

CITY COUNCIL OF ALEXANDRIA, VIRGINIA

**Public Hearing Meeting
Saturday, February 23, 2008 - - 9:30 a.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; Mr. Mason, Special Assistant to the City Manager; Ms. Harris, Communications Officer, City Manager's Office; Police Captain Ogden; Animal Control Officer Gordon; Mr. Kincannon, Director, Recreation, Parks and Cultural Activities; Ms. Vosper, Recreation, Parks and Cultural Activities; Ms. Colton, Recreation, Parks and Cultural Activities; Mr. Baier, Director, Transportation and Environmental Services; Mr. Culpepper, Deputy Director, Transportation and Environmental Services; Mr. Lambert, Transportation and Environmental Services; Ms. Hamer, Director, Planning and Zoning; Mr. Josephson, Deputy Director, Planning and Zoning; Mr. Farner, Planning and Zoning; Ms. Peterson, Planning and Zoning; Ms. Smith-Page, Director, Real Estate Assessments; Ms. Blott, Executive Director, Animal Shelter; and Mr. Lloyd.

Recorded by: Jacqueline M. Henderson, City Clerk and Clerk of Council

OPENING

1. Calling the Roll.

The meeting was called to order by Mayor Euille, and the City Clerk called the roll; all the members of Council were present.

OPENING

1. Calling the Roll.

The meeting was called to order by Mayor Euille, and the City Clerk called the roll; all the members of Council were present.

2. Public Discussion Period.

(a) Gary Carr, 216 Aspen Street, said he has been on a marathon to bring running tracks to the City, specifically, to restore the tracks at Hammond Middle School and George Washington Middle School, and to build a championship track somewhere within the City, and he noted the reasons for building the tracks. He said he is a proponent of running for health reasons, for diet and exercise and character. He asked Council to pass a resolution to eliminate childhood obesity, starting with fixing the field at Hammond this year.

Mayor Euille noted that Council has a work session this Monday on the Capital Improvements Program, and that will be an opportune time for staff to report to Council but for Council to question staff relative to the status of the fields and tracks.

(b) Richard Calderon, 505 E. Braddock Road, #803, president, Colecroft Station Condominium, spoke about the flawed premise of the proposed Braddock Road Metro Plan. The effort attempts to provide affordable housing by zoning for multi-family high rise apartments. He said what City planners do not understand is that long term maintenance and operating costs of the buildings is high. Rather than plan for affordable townhouses with above-grade parking at 1.5 FAR, the Metro plan proposes to zone 2,345 condo and rental units at a nominal 2.5 to 3.0 FAR. Since the systems in the structures are two to ten times more expensive than townhouses, either the buildings will deteriorate to the condition of so many around Landmark because of poor capital repair, or high condo fees and rents will force out the teachers, firemen and others for whom the density was granted in the first place.

(c) Holly Hess, 610 N. West Street, Colecroft Station, spoke about the Braddock Road Metro Plan and in particular the transportation concerns. She said the transportation piece concerns her the most as it will negatively affect her community in a way that is irreversible. The proposal includes two very large office towers on the Braddock Road Metro Station and includes 3,020 office workers, generating 1,500 to 2,100 cars and the plan includes 900 to 1,500 bus and metro transit commuters under unrealistically optimistic transit assumptions and the increase in peak traffic would lock down traffic under the Braddock Road metro bridges, Wythe Street and West Street for many hours during rush hour. She said the plan ignores transportation impacts and fails to address basic assumptions of the Comprehensive Plan. She urged Council to eliminate the proposed office development on the Braddock Road Metro and use it as open space for the area.

(d) Maria Willcox, 334 N. Columbus Street, spoke about the Braddock Road Metro Plan, and she urged Council to halt approval of the misleadingly labeled Braddock Road Metro Comprehensive Plan, as the plan proposes that development grow the northwest end of Old Town and Parker Gray by 2,345 new condo and rental units, 231 townhouses, 4,240 office workers, generating 4,053 or more additional morning commuter trips and 3,394 additional transit riders. The proposed plan is not comprehensive because it does not address the true impact of the traffic on the neighborhood. She said the traffic consultants explained to the citizen workshops that

the only way to accommodate the additional commuters is to lengthen the period of peak traffic congestion by many hours, and that is unacceptable and will depress property values in the neighborhood. She asked why repeat an outworn, stale, top-down program when Alexandria's homegrown grassroots model is so alive and successful.

(e) Pat Troy, 310 Wolfe Street, chair of the Alexandria St. Patrick's Day Parade, spoke of the St. Patrick's Day Parade on March 1 - the first parade in the nation, and he noted that "Ballyshanners" means "Old Town." Mr. Troy thanked all the City Departments for all their help in planning the parade - Police, Fire, Sheriff, Transportation and Environmental Services and Recreation, Parks and Cultural Activities. He noted the participants in the parade and noted the day begins with the dog show and an antique car show.

(f) Carlos Amaya, 519 Four Mile Road, #102, spoke of the need for the Arlandria Health Clinic and noted that there are no funds for the people that go to the clinic, and for the last year, he has had cancer and its been hard for him using the Arlandria Clinic. He noted that more doctors and funds are needed in the clinic so people can get served better.

Mayor Euille noted that Council had an opportunity to attend a 10th anniversary celebration for the Arlandria Health Clinic last night, and Council knows that as a non-profit operation, they do as much as they can and they have done a yeoman's job and they are most appreciative.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES

ACTION CONSENT CALENDAR (3)

Planning Commission

3. SPECIAL USE PERMIT #2007-0115
510 SECOND STREET
HOLIDAY INN - COFFEE SHOP
Public Hearing and Consideration of a request to operate a restaurant within an existing hotel; zoned CD/Commercial Downtown. Applicant: Carr Hospitality by Hammad Shah.

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated January 3, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 3; 2/23/08, and is incorporated as part of this record by reference.)

4. Public Hearing and Consideration of the Report of the Naming Committee Proposing the Naming of the Open Space at the Corner of Janney's Lane and

Quaker Lane in Honor of the Late President Gerald R. Ford. (#12, 1/22/08)

(A copy of the City Manager's memorandum dated January 18, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 4; 2/23/08, and is incorporated as part of this record by reference.)

END OF ACTION CONSENT CALENDAR

WHEREUPON, upon motion by Councilman Gaines and seconded by Vice Mayor Pepper and carried unanimously, City Council adopted the consent calendar, with the addition of item #4, as follows:

3. City Council approved the Planning Commission recommendation.

4. City Council held the public hearing, thanked the members of the Gerald R. Ford Memorial Committee for their work on behalf of the City, and requested the Public Art Committee of the Alexandria Commission on the Arts to meet with the members of the Ford Memorial Committee to discuss the best approach to pursue the idea of placing a three-dimensional statuary or bust of President Ford on the site and report back to Council with its recommendations.

