

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF NOVATO REQUIRING  
THE LICENSURE OF TOBACCO RETAILERS AND  
ADDING SECTION 7-6 TO THE CITY'S MUNICIPAL  
CODE

The City Council of the City of Novato does ordain as follows:

**SECTION I. FINDINGS.** The City Council of the City of Novato hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City of Novato; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death; and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year and will be responsible for 10 percent of all deaths worldwide; and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code §118950);
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and tobacco paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code §308);

- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age (Cal. Bus. & Prof. Code §22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code §22952);
- State law prohibits the sale of tobacco products and paraphernalia through self-service displays with limited exceptions for stores licenses to sell alcoholic beverages, but permits local agencies to adopt more restrictive legislation (Cal. Bus. & Prof. Code §§22960 and 22962);
- State law prohibits the sale or furnishing of electronic cigarettes to minors (Cal. Health & Safety Code §119405);
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code §308.3); and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§22970.1 and 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code §22971.3); and

WHEREAS, California courts have affirmed the power of the City to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

WHEREAS, despite the State's and City's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age;
- In California, 67.7 percent of adult smokers started by the age of 18;
- Nearly 34,000 youth start to smoke in California each year;

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 7.6 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2013;
- E-cigarette use among American youth is now a major public health concern, growing an astounding 900% among high school students from 2011 to 2015;

- Among the 14.2 percent of minors nationwide who smoked cigarettes in 2011, 14.0 percent had usually obtained their own cigarettes by buying them in a store or gas station; and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

- A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and
- Over 90 percent of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco; and
- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws; and

WHEREAS, cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco; and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, the 2016 Healthy Store Healthy Community public intercept survey for Marin indicates 90% support for Tobacco Retailer Licensing; and

WHEREAS, in Marin County 17 out of 29 pharmacies have voluntarily eliminated tobacco from their product mix and the Marin County Pharmacists Association supports eliminating the sale of tobacco in all pharmacies; and

WHEREAS, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

**SECTION II.** Section 7-6 is added to the Novato Municipal Code to read as follows:

**Sec. 7-6.1. TITLE.** This section shall be known as “Novato’s Tobacco Retailers’ Licensing Law.”

**Sec. 7-6.2. DEFINITIONS.** The following words and phrases, whenever used in this section, shall have the meanings defined in this subsection unless the context clearly requires otherwise:

- (a) "Arm’s Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this is not an Arm’s Length Transaction.
- (b) "Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt wrap," or "cigar wrap."
- (c) "City" means the City of Novato, State of California.
- (d) "Department" means City Manager, and any agency or Person designated by the Department to enforce or administer the provisions of this section.
- (e) “Electronic Smoking Device” means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such electronic smoking device, whether 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.
- (f) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (g) "Pharmacy" means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.
- (h) "Proprietor" means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%)



or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

- (i) "Self-Service Display" means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.
- (j) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.
- (k) "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of Tobacco Products.
- (l) "Tobacco Product" means:
  - (i) any product containing, made, or derived from tobacco, nicotine, or other substance that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to, cigarettes, cigars, little cigars, chewing tobacco, snuff;
  - (ii) any Electronic Smoking Device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, pipe, or hookah;
  - (iii) Notwithstanding any provision of subsections (a) and (b) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
- (m) "Tobacco Retailer" or "Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

### **Sec. 7-6.3. REQUIREMENTS AND PROHIBITIONS**

- (a) **TOBACCO RETAILER'S LICENSE REQUIRED.** It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this section for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.
- (b) **LAWFUL BUSINESS OPERATION.** In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this section for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, or Tobacco Retailing.
- (c) **DISPLAY OF LICENSE.** Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (d) **POSITIVE IDENTIFICATION REQUIRED.** No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product to another Person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.
- (e) **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.
- (f) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.
- (g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:
  - (1) Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a license under Section 7-6.12; and
  - (2) Shall not display any advertisement relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

- (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 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.
- (i) **MINIMUM PACK SIZE FOR CIGARS.** Notwithstanding any other provision of this section, it shall be a violation of this section for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:
- (1) any single Cigar, whether or not packaged for individual sale;
  - (2) any number of Cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or
  - (3) any package of Cigars containing fewer than five Cigars.

