

ORDINANCE NO. 3456

AN ORDINANCE to amend and reordain Section 7-6-284 (ADVERTISEMENT AND NOTICE OF AMENDMENTS, ETC., INITIATED BY COUNCIL ON ITS OWN MOTION), Section 7-6-285 (APPLICATIONS FOR AMENDMENT, ETC., GENERALLY), Section 7-6-286 (CONDITIONAL ZONING GENERALLY), Section 7-6-287 (RECOMMENDATION OF PLANNING COMMISSION; ACTION BY COUNCIL; REFERENCE TO PLANNING COMMISSION FOR FURTHER STUDY), and Section 7-6-288 (PROTEST OF LANDOWNERS), and to repeal Section 7-6-289 (LIMITATION ON FREQUENCY OF PUBLIC HEARINGS BEFORE COUNCIL AS TO CHANGES IN ZONE BOUNDARIES AND ZONING REGULATIONS), all of Article O (AMENDMENTS, ETC.), Chapter 6 (ZONING), Title 7 (PLANNING AND DEVELOPMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 7-6-284 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. 7-6-284 Advertisement and notice of amendments initiated by council or commission on its own motion.

No amendment, supplement or change in this chapter initiated by the city council or the planning commission on its own motion shall be made unless and until the city manager has caused notice to be given, according to the provisions of article P of this chapter, of the hearing before the planning commission and council at which such motion will be considered.

Section 2. That Section 7-6-285 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. 7-6-285 Applications for change in zone boundaries generally.

(a) Applications for changes in zone boundaries made by the owner of property or parties in interest shall be addressed to the city council and shall be filed with the director of planning and community development. Each such application for change in zone boundaries shall correctly list the names and addresses of all abutting property owners, and when the property borders on a street, public way or public service company right-of-way, the names and addresses of the property owners directly opposite the property across such street, public way or public service company right-of-way. Each such application shall be accompanied by such fee as the director shall provide by general rule.

(b) Upon the filing of such application, the director of planning and community development shall confer with the city manager for the purpose of scheduling hearing dates before the planning commission and before the city council. Notice of such hearings shall be provided in accordance with article P of this chapter.

(c) The planning commission shall meet at such times arranged in relation to the meetings of the city council as will permit of the proper scheduling of the notice and hearings required by this chapter; provided, however, that after newspaper and other required notice has been given, the planning commission or city council may reschedule meetings for good cause, in which event new notice of the rescheduled meeting or meetings shall be given in accordance with the provisions of article P of this chapter.

Section 3. That Section 7-6-286 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. 7-6-286 Conditional zoning generally.

The following regulations shall apply to conditional zoning:

(a) Proffer of conditions. Applicants for changes in zone boundaries may voluntarily proffer in writing, prior to the public hearing before the planning commission, reasonable conditions which shall be in addition to the regulations in this chapter that are applicable to the particular zone classification sought in the application; provided, that any such proffer may be amended in writing by the applicant prior to the close of the public hearing before city council.

(b) Acceptance of proffered conditions. The city council may accept conditions proffered under this section by applicants for changes in zone boundaries, and any such conditions so accepted shall be set forth in the ordinance implementing such change in zone boundaries.

(c) Enforcement and guarantees.

(1) Failure to meet any proffered condition accepted by city council as part of an amendment to the zoning ordinance shall constitute cause to deny the issuance of any required site plan or use, occupancy or building permit, or revoke same after issuance.

(2) The zoning administrator shall administer and enforce conditions attached to a rezoning, including:

a. the ordering in writing of the remedy of any noncompliance with such conditions;

b. the bringing of legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding; and

c. requiring a guarantee, satisfactory to the city council, in an amount sufficient for and conditioned upon the construction of any facility or other improvement required by the conditions, or a contract for the construction of such facility or other improvement and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the city council, or agent thereof, upon the submission of satisfactory evidence that construction of such facility or other improvement has been satisfactorily completed, in whole or in part, and requiring such like additional guarantees of the continued maintenance and operation of such facilities or improvements as council may require.

(3) Any owner of property aggrieved by a decision of the zoning administrator made pursuant to this subsection may petition city council for review of the decision.

(d) Records. The zoning map of the city shall show by an appropriate symbol the existence of conditions attaching to the zoning of particular properties. The zoning administrator shall maintain and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zone.

(e) Amendments and variations of conditions. Once accepted and formally adopted as part of an amendment to the zoning ordinance, proffered conditions shall continue in effect until a subsequent amendment, adopted pursuant to the rezoning procedure established by this chapter, changes the zoning on the property subject to the conditions; provided, that the conditions shall not be effected by a subsequent amendment which is part of a comprehensive revision to the zoning ordinance, unless such comprehensive revision expressly so provides.

(f) Relation of section to other laws. The provisions contained in this section shall be considered separate from, supplemental to and additional to the provisions contained elsewhere in this code or other city ordinances. Nothing contained in this section shall be construed as excusing compliance with all other applicable provisions of this code or other city ordinances. Whenever the conditional rezoning of property granted under the authority of this section contains regulations which differ from the regulations otherwise provided in this chapter, the regulations contained in the conditional rezoning granted under the authority of this section shall govern. Nothing in this section shall be construed to prohibit the imposition of conditions,

including dedications and exactions, in addition to those provided in this section, when authorized under other provisions of this code.

Section 4. That Section 7-6-287 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. 7-6-287 Recommendation of planning commission; action by council; referral to planning commission for further study.

