

City of Alexandria, Virginia

MEMORANDUM

DATE: FEBRUARY 3, 2011

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO AMEND THE CITY CODE TO EXEMPT BREASTFEEDING FROM THE ORDINANCE REGARDING INDECENT EXPOSURE

ISSUE: Consideration of an ordinance to amend the City Code to exempt breastfeeding from the ordinance regarding indecent exposure.

RECOMMENDATION: That City Council introduce the ordinance (Attachment 1) and pass it on First Reading, and schedule the ordinance for Second Reading and Final Passage on Saturday, February 12, 2011.

DISCUSSION: Vice Mayor Donley and Councilman Krupicka have requested that the City Manager and City Attorney respond to several recommendations to support mothers in Alexandria who wish to breastfeed their children (Attachment 2). The proposed ordinance was prepared in response to their request that the City's Indecent Exposure Ordinance be amended so that it clearly states that breastfeeding a child in a public place or at a place where others are present is not in violation of the City Code. As noted in their memorandum, we are not aware of a case where someone in Alexandria has been cited for breastfeeding. The amendment would make it clear that this is not a code violation and would help to establish breastfeeding as a positive practice for both mothers and children in Alexandria.

The Partnership for a Healthier Alexandria has established promotion of breastfeeding as an important objective, and they support this code amendment. I recommend that Council introduce the ordinance, pass it on first reading and set it for public hearing and consideration on Saturday, February 12.

With respect to the other issues raised in the joint memorandum, City staff is working on identifying locations in City buildings that can be used to comply with the provisions of the Patient Protection and Affordable Care Act of 2010 and the subsequent amendments to the Fair Labor Standards Act. Staff from the City Manager's Office, the Human Resources Department, the General Services Department and the Health Department will be working together to follow-up on room identification and policy development to ensure that the City is in compliance with the regulations. In the interim employees can contact our Human Resources Department, and staff there will ensure that we accommodate the needs of nursing mothers as needed.

The Partnership for a Healthier Alexandria's resolution promoting breastfeeding will be docketed for Council consideration at our February 22 legislative meeting.

We are in full support of these and other efforts to promote the health and well-being of our community members, and will report back to Council on our progress in this area.

ATTACHMENTS:

Attachment 1: Ordinance

Attachment 2: January 21, 2011 Memorandum from Vice Mayor Kerry J. Donley and Councilman Rob Krupicka.

STAFF:

Michele Evans, Deputy City Manager;

Cheryl Orr, Director, Department of Human Resources

Jeremy McPike, Acting Director, Department of General Services

Dr. Stephen Haering, Director, Health Department

Introduction and first reading: 2/8/11
Public hearing: 2/12/11
Second reading and enactment: 2/12/11

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 13-1-17 (INDECENT EXPOSURE) of Chapter 1 (GENERAL OFFENSES) ,Title 13 (MISCELLANEOUS OFFENSES) of the Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

An amendment to specifically exempt breastfeeding from the ordinance regarding indecent exposure.

Sponsor

Kerry J. Donley, Vice Mayor
Councilman Rob Krupicka, City Councilman

Staff

James L. Banks, Jr. City Attorney

Authority

§ 3.04(g), Alexandria City Charter

Estimated Costs of Implementation

None

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

None

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ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Section 13-1-17 (INDECENT EXPOSURE) 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 13-1-17 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. 13-1-17 Indecent exposure.

It shall be unlawful for any person to knowingly, voluntarily and intentionally appear in public or in a public place or in a place open to the public, or open to public view in a state of nudity, or to employ, encourage or procure another person to so appear. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor. As used herein, "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

Nothing contained herein shall be construed to apply to the breastfeeding of a child in a public place, the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, act or drama as differentiated from commercial or business advertising, promotion or exploitation of nudity for the purpose of advertising, promotion, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall.

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

WILLIAM D. EUILLE
Mayor

Introduction: 2/8/11
First Reading: 2/8/11
Publication:
Public Hearing:
Second Reading:
Final Passage:



City of Alexandria, Virginia

301 King Street, Suite 2300
Alexandria, Virginia 22314



Attachment 2

Date: January 21, 2011

Jim Hartman, City Manager
James Banks, City Attorney

From: Vice Mayor Kerry J. Donley 
Councilman Rob Krupicka 

CC: Alexandria City Council
Alexandria Health Department
Partnership for a Healthier Alexandria
Women's Commission

Re: Text Amendment – Indecent Exposure Ordinance & City Policy Regarding Breastfeeding Mothers

The purpose of this memo is to request three items related to support mothers in Alexandria that wish to breastfeed their children. The first item relates to Alexandria's Indecent Exposure Ordinance. The second relates to city policies related to breastfeeding mothers. And the third is a request to docket for the Council a resolution regarding the promotion and support of breastfeeding in Alexandria.

