

~~18~~ 16
~~2-13-01~~ 2-24-01

Introduction and first reading: 2/13/01
Public hearing: 2/24/01
Second reading and enactment: 2/24/01

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend Chapter 8 (PARKING AND TRAFFIC REGULATIONS) of Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 5-8-117 (ESTABLISHMENT OF PARKING SPACES FOR PERSONS WITH A DISABILITY).

Summary

The proposed ordinance implements the new policy and procedure, adopted by City Council on November 18, 2000, for the approval, in residential areas of the City, of on-street parking spaces reserved for the use of persons with disabilities.

Sponsor

Department of Transportation and Environmental Services

Staff

Richard Baier, Director, Transportation and Environmental Services
Beverly Steele, Special Projects Coordinator
Ignacio B. Pessoa, City Attorney

Authority

§ 2.04(g) Alexandria City Charter
§ 46.2-1236, Code of Virginia, 1950, as amended

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

~~18~~ 16
~~2-13-01~~ 2-24-01

ORDINANCE NO. _____

AN ORDINANCE to amend Chapter 8 (PARKING AND TRAFFIC REGULATIONS) of Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of The Code of the City of Alexandria, Virginia, 1981, as amended, by adding thereto a new Section 5-8-117 (ESTABLISHMENT OF PARKING SPACES FOR PERSONS WITH A DISABILITY).

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 8 of Title 5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new Section 5-8-117 to read as follows:

[The following is all new language.]

Sec. 5-8-117 Establishment of parking spaces for persons with a disability.

(a) Preemption of other law. Notwithstanding any contrary provision in this code, reserved parking spaces in the public right-of-way in single-family, two-family and townhouse residential areas for use by persons with a disability shall be established and removed as provided in this section.

(b) Application requirements. An application for a reserved parking space for persons with disabilities in the public right-of-way in residential areas must comply with the following criteria in order to be considered:

(1) There must be no off-street parking at the applicant's residence, or the applicant must demonstrate, as provided in paragraph (6), that existing off-street parking is not feasible for use by the applicant.

(2) The applicant must have a valid Virginia DMV disabled parking license plate or placard.

(3) The applicant must reside at the address in front of which the space is requested.

(4) The applicant must demonstrate that a vehicle is registered in Alexandria to a person who resides at the address requested.

(5) Legal parking must be available in front of the applicant's address.

(6) Each applicant must supply a copy of the medical certification submitted to the Department of Motor Vehicles, or a new such certification, which demonstrates eligibility for a DMV disabled parking license plate or placard, and, where existing off-street parking exists, must supply additional medical evidence to demonstrate that such parking is not feasible for use by the applicant.

(c) Approval requirements. If an application fails to meet any of the criteria listed in subsection (b), it will not be approved, unless a waiver is sought and approved under subsection (e). If the application is denied, the applicant shall be notified in writing as to the specific reasons for the denial, and shall also be notified of any right to appeal provided under this section.

(d) Block Limits. No more than one reserved parking space for persons with disabilities will be authorized for one side of any street, between intersecting streets (block face).

(e) Waivers. The City Manager is authorized to waive:

(1) The block limits standard under the following conditions:

(a) (i) The applicant demonstrates to the satisfaction of the City Manager that the applicant has a severe mobility impairment, and that the applicant or a resident of the applicant's household owns a motor vehicle especially equipped to permit operation by, or transport of, the applicant, or

(ii) The applicant demonstrates to the satisfaction of the City Manager that the block on which the applicant resides is of unusual or exceptional length, and that permitting an additional space would be the functional equivalent of the application of the usual block limit standard; and

(b) The applicant demonstrates to the satisfaction of the City Manager that the applicant otherwise meets the criteria in subsection (b) of this section; and

(c) If granted, a waiver shall be valid for a period of one year only, but the applicant may re-apply for additional one year periods.

