




# TOWN OF FAIRFAX

## STAFF REPORT

### November 2, 2016

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Discussion regarding possible amendments to Town Code Chapter 8.44 ('Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations')

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CONTINUED FROM SEPTEMBER AND OCTOBER TOWN COUNCIL MEETINGS

#### **RECOMMENDATION**

Discuss possible amendments to Town Code Chapter 8.44 ('Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations') and direct staff as appropriate

#### **DISCUSSION**

In June 2016, new state tobacco laws took effect that increased the minimum age of sale for tobacco products in California from 18 to 21, and added e-cigarettes to the existing definition of tobacco products, in essence tightening restrictions on e-cigarettes. Previously in 2015, the Council amended the 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 these new state laws, staff would suggest amending the Town Code to reflect both past and current changes in State law. However, before undertaking these revisions, Mayor Goddard would like the Council to discuss prohibiting smoking marijuana in locations similar to tobacco products such as Town-owned facilities, certain enclosed areas (e.g., businesses), and certain unenclosed public areas (e.g., parks). However, this prohibition would not extend to residential units. Town Code Chapter 8.44 currently prohibits smoking in certain multi-family residences.

#### **FISCAL IMPACT**

n/a

#### **ATTACHMENT**

Town Code Chapter 8.44

[Print](#)

## Fairfax, CA Municipal Code of Ordinances

## CHAPTER 8.44: CLEAN INDOOR AND OUTDOOR AIR AND HEALTH PROTECTION - SMOKING REGULATIONS

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## Section

- 8.44.010 Findings and purpose
- 8.44.020 Definitions
- 8.44.030 Smoke generally
- 8.44.040 Application of chapter to town-owned facilities
- 8.44.050 Prohibition of smoking in certain enclosed places
- 8.44.060 Prohibition of smoking in certain multi-unit residences
- 8.44.070 Prohibition of smoking in certain unenclosed public places
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- 8.44.090 Duty of person, employer, business or nonprofit entity
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- 8.44.120 Enforcement
- 8.44.130 Violations and penalties
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- 8.44.150 Public education
- 8.44.160 Governmental agency cooperation
- 8.44.170 Other applicable laws

### § 8.44.010 FINDINGS AND PURPOSE.

The Town Council does find that:

(A) Tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

(1) Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth; and

(2) Some of the most common types of cancers including stomach, liver, uterine cervix, and kidney are related to tobacco use; and

(B) Secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

(1) The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and

(2) The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and

(3) The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm; and

(C) Exposure to secondhand smoke causes death and disease, as evidenced by the following:

(1) Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and

(2) Exposure to secondhand smoke increases the risk of coronary heart disease by approximately 30 percent; and

(3) Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year; and exacerbates childhood asthma; and

(D) The U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

(E) Tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

(1) The total annual economic burden of smoking in the United States is \$193,000,000,000; and

(2) From 2001 through 2004, the average annual health care expenditures attributable to smoking were approximately \$96,000,000,000; and

(3) The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10,000,000,000 per year in the United States in 2005; and

(4) The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15,800,000,000 in smoking-related costs in 1999 alone; and

(5) California's Tobacco Control Program saved the state and its residents \$86,000,000,000 in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly; and

(F) Exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the following:

(1) Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers; and

(2) Irritation from secondhand smoke begins at levels as low as four micrograms per cubic meter, and in some outdoor situations this level can be found as far away as 13 feet from the burning cigarette; and

(3) To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two-lane road; and

(G) Thirdhand smoke harms indoor air quality and is a recognized public health concern, as evidenced by the following:

(1) Thirdhand smoke is residual tobacco smoke contamination after a cigarette has been extinguished and takes the form of particulate matter that is deposited in a layer onto every indoor surface; in loose household dust; and as volatile organic compounds that “off gas” into the air over days, weeks and months; and

(2) Desorption of thirdhand smoke from indoor surfaces to air is recognized as a source of tobacco exposure;

(3) A majority of adults in the United States agreed with the statement that breathing in air in a room today where people smoked yesterday can harm the health of children; and

(H) Thirdhand smoke exposure has negative health impacts, as evidenced by the following:

(1) Tobacco smoke constituents, even at low levels, have been proved toxic; and

(2) Residual nicotine from tobacco smoke absorbed to indoor surfaces reacts with ambient nitrous acid, a common indoor air pollutant, to form carcinogenic tobacco-specific nitrosamines; and

