

ORDINANCE NO. 4091

AN ORDINANCE authorizing the owner of Commonwealth Terrace Apartments, and the owner's successors-in-title, to establish and maintain an encroachment into the right-of-way of the public alley behind the owner=s property at 3100-3102 Commonwealth Avenue, in the City of Alexandria, Virginia.

WHEREAS, Commonwealth Terrace, L.L.C., is the owner of the Commonwealth Terrace Apartments, located at 3100-3102 Commonwealth Avenue in the City of Alexandria, Virginia; and

WHEREAS, Commonwealth L.L.C., desires to establish and maintain 10 parking spaces, a six-foot tall wooden fence and a garbage dumpster in the public alley right-of-way behind the owner=s property at 3100-3102 Commonwealth Avenue; and

WHEREAS, the right-of-way at that point on the public alley behind the owner=s property at 3100-3102 Commonwealth Avenue 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, subject to the conditions set out in Section 2, Commonwealth Terrace L.L.C., and its successors-in-title (hereafter collectively the "Owner") be, and the same hereby are, authorized to establish and maintain an encroachment into the right-of-way of the public alley located behind owner=s property at 3100-3102 Commonwealth Avenue in the City of Alexandria, said encroachment consisting of ten parking spaces, a six-foot tall wooden fence and a garbage dumpster, 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 the following conditions:

(a) Within 60 days of the enactment of this ordinance, Owner shall convey to the city an emergency vehicle and a public access easement of a size and at a location on its property that are acceptable to the director of transportation and environmental services and the fire marshal; said emergency vehicle easement shall be sufficient to accommodate emergency and public service vehicles, and said public access easement shall be sufficient to provide access to the parking garage that is located on property adjacent to and north of Owner's property.

(b) Owner shall be responsible for maintenance of the paved area over the public alley and the public access easement provided pursuant to subsection (a).

(c) Owner shall not block access to the garage located on adjacent property to the north of Owner's property.

(d) Owner shall ensure that the lighting in the parking lot behind its property shall be maintained at a minimum of 2.0 foot candles.

(e) Within 30 days of the enactment of this ordinance, Owner shall submit to the director of planning and zoning, for his approval, a revised encroachment plat which shows the location of the parking spaces, fence and dumpster allowed by this ordinance to encroach into the public alley behind Owner's property, and the location of the emergency vehicle and public access easements required by subsection (a).

(f) The authorization to occupy the public alley right-of-way that is provided by this ordinance shall be not effective unless and until the director of transportation and environmental services and the fire marshal determine that the easements provided pursuant to subsection (a) are sufficient, and the director of planning and zoning approves the revised encroachment plan provided pursuant to subsection (e).

(g) Owner shall remove the parking spaces, fence and dumpster from the public alley within 30 days of the city's approval of a site, or other, plan providing for the development of property adjacent to the alley that requires access to the public portion of the alley.

Section 3. That the authorization hereby granted to establish and maintain said 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
	\$2,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence
	\$2,000,000 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, in addition to the conditions in Section 2, 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 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 8. That this ordinance shall be effective upon the date and at the time of its final passage, but the authorization to establish and maintain the encroachment described in Section 1 shall not be effective until the determinations required by Section 2(f) have been made by the fire marshal, the director of transportation and environmental services, and the director of planning and zoning.

KERRY J. DONLEY
Mayor

Introduction: 11/09/99
First Reading: 11/09/99
Publication: 11/10/99; 11/11/99
Public Hearing: 11/13/99
Second Reading: 11/13/99
Final Passage: 11/13/99