

EXHIBIT NO. 1

~~18~~ ²⁷
6-16-01
~~6-12-01~~

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 5, 2001
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: PHILIP SUNDERLAND, CITY MANAGER
SUBJECT: CONSIDERATION OF AN ORDINANCE TO AMEND SECTION 13-1-33 OF THE CITY CODE

ISSUE: Consideration of proposed amendment to Section 13-1-33, to permit a property manager, tenant, or other person in charge of real property, in addition to the property owner, to authorize the Alexandria Police Department to warn a trespasser to leave the property, and upon the trespasser's failure to leave, to make an arrest for criminal trespass.

RECOMMENDATION: The City Council pass the attached ordinance on first reading and set it for public hearing, second reading and final passage on Saturday, June 16, 2001.

DISCUSSION: Under the current provisions of Section 13-1-33 of the City Code, a property owner may, by written designation, on a form provided by the Chief of Police, authorize the Alexandria Police Department to warn a trespasser to leave the owner's property, and upon the trespasser's failure to leave, to arrest the individual for criminal trespass. In practice, this authorization is often given by a resident manager, tenant (in the case of a single family residence), or other person who is not the owner, but is in possession or control of the property and acting as the owner's agent.

Recently, however, the Alexandria Circuit Court dismissed a prosecution under Section 13-1-33, because the authorization was not given by the actual owner, but by an agent. The proposed ordinance clarifies that the required authorization may be given not only by the actual property owner, but by a person who is in charge of the property, such as a property manager, tenant or other responsible party.

In addition, in order to streamline the manner in which proof of the police department's authority to act for a given property may be offered at trial, the proposed ordinance further provides that the written designation shall be a public record of the City of Alexandria, Virginia, and that a properly authenticated a copy of the designation is admissible as prima facie evidence of the authority of the Alexandria police department to give the warning for a particular property.

FISCAL IMPACT: None

ATTACHMENT: Proposed ordinance

STAFF: Charles E. Samarra, Chief of Police
Deputy Chief Joseph Hilleary, Field Operations Bureau, Police Department
Sergeant Dianne Gittins, Community Support Section, Police Department

Introduction and first reading:	6/12/01
Public hearing:	6/16/01
Second reading and enactment:	6/16/01

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 13-1-33 (TRESPASS AFTER HAVING BEEN FORBIDDEN TO DO SO) of Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES), of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance specifies that a property manager, tenant, or other person in control of real property, as well as the property owner, can authorize the Alexandria Police Department to warn a trespasser to leave the property, and upon the trespasser's failure to leave, to make an arrest for criminal trespass. In addition, the proposed ordinance provides that a properly authenticated copy of the authorization form is admissible in evidence to prove that the department was so authorized.

Sponsor

Staff

Charles E. Samarra, Chief of Police
Ignacio B. Pessoa, City Attorney

Authority

§§ 2.04, 2.04(a), Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Section 13-1-33 (TRESPASS AFTER HAVING BEEN FORBIDDEN TO DO SO) of Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES), of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 13-1-33 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 13-1-33 Trespass after having been forbidden to do so.

(a) If any person shall, without authority of law, go upon or remain upon the lands or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, property manager or other person lawfully in charge of the property (hereinafter in this section referred to as the "owner" or "property owner"), or after having been forbidden to do so by a sign or signs posted by such ~~persons~~ owner or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or part, portion or area thereof at a place or places where it or they may be reasonably seen, he shall be guilty of a class 1 misdemeanor.

(b) The owner of real property may designate the Alexandria police department as a "person lawfully in charge of" the owner's property, under subsection (a). With such a designation, the department, acting through its sworn officers, may forbid persons to go or remain upon all or any portion of the owner's real property, including any building, structure or other premises located upon the property. Such designation must be in writing on a form provided by the chief of police. The designation shall include the following information:

- (1) the name and signature of the property owner making the designation;
- (2) the property owner's residence address or, if the property owner is an entity, the owner's principal place of business;
- (3) the address of the property to which the designation applies;
- (4) if the designation does not apply to all of the property, a description of the particular buildings, structures or other areas of the property to which the designation applies; and
- (5) the inclusive dates during which the designation shall be in effect; provided, that a designation made pursuant to this section shall not be for a period greater than six months.

The written designation shall be kept on file in the police department for the duration of the designation. The designation may be rescinded at any time upon the written notice of the property owner.

(c) The written designation shall be a public record of the City of Alexandria, Virginia, and a copy of such written designation, when authenticated by the custodian thereof, shall be

admissible in any trial for a violation of this section as prima facie evidence of the authority of the Alexandria police department to act under the provisions of this section as to the property for which the designation was made.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction:	6/12/01
First Reading:	6/12/01
Publication:	6/14/01
Public Hearing:	6/16/01
Second Reading:	6/16/01
Final Passage:	

ORDINANCE NO. 4210

AN ORDINANCE to amend and reordain Section 13-1-33 (TRESPASS AFTER HAVING BEEN FORBIDDEN TO DO SO) of Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES), of The Code of the City of Alexandria, Virginia, 1981, as amended.

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(b) The owner of real property may designate the Alexandria police department as a "person lawfully in charge of" the owner's property, under subsection (a). With such a designation, the department, acting through its sworn officers, may forbid persons to go or remain upon all or any portion of the owner's real property, including any building, structure or other premises located upon the property. Such designation must be in writing on a form provided by the chief of police. The designation shall include the following information:

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- (4) if the designation does not apply to all of the property, a description of the particular buildings, structures or other areas of the property to which the designation applies; and
- (5) the inclusive dates during which the designation shall be in effect; provided, that a designation made pursuant to this section shall not be for a period greater than six months.

The written designation shall be kept on file in the police department for the duration of the designation. The designation may be rescinded at any time upon the written notice of the property owner.

(c) The written designation shall be a public record of the City of Alexandria, Virginia, and a copy of such written designation, when authenticated by the custodian thereof, shall be admissible in any trial for a violation of this section as prima facie evidence of the authority of the Alexandria police department to act under the provisions of this section as to the property for which the designation was made.

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KERRY J. DONLEY
Mayor

Final Passage: June 16, 2001