(3) High levels of nicotine on indoor surfaces represents a health hazard through dermal exposure, dust inhalation, and ingestion; and

(I) Smoking is the primary cause of fire-related injuries and deaths in the home, as evidenced by the following:

(1) Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 142,900 smoking-related fires, 780 deaths, 1,600 injuries, and \$606,000,000 in direct property damage in 2006; and

(2) One in four fatalities from home fires caused by smoking is NOT the smoker whose cigarette started the fire, and 25 percent of those deaths were of neighbors or friends of the smoker; and

(3) Smoking in a residence where long-term oxygen therapy takes place is very dangerous as oxygen is a fire accelerant, and 27 percent of fatalities due to smoking during long-term oxygen therapy occurred in multifamily dwellings; and

(4) The United States Fire Administration recommends that people smoke outdoors; and

(J) Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

(1) Secondhand smoke can seep under doorways and through wall cracks; and persons living in apartments near smokers can be exposed to elevated pollution levels for 24 hours a day, and at times, the particulate matter exposure can exceed the U.S. Environmental Protection Agency's 24-Hour Health Based Standard; and

(2) The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure; and

(K) Most Californians do not smoke and a majority favors limitations on smoking in multi-unit residences, as evidenced by the following:

(1) Sixty-nine percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78 percent support laws that create nonsmoking units; and

(2) Sixty-two percent of California renters feel that there is a need for laws to limit smoking in apartments; and

(L) A local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is expressly permitted by California law; and

(M) Creating smoke free areas helps protect the health of the 86.7 percent of Californians who are nonsmokers; and

(N) State law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; and state law prohibits smoking within 20 feet of entryways and operable windows of government buildings; and

(O) Cigarette butts are a major and persistent source of litter, as evidenced by the following:

(1) It is estimated that over 2,000,000,000 billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175,000,000 pounds of cigarette butts every year; and

(2) Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons and ultimately the ocean; and

(3) Cigarette filters, made of plastic cellulose acetate, take approximately 15 years to decompose; and

(P) There is no Constitutional right to smoke.

(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 six to 12 who had tried electronic smoking devices doubled;

(2) Six point eight percent (6.8%) of all youth between sixth and twelfth grade report trying electronic smoking devices;

(3) Ten percent (10%) of high school students have tried electronic smoking devices;

(4) Nine point three percent (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 one day in the past 30 days) among high school students increased from 4.5% in 2013 to 13.4% in 2014, rising from approximately 660,000 to 2,000,000 students; and

(7) Among middle school students, current e-cigarette use more than tripled from 1.1% in 2013 to 3.9% 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 smoke free 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.

(Ord. 754, passed 6-1-2011; Am. Ord. 790, passed 6-3-2015)

### § 8.44.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BAR.** An area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of the beverages. Although a restaurant may contain a **BAR**, the term **BAR** shall not include the restaurant dining area.

**BUSINESS.** Any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes.

**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.

**EMPLOYEE.** Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

**EMPLOYER.** Any person, partnership, corporation, including a municipal corporation or non-profit entity, which employs the services of one or more individual persons or utilizes volunteers.

**ENCLOSED.ENCLOSED** means:

(1) Any covered or partially covered space having more than 75 percent of its perimeter area permanently walled from floor to ceiling or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or

(2) Any space open to the sky having more than 75 percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard; except that an area open to the sky of 3,000 square feet or more is not enclosed such as, for example, a field in an open-air arena.

**LANDLORD.** Any person who owns real property leased as residential property, any person who lets residential property, or any person who manages such property, except that **LANDLORD** does not include sublessors.

**LEASE.** A written or oral agreement between a landlord and tenant conveying possession of a unit. **LEASE** includes both agreements set for a fixed period of time as well as month-to-month or week-to-week rental agreements.

**MINOR.** Any individual who is less than 18 years old.

**MULTI-UNIT RESIDENCE.** A building or portion thereof that contains four or more units except the following specifically excluded types of housing:

- (1) A hotel or motel that meets the requirements set forth in Cal. Civil Code § 1940(b)(2);
- (2) A dormitory building;
- (3) A single-family home;
- (4) A mobile home park;
- (5) A campground;
- (6) A marina or port;
- (7) A single-family home with an attached in-law or second unit when permitted pursuant to Cal. Gov't Code §§ 65852.1, 65852.150, 65852.2 or an ordinance of the town adopted pursuant to those sections.

