

Key changes to specific sections of current local Marin tobacco control ordinances that close old loopholes with updated language

Background: Marin's local communities are joining over 100 California communities that have updated their 18- year- old tobacco control laws in response to numerous complaints from the public as well as requests from law enforcement and code enforcement officers that ordinances specify a specific number of feet from entrances or areas where smoking is restricted. California communities updated their smoke-free ordinances to reflect new scientific studies that show that there is no safe level exposure to second hand smoke (SHS), even in outdoor areas. (For scientific reports go to: www.smokefreemarin.com).

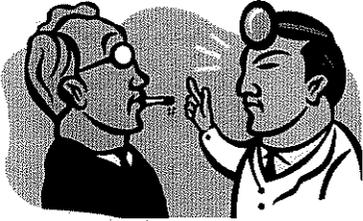
Update: *Marin County, Unincorporated, San Anselmo, Ross, Novato, and Larkspur* have updated their ordinances to include some or all of the following changes to existing smoke-free ordinances:

- ✚ Updated criteria based on new scientific findings and Green LEED requirements
- ✚ Smoke-Free restaurants and outdoor dining areas
- ✚ No smoking within 20' of building openings or entrances (include bus shelters)
- ✚ Increase smoke free hotel and motel rooms to reflect the fact that the majority of the public does not smoke
- ✚ Smoke-Free outdoor service waiting lines - new definitions include any area a person waits for service of any kind. This will include ATM's, ticket lines and bus stops.
- ✚ Smoke-free outdoor work areas including construction and road crews to prevent workers from being exposed to secondhand smoke
- ✚ Public outdoor gathering places such as Farmer's Markets, public events, parks, recreational areas
- ✚ Increase protection for residents in multi-unit housing (MUH) including townhouses, condominiums and apartments: (a) no smoking in outdoor multi-unit common areas, (b) declaration of secondhand smoke as a nuisance provides for abatement of such nuisance by a private citizen (c) disclosure about smoke-filled units to new tenants.
- ✚ In addition to SHS concerns the Coalition supports strong Youth Access Ordinances including Tobacco Retailer Licensing and point of purchase exposure to tobacco products.

For more information about resources available to local Marin city councils considering updating their ordinances, contact Bob Curry, Director, Marin County, Health and Human Services, Tobacco Related Disease Control Program, at rcurry@co.marin.ca.us or (415) 507-2559 or visit the website designed to help the public comply with Marin's new tobacco control ordinances: www.smokefreemarin.com

7 (Seven) Reasons Marin Communities Are Updating Tobacco Control Ordinances

Fact Sheet compiled by Smoke-Free Marin Coalition www.smokefreemarin.com



1. According to annual American Lung Association Report Cards on public health, *for over two years, Marin communities received low scores on their tobacco control legislation, lagging behind over 100 California communities.* The County of Marin Unincorporated areas, Novato, Ross and San Anselmo, and Larkspur have updated their ordinances to reflect recent scientific studies, yet several communities in Marin received “D”s and “F”s in protecting Marin residents from second-hand smoke and youth from illegal tobacco access in local retail stores.
2. **Smoke-free environments are popular with Marin residents:** Public opinion polls conducted in Marin communities show that 83% of all respondents are supportive of the new outdoor smoke-free provisions. Another 71.7% are supportive of the protections for people living in apartments or condominiums. In San Rafael, where the tobacco control ordinance has not yet been updated, 65% of respondents were supportive of improving protection from second-hand smoke in outdoor areas.
3. **Smoke-free environments decrease exposure to second hand and third hand smoke** while reducing youth smoking rates. Young people are less likely to smoke when they grow up in smoke-free housing and community environments such as outdoor cafes and parks.
4. **Smoking is a Fire Hazard:** According to the American Academy of Pediatricians, smoking is the leading cause of preventable injuries and deaths from fires. Smoking is the most common cause of fatal fires in residential structures after arson, according to the U.S. Fire Administration Research Series. In addition to injuries and deaths, smoking is also responsible for a greater percentage of dollar losses. In the last three years, several apartments were destroyed by neighbor’s smoking related fires in Marin County, according to the *Marin Independent Journal*. These fires were costly to property owners and local fire departments.
5. **Nearly 10% of Marin’s population still smokes.** People smoke more discreetly than in the past, but they still smoke in concentrated quasi-outdoor areas where non-smokers, including workers who must work in those areas, are forced to inhale smoke fumes:
 - ◆ Youth smoke in outdoor cafes in communities that have not updated their ordinances.
 - ◆ Commuters in bus shelters and workers at construction sites and other settings are forced to inhale second hand smoke.
 - ◆ Smokers send drifting smoke in apartments and condos: according to numerous calls to the County, nonsmoking residents of apartments also inhale secondhand smoke fumes when they share ventilation systems in multi-unit housing. This affects the health of those with asthma,

