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CHAPTER 8.44: CLEAN INDOOR AIR AND HEALTH PROTECTION

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§ 8.44.010 FINDINGS AND PURPOSE.

The Town Council does find that:

(A) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.

(B) Reliable scientific studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children and teens, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

(C) Health hazards induced by exposure to environmental tobacco smoke include lung and other forms of cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, broncho-constriction and broncho-spasm and that the most common cause of premature death from environmental tobacco smoke is heart disease.

(D) Reliable scientific studies assessed by the U.S. Environmental Protection Agency have found that sidestream and secondhand tobacco smoke causes the death of at least 53,000 non-smokers annually and is a leading cause of premature death and disability among non-smokers.

(E) Non-smokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand tobacco smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same.

(F) Persons, particularly employees, have a right to a smoke-free environment if they desire.

(G) Tobacco smoking is a leading cause of fires and cigarette and cigar butts and ash stains on merchandise and fixtures cause economic losses to businesses.

(H) Substantial scientific evidence exists that the direct use of tobacco products causes cancer, heart disease and various other medical diseases. The Surgeon General of the United States has found that tobacco-caused diseases are the leading cause of

premature, preventable death and disability in the United States.

(I) The National Centers for Disease Control have found that at least 434,000 Americans die each year from tobacco-caused diseases. The Surgeon General of the United States and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent.

(J) The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful, addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the United States.

(K) The Surgeon General of the United States has found that nicotine in tobacco products is as addictive as cocaine and heroin.

(L) The National Institute on Drug Abuse has found that tobacco use by adolescents precedes and is predictive of adolescent illicit drug use.

(M) Recent scientific studies published in the Journal of the American Medical Association found that tobacco companies target children and teens with cigarette advertising and promotion, and that this advertising and promotion encourages young people to smoke cigarettes.

(N) Cal. Penal Code § 308 prohibits selling, giving or furnishing tobacco products to minors, and prohibits minors from buying, receiving or using falsified identification to purchase tobacco products. However, local legislation is needed to ensure the prohibitions contained in Cal. Penal Code § 308 are effectively enforced.

(O) The Surgeon General, the U.S. Department of Health and Human Services and local public health agencies and private health organizations have found that cigarettes and other tobacco products are easily available to minors from tobacco retailers, shoplifting and cigarette vending machines. Therefore, strong legislative action and enforcement are necessary to curtail the wide availability of tobacco products to minors.

(P) Easy access by minors to tobacco products from open, self-service, promotional displays and open store shelves promotes tobacco sales to minors and shoplifting of tobacco products. Therefore, prohibiting self-service sales of tobacco products will promote the health, safety and welfare of residents of, and visitors to, Fairfax under 18 years of age.

(Q) Minors have easy access to cigarette vending machines, and the prohibition of the sale or dispensing of cigarettes through vending machines will thereby promote the health, safety and welfare of the residents of and visitors to Fairfax under the age of 18 years.

(R) The purposes of this chapter are:

- (1) To protect public health, safety and general welfare;
 - (2) To guarantee the right of non-smokers to breathe tobacco smoke-free air, and to recognize that the need to breathe tobacco smoke-free air has priority over the desire to smoke; and
 - (3) To reduce youth access to tobacco products, especially to prevent illegal sales of tobacco to minors.
- (S) The town's basic police power allows implementation and enforcement of the provisions of this chapter in order to protect the public health, safety and general welfare.

(Prior Code, § 8.32.010) (Ord. 630, passed - -1994)

§ 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. A **BAR**, for the purpose of this definition, does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.

BUSINESS. Any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including, but not limited to retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

COCKTAIL LOUNGE. A bar within a restaurant.

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, who employs the services of one or more individual persons.

ENCLOSED. Surrounded by a ceiling, floor and solid walls which, except for doors, passageways and/or windows, extend from floor to ceiling on all sides if an enclosed area is divided by internal partial walls or other office landscaping, it is still, in its entirety,

enclosed. A retractable roof, whether open or closed, shall be considered a ceiling for the purpose of this definition.

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

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 section.

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

PLACE OF EMPLOYMENT.

(1) Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.

(2) A private residence is not a place of employment unless it is used as a child care or health care facility.

PUBLIC PLACE.

(1) Any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms.

(2) A private residence is not a **PUBLIC PLACE**.

RESTAURANT. Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term **RESTAURANT** shall not include a cocktail lounge or tavern if the cocktail lounge or tavern is a bar, as defined in herein.

