

ORDINANCE NO. 3364

AN ORDINANCE authorizing The Pipe Dream of Alexandria, Inc., d/b/a "John Crouch Tobacconist," to maintain an encroachment on the public sidewalk at 128 King Street in the City of Alexandria, Virginia, said encroachment consisting of a "cigar store Indian" less than six feet in height placed west of, and next to, the front steps of this address.

WHEREAS, J & H Aitcheson, Inc. is the owner of the property located at 128 King Street in the City of Alexandria, Virginia; and

WHEREAS, The Pipe Dream of Alexandria, Inc., d/b/a "John Crouch Tobacconist," desires to display a "cigar store Indian" which will encroach on the public sidewalk adjoining 128 King Street west of, and next to, the front steps thereof; and

WHEREAS, the public sidewalk at that point will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That The Pipe Dream of Alexandria, Inc., d/b/a "John Crouch Tobacconist," and its successors acting as a tobacconist (hereafter collectively "tobacconist") be, and the same hereby is, authorized to establish and maintain an encroachment on the public sidewalk adjoining 128 King Street in the City of Alexandria, said encroachment consisting of placing a "cigar store Indian" west of, and next to, the front steps of 128 King Street, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve either the owner of 128 King Street or the tobacconist of liability for any negligence on its part on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain the encroachment shall at all times be subject to the following conditions:

The authorization herein granted to establish and maintain the encroachment shall be effective as long as, and only when, the property is used as a tobacco shop.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon the owner of 128 King Street or tobacconist maintaining, at all times and at its own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

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

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

This liability insurance policy shall identify the City of Alexandria and the tobacconist as named insureds and shall provide for the indemnification of the City of Alexandria and the tobacconist against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In that event, the tobacconist shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of the owner of 128 King Street and/or the tobacconist. Nothing in this section shall relieve owner of its obligations and undertakings required under this ordinance.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the tobacconist shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to the tobacconist maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria.

Section 7. That tobacconist shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in § 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

Section 8. That the authorization herein granted to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public sidewalk for any purpose whatsoever and, by written notification, demands from the owner of 128 King Street or the tobacconist the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by the owner of 128 King Street or the tobacconist without cost to the city. If the owner of 128 King Street and the tobacconist cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of the owner of 128 King Street or the tobacconist, and shall not be liable to any party for any loss or damage to the "cigar store Indian" caused by its removal.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.  
Mayor

Final Passage: April 15, 1989