

EXHIBIT NO. 1

City of Alexandria, Virginia

MEMORANDUM

28
6-16-01

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6-12-01

DATE: JUNE 4, 2001

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: CONSIDERATION OF AN ORDINANCE TO ADD A NEW CHAPTER 13 (ENVIRONMENTAL OFFENSES) TO TITLE 11 OF THE CODE OF THE CITY OF ALEXANDRIA

ISSUE: Consideration of an ordinance to add a new Chapter 13, entitled Environmental Offenses, to Chapter 11 of the Code of the City of Alexandria.

RECOMMENDATION: That City Council pass the ordinance on first reading, and schedule it for public hearing, second reading and final passage on Saturday, June 16.

DISCUSSION: Over the last several years, the City has experienced an increasing number of environmental incidents, some of which have had a significant adverse impact on our environment. Currently, the vast majority of statutes which deal with environmental offenses rest with Title 62 of the Code of Virginia. Pursuant to the current provisions of Title 62 of the Code of Virginia (Waters of the State, Ports and Harbors) if any offenses are successfully prosecuted, all costs associated with a particular incident are directed to the State with one exception. The City of Alexandria currently participates with the Virginia Department of Fire Programs as one of their State Certified Regional Hazardous Materials Response Teams. In the event an incident is certified as a State level hazardous materials response, then all costs associated with that incident are recoverable by the City.

The City Manager's Quality of Life Committee, working in cooperation with the Citywide Code Compliance Committee, seeks ways of improving the quality of life for all who visit or live or work in the City. The Citywide Code Compliance Committee, which is composed of representatives of City departments and is headed by the fire chief, recently formed an Environmental Crimes Subcommittee in an effort to address environmental issues. The subcommittee has recommended the adoption of a local ordinance to enable City personnel to deal more effectively with environmental incidents such as the improper disposal of solid waste, improper handling and disposal of hazardous waste and hazardous materials, illegal dumping and the unlawful contamination of the City's waterways and storm water system.

The proposed ordinance includes a penalty clause which provides for the imposition of a fine up to \$2,500 and/or imprisonment for up to twelve months upon conviction. Any person convicted of a

violation of this code chapter may be ordered by the court to perform public service relating to the correction or remediation of the environmental incident.

FISCAL IMPACT: In the last year the Fire Department's Hazardous Materials Team has responded to 18 incidents which were ultimately certified as State level Hazardous Materials incidents. As a result the City recovered \$38,363. This is considered to be an average number of responses for the Hazardous Materials Team in a year.

The income generated from these new fines will assist the City in providing resources to help address the environmental enforcement resource needs in City agencies such as the Commonwealth's Attorney's Office, the Fire Department, and the Department of Transportation and Environmental Services.

ATTACHMENTS: Proposed Ordinance

STAFF: Fire Chief Thomas M. Hawkins, Chairman, Citywide Code Compliance Committee
George McAndrews, Assistant City Attorney
Art D. Dahlberg, Director, Code Enforcement
Bill Skrabak, Division Chief, Environmental Quality, Transportation & Environmental Services

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 add a new Chapter 13 (ENVIRONMENTAL OFFENSES) to Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance gives the City of Alexandria specific enforcement authority over the improper handling or disposal of waste within the City. It allows storage or disposal of waste when accomplished in accordance with applicable federal and state environmental statutes and regulations. However, the ordinance prohibits illegal dumping and unlawful storage of environmentally harmful and other waste. Violation of any provision of the ordinance will be a Class 1 misdemeanor, punishable by imposition of a fine of up to \$2,500 and/or imprisonment for up to twelve months.

Sponsor

Staff

Thomas Hawkins, Fire Chief
Arthur Dahlberg, Director of Code Enforcement
George McAndrews, Assistant City Attorney

Authority

§ 2.04(j), Alexandria City Charter
§ 2.04(m), Alexandria City Charter
§ 15.2-900, 1951 Code of Virginia, as amended

Estimated Costs of Implementation

None

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

None

ORDINANCE NO. _____

AN ORDINANCE to add a new Chapter 13 (ENVIRONMENTAL OFFENSES) 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 accumulation of garbage, commercial and industrial wastes, and/or hazardous materials on public and private property – the incidence of which is increasing – constitutes a public nuisance and a threat to the health and safety of city residents.

2. The failure of owners, managers and occupants of property to store and handle hazardous materials safely, and to dispose properly of solid waste and hazardous materials, likewise constitutes a public nuisance and a threat to the health and safety of city residents.

3. Spillage or dumping of hazardous or toxic substances into storm water drainage systems and local waterways can irreparably damage natural resources, force the city to incur substantial expense in remediating the consequences of such spills and dumping, and constitutes a blighting influence which damages public and private property, depreciates its value and the value of adjacent property, and jeopardizes the health and safety of city residents.

