

orals  
2-15-07

**Ignacio Pessoa/Alex**  
02/16/2007 11:57 AM

To Jackie Henderson/Alex@Alex  
cc  
bcc  
Subject Fw: From the Mayor: Proposed Smoke Free Restaurant Act

Per your request. Sorry, I should have included you, but I thought Bill was going to bring some hard copies with him.

----- Forwarded by Ignacio Pessoa/Alex on 02/16/2007 11:55 AM -----

**Ignacio Pessoa/Alex**  
02/13/2007 10:55 AM

To City Council  
cc Jim Hartmann/Alex@Alex, Michele Evans/Alex@Alex, Mark Jinks/Alex@Alex, Bernard Caton/Alex@Alex, Brian Hannigan/Alex@Alex, Richard Josephson/Alex@ALEX  
Subject From the Mayor: Proposed Smoke Free Restaurant Act

Mayor Euille has asked that the following proposal be circulated for discussion during oral presentations tonight.

This proposal, if adopted, would become part of the Zoning Ordinance, and so would need a "text-amendment" public hearing in front of the Planning Commission, as well as before the Council, in advance of the adoption of an ordinance.

Thus, if Council wishes to proceed with the proposal, Council could either refer the proposal to the Commission tonight, or docket it for the next meeting to make the referral.

Please let me know if you have any questions.

----- Forwarded by Ignacio Pessoa/Alex on 02/13/2007 10:43 AM -----

**Ignacio Pessoa/Alex**  
02/12/2007 12:55 PM

To Bill Euille  
cc  
Subject Proposed Smoke Free Restaurant Act

Bill:

You have asked, given the General Assembly's likely failure to adopt a comprehensive no-smoking ban in restaurants, or to grant local governments the authority to do so on an individual basis, how the City might best proceed to require or encourage restaurants in the City to become smoke-free.

As you are aware, current Virginia law prohibits the City from adopting a direct ban on all smoking in restaurants and bars, of the type recently adopted in the District of Columbia and Montgomery County. Under a direct smoking ban, a patron who smokes in a restaurant him- or herself commits a violation of the no-smoking ordinance.

Nothing in Virginia law, however, prevents a restaurant owner from prohibiting smoking throughout the establishment. A patron who disregards such an owner-imposed ban and refuses to leave the premises commits a trespass, and not a no-smoking violation.

There appears to be abundant evidence of the harms caused by second hand smoke, the inadequacy of many existing restaurants' no-smoking policies to protect nonsmoking patrons and workers from second hand smoke, and accumulating evidence that in a metropolitan area such as this, a jurisdiction where smoking is permitted in restaurants and bars is likely, overall, to suffer a competitive disadvantage vis-a-vis jurisdictions which have a uniform ban.

Based on these factors, I conclude that the City does have the authority, as part of its Zoning Ordinance, to require that restaurants and bars in the City operate as smoke-free establishments. Accordingly, I have drafted for Council's discussion a proposed ordinance to amend the Zoning Ordinance to require the following:

1. All new restaurants and bars must agree, as a condition of their SUP, to operate as smoke-free establishments.
2. Every existing restaurant or bar governed by an existing SUP, which seeks an SUP amendment, must agree to operate as a smoke-free establishment, within three months of the approval of the amendment.
3. Every existing restaurant and bar which uses the public right-of-way for outdoor seating must agree to operate as a smoke-free establishment within three months after the effective date of the ordinance.
4. Every "grandfathered" restaurant, i.e., one which predates the SUP requirement, must agree to operate as a smoke-free establishment within three months of the effective date of the ordinance, or will lose its favored "grandfathered" status, and become a non-conforming use, subject to restrictions on replacing and upgrading its equipment, and to a seven-year abatement period.
5. Every existing restaurant which operates pursuant to an existing SUP, must agree to operate as a smoke-free establishment within three months of the effective date of the ordinance, or will become a non-conforming use, subject to restrictions on replacing and upgrading its equipment, and to a seven-year abatement period.
6. Every existing restaurant which changes its ownership, name, liquor license holder, or type or style of cuisine, will be treated as a new restaurant.

