



# TOWN OF FAIRFAX

## STAFF REPORT

### January 18, 2017

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager *GT*

**SUBJECT:** Introduction and first reading by title only of an Ordinance of the Town Council of the Town of Fairfax Amending Chapter 8.44 of the Fairfax Town Code Pertaining to Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations

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#### RECOMMENDATION

Introduce, waive first reading and read by title only an Ordinance of the Town Council of the Town of Fairfax Amending Chapter 8.44 of the Fairfax Town Code Pertaining to Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations.

#### DISCUSSION

The proposed ordinance amends the Town Code to make it consistent with recent changes to State law, as opposed to adding more smoking restrictions. Specifically, in June 2016, new state tobacco laws took effect that raised the minimum age of sale for tobacco products in California from 18 to 21 (with the exception of active duty military personnel), and added e-cigarettes to the existing definition of tobacco products. Previously in 2015, the Council had amended Town Code Chapter 8.44 "Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations" to prohibit smoking e-cigarettes in the same manner as smoking tobacco. With the November 2016 passage of Prop. 64 "Adult Use of Marijuana Act" (AUMA), smoking marijuana is prohibited in the same locations as smoking tobacco in the State of California.

#### FISCAL IMPACT

n/a

#### ATTACHMENT

Proposed Ordinance

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

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 8.44 OF THE FAIRFAX TOWN CODE PERTAINING TO CLEAN INDOOR AND OUTDOOR AIR AND HEALTH PROTECTION - SMOKING REGULATIONS**

The Town Council of the Town of Fairfax does ordain as follows:

**SECTION 1. FINDINGS.** The Town Council of the Town of Fairfax hereby finds that:

- A. The Town of Fairfax, California (the “Town”) is a municipal corporation, duly organized under the constitution and laws of the State of California.
- B. The Town desires to amend its local smoking regulations to comply with the Tobacco 21 Law, which amended Penal Code Section 308 to prohibit sale of tobacco and tobacco products to minors under the age of 21, except for active duty military personnel aged 18 years or older.
- C. The Town desires to clarify its local smoking regulations consistent with the recently enacted Adult Use of Marijuana Act of 2016 (AUMA or Proposition 64) that marijuana smoking is prohibited anywhere tobacco smoking is prohibited.

**SECTION 2. ADDITIONAL FINDING.** A new finding is hereby added to Section 8.44.010 of the Fairfax Town Code as follows:

“(V) California Health & Safety Code Section 11362.3 provides that no person may smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.”

**SECTION 3. DEFINITION OF MINOR.** The definition of “Minor” in Section 8.44.020 of the Fairfax Town Code is hereby amended and restated as follows:

“MINOR. Any individual who is less than 21 years old, except active duty military personnel who are 18 years of age or older. An identification card issued by the United States Armed Forces shall be used as proof of age for this purpose.”

**SECTION 4. REGULATING THE SALE OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES.** Subsections (B) and (C) of Section 8.44.110 of the Fairfax Town Code are hereby amended and restated as follows:

“(B) Any person, business, tobacco retailer or other establishment subject to this chapter shall post signs at each entrance to any premises on which any tobacco product is offered for sale, plainly visible from outside the premises, which state: “Warning: The fine for buying tobacco products, including electronic cigarettes, for anyone under 21 except for U.S. Armed Forces active duty personnel with military ID is \$200-\$1,000” in letters at least one-half inch tall, and which cite Cal. Penal Code § 308(a). These signs shall be updated to conform to any subsequent state or federal requirements and/or amendments to Cal. Penal Code Section 308.”

“(C) No person, business, tobacco retailer, electronic smoking device retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product or electronic smoking device to an individual without requesting and examining

identification establishing that the purchaser is not a minor unless the seller has some other clear and convincing basis for knowing the buyer's age.”

The remainder of Section 8.44.110, including subsections (A), (D) and (E), shall not be affected by the amendments contained herein and shall remain in full force and effect.

**SECTION 5. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

**SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDING.** This Ordinance is exempt from the requirements of the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, collectively, “CEQA”) because it is not a project within the meaning of 14 CCR § 15378 or alternatively, because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (14 CCR § 15061(b)(3)). The Ordinance implements legislative enactments by the state legislature and has no potential for direct or indirect changes to the environment. Firstly, the limitation on use of marijuana where tobacco use is prohibited is a function of state law and increases protection of individuals from secondhand marijuana smoke. Secondly, raising the age limit for a “minor” increases the protection of individuals from smoking and has no potential for causing a significant effect on the environment.

**SECTION 7.** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a meeting of the Town Council on the 18th day of January 2017, and duly adopted at the next regular meeting of the Town Council on the \_\_\_\_ day of \_\_\_\_\_, 2017, by the following vote, to wit:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

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John Reed, Mayor

Attest: \_\_\_\_\_  
Michele Gardner, Town Clerk

\_\_\_\_\_  
Date