**MULTI-UNIT COMMON AREA.** Any indoor or outdoor area of a multi-unit residence, multi-unit commercial facilities, senior citizen residences and nursing homes accessible to and usable by residents of different small units and/or members of the public, including but not limited to halls and paths, lobbies, laundry rooms, common areas, outdoor eating areas, play areas and swimming pools.

**NON-PROFIT ENTITY.** Any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of

which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a **NON-PROFIT ENTITY** within the meaning of this chapter.

**NO SMOKING SIGN.** A sign containing the words "No Smoking" or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

**OPENINGS.** **OPENINGS** shall include main entrances, exits, operable windows and ventilation intake systems.

**PERSON.** Any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

**PLACE OF EMPLOYMENT.** Any area under the legal or actual control of an employer or sole proprietor that an employee, contractor or member of the public to enter during the normal course of operations, but regardless of hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference and banquet rooms, classrooms, bingo and gaming facilities, long-term health facilities, warehouses, and private residences used as child/elder care or health care facilities subject to licensing requirements.

**PUBLIC PLACE.** Any place, public or private, open to members of the general public regardless of any fee or age requirement, including but not limited to, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, taxis, buses, bus shelters, public transportation facilities, hotels and motels, fairs, farmers' markets and theaters. **PUBLIC PLACE** does not include the area within private vehicles that are in or on public places.

**REASONABLE DISTANCE.** A distance of at least 20 feet.

**RECREATION AREA.** Any area, public or private, open to the general public for recreational purposes, regardless of any fee requirement, including, but not limited to public gardens, children's play areas, sporting facilities, stadiums, and playgrounds.

**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.

**RETAIL TOBACCO STORE.** A retail store in which the primary merchandise for sale consists of tobacco products and accessories, and in which the sale of other products is merely incidental, and which does not provide any entertainment, or any food or beverage for consumption on the premises.

**SELF-SERVICE MERCHANDISING.** The open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. This includes point-of-sale tobacco promotional products (such as tobacco industry tee shirts, caps, key chains, give-always), to which the public has access without the assistance of an employee. A vending machine is a form of self- service display.

**SERVICE AREA.** Area at which one or more persons are waiting for a transaction, entry or service of any kind, whether or not such service involves the exchange of money, including, but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops and cab stands.

**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.

**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.

**SPORTS ARENA.** Enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

**TOBACCO PARAPHERNALIA.** Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

#### **TOBACCO PRODUCT.**

(1) Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco; or

(2) Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U.S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

**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.

**TOWN.** The Town of Fairfax.

**UNIT.** A dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping, and any private outdoor spaces like balconies and patios. **UNIT** includes an apartment; a room in a long-term health care facility,



senior citizen housing, assisted living facility, or hospital; a room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a single-family home; an in-law or second unit; and single room occupancy hotel rooms, as defined in Cal. Health and Safety Code § 50519(b)(1), even where lacking private cooking facilities or private plumbing facilities. **UNIT** does not include lodging in a hotel or motel that meets the requirements set forth in Cal. Civil Code § 1940(b)(2).

**VENDOR-ASSISTED.** Only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

(Ord. 754, passed 6-1-2011; Am. Ord. 790, passed 6-3-2015)

#### **§ 8.44.030 SMOKE GENERALLY.**

For all purposes within the town, the Town Council declares that nonconsensual exposure to smoke is a nuisance, and the uninvited presence of smoke on property is a nuisance and a trespass.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.040 APPLICATION OF CHAPTER TO TOWN-OWNED FACILITIES.**

All town-owned vehicles, including buses and other means of public transit under the authority of the town, and all enclosed facilities owned and controlled by the town, including jails, and any board, council, commission and agency of the town shall be subject to the provisions of this chapter.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.050 PROHIBITION OF SMOKING IN CERTAIN ENCLOSED PLACES.**

(A) Except as otherwise provided, smoking shall be prohibited in the following enclosed places within the Town of Fairfax and except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies:

- (1) Places of employment;
- (2) Buses, taxicabs and other means of public transit under the authority of the town and ticket, boarding, and waiting areas of public transit depots;
- (3) Public places;
- (4) Service areas;
- (5) Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except for smoking which is part of such production;
- (6) Sports arenas and convention halls; and
- (7) A minimum of 80 percent of guest rooms in every hotel, motel and bed-and-breakfast facility must be permanently designated as completely nonsmoking.

(B) No person shall place, cause to be placed, or permit to be placed any ashtray, or tobacco ash collector or receptacle in any enclosed place designated as non-smoking.

