

ORDINANCE NO. 3270

AN ORDINANCE to amend and reordain Sections 11-10-2, 11-10-3, 11-10-4, 11-10-6 and 11-10-7, and to add a new Section 11-10-3.1, all of Chapter 10, Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended; which Title 11 relates to HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS, which Chapter 10 relates to SMOKING PROHIBITIONS, which Section 11-10-7 relates to ENFORCEMENT, which Section 11-10-6 relates to POSTING OF SIGNS, which Section 11-10-4 relates to EXCEPTIONS, which Section 11-10-3 relates to SMOKING PROHIBITED IN CERTAIN AREAS, which Section 11-10-2 relates to DEFINITIONS and which new Section 11-10-3.1 relates to DESIGNATED NO-SMOKING AREAS IN RESTAURANTS.

WHEREAS, studies by the National Academy of Sciences, the Surgeon General of the United States, and others have concluded that second-hand tobacco smoke is a cause of disease, including lung cancer, in non-smokers; and

WHEREAS, the Council of the City of Alexandria wishes to protect and promote the public health, safety and general welfare of the city's residents and visitors; and

WHEREAS, non-smoking patrons in city restaurants should be able to enjoy their meals as free as possible of harmful and irritating tobacco smoke; and

WHEREAS, an ad hoc Committee to Study Smoking in Restaurants, established and appointed by the city council and comprised of representatives from the Chamber of Commerce and city restaurants, three citizen members, and two city staff members, after consultation with restaurateurs and citizens, have met and produced a final report recommending amendments to Ordinance No. 2907 to further protect and promote the public health, safety and general welfare; now therefore;

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 11-10-2 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. 11-10-2. Definitions.

(a) **Food store.** Any supermarket, grocery store or other retail food store which is designed and arranged to display and sell food products to the general public for consumption off the premises, or which derives a substantial proportion of its income therefrom.

(b) **Health care facility.** Any office or institution providing individual care or the treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to hospitals, clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any physician, dentist, psychologist, psychiatrist, physiologist, podiatrist, optometrist or optician.

(c) **Person.** Any person, firm, partnership, association, corporation, company or organization of any kind.

(d) **Public meeting.** Any meeting or assembly held in a public building or building leased for a public purpose which is open to the public for the conduct of the affairs of, and the transaction of business by, any legislative or administrative body or agency of the City of Alexandria, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds.

(e) **Restaurant.** Any establishment, or place within an establishment, offering food and beverages for consumption on the premises, including lunchrooms, cafeterias, coffee shops, cafes, taverns, delicatessens, lunchstands and lunch counters, but excluding bars and lounges which do not regularly offer food and open food counters and the like in sport facilities such as football, soccer and basketball stadia and bowling alleys.

(f) **Retail store.** Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, articles or other things and all activities, operations and services connected therewith or incidental thereto. The term "retail store" shall not include food stores, hotels, motels, restaurants and those restaurant facilities which are an integral part of a retail store, bar, lounge, catering establishment and other facility. For purposes of this chapter, banks and savings and loan institutions shall be considered "retail stores."

(g) **Smoking or to smoke.** 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.

(h) **Theater.** Any indoor facility, open to the public, which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

Section 2. That Section 11-10-3 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. 11-10-3. Smoking prohibited in certain areas.

It shall be unlawful for any person to smoke in any of the following areas:

(a) In an elevator, regardless of capacity, except in those elevators in single-family dwellings;

(b) In any retail store in which more than eight persons are regularly employed at any one time;

(c) In any food store in which more than eight persons are regularly employed at any one time;

(d) In any health care facility, regardless of capacity;

(e) In any public meeting attended by more than eight persons;

(f) In any theater, except smoking by performers as part of the production;

(g) In any art gallery, library, museum, or similar cultural facility, supported in whole or in part by public funds; or

(h) In a designated no-smoking area of any restaurant, as set forth in section 11-10-3.1.

Section 3. That Chapter 10, Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding a new Section 11-10-3.1 to read as follows:

Sec. 11-10-3.1. Designated no-smoking areas in restaurants.

(a) Every restaurant with a seating capacity of greater than 40 seats shall have one or more indoor designated no-smoking areas in which smoking shall be prohibited. Such no-smoking area or areas shall consist of at least 25 percent of the indoor seating capacity of the restaurant; provided, that no single no-smoking area shall consist of fewer than 10 seats or six percent of the indoor restaurant seating capacity, whichever is larger.

