

ORDINANCE NO. 4216

AN ORDINANCE authorizing the owners of the property located at 601 Oronoco Street, and the owners= successors in title, to establish and maintain an encroachment into the public right-of-way of North Saint Asaph Street, adjacent to the owners= property, in the City of Alexandria, Virginia.

WHEREAS, Mark J. and/or Ann A. Kington are the owners of the property located at 601 Oronoco Street in the City of Alexandria, Virginia (the "Property"); and

WHEREAS, Mark J. and/or Ann A. Kington desire to establish and maintain, and have applied for, an encroachment into the right-of-way of North Saint Asaph Street adjacent to the owners= property, which encroachment shall consist of a brick retaining wall approximately 174 feet in length, and extending approximately 4 feet, 8 inches into the right-of-way outside of the existing public sidewalk; and

WHEREAS, the public right-of-way of North Saint Asaph Street at this location 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 City 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 Mark J. and/or Ann A. Kington and their 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 North Saint Asaph Street adjacent to the Owner=s property, which encroachment shall consist of a brick retaining wall approximately 174 feet in length, and extending approximately 4 feet, 8 inches into the right-of-way outside the existing public sidewalk, all as more particularly shown on the Plan attached hereto, 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:

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 insurers and shall provide for the indemnification of the City of Alexandria and Owner against any and all loss, liability and costs related thereto, including attorneys' 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 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 her obligations and undertakings required under this ordinance.

Section 3. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and 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 loss and 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 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 5. That the neither the City nor any public utility company shall be responsible for any damage to the improvements in the public right-of-way authorized by this ordinance, during repair, maintenance or replacement of the street, sidewalk or utilities that may be located in or adjacent to the area of the encroachment.

Section 6. That all work by the applicants within the public right-of-way shall require a separate permit from the Director of transportation and Environmental Services.

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 that Owner remove the encroachment. Said removal shall be completed within 60 days of the date of the notification 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

Attachment: Plan

Introduction: 06/16/01
First Reading: 06/16/01
Publication: 06/20/01; 06/21/01
Public Hearing: 06/26/01
Second Reading: 06/26/01
Final Passage: 06/26/01