This subsection (i) does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars (\$5.00).

- (j) **PHARMACIES CANNOT SELL TOBACCO PRODUCTS.** No license may be issued to authorize Tobacco Retailing in a Pharmacy.

#### **Sec. 7-6.4. APPLICATION PROCEDURE.**

- (a) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct or conducting retail tobacco sales, and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the City that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this section, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to subsection 7-6.12 of this section. Nothing in this section shall be construed to vest in any Person obtaining and maintaining a

Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

- (1) The name, address, and telephone number of each Proprietor of the business seeking a license.
- (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
- (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Person and Address") required by, authorized by, or convenient to the enforcement of this section. If an Authorized Person and Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
- (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
- (5) Such other information as the Department deems necessary for the administration or enforcement of this section as specified on the application form required by this section.
- (b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within ten (10) business days of a change.
- (c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code §6250 et seq.) or any other applicable law, subject to the laws' exemptions.
- (d) Tobacco Retailers in existence on the enforcement date specified in section 7-6.14 shall apply for a license within 90 days of said enforcement date.

#### **Sec. 7-6.5. ISSUANCE OF LICENSE.**

(a) BASES FOR DENIAL. Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this section, the

Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this section.
- (2) The application seeks authorization for Tobacco Retailing at a location for which this section prohibits issuance of Tobacco Retailer licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the City with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an Arm's Length Transaction.
- (3) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this section prohibits a license to be issued.
- (4) The application seeks authorization for Tobacco Retailing at a location, that is unlawful pursuant to this Code, including without limitation, zoning ordinance and building code, or that is unlawful pursuant to any other law.

**(b) APPEAL OF DENIAL.**

Subject to Section 7-6.11(c), a decision of the Department to deny a license is appealable to the City Council and any such appeal must be filed in writing with the City Clerk within fifteen (15) days of the Department's denial of the issuance of the license and the applicable appeal fee must be paid.

**Sec. 7-6.6. LICENSE RENEWAL AND EXPIRATION.**

- (a) **RENEWAL OF LICENSE.** A Tobacco Retailer's license is invalid if the appropriate license fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is one calendar year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than November 30 of each year, commencing November 30, 2018, and annually thereafter.
- (b) **EXPIRATION OF LICENSE.** A Tobacco Retailer's license that is not timely renewed shall expire on December 31 of each year. To renew a license not timely renewed pursuant to subparagraph (a), above, the Proprietor must:
  - (1) Submit the license fee and the renewal form; and

- (2) Submit a signed affidavit affirming that the Proprietor has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed.

**Sec. 7-6.7. TRANSFER RESTRICTIONS.**

- (a) A Tobacco Retailer's license may not be transferred from one location to another.
- (b) A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).
- (c) Notwithstanding any other provision of this section, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless: the new Proprietor(s) provide the Department with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction.

**Sec. 7-6.8. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.**

Nothing in this section shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the license. For example, nothing in this section shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code including without limitation, the zoning ordinance and building codes, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

**Sec. 7-6.9. FEE FOR LICENSE.**

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this section, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this section. Fees are nonrefundable except as may be required by law.

**Sec. 7-6.10. COMPLIANCE MONITORING.**

- (a) Compliance with this section shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this section. The Department may designate any number of additional Persons to monitor compliance with this section.
- (b) The Department will work with Marin County Tobacco Program to inspect each Tobacco Retailer at least one (1) time per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the City or its agents.
- (c) The Department shall not enforce any law establishing a minimum age for Tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
  - (1) the Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the City to monitor compliance with this section;
  - (2) the Youth Decoy is acting as an agent of a Person designated by the City to monitor compliance with this section; or
  - (3) the Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the County of Marin Department of Health & Human Services or the California Department of Health Services.

**Sec. 7-6.11. SUSPENSION OR REVOCATION OF LICENSE.**

- (a) **SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this section or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 7-6.3 above.
  - (1) Upon a finding by the Department of a first violation of this section at a location within any sixty (60)-month period, the license shall be suspended for thirty (30) days.