RETAIL TOBACCO STORE. A retail store utilized primarily for the sale of tobacco produces and accessories and in which the sale of other products is merely incidental.

SELF-SERVICE MERCHANDISING. Open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.

SEPARATE VENTILATION SYSTEM. A system which is exhausted to the outside and negatively pressurized.

SERVICE LINE. Any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involve the exchange of money.

SMOKING. Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is intended to be inhaled.

SPORTS ARENA. Enclosed sports pavilions, gymnasiums, health spas, swimming pools 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 PRODUCT. Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

TOBACCO VENDING MACHINE. Any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

TOWN. The Town of Fairfax.

(Prior Code, § 8.32.020) (Ord. 630, passed - -1994)

§ 8.44.030 APPLICATION OF CHAPTER TO TOWN-OWNED FACILITIES.

All enclosed facilities, including vehicles and equipment, owned and controlled by the town, and any board, council, commission and agency of the town shall be subject to the provisions of this chapter, except that Police Department vehicles shall be exempted for a period of one year from the effective date of this chapter.

(Prior Code, § 8.32.030) (Ord. 630, passed - -1994)

§ 8.44.040 PROHIBITION OF SMOKING IN PUBLIC PLACES.

(A) Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the Town of Fairfax, including, but not limited to the following places:

- (1) Elevators;
- (2) Buses, taxicabs and other means of public transit under the authority of the town;
- (3) Restrooms;
- (4) Service lines;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all business and non- profit entities patronized by the public, including, but not limited to attorneys offices and other offices, banks, laundromats, malls, hotels, motels and bed and breakfast establishments;
- (7) Restaurants, provided:
 - (a) Cocktail lounges in restaurants that sell alcoholic beverages shall be exempted. These cocktail lounges shall:
 1. Within two years after adoption of this chapter provide a separate ventilation system and be fully enclosed on all sides in a separate area; and
 2. Not permit children under the age of 18 in the lounge unless for the purpose of using restrooms and only for the purpose of using restrooms. The bar/cocktail lounge shall not be the sole waiting area for patrons in the restaurant.
 - (b) Outdoor dining areas shall be exempt from this chapter.
 - (c) All other dining areas shall be smoke-free.
 - (d) The owner/operator of the restaurant may, in lieu of a separate ventilation system, prohibit smoking in all areas of the restaurant.
- (8) Public areas of galleries, libraries or museums when open to the public;
- (9) 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 the production;
- (10) Sports arenas and pavilions;
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee including joint committees, or agencies of the town or any political subdivision of the

state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the town;

(12) Waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to clinics, physical therapy, mental health and drug and alcohol treatment facilities, doctors and dentists offices;

(13) Lobbies, hallways and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes and other multiple- unit residential facilities;

(14) Lobbies, hallways and other common areas in multiple-unit commercial facilities;

(15) Polling places;

(16) Licensed bingo halls operated by a nonprofit entity pursuant to Cal. Penal Code § 326.5 shall provide a smoke-free room for the benefit of those who desire a smoke-free environment; and the licensed non-profit bingo halls may allow smoking in another, separate room; provided that, operational air cleaners are at all times in use during the time bingo is being played and smoking allowed, and thereafter, in accordance with the manufacturer's recommendations. A non-smoking area shall be provided within two years of the effective date of this chapter.

(17) A minimum of 50% of guest rooms in every hotel, motel and bed and breakfast establishment must be permanently designated non-smoking.

(B) Notwithstanding any other provisions of this chapter, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non- smoking establishment.

(Prior Code, § 8.32.040) (Ord. 630, passed - -1994)

§ 8.44.050 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

(A) Within 90 days of the effective date of this chapter, each employer having an enclosed place of employment located within the town shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements. Smoking shall be prohibited in all enclosed facilities within a place of employment, except where allowed by the terms of this chapter. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.

(B) The smoking policy shall be communicated to all employees within 30 days of its adoption, and at least annually thereafter.

(C) All employers shall comply with these non- smoking provisions and shall be responsible for their implementation in their places of employment.

(D) “No Smoking” signs referring to this chapter shall be conspicuously posted at building entrances and in employee lounges, cafeterias and lunchrooms. Posting the signs shall be presumed to give employees sufficient notice of the employer’s no smoking policy pursuant to division (A) above.

(E) All employers shall supply a written copy of the smoking policy to any existing or prospective employee.

(Ord. 630, passed - -1994)

§ 8.44.060 SMOKING OPTIONAL AREAS.

(A) Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter.