The voting was as follows:

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

REPORTS AND RECOMMENDATIONS OF THE CITY MANAGER

5. Public Hearing and Consideration on the Alexandria Commission for the Arts Report, Prepared by Lord Cultural Resources, Inc. (#13, 1/22/08)

(A copy of the City Manager's memorandum dated January 17, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 5; 2/23/08, and is incorporated as part of this record by reference.)

Director of Recreation, Parks and Cultural Activities Kincannon made a presentation of the staff report.

The following persons participated in the public hearing:

(a) Alan Wile, 4825 Little Falls Road, Arlington, president of the Alexandria Arts Forum and immediate past president of the Alexandria Harmonizers, spoke in support of the report.

- (b) Pat Miller, 1806 North Cliff Street, spoke in support of the report.
- (c) Edgard Zamalloa, 105 N. Union Street, spoke in support of the report.
- (d) George Chadwick, 2930 Holly Street, chair of the Alexandria Performing Arts Association, spoke in support of the report.
- (e) Ulysses Jaines, 4009 Gibbs Street, representing the Washington Metropolitan Philharmonic Association, spoke in support of the report.
- (f) Sylvia Alimena, 6017 Jewell Court, music director of Eclipse Chamber Orchestra, spoke in support of the report.
- (g) Linda Elliff, 8977 Fort Hunt Road, president, Del Ray Artisans, spoke in support of the report.
- (h) Linda Hafer, 105 N. Union Street, executive director of The Art League, spoke in support of the report.
- (i) Susan Cohen, Torpedo Factory Arts Center, spoke in support of the report.
- (j) Matthew Harwood, 1755 N. Cliff Street, Chair, Public Art Committee, Alexandria Commission for the Arts, spoke in support of the report.

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

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

WHEREUPON, upon motion by Councilman Smedberg, seconded by Vice Mayor Pepper and carried unanimously, City Council received the report and thanked the members of the Commission for the Arts for their efforts on behalf of the City and to incorporate and include that the next step is to have a joint work session with the Arts Commission to further discuss the contents of the recommendations, the specifics in terms of processes, goals, missions and outcomes, to be followed by an implementation process.

The voting was as follows:

Smedberg	"aye"	Gaines	"aye"
Pepper	"aye"	Krupicka	"aye"

Euille	"aye"	Lovain	"aye"
	Wilson	"aye"	

Mayor Euille asked staff to get back to Council as soon as possible with the date for the joint work session with the Commission and Council.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

- 6. TEXT AMENDMENT #2007-0006
 KING STREET OUTDOOR DINING
 Public Hearing and Consideration of a request to amend Section 6-800 of the Zoning Ordinance, the King Street Outdoor Dining Overlay Zone. Staff: Department of Planning and Zoning.

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated February 5, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 6; 2/23/08, and is incorporated as part of this record by reference.)

Ms. Peterson, Planning and Zoning, made a presentation of the staff report and she and Deputy Director of Planning and Zoning Josephson responded to questions of Council.

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

(a) Julie Crenshaw Van Fleet, 26 Wolfe Street, spoke of the five feet of unobstructed sidewalk space and said the five feet needs to be from the edge of the sidewalk, not into the border of the brick in the treewell. In speaking to unobstruction, the new restaurant on the corner of Washington Street had a sandwich board in the middle of the sidewalk and a fellow serving food, and those things need enforcing. On the reduction of the umbrella height, she said she gathered that was at the lowest point of the umbrella, as it makes a difference for tall people. She spoke of the lack of courtesy to the small businesses related to the outdoor dining. She said on the prohibition of smoking in the outdoor dining area, if they don't want people to smoke inside, how can they deny them from smoking outside, and at some point, peoples' rights are being infringed on in that they can't smoke anywhere.

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Krupicka, City Council closed the public hearing. The voting was as follows:

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

Wilson "aye"

In response to a question from Council, Deputy Director of Planning and Zoning Josephson said the five feet is measured from the edge of the sidewalk and should not go into the treewell. In response to questions about bar stools and directors chairs, Mr. Josephson noted they would work with Hard Times to come up with a solution that is satisfactory to the restaurant and the City.

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

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

- 7. TEXT AMENDMENT #2008-0001
FLOOR AREA TRANSFER IN PRIVATE SCHOOLS
Public Hearing and Consideration of a request to amend Article 7 of the Zoning Ordinance by adding Section 7-2300 allowing the transfer of floor area in private schools. Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION: Recommend Approval 6-0

(A copy of the Planning Commission report dated February 5, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 7; 2/23/08, and is incorporated as part of this record by reference.)

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

- (a) Duncan Blair, 524 King Street, attorney representing Alexandria Country Day School, spoke in favor of the text amendment.

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

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

- 8. MASTER PLAN AMENDMENT #2008-0001
TRANSPORTATION MASTER PLAN
Public Hearing and Consideration of an amendment to the Transportation

Chapter of the City's Master Plan. Staff: Department of Transportation and Environmental Services

PLANNING COMMISSION ACTION: Adopted Resolution and Recommend Approval 6-0

(A copy of the Planning Commission report dated February 5, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 8; 2/23/08, and is incorporated as part of this record by reference.)

Director of Transportation and Environmental Services Baier, along with Ryan Ferguson, consultant with Michael Baker, Inc., Paul Prideaux, with Michael Baker, Inc., Mr. Lambert, Bicycle and Pedestrian Coordinator, T&ES, Mr. Culpepper, Deputy Director of T&ES, along with Poul Hertel, vice chair of the Commission, made a presentation of the staff report and responded to questions of City Council.

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

(a) Charlotte Landis, 433 N. Patrick Street, spoke in favor of the first phase of the bus rapid transit program from Glebe Road to Potomac Yard to the metro as long as the vehicle is of appropriate size for the streets, travels onto First Street and goes directly to the metro line, and she spoke in opposition to the second phase. She also spoke about a Freedom of Information Act request she filed in which she requested specific studies from 1993 on environmental quality along Route 1, which she knew existed but that she was told did not exist. She asked for special language to go in about parking, preservation and quality of life.

(b) Robert Grove, 419 N. Patrick Street, speaking against the plan, spoke about pedestrian safety on Route 1 and buses running where cars are right now, noting that the ADA requires 36 inches of clear passage and on his block of Patrick Street, there are several places where the paved areas are just 30 inches. Mr. Grove spoke of noise, vibration, pollution, impact on home values and parking.

(c) Leslie Zupan, 1309 Queen Street, president, Inner City Civic Association, said the Association voted to oppose the concept of rapid transit on N. Patrick and Henry Streets south of the Braddock Road Metro Station. Ms. Zupan said there are no buses that run on N. Patrick and N. Henry Street. She also spoke to the threat to the Inner City with trucks and to the potential loss of parking on the street.