(2) The requirement that legal parking must be available in front of the applicant's address, under the following conditions:

(a)(i) There is a fire hydrant, city no-parking regulation, or other similar impediment to parking in front of the applicant's address, or the applicant's property is of insufficient width to accommodate the reserved space, and the applicant demonstrates to the satisfaction of the City Manager that installation of the reserved space at another location will not unduly burden any other person; or (ii) The owner of the property in front of which the reserved space is proposed to be located has consented, in writing, to such location, in which case the waiver shall be granted as a matter of course, and

(b) The applicant demonstrates to the satisfaction of the City Manager that the applicant otherwise meets the criteria in subsection (b) of this section; and

(c) If granted, a waiver shall be valid for a period of one year only, but the applicant may re-apply for additional one year periods.

(3) The City Manager may impose such conditions on any waiver as the manager deems reasonable.

(f) Use of reserved spaces. A parking space for persons with disabilities will be available for use by any eligible person with a DMV disabled license plate or placard on a first come, first served basis, and is not reserved for the exclusive use of the applicant. Only those vehicles used by, or to transport, a person with a disability may park in the reserved space, and the applicant's vehicle is expected to use the reserved space when parked in the neighborhood. Reserved spaces are not intended for use by companions except when transporting persons with disabilities, and displaying a DMV plate or placard. Use of the parking space by other persons when not transporting the person with a disability is a parking violation that carries a \$100 to \$500 fine, as provided in Section 10-4-19 of this code and Section 46.2-1249 of the Virginia Code.

(g) Administrative procedures. The Director of Transportation and Environmental Services shall be responsible for administering this section.

(1) All applications must be submitted to the Director for consideration and review. The Director will (a) evaluate satisfaction of eligibility criteria; (b) verify the validity of the disabled parking license plate or placard; (c) verify vehicle registration; (d) confirm residency; (e) determine availability of off-street and on-street parking; and (f) ensure conformance to the terms of this section in making a decision.

(2) Applications for a determination that an existing off-street parking space is not feasible for use by the applicant, and for a block limit or availability of parking waiver shall be submitted to the Director, for review and recommendation, and shall be decided by the City Manager.

(3) Any person aggrieved may appeal the Director's decision to the City Manager, by filing an appeal, in writing, with the Director, within 15 days of the Director's decision. The appeal shall be limited to the record upon which the Director based his decision, and such additional written submissions as the parties may provide. The Manager's decision on appeal, or on an application for a waiver, shall state the findings of fact and reasons for the decision, and shall be final and not appealable to City Council.

(4) The Director shall implement procedures to ensure the confidentiality of any medical information submitted by an applicant, including DMV medical certifications, which shall at minimum provide for the maintenance of such information in a sealed file, with access permitted only to Department employees or the City Manager on a need-to-know basis, during the

pendency of an application. Once a decision has been made on an application, access shall be permitted only on the written authorization of the Director or Acting Director. This information shall be held strictly confidential, and shall not be released to any individual or entity, other than the applicant, outside of the Department of T&ES, the City Manager or the Manager's designee appointed hereunder. All employees who have potential access to said information shall be trained on this policy and the strict confidentiality requirements adhered to. Medical information submitted by an applicant is exempt from mandatory disclosure under FOIA, and shall not be subject to discretionary release.

(h) Annual recertification. Each year the Director will mail a recertification form to each resident who received approval for the installation of a reserved parking space, including those parking spaces that were approved prior to [effective date of this ordinance]. In order to retain the reserved space, the resident must complete and execute the form affirming continued satisfaction of all of the eligibility criteria in subsection (b) of this section. The block limit requirement of subsection (d) shall not apply to the recertification of spaces approved prior to [effective date of this ordinance]. If the Director determines that the eligibility criteria are no longer satisfied, the resident will be notified in writing and must provide a response to the Director with proper evidence of compliance within 45 days of notification. Failure to provide the information in accordance with the requested deadline will result in a second letter and failure to respond to the second letter within 30 days shall result in the removal of the reserved space.

