

CITY COUNCIL

READ FILE COVER SHEET

Subject: **Ordinance 1118 concerning Amending City Code 120:
Nuisance pertaining to Graffiti**
(Public Hearing)

Date: **8/22/2023**

Notice: Any comments made after 5:00 p.m. on the Thursday before the Council Meeting will not be seen in the agenda packet.

Purpose:

- FYI
- Read and Comment as Needed**
- Action Required by September 5, 2023**
- In Confidential File Drawer

Approve:

Johnny Boker Yes No No Comment

Comment: _____

Casi Boyer Yes No No Comment

Comment: _____

Vicki Jones Yes No No Comment

Comment: _____

Jim Ringsaker Yes No No Comment

Comment: _____

Jason Robertson Yes No No Comment

Comment: _____

Tammy Lynn Schneegas Yes No No Comment

Comment: _____

Note: N/A

CITY COUNCIL
OF
HAVRE DE GRACE, MARYLAND

ORDINANCE NO. 1118

Introduced by _____ Council Member Boyer

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL OF HAVRE DE GRACE, MARYLAND, ADOPTED PURSUANT TO THE AUTHORITY OF ARTICLE XI-E OF THE MARYLAND CONSTITUTION, THE LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AND SECTIONS 33 AND 34 OF THE HAVRE DE GRACE CITY CHARTER TO AMEND CITY CODE SECTION 120: NUISANCE

On: August 21, 2023

at: 7:00 p.m.

Ordinance introduced, read first time, ordered posted and public hearing scheduled.

PUBLIC HEARING

A Public Hearing is scheduled for September 5, 2023 at 7:00 p.m.

EXPLANATION

Underlining indicates matter added to existing law.

[Bold Brackets] indicate matter deleted from existing law.

Amendments proposed prior to final adoption will be noted on a separate page with line references or by handwritten changes on the draft legislation.

30 **WHEREAS**, it is the City’s intent, through the adoption of this amendment to the City
31 Code, to provide local enforcement tools to protect public and private property from acts of graffiti
32 vandalism and defacement; and
33

34 **WHEREAS**, the City Council intends that amendments to the City Code provision do not
35 conflict with or supplant existing state criminal laws regarding the malicious destruction of
36 property; and
37

38 **WHEREAS**, the City Council desires to amend City Code Chapter 120: Nuisances, to
39 accommodate the City’s new graffiti policy; and
40

41 **WHEREAS**, the City Council desires to adopt the following amendments to City Code
42 Chapter 120: Nuisances, to effectively address graffiti in the City:
43

44 **AMENDMENTS TO CHAPTER 120: NUISANCES:**

45
46 § 120-1. Definitions.

47
48 As used in this chapter, the following terms shall have the meanings indicated:
49

50 **CHIEF OF POLICE**

51 The Chief of Police or Acting Chief of Police of the City of Havre de Grace.
52

53 **CONVICTION**

54 An adjudication of guilt in a criminal proceeding, including probation before judgment.
55

56 **GRAFFITI**

57 A permanent drawing, permanent painting, permanent mark, inscription, word, figure, painting,
58 image, or other defacements that are written, marked, etched, scratched, sprayed, drawn, painted,
59 or engraved on or otherwise affixed to any surface of public or private property without the
60 permission of the owner of the property, or, despite advance authorization, would be highly
61 offensive to a reasonable person in the community and is not otherwise protected by the state or
62 federal constitution.
63

64 **OWNER**

65 The title owner of the premises, and any person having a legal or equitable, ownership right, or
66 interest in the premises, as recorded in the Land Records of Harford County.
67

68 **PERSON**

69 An individual, joint owner, receiver, guardian, mortgagee, trustee, lien creditor, personal
70 representative, fiduciary, or representative of any kind, and any corporation, partnership, firm,
71 association, or other legal entity.
72

