

ORDINANCE NO. 5376

AN ORDINANCE to amend Section 3-2-85 (Annual Charge for Commercial Encroachments) of Chapter 2 (Taxation) of Title 3 (Finance, Taxation, and Procurement) and Section 5-2-29 (Street Encroachments) of Chapter 2 (Streets and Sidewalks) of Title 5 (Transportation and Environmental Services) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 3-2-85 of Chapter 2 of Title 3 and Section 5-2-29 of Chapter 2 of Title 5 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended as follows, by deleting the language shown in strikethrough and adding the language shown as underlined:

Sec. 3-2-85 Annual charge for commercial encroachments.

The owner or owners of property which is used for commercial purposes and encroaches over, under or in any street, alley, sidewalk or other public place, whether or not such encroachment has been authorized by the city, shall annually compensate the city for such encroachment by payment of the equivalent of what would be the real estate tax upon the land being encroached if it were owned by the owner or owners of the encroaching property. This annual charge shall be made and collected for the calendar year beginning January 1, 1987, and for each calendar year thereafter. This charge shall be determined by and made a part of the same process by which real estate taxes are assessed, billed and collected.

Notwithstanding the above, the fee for encroachments for parklets pursuant to Section 5-2-29(j) of the City Code is established by Council resolution.

Sec. 5-2-29 Street encroachments.

Any encroachment into a public street, alley, sidewalk or other right-of-way may be authorized only by a special ordinance adopted by city council, unless the encroachment is authorized pursuant to one of the following exceptions or is otherwise authorized by this code or the City of Alexandria Zoning Ordinance:

- (a) *Steps.* Steps not more than 12 feet in length, including the required landings, may project beyond the street lot line up to five feet on streets with a right-of-way width of 100 feet or more, up to four feet on streets with a right-of-way width between 66 and 100 feet, up to three feet on streets with a right-of-way width between 50 and 66 feet and, notwithstanding the above, up to 20 inches on Union Street and on King Street between the Potomac River and the R.F.&P. railroad right-of-way. The term "steps" in this subsection includes ramps and similar structures necessary to provide access to the handicapped.
- (b) *Architectural decorations.* Belt courses, lintels, sills, architraves, pediments and similar architectural decorations may project up to four inches beyond the street lot line when less than 10 feet above the curb level, and up to 10 inches beyond the street lot line when 10 feet or more above the curb level.

- (c) *Signs.* A sign may be erected or displayed flat against a building wall or at an angle thereto, so long as the sign does not project more than four feet from the building wall or within one foot of an established curb line and the bottom of the sign is at least eight feet above a sidewalk or parking area and at least 14.5 feet above an alley.
- (d) *Canopies, awnings and marquees.* Canopies, awnings and marquees suspended from a building or structure with no ground supports, having a clearance of at least eight feet above a sidewalk, extending no more than four feet beyond the front property line, and extending to no more than one foot from the established curb line, may be erected.
- (e) *Nonpermanent planters.* Planters which are nonpermanent may be located in a right-of-way subject to the following:
- (1) A permanent planter is one which is attached in any permanent manner to a public right-of-way or to a building, building appurtenance or any other structure, or which rests on a foundation or substructure other than a sidewalk. A permanent planter requires a building permit and an encroachment ordinance. Above-grade permanent planters located in an historic district also require approval by the board of architectural review.
 - (2) A nonpermanent planter is a portable container that is light enough to be transported by two people when empty of soil and plants.
 - (3) A nonpermanent planter may not project into a public right-of-way more than steps would be allowed to project under subsection (a) above and may not exceed 30 inches in height. There is no limit to the number of planters permitted as long as the conditions of this subsection (e) are complied with and the planters are maintained in good condition.
 - (4) A nonpermanent planter must be located so as to maintain a path for public travel at least five feet in width at all points, along any adjacent sidewalk.
 - (5) A permit for a nonpermanent planter must be obtained from the department of transportation and environmental services. The permit application shall include the address of the planter, adequate location drawings, and a sketch, photo or dimensions of the planter. Visual inspection by the director of transportation and environmental services or his designee may be substituted for drawings if the location and description of the planter are recorded on the permit application. After a permit has been granted, it may be revoked and the planter removed from the right-of-way by the director or his designee whenever the applicant fails to comply with any permit conditions. A permit application will be reviewed to determine compliance with the following:
 - a. The location of the planter shall not unduly obstruct the public right-of-way.
 - b. The planter shall be of such design and construction, and the contents shall be of such nature, so as not to constitute a nuisance or public hazard.
 - c. The planter shall be of a design, material and color which are generally recognized as intended for and suitable for the display of plant materials on the public right-of-way in an urban environment and, if located in an historic district, are compatible with the streetscape in the district and are consistent with the applicable design guidelines adopted by the board of architectural review.