(i) Revocation. A reserved space is subject to revocation as follows:

(1) In the event that a complaint is made to the Director that the applicant no longer satisfies the eligibility criteria of subsection (b) of this section, or that the space is being repeatedly used in a manner contrary to subsection (f), by persons residing in or visiting the applicant's household, the Director will conduct a preliminary inquiry to determine if the complaint is supported by substantial and credible evidence. If the Director determines that the complaint is so supported, the applicant will be notified in writing of the nature and specifics of the complaint, and must provide a response within 45 days to the Director. The applicant and complainant(s) shall have the right to appear before the Director, upon 15 days written notice of the time and place of the hearing, and be heard in person or by counsel, but such hearing shall be conducted in an informal manner. The Director shall revoke a reserved parking space designation only if (i) the Director finds by a preponderance of the evidence that the applicant did not, or does not continue to, meet the criteria in subsection (b), or if (ii) the Director finds by clear and convincing evidence that the space is being repeatedly used in a manner contrary to subsection (f), by persons residing in or visiting the applicant's household. The Director shall notify all parties of the decision in writing, within 15 days of the close of the hearing. The decision shall state the findings of fact and the reasons for the decision. The notice shall inform the parties of their right to appeal the decision to the City Manager, and of the procedure for making such an appeal.

(2) Any person aggrieved may appeal the Director's decision to the City Manager, by filing an appeal, in writing, with the Director, within 15 days of issuance of the decision. The City Manager shall schedule a hearing on the matter within 30 days of the filing of the appeal,

and shall give the parties 15 days notice of the time and place of the hearing. The Manager shall notify all parties of the Manager's decision in writing, within 15 days of the close of the hearing. The Manager's decision shall state the findings of fact and the reasons for the decision, and the decision shall be final and not appealable to City Council.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction:	2/13/01
First Reading:	2/13/01
Publication:	2/15/01
Public Hearing:	2/24/01
Second Reading:	2/24/01
Final Passage:	

EXHIBIT NO. 1 sent to CC, CM, CA,
T+ES
16
2-24-01 *file*

433 Old Town Court
Alexandria, Virginia 22314-3545
February 10, 2001

The Honorable Kerry Donnelly, Mayor of the City of Alexandria
Members of City Council
City Hall
301 King Street
Alexandria, Virginia 22314

Dear Mayor Donnelly and Members of City Council:

We received a notice from the transportation department dated January 22, concerning proposed new rules for establishing reserved on-street parking spaces for persons with disabilities. It condones a practice of limiting these spaces to one per block unless extreme circumstances are presented.

We most strongly protest this discriminatory approach to providing support for the disabled. It is unthinkable to single out a disabled person for disparate treatment. This is not the basis for fair and equal treatment under the law, upon which our country was founded, and so many have given their lives to preserve.

It would be a travesty to have someone buy a home in our lovely town, only to find out that since they got here late, they are not entitled to the same treatment as others. Even worse, if a disabled person knew about this law, he or she would be unable to purchase a home because they would not have access to their car. Please don't let this happen. It can only lead to a lawsuit, which the city would lose.

Sincerely,

David A. Lantzy

David A. Lantzy

Laura A. Lantzy

Laura A. Lantzy



Elizabeth Barnes
314 Prince Street
Alexandria, Virginia
22314

16
2-24-01

CC: MAYOR KERRY DOWNEY

Ignacio Pessoa
City Attorney
City of Alexandria
P.O. Box 178 - City Hall
Alexandria, Virginia 22313

Dear Mr. Pessoa,

On Tuesday, February 13, 2001, I received and read the proposed ordinance to implement the "Residential Parking Policy for Persons with Disabilities." As you know, I also spoke to you on 2-13-01 regarding my concerns which you suggested I put in writing.

As a disabled person, I found our conversation and your comments not only to be limited in productivity, but extremely stressful and harmful to my health.

You made it a point to tell me that the City of Alexandria is not required to provide public parking in the public right of way. You were clearly implying that I should just be grateful that the city even bothered to have the few handicapped spaces that we do have. However, the Americans with Disabilities Act of 1990 (Act) Sec. 202. DISCRIMINATION, of the Act states that "no qualified individual with a disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity" Parking in the City of Alexandria, in as much as it has codified rules and regulations, is administered by a specific office, and has imputed benefits that have to be controlled and paid for via resident parking passes is certainly a service and a program.