(C) No person shall dispose of smoking waste or tobacco product waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any reasonable distance requirement.

(Ord. 754, passed 6-1-2011)

#### § 8.44.060 PROHIBITION OF SMOKING IN CERTAIN MULTI-UNIT RESIDENCES.

(A) A minimum of 75 percent of units in a multi-unit residence must be permanently designated as non-smoking, including the exclusive use areas of the units such as private balconies, porches, decks, or patios. All units may be designated non-smoking units.

(1) Non-smoking units must be grouped together (e.g., horizontally and/or vertically) and physically separated from smoking units to the maximum extent practicable.

(2) A unit and its associated exclusive use areas shall not be subject to the smoking restrictions of this chapter until 14 months after the effective date of Ordinance No. 754.

(B) *Required lease terms.*

(1) The renewal of a lease, lease extension or other agreement for the occupancy of a unit in a multi-unit residence shall include:

(a) A clause stating that smoking is prohibited in the unit if the unit has been designated as a non-smoking unit;

(b) A clause stating that it is a material breach of the lease or agreement to:

1. Violate any law regarding smoking while on the premises;
2. Smoke in a non-smoking unit; or
3. Smoke in any multi-unit residence common area in which smoking is prohibited by the landlord; and

(c) A clause stating that all lawful occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.

(2) The lease or agreement terms required by subsection (1)(a) are hereby incorporated by force of law into any lease or other agreement for the occupancy of a unit in a multi-unit residence made on or after the effective date of Ordinance No. 754 and which does not fully comply with subsection (1)(a).

(3) A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to:

(a) The landlord; and

(b) To any lawful occupant of the multi-unit residence who is exposed to secondhand

smoke as a result of that breach. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with subsection (1)(a).

(4) Failure to enforce any smoking regulation of a lease or agreement on one or more occasions shall not constitute a waiver of the lease or agreement provisions required by this chapter and shall not prevent future enforcement of any such smoking regulation on another occasion.

(C) *Disclosure of non-smoking units by landlord.* Every landlord shall maintain a list of designated non-smoking units and a floor plan identifying the relative position of smoking and non-smoking units. The floor plan also shall identify the location of any designated smoking areas. A copy of this list and floor plan shall accompany every new lease or other agreement for the occupancy of a unit in a multi-unit residence. If a copy of the list and floor plan is not supplied, the unit subject to the lease shall be a non-smoking unit.

(D) *Prohibitions and duties generally.*

(1) No person shall smoke or knowingly permit smoking in an area of the premises under his or her legal or de facto control in which smoking is prohibited by a lease or agreement term, by this chapter, the Town Code, or any other state or federal law, provided, however, that this prohibition does not apply to a person who is already compelled to act under state or federal law.

(2) Smoking shall be prohibited within a reasonable distance from any entrance, opening or exit of any enclosed area within which smoking is prohibited, except while passing on the way to another destination.

(3) No person shall knowingly permit the presence or placement of ash trays, cans, or other receptacles within multi-unit residence common areas under his or her legal or de facto control in which smoking is prohibited by this chapter, this code, or

any other state or federal law, including, for example and without limitation, with a reasonable distance of any non-smoking area.

(4) Smoking is prohibited in all multi-unit residence common areas except that a landlord may designate a portion of the outdoor area as a smoking area provided that at all times the designated smoking area complies with the following. A designated smoking area:

(a) Must be an unenclosed area;

(b) Must be located a reasonable distance from any enclosed area where smoking is prohibited;

(c) Must not include and must be a reasonable distance from unenclosed areas primarily used by children including, but not limited to, areas improved or designated for playing or swimming;

(d) Must be no more than 25 percent of the total unenclosed area of the premises for which it is designated;

(e) Must have a clearly marked perimeter;

(f) Must be identified by conspicuous signs;

(g) Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this code, state law, or federal law; and

(h) Must be accessible and conform with all pertinent requirements of the Americans with Disabilities Act or its successor.

(5) "No Smoking" signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) shall be clearly and

conspicuously posted and maintained by the landlord in every place on the premises in which smoking is prohibited by this chapter or by the landlord, except that signs are not required inside units. Signs must be sufficient to make areas where smoking is prohibited obvious to a reasonable person. The absence of signs shall not be a defense to a violation of any provision of this chapter.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.070 PROHIBITION OF SMOKING IN CERTAIN UNENCLOSED PUBLIC PLACES.**

(A) Except as otherwise expressly authorized by state or federal law, smoking shall be prohibited in any place where food and/or drink is offered for sale, including outdoor dining areas of restaurants and farmers markets, except unenclosed areas of a stand-alone bar.

