

ORDINANCE NO. 3176

AN ORDINANCE to amend and reordain Section 5-2-14, Article A, Chapter 2, Title 5 of The Code of the City of Alexandria, Virginia, 1981, as amended; which Title 5 relates to TRANSPORTATION AND ENVIRONMENTAL SERVICES, which Chapter 2 relates to STREETS AND SIDEWALKS, which Article A relates to GENERAL PROVISIONS and which Section 5-2-14 relates to SIDEWALK CROSSOVERS AND CURB CUTS GENERALLY.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 5-2-14, Article A, Chapter 2, Title 5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 5-2-14. Sidewalk crossovers and curb cuts generally.

(a) No person shall establish, build, construct, reconstruct, repair or alter any curb cut or sidewalk crossover, either temporary or otherwise, within the public right-of-way or on the public streets in the city, without first having obtained a written permit from the city, as provided in this section. Nothing in this section, however, shall apply to any curb cut or sidewalk crossover which is shown on a site plan that has been approved under title 5, chapter 5 of this code.

(b) Persons seeking a permit for a curb cut or sidewalk crossover, which is neither temporary nor the replacement or repair of an existing curb cut or sidewalk crossover, shall make application to the director of transportation and environmental services on a form prescribed by the director. Within five (5) calendar days of filing an application and on a form prescribed by the director, the permit applicant shall notify the owners of all adjacent property of his application and of their opportunity to oppose the application by submitting a written statement to the director that states their opposition and the reasons for their opposition. Thereafter, the applicant shall certify to the director that he has notified all adjacent property owners as required by this subsection. Any adjacent property owner who wishes to oppose the application shall submit a written statement to the director within five (5) days of receiving notice. Fourteen (14) days after the filing of the application or as soon as reasonably possible thereafter, the director shall study the proposed curb cut or sidewalk crossover and forward the application and any written statement filed by an adjacent property owner, along with his findings and recommendations, to the city manager.

(c) The city manager shall approve the permit application and issue a written permit only when he finds:

(1) That the location and operation of the curb cut or sidewalk crossover will not interfere unreasonably with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and means of ingress and egress to and from adjacent properties.

(2) That the health, welfare and safety of the public will not be impaired unreasonably by the curb cut or sidewalk crossover.

(3) That the curb cut or sidewalk crossover is of adequate width under existing conditions and circumstances.

(4) That the plans submitted comply with the standard specifications of the city for public work of like character, and that the design of the curb cut or sidewalk crossover has been approved by the director of transportation and environmental services as being in accord with city specifications; provided, however, that the city manager may grant variances from these specifications when strict application of the specifications will prohibit or unreasonably restrict the use of property.

(5) That the costs of construction, as estimated by the director of transportation and environmental services, have been paid for by the applicant if the work on the curb cut or sidewalk crossover is to be done by the city or a contractor employed by the city; however, if the applicant for a permit under this section elects to do the work himself or through his own contractor, he or his contractor shall comply with the requirements of article E of chapter 2 of this title.

(d) Notice of the city manager's decision on the permit application shall be mailed by the director of transportation and environmental services to the applicant and to each adjacent property owner who had submitted a written statement under subsection (b) opposing the application. Any applicant or any such adjacent property owner aggrieved by the manager's decision may appeal the decision to the traffic and parking board by filing a written notice of appeal with the director within 15 days of the date of the decision. The director shall forward the appeal to the traffic and parking board and schedule it to be heard at the next regularly scheduled meeting of the board. The director shall also notify the applicant and any adjacent property owner who has filed a notice of appeal of the date, time and place of the board meeting at which the appeal will be heard. No construction work shall begin on any curb cut or sidewalk crossover which is the subject of an appeal until the appeal has been decided by the board. In deciding an appeal, the board shall afford the applicant and any adjacent property owner an opportunity to present his views on the application and the manager's decision. The board may affirm, modify or overturn the manager's decision; provided, however, that it may modify or

overturn the decision only if it concludes that the manager clearly erred in applying the factors in subsection (c) (1) through (5) to the application. The decision of the board shall be final, and no further appeal shall lie to city council.

(e) If the applicant elects to have the city do the work on the curb cut or sidewalk crossover covered by the permit and the expense of construction amounts to more than the estimated cost, the applicant shall pay the additional amount to the city; in cases where the expense of construction amounts to less than the estimated cost, the city shall refund the excess to the applicant.

(f) Where an application for a permit under this section pertains to a curb cut or sidewalk crossover which is temporary in nature or which exists but is in need of repair or replacement, the application shall be made to the director of transportation and environmental services who, after giving due regard to the considerations enumerated in subsection (c) above, may issue a permit, and, if a permit is issued, he shall prescribe the type of construction to be used and, when the curb cut or sidewalk crossover is temporary in nature, he shall also prescribe the time the permit shall be in effect and shall require a reasonable bond or contract of insurance to save the city harmless from any claim of whatsoever nature which may arise as a result of the use of the temporary curb cut or sidewalk crossover.

(g) No curb cut or sidewalk crossover, either temporary or otherwise, shall be of a greater width than 40 feet at the property line, except in those instances in which, in the opinion of the city manager and upon recommendation of the director of transportation and environmental services, the maximum safety and convenience of the general public demand a greater width.

(h) The granting of a permit application under this section shall not be considered as vesting any property interests in the applicant. Use of any curb cut or sidewalk crossover by the applicant or his successor or their patrons shall constitute an agreement by the applicant or his successors, as the case may be, to pay for the maintenance and repair thereof and to indemnify and save harmless the city from any claim for damages to persons or property by reason of the maintenance and use thereof.

(i) In the event the use of any curb cut or sidewalk crossover should be discontinued for a period exceeding 12 months, authority to maintain the same may, at the discretion of the city manager, be forfeited and the director of transportation and environmental services may proceed to restore the curb, gutter and sidewalk to a condition conforming with the curb, gutter and sidewalk on each side thereof.

(j) The city manager is hereby empowered to close any curb cut or sidewalk crossover when its continued use is not necessary for access to the property it is designed to serve and it is being used by the public as a thoroughfare, or when its continued use would unreasonably interfere with public uses of the street, would constitute a serious menace to the safety of the public by reason of want of repair, or would not be in the public interest for any other reason. If the menace is caused solely by disrepair or need for reconstruction, use of the curb cut or sidewalk crossover may be continued after repair or reconstruction by the city at the expense of the person for whose convenience or profit the same was permitted.

Section 2. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: January 24, 1987