

# CITY COUNCIL OF ALEXANDRIA, VIRGINIA

Public Hearing Meeting  
Tuesday, May 20, 2008 - - 7:00 p.m.

\*\*\*\*\*

Present: Mayor William D. Euille, Vice Mayor Redella S. Pepper, Members of Council Ludwig P. Gaines, K. Rob Krupicka, Timothy B. Lovain, Paul C. Smedberg and Justin M. Wilson.

Absent: None.

Also Present: Mr. Hartmann, City Manager; Mr. Pessoa, City Attorney; Ms. Evans, Deputy City Manager; Mr. Jinks, Deputy City Manager; Ms. Hamer, Director, Planning and Zoning (P&Z); Mr. Josephson, Deputy Director, P&Z; Mr. Farner, Deputy Director, P&Z; Mr. Baier, Director, Transportation and Environmental Services (T&ES); Mr. Bray, Urban Planner, P&Z; Ms. Rafferty, Urban Planner, P&Z; Mr. Kagawa, Landscape Architect, Recreation, Parks and Cultural Activities; Ms. Carlton, Recreation, Parks and Cultural Activities; Mr. Hunt, Plans Examiner, Fire/Code Enforcement; Sheriff Lawhorne, Sheriff's Department; Ms. Blackford, Communications Officer, City Manager's Office; Ms. Boyd, Director, Citizens Assistance; Fire Chief Thiel, Fire Department; Mr. Chesley, Deputy Director, Recreation, Parks and Cultural Activities; Mr. Blakeley, Deputy Director, Recreation, Parks and Cultural Activities; Mr. Mason, Special Assistant to the City Manager, City Manager's Office; Mr. McPike, Division Chief, General Services; Police Captain Reyes, Police; Police Captain Ogden, Police; Ms. Ryan, Urban Planner, P&Z; Mr. Randall, Urban Planner, P&Z; Ms. Triggs, Director, Finance; Mr. Johnson, Director, Office of Management and Budget; Mr. Saenz, ITS; and Mr. Lloyd.

Recorded by: Gloria Sitton, Deputy City Clerk and Clerk of Council.

## OPENING

1. Calling the Roll.

Mayor Euille called the meeting to order and the Deputy City Clerk called the roll. All the members of Council were present.

2. Public Discussion Period.

(a) Anne Parish, 1000 Queen Street, Alexandria, spoke about the services offered at the Queen Street Clinic and encouraged more use of the clinic by citizens.

(b) Gary Carr, 216 Aspen Street, requested an expenditure of \$300 for the purchase of a new coppered wooden bucket to be used in the new Oaken Bucket Challenge between Alexandria and Arlington to promote raising the overall fitness level in the area.

**New Business Item #1:** Mayor Euille offered an apology, on behalf of the City Council, to the Sheriff and the Sheriff's Department regarding a misunderstanding of the submission of a grant application at the last meeting.

## **REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES**

### **ACTION CONSENT CALENDAR (3-7)**

#### **Planning Commission**

3. SPECIAL USE PERMIT #2008-0017  
3127 COLVIN STREET (Parcel Address: 3121 Colvin Street)  
ALEXANDRIA CAR CLINIC  
Public Hearing and Consideration of a request to operate a general automobile repair business; zoned I/Industrial. Applicant: Mirza Ahmad Zeleria

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 05/20/08, and is incorporated as part of this record by reference.)

4. SPECIAL USE PERMIT #2008-0021  
1400 DUKE STREET  
CHILD CARE AND SCHOOL  
Public Hearing and Consideration of a request to operate a child care facility and a private school; zoned OCM(50)/Office Commercial Medium. Applicant: Jerry Pnevatkatos

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 05/20/08, and is incorporated as part of this record by reference.)

5. SPECIAL USE PERMIT #2008-0022  
1669 NORTH QUAKER LANE (Parcel Address: 1667 North Quaker Lane)  
RESTAURANT  
Public Hearing and Consideration of a request to operate a restaurant; zoned CL/Commercial Low. Applicant: Wen Ti Zheng

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 05/20/08, and is incorporated as part of this record by reference.)

6. SPECIAL USE PERMIT #2008-0023  
211,215, 217 & 217 1/2 NORTH PATRICK STREET  
NON-CONFORMING OFFICE USE  
Public Hearing and Consideration of a request for the continued operation of a non-conforming office use with surface parking and open space; zoned RB/Residential. Applicant: Dr. Barry Carpenter

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 05/20/08, and is incorporated as part of this record by reference.)

7. SPECIAL USE PERMIT #2007-0029  
625 BURNSIDE PLACE (Parcel Address: 619 Burnside Place)  
POTOMAC RECYCLING  
Public Hearing and Consideration of a request to amend a special use permit to increase the allowed daily tonnage at a waste recycling facility; zoned I/Industrial. Applicant: Sandra Crippen by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 05/20/08, and is incorporated as part of this record by reference.)

#### **END OF ACTION CONSENT CALENDAR**

City Council removed all the items from the action consent calendar and considered them under separate motions.

3. SPECIAL USE PERMIT #2008-0017  
3127 COLVIN STREET (Parcel Address: 3121 Colvin Street)  
ALEXANDRIA CAR CLINIC  
Public Hearing and Consideration of a request to operate a general automobile repair business; zoned I/Industrial. Applicant: Ahmad Zeleria Mirza

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the

Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 05/20/08, and is incorporated as part of this record by reference.)

Planning and Zoning Deputy Director Josephson gave a brief presentation and answered questions from Council concerning this special use permit (SUP) application.

The following persons participated in the public hearing for this item:

(a) George Spicer, 5714 Tremont Court, stated that the applicant has had cars parked on his property and he noted that there appeared to be improper disposal of waste oil into dumpsters on the property. Mr. Spicer offered support of the project if the City will carefully monitor the operation.