(d) Bill Hendrickson, 304 E. Spring Street, spoke against the plan and also spoke to the bicycle and pedestrian mobility plan, and he thought the overall improvement of the plan will be modest. He said the Plan does not deal with larger issues, what should be the proper balance between pedestrians and bicyclists on the one hand and motor vehicles on the other. He said they need to more clearly define the goals for the future. He urged Council to request staff to research the questions and present specific and realistic options for building on the plan being adopted.

(e) Mark Freeman, 421 N. Patrick Street, spoke against the plan and said it is frustrating to hear from staff that there is no planned route for BRT or dedicated lanes, and this is a concept that can change down the road, and he said that completely ignores what is written in the document. The way the plan has been changed is to widen the line down Patrick and Henry and widened it to include three blocks in either direction, and it still says the purpose is to accommodate through trips. He also spoke to the dedicated lanes, which is the main emphasis of the plan.

(f) Sarah Becker, 1200 Princess Street, said she is the past Inner City Civic Association president who led the Route 1 effort in the early 1990's, and she spoke against the plan. A transit system on Route 1 will result in the loss of parking. She also spoke to the 1992 transportation master plan that does speak to neighborhood protection measures and she noted several old newspaper articles about the trucks and traffic on Route 1.

(g) Annabelle Fisher, 5001 Seminary Road, spoke to the overall issue of a transportation plan, and she said it is very important that a transportation plan be in place before any real development is done. The plan needs to meet each neighborhood, and they need to not decrease parking. She asked why the feasibility study is being done after it and not before. She suggested on bicycling that bicycles must have government issued licenses like motorcycles.

(h) Julie Crenshaw Van Fleet, 26 Wolfe Street, said the reason it is called the Route 1 corridor is because that's what its been called for many years. She said the constrained long-range plan approved by the Transportation Planning Board has had the Route 1 corridor on the plan for a decade or more, and the representative from Alexandria has always approved it. She said it might be a good idea for Councilmember Lovain, who is the representative now, to bring up that Alexandria doesn't want to do some of it. She said another form of transportation is the taxi system, and that has to be a part of the transportation plan, and it has to look at it from the demand side and not from the providing it side, and it cannot be a monopoly.

(i) Andres Domayko, 1312 Kingston Avenue, spoke in support of the plan on behalf of the Eisenhower Partnership, but noted the plan is still incomplete. The plan should consist of the vision and the implementation, but what Council has is only the vision, but they are pleased to hear that the implementation process is on-going and advancing. He said in some places it says "replace" the existing transportation plan and in others that it is an amendment to it. He noted their position that the old plan should not be replaced until the second phase (implementation) of this plan is in place.

In response to a request from Council, Mr. Culpepper said it is an amendment to the City's Master Plan, which consists of a number of sections, and this section would replace the 1992 adopted transportation element of the City's Master Plan.

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman

Krupicka and carried unanimously, City Council closed the public hearing. The voting was as follows:

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

WHEREUPON, upon motion by Councilman Krupicka and seconded by Councilman Smedberg, City Council deferred action to the March 11, 2008 City Council meeting, at which time staff can bring it forward again with changes that the Council discusses today, as well as any other adjustments that develop over the next two and a half weeks, and that the proposal from staff as it relates to a permanent transportation planning body come forward at the same time so Council can review both matters at the same meeting, and that nothing goes back to the Planning Commission. The voting was as follows:

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

- 9. CITY CHARTER, SECTION 9.06
CASE #2008-0001
1 & 7 EAST DEL RAY

Consideration of a proposal by the City of Alexandria to acquire the property at 1 & 7 East Del Ray Avenue, pursuant to the provisions of Section 9.06 of the City Charter. Staff: Department of Recreation, Parks and Cultural Activities.

PLANNING COMMISSION ACTION: Approved w/amendments 6-0

(THIS ITEM IS NOT SET FOR PUBLIC HEARING BUT IS FOR CITY COUNCIL'S INFORMATION ONLY - NO APPROVAL IS NECESSARY.)

(A copy of the Planning Commission report dated February 5, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 9; 2/23/08, and is incorporated as part of this record by reference.)

ORDINANCES AND RESOLUTIONS

- 10. Public Hearing, Second Reading and Final Passage of An Ordinance to Permit the Owner of the Property at 700 South Royal Street to Construct a Brick Garden Wall Which Will Encroach into the Public Right-of-way Along Franklin Street. (#15, 2/12/08) **[ROLL-CALL VOTE]**

(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. 10; 2/23/08, 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. 10; 2/23/08, 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 passed the ordinance to permit the owner of the property at 700 South Royal Street to construct a brick garden wall which will encroach into the public right-of-way along Franklin Street.

Councilman Smedberg asked the Planning Director to make sure the owner knows that several neighbors and others want to see the project come to an end, as it has dragged on for a long time.

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. 4518

AN ORDINANCE authorizing the owner of 700 South Royal Street to establish and maintain an encroachment for a brick garden wall.

WHEREAS, James Warbasse is the Owner of the property located at 700 South Royal Street, in the City of Alexandria, Virginia, and, together with his successors in interest as owner of the subject property, are referred to as "Owner" herein; and

WHEREAS, Owner desires to establish and maintain a brick garden wall which will encroach into the public sidewalk right-of-way at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the 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 Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 700 South Royal Street, in the City of Alexandria, said encroachment consisting of a brick garden wall with pillars for the wall facing Franklin Street extending no more than 2.4 inches, and 48 feet along, the public right-of-way of Franklin Street in front of the property, as generally shown on the plat attached hereto, and as approved by the Old and Historic Board of Architectural Review, 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 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 Owner 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 Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In that event, Owner shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of Owner. Nothing in this section shall relieve Owner of 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) 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.
- (c) The Owner shall be required to control weeds within 12 feet of his front property line.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owner maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees.

Section 7. That the authorization herein granted to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from Owner the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.

Section 8. That this ordinance shall be effective upon the date and at the time of its final passage.

11. Public Hearing, Second Reading and Final Passage of An Ordinance to Permit the Owner of the Property at 923 King Street to Add Brick Veneer to an Existing Wall Which Will Encroach into the Public Right-of-way Along North Patrick Street. (#16, 2/12/08) **[ROLL-CALL VOTE]**

(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. 11; 2/23/08, 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. 11; 2/23/08, and is incorporated as part of this record by reference.)

WHEREUPON, upon motion by Vice Mayor Pepper, seconded by Councilman Wilson and carried unanimously by roll-call vote, City Council passed the ordinance to permit the owner of the property at 923 King Street to add brick veneer to an existing wall which will encroach into the public right-of-way along North Patrick Street. The voting was as follows:

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

The ordinance reads as follows:

ORDINANCE NO. 4519

AN ORDINANCE authorizing the owners and tenant of the property located at 923 King Street to construct and maintain an encroachment for a brick veneer wall at that location.