73 **PREMISES**

74 Any land, building, or other structure, or part thereof located within the limits of the City of Havre
75 de Grace.

76 **PUBLIC NUISANCE**

77 A premises constitutes a public nuisance where:

- 78
- 79 A. Criminal violations have occurred on, or emanated from, the premises, including any
- 80 portion of the laws governing controlled dangerous substances, firearms, stolen property,
- 81 prostitution, gambling, disorderly conduct, or any other violation of laws, including state,
- 82 county, or City ordinances, constituting an unreasonable interference with a right common
- 83 to the general public involving a significant interference with the public health, the public
- 84 safety, the public peace, the public comfort or the public convenience; and
- 85
- 86 B. Violations of such laws have occurred, on or emanating from the premises, on two or more
- 87 occasions within a twenty-four-month period of time prior to the commencement of a
- 88 proceeding pursuant to §§ 120-3 through 120-6 of this chapter, which have resulted in two
- 89 or more criminal convictions.
- 90
- 91 C. Graffiti has been placed on the premises at a location visible from a public right of way or
- 92 from a neighboring property and has not been abated within ten (10) days from the date of
- 93 a notice of removal of the graffiti issued by the City.
- 94

95 **REMOVAL**

96 With respect to a notice, citation or an order of abatement for “removal” of graffiti issued by City

97 Code enforcement, City police department, or a Court of competent jurisdiction, “removal” means,

98 where practicable, the painting over or washing off of graffiti to restore the affected property to a

99 condition substantially similar to the condition of the property before the application of the graffiti.

100 Where painting or washing would fail to restore the property to its original condition, such as non-

101 water-soluble media on an otherwise unpainted brick wall, removal shall mean removal by

102 chemical or mechanical means. Removal also means, in cases of deep etching into the property or

103 other situations where property cannot reasonably be restored by other means to a condition

104 substantially similar to what it was before the application of the graffiti, replacement of the

105 damaged property.

106 § 120-2. Obligations of owners.

- 107
- 108
- 109 A. Every premises owner within the City of Havre de Grace is responsible for monitoring his
- 110 or her premises and is required to take timely and appropriate action to prevent and eliminate
- 111 or remove a public nuisance from existing thereon, whether that public nuisance is created
- 112 by existing physical conditions or by nuisance-creating behaviors and regardless of whether
- 113 the public nuisance is created by or at the direction of the premises owner or by a third party.
- 114
- 115 B. Every premises owner within the City of Havre de Grace is presumed to have constructive
- 116 knowledge of the facts that can be discovered by a reasonable inquiry concerning the
- 117 condition of his or her premises and activities taking place on his or her premises. Every
- 118 owner is required to manage and control his or her premises, tenants, and other occupants in
- 119 a manner so as not to create or allow a public nuisance, or to create or allow his or her
- 120 premises, tenants, or other occupants to have an adverse impact on adjoining properties or
- 121 the neighborhood, or to violate the provisions of this chapter. Every owner shall remain liable

for violations of this chapter occurring on or emanating from his or her premises regardless of any contract or agreement with any party regarding the premises.

- C. Limitations and restrictions on scope of abatement authority. If the premises consist entirely of residential units or mixed residential and other use units, and the public nuisance has occurred solely within one or more units, abatement authority under this chapter is restricted to the units in which the public nuisance has occurred, and does not extend to any other unit in the premises.

§ 120-3. Public nuisance abatement authorized.

- A. Notice; Cease and desist order. Upon a finding by the Chief of Police, or their designee, through a visual inspection of the property, or pursuant to a citizen complaint, or if it involves a public nuisance based on behaviors taking place at the premises, through proof of certified court records, that two convictions have occurred under the circumstances described under Subsection B of the definition of "public nuisance" in § 120-1 of this chapter, the Chief of Police shall prepare a written notice, directed to the owner, setting forth the following:

- (1) A description of the proof, using photographs of graffiti, eyewitness statements, anonymous citizen complaints, and if related to a public nuisance defined under 120-1(b) of the "public nuisance" definition of this Chapter, [demonstrating] documentation that two convictions have occurred under the circumstances described therein; [under Subsection B of the definition of "public nuisance" in § 120-1 and the violation(s) of this chapter being charged;] and
- (2) A [An] notice and cease and desist order requiring the owner to abate the nuisance in or on the premises where the public nuisance exists, within 30 days following the service of the notice, by removing, discontinuing, ceasing, and desisting the public nuisance and the behavior, activities, and other circumstances giving rise to the public nuisance.
- (3) The **[order] notice** issued pursuant to this subsection shall be immediately posted on the premises and served on the owner as provided in § 120-3D.

