

ORDINANCE NO. 3754

AN ORDINANCE authorizing the Mark Winkler Company, and its successors in title, to increase the size of the freestanding sign that may be located, pursuant to Ordinance No. 3151, within the public median right-of-way located in Nottingham Drive at its terminus with Seminary Road, in the City of Alexandria, Virginia.

WHEREAS, the Mark Winkler Company is the owner of the property located at 4900 Seminary Road in the City of Alexandria, Virginia; and

WHEREAS, the owner desires to move the existing freestanding sign which encroaches into the public median right-of-way located in Nottingham Drive at its terminus with Seminary Road, in the City of Alexandria, Virginia as authorized by Ordinance No. 3151, enacted on September 13, 1986, and install a slightly larger sign; and

WHEREAS, the public right-of-way at that point on Nottingham Drive will not be significantly impaired by this larger sign; and

WHEREAS, this request to encroach into the public right-of-way of Nottingham Drive with a larger freestanding sign has been approved, subject to certain conditions, by the Planning Commission of the City of Alexandria at one of its regular meetings; 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 Mark Winkler Company and its successors in title (hereinafter collectively the "Owner") be, and the same hereby are, authorized to continue to encroach into the public median right-of-way located in Nottingham Drive at its terminus with Seminary Road, in the City of Alexandria, as authorized by Ordinance No. 3151, except that the freestanding sign which may exist within the encroachment area may be up to 2 feet, 7 inches in width, 15 feet, 4 inches in length, and 3 feet, 6 inches in height provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owner 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 condition that, in the event the City shall, in the future, have need for the area of the proposed encroachment,

the applicant shall remove any structure or projection that encroaches into the public right-of-way, within 60 days, upon notification by the City.

Section 3. That the authorization hereby granted to establish and maintain the encroachment shall be subject to and conditioned upon Owner 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 Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner 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, Owner 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 Owner. 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, Owner 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) arising 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 Owner's 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 or any of its officers or employees.

Section 7. That Owner shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in Section 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 right-of-way for any purpose whatsoever and, by written notification, demands from Owner the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner 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 Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment caused by the removal.

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

PATRICIA S. TICER  
Mayor

Final Passage: October 15, 1994