

ORDINANCE NO. 3935

AN ORDINANCE to amend and reordain Section 11-12-3 (ABATEMENT OF GRAFFITI NUISANCE), Section 11-12-5 (PENALTIES) and Section 11-12-6 (RESTITUTION BY PERPETRATOR), of Chapter 12 (GRAFFITI ABATEMENT), Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS), and Section 13-1-19 (INJURING; REMOVING OR DESTROYING PROPERTY -- GENERALLY), of Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES), and to further amend said Chapter 1 of Title 13 by adding thereto a new section 13-1-19.1 (VANDALISM AND GRAFFITI), all of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 11-12-3 of The Code of the City of Alexandria, Virginia, 1981, be, and the same hereby is, amended to read as follows:

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 to 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 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 section, 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 to 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 manager may enter upon the property and remove or effectively obscure the graffiti.

(c) Waiver of liability. The failure of the recipient of a notice given pursuant to subsection (a) to comply with the notice by removing or effectively obscuring such graffiti within 10 days shall be deemed a waiver of any claim by or on behalf of the notice 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.

Section 2. That Section 11-12-5 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended to read as follows:

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 13-1-19.1 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).

Section 3. That Section 11-12-6 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended to read as follows:

Sec. 11-12-6 Restitution or community service.

Restitution or community service, or both, by a person who has been found guilty of a violation of section 11-12-2(a) shall be ordered as provided in section 13-1-19.1 of this code or section 19.2-305.1 of the Code of Virginia, 1950, as amended.

Section 4. That Section 13-1-19 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended to read as follows:

Sec. 13-1-19 Removing property--generally.

It shall be unlawful for any person willfully or maliciously to remove without authority any property of the city wherever situated or the private property of any person. Any person violating this section shall be guilty of a class 1 misdemeanor. Any person removing city property in violation of this section shall be responsible for the cost of replacing the property.

Section 5. That Chapter 1 of Title 13 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new section to read as follows:

Sec. 13-1-19.1 Vandalism and Graffiti.

(a) It shall be unlawful for any person willfully or maliciously to destroy, damage, injure or deface, in whole or in part, any public building, public facility, or publicly-owned personal property.

(b) It shall be unlawful for any person willfully or maliciously to destroy, damage, injure or deface, in whole or in part, any private building, private facility or privately-owned personal property; provided, that the provisions of this subsection shall not be applicable in the event the damage to such private property is \$1,000 or greater. The amount of damage caused by the destruction, damage, injury or defacing of such private property may be established by proof of the fair market cost of repair or fair market replacement value of the property.

(c) Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor.

(d) Upon a finding of guilt of a violation of this section in any case tried before the court without a jury, in the event the violation constitutes a first offense under this section which results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service work as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Such discharge and dismissal shall be without adjudication of guilt, and shall be a conviction only for the purpose of applying this section in subsequent proceedings.

(e) Community service work, to the extent feasible, shall include the repair, restoration or replacement of damage or defacement to property within the city, and may include clean-up, beautification, landscaping or other similar community service work within the city. The sheriff of the city shall supervise the performance of any community service work required and report thereon to the court imposing such requirement. At or before the time of sentencing a defendant convicted for violating this section, the court shall receive and consider any plan for making restitution or performing community service work submitted by the defendant. The court shall also receive and consider the recommendations of the city manager concerning the plan.

(f) Notwithstanding any other provision of law, no person convicted for a violation of this section shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or has been compelled to perform community service work, or both, as is more particularly set forth in section 19.2-305.1 of the Code of the Virginia, 1950, as amended.

(g) Nothing in this section shall be deemed to affect the intake and other procedures, including disposition, of the juvenile and domestic relations court where the perpetrator of a violation is subject to the jurisdiction of said court.

Section 6. That this ordinance shall become effective July 1, 1997.

KERRY J. DONLEY  
Mayor

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