



# TOWN OF FAIRFAX

## STAFF REPORT

### June 3, 2015

**TO:** Mayor and Town Council

**FROM:** Michele Gardner, Town Clerk *MG*

**SUBJECT:** Second reading by title only and adoption of Ordinance No. 790 amending Town Code Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor Air and Health Protection'), to include restrictions on the usage of electronic smoking devices (e.g., e-cigarettes) and prohibit smoking in tobacco retail stores

---

#### **RECOMMENDATION**

Waive second reading and read by title only and adopt Ordinance No. 790, an Ordinance of the Town Council of the Town of Fairfax Amending Town Code Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor Air and Health Protection'), to Include Restrictions on the Usage of Electronic Smoking Devices and Prohibit Smoking in Tobacco Retail Stores.

#### **DISCUSSION**

At its May 6, 2015 meeting, the Town Council introduced and held the first reading by title only of Ordinance No. 790. Tonight is the second reading and adoption. If adopted, the ordinance will go into effect 30 days after passage.

#### **FISCAL IMPACT**

None

#### **ATTACHMENTS**

Ordinance No. 790

**ORDINANCE NO. 790**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TOWN CODE TITLE 8 ('HEALTH AND SAFETY'), CHAPTER 8.44 ('CLEAN INDOOR AIR AND HEALTH PROTECTION'), TO INCLUDE RESTRICTIONS ON THE USAGE OF ELECTRONIC SMOKING DEVICES AND PROHIBIT SMOKING IN TOBACCO RETAIL STORES**

**WHEREAS**, the Town of Fairfax is authorized to adopt regulations and laws designed to promote the public health, safety, and welfare; and

**WHEREAS**, the use of tobacco products has been shown to carry grave health risks and is currently subject to restrictions within the Town of Fairfax; and

**WHEREAS**, the use of tobacco has decreased as public knowledge of its deleterious effects has become more widespread, but such decreases have required many years of public education efforts and huge expenditures of public and private funds; and

**WHEREAS**, the use of electronic smoking devices, also referred to as 'e-cigarettes,' has grown in in popularity in recent years, even as traditional tobacco use has declined; and

**WHEREAS**, electronic smoking devices may or may not contain nicotine, an addictive substance found in tobacco; and

**WHEREAS**, the growing use of electronic smoking devices threatens to give the impression that use of such devices is less injurious to the health of the user and bystanders than is the use of traditional tobacco products; and

**WHEREAS**, electronic smoking devices emit vapor and other substances that may be inhaled by bystanders, who may include children, the elderly, among others, and the effect of such substances on the user and others has not been shown to be safe; and

**WHEREAS**, electronic smoking devices have not been proven to be risk-free, and are currently under study by the federal Food and Drug Administration; and

**WHEREAS**, the unfettered use of electronic smoking devices may make smoking in such form more socially acceptable than smoking traditional tobacco products, even while it may carry the same or similar risks, thus undermining the results of the many years of anti-smoking efforts that have decreased the percentage of the population using tobacco; and

**WHEREAS**, the use of electronic smoking devices amongst minors is becoming increasingly popular; and

**WHEREAS**, the Town Council of the Town of Fairfax desires to protect the public health, safety, and welfare of its residents and visitors by limiting the use of electronic smoking devices and removing from the Town Code a provision that currently allows smoking in retail tobacco stores; and

**WHEREAS**, the Town Council notes that no tobacco retail stores, as defined in Chapter 8.44 of the Town Code, are currently in operation within Town limits.

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

SECTION 1. Fairfax Town Code, Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor Air and Health Protection') is hereby renamed 'Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations'

SECTION 2. Fairfax Town Code, Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations'), Section 8.44.010 ('Findings and Purpose') is amended to include the following findings, which shall be placed in alphabetical order within said Section:

“(Q) Electronic smoking devices, or “e-cigarettes,” have become increasingly popular in recent years, as evidenced by the following:

- (1) Between 2011 and 2012 the percentage of all youth in grades 6 to 12 who had tried electronic smoking devices doubled;
- (2) 6.8% of all youth between 6<sup>th</sup> and 12<sup>th</sup> grade report trying electronic smoking devices;
- (3) 10% of high school students have tried electronic smoking devices;
- (4) 9.3% of youth who have used electronic smoking devices have never smoked conventional cigarettes;
- (5) Between 2010 and 2011, rates of both awareness and use of unregulated electronic smoking devices by adults also increased significantly;
- (6) Findings from the 2014 National Youth Tobacco Survey show that current e-cigarette use (use on at least 1 day in the past 30 days) among high school students increased from 4.5 percent in 2013 to 13.4 percent in 2014, rising from approximately 660,000 to 2 million students; and
- (7) Among middle school students, current e-cigarette use more than tripled from 1.1 percent in 2013 to 3.9 percent in 2014—an increase from approximately 120,000 to 450,000 students.

(R) The State of California’s Tobacco Education and Research Oversight Committee (TEROC) “opposes the use of e-cigarettes in all areas where other tobacco products are banned.”

(S) A study published in the Journal of Environmental and Public Health suggests that electronic smoking devices “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant denormalization of tobacco use previously.”

