

ORDINANCE NO. 3823

AN ORDINANCE to amend and reordain Chapter 12 (GRAFFITI ABATEMENT) of 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. On May 9, 1995, council adopted Ordinance No. 3794 to provide for the abatement of graffiti on public and private property. On July 1, 1995, Virginia Code § 15.1-11.2:2 became effective, and restricted the options available to the city in performing graffiti abatement. This ordinance is necessary to conform Ordinance No. 3794 to state law.

11. 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 Chapter 12 of Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended 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, and visible from any public right-of-way.

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 10 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 10 days of the date of the notice, or grant the city written permission to enter upon the property and remove or effectively obscure such graffiti, and shall inform the recipient that, in the event of failure to comply, the city may seek a court order allowing the city to enter upon the property and remove or effectively obscure such graffiti, 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, or grant the city written permission to enter upon the property and remove or effectively obscure such graffiti, within 10 days from service of the notice described in subsection (a), the city attorney may file a public nuisance action against the property owner and the manager and/or occupant of the property, to allow the city to enter upon the property and remove or effectively obscure such graffiti.

(c) 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 be required to clean, paint or repair any more extensive area than where the graffiti is located. Nor shall the city 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 upon the date and time of its final passage.

PATRICIA S. TICER
Mayor

Final Passage: October 14, 1995