

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 4, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: ORDINANCE TO AMEND THE CITY CODE TO ADDRESS LITTERING AND OTHER IMPROPER CONTROL OF TRASH OR DEBRIS

ISSUE: Ordinance to amend the City Code to address littering and other improper control of trash and debris.

RECOMMENDATION: That City Council pass the ordinance on first reading, and schedule it for public hearing, second reading and final passage on Saturday, December 13.

DISCUSSION: Currently, the City Code does not contain the term “litter.” While the existing Code Section 13-1-21 could be used to enforce conduct that is generally regarded as littering, the proposed amendment does so with specificity, giving less room for argument by an offender, and allows the imposition of civil penalties, rather than the exclusively criminal enforcement tools in the code.

After receiving input from citizens regarding littering issues in the City, Councilman Gaines asked T&ES and the City Attorney’s Office staff to prepare an ordinance expressly addressing littering in the City. While the current Code can be applied broadly to enforce most things commonly viewed as littering, there are some gaps and is a lack of specificity with respect to what conduct is prohibited. By making the ordinance more comprehensive and express in its terms, we will have a more defensible enforcement structure and will be able to provide clear direction to the public.

Moreover, the proposed ordinance specifically addresses debris falling from or being thrown from vehicles. While someone engaged in this conduct could be charged under State law, all fines levied under state law, as opposed to a City ordinance, are ultimately remitted to the state, not to the City. The proposed addition to City Code would allow charging officers to cite drivers of offending vehicles under the City Code, rather than the state Code, resulting in traffic fines being paid to the City.

The proposed ordinance also imposes civil penalties for non-traffic related offences, rather than criminal sanctions. Generally, civil remedies can be imposed by a broader range of enforcement

staff and are a sanction more suited to the nature of the offense, plus they bear a more easily satisfied burden of proof in the event they are challenged by a cited individual.

Finally, the proposed ordinance gives clear guidance to property owners and occupants, as well as to operators of construction sites, as to their obligations with respect to placement of receptacles and otherwise controlling trash and debris that may originate from their properties.

The proposed terms were developed after benchmarking with other jurisdictions to see how the issue is treated elsewhere, considering those approaches and rejecting, changing or modifying them to fit the City's unique character and composition.

FISCAL IMPACT: None

ATTACHMENTS: Proposed Ordinance

STAFF:

Richard J. Baier, P.E., Director, Transportation & Environmental Services
Christopher Spera, Assistant City Attorney

Introduction and first reading: 12/09/08
Public hearing: 12/13/08
Second reading and enactment: 12/13/08

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to repeal Section 13-1-21 (THROWING, LEAVING, ETC., GARBAGE, MIXED REFUSE, DEAD ANIMALS, ETC., ON PRIVATE PREMISES) and Section 13-1-22 (THROWING, LEAVING, ETC., GARBAGE, MIXED REFUSE, DEAD ANIMALS, ETC., ON STREETS, ETC., PERMIT FOR DEPOSIT OF BUILDING MATERIALS), of Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES), and to amend the said Chapter 1, Title 13, by adding thereto a new Section 13-1-22.1 (PROHIBITION AGAINST LITTERING AND OTHER IMPROPER DISCARD OR DISPOSAL), all of the Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance enhances and updates the City’s regulations which prohibit littering, dumping, and related offenses, including such offenses involving motor vehicles.

Sponsor

Councilman Ludwig P. Gaines

Staff

Richard Baier, Director, Transportation and Environmental Services
Christopher P. Spera, Assistant City Attorney

Authority

§§ 2.01, 2.0(c), 2.04(m) Alexandria City Charter

Estimated Cost of Implementation

None

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

None

ORDINANCE NO. _____

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AN ORDINANCE to repeal Section 13-1-21 (THROWING, LEAVING, ETC., GARBAGE, MIXED REFUSE, DEAD ANIMALS, ETC., ON PRIVATE PREMISES) and Section 13-1-22 (THROWING, LEAVING, ETC., GARBAGE, MIXED REFUSE, DEAD ANIMALS, ETC., ON STREETS, ETC., PERMIT FOR DEPOSIT OF BUILDING MATERIALS), of Chapter 1 (GENERAL OFFENSES), Title 13 (MISCELLANEOUS OFFENSES), and to amend the said Chapter 1, Title 13, by adding thereto a new Section 13-1-22.1 (PROHIBITION AGAINST LITTERING AND OTHER IMPROPER DISCARD OR DISPOSAL), all of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 13-1-21 and Section 13-1-22 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby are, repealed, and such section numbers are hereafter reserved.