- B. Additional orders. In the event the behavior, activities, and other circumstances giving rise to the public nuisance have not been removed or discontinued within the thirty-day period provided in § 120-3A(2) above, the Chief of Police or their designee shall file a written report with the Mayor of the City of Havre de Grace with a statement as the level of potential harm to the health, safety and welfare to the community if the public nuisance is not abated immediately. The Mayor, after consulting with the Chief of Police and the City Attorney, shall decide whether to issue an emergency Executive Order, prosecute the matter criminally, issue a civil citation, or seek an order for abatement from a court of competent jurisdiction. **[order the Chief of Police to abate the public nuisance through the use of such other means within the City's powers, including ordering the closing of the premises to the extent necessary to abate the public nuisance. In determining the appropriate order to be issued, the Mayor shall use reasonable discretion and consider the circumstances present in each case, including the nature and severity of the underlying convictions, any efforts by the owner of the premises to comply with the cease and desist order, any**

168 irreparable loss or detriment that might occur to the owner of the premises, and the
169 interests of the public.]

170
171 C. Notice and opportunity to be heard. **[Prior to carrying out the order authorized by § 120-**
172 **3B, the City shall prepare a]** The written notice and cease and desist order shall set [setting]
173 forth the following:

- 174
175 (1) The violations being charged and the underlying convictions, if any;
- 176 (2) The proposed abatement remedy **[ordered to be taken by the Chief of Police]**;
- 177 (3) The owner's opportunity to request a prompt hearing to determine whether a public
178 nuisance exists in or from the premises, and if so, to determine whether the
179 recommended abatement is the appropriate abatement remedy to be taken;
- 180 (4) That the request for hearing must be made to the City, in writing, within 5 **[10]** days
181 from the date of service of the notice; and
- 182 (5) Such other particulars as may be appropriate.

183
184 D. Service and posting of notice.

- 185
186 (1) The notice prescribed by § 120-3C shall be served by certified mail, return receipt
187 requested, [in accordance with the Maryland Rules of Procedure] and by first class
188 US Mail, postage paid, on the owner, any tenant, any person in actual possession or
189 occupancy of the premises, and any other person having an interest in the premises, as
190 disclosed by the Land Records of Harford County, the City's tax records, or from other
191 public records that [is] are otherwise known or readily ascertainable.
- 192 (2) In addition, the notice shall be immediately posted in a conspicuous place on the
193 premises.

194
195 E. Scheduling of a requested hearing.

- 196
197 (1) If an owner requests a hearing under § 120-3C, the City shall prepare a written notice
198 setting forth the following:
- 199 (a) That a hearing will be held to determine whether a public nuisance exists in, on,
200 or from the premises, and if so, to determine the appropriate abatement remedy
201 to be taken;
- 202 (b) The date, place, and time of the hearing, which shall be set no more than 30 days
203 following the date of the notice with a temporary stay of the cease and desist order
204 pending the outcome of the hearing;
- 205 (c) The right of the owner or any person having an interest in the premises to be heard
206 and to be represented by an attorney at the hearing, to present evidence, and cross-
207 examine witnesses;
- 208 (d) The possible consequences of failure to appear; and
- 209 (e) Such other particulars as may be appropriate.

210 (2) The notice prescribed by this section shall be served by first class mail, or hand
211 delivered to the owner, any tenant, any person in actual possession or occupancy of the
212 premises, and any other person having an interest in premises, as disclosed by the Land
213 Records of Harford County, or that is otherwise known or readily ascertainable. In
214 addition, the notice shall be immediately posted in a conspicuous place on the premises.
215

216 F. Stay of proceedings.

217
218 (1) **[Except as provided in § 120-3F(2) below,]** Unless an emergency Executive Order is issued
219 by the Mayor, a request for hearing stays the enforcement of the **[Mayor's] cease and desist**
220 **order**

221
222 (2) If the Chief of Police or an administrative officer of the City certifies to the presiding officer
223 facts stated in the certificate that indicate to the presiding officer that a stay of the cease and
224 desist order would cause imminent peril to life or property, the presiding officer may
225 recommend that the Mayor issue an emergency Executive Order to abate the public nuisance.
226 **[stay the enforcement of the Mayor's order only for due cause shown by the owner.]**
227

228 § 120-4. Conduct of hearings; evidentiary matters.