(b) Jeff Lutton, 3121 Colvin Street, expressed concern about the cramped conditions of Colvin Street and he noted that the applicant tends to use his property for loading and unloading, causing his customers to be inconvenienced. Mr. Lutton stated that he hoped the City would be able to monitor business so it will not prohibit his business operations.

(c) Ahmad Zeleria Mirza, 3127 Colvin Street, applicant for the SUP, spoke in support of the application. Mr. Mirza addressed the concerns of the previous speakers about the parking problems and waste disposal. Mr. Mirza also answered questions about parking and waste.

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing. The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Gaines and carried unanimously, City Council approved the Planning Commission recommendation with an amendment to require a six month review and the submission of a waste management plan within 15 days to the Planning Department for review. The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

4. SPECIAL USE PERMIT #2008-0021  
1400 DUKE STREET

**CHILD CARE AND SCHOOL**

Public Hearing and Consideration of a request to operate a child care facility and a private school; zoned OCM(50)/Office Commercial Medium. Applicant: Jerry Pnevatkatos

**PLANNING COMMISSION ACTION:** Recommend Approval 6-0

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Councilman Wilson disclosed that his child attended a facility operated by the applicant but he no longer attends, and it should not affect his ability to decide on this application.

Councilman Smedberg asked for clarification on whether there would be a daycare center or school operated at the location.

In response to Councilman Smedberg, Mr. Josephson stated that the application was for both, noting the daycare center would begin operation immediately and the applicant would have the ability to expand with a school at a later date.

Ms. Patel, attorney for the applicant, stated that at this time, the services offered will be a daycare center with the opportunity to provide school services.

Planning and Zoning Deputy Director Josephson responded to questions and concerns from Council about permit issuance, parking and clarification of items in the staff report.

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Wilson and carried 6-0-1, City Council closed the public hearing and approved the Planning Commission recommendation. The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Wilson	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	abstain	

5. **SPECIAL USE PERMIT #2008-0022**  
1669 NORTH QUAKER LANE (Parcel Address: 1667 North Quaker Lane)  
**RESTAURANT**  
Public Hearing and Consideration of a request to operate a restaurant; zoned CL/Commercial Low. Applicant: Wen Ti Zheng

**PLANNING COMMISSION ACTION:** Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 05/20/08, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Wilson, seconded by Councilman Krupicka and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation. The voting was as follows:

Wilson	"aye"	Pepper	"aye"
Krupicka	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

- 6. SPECIAL USE PERMIT #2008-0023  
211,215, 217 & 217 1/2 NORTH PATRICK STREET  
NON-CONFORMING OFFICE USE  
Public Hearing and Consideration of a request for the continued operation of a non-conforming office use with surface parking and open space; zoned RB/Residential. Applicant: Dr. Barry Carpenter

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 05/20/08, and is incorporated as part of this record by reference.)

Planning and Zoning Deputy Director Josephson responded to questions from Council about the zoning designation of the property.

The following person participated in the public hearing for this item:

- (a) Dr. Barry Carpenter, 211 North Patrick Street, the applicant, spoke in support of the application.

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

- 7. SPECIAL USE PERMIT #2007-0029  
625 BURNSIDE PLACE (Parcel Address: 619 Burnside Place)  
POTOMAC RECYCLING

Public Hearing and Consideration of a request to amend a special use permit to increase the allowed daily tonnage at a waste recycling facility; zoned I/Industrial. Applicant: Sandra Crippen by Duncan Blair, attorney

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 05/20/08, and is incorporated as part of this record by reference.)

The following person participated in the public hearing for this item:

(a) Duncan Blair, 524 King Street, attorney for the applicant, spoke in support of the item and responded to questions from Council about the project and the operation of the business.

**WHEREUPON**, upon motion by Councilman Wilson, seconded by Vice Mayor Pepper and carried unanimously, City Council closed the public hearing and approved the Planning Commission recommendation with the addition of condition #38 stating, "The applicant shall designate an employee whose responsibility will be to assure compliance with all conditions of the special use permit. The name and phone number of that employee shall be provided to the Department of Planning and Zoning and to a representative of the surrounding property, " and the addition of condition #39 stating, "The special use permit shall be docketed for review within 120 days of adoption of the Eisenhower West Small Area Plan." The voting was as follows:

Wilson	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

## REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

- Public Hearing on a Report of the Naming Committee on the Proposal to Name the Duke Street Bridge Near the Beatley Library in Honor of the Late Richard Leibach. (#31, 5/13/08)

(A copy of the City Manager's memorandum dated May 8, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8; 05/20/08, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing on the report of the Naming Committee on the proposal to name the Duke Street Bridge near the Beatley Library in honor of the late Richard Leibach and recommended that the bridge be named in honor of the late Richard Leibach. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

**REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

**Planning Commission (continued)**

9. MASTER PLAN AMENDMENT #2008-0002(A)  
 DEVELOPMENT SPECIAL USE PERMIT #2006-0025 (B)  
 3000 & 3100 BUSINESS CENTER DRIVE  
 DASH BUS FACILITY  
 Public Hearing and Consideration of a request for (1) an amendment to the City's Master Plan to increase height limits in the Taylor Run/Duke Street Small Area Plan; (2) a development special use permit, with site plan, modifications and subdivision, to construct a public building; zoned I/Industrial. Applicant: City of Alexandria, Department of General Services

PLANNING COMMISSION ACTION: MPA: Resolution Adopted 7-0  
 DSUP: Recommend Approval 7-0

(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 05/20/08, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously, City Council closed the public hearing and City Council approved the Planning Commission recommendation. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

10. SPECIAL USE PERMIT #2008-0020  
 4007 MOUNT VERNON AVENUE  
 24 EXPRESS STORE  
 Public Hearing and Consideration of a request for a special use permit amendment to increase the hours for the sale of alcoholic beverages; zoned NR/Neighborhood Retail. Applicant: UAC Land and Building t/a 24 Express by William Thomas, Jr., agent

PLANNING COMMISSION ACTION: Recommend Approval 7-0



(A copy of the Planning Commission report dated May 6, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 10; 05/20/08, and is incorporated as part of this record by reference.)

