

ORDINANCE NO. 3856

AN ORDINANCE authorizing the owner of 950 North Washington Street, and the owner's successors in title, to maintain an encroachment into the public right-of-way adjacent to 950 North Washington Street, in the City of Alexandria, Virginia.

WHEREAS, the American Academy of Physicians Assistants, Inc. ("Academy"), is the owner of the property located at 950 North Washington Street in the City of Alexandria, Virginia; and

WHEREAS, the Academy owns a four-story office building located on said property, which office building was constructed in 1986; and

WHEREAS, the Academy has recently learned that the existing building encroaches approximately five inches into the public right-of-way adjacent to 950 North Washington Street; and

WHEREAS, the public right-of-way at that point adjacent to 950 North Washington Street is not 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 American Academy of Physicians Assistants, Inc., and its successors in title (hereafter collectively the "Owner") be, and the same hereby are, authorized to maintain an encroachment into the public right-of-way adjacent to 950 North Washington Street in the City of Alexandria, said encroachment consisting of that portion the exterior wall of the office building located thereon which projects approximately five inches into the public right-of-way, 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 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 described in Section 1 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:

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| Bodily Injury: | \$1 million each occurrence \$1 million aggregate |
| Property Damage: | \$1 million each occurrence \$1 million 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, liability and costs related thereto, including attorney fees, occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed annually with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event that this policy of insurance lapses, is cancelled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to 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 the Owner. Nothing in this section shall relieve Owner of her obligations and undertakings required under this ordinance.

Section 3. That by accepting the authorization hereby granted to maintain the encroachment and by so maintaining the encroachment, Owner shall be deemed to have promised and agreed to indemnify and hold 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 4. 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 5. 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 6. That Owner shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established pursuant to § 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

Section 7. That the authorization herein granted to 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 that Owner remove 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 8. That this ordinance shall be effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Final Passage: April 13, 1996