The rationale for the proposed regulations is that restaurants which receive a zoning permit or some other benefit from the City must, as a condition of receiving or retaining that permit or benefit, agree to operate as a smoke-free establishment. Existing restaurants which do not so agree may continue to operate, but will be severely restricted, and in some cases effectively precluded, from making any significant changes or improvements to the restaurant, and may be required to cease existing operations after seven years.

Please let me know if you have any questions at this time.

Ignacio



Smoke Free Restaurant Act.pdf

1  
2 CITY OF ALEXANDRIA  
3 PROPOSED SMOKE-FREE RESTAURANT ACT

4 [THE FOLLOWING IS ALL NEW LANGUAGE.]  
5

6 Section 2-100 Definitions.

7  
8 2-190.1 Restaurant, smoke-free. A restaurant which does not permit patron or employee  
9 smoking within or on the premises, including without limitation in any bar,  
10 lounge, dining, patio, outdoor seating, waiting, storage or other area, except for  
11 exterior sidewalks and parking areas.  
12

13 2-193.1 Smoking. The act of smoking or carrying a lighted or smoldering cigar, cigarette  
14 or pipe of any kind, or lighting a cigar, cigarette or pipe of any kind.  
15

16 Section 7-2200 Smoke-free restaurants required.

17  
18 7-2201 Any new restaurant for which a special use permit pursuant to Section 11-500, or  
19 for which an administrative permit pursuant to Section 6-600, Section 6-700 or  
20 Section 6-800, or for which a building permit pursuant to Section 4-700 of this  
21 ordinance, is approved after [effective date] shall, as a condition of such permit,  
22 agree to operate as a smoke-free restaurant.  
23

24 7-2202 Any restaurant existing on [effective date] for which a special use permit pursuant  
25 to Section 11-500, or for which an administrative permit pursuant to Section 6-  
26 600, Section 6-700 or Section 6-800, or for which a building permit pursuant to  
27 Section 4-700 of this ordinance, is approved or amended after [effective date]  
28 shall, as a condition of such permit, agree to operate as a smoke-free restaurant,  
29 within three months after the approval of such permit.  
30

31 7-2203 Every restaurant with outdoor seating located in the public right-of-way existing  
32 on [effective date] shall, as a condition of the continued right to use the public  
33 right-of-way, agree to operate as a smoke-free restaurant within three months after  
34 [effective date].  
35

36 7-2203 Every grandfathered restaurant existing on [effective date] shall, as a condition of  
37 the continued right to be classified as a grandfathered use, agree to operate as  
38 a smoke-free restaurant within three months of [effective date].  
39

40 7-2204 Every restaurant existing on [effective date] for which a special use permit  
41 pursuant to Section 11-500, or for which an administrative permit pursuant to  
42 Section 6-600, Section 6-700 or Section 6-800, or for which a building permit  
43 pursuant to Section 4-700 of this ordinance, has been approved, shall agree to

1 operate as a smoke-free restaurant within three months of [effective date].  
2

3 7-2205 Every restaurant which is not a smoke-free restaurant as required pursuant to  
4 Section 7-2203 and Section 7-2204 shall be classified as a nonconforming use  
5 subject to Section 12-214 of this ordinance.  
6

7 7-2206 For purposes of this Section 7-2200, "a restaurant existing on [effective date]"  
8 shall not be deemed to include a new restaurant at the same location as a  
9 restaurant which operated on [effective date]. Indicia of a new restaurant shall  
10 include, without limitation, a change in ownership or control, a change in name, a  
11 change in Virginia Alcoholic Beverage Control Board licensee, or a change in  
12 type or style of cuisine.  
13

14 7-2207 The provisions of this Section 7-2200 shall preempt any contrary provisions of the  
15 City Code or this ordinance.  
16