Planning and Zoning Deputy Director Josephson gave a brief presentation on the proposed amendment to the special use permit and responded to questions and concerns from Council.

Police Captain Reyes reported police statistics for the area around the store and responded to questions from Council about law enforcement activity since the last review of the special use permit.

The following persons participated in the public hearing for this item:

(a) William Thomas, 11320 Random Hills Road, #325, Fairfax, attorney for the applicant, spoke in support of the application and responded to questions from Council.

(b) Kathleen Henry, 3200 Commonwealth Avenue, #208, representing the Arlandria Chirilagua Housing Cooperative, spoke in support of the application without the additional days for armed security guards. Ms. Henry responded to questions from Council.

(c) Kevin Beekman, 3905 Elbert Avenue, spoke in opposition to the proposed amendment to the special use permit.

(d) Melissa Garcia, 507 Shorter Lane, spoke in opposition to the proposed amendment to the special use permit.

(e) Andy Pearn, 4007 Mount Vernon Avenue, spoke in support of the application and presented crime statistics about alcohol related crimes in the vicinity of the store.

(f) Charles Niphadkabin, 4007 Mount Vernon Avenue, the applicant, spoke in support of the application and noted the improvements that the 24 Express Store has made to improve the area. Mr. Niphadkabin also offered support to any initiatives that the City and the neighborhood sought to start in the future.

**WHEREUPON**, upon motion by Councilman Gaines, seconded by Vice Mayor Pepper and carried unanimously, City Council closed the public hearing. The voting was as follows:

Gaines	"aye"	Krupicka	"aye"
Pepper	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"

Wilson "aye"

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Smedberg and carried unanimously, City Council deferred the item until the June 24 Legislative meeting, giving staff the directive to approach other retail establishments in the area and request a voluntary decrease in the hours for the sale of alcoholic beverages in the businesses and to develop a plan/strategy to address the alcohol use in the area. Council also requested that staff include specific loitering language in the subsequent report. The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Wilson	"aye"	

**ORDINANCES AND RESOLUTIONS**

- 11. Public Hearing, Second Reading and Final Passage of an Ordinance to Increase Fees For Overweight/oversize Vehicle Permits. (#17, 05/13/08)

(A copy of the City Manager's memorandum dated May 8, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 11; 05/20/08, and is incorporated as part of this record by reference.

A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 11; 05/20/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 11; 05/20/08, and is incorporated as part of this record.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried 6-0 by roll-call vote, City Council closed the public hearing and passed an ordinance to increase fees for overweight/oversize vehicle permits. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	absent	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

The ordinance reads as follows:

**ORDINANCE NO. 4539**

AN ORDINANCE to amend and reordain Section 5-8-152 (PERMITS FOR EXCESSIVE SIZE AND WEIGHT, ETC.), of Article I (VEHICLE WEIGHT LIMITS), 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.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 5-8-152 of The Code of the City of Alexandria, 1981 as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 5-8-152 Permits for excessive size and weight; concrete mixers; certain coal-hauling vehicles; certain refuse collection trucks and certain vehicles carrying containerized freight.

a) The director of transportation and environmental services may, in his discretion, upon application in writing and good cause being shown therefore, issue a special permit in writing authorizing the applicant to operate or move a vehicle upon the street of a size and weight exceeding the maximum specified by law. Every permit may designate the route to be traversed and contain any other restrictions or conditions deemed necessary to him. Before a special permit is issued, the applicant shall pay to the city ~~a fee of \$5.00 for a single haul permit or \$10 for an annual haul special permit~~ the fee established and published pursuant to section 3-1-8 of this code.

b) The director of transportation and environmental services, upon application in writing made by the owner or operator of any of the vehicles of the types specified in section ~~46.1-343~~ 46.2-1139 of the Code of Virginia (1950), as amended, shall issue the permits that are provided for in that section, and the applicant shall pay to the city the fee established and published pursuant to section 3-1-8 of this code.

c) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any officer. Any person who violates any of the terms or conditions of the special permit shall be punished in accordance with section 10-1-19 of this code.

Section 2. That this ordinance shall become effective July 1, 2008.

12. Public Hearing, Second Reading and Final Passage of an Ordinance to Increase the Fee Charged For Presenting a Bad Check to the City. (#18, 05/13/08)

(A copy of the City Manager's memorandum dated April 29, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12; 05/20/08, and is incorporated as part of this record by reference.

A copy of the informal memorandum explaining the ordinance is on file in the

Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 12; 05/20/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 12; 05/20/08, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried 6-0 by roll-call vote, City Council closed the public hearing and passed an ordinance to increase the fee charged for presenting a bad check to the City. The voting was as follows:

Wilson	"aye"	Gaines	absent
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

The ordinance reads as follows:

#### **ORDINANCE NO. 4540**

AN ORDINANCE to amend and reordain Section 3-2-301 (GENERALLY) of Article Q (FEE FOR PASSING BAD CHECKS TO CITY), Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

#### **THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:**

Section 1. That Section 3-2-301 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is amended and reordained to read as follows:

Sec. 3-2-301      Generally.

A fee of \$35 shall be charged for the uttering, publishing or passing of any check or draft for payment of taxes or any other sums due to the city, which is subsequently returned for insufficient funds or because there is no account or the account has been closed.

Section 2. That this ordinance shall become effective on July 1, 2008.

13. Public Hearing, Second Reading and Final Passage of an Ordinance to Authorize the Issuance of General Obligation Capital Improvement Bonds in the Estimated Maximum Amount of \$78,800,000, and to Provide For Reimbursement to the City From Bond Proceeds. (#19, 05/13/08)

(A copy of the City Manager's memorandum dated May 8, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 13; 05/20/08, and is incorporated as part of this record by reference.

