

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 14, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

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

FROM: FAROLL HAMER, DIRECTOR *FH*
DEPARTMENT OF PLANNING AND ZONING

SUBJECT: SMOKE FREE RESTAURANT ORDINANCE, TEXT AMENDMENT
2007-0003

On May 1, 2007, the Planning Commission recommended approval (on a vote of 4 to 2) of a text amendment that would require restaurants in the City to operate as smoke free establishments as a condition of their approved Special Use Permit. Existing restaurants that already have an SUP or restaurants that operate as grandfathered uses would have three months to institute no smoking requirements or risk becoming nonconforming uses subject to a seven year abatement period.

There were a number of people who testified at the Planning Commission hearing on this subject, both in opposition to and in support of the ordinance. Some speakers strenuously opposed the ordinance as an infringement on their rights, while some supported it as a means of protecting the health of workers and the public. Some others, including restaurant operators, testified that the ordinance would have a negative impact on their business and negate the investment that some have made toward installation of ventilation systems to reduce the effects of secondhand smoke. Others testified that the City should continue to encourage the existing voluntary program for restaurants and some spoke in favor of a regional smoke free initiative with surrounding Virginia jurisdictions. Some of the speakers expressed opposition to the City regulating behavior through its zoning regulations.

In his May 25, 2007 memo to City Council, the City Attorney acknowledges some of these concerns and provides revisions to the proposed ordinance to address them. The revisions include three proposed changes:

- Outdoor dining areas would be excluded from the proposed regulations

- Restaurants that have a separate and independent HVAC system for smoking areas would be given an extended five year period to implement no smoking requirements
- Through a reenactment clause, the ordinance would not be effective unless the Council readopts it during their legislative session which starts in September 2007. If readopted, the ordinance would take effect on July 1, 2008.

The Planning Commission did not have an opportunity to hold a public hearing on the revisions, as their last public meeting was held on June 5, 2007. However, the staff polled them individually on each amendment. Five commissioners responded.

It should be noted that concerning the first amendment, allowing smoking in outdoor dining areas, the Planning Commission did hold a public hearing on proposed changes to the King Street outdoor dining program at their June 5 meeting. At that time, they voted unanimously to recommend to Council that smoking not be allowed in outdoor dining areas in the public right-of-way along King Street.

Concerning the provision of a time extension, four Commissioners agreed with the extension and one Commissioner felt that more information was needed on the number of restaurants that have installed HVAC equipment in areas where smoking is allowed. All five of the Commissioners responding agreed with the provision that requires reenactment. Four of the five stated that it would be advisable, given the substantive nature of the amendments, to hold another Planning Commissioner hearing.

SPEAKER'S FORM

DOCKET ITEM NO. 8

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK
BEFORE YOU SPEAK ON A DOCKET ITEM.

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

- 1. **NAME:** Terry Hargrove
- 2. **ADDRESS:** 9221 Forest Hill Avenue, *Richmond, VA*
TELEPHONE NO. 804-267-1900 **E-MAIL:** thargrove@lungva.org
- 3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**
American Lung Association of Virginia
- 4. **WHAT IS YOUR POSITION ON THE ITEM?**
For
- 5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**
Lobbyist
- 6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
Yes

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

- (a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.
- (b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.
- (c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker

SPEAKER'S FORM

DOCKET ITEM NO. 8

PLEASE COMPLETE THIS FORM AND GIVE IT TO THE CITY CLERK
BEFORE YOU SPEAK ON A DOCKET ITEM.

PLEASE ANNOUNCE THE INFORMATION SPECIFIED BELOW PRIOR TO SPEAKING.

1. **NAME:** Cathleen Smith Grzesiek
2. **ADDRESS:** 4217 Park Place Court, Glen Allen, VA 23060
TELEPHONE NO. 804-965-6511 **E-MAIL:** cathleen.grzesiek@heart.org
3. **WHOM DO YOU REPRESENT, IF OTHER THAN YOURSELF?**
American Heart Association
4. **WHAT IS YOUR POSITION ON THE ITEM?**
For
5. **NATURE OF YOUR INTEREST IN ITEM (PROPERTY OWNER, ATTORNEY, LOBBYIST, CIVIC INTEREST, ETC.):**
Public Health Advocate
6. **ARE YOU RECEIVING COMPENSATION FOR THIS APPEARANCE BEFORE COUNCIL?**
Yes

This form shall be kept as a part of the permanent record in those instances where financial interest or compensation is indicated by the speaker.

A maximum of three minutes will be allowed for your presentation, except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard on a docket item shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation. If you have a prepared statement, please leave a copy with the Clerk.

Additional time not to exceed 15 minutes may be obtained with the consent of the majority of the council present; provided notice requesting additional time with reasons stated is filed with the City Clerk in writing before 5:00 p.m. of the day preceding the meeting.

The public normally may speak on docket items only at public hearing meetings, and not at regular legislative meetings. Public hearing meetings are usually held on the Saturday following the second Tuesday in each month; regular legislative meetings on the second and fourth Tuesdays in each month. The rule with respect to when a person may speak to a docket item at a legislative meeting can be waived by a majority vote of council members present but such a waiver is not normal practice. When a speaker is recognized, the rules of procedures for speakers at public hearing meetings shall apply. If an item is docketed *for public hearing* at a regular legislative meeting, the public may speak to that item, and the rules of procedures for speakers at public hearing meetings shall apply.

In addition, the public may speak on matters which are not on the docket during the Public Discussion Period at public hearing meetings. The mayor may grant permission to a person, who is unable to participate in public discussion at a public hearing meeting for medical, religious, family emergency or other similarly substantial reasons, to speak at a regular legislative meeting. When such permission is granted, the rules of procedures for public discussion at public hearing meetings shall apply.

Guidelines for the Public Discussion Period

- (a) All speaker request forms for the public discussion period must be submitted by the time the item is called by the city clerk.
- (b) No speaker will be allowed more than three minutes; except that one officer or other designated member speaking on behalf of each *bona fide* neighborhood civic association or unit owners' association desiring to be heard during the public discussion period shall be allowed five minutes. In order to obtain five minutes, you must identify yourself as a designated speaker, and identify the neighborhood civic association or unit owners' association you represent, at the start of your presentation.
- (c) If more speakers are signed up than would be allotted for in 30 minutes, the mayor will organize speaker