




# TOWN OF FAIRFAX

## STAFF REPORT

June 7, 2017

**TO:** Mayor and Town Council

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

**SUBJECT:** Discuss/consider the concept of modifying the Fairfax Town Code Pertaining to Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations to improve the Town's American Lung Association (ALA) grade

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CONTINUED from the January Town Council meeting

### RECOMMENDATION

Discuss modifying the current smoking regulations in the Town Code to improve the Town's ALA grade and provide guidance to staff so that we may bring back an ordinance.

### DISCUSSION

The introduction of an ordinance amending the Town Code pertaining to smoking regulations was originally scheduled for the January 18, 2017, Council meeting. The proposed amendments were to make the Town Code consistent with recent changes to State law, as opposed to adding more smoking restrictions. Those 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), and adding e-cigarettes to the existing definition of tobacco products. 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.
2. Prohibiting smoking marijuana in the same locations as smoking tobacco in the State of California. ("Adult Use of Marijuana Act").

However, the item was continued due to the late hour. Shortly after the January 2017 meeting, the American Lung Association (ALA) released its annual tobacco control grades for California municipalities and counties, awarding Fairfax a grade of "C." Seven communities in Marin received a "C" rating. As a result, Councilmember Coler requested the Council consider adding restrictions to the ordinance in order to raise Fairfax's ALA grade to at least a B for the purpose of creating a better smoke free environment for residents. Those additional restrictions are before the Council tonight for consideration.

The ALA scorecard and grading rubric, attached hereto, illustrate the areas in which Fairfax earns – and doesn't earn – points for its current smoking regulations. Staff reviewed the ALA scorecard with Bob Curry from Marin County Health and Human Services, who works with Marin communities to improve their smoking regulations. To qualify for a "B" rating, the Town will need to have an overall total point score of at least 8 points. Fairfax currently has a total score of 6

points. To accomplish this, the Town would need to receive an “A” rating in 2 out of the 3 categories.

The four areas where the Town could improve are listed below, followed by suggestions for specific restrictions (and how many points they are worth).

### 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.

### 2. Smokefree Housing

- Increase the percentage of non-smoking units to 100% in a multi-unit residence (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.

### 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 0 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. If the Town were interested in this provision, staff would suggest inviting County staff to a Council meeting

to learn more about the County's tobacco licensing requirements prior to considering this amendment to the Town code. We would also invite the affected retailers to such a presentation.

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. It should be noted that no community in Marin received the required 4 points to add a point to their overall score. Staff believes the two areas listed above would be simple to include with no discernible impact to local businesses. While this would increase the Town's score by 2 points, we would still be short by 1 point. The other issues (see attached chart) such as prohibition on flavored tobacco products and minimum pack for cigars could affect retailers in Town. Similar to item 3 above, we could invite County staff and affected businesses to a Council meeting to discuss these emerging issues.

Should the Council want to proceed with modifications to the ordinance, staff would recommend pursuing revisions to increase the score under "Smokefree Outdoor Air" (Item #1 listed above) and "Reducing Sale of Tobacco Products" (Item #3). The next step in the process would be to invite County staff to a Council meeting to discuss the County's licensing requirements under "Reducing Sale of Tobacco Products." Another option is that the Council could make revisions to the ordinance which would improve the smokefree environment, but not increase the Town's overall score. In other words, we could implement item #1 and add two emerging issues as recommended, with the recognition the Town's overall score would only increase by 1 point and thus remain a "C."

**FISCAL IMPACT**

n/a

**ATTACHMENT**

ALA scorecard for Marin County



MARIN COUNTY

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

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)