A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 13; 05/20/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 3 of Item No. 13; 05/20/08, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Councilman Wilson, seconded by Vice Mayor Pepper and carried 6-0 by roll-call vote, City Council closed the public hearing and passed an ordinance to authorize the issuance of General Obligation Capital Improvement Bonds in the estimated maximum amount of \$78,800,000 and to provide for reimbursement to the City from Bond proceeds. The voting was as follows:

Wilson	"aye"	Gaines	absent
Pepper	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

The ordinance reads as follows:

#### **ORDINANCE NO. 4541**

AN ORDINANCE OF THE CITY OF ALEXANDRIA, VIRGINIA AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION CAPITAL IMPROVEMENT BONDS IN THE ESTIMATED MAXIMUM AMOUNT OF \$70,000,000; AND PROVIDING FOR REIMBURSEMENT TO THE CITY OF ALEXANDRIA FROM BOND PROCEEDS

WHEREAS, the City Council of the City of Alexandria, Virginia ("City") has determined that it is advisable to issue up to \$70,000,000 general obligation bonds of the City to finance the cost, in whole or in part, of various capital improvements as described below (the "Projects").

THE CITY COUNCIL OF THE CITY OF ALEXANDRIA HEREBY ORDAINS:

**1. Authorization of Bonds and Use of Proceeds.** The City Council hereby determines that it is advisable to contract a debt and to issue and sell general obligation bonds in the aggregate maximum principal amount of \$70,000,000 (the "Bonds"). The issuance and sale of the Bonds are hereby authorized. The proceeds from the issuance and sale of the Bonds shall be used to pay all or a portion of the costs of the Projects as described below and the Director of Finance is authorized and directed to

determine the portion of the cost of each Project to be financed with Bond proceeds.

<u>General Project Description</u>	<u>Estimated Maximum Cost</u>
<u>Schools</u>	\$15,500,000
Construction, remodeling and repairing of school buildings and acquisition of necessary equipment (includes projects contained in the capital improvement program under "Schools").	
<u>City Parks and Buildings</u>	\$23,500,000
Construction, renovation and improvement of existing of new City buildings and park facilities and acquisition of necessary land and equipment (includes projects contained in the capital improvement program under "Recreation and Parks" and "Public Buildings").	
<u>Traffic Improvements</u>	\$2,800,000
Maintenance and upgrade of the City's traffic control (includes projects contained in the capital improvement program under "Public Transportation and Traffic Control").	
<u>Information Technology</u>	\$1,000,000
Maintenance and upgrade of the City's information technology infrastructure and hardware, networks, and software (includes projects contained in the capital improvement program under "Information Technology Plan").	
<u>Infrastructure</u>	\$15,000,000
Construction, renovation and improvement of City streets, bridges, storm and sanitary sewers and acquisition of necessary equipment (includes projects contained in the capital improvement program under "Community Development," "Streets, Bridges and Pedestrian Improvements").	
<u>Affordable Housing</u>	\$12,200,000
Acquisition, construction, remodeling and repairing of affordable housing and acquisition of necessary land and equipment.	
<u>Total:</u>	\$70,000,000

2. **Pledge of Full Faith and Credit.** The full faith and credit of the City are hereby

irrevocably pledged for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. The City Council shall levy an annual ad valorem tax upon all property in the City, subject to local taxation, sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due for payment unless other funds are lawfully available and appropriated for the timely payment thereof.

**3. Details and Sale of Bonds.** The Bonds shall be issued upon the terms established pursuant to this Ordinance and upon such other terms as may be determined in the manner set forth in this Ordinance. The Bonds shall be issued in one or more taxable or tax-exempt series, in fully registered form, shall be dated such date or dates as the City Manager and the Director of Finance, or either of them, may approve, shall be in the denominations of \$5,000 each or whole multiples thereof and shall be numbered from R-1 upwards consecutively. The Bonds shall mature on such dates and in such amounts and shall be issued in such principal amount as the City Manager and the Director of Finance, or either of them, may approve, provided that the final maturity of any Bond is not more than approximately 25 years from its date and the aggregate principal amount of the Bonds is not more than \$70,000,000. The City Manager and the Director of Finance, or either of them, is authorized and directed to accept a bid or bids for the purchase of the Bonds which results in the lowest true interest cost to the City and the Bonds shall bear interest, payable semi-annually, at such rate or rates and shall be sold to the successful bidder or bidders at such price as may be set forth in the bid or bids so accepted; provided that the true interest cost of the Bonds shall not exceed 6.5% per annum. The City Manager and the Director of Finance, or either of them, is authorized and directed to approve such optional redemption provisions for the Bonds as such officer or officers determine to be in the best interest of the City. The City Council may provide for additional or other terms of the Bonds by subsequent resolution.

**4. Form of Bonds.** The Bonds shall be in substantially the form attached to this Ordinance as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Ordinance. There may be endorsed on the Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

**5. Book-Entry-Only-Form.** The Bonds shall be issued in book-entry-only form. The Bonds shall be issued in fully-registered form and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC") as registered owner of the Bonds, and immobilized in the custody of DTC. One fully-registered Bond in typewritten or printed form for the principal amount of each maturity of the Bonds shall be registered to Cede & Co. Beneficial owners of the Bonds shall not receive physical delivery of the Bonds. Principal, premium, if any, and interest payments on the Bonds shall be made to DTC or its nominee as registered owner of the Bonds on the applicable payment date.

Transfer of ownership interest in the Bonds shall be made by DTC and its

participants (the "Participants"), acting as nominees of the beneficial owners of the Bonds in accordance with rules specified by DTC and its Participants. The City shall notify DTC of any notice required to be given pursuant to this Ordinance or the Bonds not less than fifteen (15) calendar days prior to the date upon which such notice is required to be given. The City shall also comply with the agreements set forth in the City's Letter of Representations to DTC.

