



# TOWN OF FAIRFAX

## STAFF REPORT

### August 7, 2019

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager

**SUBJECT:** Introduce and read by title an Ordinance Amending Chapter 8.44 of the Fairfax Municipal Code, Title 8, Entitled "Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations" to prohibit the sale of menthol-flavored tobacco products; CEQA Categorical Exemption, CEQA Guidelines Sections 15060(c)(2), 15060(c)(3)

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#### **RECOMMENDATION**

Introduce and read by title only an Ordinance of the Town Council of the Town of Fairfax Amending Chapter 8.44 of the Fairfax Municipal Code, Title 8, Entitled "Clean Indoor and Outdoor Air and Health Protection - Smoking Regulations" to prohibit the sale of menthol-flavored tobacco products.

#### **DISCUSSION**

In response to one of the recommendations of the Marin Civil Grand Jury Report Vaping: An Under-the-Radar Epidemic dated May 9, 2019, the Town Council agreed that it will consider an ordinance amending its current tobacco ordinance to include menthol-flavored products by the end of 2019.

The previous amendment to the ordinance, adopted December 2017, prohibited flavored tobacco products except for tobacco or menthol. This revision would prohibit menthol flavored products and would take effect September 1, 2020. This would provide retailers approx. 12 months from a possible second reading in September 2019 to prepare for prohibition and reduce their inventories of flavored menthol products

#### **FISCAL IMPACT**

N/A

#### **ATTACHMENT**

Ordinance

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX  
AMENDING ARTICLE II ENTITLED "TOBACCO RETAILERS LICENSING ORDINANCE"  
OF FAIRFAX MUNICIPAL CODE, TITLE 8 CHAPTER 8.44 ("CLEAN INDOOR AND  
OUTDOOR AIR AND HEALTH PROTECTION - SMOKING REGULATIONS") TO PROHIBIT  
THE SALE OF MENTHOL TOBACCO PRODUCTS**

The Town Council of the Town of Fairfax hereby finds that:

**WHEREAS**, the Town desires to amend its local smoking regulations to prohibit the sale of menthol tobacco products; and

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES  
ORDAIN AS FOLLOWS:**

**Section 1.** The above recitals are true and correct and are hereby incorporated into this Ordinance.

**Section 2.** Section 8.44.210 (H) of the Fairfax Municipal Code is hereby amended and restated as follows:

H. Flavored Tobacco Products. No tobacco retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco ) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product unless:

1. The tobacco product consists of a package of cigars containing at least five cigars or more; or
2. The tobacco product consists of a single cigar for which the retail price exceeds five dollars (\$5.00); or
3. The tobacco product consists of pipe tobacco; or
4. The tobacco product consists of a package of chewing tobacco or snuff containing at least five units or more.

All other provisions and definitions contained in Section 8.44.210 of the Fairfax Municipal Code shall remain in full force and effect.

**Section 3. Compliance with California Environmental Quality Act.** The Town Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 4. Effective Date and Posting.** This Ordinance shall be effective September 1, 2020 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.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 17th day of July 2019, and duly adopted at the next regular meeting of the Town Council on the 7th day of August 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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BARBARA COLER, Mayor

ATTEST:

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Hannah Politzer, Deputy Town Clerk

Exhibit A attached

(redline of Town Code)

**ARTICLE II: TOBACCO RETAILERS LICENSING ORDINANCE**

**§ 8.44.200 TITLE.**

This article shall be known as Fairfax's "Tobacco Retailers Licensing Ordinance."

(Ord. 814, passed 12-6-2017)

**§ 8.44.210 REQUIREMENTS AND PROHIBITIONS.**

(H) *Flavored tobacco products.* No tobacco retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco ~~or menthol~~) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product unless:

- (1) The tobacco product consists of a package of cigars containing at least five cigars or more; or
- (2) The tobacco product consists of a single cigar for which the retail price exceeds \$5; or
- (3) The tobacco product consists of pipe tobacco; or
- (4) The tobacco product consists of a package of chewing tobacco or snuff containing at least five units or more.