



# TOWN OF FAIRFAX

## STAFF REPORT

### September 6, 2017

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager *GT*  
Michele Gardner, Assistant to the Town Manager

**SUBJECT:** Discuss/consider presentation from Marin County Health and Human Services regarding tobacco licensing program and other smoking regulations

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CONTINUED from the January and June, and September Town Council meetings

#### **RECOMMENDATION**

Receive presentation from the County and discuss/consider the inclusion of additional smoking regulations in a future amendment to the Town Code.

#### **BACKGROUND**

The introduction of an ordinance amending the Town's smoking regulations was originally scheduled for the January 18, 2017, Council meeting. The proposed ordinance was to make the Town Code consistent with recent changes to State law, as opposed to adding more smoking restrictions. The changes included:

1. Raising the minimum age for sale of tobacco products in California from 18 to 21 (with the exception of active duty military personnel);
2. Adding e-cigarettes to the existing definition of tobacco products;<sup>1</sup>
3. Prohibiting smoking marijuana in the same locations as smoking tobacco in the State of California. ("Adult Use of Marijuana Act").

The item was continued due to the late hour, and shortly after the January 2017 meeting, the American Lung Association (ALA) released its annual tobacco control grades for California municipalities and counties, awarding Fairfax and seven other Marin communities a grade of "C." Reflecting on the ALA information, Councilmember Coler requested the Council consider adding restrictions to the ordinance for the dual purpose of creating a better smoke-free environment for residents, and raising Fairfax's ALA grade to at least a B.

At the Council's June 7<sup>th</sup> meeting, the Council considered four areas on the ALA scorecard in which Fairfax's current smoking regulations had room for improvement, taking into account staff's discussions with Marin County Health and Human Services regarding particular restrictions in each area.

The Council indicated that they would like to receive a presentation from the County to learn more about the various restrictions, particularly regarding outdoor service areas and the tobacco retailer licensing program, as well as some of the emerging issues. Mr. Bob Curry, from the Marin County Department of Health and Human Services' Tobacco Related Disease Control Program, graciously agreed to come to the Council's October meeting. The Council also

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<sup>1</sup> Note: in 2015, the Council amended the Town's Smoking Regulations (Town Code Chapter 8.44) to prohibit smoking e-cigarettes in the same manner as smoking tobacco.

asked whether state law prohibits the smoking of cannabis on sidewalks. It does: cannabis cannot be smoked in a “public place” per Health and Safety Code 11362.3(a)(1), which includes sidewalks.

The ALA scorecard and grading rubric (attached) illustrate the areas in which Fairfax earns – and doesn’t earn – points for its current smoking regulations. To qualify for a “B” rating, the Town would need to have an overall total score of at least 8 points. Fairfax currently has a total score of 6 points. To gain 2 more points overall, the Town would need to receive an “A” rating in 2 out of the first 3 categories, as follows.

### 1. Smokefree Outdoor Air

- Add “Outdoor Service areas” (4 points)
- Add bars to “Outdoor Dining” (2 pts.)
- Add sidewalks (1 pt.)

Analysis: The Town received a score of 15 points or a “B” grade. To receive an “A”, the Town would need an additional 3 points or a total of 18 points in this category. The most logical approach would be to require “service areas” to be smoke-free. Service areas are defined as areas in which people are waiting for transactions such as movie ticket lines, ATM lines, and bus stops. Current Town code prohibits smoking in *enclosed* service areas, but does not specifically prohibit smoking in *unenclosed* service areas. However, smoking is prohibited near entry ways to businesses which probably affects many service areas. This addition would increase the Town’s score to 4 points which provides the necessary 3 points to achieve an “A”. The attached chart indicates all communities in Marin, except Fairfax and Tiburon, prohibit smoking in unenclosed service areas. Staff believes this provision would have a minimal impact on businesses in Town. At its June 7 meeting, the Council was interested in adding outdoor service areas.

### 2. Smokefree Housing

- Increase percentage of non-smoking units to 100% in multi-unit residences (4 pts)

Analysis: The Town received a score of 8 points or a “B” grade. To receive an “A”, the Town would need an additional 3 points or a total of 11 points in this category. Current Town Code requires a minimum of 75% of units in a multi-unit residence to be smoke free. Staff is not recommending this approach due to enforcement issues and the need to inform affected residents of this restriction. About half of the communities in Marin require 100% of units in multi-unit residences to be smoke-free. At its June 7 meeting, the Council seemed to agree that they were not interested in this category for the time being.

### 3. Reducing Sales of Tobacco Products

- Add a tobacco retailer licensing requirement for local retailers (4 pts)

Analysis: This is an all or nothing category. You either get an “A” (4 pts) or an “F” (0 pts). Fairfax does not have this requirement and thus received no points. Only three communities in Marin have this requirement. Businesses that sell tobacco or tobacco-related products would pay a license fee essentially to cover the cost of issuing the license, and developing materials pertaining to the license. We believe there are several businesses (upwards of 6) in Fairfax that would be subject to the requirement. The County would be responsible for licensing and enforcement. The retailer license system

is aimed at keeping tobacco products out of the hands of young people. The Council was interested in further exploring this with a representative from the County.

