in the City. The addition of outdoor dining on the sidewalk in the public right-of-way to Section 5-2-29 of the City Code would allow the same standards and requirements of Zoning Ordinance Section 6-800 to be applied citywide. The opportunity for a permitted encroachment for sidewalk dining in the public right-of-way allows for a single application and administrative staff review for parklet and outdoor dining in compliance with the Parklet Requirements and the City of Alexandria Outdoor Dining Design Guidelines as noted in the City Code.

Administrative approvals of the encroachments:

Currently the Code allows for other encroachments to be considered on a case-by-case basis and may only be authorized by an ordinance adopted by City Council. As part of proposed code changes, this provision is being modified, and the list of permitted encroachments is being broadened and clarified in Chapter 5-2-29. As proposed, all allowable encroachments will be handled administratively through a standalone permit process or through a site plan process and must meet the criteria established in the broadened list of allowable encroachments. If the requested encroachment is not explicitly listed or does not comply exactly with the dimensions listed as an allowable encroachment under City Code Section 5-2-29, in deciding if the encroachment is allowable, staff must consider the scope and nature of the proposed encroachment to determine whether it is in substantial conformance. For a favorable recommendation, at a minimum, the proposed encroachment must be minor and comparable in scope to the list of allowed encroachments.

In some land use cases, there are encroachments that may be necessary or encouraged due to design constraints. These encroachments may be brought forward for Council consideration through special ordinance if recommended by the Directors of Planning & Zoning and Transportation & Environmental Services as integral to the project, solving a unique condition, an/or is fully compatible with the proposed building, street frontage,

and right-of-way user experience.

Liability insurance requirements:

The City Code is updated to reference a policy that will be developed in conjunction with Risk Management to spell out the insurance requirements for various types of encroachments as residential encroachments may have different requirements than a commercial parklet.

Fees for commercial encroachments:

Currently, the City Code requires that commercial encroachments pay an annual fee based on a proportional tax assessed by the Office of Real Estate Assessments. This process has been difficult to administer as some of the encroachments are requested by lease holders, and not the owners of the properties, and the value determination takes staff time to evaluate for each request.

DISCUSSION: Staff believe commercial businesses should continue to pay for use of the City's right of way since businesses may benefit from the use of this public space. In the future, to simplify the payment required for commercial encroachments, a code change and an updated Council Resolution is recommended. If adopted as proposed, along with a subsequent fee resolution, the basis for the encroachment fee will become consistent for all types of encroachments including outdoor dining, parklets, and other allowable encroachments as defined by the City Code. The fee is going to be aligned with the existing parklet resolution to establish an annual charge based on square footage of the area impinged upon and will be adjusted for a square foot value. This allows for simplification of the calculation and administration of the fee. The permits will need to be renewed annually for all encroachments to ensure continued compliance with the encroachment requirements along with the payment of any applicable fee.

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 to determine for their suitability. Encroachments, Vacations or Leases will be docketed only if there is a positive staff recommendation.

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. With the proposed changes to the code, a revised fee can be established with Council's resolution.

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

ATTACHMENTS:

1. Ordinance Cover
2. Ordinance
3. Presentation

STAFF:

Emily A. Baker, Deputy City Manager
Christina Brown, Deputy City Attorney
Bryan MacAvoy, Assistant City Attorney
Lalit Sharma, Deputy Director, T&ES
Brian Dofflemyer, Division Chief, T&ES
Katie North, Division Chief, T&ES
Tony LaColla, Division Chief, P&Z
Ann Horowitz, Principal Planner, P&Z
Dirk Geratz, Principal Planner, P&Z