Section 2. That Chapter 1, Title 1 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 13-1-21.1, to read as follows:

[The following is all new language.]

Sec. 13-1-21.1 – Prohibition against Littering and Other Improper Discard or Disposal

(a) Definitions.

The following words and terms, when used in this section, shall for the purpose of this section have the following meanings ascribed to them in this section:

- (1) "Abatement cost" means the City's cost for labor, equipment, and supplies for, or the contract price of, and any charges to, the City, with respect to the removal and disposal of litter, garbage, rubbish, or refuse from a property.
- (2) "Construction site" means any residential, commercial, industrial or other area, lot or site at which construction or demolition of any type is conducted, including roads, at buildings, and at all other places actively being constructed, demolished, renovated, or repaired.
- (3) "Construction waste" means solid waste that is produced or generated during construction, demolition, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, sawdust, shavings, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes and are subject to other

- 1 sections of this Code, including, without limitation City Code Section 11-13-2.
2 (4) "Discard" means to abandon, dispose of, burn, incinerate, accumulate, store or
3 treat before or instead of being abandoned, disposed of, burned or incinerated.
4 (5) "Discarded material" means a material that is abandoned, disposed of, burned,
5 incinerated, accumulated, stored or treated before or instead of being abandoned,
6 disposed of, burned or incinerated.
7 (6) "Dispose" means to discharge, deposit, inject, dump, spill, leak or placement of
8 any solid waste into or on any land or water so that such solid waste or any
9 constituent of it may enter the environment or be emitted into the air or
10 discharged into any waters.
11 (7) "Garbage" means readily putrescible discarded materials composed of animal,
12 vegetable, or other organic matter, including, without limitation, food waste,
13 offal or dead animals.
14 (8) "Litter" means any man-made material that, if thrown, discarded, or disposed as
15 prohibited by this section, may create a danger to public health, safety, or
16 welfare or degrades the environment of the City. "Litter" shall include, but is not
17 limited to, any garbage, trash, refuse, rubbish, newspaper, magazine, glass,
18 metal, plastic or paper container, construction waste, or any discarded object
19 likely to injure any person, create a traffic hazard, or degrade the environment.
20 (9) "Person" means any individual, corporation, association, firm, receiver,
21 guardian, trustee, executor, administrator, fiduciary, representative, or group of
22 individuals or entities of any kind.
23 (10) "Receptacle" means a container that is specifically designed, constructed, and
24 placed for use as a depository for litter or solid waste.
25 (11) "Refuse" means all solid waste products having the character of solids rather
26 than liquids and that are composed wholly or partially of materials such as
27 garbage, trash, rubbish, litter, ashes, coal, dirt, mud, gravel, sand, residues from
28 clean up of spills or contamination, or other discarded materials.
29 (12) "Rubbish" means combustible or slowly putrescible discarded materials, which
30 include but are not limited to trees, wood, leaves, straw, hay, trimmings from
31 shrubs or trees, printed matter, plastic and paper products, grass, rags, and other
32 combustible or slowly putrescible materials not included under the term
33 "garbage."
34 (13) "Solid waste" or "waste" means any garbage, refuse, rubbish, trash, or other
35 discarded material, but does not include solid or dissolved materials in domestic
36 sewage, solid or dissolved materials in irrigation return flows, industrial
37 discharges, or special nuclear or by-product materials.
38 (14) "Trash" means combustible and noncombustible discarded materials and is used
39 interchangeably with the term "rubbish".
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41 (b) Administration and enforcement.

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43 The Director of Transportation and Environmental Services, or his designee, shall be
44 responsible for the administration of this section and shall have the authority to enforce
45 compliance through the use of civil remedies as authorized by this section. Further, any law
46 enforcement officer or sworn special police officer is authorized to enforce the provisions of
47 subsections (c)(2) and (d) hereof through the issuance of traffic citations.
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(c) Unlawful disposal of litter.

- (1) No person shall drop, cast, sweep, deposit, discard, or otherwise dispose of any litter in or upon any exterior public or exterior private property within the City including but not restricted to any street, sidewalk, park, body of water, or vacant or occupied lot, except by placement in a proper receptacle or in an area designated and approved by the City as a permitted disposal site. This subsection shall not apply to leaves deposited in the streets from October 1 to December 31 of any calendar year for collection by the City.
- (2) When a violation of the provisions of this subsection has been observed by any person, and the litter has been ejected or removed from a motor vehicle, the owner or operator of such motor vehicle shall be presumed to be the person ejecting or disposing of such litter, provided however, that such presumption shall be rebuttable by competent evidence. Violation of this subsection (c)(2) shall constitute a traffic infraction punishable by a fine not to exceed two hundred fifty dollars (\$250.00). In lieu of imposition of a fine, the court may order the defendant to perform community service in litter abatement activities.