allergies, children and infants who can die of SIDS (Sudden Infant Death Syndrome). Recent air toxicology studies from Stanford University, Berkeley Lawrence Laboratories, the Surgeon General and the California Air Resources Board show that these fumes, even in quasi-outdoor areas, are far more toxic to human health than most people realize. Contrary to myths, it is legal to enact smoke-free policies for multi-unit housing. According to public health attorneys, who thoroughly researched this topic, there is no constitutional right to smoke and smokers do not come under protected classes such as gender, ethnicity, or age: www.talc.phy.org. For more on second hand and third hand smoke exposure risks, go to: www.smokefreemarin.com under the "Secondhand Smoke Research link).



- 6. Smoking increases everyone's health care costs:** each Marin County taxpayer pays hundreds of dollars every year for health related costs of treating smokers, according to a study conducted over ten years ago at the University of California. Those costs are higher now- health care costs for smokers at any given age are as much as **40 percent higher than those for nonsmokers**, according to the *New England Journal of Medicine* (Health Cost of Smoking 337:1052-1057). The costs to taxpayers are only one side of the

burden of tobacco related diseases. The other side is the loss of health, functioning and family members. Marin Oncologists have reported that many smokers wait too long for treatment and that *parents* of Marin High School students die from tobacco related diseases. Numerous studies show that 80% of smokers want to quit- and do so - when "smoking areas" become restricted.



- 7. Cigarette trash is one of the leading causes of litter and groundwater pollution, damaging the environment.** Birds, animals and small children have choked on cigarette butts they have picked up off the ground.
<http://www.cigarettelitter.org>

Conclusion: Smoke-free ordinances contribute to a community's public health for generations to come. These ordinances are cost-effective and tend to be self enforcing, following effective public education campaigns. A website has been created for this purpose: www.smokefreemarin.com.

Prepared by Smoke-free Marin Coalition. For more information call 499-3020.

Multi-unit Housing and Secondhand Smoke: Prepared by Smoke-Free Marin

1. What is secondhand smoke (SHS)?

Secondhand smoke (SHS) is a mixture of over 4,000 chemicals consisting of gases and fine particles, and is derived from two sources: burning cigarette (side stream smoke) and exhaled air of smokers (mainstream smoke). SHS contaminates indoor and outdoor air, and at least 250 chemicals in secondhand smoke are toxic or carcinogenic.

2. Why is SHS at home an important issue?

Smoking restrictions have been adopted in public places and the work place, therefore the home is becoming the predominant location for SHS exposure, particularly for children. Also, people spend most of their time at home, which is a confined place for prolonged SHS exposure, especially for people who live with regular smokers.

3. How many people live in Multi-unit housing (MUH)?

In California, approximately 11 million people (34 percent) live in MUH, the second most common type of residential units after single family homes.

4. How does smoke travel in MUH and/or inside buildings?

MUH structures with shared interior walls typically have less airflow into the units compared to single-family detached houses. As a result, SHS becomes trapped inside individual units and can move into an adjacent unit through hallways, cracks in walls and floors, shared ventilation systems, or even through electrical outlets and plumbing fixtures.

5. How long can SHS linger in a unit or house?

Cigarette smoke is absorbed onto walls, floors, furniture, clothes, toys and other household surfaces within minutes to hours after emission. It can then be recycled into the air for hours or months, providing ongoing reservoirs of contamination and causing continual exposures from the hazardous air pollutants in SHS.

6. Do current heating, ventilating, and air conditioning (HVAC) systems help to prevent secondhand smoke exposure in multi-unit housing?

No. current HVAC systems cannot control exposure to SHS. HVAC operations can even distribute SHS contaminants throughout an entire building if the HVAC system is not controlled properly.

7. Is the public aware that secondhand smoke from other apartments can drift into their units?

Nearly 60 percent of renters believe that SHS can drift from unit to unit and 72 percent believe SHS can drift into a unit from outside. The apartment owners or managers are even better informed; 69 percent believe that SHS can drift from unit to unit and 80 percent believe SHS can drift into a unit from outside.