You may want to contact the Department of Justice as I did and hear for yourself their opinion that the City of Alexandria is administering public right of way parking as a service, program, or activity of a public entity. Since other groups and categories of Alexandrians and non-Alexandrians are afforded special accommodations in the form of special loading zone spaces, taxi stand spaces, entrance way spaces, special Old Town parking for residents, three 20 minute parking meters for Burke and Herbert Bank (even though they have their own parking lot), etc., with no restriction of one per block and no requirement of annual recertification, no veto power by single property owners, then, in fact, the ordinance in question does become subject to Sec. 202 of the Act. Handicap spaces are being administered quite differently than other special spaces and the applicants for those spaces are being treated differently. No reason for this different treatment has been demonstrated or studied and appears to be highly discriminatory.

In our telephone conversation, I specifically asked you why, per Sec. 5-8(e)(2)(a)(i) and (ii) of the proposed ordinance, when the requested handicapped space cannot be in front of the applicant's

address because of a City action (fire hydrant, etc.), the owner of the property next door (absentec or not) is given the codified opportunity to consent or not to a waiver. I raised the question, because to my knowledge such parking space is owned and administered by the City parking program and not by the property owner. It should be the City, and not the property owner, who makes decisions on public programs and services. You said the property owner had the right to approve the decision because "they might have a good reason" and when I asked you what would be a good reason, you told me you "didn't know." You also told me in very strong terms that this section would not be changed. The purpose of a Public Hearing is to invite discussions that might lead to changes - I trust that will be the case. A property owner should not be granted the power to veto a proposed handicapped space due to the fact that fire hydrant, etc., exists in front of the applicant's home. The handicapped applicant should not have to bear the consequence of this fire hydrant alone. If a fire hydrant was necessary, then the consequence of that fire hydrant must be born by adjacent properties as well. All perceived dominion over the spaces should move down the line to accommodate a public safety need. Surely this is more fair and much more logical than only the house in front of the fire hydrant losing its dominion. The logic in the proposed ordinance is not consistent with a representative form of government. That's why we elect and hire and pay people to represent all of us. No one citizen can directly control another citizen's well being as is provided for in the ordinance. Corruption, bribery, intimidation is guaranteed - not just possible, but guaranteed.

The proposed ordinance allows for a waiver of this provision by the City Manager. When I asked you what the criteria were to be used by the City Manager you said a criterion might be the degree of the applicant's disability. When I asked you whether the City Manager was qualified to question a medical doctor's statement that a person was permanently and totally disabled and had mobility problems severe enough to warrant handicapped parking you said "everyone knows all the doctors routinely fill out and sign all those forms." Your obvious disdain for the process and bias as the City Attorney seems to border on abject discrimination of disabled persons. The City needs a sound analysis of your statement before this ordinance can be passed if that statement or belief is the basis of any aspect of this reactionary attempt to punish all for the sins of a few.

I also pointed out to you that Sec. 5-8 (e)(2)(a)(ii)(c) of the ordinance requires that such a waiver for a fire hydrant, etc. that necessitates that a handicap space be moved to a space not in front of the applicant's address shall be valid for one year only. I find this to be extremely punitive to require a permanently disabled person with a permanent mobility problem to have to ask for a waiver every year - after all the fire hydrant, etc. does not move.

The solution is that no waiver should even be necessary. The language should be changed to read, "Sec 5-8(e) (2)(a)(~~ii~~) There is a fire hydrantthen the next adjacent space will be utilized as the handicapped space." This is entirely fair and can actually have a chance of being administered fairly. Concurrently, remove (2) under (e) Waivers.

As a disabled person, I want you to know that every day presents me with new difficulties and challenges that I would wish on no one. I have an incurable disease that will never improve but will only get worse over time. I am not able to enjoy the many daily activities that currently healthy people like yourself take for granted. I would gladly give my handicap license plate in

exchange for your current good health. It is quite unsettling to think that an ordinance mainly crafted to appease the non-handicap's illogical thought that they will gain more parking (the handicapped persons' cars will still be parked in the same number of spaces) may adversely impact on my ability to leave my house by their being deputized the power and authority to reject a proposed handicap space. The near certain prospect of abuse of this power is frightening, not just for me, but for the image and treasury of the City.