4. 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 13, to read as follows:

[The following is all new language.]

CHAPTER 13

Environmental Offenses

Sec. 11-13-1 Definitions.

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

(a) "Bulk waste" shall mean solid, tangible objects that are subject to disposal. Bulk waste shall include, but is not limited to, appliances, furniture, bedding material, motor vehicle parts and tires, mechanical equipment, mechanical parts and carpets.

(b) "Commercial waste" shall mean all waste from any retail, wholesale or commercial establishment that has been, or is in the process of being, dumped.

(c) "Dump" shall mean to discharge, deposit, inject, dispose of, spill, leak or place any waste into or on any land or water so that such waste, or any constituent of such waste, may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(d) "Hazardous waste" shall mean a solid waste or combination of solid wastes that has been, or is in the process of being, dumped and which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

(2) pose a substantial present or potential danger to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Hazardous wastes shall include, but are not limited to, insecticides, poisons, corrosives, combustibles, caustics, acids, infectious materials, explosives, compressed gases, biological and chemical materials, radioactive materials, flammable materials and petroleum products.

(e) "Household hazardous waste" shall mean any solid waste derived from households (including single and multiple residences, hotels, motels, crew quarters, campgrounds, picnic grounds and recreation areas) that has been or is in the process of being dumped and which, except for the fact that it is derived from a household, would be classified as a hazardous waste, including but not limited to, nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers or other paint solvents; toxic art supplies; used motor oil and unusable gasoline or kerosene; fluorescent or high-intensity light bulbs; ammunition and fireworks; banned pesticides and restricted-use pesticides, as defined in the Virginia Code and applicable regulations. All empty household product containers and any household products in legal distribution, storage or use shall not be considered household hazardous waste.

(f) "Industrial waste" shall mean all materials or substances related to manufacturing, processing or production that have been, or are in the process of being, dumped.

(g) "Permit" shall mean a valid written document issued by a federal, state or local entity authorizing the work or activity described in the document.

(h) "Person" shall mean any individual, firm, owner, sole proprietorship, partnership, corporation, unincorporated association, governmental body, municipal corporation, executor, administrator, trustee, guardian, agent, occupant or other legal entity.

(i) "Solid waste" shall mean any garbage, refuse, sludge and other discarded material that has been, or is in the process of being, dumped. Solid waste includes any solid, liquid, semisolid or contained gaseous material that results from industrial, commercial or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the Virginia Water Control Board, or (iii) source, special nuclear or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

(j) "Sanitary sewer" shall mean pipelines or conduits, pumping stations and force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

(k) "Storm water system" shall mean all man-made facilities, structures and natural watercourses used for collecting and conveying storm water to, through and from drainage areas to the points of final outlet, including but not limited to streets, curbs and gutters, inlets, conduits and appurtenant features, canals, creeks, channels, catch basins, ditches, drains, sewers, streams, gulches, gullies, flumes, culverts, siphons, retention or detention basins, dams, flood walls, levees, pumping stations and wetlands.

(l) "Structural waste" shall mean all building materials resulting from erecting, removing, repairing, remodeling or razing buildings or other structures that have been, or are in the process of being, dumped.

(m) "Waste" shall mean any commercial, hazardous, household hazardous, industrial, solid, structural or yard waste as defined in this section.

(n) "Waters" shall mean any waters adjacent to or within the city or owned by the city, including, but not limited to, rivers, lakes, bays, tributaries or ponds.

(o) "Yard waste" shall mean decomposable waste materials generated by yard and lawn care that have been, or are in the process of being, dumped. Yard waste includes all materials derived from trees, shrubbery, leaves, fallen branches, lawn trimmings and other woody waste.

Sec. 11-13-2 Illegal dumping prohibited.

(a) It shall be unlawful for any person to dump any waste on any property, in any waters or in any sanitary sewer or storm water system, except as authorized by law or by applicable permit. It shall be the burden of the alleged violator to show proof of any applicable permits.

(b) In the event waste is dumped from a motor vehicle or water craft in violation of this section, the owner of such motor vehicle or water craft shall be presumed to be the person ejecting such waste, and such owner shall have the burden of coming forward with evidence to rebut the presumption.

Sec. 11-13-3 Unlawful storage and accumulation of waste.

It shall be unlawful for any person to accumulate, store, leave, place or deposit, or allow to be accumulated, stored, left, placed or deposited, any waste on any property within the city except as authorized by law or by applicable permit. It shall be the burden of the alleged violator to show proof of an applicable permit.

Sec. 11-13-4 Failure to keep property clean and free of accumulations of waste.

