

EXHIBIT NO. 1

8
6-16-07



Richard Josephson/Alex

06/11/2007 04:26 PM

To Kendra Jacobs/Alex@Alex, Jackie Henderson/Alex@Alex

cc

bcc

Subject Fw: Revisions to Proposed Smoke-Free Restaurant Act

----- Forwarded by Richard Josephson/Alex on 06/11/2007 04:25 PM -----

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05/25/2007 12:27 AM

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Subject Revisions to Proposed Smoke-Free Restaurant Act

As requested by the Mayor and Council on May 22, I have drafted several revisions to the proposed Smoke-Free Restaurant Act for consideration at the public hearing on June 16. The revisions are described in the attached memo.

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



Smoke-Free Act Revision Memo.pdf

MEMORANDUM

TO: THE HONORABLE MAYOR AND
MEMBERS OF CITY COUNCIL

FROM: IGNACIO B. PESSOA *IBP*
CITY ATTORNEY

DATE: MAY 25, 2007

SUBJECT: PROPOSED REVISIONS TO SMOKE-FREE RESTAURANT ACT

Issue: Consideration of proposed revisions to the text amendment to the Zoning Ordinance to require smoke-free restaurants.

Recommendation: That City Council consider these proposed revisions at the public hearing on the text amendment on June 16, 2007.

Discussion: On May 22, 2007, City Council requested that I draft revisions to the text amendment to require smoke-free restaurants, based upon comments received during the Planning Commission's public hearing on the text amendment, conducted on May 1, 2007, and during the public informational session held by the Mayor and staff on April 4, 2007. The attached revisions include three proposed changes.

First, outdoor dining areas are excluded from the proposed regulations. Thus, a restaurant may, but is not required to, permit smoking in outdoor areas. Some comments suggested that most jurisdictions in the D.C. metropolitan area, and nationally, did not include outdoor areas within their no-smoking regulations.

Second, restaurants which have a completely separate and independent HVAC system, to service all areas of the restaurant in which smoking is permitted, exclusive of all non-smoking areas, are given an extended, five year period, before they are required to make a smoke-free election. Comments suggested that restaurants which, prior to formal public notice and discussion of the text amendment, had invested in such systems, and thus had taken extra steps to protect patrons from unwilling exposure to second-hand smoke, should have an extended period within which to become smoke-free.

Third, a "reenactment clause" is included, which provides that the ordinance to adopt the text amendment will not become effective unless it is readopted by Council during the legislative session which starts in September 2007. If readopted, the effective date for ordinance would be July 1, 2008. Most restaurants would then have three months, i.e., until October 1, 2008, to make their election. Restaurants described in the preceding paragraph would have until July 1, 2013. Several speakers urged the City to delay implementation of new regulations, and attempt either to expand the current, voluntary smoke-free restaurant initiative, or to attempt to coordinate a regional response with surrounding Virginia jurisdictions to address the hazard of second hand smoke. The reenactment clause permits Council to adopt a formal smoke-free

policy at this time, but to allow such efforts to be undertaken before any regulatory changes are finally adopted and take effect.

As a final point, data published today by the Centers for Disease Control and Prevention, shows that as of 2003 almost 75 percent of households in this country, including those in Virginia, Maryland and the District of Columbia, have established rules which ban all smoking inside the home. Ten years prior, that number was 39 percent. The logical inference is that people who enforce a smoke-free environment within their own homes will expect and require a smoke-free environment in their dining and entertainment venues. Thus, this data dramatically buttresses the economic argument which underlies the use of the City's zoning authority as contemplated by the proposed ordinance. Put simply, a jurisdiction which tolerates restaurant smoking puts itself at a competitive disadvantage as a dining, entertainment and tourism venue.

Cc: James K. Hartmann
City Manager

Michele Evans
Deputy City Manager

Faroll Hamer
Director of Planning and Zoning

Charles Konigsberg, Jr., M.D.
Health Director

Bernard Caton
Legislative Director

CITY OF ALEXANDRIA
PROPOSED SMOKE-FREE RESTAURANT ACT
REVISED MAY 25, 2007

[THE FOLLOWING IS ALL NEW LANGUAGE]
[REVISIONS ARE SHOWN WITH STRIKEOUTS AND UNDERLINING]

Section 2-100 Definitions.

- 2-190.1 Restaurant, smoke-free. A restaurant which does not permit patron or employee smoking within or on the premises, including without limitation in any bar, lounge, dining, patio, ~~outdoor seating~~, waiting, storage or other enclosed area, or area under permanent roof or cover, ~~except for exterior sidewalks and parking areas 20 feet or more from an entrance, operable window, patio or outdoor seating area.~~
- 2-193.1 Smoking. The act of smoking or carrying a lighted or smoldering cigar, cigarette or pipe of any kind, or lighting a cigar, cigarette or pipe of any kind.

Section 7-2200 Smoke-free restaurants required.