- (1) Private residences, except when used as a child care or health care facility;
- (2) Retail tobacco stores;
- (3) A maximum of 50% of hotel/motel rooms or bed and breakfast bedrooms;
- (4) Bars, as defined in § [8.44.020\(A\)](#), except for cocktail lounges, as provided in § [8.44.040\(A\)](#); and
- (5) Parks and ballfields.

(B) Notwithstanding any other provision of this chapter, any owner, operator, manager or other person who controls any establishment described in this chapter may declare that entire establishment as a non-smoking establishment.

(Ord. 630, passed - -1994)

§ 8.44.070 POSTING OF SIGNS.

(A) “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building, as well as on entrances at eye level, or other place where smoking is regulated by this chapter, by the owner, operator, manager or other person having control of the building or other place.

(B) Every restaurant and enclosed shopping center shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(Ord. 630, passed - -1994)

§ 8.44.080 REGULATING THE SALE OF TOBACCO PRODUCTS.

(A) Beginning 90 days after the effective date of this chapter, 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 state “THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO 1D REQUIRED.” The letters of the signs should be at least one quarter inch high.

(B) Beginning 90 days after the effective date of this chapter, 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 18 years or greater unless the seller has some other reasonable basis for determining the buyer’s age.

(C) Beginning 90 days after the effective date of this chapter, it shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold or offer for sale or display for sale any tobacco products by means of self-service merchandising or by any means other than vendor-assisted sales.

(D) Beginning two years after the effective date of this chapter, 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 this chapter shall be removed within two years after the effective date of this chapter.

(Prior Code, § 8.32.080) (Ord. 630, passed - -1994)

§ 8.44.090 ENFORCEMENT.

(A) Notice of these regulations shall be given to all applicants for a business license.

(B) Enforcement of this chapter shall be implemented by the Town Manager or his or her designee.

(C) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Town Manager or his or her designee.

(D) The town's Building Official shall require, while an establishment is undergoing otherwise mandated inspections, certification from the owner, manager, operator or other person having control of the establishment that all requirements of this chapter have been complied with.

(E) County Health Inspectors, on their regular restaurant inspections, shall check for compliance with sign posting requirements. Restaurants shall be notified, in writing, of any violations on the standard health inspection report. Further, the violations shall be reported, in writing, by the county's Health Department, on a quarterly basis, to the Town of Fairfax.

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

(Prior Code, § 8.32.090) (Ord. 630, passed - -1994)

§ 8.44.100 VIOLATIONS AND PENALTIES.

(A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by this chapter.

(C) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to § [8.44.080](#) shall have the following responsibilities:

(1) To post plainly visible signs at a point of purchase stating that sale of tobacco products to minors is prohibited by law and photo I.D. is required to purchase tobacco;

(2) To request and inspect identification from any person buying tobacco products which shows that the purchaser is of legal age unless the seller has some other reasonable basis for determining the buyer's age;

(3) To prohibit any cigarette sales from a vending machine in the establishment;
and

(4) To eliminate self-service merchandising of tobacco products.

This division shall not be interpreted to reduce any person's obligations pursuant to § [8.44.080](#).

(D) Any person, business tobacco retailer or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter shall be deemed guilty of an infraction, punishable by:

- (1) A fine, not exceeding \$100 for the first violation;
- (2) A fine, not exceeding \$200 for a second violation of this chapter within one year; and
- (3) A fine not exceeding \$500 for a third violation or any subsequent violation of this chapter within one year.

(Ord. 630, passed - -1994)

§ 8.44.110 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. 630, passed - -1994)

§ 8.44.120 PUBLIC EDUCATION.

The Town Manager or his or her designee shall apply to all appropriate agencies for funds to be used for the purposes of this chapter. Any such funds may be used to educate the public concerning the location and names of businesses subject to and in compliance with this chapter.

(Prior Code, § 8.32.120) (Ord. 630, passed - -1994)

§ 8.44.130 GOVERNMENTAL AGENCY COOPERATION.

(A) The Town Manager or his or her designee shall annually request other governmental and educational agencies having facilities within the town to establish local operating procedures in cooperation and compliance with this chapter.

(B) 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.

(Prior Code, § 8.32.130) (Ord. 630, passed - -1994)

§ 8.44.140 OTHER APPLICABLE LAWS.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Prior Code, § 8.32.140) (Ord. 630, passed - -1994)

§ 8.44.150 SEVERABILITY.

If any section, provision, clause, sentence or division of this chapter or the application thereof to any person or circumstances shall be held invalid, the invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Ord. 630, passed - -1994)

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