

ORDINANCE NO. 3268

AN ORDINANCE authorizing the owners of the property at 101 West Alexandria Avenue to maintain an existing encroachment in the public right-of-way of the 1400 block of Hancock Avenue, in the City of Alexandria, Virginia, consisting of a 42-inch-high chain link fence, running a distance of approximately 71 feet.

WHEREAS, James P. Battey and Mary M. Gorra (the "Owners") are the Owners of the premises located at 101 West Alexandria Avenue in the City of Alexandria, Virginia, ("Property"); and

WHEREAS, the Owners desire to maintain the chain link fence which encroaches into the public right-of-way in the 1400 block of Hancock Avenue; and

WHEREAS, the said chain link fence has been at this location for at least 30 years; and

WHEREAS, the department of transportation and environmental services has required that the encroachment be reduced to allow a minimum of five feet behind the face of curb on Hancock Avenue for pedestrian use and opening space for car doors; and

WHEREAS, the department of transportation and environmental services has agreed to move and reinstall the fence to meet the requirements of the above condition; and

WHEREAS, upon meeting the requirement set out above, the public right-of-way at that point on the 1400 block of Hancock Avenue will not be significantly impaired by this encroachment; and

WHEREAS, the said encroachment, as modified by the reduction requirement, 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 the Owners of the Property, and their successors in title, be and the same hereby are authorized to maintain an encroachment consisting of a chain link fence, which will encroach into the public right-of-way along the west side of the 1400 block of Hancock Avenue, approximately six feet from the east side of the property, until such encroachment is removed or destroyed; provided, further, that this privilege shall not be construed to relieve any such Owner of the Property of liability for any negligence on its part on account of or in connection with such encroachment; provided, further, that this privilege shall be subject to the hereinafter contained provisions.

Section 2. That the privilege hereby granted to maintain this encroachment shall be subject to the Owners, and their successors in title, at all times maintaining the encroachment in conformity with the requirements of the director of transportation and environmental services.

Section 3. That the privilege hereby granted to maintain this encroachment shall be subject to the Owners of the Property, at their 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:	\$500,000 each occurrence
	\$500,000 aggregate
All Risk Property Damage:	\$500,000 each occurrence
	\$500,000 aggregate

said policies of insurance to identify the City of Alexandria and the Owners as named insureds, and to indemnify the City of Alexandria and the Owners 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, 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 Owners 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 Owners; provided, further, that nothing in this Section 3 shall relieve the Owners of their obligations and undertakings required under this ordinance.

Section 4. That the privilege hereby granted to maintain this encroachment shall be subject to the Owners of the Property maintaining the chain link fence in good repair so long as the encroachment shall exist in the public right-of-way.

Section 5. That the existence, placement, use and maintenance of this encroachment, pursuant to the privilege hereby granted, shall be considered an agreement by the Owners of the Property to save harmless the City of Alexandria from any and all liability by reason of the existence, placement, use and maintenance of the encroachment.

Section 6. That nothing herein contained shall be deemed a waiver of sovereign immunity by or on behalf 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 from the Owners of the Property the removal of the encroachment authorized by this ordinance, which removal shall be completed promptly, within no more than 60 days from the date of such notice, without cost to the City of Alexandria; provided, that, if the Owners cannot be found, or shall fail or neglect to remove the encroachment when required to do so, the city shall have the right to remove same at the expense of the Owners, and the city shall not be liable for any loss or damage to the structure of the encroachment whatsoever; provided, further, that upon proof to the satisfaction of the director of the department of transportation and environmental services of undue hardship in the event such notice is served, the department of transportation and environmental services shall remove, or move and reinstall the encroachment.

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: January 23, 1988