

ORDINANCE NO. 3259

AN ORDINANCE authorizing the Chelsea Walk Homeowners Association, and its successors in interest, to maintain an existing encroachment in the public right-of-way of Franklin Street, in the City of Alexandria, Virginia, consisting of a four-foot-wide sidewalk and a brick wall with railing 36 inches in height.

WHEREAS, the Chelsea Walk Homeowners Association is incorporated under the laws of the State of Virginia as a non-stock corporation, for the purposes of exercising the functions described in that certain instrument entitled Restrictive Covenants, Chelsea Walk Homeowners Association, City of Alexandria, Virginia, and recorded among the land records of the City of Alexandria, Virginia, at Deed Book 1214, Page 1519; and

WHEREAS, Chelsea Walk Homeowners Association desires to maintain the sidewalk and brick wall with railing 36 inches in height, which encroaches into the public right-of-way on Franklin Street; and

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

WHEREAS, the said encroachment has been approved by the Planning Commission of the City of Alexandria, Virginia, and it is determined that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chelsea Walk Homeowners Association, and its successors in interest, be and the same hereby is authorized to maintain an encroachment consisting of a sidewalk and brick wall with railing, 36 inches in height, which will encroach into the public right-of-way along the south side of the 900 block of Franklin Street between 904 Franklin Street and 918 Franklin Street, inclusive, a distance of four feet in width and 148.38 feet in length, until such encroachment is removed or destroyed; provided, that this authority shall not be construed to relieve such owner of liability for any negligence on its part on account of such encroachment and, shall be subject to the hereinafter contained provisions.

Section 2. That the privilege hereby granted to construct and maintain the encroachment shall be subject to the owner of the encroachment, at its own expense, maintaining at all times in full force and effect public liability and property damage insurance, with a company authorized to transact business in the Commonwealth of Virginia, with minimum limits as follows:

Bodily Injury: \$1,000,000 each occurrence
 \$1,000,000 aggregate,

All Risk Property Damage: \$1,000,000 each occurrence
 \$1,000,000 aggregate,

said policy or policies of insurance to identify the City of Alexandria and the owner as named insureds, and to indemnify the City of Alexandria and the owner against all loss occasioned by the existence, placement, use or maintenance of said encroachment, such policy or policies and evidence of renewal thereof to be presented to the city attorney for approval; provided, that any other provision herein to the contrary notwithstanding, in the event such policy or policies of insurance shall lapse, be canceled, be not renewed or otherwise cease to be in force and effect, then the privilege herein granted shall at the option of the city, forthwith and without notice or demand by the city cease and determine, and the owner shall remove said encroachment from the public right-of-way or the city, at its option, may remove same at the expense and risk of the owner; and provided, further, that nothing in this Section 2 shall relieve the owner of its obligations and undertakings required under this ordinance.

Section 3. That the privilege hereby granted to maintain the encroachment shall be subject to the owner of the encroachment maintaining the area subject to the encroachment landscaped with live plantings and in a litter-free fashion, and removing snow, ice, and other hazardous accumulations therefrom, so long as the encroachment shall exist in the public right-of-way.

Section 4. That the existence, placement, use and maintenance of said encroachment, pursuant to the authority hereby granted, shall be considered an agreement by the owner and its successors and assigns to save harmless the City of Alexandria from any and all liability by reason of the existence, placement, use and maintenance of the said encroachment.

Section 5. That nothing herein contained shall be deemed a waiver of sovereign immunity by or on behalf of the City of Alexandria.

Section 6. That the owner of the encroachment shall pay to the city the annual charge established in § 3-2-85 of The Code of the City of Alexandria.

Section 7. That the privilege hereby granted shall be terminated whenever the City of Alexandria shall desire to use the public right-of-way for any purpose whatsoever and shall by written notification demand the removal of such encroachment,

which removal shall be completed promptly, within no more than 30 days from the date of such notice, without cost to the City of Alexandria; provided, however, that if the owner cannot be found, or shall fail or neglect to remove the encroachment when required to do so, then the city shall have the right to remove same at the expense of the owner, and shall not be liable for any loss or damage to the structure of the encroachment whatsoever.

Section 8. 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 requests. 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 on the date of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: December 12, 1987