(B) Smoking is prohibited within:

(1) A reasonable distance from any entrance, opening or exit of any enclosed area within which smoking is prohibited, except while passing on the way to another destination. Entrances to outdoor decks or patios at bars are excluded from this prohibition;

(2) Parks, including, but not limited to Contratti Field, Fairfax Park and Peri Park Playground;

(3) Public events including but not limited to, sports events, festivals, entertainment, speaking performances, ceremonies, pageants, parades, fairs and farmer's markets; and

(4) Places of employment.

(C) No person shall place, cause to be placed, or permit to be placed any ashtray, or tobacco ash collector or receptacle in any area designated a non-smoking area by this chapter.

(D) No person shall dispose of smoking waste or tobacco product waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any reasonable distance requirement.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.080 SMOKING OPTIONAL AREAS.**

(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.

(B) Nothing in this chapter shall be construed to prevent any owner, operator, manager or other person who controls any establishment or facility from declaring and enforcing a nonsmoking policy in the entire establishment or facility or from posting signs as described by § 8.44.100.

(Ord. 754, passed 6-1-2011; Am. Ord. 790, passed 6-3-2015)

#### **§ 8.44.090 DUTY OF PERSON, EMPLOYER, BUSINESS OR NONPROFIT ENTITY.**

(A) No person, employer, business, or nonprofit entity shall knowingly permit the smoking of tobacco products in an area which is under the legal or actual control of the person, employer, business, or nonprofit entity and in which smoking is prohibited by law and the person, employer, business or nonprofit entity is not otherwise compelled to act under state or federal law.

(B) No person, employer, business, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area which is under the legal or actual of the person, employer, business, or nonprofit entity and in which smoking is prohibited.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.100 POSTING OF SIGNS.**

(A) The person, employer, business or non-profit entity with legal or actual control of a building subject to this chapter shall clearly and conspicuously post "No Smoking" signs at the entrances of every building, as well as at every other place where smoking is prohibited under this chapter.

(B) "No Smoking" signs shall be clearly and conspicuously posted at every entrance to any building or other place where smoking is prohibited under this chapter.

(C) Every retail tobacco store and every vendor of tobacco products shall visibly post Cal. Bus. and Prof. Code § 22952 signage that expressly references Cal. Penal Code § 308 at the entrance of any premises subject to regulation under §§ 8.44.040, 8.44.050 and 8.44.060 of this chapter and applicable state and/or federal law.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.110 REGULATING THE SALE OF TOBACCO PRODUCTS AND ELECTRONIC SMOKING DEVICES.**

(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 and 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.

(Ord. 790, passed 6-3-2015)

#### **§ 8.44.120 ENFORCEMENT.**

(A) Notice of these regulations shall be given to all applicants for a business license or renewal thereof; provided, however, lack of such notice shall be no defense to a violation of this chapter.

(B) Enforcement of this chapter may be brought through the administrative citation process as outlined in Chapter 1.10 of the Fairfax Town Code. Before a civil penalty is levied, the person charged with the violation shall be given a written warning by the town staff of the proposed action, including the nature of the violation and the amount of the proposed penalty.

(C) Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter.

(D) Any violation of this chapter is hereby declared to be a nuisance.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.130 VIOLATIONS AND PENALTIES.**

The remedies provided by this chapter are not intended to preclude any other remedy available at law or in equity.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.140 NON-RETALIATION.**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because the employee or applicant exercises any right to a smoke-free environment afforded by this chapter.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.150 PUBLIC EDUCATION.**

The Town Manager or his or her designee will engage in a continuing educational program to explain and clarify the purposes and requirements of this chapter, as well as a guide to owners, operators and managers with compliance; provided, however, lack of such education shall be no defense to a violation of this chapter.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.160 GOVERNMENTAL AGENCY COOPERATION.**

The Town Manager or his or her designee may annually request other governmental and educational agencies having facilities within the town to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all federal, state, county and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

(Ord. 754, passed 6-1-2011)

#### **§ 8.44.170 OTHER APPLICABLE LAWS.**

It is the intent of the Town Council of the Town of Fairfax to supplement applicable state and federal law and not to duplicate or contradict such law and this chapter shall be construed consistently with that intention. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. 754, passed 6-1-2011)