

EXHIBIT NO. 1

22  
6-26-07 ~~19~~  
~~6-16-07~~

Introduction and first reading:	6/16/2007
Public hearing:	6/26/2007
Second reading and enactment:	6/26/2007

### INFORMATION ON PROPOSED ORDINANCE

#### Title

AN ORDINANCE to amend and reordain Section 2-100 (DEFINITIONS) of Article 2 (DEFINITIONS); by adding Sections 2-190.1 and 2-190.3, (RELATING TO SMOKE-FREE RESTAURANTS), and to amend and reordain Article VII (SUPPLEMENTAL ZONE REGULATIONS), by adding thereto a new Section 7-2200 (SMOKE-FREE RESTAURANTS REQUIRED), of the City of Alexandria Zoning Ordinance (TA No. 2007-0003).

#### Summary

The proposed ordinance provides for smoke-free restaurants as a special or permitted zoning uses in the City of Alexandria, and categorizes restaurants which are not smoke-free as nonconforming uses. The proposed ordinance also includes a "reenactment clause," which provides that the ordinance will not become effective unless reenacted by the City Council during the legislative session commencing in September 2007, and if so reenacted, the effective date of will July 1, 2008.

#### Sponsor

#### Staff

Faroll Hamer, Director of Planning and Zoning  
Ignacio B. Pessoa, City Attorney

#### Authority

§§ 2.04(w), 3.12, 9.12, Alexandria City Charter, § 15.2-2283, Code of Virginia  
§ 11-800, City of Alexandria Zoning Ordinance

#### Estimated Costs of Implementation

None

#### Attachments in Addition to Proposed Ordinance

None

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend and reordain Section 2-100 (DEFINITIONS) of Article 2 (DEFINITIONS); by adding Sections 2-190.1 and 2-190.3, (RELATING TO SMOKE-FREE RESTAURANTS), and to amend and reordain Article VII (SUPPLEMENTAL ZONE REGULATIONS), by adding thereto a new Section 7-2200 (SMOKE-FREE RESTAURANTS REQUIRED), of the City of Alexandria Zoning Ordinance (TA No. 2007-0003).

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2007-0003, the city council initiated on its own motion and referred to the Planning Commission a text amendment to provide for smoke-free restaurants as a special or permitted zoning use in the City of Alexandria, and to categorize restaurants which are not smoke-free as nonconforming uses, and

2. The Planning Commission and City Council have approved the adoption of Text Amendment No. 2007-0003, and

3. Adoption of this ordinance is necessary and appropriate to protect and promote the health, safety and general welfare of residents, workers and visitors to the City, and to protect and promote the economic well being of the City and restaurant businesses within the City, which are part of and compete in the Washington, D.C. metropolitan region, and

3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

*THE FOLLOWING IS ALL NEW LANGUAGE.  
REVISIONS TO THE TEXT AMENDMENT DATED MAY 25, 2007  
ARE SHOWN WITH STRIKEOUTS AND UNDERLINING.*

Section 1. That Section 2-100 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto the following new sections:

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~~

1 ~~areas 20 feet or more from an entrance, operable window, patio or outdoor seating~~  
2 ~~area.~~

3  
4 2-193.1 Smoking. The act of smoking or carrying a lighted or smoldering cigar, cigarette  
5 or pipe of any kind, or lighting a cigar, cigarette or pipe of any kind.  
6

7 Section 2. That Article VII of the City of Alexandria Zoning Ordinance be, and the  
8 same hereby is, amended by adding thereto the following new section:  
9

10 Section 7-2200 Smoke-free restaurants required.

11  
12 7-2201 Any new restaurant for which a special use permit pursuant to Section 11-500, or  
13 for which an administrative permit pursuant to Section 6-600, Section 6-700 or  
14 Section 6-800, or for which a building permit pursuant to Section 4-700 of this  
15 ordinance, is approved after [effective date] shall, as a condition of such permit,  
16 agree to operate as a smoke-free restaurant.  
17

18 7-2202 Any restaurant existing on [effective date] for which a special use permit pursuant  
19 to Section 11-500, or for which an administrative permit pursuant to Section 6-  
20 600, Section 6-700 or Section 6-800, or for which a building permit pursuant to  
21 Section 4-700 of this ordinance, is approved, reviewed or amended after  
22 [effective date] shall, as a condition of such permit, agree to operate as a smoke-  
23 free restaurant, within three months after the approval, review or amendment of  
24 such permit.  
25

26 7-2203 Every restaurant with outdoor seating located in the public right-of-way existing  
27 on [effective date] shall, as a condition of the continued right to use the public  
28 right-of-way, agree to operate as a smoke-free restaurant within three months  
29 after [effective date].  
30

31 7-2203 Every grandfathered restaurant existing on [effective date] shall, as a condition of  
32 the continued right to be classified as a grandfathered use, agree to operate as a  
33 smoke-free restaurant within three months of [effective date].  
34

35 7-2204 Every restaurant existing on [effective date] for which a special use permit  
36 pursuant to Section 11-500, or for which an administrative permit pursuant to  
37 Section 6-600, Section 6-700 or Section 6-800, or for which a building permit  
38 pursuant to Section 4-700 of this ordinance, has been approved, shall agree to  
39 operate as a smoke-free restaurant within three months of [effective date].  
40

41 7-2205 Every restaurant which is not a smoke-free restaurant as required pursuant to  
42 Section 7-2203 and Section 7-2204 shall be classified as a nonconforming use

1 subject to Section 12-214 of this ordinance.