- (2) Upon a finding by the Department of a second violation of this section at a location within any sixty (60)-month period, the license shall be suspended for ninety (90) days.
- (3) Upon a finding by the Department of a third violation of this section at a location within any sixty (60)-month period, the license shall be suspended for one (1) year.
- (4) Upon a finding by the Department of four or more violations of this section at a location within any sixty (60)-month period, the license shall be revoked.
- (b) APPEAL OF SUSPENSION OR REVOCATION. A decision of the Department to suspend or revoke a license is appealable to the City Council and any appeal must be filed in writing with the City Clerk within fifteen (15) days of mailing of the Department's decision and the applicable appeal fee must be paid. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the City Council is not available for a revocation made pursuant to subsection (c) below.
- (c) REVOCATION OF LICENSE WRONGLY ISSUED. A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 7-6.5 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the City. Such a revocation shall be without prejudice to the filing of a new license application.
- (d) JUDICIAL ACTION TO CHALLENGE. Any final administrative action to suspend or revoke a Tobacco Retailer's license under this section shall be subject to judicial review pursuant to Cal. Gov't Code section 53069.4, which, among other things, requires such a judicial challenge to be brought within 20 days of service of the final decision.

**Sec. 7-6.12. TOBACCO RETAILING WITHOUT A VALID LICENSE.**

- (a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the City Council finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

- (1) After a first violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty (30) days have passed from the date of the violation.
  - (2) After a second violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety (90) days have passed from the date of the violation.
  - (3) After of a third or subsequent violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until sixty (60) months have passed from the date of the violation.
- (b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this section. The decision by the Department may be appealed pursuant to the procedures set forth in section 7-6.11(b). Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.
- (c) For the purposes of the civil remedies provided in this section, each of the following constitutes a separate violation of this section:
- (1) each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this section; or
  - (2) each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this section;

**Sec. 7-6.13. ADDITIONAL REMEDIES.**

- (a) The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.

- (b) Whenever evidence of a violation of this section is obtained in any part through the participation of a Person under the age of twenty-one (21) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this section and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (c) Violations of this section are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than Two Hundred Fifty Dollars (\$250.00) and not exceeding One Thousand Dollars (\$1,000.00) per violation.
- (d) Violations of this section may, in the discretion of the City Attorney, may be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this section shall also constitute a violation of this section.
- (f) Violations of this section are hereby declared to be public nuisances.
- (g) In addition to other remedies provided by this section or by other law, any violation of this section may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

**Sec. 7-6.14. ENFORCEMENT.**

This section shall not be enforced by the City until January 1, 2018.

**SECTION III. SEVERABILITY.** 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 City Council of the City of Novato 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 IV. EFFECTIVE DATE.** This Ordinance shall become effective thirty (30) days from and after the date of its passage


**SECTION V. CEQA FINDINGS.**

This ordinance is exempt from the California Environmental Quality Act ("CEQA") under 14 Cal. Code Regs. Section 15061(b)(3) because it can be seen with certainty that there is no possibility that its adoption will have a significant adverse effect on the environment. It is also categorically exempt under 14 Cal. Code Regs. Section 15308 because the ordinance constitutes a regulatory activity whose purpose is the protection of the environment and to reduce the adverse health effects of air pollutants caused by smoking.

\* \* \* \* \*

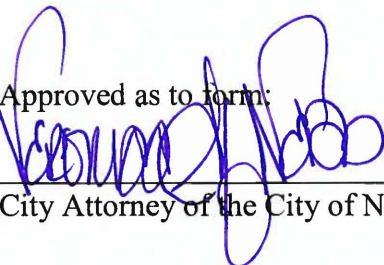
**IT IS HEREBY CERTIFIED** that the foregoing ordinance was duly introduced at a regular meeting of the Novato City Council held on 10<sup>th</sup> day of January, 2017, and thereafter passed and adopted by the Novato City Council on the 31<sup>st</sup> day of January, 2017, by the following vote, to wit:

AYES:	Councilmembers	Drew, Eklund, Fryday, Lucan, Athas
NOES:	Councilmembers	None
ABSTAIN:	Councilmembers	None
ABSENT:	Councilmembers	None

  
\_\_\_\_\_  
Mayor of the City of Novato

Attest:

  
\_\_\_\_\_  
City Clerk of the City of Novato

Approved as to form:  
  
\_\_\_\_\_  
City Attorney of the City of Novato