ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of June 12, 2010

DATE: June 12, 2010

SUBJECT: Enactment of an Ordinance to Amend, Reenact, and Recodify Chapter 22 (Street Development And Construction), Section 22-8.1 of the Code of Arlington County, Virginia Concerning Permits Issued Before July 1, 2010 by the Commonwealth of Virginia, Department of Transportation (VDOT), for Activity, Work and Installation of Facilities in the Columbia Pike (State Route 244) Right of Way.

C. M. RECOMMENDATION:

Enact an Ordinance to Amend, Reenact, and Recodify Chapter 22 (Street Development And Construction), Section 22-8.1 of the Code of Arlington County, Virginia Concerning Permits Issued Before July 1, 2010 by the Commonwealth of Virginia, Department of Transportation (VDOT), for Activity, Work and Installation of Facilities in the Columbia Pike (State Route 244) Right of Way.

ISSUE: Should Arlington County recognize VDOT approved permits for work in the Columbia Pike Right of way issued by VDOT prior to the July 1, 2010 transfer and conveyance? No issues have been identified.

SUMMARY: This ordinance amends Chapter 22, Section 22-8.1 of the County Code effective July 1, 2010, to coincide with the July 1, 2010 effective date of the transfer of Columbia Pike (State Route 244) from VDOT to the County Board. Under the proposed Ordinance, facilities existing within the Columbia Pike right of way on such date will be permitted to remain, subject to certain provisos concerning the obligation to relocate facilities. For VDOT issued permits concerning work that is ongoing as of July 1st, the County will recognize such permits until September 30th, at which time County permits must be obtained if work is to continue after such date.

BACKGROUND: The County Board has requested that VDOT transfer and convey the Columbia Pike (Route 244), portions of South Joyce Street, and Army Navy Drive rights of way from the primary system to the local road system. VDOT has, and will continue to issue permits for work in the right of way to public and private entities and to the County until the effective

County Manager: MB MA

County Attorney: BAC/SAM

Staff: Penny Newquist, Department of Environmental Services, Director's Office

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date of the transfer which is expected to be July 1, 2010. Based on the last report obtained from VDOT staff as of March 1, 2010, twenty VDOT-issued permits are open or active. Upon transfer and conveyance of the Columbia Pike right of way, a ninety-two day period from July 1 until September 30 will be allowed for permit holders to complete work authorized by previously issued VDOT permits. If the work allowed under these permits is not completed by September 30, 2010, then the permit holders must obtain new permits from the County no later than October 1, 2010.

Any VDOT-issued permit holder will not be required to obtain a permit for work that has been completed or for which the permit has been closed. In portions of Columbia Pike (one interchange and one intersection) and other streets within which the County does not obtain an ownership or easement interest, VDOT will continue to issue permits.

The Ordinance provides that: permission for facilities to remain in the Columbia Pike right of way are licenses and do not convey property rights; owners of facilities are obligated to relocate facilities at the owners expense; and the failure to obtain timely permits is an ordinance violation punishable, upon conviction, by a fine between five dollars and fifty dollars. Each day is a separate offense.

PUBLIC NOTICE: Public notice of consideration by the County Board on June 12, 2010 of the proposed ordinance was placed in the Washington Times on June 3 and June 10.

FISCAL IMPACT: None. The FY 2011 adopted budget included the revenue and expense impact from the transfer of Columbia Pike to the County, including $10,000 in new fee revenue for right-of-way permits issued by Arlington County. All fees collected by VDOT for VDOT-issued permits will remain with VDOT.

AN ORDINANCE TO AMEND CHAPTER 22 (STREET DEVELOPMENT AND CONSTRUCTION) OF THE CODE OF THE COUNTY OF ARLINGTON, VIRGINIA, 1957, AS AMENDED, BY ADDING TO CHAPTER 22 A NEW SECTION 22-8.1 CONCERNING PERMITS ISSUED BEFORE JULY 1, 2010 BY THE COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION, FOR ACTIVITY, WORK AND INSTALLATION OF FACILITIES IN THE COLUMBIA PIKE (STATE ROUTE 244) RIGHT OF WAY

1. BE IT ORDAINED by the County Board of Arlington County, Virginia that Chapter 22 (Street Development and Construction) of the Code of the County of Arlington, Virginia, 1957, as amended, is amended by adding thereto a new Section 22-8.1 to read, in its entirety, as follows:

§ 22-8.1 Permits Issued Before July 1, 2010 by the Commonwealth of Virginia, Department of Transportation, for Activity, Work and Installation of Facilities in the Columbia Pike (State Route 244) Right of Way

(a) All facilities, as hereinafter defined, existing on July 1, 2010 in the Columbia Pike right of way as defined in a certain Quitclaim Deed from the Commonwealth of Virginia to the County Board of Arlington County, Virginia pursuant to a permit, agreement, or other written permission duly issued by the Commonwealth of Virginia, Department of Transportation, are permitted to remain in the Columbia Pike right of way after the effective date of the transfer of such right of way from the Commonwealth to the County Board without the necessity of the owner of such facilities obtaining a permit pursuant to this chapter, provided that:

(1) The permission for such facilities to remain in the right of way shall not be construed as conveying any property right to the owner of the facilities. The permission shall be a mere license, revocable at will by the county manager.

(2) Unless otherwise specifically provided by statute or by a fully executed written agreement between the County Board and the owner of the facilities:

(i) Such owner shall relocate and/or adjust all such facilities located, in whole or in part, within the Columbia Pike right of way when relocation and/or adjustment is necessary to facilitate any street, highway and/or transportation improvements;

(ii) The relocation and/or adjustment of the facilities shall be performed by the owner of the facilities at such owner's sole cost and expense, without delay, and without liability to, or obligation of, the county to such owner or to others.

(iii) The permission for such facilities to remain in the right of way shall not relieve the owner thereof, or any other person or entity, of the requirement to obtain permits for work in the right of way as otherwise required by this chapter.

(b) All permits issued before July 1, 2010, by the Commonwealth of Virginia, Department of Transportation, permitting activity or work to be performed, or facilities to be installed, in the Columbia Pike right of way, and which activity, work, or installation is not completed as of July 1, 2010, shall be recognized by the county as fulfilling, until September 30, 2010, the requirements of this chapter, but only for the activities at the location(s) specified in such permit, provided that:

(1) In order to continue any activity, work, or installation in the Columbia Pike right of way after September 30, 2010, the person or entity required by this chapter shall obtain a permit from the county, in accordance with this chapter;

(2) Such permit shall be obtained not later than October 1, 2010; and,

(3) The failure of any person, firm or corporation to timely obtain a permit in accordance with subsections (b)(1) and (b)(2) above shall constitute a violation of this Section 22-8.1 and, upon conviction thereof, shall be punishable as provided in Section 22-9.

(c) For the purposes of this Section 22-8.1, the word "facilities" shall refer to and mean any item that is built, constructed, installed, or established to perform a particular function or to serve or facilitate a particular end, including without limitation, structures, equipment, fixtures, apparatus, tunnels, pipes, box culverts, conduits, wires, cables, fiber optic cable lines, utilities, foundations, poles, towers, antennae, telecommunications systems, traffic signals, cabinets, benches, retaining walls, landscaping, and appurtenances thereto.

(d) Enforcement of this Section 22-8.1 shall not preclude the county from enforcing any other provision of the Code or of state law concerning the unauthorized use or occupation of the public right of way.

2. BE IT FURTHER ORDAINED that all provisions of Chapter 22 of the Code shall remain as previously enacted.

3. BE IT FURTHER ORDAINED that this Ordinance shall be effective on July 1, 2010 at 12:01 a.m.