WHEREAS, Conklyn's Florist & S/R Flowers, Inc., are the Owners ("Owners") of the property Located at 923 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Allen Ramazon is the Tenant ("Tenant") of the property located at 923 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Owners and Tenant desire to establish and maintain a brick veneer to an existing wall which will encroach into the public sidewalk right-of-way at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the 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 Owners and Tenant be, and the same hereby are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 923 King Street, in the City of Alexandria, said encroachment consisting of a brick veneer on the existing block wall that faces west and fronts on North Patrick extending approximately 5 inches into the public right of way for a length of approximately 31.51 feet, as generally shown on the plat attached hereto, and as approved by the Old and Historic Board of Architectural Review, 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 Owners or Tenant of liability for any negligence on their 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 Owners and/or Tenant maintaining, at all times and at their 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 Owners and/or Tenant as named insureds and shall provide for the indemnification of the City of Alexandria and Owners and/or Tenant against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city, terminate. In that event, Owners and 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 Owners and Tenant. Nothing in this section shall relieve Owners and Tenant of their 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) Neither the City of Alexandria nor any public or private utility company shall be responsible for damage to Owners' or Tenant=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 Owners and Tenant shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners and 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 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 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 Owners or Tenant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owners or Tenant without cost to the city. If Owners or 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 Owners or Tenant, and shall not be liable to Owners or 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 terms "Owners" and "Tenant" shall be deemed to include Conklyn's Florist & S/R Flowers, Inc., Conklyn's Inc., and Allen Ramazon and their respective successors in interest.

Section 9. That this ordinance shall be effective upon the date and at the

time of its final passage.

12. Public Hearing, Second Reading and Final Passage of an Ordinance to Revise the City's Regulations Concerning Vicious and Dangerous Dogs to Conform to Changes in State Law. (#18, 2/12/08) **[ROLL-CALL VOTE]**

(A copy of the City Manager's memorandum dated February 8, 2008, is on file in the Office of the City Clerk and Clerk of Council, marked Exhibit No. 1 of Item No. 12; 2/23/08, 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; 2/23/08, 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; 2/23/08, and is incorporated as part of this record by reference.)

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

(a) Tracy Compton, 2930 Sycamore Street, spoke in support of the ordinance to conform to the State law.

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

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

WHEREUPON, upon motion by Councilman Wilson, seconded by Councilman Smedberg and carried unanimously by roll-call vote, City Council passed the ordinance to revise the City's regulations concerning vicious and dangerous dogs to conform to the changes in State Law. The voting was as follows:

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

The ordinance reads as follows:

ORDINANCE NO. 4520

AN ORDINANCE to amend and reordain Article C (DOGS AND OTHER ANIMALS), Chapter 7 (ANIMALS AND FOWL), Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES), and to amend and reordain Section 6-1-2.2 (SAME B DOG EXERCISE AREAS; DESIGNATION BY CITY MANAGER; PROHIBITED CONDUCT), Chapter 1 (GENERAL PROVISIONS), Title 6 (PARKS, RECREATION AND CULTURAL ACTIVITIES), all of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article C, Chapter 7, Title 5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is hereby, amended and reordained to read as follows:

ARTICLE C Dogs and Other Animals

Sec. 5-7-31 Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purposes of this article, have the following meanings:

- (a) Animal control officer. Any person appointed as the chief animal control officer or a deputy animal control officer under section 5-7-44 of this code.
- (b) Animal shelter. The facility designated by the city manager for the detention of animals.
- (c) Dangerous dog. Any canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. However, when a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous:
 - (1) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite,
 - (2) if both animals are owned by the same person,
 - (3) if such attack occurs on the property of the attacking or biting dog's owner or custodian, or
 - (4) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or

custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

- (d) Dog. The word "dog" shall include both the male and female sex of the species.
- (e) Commercial dog handler. Any person who boards, keeps, handles or walks dogs owned by another person for compensation.
- (f) Dwelling unit. A group of one or more rooms designed or intended for use as a residence, including a single-family home, a townhouse, a duplex, a condominium and an apartment.
- (g) Hearing dog. Any dog specially trained to alert its owner by touch to sounds of danger or other sounds to which the owner should respond.
- (h) Law enforcement officer. Any employee of the Alexandria police department who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth.
- (i) Owner. A person having a right of property in a dog or cat, and any person who keeps or harbors a dog or cat or has it in his care or control, or who acts as its custodian, including, but not limited to, a commercial dog handler and any person who permits a dog or cat to remain on or about any premises occupied by him.
- (j) Run or running at large. Roaming or running off the premises of its owner not secured by a leash, lead or other means of physical restraint, which leash, lead or other means of physical restraint is not harmful or injurious to the dog and which is held by a responsible person capable of physically restraining the dog.
- (k) Seeing-eye dog. Any dog that is specially trained to serve as a guide for a blind person.
- (l) Service dog. Any dog that is specially trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or performing other activities of service or support.
- (m) Vicious dog. Any canine or canine crossbreed that has
 - (1) killed a person;
 - (2) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or

- (3) continued to exhibit the behavior that resulted in a previous finding by July 1, 2006, by the chief animal control officer or city manager as authorized by prior law, that it is a dangerous dog, provided that its owner has been given notice of that finding.

Sec. 5-7-32 Running at large prohibited.

No dog or exotic or poisonous animal shall run at large within the city at any time.

Sec. 5-7-33 Owners and custodians not to let dogs or exotic or poisonous animals run at large.

It shall be unlawful for the owner or custodian of any dog or exotic or poisonous animal to permit his dog or exotic or poisonous animal to run at large in the city at any time. Any owner or custodian who permits his exotic or poisonous animal to run at large shall, in addition to any penalty provided under this article, be liable for a fee determined by the city manager to cover the costs incurred by the city in locating and capturing, or otherwise disposing of, the animal.

Sec. 5-7-33.1 Running at large prohibited in public parks or playgrounds; owners not to let dogs run at large in public parks or playgrounds; keeping dogs under physical restraint in public parks or playgrounds.

- (a) No dog shall run at large within any public park or playground at any time.
- (b) It shall be unlawful for the owner of any dog to permit his dog to run at large in any public park or playground at any time.
- (c) It shall be unlawful for the owner of any dog to permit the dog to be in a public park or playground unless it is kept secured by a leash, lead or other means of physical restraint which leash, lead or other means of physical restraint is not harmful or injurious to the dog and which is held by a responsible person capable of physically restraining the dog, or it is in a designated and posted dog exercise area, as provided in section 6-1-2.2 of this code.