(d) Securing and covering loads.

- (1) All motor vehicles used to transport any material along streets, roads, or highways of the City, shall be constructed, maintained, and loaded in such a manner as to prevent such vehicle's contents from dropping, sifting, leaking, or otherwise escaping. This subsection shall not apply to any:
 - (A) Motor vehicle that is used exclusively for agricultural purposes as provided in § 46.2- 698 of the Code of Virginia and is not licensed in any other state;
 - (B) Agricultural vehicle, tractor, or other vehicle exempted from registration and licensing requirements under State law;
 - (C) Motor vehicle transporting forest products, poultry, or livestock; or
 - (D) Public service company vehicle, pickup truck, or emergency snow removal equipment while engaged in snow removal operations.
 - (E) Public service vehicle engaged in the removal of solid waste, leaves, recycling or other materials within the City.
- (2) No person shall transport any litter, rubbish or solid waste in an open or uncovered vehicle along the streets, roads, or highways of the City, unless the load is covered by a tarpaulin or other suitable cover in such manner as to contain the entire load. If any of the contents of the load shall be blown, spilled, fall, or become scattered in or upon any public way or place, such person shall immediately cause such contents to be gathered up and removed.
- (3) When a violation of the provisions of this subsection has been observed by any person, the owner or operator of the motor vehicle shall be presumed to be the person responsible for the contents dropping, sifting, leaking, or otherwise

1 escaping from the motor vehicle, provided however, that such presumption shall
2 be rebuttable by competent evidence.

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4 (4) Violation of this subsection shall constitute a traffic infraction punishable by a
5 fine not to exceed two hundred fifty dollars (\$250.00). In lieu of imposition of a
6 fine, the court may order the defendant to perform community service in litter
7 abatement activities.

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9 (e) Duty of owners and occupants.

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11 (1) It shall be the responsibility of each owner, agent, occupant, or lessee of real
12 property to keep his or her property free of litter. The owner, agent, occupant, or
13 lessee of any property shall be responsible for removing litter accumulating on
14 said property.

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16 (2) No owner, agent, occupant, or lessee of any property shall allow the storage or
17 accumulation of litter on the exterior of said property outside of a receptacle that
18 is covered, secured, and maintained so as to prevent blowing, spilling, scattering,
19 or leaking of the litter and waste contained therein, except that this requirement
20 shall not apply to an area designated and approved by the City as a permitted
21 disposal site.

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23 (3) It shall be the responsibility of each proprietor and each operator of any
24 business, industry, or institution to keep the adjacent and surrounding areas free
25 of litter. These areas include, but are not limited to public and private sidewalks,
26 roads, and alleys; grounds; parking lots; loading and unloading areas; and all
27 vacant lots that are owned or leased by such establishment or institution.
28 Removal of any litter shall be performed in accordance with this subsection.

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30 (4) Each owner, agent, occupant, or lessee whose property faces on the sidewalks in
31 the City or the strips between the streets and sidewalks shall be responsible for
32 keeping such sidewalks and strips free of litter. Removal of any litter shall be
33 performed in accordance with this subsection.

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36 (f) Construction sites.

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38 (1) It shall be unlawful for any owner or agent of a construction site, or any
39 contractor on a construction site, to cause, permit, or allow the presence of litter
40 on such site outside of a proper receptacle or to cause, permit, or allow litter or
41 waste to be spilled, discharged, or blown by wind or water, except for the wind
42 and water from hurricanes, tornadoes, and floods. It shall be the responsibility of
43 the owner or agent of the property and each contractor performing work on the
44 site to keep the property free of litter.

- 45
46 (2) The owner, agent, or contractor in charge of a construction site shall furnish on
47 such site receptacles sufficient to contain worker's litter and receptacles
48 sufficient to contain all construction waste. All receptacles shall be conveniently

1 available and maintained and secured or covered so as to prevent litter and waste
2 from being spilled, discharged, or blown by wind or water, except for the wind
3 and water from hurricanes, tornadoes, and floods. The number and capacity of
4 receptacles should be determined by the primary contractor, but no less than one
5 (1) receptacle for worker's litter and no less than one (1) receptacle for
6 construction waste shall be placed at each construction site. Receptacles required
7 under this subsection shall be not less than ten (10) gallons capacity. All
8 receptacles shall be emptied as necessary, but not less frequently than weekly,
9 except that receptacles used exclusively to contain construction waste shall be
10 serviced with sufficient frequency to prevent spillage from overflow and to
11 prevent offensive odors. All receptacles required under this subsection shall
12 remain conveniently available on the site from the time construction activity
13 commences until the construction activity ceases.