Replacement Bonds (the "Replacement Bonds") may be issued directly to beneficial owners of the Bonds rather than to DTC or its nominee but only in the event that:

- (i) DTC determines not to continue to act as securities depository for the Bonds; or
- (ii) The City has advised DTC of its determination not to use DTC as a securities depository; or
- (iii) The City has determined that it is in the best interest of the beneficial owners of the Bonds or the City not to continue the book-entry system of transfer.

Upon occurrence of the event described in (i) or (ii) above, the City shall attempt to locate another qualified securities depository. If the City fails to locate another qualified securities depository to replace DTC, the City Council shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A to the Ordinance to the Participants. In the event the City Council, in its discretion, makes the determination noted in (iii) above and has made provisions to notify the beneficial owners of the Bonds by mailing an appropriate notice to DTC, the appropriate officers and agents of the City shall execute and deliver Replacement Bonds substantially in the form set forth in Exhibit A to this Ordinance to any Participants requesting such Replacement Bonds. Principal of and interest on the Replacement Bonds shall be payable as provided in this Ordinance and in the Bonds and Replacement Bonds will be transferable in accordance with the provisions of paragraphs 9 and 10 of this Ordinance and the Bonds.

**6. Appointment of Bond Registrar and Paying Agent.** The City Manager and the Director of Finance, or either of them, are authorized and directed to appoint a Bond Registrar and Paying Agent for the Bonds and as long as the Bonds are in book-entry form, either of such officers may serve as Paying Agent.

The City Manager and the Director of Finance, or either of them, may appoint a subsequent registrar and/or one or more paying agents for the Bonds upon giving written notice to the owners of the Bonds specifying the name and location of the principal office of any such registrar or paying agent.

**7. Execution of Bonds.** The Mayor and the Clerk of the City are authorized and directed to execute appropriate negotiable Bonds and to affix the seal of the City thereto and to deliver the Bonds to the purchaser thereof upon payment of the purchase price. The manner of execution and affixation of the seal may be by facsimile, provided, however, that if the signatures of the Mayor and the Clerk are both by facsimile, the Bonds shall not be valid until signed at the foot thereof by the manual signature of the Bond Registrar.



8. **CUSIP Numbers.** The Bonds shall have CUSIP identification numbers printed thereon. No such number shall constitute a part of the contract evidenced by the Bond on which it is imprinted and no liability shall attach to the City, or any of its officers or agents by reason of such numbers or any use made of such numbers, including any use by the City and any officer or agent of the City, by reason of any inaccuracy, error or omission with respect to such numbers.

9. **Registration, Transfer and Exchange.** Upon surrender for transfer or exchange of any Bond at the principal office of the Bond Registrar, the City shall execute and deliver and the Bond Registrar shall authenticate in the name of the transferee or transferees a new Bond or Bonds of any authorized denomination in an aggregate principal amount equal to the Bond surrendered and of the same form and maturity and bearing interest at the same rate as the Bond surrendered, subject in each case to such reasonable regulations as the City and the Bond Registrar may prescribe. All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the City and the Bond Registrar, duly executed by the registered owner or by his or her duly authorized attorney-in-fact or legal representative. No Bond may be registered to bearer.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by this Ordinance and entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

10. **Charges for Exchange or Transfer.** No charge shall be made for any exchange or transfer of Bonds, but the City may require payment by the registered owner of any Bond of a sum sufficient to cover any tax or other governmental charge which may be imposed with respect to the transfer or exchange of such Bond.

11. **Non-Arbitrage Certificate and Tax Covenants.** The City Manager and the Director of Finance, or either of them, and such officers and agents of the City as either of them may designate are authorized and directed to execute a Non-Arbitrage Certificate and Tax Covenants setting forth the expected use and investment of the proceeds of the Bonds and containing such covenants as may be necessary in order to comply with the provisions of the Internal Revenue Code of 1986, as amended ("Code"), including the provisions of Section 148 of the Code and applicable regulations relating to "arbitrage bonds." The City Council covenants on behalf of the City that the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in the City's Non-Arbitrage Certificate and Tax Covenants, to be delivered simultaneously with the issuance and delivery of the Bonds and that the City shall comply with the other covenants and representations contained therein.

12. **Revocation of Authorization for Previously Authorized Taxable Bonds.** On October 15, 2005 the City Council adopted Ordinance No. 4423 (the "Prior Ordinance") authorizing the City to issue certain amounts of taxable and non-taxable bonds. All

authorization under the Prior Ordinance for the issuance by the City of taxable bonds is hereby revoked and rescinded to the extent such bonds have not been issued as of the date of this Ordinance.

**13. Disclosure Documents.** The City Manager and the Director of Finance, or either of them, and such officers and agents of the City as either of them may designate are hereby authorized and directed to prepare, execute, if required, and deliver an appropriate notice of sale, preliminary official statement, official statement, continuing disclosure agreement or such other offering or disclosure documents as may be necessary to expedite the sale of the Bonds. The notice of sale, preliminary official statement, official statement, continuing disclosure agreement or other documents shall be published in such publications and distributed in such manner, including electronically, and at such times as the Director of Finance shall determine. The Director of Finance is authorized and directed to deem the preliminary official statement "final" for purposes of Securities and Exchange Commission Rule 15c2-12.

**14. Further Actions.** The City Manager and the Director of Finance and such officers and agents of the City as either of them may designate are authorized and directed to take such further action as they deem necessary regarding the issuance and sale of the Bonds and all actions taken by such officers and agents in connection with the issuance and sale of the Bonds are ratified and confirmed.

**15. Reimbursement.** The City Council adopts this declaration of official intent under Treasury Regulations Section 1.150-2. The City Council reasonably expects to reimburse advances made or to be made by the City to pay the costs of the Projects from the proceeds of its debt. The maximum amount of debt expected to be issued for the Projects is set forth in paragraph 1 above. The City hereby authorizes the Director of Finance, on behalf of the City, to specifically declare the City's official intent to reimburse portions of the cost of the Projects with Bond proceeds.