229
230 A. All contested hearings held under this chapter shall be held in City Hall and shall be open to
231 the public. A record of such hearings shall be kept by typed transcript or transcribeable
232 audiotape. The presiding officer may postpone or continue the hearing if the interests of justice
233 so require.

234
235 B. An independent individual designated by the Mayor shall serve as presiding officer, who shall
236 apply the law and determine the facts. The existence of the public nuisance shall be proved by
237 a preponderance of the evidence.
238

239 C. The following evidentiary rules apply to all contested hearings held under this chapter:

240
241 (1) In general. Each party in a contested case shall offer all of the evidence that the party
242 wishes to have made part of the record.

243 (2) Probative evidence. The presiding officer may admit probative evidence that reasonable
244 and prudent individuals commonly accept in the conduct of their affairs and give
245 probative effect to that evidence.

246 (a) It shall be prima facie evidence that a public nuisance exists on a premises upon the
247 second conviction for a violation of any of the provisions of the laws governing the
248 offenses enumerated in, and under the circumstances **[described in,]** defined as a
249 “public nuisance” under § 120-1A [(6)] and B above, or if graffiti exists and has
250 not been removed within ten days of receiving public notice. Convictions may be
251 proved by certified or true test copies of court records.

252 (b) Evidence of the general reputation of the premises is admissible to corroborate
253 testimony based on personal knowledge or observation, or evidence seized during

254 the execution of a search and seizure warrant, but shall not, in and of itself, be
255 sufficient to establish the existence of a public nuisance under this subsection.

256 (c) Evidence that the public nuisance had been discontinued at the time of the filing of
257 the notice under § 120-3C or at the time of the hearing does not bar the imposition
258 of appropriate relief, including imposition of fines for each instance of public
259 nuisance.

260 (d) The existence of a public nuisance may be established, and appropriate relief
261 ordered under this chapter, without proof that an owner had actual knowledge of
262 the existence of the facts constituting the public nuisance prior to the issuance of
263 the notice and cease and desist order, or that the owner acquiesced or participated
264 therein.

265
266 (3) Hearsay. Evidence may not be excluded solely on the basis that it is hearsay.

267 (4) Exclusions. The presiding officer may exclude evidence that is incompetent, irrelevant,
268 immaterial, unduly repetitious, or governed by a privilege recognized by law.

269 (5) Scope of evidence. On any genuinely contested material issue, each party is entitled to
270 call witnesses, offer evidence, including rebuttal evidence, cross-examine any witness
271 that another party calls, present summation, and argument.

272 (6) Documentary evidence. The presiding officer may receive documentary evidence in the
273 form of copies or excerpts.

274 (7) Sequestration of witnesses. The presiding officer shall have the power to sequester
275 witnesses at the request of any party to the proceeding.

276 (8) Compulsory attendance of witnesses. If in the event it becomes necessary in the interests
277 of justice that a material witness be required to attend the hearing by subpoena, the
278 presiding officer may postpone or continue the hearing if the interest of justice so require
279 to allow the party a reasonable time to obtain the attendance of such witness through any
280 proper available legal channels.

281
282 § 120-5. Findings and enforcement.
283

284 A. Following the conclusion of the hearing, the presiding officer shall promptly render a decision
285 and the reasons therefor. The presiding officer shall immediately notify all parties to the
286 proceeding of the decision, including the Mayor and the Chief of Police. The decision shall be
287 made orally at the conclusion of the hearing and transcribed as part of the record. The presiding
288 officer may also issue the reasons articulated for the decision in written form within no more
289 than 10 days following the conclusion of the hearing.
290

291 B. No public nuisance established. If the presiding officer finds that the existence of a public
292 nuisance has not been established by a preponderance of the evidence at the hearing, the
293 proceeding shall be closed.
294

295 C. Public nuisance established. If the presiding officer finds that the existence of a public nuisance
296 has been established by a preponderance of the evidence at the hearing, an order of **[the Mayor**

297 **shall be issued providing for the abatement]** of the public nuisance shall be issued by the
298 hearing examiner, which shall be posted on the premises and given to those persons listed, and
299 in the manner set forth, in § 120-3D of this chapter. On and after the 10th business day
300 following the posting, **[and upon the written directive of the Mayor,]** the order may be
301 enforced by the Chief of Police or their designee.