- 14
15 (3) The requirement for receptacles in this subsection shall not apply to any
16 construction site on which only repair or minor renovation of a building is taking
17 place, provided that no litter or construction waste is placed, stored, or otherwise
18 accumulated on the exterior of the property outside of a proper receptacle and
19 any such receptacle is maintained in accordance with this section.

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21 (g) Litter receptacles at places frequented by the public.

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23 (1) Every owner, occupant, tenant, or lessee in control of any property that is held
24 out to the public as a place for assemblage, for the transaction of business or
25 recreation, or as a public way shall provide adequate receptacles of sufficient
26 number and size to contain all litter generated by those persons frequenting that
27 public place. The number and size of the receptacles shall be determined by the
28 owner, occupant, tenant, or lessee in control of any property, except that no less
29 than one (1) receptacle shall be placed at each site. Receptacles shall be no less
30 than ten (10) gallons in capacity and clearly marked and designed to prevent the
31 escape of litter and waste. Any person owning or in control of any property at
32 which receptacles are required by this section shall at his or her own expense be
33 responsible for the procurement, placement, and maintenance of such receptacles
34 as required by this section.
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36 (2) All litter and solid waste shall be removed from receptacles as necessary, but not
37 less frequently than weekly, and all receptacles shall be maintained in a sanitary
38 and serviceable condition.
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40 (3) No person shall cause the unauthorized removal, upsetting, mutilation or
41 defacing of, or tamper with any receptacle, or cause the contents thereof to be
42 spilled or to be strewn in or upon any public or private property.
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44 (4) Any person who fails to place and maintain receptacles in the number and
45 manner required under this subsection shall be subject to a civil fine of twenty-
46 five dollars (\$25.00) for each day of violation, not to exceed a total of \$2,500 for
47 any calendar year.

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(h) Enforcement.

- (1) The City may commence enforcement of subsections (c)(1), (e), (f) or (g) of this section by notifying in writing the owner, lessee, occupant, or person in responsible charge or in possession of a property or premises, of the existence of an unlawful condition on such property or premises. Such written notice shall be sent to the owner, lessee, occupant, or person in responsible charge or in possession of a property by registered or certified mail, or may be served by the sheriff, to the last known address of the owner as indicated in the City's current real estate tax assessment records. Such notice shall contain a description of the nature of the violation; any corrective action needed to be taken by such person to come into compliance with this section; and the time frame within which such corrective action shall be completed. The amount of time allowed to abate, correct, or eliminate the unlawful condition shall not exceed ten (10) days.

- (2) Every owner, lessee, occupant, or person in responsible charge or in possession of a property or premises shall, upon written notice of an unlawful condition, abate, correct, and eliminate such condition within the timeframe required by such notice. After receipt of a written notice of violation pursuant to subsection (a) hereof, it shall be unlawful for the owner, lessee, occupant, or person in responsible charge or in possession of a property or premises on which the unlawful condition exists to fail to abate, correct, or eliminate such condition within the timeframe as such written notice requires. Ten (10) days after due notice is given to any owner, agent, occupant, operator, contractor in charge, or lessee of any property, business, industry, institution, or construction site to remove litter from the premises, the City is authorized to clean up such property, by use of City employees or by employing an agent of the City, and bill such owner or agent for the abatement costs thereof. If the bill has not been paid within thirty (30) days, execution may be issued by the City against the property for the abatement cost, and such execution shall constitute a lien on the property, on a parity with liens for unpaid taxes, until the claim has been satisfied. Execution of the notice to remove litter shall be in writing and shall be in the form of a registered or certified letter. Nothing in this section shall be deemed to prevent the City from imposing the other remedies set forth herein for violation of this section.

- (3) In addition to the penalty provided in sub-Section (4) below, the Director may initiate injunctive, abatement, or any other appropriate action to prevent, enjoin, abate, or remove a violation of any of the provisions of this section.

- (4) Except where otherwise noted, a violation of any provision of this section shall constitute a civil violation that shall be enforced through the levying of a civil penalty, pursuant to Section 1-1-11 of this code of two hundred fifty dollars (\$250.00) for a first violation and four hundred dollars (\$400.00) for each subsequent violation of the same section or provision.