- 7-2201. Any new restaurant for which a special use permit pursuant to Section 11-500, or for which an administrative permit pursuant to Section 6-600, Section 6-700 or Section 6-800, or for which a building permit pursuant to Section 4-700 of this ordinance, is approved after [effective date] shall, as a condition of such permit, agree to operate as a smoke-free restaurant.
- 7-2202 Any restaurant existing on [effective date] for which a special use permit pursuant to Section 11-500, or for which an administrative permit pursuant to Section 6-600, Section 6-700 or Section 6-800, or for which a building permit pursuant to Section 4-700 of this ordinance, is approved, reviewed or amended after [effective date] shall, as a condition of such permit, agree to operate as a smoke-free restaurant, within three months after the approval, review or amendment of such permit.
- 7-2203 Every restaurant with outdoor seating located in the public right-of-way existing on [effective date] shall, as a condition of the continued right to use the public right-of-way, agree to operate as a smoke-free restaurant within three months after [effective date].
- 7-2203 Every grandfathered restaurant existing on [effective date] shall, as a condition of the continued right to be classified as a grandfathered use, agree to operate as a

1 smoke-free restaurant within three months of [effective date].

2
3 7-2204 Every restaurant existing on [effective date] for which a special use permit
4 pursuant to Section 11-500, or for which an administrative permit pursuant to
5 Section 6-600, Section 6-700 or Section 6-800, or for which a building permit
6 pursuant to Section 4-700 of this ordinance, has been approved, shall agree to
7 operate as a smoke-free restaurant within three months of [effective date].
8

9 7-2205 Every restaurant which is not a smoke-free restaurant as required pursuant to
10 Section 7-2203 and Section 7-2204 shall be classified as a nonconforming use
11 subject to Section 12-214 of this ordinance.
12

13 7-2206 For purposes of this Section 7-2200, "a restaurant existing on [effective date]"
14 shall not be deemed to include a new restaurant at the same location as a
15 restaurant which operated on [effective date]. Indicia of a new restaurant shall
16 include, without limitation, a change in ownership or control, a change in name, a
17 change in Virginia Alcoholic Beverage Control Board licensee, or a change in
18 type or style of cuisine.
19

20 7-2207 The provisions of this Section 7-2200 shall preempt any contrary provisions of
21 the City Code or this ordinance.
22

23 7-2208 Notwithstanding any contrary provision of this Section 7-2200, a restaurant
24 which, on May 1, 2007 and thereafter, has in operation a completely separate and
25 independent HVAC system, to service all areas of the restaurant in which
26 smoking is permitted, exclusive of all non-smoking areas, shall comply with the
27 provisions of this Section 7-2200 within five years of [effective date].
28

29 7-2209 The provisions of this Section 7-2200 shall not become effective unless reenacted
30 by the City Council during the legislative session commencing in September
31 2007, and if so reenacted, the effective date shall be July 1, 2008.
32

TEXT AMENDMENT # 2007-0003

ISSUE DESCRIPTION: Consideration of a request for amendments to the Zoning Ordinance to add definitions under new Sections 2-190.1 and 2-193.1, and to add new Section 7-2200 relating to requirements for smoke-free restaurants.

ZONING ORDINANCE SECTION: 7-2200

CITY DEPARTMENT: Planning and Zoning and Office of the City Attorney

PLANNING COMMISSION ACTION RECOMMENDED APPROVAL 4-2 May 1, 2007

CITY COUNCIL ACTION 5/12/07 - CC deferred until 6/16/07 Public
Hearing. 6/16/07 - CC approved the PC recommendation w/
amendments (see attachment)

REPORTS OF BOARDS, COMMISSIONS AND COMMITTEES (continued)

Planning Commission (continued)

8. TEXT AMENDMENT #2007-0003
SMOKE FREE RESTAURANTS

Public Hearing and Consideration of a request for amendments to the Zoning Ordinance to add definitions under new Sections 2-190.1 and 2-193.1, and to add new Section 7-2200 relating to requirements for smoke-free restaurants. Staff: Department of Planning and Zoning

PLANNING COMMISSION ACTION : Recommend Approval 4-2
(Deferred from the May 12, 2007 City Council Meeting)

~~City Council approved the Planning Commission recommendation, to include the separate and independent HVAC system and the reenactment clause, along with the following amendments: 1. This be made a Council Legislative item for: (a) asking the General Assembly for a state-wide smoking ban; or (b) giving local jurisdictions the power to ban smoking; 2. The no-smoking area is to be in the public right-of-way (sidewalks); and 3. The City Attorney will consult with legal staffs of surrounding jurisdictions to determine if they would support similar legislation in those jurisdictions.~~

Council Action: _____

9. TEXT AMENDMENT #2007-0004
OUTDOOR DINING

Public Hearing and Consideration of request to amend Section 6-800 of the Zoning Ordinance, the King Street Outdoor Dining Overlay Zone. Staff: Department of Planning and Zoning .

PLANNING COMMISSION ACTION : Recommend Approval 5-0

City Council deferred action until the June 26, 2007 City Council meeting, along with docketing an emergency ordinance for June 26.

Council Action: _____

10. MASTER PLAN AMENDMENT #2007-0001

Public Hearing and Consideration of a request for a revision of the transportation chapter of the City's Master Plan to designate the location of a dedicated transit-bus rapid transit lane(s) north of the Route 1 - Monroe Avenue bridge to be within the central landscaped median. Staff: Departments of Planning and Zoning and Transportation and Environmental Services .

PLANNING COMMISSION ACTION: Resolution Adopted and Recommended 5-0