(a) At the meeting at which it conducts the public hearing, the planning commission shall vote either to make a recommendation to the city council for or against adoption of the proposal to change the zoning classification of property or to amend, supplement or change the text of this chapter, and give its reasons therefor, or to request, with or without such a recommendation, that the council refer the proposal back to the commission for further study; provided, however, that the planning commission may defer its vote for a period not to exceed 90 days upon a recorded vote of a majority of the members of the commission that good cause exists for such deferral. Such recommendation or request for referral back, and the reasons therefor, shall be sent to the city council prior to council's public hearing on the matter. The city council shall conduct a full and impartial public hearing on each proposal, and thereafter it may grant such proposal by motion and proceed with the adoption of an ordinance effecting the change in zoning classification or the amendment, supplement or change to the text of this chapter, or it may deny such proposal by motion; provided, that if the planning commission shall disapprove or recommend against adoption of a proposal, it shall require a recorded three-fourths vote of all members of the city council to grant the proposal by motion and to adopt any ordinance effecting the change in zoning classification or the amendment, supplement or change to the text of this chapter; provided further, that the city council may also refer the proposal back to the planning commission for further study.

(b) City council shall grant, deny or refer the proposal back to the planning commission following its public hearing on the proposal but no later than at its next regular meeting; provided, that council may extend such deadline for action for an additional period not to exceed 45 days upon a recorded vote of the majority of all the members of council that good cause exists for such extension; provided further, that if the proposal is denied, it may also be referred back to the commission for further study; and provided further, that if a referral back is made, city council may include such suggestions and modifications to the proposal as it shall see fit.

(c) The planning commission shall hold at least one public hearing on any proposal referred back to it, notice of which hearing shall be given according to the provisions of article P of this chapter. The planning commission shall act on such proposal within 25 days of the date on which it was referred back and shall submit its reviewed recommendation to the city council. If two-thirds of the entire membership of the commission votes to recommend disapproval of a proposal referred back to it by council, the proposal may be approved only by a recorded affirmative vote of three-fourths of all the members of the council. If the commission fails to act on such a proposal within 25 days of the date of the council referral or fails to recommend disapproval of the proposal by a two-thirds vote of its entire membership, the proposal may be approved by a simple majority of all members of council. An additional public hearing shall be held by the council, preceded by at least 10 days' notice thereof published in a newspaper of general circulation in the city, on any proposal referred back by council to the planning commission for further study. Such hearing shall be held within 45 days from the date on which the proposal was referred back to the commission by council; provided, that council may extend such 45-day period for an additional period not to exceed 45 days upon a recorded vote of the majority of all the members of council that good cause exists for such extension. At the meeting at which the public hearing is conducted, council shall grant the proposal or deny the proposal.

(d) Whenever city council approves a proposal to change the zoning classification of property, not more than 75 days may be taken to follow the proper procedure for the passage of an ordinance implementing the approval.

(e) In determining the boundaries of zones, city council may approve a proposal for, and may adopt an ordinance for, a zone change to a more restrictive zone than that originally proposed by application or motion; provided, in cases where the zone change procedure is initiated by other than the planning commission or the council on its own motion:

(1) that the planning commission recommends in favor of such more restrictive zone change at a public hearing held to consider the application for a zone change amendment;

(2) that the applicant agrees to the more restrictive zone change at or before the planning commission hearing; and

(3) that at least a 10 days' notice of the more restrictive zone change and of the time and place of the required public hearing before council shall be given by publication thereof in a newspaper of general circulation in the city.

A protest under section 7-6-289 of this code against a less restrictive zone change shall not be effective against a more restrictive change. This shall not, however, preclude the filing of an effective new protest against a more restrictive zone change; nor shall it preclude the effectiveness of a protest filed against both a less restrictive and a more restrictive zone change.

(f) The time constraints and limitations listed and described in this article shall not apply to any motion, or to any ordinance, to adopt, amend, supplement or repeal the regulations and restrictions set forth in this chapter, or to provide for their enforcement. In addition, notwithstanding any of the procedural requirements set forth in this chapter or by other law, ordinances adopting or amending zoning regulations and restrictions or determining zone boundaries may be enacted under the emergency ordinance provisions of the city charter without compliance with such requirements.

Section 5. That Section 7-6-288 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. 7-6-288 Protest of landowners.

(a) If a protest is filed with the city clerk against a proposal, whether by application or motion, to amend the boundaries of a zone, or to amend the terms of an adopted conditional zoning proffer or zoning condition, signed by the owners of 20 percent or more either of the area of land within the boundaries of such proposed change or of the area of land within 300 feet of the boundaries of the land affected by such proposed change, city council shall not approve the application or motion, or adopt the ordinance making such amendment, by less than three-fourths affirmative votes of the members of council. Streets, alleys and lands dedicated to public use or lands owned by the city, state or federal government shall not be included in computing the above-mentioned areas. Following the filing of such a protest, the department of planning and community development shall verify that those filing are legal property owners. Through mathematical calculations and the use of a planimeter, the department of transportation and environmental services shall verify said 20 percent area. The provisions of this section shall not apply to city-owned property, or when the council adopts a new zoning code for the city or a comprehensive revision to the zoning map, as these terms are defined in section 7-6-303(e) of this code.

(b) Any such protest shall be filed not later than 12 o'clock noon on the last working day before the day on which a public hearing on the proposal is first conducted by city council. Once any such protest has been filed, no changes thereto by way of

addition, substitution, amendment or withdrawal may be made after said 12 o'clock noon deadline.

Section 6. That Section 7-6-289 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is repealed.

Section 7. That this ordinance shall become effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: June 16, 1990