(d) In addition to the officers identified in section 5-7-46, any city employee who is (1) specifically designated by the city manager, (2) wearing a uniform and (3) carrying identification may enforce the provisions of this section in accordance with the procedures set forth in section 5-7-46. As used in the subsection "uniform" shall mean a shirt, jacket or coat on which is permanently displayed and visible the seal of the city together with the name of the employee's department, office or agency, and "identification" shall mean a card or badge issued by the city to identify the employee by name and photograph, or badge number, and indicate that the employee is an authorized enforcement officer.

Sec. 5-7-34 Impounding of dogs running at large; redemption of impounded dogs; disposition of unredeemed dogs.

- (a) Any dog observed by an animal control officer or a law enforcement officer to be running at large shall be impounded and kept at the animal shelter. If the dog has upon it the name or address of the owner, or such name or address is otherwise known to the operators of the animal shelter, then the operators of the animal shelter shall notify the owner within 24 hours after seizure of the dog. If the dog has upon it a license tag, then the operators of the animal shelter shall notify the person in whose name the license stands within 24 hours after obtaining the name. Notice of the impounding shall be in writing by mail, postage prepaid, and shall be construed as having been given at the time of posting thereof. If the dog impounded has no name, address or license tag upon it and the owner is not otherwise known to the operators of the animal shelter, then no notice shall be necessary. Notwithstanding the above, whenever written notice is required the operators of the animal shelter shall, prior to mailing, make one reasonable attempt to give notice by telephone.
- (b) The owner of any dog so impounded shall be entitled to possession of the dog upon proof of ownership satisfactory to the operators of the animal shelter and the payment of reasonable charges designated by the city manager for the impoundment of a dog and the keep of a dog; provided, however, that before release to any person:
 - (1) If the dog has not been inoculated against rabies, the provisions of section 5-7-38 of this code relative to inoculation shall be complied with at the owner's expense.
 - (2) If the dog is not licensed, a license as required by this article shall be secured.
 - (3) All the other applicable sections of this article shall be complied with.
- (c) Any dog which has been impounded and has not been redeemed by the owner may be destroyed, or redeemed by and released to any person desiring to give the dog a home upon the payment of a reasonable charge designated by the city manager and upon compliance with the applicable provisions of this article; provided, that any dog shall be held for at least five days after impounding, and in those cases where it is required that notice be given the owner, held for at least five days after the required notice has been given.
- (d) The sums collected pursuant to the provisions of this section shall be accounted for and promptly paid over to the director of finance for deposit in the general fund of the city.

Sec. 5-7-35 Keeping dogs under physical restraint.

- (a) Except as provided below, it shall be unlawful for the owner of any dog to permit the dog to be off the premises of its owner unless it is kept secured by a leash, lead or other means of physical restraint which leash, lead or other means of physical restraint is not harmful or injurious to the dog and which is held by a responsible person capable of physically restraining the dog.
- (b) The leash, lead or other means of physical restraint may be removed from a dog in a designated and posted dog exercise area, as provided in section 6-1-2.2 of this code.
- (c) The leash, lead or other means of physical restraint may be removed from a dog on private property, other than the property of the owner; provided that the owner or person in control of such private property has permitted such dog to be present without a leash, lead or other means of physical restraint.

Sec. 5-7-36 Vicious and dangerous dogs generally.

- (a) Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed kept or found at any time within the City is a dangerous dog or vicious dog shall apply to a magistrate having jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court having jurisdiction at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If the owner or custodian cannot be located or identified, the animal shall be subject to impound and disposition pursuant to sections 5-7-34 or 5-7-45 of this code.
- (b) Upon the successful application for the issuance of a summons, the officer shall contact the chief animal control officer of the City or of the jurisdiction where the dog is or may be found and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The chief animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal.
- (c) If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with

the provisions of Virginia Code ' 3.1-769.119. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 ('19.2-260 et seq.) of Chapter 15 of Title 19.2 of the Code of Virginia. The City shall be required to prove its case beyond a reasonable doubt.

- (d) No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited.
- (e) No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.
- (f) If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.
- (g) The owner of any animal found to be a dangerous dog shall, within 10 days of such finding, obtain a dangerous dog registration certificate from the chief animal control officer for a fee of \$50, in addition to other fees that may be authorized by law. The chief animal control officer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained. The chief animal control officer shall provide a copy of the dangerous dog registration certificate and verification of compliance to the State Veterinarian.
- (h) All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, (ii) that the animal has been neutered or spayed, and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and

confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000.

- (i) While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.
- (j) The owner of any dog found to be dangerous shall register the animal with the Commonwealth of Virginia Dangerous Dog Registry, as established under S. 3.1-796.93:3 of the Virginia Code, within 45 days of such a finding by the court.
- (k) The owner shall also cause the local animal control officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.
- (l) After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the chief animal control officer to be notified if the animal (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

- (m) Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:
 - (1) Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person;
 - (2) Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or
 - (3) May be charged and found guilty under Va. Code S. 3.1-796.93:1 of a Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.
 - (4) The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.
- (n) The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

Sec. 5-7-36.1 Reserved.

Sec. 5-7-36.2 Reserved.

Sec. 5-7-37 Confinement of animal which has committed an attack.

- (a) Whenever a report is made, as provided by section 5-7-40, of a person having been bitten by an animal or a notice is received by the police department, the health department, an animal control officer or the operators of the animal shelter of an animal having bitten a person or another animal, and, in the case of a dog, no summons or notice of violation has been issued charging maintenance of a vicious or dangerous dog, an animal control officer shall forthwith issue an order to the owner of the animal

directing that the animal be confined under quarantine and kept under observation on the premises of the owner, or of a private kennel for a period of 10 days following the issuance of the order at the expense of the owner, during which time the animal shall never leave the premises, and the order shall be served upon the owner by an animal control officer in the manner provided by section 8.01-296, Code of Virginia. If, within the ten-day period, an authorized representative of the director of public health or a licensed veterinarian reports that the animal shows no symptoms of rabies and, in the case of a dog, no summons or notice of violation has been issued, the animal shall be released from quarantine. If a report of rabies is made or if, in the case of a dog, a summons or notice of violation is issued before the expiration of the ten-day period, the animal shall be immediately removed by an animal control officer to the animal shelter pending a final disposition of the case; and costs to keep the animal at the animal shelter shall be charged to its owner.

- (b) If an owner does not comply with the provisions of an order issued pursuant to this section within 24 hours from the time he is served, the animal in question shall be impounded by an animal control officer, at the animal shelter, and kept under observation at the owner's expense for a period of 10 days, and the owner shall be charged with a violation of this section.

Sec. 5-7-38 Inoculation of dogs against rabies.