302
303 D. Closing order. If the order directs the closing of the premises, such closing shall be for such
304 period and to the extent necessary to abate the public nuisance **[as the Mayor reasonably may**
305 **direct]**, but in no event shall the closing be for a period of more than one year from the date of
306 the closing. Prior to such closing, the premises shall be inspected by the City Code Inspector
307 and a written inventory made of the contents of the premises. The proper representatives of the
308 City may enter the premises during the closing to inspect the premises.

309
310 E. Owner's continuing obligations during closing. During the closing, the owner of the premises
311 shall be required to maintain the premises in accordance with all City Codes, keep the premises
312 safe and orderly, and secure, and continue to keep and maintain all insurance on the premises
313 in effect prior to the cease and desist order with proof of such insurance to be provided to the
314 City Director of Administration.

315
316 F. Banishment option for elderly and disabled persons. If the **[presiding] hearing** officer finds
317 that the owner of the premises, due to age or disability, is without actual knowledge of the
318 existence of the public nuisance on the premises, such owner may obtain a stay of the closing
319 order by causing the public nuisance to be permanently abated by causing the person or persons
320 who are or were responsible for maintaining the public nuisance on the owner's premises to
321 permanently leave and not return to the premises. By so doing, the owner shall be deemed to
322 consent to allow the proper representatives of the City to enter the premises and to inspect the
323 premises during reasonable hours and upon prior notice. If the public nuisance is abated to the
324 reasonable satisfaction of the Chief of Police for a period of one (1) year, the closing order
325 **[proceeding]** shall automatically terminate. **[be closed.]**

326
327 G. Nature of closing. A closing directed pursuant to this chapter is not an act of possession,
328 ownership, or control by the City of Havre de Grace.

329
330 H. Use and occupancy permit. **[Prior to the termination]** After the termination of a closing order,
331 the owner of the premises shall apply for and obtain an applicable use and occupancy permit
332 from the City before the premises may be occupied.

333
334 § 120-6. Vacating order to close.

335
336 The **[Chief of Police] hearing officer may [shall]** vacate the closing provisions of the order if an
337 interested person:

338
339 A. Posts a bond for the period of the ordered closing in an amount of the full assessed value of
340 the premises as shown in the tax assessment records of the Maryland State Department of
341 Assessments and Taxation, prorated for the proportional assessment of units closed if less than
342 all units therein are closed, but not to exceed \$1,000,000 in any case; and

343 B. Submits adequate proof sufficient in the judgment and discretion of the **[Chief of Police]**
344 hearing officer that the behavior, activities, and other circumstances giving rise to the public
345 nuisance have been discontinued and will not be maintained or permitted in any unit of the
346 premises during the period of the ordered closing.

347
348 § 120-7. Notice to owners and tenants.
349 Prior to the effective date of this chapter, the Mayor and City Council of Havre de Grace shall
350 prepare a written notice outlining the provisions of this chapter. Such notices shall be contained
351 on the City's Web site, distributed to all property owners in the City, and a reasonable number of
352 copies shall be made available for free to the public at City Hall, the City Police Station, the public
353 library, and disseminated through the media.

354
355 § 120-8. Rules and regulations.
356 Prior to the effective date of this chapter, the **[Chief of Police]** the Director of Administration or
357 their designee shall promulgate procedures, rules, and regulations that may be necessary or proper
358 to effectuate the purpose and the provisions of this chapter, including reasonable means of advising
359 premises owners or their agents of any first or second arrest or conviction for the criminal conduct
360 defined in § 120-1 of this chapter occurring in those premises which the **[Chief of Police]** Director
361 of Administration determines will or may be subject to this chapter, and the procedures and terms
362 for the posting of bonds.

363
364 § 120-9. Judicial review.
365 Any person aggrieved by any final decision made pursuant to this chapter, has the right of appeal
366 to the Circuit Court for Harford County as may be provided by law for appeals from municipal
367 administrative actions.