Anything less than the aforementioned is discriminatory against the handicapped form of special parking uses. No other types of special parking spaces need to seek approval from specific residents for their self-serving analysis of the "burden" as required in the proposed ordinance. In fact, "burden" has not even been defined by the ordinance.

Incredibly, the proposed ordinance in Sec 5-8, (e) (2) (a)(I), states that for a waiver of a fire hydrant, etc. necessitated moving of a handicapped space to take place, it is required that "the applicant demonstrates to the satisfaction of the City Manger that installation of the reserved space at another location will not unduly burden any other person:..." In fact, it should be the reverse. It should be the City Manger that must demonstrate that NOT locating a handicap spot next to applicant's property will not unduly burden the applicant. Certainly the burden of not having a handicapped parking space near the applicant's home should be analyzed and considered as equally as the concern of a resident's burden or perceived burden of having a handicapped space in front of their property. In fact, the handicapped burden should take precedence.

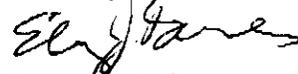
This is called "reasonable accommodation" under the Americans with Disabilities Act in the conduct of the programs and services of a public entity. It is the City Manger who should have to demonstrate the burden of NOT having a handicapped space to a person with severe mobility problems sufficient enough for the Commonwealth of Virginia to officially issue handicapped license plates with no annual recertification. What non-handicapped "burdens" could POSSIBLY take precedence over a handicapped person's burden of not being able to drag themselves to their car. Giving special precedence to the non-handicapped concerns of burden over the concerns of burden of the handicapped is unequal treatment and a violation of the intent and spirit of the law. The fact is that for no other types of special uses of parking spaces in the City parking program, e.g., loading zones, 20-minute banking parking, entrance no parking, fire hydrant spaces, do specific individual residents get such power and authority to have their burden unequally treated over others. In addition, no other special use parking is restricted to only one per block - NONE. The ordinance as proposed constitutes "exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities," ... as discussed in Sec. 2 (5) of the Americans with Disabilities Act. Burke and Herbert Bank does not have to hear from any specific individual about the "burden" of subsidizing their business by taking parking spaces out of inventory. Portners Restaurant never hears how their two spaces designated "entrance" may "burden" a specific resident. Trojan Antiques on Prince Street has two loading zones - TWO!!! Taxi zones for 5 cabs (5 lost parking spaces) in front of the Holiday Inn - the list and the unequal administration of a public entity parking program go on and on.

We can do better than this in Alexandria. Disability is an unfortunate reality that the City of

Alexandria must have the courage and leadership to both accept and prosper with. And it is not hard. Some handicapped people drive cars. They will park their cars in parking spaces. It is the same number of people and the same number of spaces regardless of whether they are designated handicapped or not. Limiting the number of handicapped spaces does not create or reduce the number of spaces - the proposed ordinance is a zero sum game. The incredible aspect of this proposed ordinance and all the embarrassment to the city and litigation that will come out of it is how little will be actually be accomplished by it and how little analysis was done to determine if in fact there even is a problem in the first place.

I hope that you and the City of Alexandria will make this process a fair and equitable one so that those disabled residents of Alexandria will not have to endure and participate in something punitive and specious. Please do not further complicate, "burden," and disrupt the lives of those of us who only want to keep our independence as long as we are able so that we may strive for a better quality of life such as those of you who are currently so fortunate to enjoy.

Sincerely,



Elizabeth J. Barnes

cc:

Kerry J. Donley
Philip Sunderland
Chairman, Traffic and Parking Board
Chair, Human Rights Commission
Chairman, Commission on Aging
Chair, Commission for Persons with Disabilities
William C. Cleaveland
Claire M. Eberwein
William D. Euille
Redella S. Pepper
David G. Speck
Joyce Woodson
Senator John Warner
Representative Jim Moran
State Senator Patsy Ticer