8. What are the health effects and economic costs caused by secondhand smoke?

Studies have reported that SHS exposure causes adverse health effects, including heart disease, lung cancer, respiratory illness, middle ear disease, low birth weight, and sudden infant death syndrome (SIDS). Every year, approximately 50,000 deaths in the United States and 4,000 deaths in California are associated with SHS

exposure. As a result of SHS exposure, the annual costs of direct medical care and other indirect expenses for mortality and morbidity in the United States are over 10 billion dollars.

9. Is there any risk-free level of exposure to secondhand smoke?

No. based on research findings, the U.S. Surgeon General has declared that there is no risk-free level of SHS exposure. SHS exposure can be particularly dangerous to sensitive populations such as children, and people who have heart or breathing problems.

10. Do Californians support smoke-free multi-unit housing? How about smokers? Apartment owners/managers?

Yes. Californians show support for smoke-free MUH. In 2001, 63 percent of Californians' agreed that half of the MUH units should be smoke-free while in 2006 more than three quarters (76 percent) agreed with the statement. The most significant change is observed among smokers. In 2001, 44 percent of smokers agreed that half of the units should be smoke-free. In 2006, 63 percent of smokers supported that statement. Apartment owners or managers were also supportive of smoke-free units. Two-thirds of the owners or managers (66 percent) either somewhat or strongly favored a law that requires a percentage of smoke-free units.

11. What is third hand smoke?

According to a research report released September 20, 2010, UC researchers have found that the residue from tobacco smoke clings to furniture, clothes, rugs, walls and floors. It may linger there for months and then mix with common pollutants to form carcinogens and tiny particles that are potentially hazardous, particularly to children. Thirdhand smoke, which sticks in rooms and cars, is often smelled but not seen. Earlier this year, Lawrence Berkeley National Laboratory scientists reported that nicotine from thirdhand smoke reacts with nitrous acid, an indoor pollutant commonly found in homes with gas-burning appliances, to form carcinogens called tobacco-specific nitrosamines. "These are among the most broadly acting potent carcinogens present in unburned tobacco and tobacco smoke," said Destailats, Scientist. The study also indicated that opening windows or running a fan to ventilate the room while a cigarette burns doesn't eliminate the hazards of thirdhand smoke.

12. How does third hand smoke affect us?

Since the most likely exposure to these particular carcinogens is through either inhalation of dust or contact of skin with contaminated surfaces, thirdhand smoke would seem to pose the greatest danger to infants and toddlers who crawl on rugs and floors, touch furniture and put dirty fingers or objects in their mouth. (UC Research News 9/20/2010). During the June 15 *Today Show* (NBC) Dr. Nancy Snyderman spoke about a lung condition called "Idiopathic Pulmonary Fibrosis" and how exposure to smoke particulates early in life, including childhood, may have ramifications for lung health much later in life. She said that tiny particulates cause inflammation and scarring in the lungs that can cause dry coughing, shortness of breath and fatigue while compromising lung health for many years to come. Dr. Snyderman said, "The insult that lungs take in earlier years have a price to pay in later years. Particulates in our environment have ramifications later in life." Scientific consensus shows that since ventilation does not work, environmental policies are necessary to protect non-smokers from involuntary exposure.

ORDINANCE NO. 754

AN ORDINANCE OF THE TOWN OF FAIRFAX AMENDING CHAPTER 8.44 OF THE FAIRFAX TOWN CODE

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

SECTION 1. Municipal Code Amended:

Chapter 8.44 of the Fairfax Municipal Code is hereby deleted in its entirety and replaced by the following:

CHAPTER 8.44: CLEAN INDOOR AIR AND HEALTH PROTECTION

- 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
- 8.44.080 Smoking optional areas
- 8.44.090 Duty of person, employer, business or nonprofit entity
- 8.44.100 Posting of signs
- 8.44.110 Regulating the sale of tobacco products
- 8.44.120 Enforcement
- 8.44.130 Violations and penalties
- 8.44.140 Non-retaliation
- 8.44.150 Public education
- 8.44.160 Governmental agency cooperation
- 8.44.170 Other applicable laws
- 8.44.180 Effective date

§ 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:

- (2) (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
- (3) 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 thirty 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 billion; and
- (2) From 2001-2004, the average annual health care expenditures attributable to smoking were approximately \$96 billion; and
- (3) The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over \$10 billion 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 \$15.8 billion in smoking-related costs in 1999 alone; and
- (5) California's Tobacco Control Program saved the state and its residents \$86 billion 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 4 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 million 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% 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% 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) 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units; and
- (2) 62% 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% 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 two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million 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;

§ 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

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 means:

A. any covered or partially covered space having more than seventy five percent (75%) 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

B. any space open to the sky having more than seventy-five (75%) 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 three thousand (3000) 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 eighteen (18) years old.