368
369 § 120-10. Prohibited conduct; penalties.
370
371 A. Destruction, etc., of posted order. Any person who intentionally destroys, removes, or defaces
372 an order posted by the **[Chief of Police]** City under authority of this Chapter 120, shall upon
373 conviction, be guilty of a misdemeanor punishable by a fine of not more than \$300 or
374 imprisonment for not more than 30 days, or both.

375
376 B. Failure to obey order.
377
378 (1) Any person: (i) who intentionally disobeys any proper order issued **[by the Chief of**
379 **Police or his designee]** under this chapter; or (ii) who uses or occupies or permits any
380 other person to use or occupy any premises ordered closed **[pursuant to proceedings**
381 **under this chapter]**, shall, upon conviction, be guilty of a misdemeanor punishable by
382 a fine of \$1,000 or imprisonment for not more than one year, or both.

383 (2) Each day a violation of this subsection occurs or continues is a separate offense.
384

385 C. Imprisonment in default of fine and costs. Imprisonment in default of fine and costs shall be
386 regulated by the provisions of Article 38, Section 4 of the Annotated Code of Maryland, as the
387 same may be amended from time to time.
388

389 § 120-11. Applicability and interpretation.

390

391 A. Application. The provisions of this chapter shall apply generally to all property throughout the
392 City of Havre de Grace and up to one-half mile outside of municipal limits as permitted by the
393 Local Government Article of the Maryland Annotated Code Section 5-207, wherein any of the
394 nuisances hereinafter specified are found to exist; provided, however, that any condition which
395 would constitute a violation of this chapter, but which is duly authorized under any City, state
396 or federal law, shall not be deemed to violate this chapter.

397

398 B. Chapter to provide needed law enforcement tools. The enforcement of abatement procedures
399 by the Chief of Police and the penalties imposed pursuant to this chapter:

400

401 (1) Constitute additional methods of law enforcement to the fullest extent permitted by law
402 in response to the proliferation of the above described public nuisances; and

403 (2) Are an exercise of the municipal police powers that are reasonable and necessary in order
404 to protect the health, safety, and general welfare of the people of the City of Havre de
405 Grace.

406

407 C. Construction. This chapter shall be construed liberally in accordance with its remedial
408 purposes. The definition of public nuisances herein shall not be subject to any restrictions or
409 limitations upon public or private nuisance actions at common law. This chapter is civil in
410 nature and none of its provisions should be interpreted as punishment. This chapter is intended
411 to complement and be compatible with the provisions of § 14-120 of the Real Property Article
412 of the Annotated Code of Maryland, as the same may be amended from time to time. Nothing
413 in this chapter is intended to conflict with, supersede, or otherwise interfere with the provisions
414 of § 14-120 of the Real Property Article of the Annotated Code of Maryland, the Local
415 Government Article of the Annotated Code of Maryland, or any other State or federal law.

416

417 § 120-12. Severability.

418 If any section, sentence, clause or phrase of this chapter is held invalid or unconstitutional by any
419 court of competent jurisdiction, then said ruling shall not affect the validity of the remaining
420 portions of this chapter.

421

422 § 120-13. Availability of other remedies.

423 This chapter does not limit the availability of any other legal or equitable remedies, including, but
424 not limited to, those existing legal and equitable remedies for nuisance abatement of any type under
425 City, state, or federal law.

426

427 **NOW THEREFORE**, it is this ____ day of _____, 2023 determined, decided and ordained by
428 the Mayor and City Council that the City Code be amended by amending Section 120: Nuisances
429 as set forth above.

430

431 ADOPTED by the City Council of Havre de Grace, Maryland this ____ day of _____, 2023.

432

433 SIGNED by the Mayor and attested by the Director of Administration this ____ day of _____,
434 2023.

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449
450

ATTEST:

MAYOR AND CITY COUNCIL
OF HAVRE DE GRACE

Stephen J. Gamatoria
Director of Administration

William T. Martin
Mayor

Introduced/First Reading: 8/21/2023
Public Hearing:
Second Reading/Adopted:
Effective Date:

Public Hearing