First, we have been approached by the Partnership for a Healthier Alexandria concerning a text amendment to the Indecent Exposure Ordinance which would clearly state that breastfeeding a child in a public place or a place where others are present. While we are not sure that breastfeeding has been cited in the city, we believe this amendment will not only remove any ambiguity in the ordinance, but it will more firmly establish breastfeeding as a positive practice for both mother and child here in Alexandria.

Breastfeeding has been shown to yield healthier children later in life due to inherited immunities, but it has also been shown to prevent obesity in children as they grow older. Additionally, breastfeeding has also been shown to have healthy benefits to mothers as well such as a lower incidence of breast cancer.

As part of their mission, the Partnership for a Healthier Alexandria has established promotion of breastfeeding has an important objective, and they have proposed this amendment as a potential step toward the promotion of breastfeeding in Alexandria. We concur that this amendment is a positive step forward.

Attached is proposed language from the Partnership for your consideration. We hope this amendment can be prepared quickly for Council's consideration in March or April.

Second, we believe the city of Alexandria should be a leader in workplace policies related to breastfeeding mothers. Earlier this year Congress passed the Patient Protection and Affordable Care Act of 2010 ("PPACA"), which amended the Fair Labor Standards Act to provide breaks for nursing mothers to express milk. As yet, the City does not have a policy to address implementation of this new legislation. We'd like to request the City Manager and staff develop such a policy so that all City staff is aware of the regulations and how they can ask for assistance. One element to consider is the identification of a room in each City operated building so that when a nursing mother (either City staff or visitor to the building) has a need to nurse, they can be directed to a suitable location that does not include the bathroom.

Third, as this policy is developed, we'd like to request staff evaluate other ways we can promote the health benefits of breastfeeding. This effort is consistent with our healthy food initiatives and our overall efforts to improve the health and well-being of our community. As such, we'd like to request that the City Manager docket the attached resolution, prepared by the Partnership for a Healthier Alexandria, for consideration by the City Council as soon as practical.

As background, we have included several links for your information, including a recent Washington Post article regarding actions for employees at the Federal level. This is an issue that makes sense from a morale and retention standpoint as well as being reflective of the new legislation.

SEC. 4207. REASONABLE BREAK TIME FOR NURSING MOTHERS.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended by adding at the end the following:

“(r)(1) An employer shall provide—

“(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and

“(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

“(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

“(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.

“(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.”

Virginia Resolution on Employers to Recognize Benefits of Breastfeeding (2002)

<http://leg1.state.va.us/cgi-bin/legp504.exe?ses=021&tvp=bil&val=hj145>

Recent Washington Post article on breastfeeding policy for federal workplace

<http://www.washingtonpost.com/wp-dyn/content/article/2010/12/21/AR2010122105385.html?referrer=emailarticle>

Breastfeeding Laws (federal and state)

US Breastfeeding Committee Information

<http://www.usbreastfeeding.org/Workplace/WorkplaceSupport/WorkplaceSupportinHealthCareReform/tabid/175/Default.aspx>

The Business Case for Breastfeeding:

<http://www.womenshealth.gov/breastfeeding/government-programs/business-case-for-breastfeeding/>

http://www.businessgrouphealth.org/pdfs/FINAL%20HRSA%20Pres_NBGH_Webinar_BusCase.pdf

Additional articles of interest

http://www.cdc.gov/breastfeeding/pdf/bf_guide_2.pdf

http://www.breastfeedingtaskforla.org/pdf/BF_Policy_Brief_FINAL.pdf

Supporting Breastfeeding in the City of Alexandria

A) CURRENT LAW -- CITY OF ALEXANDRIA: INDECENT EXPOSURE ORDINANCE, Sec. 13-1-17

It shall be unlawful for any person to knowingly, voluntarily and intentionally appear in public or in a public place or in a place open to the public, or open to public view in a state of nudity, or to employ, encourage or procure another person to so appear. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor. As used herein, "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

Nothing contained herein shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, act or drama as differentiated from commercial or business advertising, promotion or exploitation of nudity for the purpose of advertising, promotion, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall.