(T) Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

(U) The use of electronic smoking devices in smokefree locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.”

SECTION 3. Fairfax Town Code, Title 8 (‘Health and Safety’), Chapter 8.44 (‘Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations’), Section 8.44.020 (‘Definitions’) is amended to include the following definitions, each of which shall be placed in alphabetical order within said Section:

“ELECTRONIC SMOKING DEVICE. An electronic or battery operated device that delivers vapors for inhalation. This term shall include every variation and type of such devices, whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

ELECTRONIC SMOKING DEVICE PARAPHERNALIA. Any cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

ELECTRONIC SMOKING DEVICE VENDING MACHINE. Any machine, appliance, or other mechanical device that carries Electronic Smoking Devices or Electronic Smoking Device Paraphernalia that is operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

RETAIL ELECTRONIC SMOKING DEVICE STORE. A retail store which sells, offers for sale, or does or offers to exchange for any form of consideration, Electronic Smoking Devices or Electronic Smoking Device Paraphernalia. This definition is without regard to the quantity of the Electronic Smoking Devices or Electronic Smoking Device Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

SMOKE. The gases and particles released into the air by combustion, electrical ignition, or vaporization, including from an Electronic Smoking Device, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the resulting gases, particles or vapors combustion products, such as, for example, tobacco smoke, and marijuana smoke, except when the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.”

SECTION 4. Fairfax Town Code, Title 8 (‘Health and Safety’), Chapter 8.44 (‘Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations’), Section

8.44.020 ('Definitions') is amended to delete, in its entirety, the existing definitions of the following terms and replace them as follows:

"SMOKING. Engaging in an act that generates Smoke, such as, for example, possessing a lighted cigar, a lighted cigarette of any kind, a lighted pipe, or a lighted hookah pipe; or lighting a pipe, a hookah pipe, a cigar, or a cigarette of any kind, or operating an Electronic Smoking Device.

TOBACCO VENDING MACHINE. Any machine, appliance, or other mechanical device that carries Tobacco Products or Tobacco Paraphernalia operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms."

SECTION 5. Fairfax Town Code, Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations'), Section 8.44.080 ('Smoking Optional Areas'), Subsection A is amended to delete its subsection (2) in its entirety, such that Subsection A shall now read as follows:

"(A) Except as otherwise prohibited by state or federal law, the smoking restrictions of this chapter shall not apply to private single family residences, except when used as a child care or health care facility."

SECTION 6. Fairfax Town Code, Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations'), Section 8.44.110 ('Regulating the Sale of Tobacco Products') is hereby renamed 'Regulating the Sale of Tobacco Products and Electronic Smoking Devices.'

SECTION 7. Fairfax Town Code, Title 8 ('Health and Safety'), Chapter 8.44 ('Clean Indoor and Outdoor Air and Health Protection – Smoking Regulations'), Section 8.44.110 ('Regulating the Sale of Tobacco Products and Electronic Smoking Devices') is deleted in its entirety and shall be replaced with the following language within said Section:

"(A) Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible signs at the point of purchase of tobacco products which comply with the signage requirements of Cal. Bus. and Prof. Code § 22952, as amended from time to time.

(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 for anyone under 18 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 § 308(a). Any person, business, electronic

smoking device retailer, or other establishment subject to this chapter shall post signs at each entrance to any premises on which any electronic smoking device or paraphernalia is offered for sale, plainly visible from outside the premises, which state “Warning: The fine for buying electronic cigarettes for anyone under 18 is \$200-\$1,000” in letters at least one-half inch tall, and which cite to Cal. Health & Safety Code § 119405(b).

(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 the purchaser’s age as 18 years or greater unless the seller has some other clear and convincing basis for knowing the buyer’s age.

(D) It shall be unlawful for any person, business, tobacco retailer, or electronic smoking device retailer to sell, permit to be sold, or offer for sale any tobacco product or electronic smoking device or paraphernalia by means of self-service merchandising, or by any means other than vendor-assisted sales.

(E) No person, business, or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any electronic smoking device vending machine or tobacco vending machine for the purpose of selling or distributing any electronic smoking device or any tobacco product.”

SECTION 8. The Town Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (‘CEQA,’ as codified at Public Resources Code Section 21000, *et seq.*, and as further governed by 14 California Code of Regulations Section 15000, *et seq.*) pursuant to 14 C.C.R. Section 15061(b)(3) because there is no possibility that it will cause a significant effect on the environment, as limiting the use of electronic smoking devices, prohibiting smoking in retail tobacco stores, and regulating the sale of tobacco products and electronic smoking devices will not result in a substantial, or potentially substantial adverse change in the environment.

SECTION 9. This ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

SECTION 10. Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, which places are designated for that purpose:

1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road, Fairfax;
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women’s Club building, located at 46 Park Road, Fairfax.

The foregoing ordinance was duly and regularly introduced at a regular meeting of the Fairfax Town Council, held in said Town on the 6<sup>th</sup> day of May, 2015, and thereafter adopted at a regular meeting of the Town Council on the 3<sup>rd</sup> day of June 2015.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

---

Barbara Coler, Mayor

Attest:

---

Michele Gardner, Town Clerk

---

Date