It shall be the duty of every resident of the city owning or in possession of a dog four months old or older within the city to have such dog inoculated with an anti-rabic vaccine approved by the director of public health, which inoculation shall be repeated as often as the director of public health may from time to time specify. The expense of inoculation of dogs against rabies shall be borne by the owners of such dogs. The inoculation shall be made by any licensed veterinarian. A certificate of vaccination shall be presented by the veterinarian within 10 days after inoculation.

Sec. 5-7-38.1 Inoculation of cats against rabies.

- (a) It shall be the duty of every resident of the city owning or in possession of a cat four months old or older within the city to have such cat inoculated with an anti-rabic vaccine approved by the director of public health, which inoculation shall be repeated as often as the director of public health may from time to time specify. The expense of inoculation of cats against rabies shall be borne by the owners of such cats. The inoculation shall be made by any licensed veterinarian.
- (b) At the time of vaccination, a suitable and distinctive rabies tag and a certificate of vaccination shall be issued by the veterinarian to the cat's owner. The certificate shall certify that the cat in question has been vaccinated in accordance with this section. Such certificate shall show the

date of vaccination, the rabies collar tag number, the date of required immunization, a brief description of the cat and its sex and breed, and the name of the owner. The certificate issued under this section shall be carefully preserved by the owner of the cat and exhibited promptly upon request for inspection by an animal control officer, a public health officer or any other law enforcement officer. One copy of the certificate required under this section shall be retained by the veterinarian and one copy shall be presented by the veterinarian to the health department for registration within 10 days after inoculation.

Sec. 5-7-39 Procedure as to dogs and cats suspected of having rabies.

Dogs and cats suspected of having rabies and exhibiting the common symptoms of this disease shall be impounded either at the animal shelter or at a private veterinarian's establishment in solitary confinement and kept under observation for a period of 10 days. At the time any dog or cat is impounded, an attempt shall be made by an animal control officer to determine whether the dog or cat has been previously inoculated against rabies. If it is found that the dog or cat has not been effectively inoculated or there is any doubt as to whether or not the dog or cat has in fact been inoculated, then the dog or cat shall be inoculated on the last day of the above-mentioned observation period. The director of public health is hereby given authority to cause to be destroyed any dog or cat which in his opinion has rabies, and to have the head of the dog or cat examined. All expenses in connection with the provisions of this section shall be borne by the owner of the dog or cat in question.

Sec. 5-7-40 Reports of animal bites.

- (a) The owner of any animal which bites a person shall immediately notify an animal control officer, the health department or the police department of the biting.
- (b) It shall be the duty of every physician and medical practitioner in the city and of every hospital in the city to report to an animal control officer or the health department the name and address of any person treated for bites or wounds inflicted by animals, together with all available information necessary for rabies control.
- (c) It shall be the duty of every veterinarian practicing in the city to report to an animal control officer or the health department the name and address of the owner of any animal treated for bites or wounds inflicted by any other animal, together with all available information necessary for rabies control.

Sec. 5-7-41 When muzzles required, exception.

Whenever it becomes necessary to safeguard the public from the danger of hydrophobia, the city manager, with the written approval of the director of public health, may issue a proclamation ordering every person owning or keeping a dog to confine it securely on his premises, unless the dog shall have a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog running at large during the time covered by the proclamation shall be seized and impounded. This section shall not be construed to prevent the owner of a dog or the agent of the owner from taking the dog unmuzzled from the premises of the owner, if the dog is upon a leash.

Sec. 5-7-42 Female dogs in season; allowing dog to urinate, etc.; noisy dogs; offensive odors from dogs; dogs prohibited on posted playground areas and on school grounds.

The following conduct is declared a nuisance and is prohibited. It shall be unlawful for the owner of a dog to:

- (1) Fail to keep his female dog confined during the entire time the dog is in season in a building or secure enclosure in such a manner that the female dog cannot come into contact with a male dog except for planned breeding.
- (2) Knowingly or willfully allow his dog to urinate or defecate on the private property of other persons without their consent or that of the authorized agent of the one having control of the premises.
- (3) Knowingly or willfully allow his dog to urinate or defecate on public property; provided, that urination by a dog on curbs of streets and in alleys, streets or areas designated and posted as dog exercise areas in accordance with section 6-1-2.2 shall not constitute a violation of this section; and provided further, that defecation by a dog on public property out of doors shall not constitute a violation of this section if the owner of the dog immediately removes the material defecated and disposes of it in a manner not inconsistent with the provisions of this section.
- (4) Keep dogs which bark or howl to such extent as to annoy any resident or keep dogs in such a manner as to cause offensive odors.
- (5) Permit his dog, except a seeing-eye, service or hearing dog, to go upon any public property posted by the city manager as a playground area, or upon the grounds of any public school.

Sec. 5-7-42.1 Dog defecation in public parks or playgrounds.

It shall be unlawful for the owner of a dog to knowingly or willfully allow his dog to defecate in any public park or playground; provided, that defecation by a dog in any

public park or playground shall not constitute a violation of this section if the owner of the dog immediately removes the material defecated and disposes of it in an appropriate trash receptacle. In addition to the officers identified in section 5-7-46, any city employee who is (1) specifically designated by the city manager, (2) wearing a uniform and (3) carrying identification may enforce the provisions of this section in accordance with the procedures set forth in section 5-7-46. As used in the subsection "uniform" shall mean a shirt, jacket or coat on which is permanently displayed and visible the seal of the city together with the name of the employee's department, office or agency, and "identification" shall mean a card or badge issued by the city to identify the employee by name and photograph, or badge number, and indicate that the employee is an authorized enforcement officer.

Sec. 5-7-43 Powers of operators of animal shelter generally.

The operators of the animal shelter shall have the following powers:

- (a) to destroy unredeemed dogs, as provided in section 5-7-34;
- (b) to destroy vicious dogs upon an order from the court, as provided in section 5-7-36;
- (c) to receive and investigate complaints of and to enforce and make determinations regarding vicious and dangerous dogs, as provided in section 5-7-36;
- (d) reserved;
- (e) to impound and release dogs and to issue orders, as provided in section 5-7-37; and
- (f) to destroy dogs as provided in section 5-7-39.

Sec. 5-7-44 Appointment and powers of chief animal control officer and deputy animal control officers.

A chief animal control officer shall be appointed by city council and may be removed by council or the city manager. The city manager may appoint one or more deputy animal control officers, who may be removed by the manager, to assist the chief animal control officer in the performance of her duties. The chief animal control officer and deputy animal control officers shall, within the city and subject to any limitations imposed as a condition of their appointment, have the powers of an animal control officer as conferred by the Code of Virginia (1950), as amended, the powers of a state game warden as conferred by the city charter in the enforcement of the dog laws of the city, and the power to enforce the provisions of this article and section 6-1-2.2 of this code.