B) PROPOSED REVISED LAW -- CITY OF ALEXANDRIA: INDECENT EXPOSURE ORDINANCE, Sec. 13-1-17.

Changes in red.

It shall be unlawful for any person to knowingly, voluntarily and intentionally appear in public or in a public place or in a place open to the public, or open to public view in a state of nudity, or to employ, encourage or procure another person to so appear. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor. As used herein, "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

Nothing contained herein shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, act or drama as differentiated from commercial or business advertising, promotion or exploitation of nudity for the purpose of advertising, promotion, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall. *Additionally, no person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.*

Justification for the Revised City Ordinance

- The City of Alexandria's indecent exposure ordinance, Sec. 13-1-17, does not have a specific exemption for breastfeeding.
- Virginia statute does explicitly exempt breastfeeding, Code of Virginia § 18.2-387.
- Current Virginia law provides that *"No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present."* Code of Virginia § 18.2-387. And other state statutes evidence the State's support for breastfeeding. For example, Code § 2.2-1147.1 specifically allows for breastfeeding on state property, and Va. Code Ann. § 8.01-341.1 exempts breastfeeding mothers from jury duty.
- Thus the City Ordinance would seem to contravene the general policy of state statutes as given by the General Assembly. As such, any prohibition of breastfeeding in public under the City Ordinance would probably be found invalid or void, meaning a person breastfeeding in Alexandria would not be subject to indecent exposure laws.
- For consistency with State law and policy, and to show the City's recognition of and support for breast feeding, the City of Alexandria should adopt the Propose Revised Ordinance which makes it explicit that breastfeeding is not considered indecent exposure.

RESOLUTION No. _____

The Alexandria City Council hereby finds and declares as follows:

WHEREAS, Inova Health System's 2007 survey found that over 40% of Alexandria children and teens are overweight or obese with 70% of children and teens not eating enough fruits and vegetables; and

WHEREAS, the *Partnership for a Healthier Alexandria's* ACHIEVE Planning Team received grants from the Centers for Disease Control and Prevention and Kaiser Permanente to work with policy and grass-roots leaders to implement policy, systems, and environmental changes to prevent obesity, including supporting and promoting breastfeeding; and

WHEREAS, [current month] WIC clients' breastfeeding rates include only X% exclusively breastfeeding; and

WHEREAS, preventing obesity begins at birth through breastfeeding. The Centers for Disease Control and Prevention recognizes that the initiation of breastfeeding is associated with a reduced risk of pediatric overweight; and

WHEREAS, the Alexandria City Council acknowledges the U.S. Surgeon General's report on the health and economic importance of breastfeeding which concludes that:

- a) Breastfeeding is one of the most important contributors to infant health;
- b) Breastfeeding provides a range of benefits for the infant's growth, immunity, and development;
- c) Breastfeeding improves maternal health and contributes economic benefits to the family, health care system, and workplace; and

WHEREAS, City Council acknowledges that both Commonwealth of Virginia and the United States have passed laws which to help redress the low breastfeeding rates and duration in the United States, including the social and workplace factors that can make it difficult for women to breastfeed:

- a) Virginia Code § 2.2-1147.1 (2002) guarantees a woman the right to breastfeed her child on any property owned, leased or controlled by the state.
- b) Virginia's House Joint Resolution 145 (2002) encourages employers to recognize the benefits of breastfeeding and to provide unpaid break time and appropriate space for employees to breastfeed or express milk; and

WHEREAS, Section 4207 of the Patient Protection and Affordable Health Care Act amended the Fair Labor Standards Act requiring employers to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk."

WHEREAS, the Alexandria City Council declares that the achievement of optimal infant and child health, growth, and development requires protection and support for the practice of breastfeeding. The City Council finds that:

- a) The American Academy of Pediatrics recommends exclusive breastfeeding for the first six months of a child's life and breastfeeding with the addition of solid foods to continue for at least twelve months, and that arrangements be made to provide expressed breast milk if the mother and child must separate during the first year.
- b) Breast milk contains all the nutrients a child needs for optimal health, growth, and development, many of which can only be found in breast milk;
- c) Approximately two-thirds of women who are employed when they become pregnant return to the work force by the time their children are six months old;
- d) Employers benefit when their employees breastfeed. Breastfed infants are sick less often; therefore, maternal absenteeism from work is lower in companies with established lactation programs. In addition, employee medical costs are lower and employee productivity is higher;
- e) According to a survey of mothers, most want to breastfeed but discontinue sooner than they hope, citing lack of societal and workplace support as key factors limiting their ability to breastfeed; and

