

ORDINANCE NO. 3794

AN ORDINANCE to add a new Chapter 12 (GRAFFITI ABATEMENT) to Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, the City Council of Alexandria finds and determines that:

1. The placement of graffiti on public and private property constitutes a public nuisance, the incidence of which is increasing.

2. The failure of owners, managers and occupants of property promptly to remove graffiti from their property also constitutes a public nuisance.

3. Graffiti on public and private property is a blighting influence which damages property and depreciates its value and the value of adjacent property.

4. Graffiti on public and private property is inconsistent with the city's aesthetic standards.

5. Unless graffiti is promptly removed from public and private property, the incidence of graffiti tends to proliferate, with other property becoming the object of graffiti.

6. Graffiti on public and private property tends to breed community discontent, contempt for public and private property rights, and criminal activity.

7. While the owners, managers and occupants of the property on which graffiti is placed are the victims of graffiti, it remains the duty of these individuals to remove graffiti from their property as soon as reasonably possible.

8. The expenditure of public funds to remove graffiti on public and private property, as authorized in this ordinance, is a public purpose.

9. Adoption of this ordinance is necessary to assist in preventing and controlling the further spread of graffiti in the City of Alexandria.

10. For the foregoing reasons, and in light of all other facts and circumstances of which the council may take notice as the legislative body of the City of Alexandria, adoption of this ordinance is necessary and desirable to promote the general welfare of the city, and the safety, health, peace, good order, comfort and convenience of the citizenry; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new Chapter 12, to read as follows:

CHAPTER 12

Graffiti Abatement

Sec. 11-12-1 Definitions.

The following terms, as used in this chapter, shall have the meanings set forth below:

(a) "City manager" shall mean the Alexandria city manager, or her designee.

(b) "Graffiti" shall mean writings, drawings, inscriptions, figures or marks of paint, ink, chisel, chalk, dye and other similar substance, or flyers, bills and similar materials, which have been placed on public or private property without the permission of the owner, manager or occupant of the property.

(c) "Placement of graffiti" shall include any form or act of drawing, painting, scrawling, writing, marking, inscribing, scratching, gluing, posting or otherwise affixing graffiti to public or private property.

(d) "Public or private property" shall mean the exterior surface of any building, or any street, alley, sidewalk, or other vehicular or pedestrian right-of-way, or any article of street furniture, utility or public service equipment, or other personal property located outdoors, whether owned by a public entity or by a private person or entity.

Sec. 11-12-2 Graffiti nuisance prohibited.

(a) The placement of graffiti on any public or private property is declared to be a public nuisance and is prohibited.

(b) The failure of any property owner, manager or occupant of public or private property to remove or effectively obscure graffiti which has been placed upon property under such person's ownership or control, within 30 days after the service of notice as provided in this chapter, is declared to be a public nuisance and is prohibited.

Sec. 11-12-3 Abatement of graffiti nuisance.

(a) Notice and opportunity to abate. Whenever the city manager becomes aware of the existence of graffiti on any public

or private property, the city manager shall give, or cause to be given, written notice to remove or effectively obscure such graffiti to the owner, manager or occupant of the property. Such notice may be served by personal service or certified mail, and shall be complete upon delivery or mailing. Such notice shall direct the recipient to remove or effectively obscure such graffiti within 30 days of the date of the notice, and shall inform the recipient that, in the event of failure to comply, the city manager may enter upon the property and remove or effectively obscure such graffiti, and recover the costs thereof, in the manner provided in this chapter. Prior to the issuance of a notice under this subsection, the city manager shall contact the owner, manager or occupant of the affected property and attempt to obtain the commitment of such person to remove the graffiti within a reasonable period of time. Only in the event no such commitment is made or, if made, the commitment is not honored may the city manager proceed to issue a notice under this subsection.

(b) Abatement by city. If the owner, manager or occupant of the property upon which graffiti has been placed fails to remove or effectively obscure the graffiti within 30 days from service of the notice described in subsection (a), the city manager may enter upon the property and remove or effectively obscure the graffiti.

(c) Costs and liens. In the event the city manager has removed or effectively obscured the graffiti, the city manager shall, except as provided in subsection (d), bill the recipient of the notice described in subsection (a) for all expenses incurred by the city in abating the nuisance, including without limitation all administrative and personnel expenses and materials used. In the event the bill shall remain unpaid for a period of 30 days from the date of the bill, the city attorney may, on behalf of the city, sue the recipient of the notice in a court of competent jurisdiction to recover all expenses incurred by the city in abating the nuisance and all attorneys' fees and costs incurred by the city in enforcing this chapter and collecting such expenses. In addition to or in lieu of suit, the city attorney may record a lien in the public land records against the subject property, which lien shall be for such expenses, fees and costs, shall bear interest from the date of recordation at the legal rate, shall constitute a lien superior to all other liens except for state taxes, and may be enforced in the same manner as real estate tax liens.

(d) Hardship exception. The city manager shall provide by regulation for the waiver of the imposition of costs and liens against the recipient of a notice given pursuant to subsection (a) in such cases of hardship as may be defined in the regulations. At minimum, such regulations shall provide (i) that a person eligible for exemption or deferral of real estate tax pursuant to article L, chapter 2, title 3 of this code, and (ii)

that a low income person as defined in section 7-2-3 of this code shall be eligible for a hardship exception. The costs of graffiti removal by the city in cases where the hardship exception applies shall be paid out of general revenues.

(e) Waiver of liability. The failure of the recipient of a notice given pursuant to subsection (a) to comply with the notice shall be deemed a waiver of any claim by or on behalf of the recipient or, if different, the owner of the property against the City of Alexandria for damage to the property arising out of the work of removing or obscuring the graffiti.

Sec. 11-12-4 Materials.

In no case shall the city manager be required to clean, paint or repair any more extensive area than where the graffiti is located. Nor shall the manager be required to restore the area to its original condition (e.g., color, texture).

Sec. 11-12-5 Penalties.

(a) Any person who commits a violation of section 11-12-2(a) shall be punished as provided in section 13-1-19 of this code or in sections 18.2-137 or 18.2-138 of the Code of Virginia, 1950, as amended.

(b) Abatement of the nuisance by the city as provided in section 11-12-3 shall be the sole remedy for the violation of section 11-12-2(b).

Sec. 11-12-6 Restitution by perpetrator.

In addition to any fine or sentence imposed under section 11-12-5(a), the court shall order the person convicted to make restitution to the owner, manager or occupant of the property upon which the graffiti has been placed, for the damage or loss caused directly or indirectly by the violation, in a reasonable amount and manner to be determined by the court.

Sec. 11-12-7 Exemptions.

This chapter shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on streets, sidewalks or other paved surfaces which are used in connection with traditional children's activities, such as drawings or bases for kickball, handball, hopscotch and the like, or to prohibit markings placed on public or private property by the authorized representative of the city or a public utility to indicate the location of service lines and facilities.

Section 2. That this ordinance shall become effective on July 1, 1995.

PATRICIA S. TICER
Mayor

Final Passage: May 9, 1995