4. Emerging Issues (need 4 pts for 1 pt. to the overall grade)
- Ban the sampling of tobacco products (1 pt.)
  - Ban pharmacies from selling tobacco products (1 pt.)

Analysis: The Town received one point in this category. No community in Marin received the required 4 points to add a point to their overall score. Staff believes the two bans listed above would be simple to include with no discernible impact to local businesses. This would increase the Town's score by 2 points, but not the Town's overall score. The other issues (see attached chart) such as prohibition on flavored tobacco products and minimum pack for cigars could affect retailers in Town. At its June 7 meeting, the Council appeared amenable to adding the two bans bulleted above, and asked for more information on the other emerging issues. The County representation may be able to answer these questions for the Council.

**FISCAL IMPACT**

n/a

**ATTACHMENT**

ALA scorecard for Marin County



**MARIN COUNTY**

	Belvedere	Corte Madera	Fairfax	Larkspur	Mill Valley	Novato	Ross	San Anselmo	San Rafael	Sausalito	Tiburon	County Unincorporated
<b>Overall Tobacco Control Grade</b>	<b>A</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>A</b>	<b>C</b>	<b>C</b>	<b>B</b>	<b>A</b>	<b>C</b>	<b>C</b>	<b>A</b>
<b>Total Points</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>12</b>	<b>6</b>	<b>5</b>	<b>8</b>	<b>12</b>	<b>7</b>	<b>7</b>	<b>11</b>
<b>Smokefree Outdoor Air</b>	<b>A</b>	<b>A</b>	<b>B</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>B</b>	<b>A</b>
Dining	4	4	2	4	4	2	4	4	4	4	4	2
Entryways	4	4	4	4	4	4	4	4	4	4	4	4
Public Events	4	4	4	4	4	4	4	4	3	3	4	4
Recreation Areas	4	4	4	4	4	4	4	4	4	4	4	4
Service Areas	4	4	0	4	4	4	4	4	4	4	0	4
Sidewalks	0	0	0	0	0	0	0	0	1	0	0	0
Worksites	1	1	1	1	1	1	0	1	1	1	0	1
<b>Total Points</b>	<b>21</b>	<b>21</b>	<b>15</b>	<b>21</b>	<b>21</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>21</b>	<b>20</b>	<b>16</b>	<b>19</b>
<b>Smokefree Housing</b>	<b>A</b>	<b>B</b>	<b>B</b>	<b>B</b>	<b>A</b>	<b>C</b>	<b>D</b>	<b>A</b>	<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>
Nonsmoking Apartments	4	2	2	2	4	1	0	4	4	2	4	2
Nonsmoking Condominiums	4	2	2	2	4	1	0	4	4	2	4	2
Nonsmoking Common Areas	4	4	4	4	4	4	2	4	4	4	4	4
Nonsmoking Housing Authority	n/a	n/a	0	n/a	n/a	0	n/a	0	0	0	0	0
<b>Total Points</b>	<b>12</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>12</b>	<b>6</b>	<b>2</b>	<b>12</b>	<b>12</b>	<b>8</b>	<b>12</b>	<b>8</b>
<b>Reducing Sales of Tobacco Products</b>	<b>n/a</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>A</b>	<b>F</b>	<b>n/a</b>	<b>F</b>	<b>A</b>	<b>F</b>	<b>F</b>	<b>A</b>
Tobacco Retailer Licensing		0	0	0	4	0		0	4	0	0	4
<b>Total Points</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>		<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>4</b>
<b>Emerging Issues Bonus Points</b>												
Emerging Products Definition - Secondhand Smoke	1	1	1	0	1	1	0	1	1	1	1	1
Emerging Products Definition - Licensing	0	0	0	0	1	0	0	0	0	0	0	0
Retailer Location Restrictions	0	0	0	0	0	1	0	0	1	0	0	1
Sampling of Tobacco Products	0	0	0	0	0	0	0	0	0	0	0	0
Sale of Tobacco Products in Pharmacies	0	0	0	0	0	0	0	0	0	0	0	1
Flavored Tobacco Products	0	0	0	0	0	0	0	0	0	0	0	0
Minimum Pack Size of Cigars	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Points</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>3</b>

Overall Tobacco Control Grade: A (11-12), B (8-10), C (5-7), D (2-4), F (0-1);  
determined by grades and points from other three categories – A (4), B (3), C (2), D (1), F (0)  
Smokefree Outdoor Air Grade: A (18+), B (13-17), C (8-12), D (3-7), F (0-2)

Smokefree Housing Grade: A (11+), B (8-10), C (5-7), D (2-4), F (0-1)  
Reducing Sales of Tobacco Products Grade: A (4+), B (3), C (2), D (1), F (0)