**16. Effective Date; Applicable Law.** In accordance with Section 15.2-2601 of the Code of Virginia of 1950, as amended, the City Council elects to issue the Bonds pursuant to the provisions of the Public Finance Act of 1991. This Ordinance shall take effect at the time of its enactment.

14. Public Hearing, Second Reading and Final Passage of an Ordinance to Revise the Membership of the Consumer Affairs Commission. (#20, 05/13/08)

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 14; 05/20/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 14; 05/20/08, and is incorporated as part of this record by reference.)

**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Smedberg and carried unanimously by roll-call vote, City Council closed the public hearing and passed an ordinance to revise the membership of the Consumer Affairs Commission. The voting was as follows:

Pepper	"aye"	Gaines	"aye"
Smedberg	"aye"	Krupicka	"aye"
Euille	"aye"	Lovain	"aye"
	Wilson	"aye"	

The ordinance reads as follows:

### **ORDINANCE NO. 4542**

AN ORDINANCE to amend and reordain Section 12-7-12 (COMPOSITION; OFFICERS; APPOINTMENT, TERM AND COMPENSATION OF MEMBERS) of Article B (CONSUMER AFFAIRS COMMISSION), Chapter 7 (CONSUMER AFFAIRS), of Title 12 (EDUCATION, SOCIAL SERVICES AND WELFARE), of The Code of the City of Alexandria, 1981, as amended.

#### **THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:**

Section 1. That Section 12-7-12 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended and reordained, to read as follows:

Section 12-7-12 Composition; officers; appointment, term and compensation.

The commission shall consist of 11 members appointed by the city council; two of whom shall be members of the business community, ~~two~~ one of whom shall be a members of a local consumer action organizations and ~~seven~~ eight of whom shall be citizens at large; provided, however, that ~~one~~ one of the positions designated for a member of a local consumer action organization may be filled by a representative of a local non-profit organization which deals with consumer issues, or by an employee of a state or federal agency which deals with consumer issues, and provided, further that the vacancy for the consumer action organization member has been advertised and has remained unfilled for a period of three months or longer; and provided also that either or both of the positions designated for a member of the business community may be filled by a citizen at large, provided further that the vacancy for the business community member has been advertised and has remained unfilled for a period of three months or longer, and such position shall revert to a position for a member of the business community upon the expiration of the term of such appointee. All members shall be residents of the city; except that one member of the business community and ~~one~~ the member of a consumer action organization may be a nonresident of the city but a resident of the state. All members shall be appointed by city council for three-year

terms. Any vacancy shall be filled by the council for the unexpired portion of a term. The commission shall select a chairperson, vice chairperson and secretary by a majority vote of all members of the commission. The chairperson shall serve a two-year term and may not succeed himself. In the event that the chair is vacated for any reason, the vice chairperson shall succeed and serve as chairperson for the remainder of the term. A vice chairperson shall be selected by majority vote of all members of the commission to serve as vice chairperson for the unexpired term. Members shall serve without compensation but may receive reimbursement for expenses, subject to the availability of funds.

Section 2. That this ordinance shall become effective on the date and at the time of final passage; provided, however that this ordinance shall not affect the term of office of the members of the Consumer Affairs Commission in office on the effective date.

15. Public Hearing, Second Reading and Final Passage of an Ordinance to Authorize a Vacation of, and Encroachment Into, the Public Right-of-way at the Northeast Corner of Duke Street and Reineker's Lane. (#21, 05/13/08)

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 15; 05/20/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 15; 05/20/08, and is incorporated as part of this record by reference.)

The following person participated in the public hearing for this item:

(a) Kenneth Wise, 1750 Tysons Boulevard, McLean, attorney for the owner of the property, offered an amendment to the proposed ordinance which stated, "The City of Alexandria reserves an easement for subsurface rights within the vacated area outside the limits of the parking garage structure for any future public utilities. City of Alexandria also reserves a permanent surface easement for public right-of-way access and use," and submitted a letter with the changes.

**WHEREUPON**, upon motion by Councilman Krupicka, seconded by Councilman Smedberg and carried unanimously by roll-call vote, City Council closed the public hearing and passed an ordinance to authorize a vacation of, and encroachment into, the public right-of-way at the northeast corner of Duke Street and Reineker's Lane with the provision that the City of Alexandria reserves an easement for subsurface rights within the vacated area outside the limits of the parking garage structure for any future public utilities. City of Alexandria also reserves a permanent surface easement for public right-of-way access and use. The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Smedberg	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Wilson	"aye"	

The ordinance reads as follows:

**ORDINANCE NO. 4543**

AN ORDINANCE to vacate a portion of the public right-of-way located adjacent to and below 206 Reineker’s Lane (VAC No. 2007-0001), and to permit an encroachment for existing stairs and planters located along the public right-of-way of 1701 Duke Street.

WHEREAS, Carr Properties, Inc. (“Owner”) has applied for a vacation to permit an underground parking garage to extend into the area adjacent to and below the public right-of-way on the east side of Reineker’s Lane, in the City of Alexandria, Virginia; and

WHEREAS, the Planning Commission of the City of Alexandria at one of its regular meetings recommended approval of the vacation of such public right-of-way at this location; and

WHEREAS, the Council of the City of Alexandria has approved the recommendation of the Planning Commission; and

WHEREAS, viewers, Dennis L. Jones, chair, Tom Welsh and William L. Brandon, have been, and again by this ordinance are, duly appointed by the Council of the City of Alexandria, to make their reports in conjunction with this vacation; and

WHEREAS, the procedures required by law, including the publication of notice in a newspaper of general circulation in the City of Alexandria, have been followed in conjunction with this vacation; and

WHEREAS, in consideration of the reports of the viewers, of other evidence relative to this vacation and of compliance with the conditions set forth in this ordinance, the Council of the City of Alexandria, has determined that the portion of the public right-of-way to be vacated is no longer desirable for public use and that the public interest will not be harmed by this vacation; and

WHEREAS, in connection with such vacation Owner also wishes to reconstruct and maintain stairs and planters that are currently located in the public right-of-way along 1701 Duke Street, and the public right-of-way will not be significantly impaired by this encroachment, and this encroachment will not be detrimental to the public interest; and therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the vacation of the public right-of-way to Owner, consisting of an area encumbering approximately 910 square feet, and measuring approximately 12 feet in width by 32 feet in depth and extending a distance of 125 feet, located beneath the Reineker's Lane right of way, for the purpose of permitting Owner to extend a three level parking garage into said area, as shown on the plat of vacation attached hereto and incorporated herein by reference, be, and the same hereby is, approved.