2  
3 7-2206 For purposes of this Section 7-2200, "a restaurant existing on [effective date]"  
4 shall not be deemed to include a new restaurant at the same location as a  
5 restaurant which operated on [effective date]. Indicia of a new restaurant shall  
6 include, without limitation, a change in ownership or control, a change in name, a  
7 change in Virginia Alcoholic Beverage Control Board licensee, or a change in  
8 type or style of cuisine.  
9

10 7-2207 The provisions of this Section 7-2200 shall preempt any contrary provisions of  
11 the City Code or this ordinance.  
12

13 7-2208 Notwithstanding any contrary provision of this Section 7-2200, a restaurant  
14 which, on May 1, 2007 and thereafter, has in operation a completely separate and  
15 independent HVAC system, to service all areas of the restaurant in which  
16 smoking is permitted, exclusive of all non-smoking areas, shall comply with the  
17 provisions of this Section 7-2200 within five years of [effective date].  
18

19 7-2209 The provisions of this Section 7-2200 shall not become effective unless reenacted  
20 by the City Council during the legislative session commencing in September  
21 2007, and if so reenacted, the effective date of this Section 7-2200 shall be July 1,  
22 2008.  
23

24 Section 3. That Section 2-100 and Article VII of the City of Alexandria Zoning  
25 Ordinance, as amended by this ordinance, be, and the same hereby are, reordained as part of the  
26 City of Alexandria Zoning Ordinance.  
27

28 Section 4. That this ordinance shall become effective as provided in Section 7-2209,  
29 above.  
30

31  
32 WILLIAM D. EUILLE  
33 Mayor  
34

35  
36 Introduction: 6/16/2007  
37 First Reading: 6/16/2006  
38 Publication:  
39

22  
6-26-07

OFFICE OF THE CITY ATTORNEY

DOCKET ITEM 22  
JUNE 26, 2007

PROPOSED AMENDMENT TO PROHIBIT SMOKING IN OUTDOOR  
RESTAURANT SEATING IN THE PUBLIC RIGHT-OF-WAY, REQUESTED  
BY COUNCILMAN KRUPICKA:

Ordinance Page 1 (handwritten page 3), line 41:

Insert, after "cover"

*and which does not permit patron or employee smoking within areas,  
or at seats or tables, located in the public right-of-way and used or controlled by  
the restaurant under permit or license from the City*

ORDINANCE NO. 4493

AN ORDINANCE to amend and reordain Section 2-100 (DEFINITIONS) of Article 2 (DEFINITIONS); by adding Sections 2-190.1 and 2-190.3, (RELATING TO SMOKE-FREE RESTAURANTS), and to amend and reordain Article VII (SUPPLEMENTAL ZONE REGULATIONS), by adding thereto a new Section 7-2200 (SMOKE-FREE RESTAURANTS REQUIRED), of the City of Alexandria Zoning Ordinance (TA No. 2007-0003).

WHEREAS, the City Council finds and determines that:

1. In Text Amendment No. 2007-0003, the city council initiated on its own motion and referred to the Planning Commission a text amendment to provide for smoke-free restaurants as a special or permitted zoning use in the City of Alexandria, and to categorize restaurants which are not smoke-free as nonconforming uses, and
2. The Planning Commission and City Council have approved the adoption of Text Amendment No. 2007-0003, and
3. Adoption of this ordinance is necessary and appropriate to protect and promote the health, safety and general welfare of residents, workers and visitors to the City, and to protect and promote the economic well being of the City and restaurant businesses within the City, which are part of and compete in the Washington, D.C. metropolitan region, and
3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 2-100 of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto the following new sections:

- 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, waiting, storage or other enclosed area, or area under permanent roof or cover, and which does not permit patron or employee smoking within areas, or at seats or tables, located in the public right-of-way and used or controlled by the restaurant under license or permit from the city.
- 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 2. That Article VII of the City of Alexandria Zoning Ordinance be, and the same hereby is, amended by adding thereto the following new section:

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 July 1, 2008 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 July 1, 2008 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 July 1, 2008 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 July 1, 2008.

7-2203 Every grandfathered restaurant existing on July 1, 2008 shall, as a condition of the continued right to be classified as a grandfathered use, agree to operate as a smoke-free restaurant within three months of July 1, 2008.

7-2204 Every restaurant existing on July 1, 2008 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, has been approved, shall agree to operate as a smoke-free restaurant within three months of July 1, 2008.

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

7-2206 For purposes of this Section 7-2200, "a restaurant existing on July



1, 2008” shall not be deemed to include a new restaurant at the same location as a restaurant which operated on July 1, 2008. Indicia of a new restaurant shall include, without limitation, a change in ownership or control, a change in name, a change in Virginia Alcoholic Beverage Control Board licensee, or a change in type or style of cuisine.

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

7-2208                    Notwithstanding any contrary provision of this Section 7-2200, a restaurant which, on May 1, 2007 and thereafter, has in operation 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, shall comply with the provisions of this Section 7-2200 within five years of July 1, 2008.

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

Section 3. That Section 2-100 and Article VII of the City of Alexandria Zoning Ordinance, as amended by this ordinance, be, and the same hereby are, reordained as part of the City of Alexandria Zoning Ordinance.

Section 4. That this ordinance shall become effective as provided in Section 7-2209, above.

WILLIAM D. EUILLE  
Mayor

Final Passage:    June 26, 2007