

ORDINANCE NO. 691-A

Introduced by Commissioner Gramson.

AN ORDINANCE AUTHORIZING A LICENSE FOR DIKE CROSSING TO LAND OWNERS ADJOINING A DIKE, SETTING FORTH TERMS AND PROVISIONS FOR LICENSEE'S USAGE; AND AUTHORIZING EASEMENTS FOR YEARS UPON SHOWING OF A NECESSITY.

THE CITY OF WARRENTON ORDAINS AS FOLLOWS:

Section 1. Much of the land located within the city of Warrenton is subject to flooding and depends directly on the dikes for flood protection. It is of paramount public interest that the dikes be properly maintained at all times and that there be free and open access over the dikes by city employees, authorized contractors and the Corps of Engineers for accomplishing maintenance and repairs and to meet any emergency that may ever arise.

Section 2. Subject to the paramount public interest in the proper dike maintenance, it is in the interest of the city and the furtherance of its comprehensive plan that limited rights of crossing and construction of improvements be permitted on the dikes by those holding a qualified property interest. The City of Warrenton, therefore, hereby permits those qualified to use the dike immediately adjoining their property upon and subject to the following license conditions:

Section 3. All Licensees:

1. Must have an interest in the adjoining real property abutting the dike at the point they wish to cross the dike. Their interest must be either (1) fee simple estate, (2) land sale contract vendee, or (3) lessee under a leasehold for years;
2. Must pose no threat of actual or potential damage to the dikes or other property owners by their use;
3. Prior to any construction of any improvement on the dike or in the river, must furnish five (5) set of detailed plans of the proposed use and improvement.
4. Must comply with all city, state and federal land use requirements and other laws and regulations.

Section 4: All structures or improvements must be previously approved by and meet all standards of the U. S. Army Corps of Engineers, Flood and Levy Control Section, or other Corps of Engineers regulations, including navigation, if appropriate.

Section 5: The dikes shall not be used as a roadway. Access must be perpendicular across the dike between the property and river in the most direct fashion. The access crossing shall not be parallel with the line of the dike

unless the surface of the dike is graveled or paved to the standards of the U. S. Army Corps of Engineers.

Section 6: The license is personal to the adjoining property owner and does not constitute a property interest and may not be transferred or assigned to anyone who does not have the property interest as set forth in paragraph 1 above.

Section 7: The license may be terminated forthwith upon breach by the applicant of one of these conditions. In addition, the city commission may revoke the license at any time it is found to be in the best interests of the city, its inhabitants or adjoining landowners.

Section 8: In case suit or action is instituted to enforce any of the provisions of the license, the prevailing party shall be entitled to such sum as the court may adjudge reasonable as attorney's fees to be allowed in said suit or action and if an appeal is taken from any judgment or decree of the trial court, the prevailing party shall be entitled to such sum as the appellate court shall adjudge reasonable as attorney's fees on such appeal.

Section 9: There will be no structure or improvement placed on the dike, or use of the dike except as specifically authorized and permitted herein in accordance with approvals obtained under this ordinance. All structures or improvements shall be constructed in conformity with the approved plan and no deviation is permitted unless otherwise authorized. In the event the improvement construction is 50% or more destroyed through any cause, a new application for replacement of the improvement must be made.

Section 10: Upon satisfactory showing of necessity, the city commission may grant an easement for years for construction of improvements on the dike at a price and on terms as may be deemed appropriate under the circumstances, as determined by the city commission. One criterion which may be considered in determining necessity is whether a financial institution which would finance the improvement requires such an interest as a condition of granting financing. The city commission may consider all other relevant factors.

Section 11: In case any portion or provision of this ordinance should be held to be invalid for any reason whatsoever by any court, then all other provisions shall be held and considered to be independent of and separable and from such invalid portions and shall not be affected or rendered void by the invalidity of such other portions.

Section 12: Any person violating any of the provisions of this ordinance may, upon conviction thereof, be punished by a fine not exceeding \$100.00 or imprisonment in jail for a period of not exceeding five days, or both by fine and imprisonment.

Passed by the City Commission of the City of Warrenton
this 7th day of May, 1980.

7th Approved by the Mayor of the City of Warrenton this
day of May, 1980.



Mayor

ATTEST:



Auditor and Police Judge