MULTI-UNIT RESIDENCE. A building or portion thereof that contains four (4) or more Units except the following specifically excluded types of housing:

- (a) a hotel or motel that meets the requirements set forth in California Civil Code section 1940(b)(2);
- (b) a dormitory building;
- (c) a single-family home;
- (d) a mobile home park;
- (e) a campground;
- (f) a marina or port;
- (g) a single-family home with an attached in-law or second unit when permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City 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 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 means a distance of at least twenty (20) feet.

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.

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.

SELF-SERVICE MERCHANDISING means 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.

SMOKING means possessing a lighted pipe, lighted cigar, or lighted cigarette, lighted hookah, or other device of any kind, or the lighting of a pipe, hookah, cigar or cigarette, or other device containing tobacco, tobacco product, tobacco-like product, spices, or any other plant or herbal materials.

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 means:

A. 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

B. 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 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 means 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 California Health and Safety Code section 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 California Civil Code section 1940(b)(2).

VENDOR-ASSISTED means 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.

§ 8.44.030 SMOKE GENERALLY

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

§ 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.

§ 8.44.050 PROHIBITION OF SMOKING IN 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 eighty percent (80%) 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.

§ 8.44.060 Prohibition of Smoking in certain Multi-Unit Residences.

A. A minimum of seventy five percent (75%) 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 fourteen (14) months after the effective date of the ordinance.

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
 - (i) violate any law regarding smoking while on the premises;
 - (ii) smoke in a non-smoking unit; or
 - (iii) 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 (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 the ordinance which adopted this section and which does not fully comply with (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 (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 ordinance 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:

- (i) must be an Unenclosed Area;
- (ii) must be located a Reasonable Distance from any Enclosed Area where Smoking is prohibited;
- (iii) 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;
- (iv) must be no more than twenty-five percent (25%) of the total Unenclosed Area of the premises for which it is designated;
- (v) must have a clearly marked perimeter;
- (vi) must be identified by conspicuous signs;
- (vii) 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
- (viii) 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.

§ 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. 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.

§ 8.44.080 SMOKING OPTIONAL AREAS.

A. Except as otherwise prohibited by state or federal law, the following areas shall not be subject to the smoking restrictions of this chapter:

1. Private single family residences, except when used as a child care or health care facility;
2. Retail tobacco stores, except where smoke from such stores enters an adjacent enclosed area where smoking is not permitted.

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 Section 8.44.100.

§ 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.

§ 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 Business and Professions Code section 22952 signage that expressly references Penal Code Section 308 at the entrance of any premises subject to regulation under Sections 8.44.040, 8.44.050 and 8.44.060 of this Chapter and applicable state and/or federal law.

§ 8.44.110 REGULATING THE SALE OF TOBACCO PRODUCTS.

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 California Business and Professions Code Section 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" in letters at least one half inch (½") tall, and which cite California Penal Code 308(a). These signs shall be updated to conform to any subsequent state or federal requirements and/or amendments to Penal Code Section 308(a).

C. No person, business, tobacco 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 to an individual without requesting and examining identification establishing the purchaser's age as eighteen 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, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product 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 vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of the ordinance codified in this chapter shall be removed within thirty days after the effective date of the ordinance codified in this chapter.

§ 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 Section 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.

§ 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.

§ 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.

§ 8.44.150 PUBLIC EDUCATION.

The Town Manager or his/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.

§ 8.44.160 GOVERNMENTAL AGENCY COOPERATION.

The Town Manager or his/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.

§ 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 Ordinance 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.

SECTION 2: Validity.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Town Council of the Town of Fairfax hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 3: Ordinance posting and effective date.

Copies of the foregoing ordinance shall, within fifteen (15) 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;
3. Bulletin Board, Fairfax Women's Club building;

which places are designated for that purpose. This ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

The foregoing ordinance amending the Fairfax Town Code was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on May 4, 2011 and was duly passed and adopted at a regular meeting held the ____ day of _____, 2011. by the following vote to wit:

AYES:
NOES:
ABSENT:

LARRY BRAGMAN, MAYOR

Attest:

Town Clerk, Judy Anderson