(b) Every restaurant with a seating capacity of 40 or fewer seats shall have a single indoor designated no-smoking area in which smoking shall be prohibited. Such no-smoking area shall consist of at least 25 percent of the indoor seating capacity of the restaurant.

(c) Notwithstanding the provisions of subsections (a) and (b), every restaurant for which a special use permit is approved pursuant to title 7, chapter 6 of this code after April 22, 1988,

shall have one or more indoor designated no-smoking areas in which smoking shall be prohibited. Such no-smoking area or areas shall consist of at least 50 percent of the indoor seating capacity of the restaurant; provided, that no single no-smoking area shall consist of fewer than 10 seats or 12 percent of the restaurant indoor seating capacity, whichever is larger; provided further, that the no-smoking area or areas of a restaurant subject to this subsection which meets the indoor air quality standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers shall be required only to consist of at least 25 percent of the restaurant indoor seating capacity in which case the provisions in subsection (a) regarding the minimum size of no-smoking areas shall apply.

(d) Any restaurant with outdoor seating shall have one or more designated outdoor no-smoking areas in which smoking shall be prohibited. Such no-smoking area or areas shall consist of at least 25 percent of the outdoor seating capacity of the restaurant; provided, that no single no-smoking area shall consist of fewer than 10 seats or 10 percent of the outdoor seating capacity of the restaurant, whichever is larger.

(e) Every restaurant shall make a good faith effort to designate one or more no-smoking areas in patron waiting areas.

(f) Any restaurant required by this section to designate one or more no-smoking areas shall post conspicuous signs which inform all patrons of the existence of the no-smoking areas, and shall inform its patrons of the boundaries of the no-smoking areas by such posted signs, by signs placed on individual dining tables or verbally by restaurant personnel.

(g) For purposes of this section, neither the indoor seating capacity nor the outdoor seating capacity of a restaurant shall include any bar or lounge area, and such areas shall not be required to contain any designated no-smoking area.

Section 4. That Section 11-10-4 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. 11-10-4. Exceptions.

The prohibitions and requirements of this chapter shall not apply to the following:

(a) In lawfully designated smoking areas;

(b) In those areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another and that consist primarily of walkways and seating arrangements;

(c) In an area of a theater commonly referred to as a lobby if physically separated from the spectator area;

(d) In the offices or work areas of public buildings not entered by the public in the normal course of business or use of the premises;

(e) During the hours in which the particular business or institution is not open to the public;

(f) In any tobacco shop or store primarily concerned with selling tobacco and smoking implements;

(g) In the in-patient sleeping quarters of any health care facility, except hospitals. Each such facility shall make a reasonable effort to assign patients to sleeping rooms according to the patient's individual nonsmoking or smoking preference;

(h) The sleeping quarters of nonambulatory hospital patients, when the physician writes an order in the patient's record allowing that patient to smoke; and

(i) Restaurants when engaged in the business of catering to banquets or other private parties at which guests occupy seats for meal service; provided, however, that restaurants shall advise in writing any person who contracts for a banquet or other private party that the City of Alexandria strongly encourages that banquet and private party guests be given the opportunity to choose to sit at tables set aside for smokers or non-smokers and that seating for at least 25 percent of the guests be provided at contiguous tables set aside for non-smokers.

Section 5. That Section 11-10-6, Chapter 10, Title 11 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. 11-10-6. Posting of signs.

Any person who owns, manages or otherwise controls any building, facility, room, area or place in which smoking is prohibited, is required to post or cause to be posted conspicuously, signs at least five inches in height, which read:

NO SMOKING
City Code
Prohibits the Carrying
of Lighted Tobacco
Products of Any Kind
\$25.00 Fine

The letters in the words "No Smoking" shall be at least one and one-half inches in height. Restaurants for which sign requirements are required by section 11-10-3.1 are excluded from the requirements of this section.

Section 6. That Section 11-10-7, Chapter 10, Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same is hereby amended and reordained to read as follows:

Sec. 11-10-7. Enforcement.

The provisions of this chapter shall be enforced by the city manager or his duly authorized representative. Nothing in this chapter shall be construed as permitting smoking where other federal, state, or local laws prohibit it.

Section 7. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet requests. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective 90 days from the date of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: January 26, 1988