Section 2. That the vacation made and provided by the preceding section of this ordinance be, and the same hereby is, subject the conditions set forth below:

- (a) Owner shall prepare a plat of consolidation, showing the property vacated and all easements therein, and consolidating such property with the adjoining lot, and the plat of consolidation shall be filed with the directors of Planning & Zoning and Transportation & Environmental Services and recorded in the land records of the City of Alexandria.
- (b) Easements shall be reserved for all existing public and private utilities within the area vacated. Owner shall show all easements on the plat of consolidation.
- (c) City of Alexandria reserves an easement for subsurface rights within the vacated area outside the limits of the parking garage structure for any future public utilities. City of Alexandria also reserves a permanent surface easement for public right-of way access and use.
- (d) Owner shall not use the vacated land to derive any increased above grade development rights for the lands adjacent to the vacated area, including increased floor area, subdivision rights or additional dwelling units; however, Owner may develop the below grade area and build improvements. The above grade restrictions and below grade improvement rights shall appear as part of the deed of vacation and shall also appear as a note on the consolidation plat, both of which shall be approved by the directors of Planning & Zoning and Transportation & Environmental Services prior to recordation.
- (e) Owner shall be responsible for perpetual ownership, development and maintenance of the improvements constructed in the vacated right-of-way.
- (f) The City of Alexandria shall own and maintain the sidewalk constructed in the public right of way; however, the Owner shall maintain the sidewalk constructed in the vacated right of way. The sidewalk constructed on Owner's property shall be privately owned and maintained, and publicly accessible, via a public right-of-way access easement that allows the public to use the

sidewalk.

- (g) Owner shall pay the sum of \$ 51,000.00 to the City for the vacated land.

Section 3. The term "Owner" shall be deemed to include Carr Properties, Inc. and all respective successors in interest.

Section 4. That the city manager be, and hereby is, authorized to do on behalf of the City of Alexandria all things necessary or desirable to carry into effect this vacation, including the execution of documents.

Section 5. That the city clerk be, and hereby is, authorized to attest the execution by the city manager of all documents necessary or desirable to carry into effect this vacation, and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 6. That Owner is authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 1701 Duke Street, in the City of Alexandria, said encroachment consisting of stairs located along the Duke Street frontage of 1701 Duke Street extending approximately 3.68 feet into the public right-of-way for a length of approximately 29.65 feet; and also consisting of two planters, each extending approximately 4.68 feet into the public right-of-way, the first located closest to Reineker's Lane being approximately 6.6 feet long and the second located at the opposite end of the stairs being approximately 6.7 feet long, as generally shown on the plat 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.

Section 7. That the authorization hereby granted to establish and maintain said encroachment shall in addition be subject to and conditioned upon the following terms:

- (a) Neither the City of Alexandria nor any public or private utility company shall be responsible for damage to Owner's property encroaching into the public right-of-way during repair, maintenance or replacement of the public right-of-way or any public facilities or utilities in the area of encroachment.
- (b) The Owner shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.

Section 8. 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 9. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owners and Tenant maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 10. 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 11. 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 Owners 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 or personal property within the encroachment area, caused by the removal.

Section 12. That this ordinance shall be effective upon the date and at the time of its final passage; provided, however, that no recordation of this ordinance shall have any force or effect unless and to the extent annexed to a deed, executed by the city manager and attested by the city clerk, conveying the property vacated to Owner. The execution of such deed shall constitute conclusive evidence of compliance with the provisions of this ordinance. Such deed shall be recorded and indexed in the name of the City of Alexandria, as grantor, and Owner as grantee, and such recordation shall be done by the grantee at their own expense. In the event no such deed is recorded within 18 months of the effective date, this ordinance shall be void and of no effect.

16. Public Hearing, Second Reading and Final Passage of an Ordinance to Authorize Outdoor Restaurant Seating in the Public Sidewalk at 220 North Lee Street. (#22, 05/13/08)

(A copy of the informal memorandum explaining the ordinance is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 16; 05/20/08, and is incorporated as part of this record by reference.

A copy of the ordinance referred to in the above item, of which each Member of Council received a copy not less than 24 hours before said introduction, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 2 of Item No. 16; 05/20/08, and is incorporated as part of this record by reference.)



**WHEREUPON**, upon motion by Vice Mayor Pepper, seconded by Councilman Gaines and carried unanimously by roll-call vote, City Council closed the public hearing and passed an ordinance to authorize outdoor restaurant seating in the public sidewalk at 220 North Lee Street. The voting was as follows:

Pepper	"aye"	Krupicka	"aye"
Gaines	"aye"	Lovain	"aye"
Euille	"aye"	Smedberg	"aye"
	Wilson	"aye"	

The ordinance reads as follows:

**ORDINANCE NO. 4544**

AN ORDINANCE authorizing the tenant of 220 North Lee Street to establish and maintain an encroachment for outdoor restaurant seating at 220 North Lee Street, in the City of Alexandria, Virginia.