Sec. 5-7-45 Killing certain animals that cannot be safely taken up and impounded.

If any vicious or dangerous dog or any dog, cat or other animal suspected of, or having rabies, found at large, cannot be safely taken up and impounded, the dog or other animal may be slain by any law enforcement officer.

Sec. 5-7-46 Penalties.

- (a) Except as otherwise provided in section 5-7-36 of this code or in subsection (b) below, a person shall be assessed a civil penalty of \$50 for violating any provision of this article.
- (b) A person shall be assessed a civil penalty of \$100 for violating the provisions of sections 5-7-33.1 or 5-7-42.1 of this article.
- (c) If an animal control officer or law enforcement officer determines that a civil penalty violation of this article has occurred, he shall issue and serve, or cause to be served, a notice of violation on any and all persons committing the violation. The notice shall provide that the person served may elect to make an appearance, either in person or in writing by mail, before the treasurer of the city, and admit liability for or plead no contest to the violation and pay the civil penalty established for the violation, all within the time period set forth in the notice. If a person so notified does not elect to admit liability or to plead no contest, the violation shall be tried in the Alexandria General District Court upon a warrant in debt or motion for judgment, with the same right of appeal as provided in civil actions at law. A finding or admission of liability or a plea of no contest shall not be deemed a criminal conviction for any purpose.
- (d) A violation of the provisions of this article shall be an offense separate from a violation of the provisions of chapter 1 of title 6 of this code.

Sec. 5-7-47 License--required; disposition of revenue.

- (a) It shall be unlawful for any person to own a dog or cat four months old or older within the city unless such dog or cat is licensed, as required by the provisions of this article.
- (b) All dog and cat license taxes collected pursuant to this article shall be paid into the general fund from which sufficient funds for the operation and maintenance of the animal shelter may be provided, as authorized by council.

The owner of a dog or cat required to be licensed by this article shall obtain the license and pay the license tax within 30 days of moving into the city, acquiring the animal, or attainment of the required age by the animal, which ever is later.

The owner of a dog or cat with an existing license required by this article shall renew the animal's license and pay the license tax within 10 days after expiration of such animal's license.

Sec. 5-7-48 Same--tax imposed; tax rates; expiration.

- (a) There is hereby imposed a license tax on dogs and cats required to be licensed by this article, as follows:
 - (1) For any male or female dog or cat the license tax for a one year license shall be \$30 for a dog, and \$10 for a cat, and the license tax for a three year license shall be \$75 for a dog and \$25 for a cat, except as provided in paragraphs (2), (3) or (4) below.
 - (2) For any spayed or neutered dog or cat, the license tax for a one year license shall be \$10 for a dog, and \$2 for a cat, and the license tax for a three-year license shall be \$25 for a dog and \$5 for a cat.
 - (3) For any hearing dog, seeing eye dog or service dog, a license shall be required but no license tax shall be charged.
 - (4) For any dog owned by a person 65 years of age or older, there shall be a \$5 discount in the applicable license tax for a one-year license, and a \$15 discount in the license tax for a three-year license.
 - (5) The owner of an animal required to be licensed by this article may elect to obtain a one-year license or a three-year license, and shall pay the corresponding license tax at the time the license is obtained.
- (b) A one-year license shall be valid for a maximum period of 12 months from the date of issuance; provided, however, that the license shall expire on the last day of the month in which the rabies vaccination of the licensed animal expires.
- (c) A three-year license shall be valid for a maximum period of 36 months from the date of issuance; provided, however, that the license shall expire on the last day of the month in which the rabies vaccination of the licensed animal expires.

Sec. 5-7-49 Same--application; issuance; records to be kept.

Any owner may obtain a dog or cat license by making a signed written application to the city manager or the manager's designee. The application shall contain the name, sex, age, breed and description of the dog or cat and the name and address of the owner, and shall be accompanied by the amount of the license tax and a certificate of vaccination or other evidence from a licensed veterinarian showing that the dog or cat is inoculated against rabies and the expiration date of the vaccination. Upon receipt of a proper application, accompanied by the amount of the license tax and a proper certificate of vaccination or other evidence, the city manager or the manager's designee shall issue a license receipt and an appropriate tag to the owner, and shall record upon the receipt and upon records maintained by the city the name and address of the owner, the date of issuance, the period of time for which issued and date of expiration of the rabies vaccination, the serial number of the license and the sex, age, breed and description of the dog or cat.

Sec. 5-7-50 Same--components; information to be on tags.

A dog or cat license shall consist of the receipt referenced in section 5-7-49 and a tag of a style adopted by the city. A tag shall be stamped or otherwise permanently marked to show the serial number, the calendar year for which issued and the name of the city.

Sec. 5-7-51 Same--preserving and displaying receipts; dogs to wear tags.

Dog and cat licenses shall be carefully preserved and exhibited promptly upon request of any law enforcement officer, authorized agent of the director of public health, or animal control officer. Dog license tags shall be securely fastened by the owner to a substantial collar which shall be borne by the dog.

Sec. 5-7-52 Same--duplicate tags.

If a dog or cat license tag is lost, destroyed or stolen, the owner shall at once apply to the city manager or her designee for a duplicate license tag, presenting the original license receipt, if available. Upon affidavit of the owner that the original license tag has been lost, destroyed or stolen, the city manager or her designee shall issue a duplicate license tag which the owner shall immediately affix to the collar of the dog. The city manager or her designee shall endorse the number of the duplicate and the date issued on records of her office and on the face of the original license receipt, if available. The fee for a duplicate tag shall be \$1.

Sec. 5-7-53 Same--effect of a dog or cat not wearing collar bearing a tag.

Any dog or cat not wearing a collar bearing a license tag of the proper calendar year shall be presumed to be unlicensed, and in any proceedings under this article the owner of such dog or cat shall have the burden of proving that the dog or cat is in fact

licensed.

Sec. 5-7-54 Same--maintenance of records.

The city manager or her designee shall keep orderly lists and accounts with respect to receipts, disbursements, licenses issued, and how unsold tags are disposed of, and annually shall provide an accounting of her activities with respect to dogs and cats and dog and cat licenses for use by the director of finance.

Sec. 5-7-55 Same--transmittal of funds to director of finance.

All persons responsible for the issuance of dog and cat licenses and the collection of license taxes shall keep accurate records and shall transmit all funds collected to the director of finance at least every 30 days.

Sec. 5-7-56 Making false statement to secure license.

It shall be unlawful for any person to make a false statement in order to secure a dog or cat license.

Sec. 5-7-57 Limitation on number of dogs and cats kept per dwelling unit.

