

Docket Item #7
Text Amendment 2007-0003
SMOKE FREE RESTAURANTS

Planning Commission Meeting
May 1, 2007

ISSUE: 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 and Office of the City Attorney

DISCUSSION

On February 15, 2007, City Council requested that a text amendment related to smoke free restaurants be docketed for consideration and possible referral to the Planning Commission.

On February 27, 2007 City Council made a referral to the Planning Commission and initiated the process of amending the Zoning Ordinance to require smoke-free restaurants in Alexandria.

On June 27, 2006, the Surgeon General of the United States issued a comprehensive scientific report which concluded that there is no risk-free level of exposure to secondhand smoke, and that even brief secondhand smoke exposure can cause immediate harm. In addition, there appears to be abundant evidence of the inadequacy of many existing restaurants' no smoking policies to protect nonsmoking patrons and workers from secondhand smoke.

Almost three-quarters of Americans who live and work in the top 100 metropolitan areas in this country are protected by law from any exposure to secondhand smoke in restaurants and attached bars, including those in Boston, New York, Philadelphia, Washington D.C. and Montgomery and Prince George's Counties, and now Baltimore, Maryland. Also this year, Maryland joined 18 states and the District in restricting smoking to protect bar patrons and workers from secondhand smoke.

In a July 24, 2006 editorial, Nation's Restaurant News, a leading industry publication, acknowledged mounting evidence which shows that smoke free restaurant policies in fact help increase business, and concluded that it was time for restaurant trade associations and operators to abandon their historical opposition to such policies. The confluence of these developments strongly suggests that in a metropolitan area such as this, a jurisdiction where smoking is permitted in restaurants and bars is likely, overall, to suffer an economic disadvantage vis-à-vis jurisdictions which have a uniform ban.

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 agree may continue to operate, but will be severely restricted, and in some cases effectively precluded, from making any significant changes or improvements, and may be required to cease existing operations after seven years.

A smoke free restaurant is defined as 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 area, except for exterior sidewalks and parking areas 20 feet or more from an entrance, operable window, patio or outdoor seating area.

Under current Virginia law the City is prohibited from adopting a direct ban on all smoking in restaurants and bars, of the type recently adopted in Maryland, 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. However, nothing in Virginia law 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.

Based on these factors, 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.

As part of its outreach efforts, the City mailed notice of the proposed regulations to all restaurants in the City, posted the draft regulations on the City's Website, provided briefings to the press and sponsored an informational meeting on April 4, 2007 with Alexandria restaurant owners and operators to discuss the proposed regulations.

The proposed amendment to the Zoning Ordinance would require the following:

All new restaurants and bars must agree, as a condition of their SUP, to operate as smoke-free establishments.

- Every existing restaurant or bar governed by an existing SUP, which seeks an SUP amendment, or is subject to a mandatory SUP review, must agree to operate as a smoke-free establishment, within three months after the approval of the amendment or review.
- 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.
- Every "grandfathered" restaurant, i.e., one which predates the SUP requirements, 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.
- 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.
- Every existing restaurant which changes its ownership, name, liquor license holder, or type or style cuisine, will be treated as a new restaurant.

Under these proposed regulations 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 license, or a change in type or style of cuisine.

PROPOSED TEXT CHANGES:

[THE FOLLOWING IS ALL NEW LANGUAGE.]

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

- 7-2204 Every 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, has been approved, shall agree to operate as a smoke-free restaurant within three months of [effective date].
- 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 [effective date]” shall not be deemed to include a new restaurant at the same location as a restaurant which operated on [effective date]. 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.

STAFF: Ignacio Pessoa, City Attorney
Richard Josephson, Deputy Director