- d. The owner of the planter shall agree to move the planter whenever the city requires access to the planter location.
- (f) *Benches*. Benches and similar street furniture may be placed in a public right-of-way, subject to the following:
- (1) The bench or street furniture shall be located immediately adjacent to the closest building wall, shall touch the wall along the length of the bench or street furniture, and shall not project from the wall more than 30 inches.
 - (2) The bench or street furniture shall not be used as part of a business for advertising, or for making sales or providing services to customers, and shall be available for use by the general public.
 - (3) The director of transportation and environmental services or his designee shall review any bench or street furniture proposed for a right-of-way and its location, and approve it if he finds that it will not interfere with pedestrian access and safety, will not be an attractive nuisance and will promote the health, safety and welfare of the city.
 - (4) The director of planning and zoning or his designee shall review any bench or street furniture proposed for a right-of-way and shall approve it if he finds that its design is compatible with the character of the surrounding area.
- (g) *Rental bicycles*. Bicycles offered for rent may be displayed and rented from areas of right of way pursuant to section 7-2400 of the zoning ordinance and this section 5-2-29.
- (h) *Parker-Gray Historic District front fences*. Within the Parker-Gray Historic District, retaining walls less than two feet in height above the lower adjacent grade or fences at the height and location otherwise permitted in a front yard may be constructed in the public right-of-way.
- (i) *Street or alley crossing banner*. With a special event permit pursuant to City of Alexandria Special Event Policy and Procedures approved by the city council on January 23, 2010 as the same may be amended, the permittee may place a banner across a public street or alley for up to 10 days upon a determination made by the city manager that the sign does not pose a danger to the safety of the public.
- (j) **Parklet. Parklets, as defined in the zoning ordinance, are intended to create additional public space, support an active and safe streetscape, enhance the economic and social vitality of a neighborhood, and promote business friendly activity through the creation of new spaces for commercial uses, such as outdoor dining and retail display. Parklets, may be placed in a public right-of-way, pursuant to an application for a permit subject to the following:**
- (1) Parklets must comply with the Parklet Requirements, which address the allowed locations, design requirements, safety, and maintenance responsibilities, that are approved by the Traffic and Parking Board.**
 - (2) Unless approved for a private commercial use through a separate permit as allowed by the zoning ordinance, the parklet shall be available for use by the general public.**

(3) The director of transportation and environmental services or designee shall review any parklets and approve it if the director finds that it complies with the Parklet Requirements, will not interfere with pedestrian access and safety, and will create new public space or space for commercial uses that support an active streetscape.

(4) The director of planning and zoning or designee shall review any proposed parklets for compliance with any established design criteria and shall approve it if the director finds that its design is compatible with those standards and the character of the surrounding area.

(5) Fees for parklets shall be established by the City Council through a resolution pursuant to Section 3-2-85 of this code.

(k) Outdoor retail display and sales on the sidewalk. Outdoor retail display and sales associated with an adjacent retail business is permitted on the public sidewalk and shall comply with the requirements of the zoning ordinance.

(l) Encroachment requirements. In addition to any other restrictions or requirements imposed by this code or the City of Alexandria Zoning Ordinance, the owner of any sign, canopy, awning or marquee, nonpermanent planter, bench, bicycle display, ~~or~~ similar street furniture, **parklet, or outdoor retail display and sales** that encroaches into a public right-of-way pursuant to this section shall also comply with the following:

(1) *Liability insurance.* The owner shall obtain and maintain a policy of general liability insurance in the amount of \$1,000,000 which will indemnify the owner (and all successors in interest), and the city as an additional named insured, against all claims, demands, suits and related costs, including attorneys' fees, arising from any bodily injury or property damage which may occur as a result of the encroachment.

(2) *Removal of encroachment.* The owner or any successor in interest shall remove the encroachment if the city determines that the encroachment interferes with public access or is otherwise inconsistent with the public welfare. In such case, the city shall provide the owner or successor in interest with written notice of the need to remove the encroachment at least 10 days prior to the date on which the removal must be completed. If the owner or successor in interest cannot be found, or fails to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of the owner or successor, and shall not be liable for any loss or damage to the encroaching structure that may occur as a result of the removal.

Section 2. That Section 3-2-85 of Chapter 2 of Title 3 and Section 5-2-29 of Chapter 2 of Title 5 of the Code of the City of Alexandria, Virginia, 1981, as amended pursuant to Section 1 of this ordinance, be, and the same hereby is, reordained as part of the Code of the City of Alexandria.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

JUSTIN M. WILSON
Mayor

Final Passage: October 16, 2021