WHEREAS, the Alexandria Health Department, recognizing the importance of breastfeeding and promoting optimal nutrition for pregnant women and young children, instituted a breastfeeding support policy in January 2011 as a model for the Alexandria community. The Health Department has designated rooms for clients and staff to breastfeed in its King Street and Casey Clinics; and

WHEREAS, the City Council supports the right of a mother to breastfeed in public and at work without harassment or inconvenience; and

WHEREAS, the City Council encourages local governmental agencies, and private and public sector businesses to provide convenient, sanitary, safe, and private rooms for mothers and unpaid break time to express breast milk; and

WHEREAS, August is National Breastfeeding Month.

NOW, THEREFORE, BE IT RESOLVED that the Alexandria City Council:

1. AFFIRMS its strong support of breastfeeding, be it in the home, public places, or the work place;
2. AFFIRMS its desire to encourage women to breastfeed;
3. Directs the City Manager to develop a breastfeeding support policy for City employees, modeled after the Alexandria Health Department's policy;
4. PROVIDES the right to breastfeed to every woman her child on any property owned, leased or controlled by the city.
5. AMENDS the City's indecent exposure ordinance, Sec. 13-1-17, to explicitly except breastfeeding.
6. ENCOURAGES businesses and other community-based organizations to recognize the benefits of breastfeeding and provide unpaid break time and appropriate space for employees to breastfeed or express milk by developing their own breastfeeding policies consistent with Section 4207 of the Patient Protection and Affordable Health Care Act.

7. SUPPORTS the *Partnership for a Healthier Alexandria*, a citizen-led health coalition, and its ACHIEVE Planning Team in their work to encourage breastfeeding by:
 - a. Providing lactation counseling to key providers of perinatal care and support in the community, including the Alexandria Health Department, Alexandria Neighborhood Health Services Inc, Healthy Mothers Inc, Resource Mothers, Smart Beginnings Baby College, and others.
 - b. Launching a breastfeeding campaign within the community and among key providers of perinatal care and support.
 - c. Encouraging other workplaces to develop breastfeeding support policies by making the business case for breastfeeding.



COA Contact Us: Legalizing Breastfeeding in Public

william.euille, frank.fannon, kerry.donley, alicia.hughes,

Sharon to: delpepper, paulcsmedberg, rose.boyd, jackie.henderson,
elaine.scott, rob.krupicka, linda.owens, elizabeth.jones

Please respond to Sharon

01/31/2011 03:08 PM

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2-8-11

Time: [Mon Jan 31, 2011 15:08:23] Message ID: [27298]

Issue Type: Mayor, Vice Mayor, and Council Members

First Name: Sharon

Last Name:

Street Address:

City: Montgomery Village

State: MD

Zip: 20886

Phone: xxx-xxx-xxxx

Email Address: arose4blueeyes@aol.com

Subject: Legalizing Breastfeeding in Public
http://www.nbcwashington.com/news/local-beat/Alexandria_Considers_Ordinance

[_Legalizing_Public_Breastfeeding.html](#)

Comment: I'm sorry but is nothing a

personal, private moment of 'mother & child bonding'!!! And don't we have more critical issues to resolve other than legalizing public breast feeding (exposure). Come on, Folks! Read the police blogs for daily increase in criminal activity, etc We are not a foreign county, 3rd World country where mothers walk around (basically nude) with babies strapped to them while they, mothers, are working generally in open fields or live in basically exposed shanties . We are a modernized country where there are plenty of facilities where a mother and child can bond & perform the 'natural' acts & responsibilities of 'motherhood'...breast feeding

Comments: included. It doesn't mean the rest of the world (those out and about with their families @ shopping centers, parks, etc) have to participate in your beautiful but private moment. If feeding your child (schedule) comes inconveniently (interrupting your shopping trip e.g.), then there is

something wrong with priority.

I am not equating breastfeeding with

urinating. But there are times when the unscheduled urge hits a private

citizen & no facility is apparent or close by. That too is a natural

function. Will you Council members next be legalizing 'public urination'?

Should those who can't control their bladders clamor for a law or yell

'discrimination'. Rhetorical! Being totally facetious with that one. But

come on, Councilpersons, spend your time (and tax payers money) on more

critical issues/concerns.