- (a) It shall be unlawful for any person to keep more than three dogs over four months of age or four cats over four months of age in any dwelling unit in the city.
- (b) Any person who, on October 1, 1995, is lawfully keeping more than the number of dogs and cats permitted by this section shall be entitled to continue to keep all such dogs and cats, so long as they are duly licensed and inoculated in accordance with this article. However, it shall be unlawful for any such person to keep any dog or cat acquired after October 1, 1995, unless the total number of dogs and cats kept by the person does not exceed the number of dogs and cats permitted by subsection (a) of this section.
- (c) This section shall not apply to any person authorized to operate a "kennel," as that term is defined in the City of Alexandria Zoning Ordinance.

Secs. 5-7-58 through 5-7-70 Reserved.

Section 2. That Section 6-1-2.2 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same is hereby, amended and reordained to read as follows:

Sec. 6-1-2.2 Same--dog exercise areas; designation by city manager; prohibited conduct.

- (a) As used in this section:
- (1) Commercial dog handler shall mean any person who boards, keeps, handles or walks dogs owned by another person for compensation.
 - (2) Dog exercise area shall mean an area of open space, owned or controlled by the city and fenced or unfenced, which has been designated and posted as a dog exercise area by the city manager, pursuant to this section.
 - (3) Owner shall mean any person having a right of property in a dog, and any person who keeps or harbors a dog or has it in his care or control, or who acts as its custodian, including, but not limited to, a commercial dog handler, and any person who permits a dog to remain on or about any premises occupied by him.
 - (4) Aggressive dog shall mean a dog which is capable of inflicting death or serious injury on a person or another animal and which:
 - (i) has, without provocation, attacked or bitten a person engaged in a lawful activity;
 - (ii) has, while off the property of its owner and without provocation, killed or seriously injured another animal;
 - (iii) has, without provocation, chased, confronted or approached a person on a street, side walk or other public property in a menacing fashion such as would put an average person in fear of attack;
 - (iv) has exhibited a propensity, tendency or disposition to attack, cause injury or threaten the safety of persons or other animals without provocation; or
 - (v) has acted in a manner that causes or should cause its owner to know that it is potentially vicious.
- (b) The city manager may designate and post dog exercise areas in the city, in accordance with the provisions of this section and of the "Dog Exercise Areas and Fenced Dog Parks Master Plan," adopted by city council on September 27, 2000, as such provisions may be amended by the council from time to time.
- (c) Within a dog exercise area, dogs under the care, custody and control of an owner are permitted to run free, without a leash, lead or other restraint, but subject to the provisions of this section, and to any rules or regulations

promulgated by the city manager pursuant to this section, and applicable within such dog exercise area.

- (d) No such owner shall have in a dog exercise area:
 - (1) more than three dogs;
 - (2) a dog that is not in such owner's view and under his or her voice control;
 - (3) a dangerous dog as defined in section 5-7-31(c);
 - (4) a vicious dog as defined in section 5-7-31(m);
 - (4.1) an aggressive dog as defined in subsection (a) of this section;
 - (5) a female dog in season;
 - (6) a dog that is less than 4 months old;
 - (7) if such owner is a resident of the city, a dog that is not inoculated and licensed in accordance with sections 5-7-38 and 5-7-47 of this code;
 - (8) if such owner is not a resident of the city, a dog that has not been inoculated with an anti-rabic vaccine that is in accordance with the latest edition of the "Compendium of Animal Rabies Control" issued by the National Association of State Public Health Veterinarians, Inc., and evidence that such dog has been inoculated.
 - (9) The prohibitions established by paragraphs (3), (4) and (4.1) of this subsection shall apply to any dog which meets the respective definition, without regard to the jurisdictional residence of the dogs owner or of the dog, or to whether the dog has been declared to be a vicious, dangerous or aggressive dog under Virginia law, or the similar laws of any other jurisdiction. The director of recreation, parks and cultural activities, with the concurrence of the chief animal control officer, may notify, in writing, the owner or custodian of any such dog found in a dog exercise area that such dog is subject to the prohibitions of this subsection.
- (e) No child less than 16 years of age shall be permitted in a dog exercise area which is fully enclosed by a fence unless accompanied by an adult.
- (f) The city manager may promulgate such additional rules and regulations, not inconsistent with the provisions of this section and of the "Dog Exercise

Areas and Fenced Dog Parks Master Plan," as he deems necessary and appropriate to implement or enforce the provisions of this section.

- (g) The director of recreation, parks and cultural activities shall cause one or more signs to be posted in a visible location in any dog exercise area. Such signs shall inform the public of the existence of the dog exercise area, the geographic limits of the area, the limitations imposed by subsection (d), subsection (e) if applicable, and such other rules and regulations promulgated by the city manager as may be applicable.
- (h) Any person who violates any provision of this section shall be liable for a class four civil penalty, as prescribed in section 1-1-11 of this code.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage; provided, however, that this ordinance shall not affect any offense or act committed or done, any administrative determination made or rendered, any penalty or forfeiture incurred, or any contract or agreement established, prior to its effective date; nor shall it affect any prosecution, suit or proceeding pending on, nor any judgement or judicial decision rendered prior to, its effective date.

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

DEFERRAL/WITHDRAWAL CONSENT CALENDAR (13)

Planning Commission (continued)

13. TEXT AMENDMENT #2007-0008 (A)
REZONING #2007-0003 (B)
DEVELOPMENT SPECIAL USE PERMIT #2006-0005 (C)
SPECIAL USE PERMIT (TMP) #2007-0071 (D)
1199 SOUTH WASHINGTON STREET
HUNTING CREEK PLAZA/HUNTING TERRACE
Public Hearing and Consideration of (1) a text amendment to the Zoning Ordinance to increase height limitations and FAR on the subject property in accordance with Section 3.43 of the Hunting Creek Plan; (2) a request to amend the Height District Map within the RC zone to change the height districts for the subject property; (3) a development special use permit, with site plan and modifications, to construct a multi-family residential building; (4) a request for a parking reduction; (5) a request for increased height and density in accordance with Section 3.43 of the Hunting Creek Area Plan; and (6) a request for a transportation management plan; zoned RC/High Density. Applicant: Hunting Creek, LLC by J. Howard Middleton, attorney.

PLANNING COMMISSION ACTION: Deferred 5-1

END OF DEFERRAL/WITHDRAWAL CONSENT CALENDAR

City Council noted the deferral.

* * * * *

THERE BEING NO FURTHER BUSINESS TO BE CONSIDERED, upon motion by Councilmember Lovain, seconded by Councilman Smedberg and carried unanimously, the City Council public hearing meeting of February 23, 2008, was adjourned at 1:39 p.m. The voting was as follows:

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

APPROVED BY:

WILLIAM D. EUILLE MAYOR

ATTEST:

Jacqueline M. Henderson, CMC, City Clerk