It shall be unlawful for any person to fail to keep property within the city clean and free of accumulations or deposits of waste.

Sec. 11-13-5 Removal of certain substances thrown, dropped or deposited on highway at scene of motor vehicle accident.

Any person removing a wrecked or damaged motor vehicle from a street or highway in the city shall remove any glass, metal, plastic, liquid, hazardous or solid waste, or any other injurious substance dropped, thrown or deposited upon the street or highway from such vehicle. Failure to remove such materials prior to leaving or departing from the location from which the vehicle is removed shall constitute an offense under this chapter.

Sec. 11-13-6 Proof of proper disposal required.

(a) Any person required to remove any waste from any property, waters, sanitary sewer or storm water system, as required by this chapter, shall provide proof that the waste that was removed was disposed of in accordance with all applicable local, state and federal regulations.

(b) A disposal receipt showing proper disposal shall be submitted to the enforcement officer who originated the charge or complaint. The receipt shall indicate on its face the date, time and place of disposal. It shall also, to the extent practicable, state the identifiable quantity or volume of waste that was removed.

(c) Failure to dispose of waste in accordance with all applicable city, state and federal regulations or to submit the required disposal receipt shall constitute an offense under this chapter.

Sec. 11-13-7 Enforcement.

Any city law enforcement officer, duly designated sworn special police officer, the director of transportation and environmental services or his designee, the director of public health or his designee, the director of code enforcement or his designee, or the chief fire marshal or any of his deputies, is authorized and shall have authority to enforce all provisions of this chapter.

Sec. 11-13-8 Violations.

(a) A person who violates any provision of this chapter shall be guilty of a Class 1 misdemeanor. Each day of violation shall constitute a separate offense.

(b) In addition to any penalty imposed for each violation of this chapter, a judge hearing the case may direct the person responsible for the violation to correct the violation and remedy any damage to the property where the spill or dump occurred. Each day's default in the performance of such correction or remediation shall constitute a violation of, and a separate offense under, this chapter. A person convicted of a violation of this chapter may also be ordered by the court to perform public service relating to the correction or remediation of an area polluted by solid waste.

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. 4211

AN ORDINANCE to add a new Chapter 13 (ENVIRONMENTAL OFFENSES) 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 accumulation of garbage, commercial and industrial wastes, and/or hazardous materials on public and private property – the incidence of which is increasing – constitutes a public nuisance and a threat to the health and safety of city residents.
- 2. The failure of owners, managers and occupants of property to store and handle hazardous materials safely, and to dispose properly of solid waste and hazardous materials, likewise constitutes a public nuisance and a threat to the health and safety of city residents.
- 3. Spillage or dumping of hazardous or toxic substances into storm water drainage systems and local waterways can irreparably damage natural resources, force the city to incur substantial expense in remediating the consequences of such spills and dumping, and constitutes a blighting influence which damages public and private property, depreciates its value and the value of adjacent property, and jeopardizes the health and safety of city residents.
- 4. 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,

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(c) "Dump" shall mean to discharge, deposit, inject, dispose of, spill, leak or place any waste into or on any land or water so that such waste, or any constituent of such waste, may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(d) "Hazardous waste" shall mean a solid waste or combination of solid wastes that has been, or is in the process of being, dumped and which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

(2) pose a substantial present or potential danger to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

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(b) A disposal receipt showing proper disposal shall be submitted to the enforcement officer who originated the charge or complaint. The receipt shall indicate on its face the date, time and place of disposal. It shall also, to the extent practicable, state the identifiable quantity or volume of waste that was removed.

(c) Failure to dispose of waste in accordance with all applicable city, state and federal regulations or to submit the required disposal receipt shall constitute an offense under this chapter.

Sec. 11-13-7 Enforcement.

Any city law enforcement officer, duly designated sworn special police officer, the director of transportation and environmental services or his designee, the director of public health or his designee, the director of code enforcement or his designee, or the chief fire marshal or any of his deputies, is authorized and shall have authority to enforce all provisions of this chapter.

Sec. 11-13-8 Violations.

(a) A person who violates any provision of this chapter shall be guilty of a Class 1 misdemeanor. Each day of violation shall constitute a separate offense.

(b) In addition to any penalty imposed for each violation of this chapter, a judge hearing the case may direct the person responsible for the violation to correct the violation and remedy any damage to the property where the spill or dump occurred. Each day's default in the performance of such correction or remediation shall constitute a violation of, and a separate offense under, this chapter. A person convicted of a violation of this chapter may also be ordered by the court to perform public service relating to the correction or remediation of an area polluted by solid waste.

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

KERRY J. DONLEY
Mayor

Final Passage: June 16, 2001