WHEREAS, Atlas Partners, LLC ("Tenant") is the Tenant of the property located at 220 N. Lee Street, in the City of Alexandria, Virginia; and

WHEREAS, Tenant desires to establish and maintain outdoor restaurant seating which will encroach into the public sidewalk right-of-way at 220 North Lee Street; and

WHEREAS, the public sidewalk right-of-way at that point on at 220 North Lee Street 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; now, therefore,

**THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:**

Section 1. That Tenant be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 220 North Lee Street, in the City of Alexandria, said encroachment consisting of outdoor restaurant seating, as generally shown on the diagram 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 Tenant of liability for any negligence on his 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 said encroachment shall be subject to and conditioned upon Tenant maintaining, at all times and at his 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 \$1,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate

This liability insurance policy shall identify the City of Alexandria and Tenant as named insureds and shall provide for the indemnification of the City of Alexandria and Tenant against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment, and demands, suits and all costs related thereto, including attorney fees. 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, Tenant 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 Tenant. Nothing in this section shall relieve Tenant of his obligations and undertakings required under this ordinance.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall in addition be subject to and conditioned upon the following terms:

- a. No food, beverages, or other material shall be stored outside.
- b. Trash and garbage shall be stored inside or in a dumpster.
- c. Trash and garbage shall be collected daily when the business is open, except Sundays.
- d. Employees shall not be allowed to park in the rear of Crilley Warehouse during evening hours, other than to use the two (2) spaces assigned to the Tenant.
- e. Tenant shall maintain and clean the parking lot area and the adjacent alley to keep it free of litter and debris.
- f. All restaurant trash and litter shall be placed directly in the dumpsters located

behind the building.

g. No delivery trucks shall park in or block the alley, but be encouraged to park in the Lee Street "loading zone".

h. Employees shall not loiter or engage in loud conversation in the alley and parking areas.

i. Employees shall exit the restaurant only from the Lee Street entrance.

j. Seating shall be provided for no more than 174 patrons total. Up to 18 seats may be located outside on private property and within the approved area of encroachment.

k. Tenant shall post the hours of operation at the entrance to the restaurant.

l. Tenant shall require their employees to use off-street parking.

m. Loudspeakers shall be prohibited from the exterior of the building, and no amplified sound shall be audible at the property line outside.

n. Meals ordered before the closing hour may be served, but no new patrons be admitted and no alcoholic beverages shall be served after the closing hour, and all patrons shall leave by one hour after the closing hour.

o. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers.

p. Tenant shall control cooking odors, smoke and any other air pollution from operations at the site and prevent them from leaving the property or becoming a nuisance to neighboring properties, as determined by the Department of Transportation & Environmental Services.

q. Tenant shall conduct employee training sessions on an ongoing basis, including as part of any employee orientation, to discuss all Special Use Permit provisions and requirements, and on how to prevent underage sales of alcohol.

r. Tenant shall encourage its employees to use mass transit or to carpool when traveling to and from work, by posting information regarding DASH and METRO routes, the location where fare passes for transit are sold, and advertising of carpooling opportunities.

s. On site alcohol service is permitted; no off-premise alcohol sales are permitted.

t. Tenant shall provide storage space for solid waste and recyclable materials

containers as outlined in the City's *A Solid Waste and Recyclable Materials Storage Space Guidelines@* , or to the satisfaction of the Director of Transportation & Environmental Services.

u. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public.

v. In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant shall remove any structure or projection that encroaches into the public right-of-way, within 60 days, upon notification by the City.

w. Outdoor dining shall end at 10:00 p.m., daily.

x. The area of encroachment shall be limited to the width of the restaurant and four feet from the building face.

y. Tenant shall abide by the regulations of the King Street Outdoor Dining Program regarding the design and maintenance of the outdoor seating area.

z. The Director of Planning and Zoning shall review the special use permit after it has been operational for one year, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community; (b) the director received a request from any person to docket the permit for review as the result of a complaint that rises to the level of a violation of the permit conditions, (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Tenant 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 be subject to Tenant'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 Tenant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Tenant without cost to the city. If Tenant 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 Tenant, and shall not be liable to Tenant for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.

Section 8. The term "Tenant" shall be deemed to include Atlas Partners, LLC, or any corporation or entity in which Atlas Partners, LLC has a controlling interest, and any successors in interest.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

## **REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)**

### **DEFERRAL/WITHDRAWAL CONSENT CALENDAR (17-18)**

#### **Planning Commission (continued)**

17. TEXT AMENDMENT #2008-0004  
SMALL BUSINESS ZONING  
Public Hearing and Consideration of a text amendment of the Zoning Ordinance eliminating the requirement for SUP approval for a variety of uses, changing a variety of uses to either permitted or administrative SUP uses, and amending the procedures and standard for minor and change of ownership amendments and for administrative SUPs, as recommended by the Small Business Task Force. Staff: Department of Planning and Zoning.

PLANNING COMMISSION ACTION: Deferred 7-0

18. SPECIAL USE PERMIT #2007-0107  
CARLYLE DEVELOPMENT - Area bounded by Duke Street to the north, Holland Lane to the east, Eisenhower Avenue to the south and Mill Road to the west, known as the Carlyle Development  
CARLYLE COORDINATED SIGN PROGRAM  
Public Hearing and Consideration of a request for an amendment to the Carlyle Coordinated Sign Program; zoned CDD-1/Coordinated Development District-1. Applicant: Carlyle-Lane-CFRI Venture II, LLC and LCOR Ballenger Avenue, LLC by Jonathan P. Rak, attorney

PLANNING COMMISSION ACTION: Deferred w/o objection 7-0

**END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR**

City Council noted the deferrals.

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**THERE BEING NO FURTHER BUSINESS TO DISCUSS**, upon motion by Councilman Krupicka, seconded by Councilman Wilson and carried unanimously, City Council adjourned the public hearing meeting of May 20, 2008, at 10:28 p.m. The voting was as follows:

Krupicka	"aye"	Pepper	"aye"
Wilson	"aye"	Gaines	"aye"
Euille	"aye"	Lovain	"aye"
	Smedberg	"aye"	

APPROVED BY:

\_\_\_\_\_  
WILLIAM D. EUILLE MAYOR

ATTEST:

\_\_\_\_\_  
Gloria A. Sitton, CMC Deputy City Clerk