

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1533

AN ORDINANCE OF THE CITY OF NOVATO REGULATING SECOND-HAND SMOKE, PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES AND AMENDING THE NOVATO 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:

A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and
- the World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and
- the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and
- secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and
- 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure; and
- secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke; and
- secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and

- the total cost of smoking in California was estimated as \$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
- cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 31,200 structure fires and 830 deaths in 2001; and

B. Most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

- 84% of Californians are non-smokers; and
- 70% of Californians surveyed approve of apartment complexes requiring at least half of rental units be non-smoking; and
- 67% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings; and

C. Secondhand smoke can seep under doorways and through wall cracks; and

D. There is no Constitutional right to smoke; and

E. State law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and

F. A local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within the common areas of multi-unit residences is not prohibited by state law; and

G. California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance; and

H. Local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance; and

NOW THEREFORE, it is the intent of the City Council in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users; by protecting children from exposure to smoking and tobacco; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from nonconsensual exposure to secondhand smoke and tobacco-related litter and pollution and by affirming the family-friendly atmosphere of the City's public places .

**SECTION II.** Section 7-3 of the City of Novato Municipal Code is hereby amended to read as follows:

**Section 7-3 SMOKING REGULATIONS**

**Sections**

- 7-3.1 Title
- 7-3.2 Definitions
- 7-3.3 City-owned vehicles and Enclosed facilities
- 7-3.4 Prohibition of Smoking in Enclosed Public Places and places of employment
- 7-3.5 Prohibition of Smoking in certain unenclosed Public Places
- 7-3.6 Prohibition of Smoking in certain Multi-Unit Residences
- 7-3.7 Smoking optional areas
- 7-3.8 Duty of Person, Employer, Business, or Nonprofit Entity
- 7-3.9 Posting of signs
- 7-3.10 Regulating the sale of Tobacco Products
- 7-3.11 Secondhand Smoke Exposure
- 7-3.12 Enforcement
- 7-3.13 Violations and Penalties
- 7-3.14 Nonretaliation
- 7-3.15 Public education
- 7-3.16 Governmental agency cooperation
- 7-3.17 Other applicable laws

**Section 7-3.1 Title.**

This section shall be known as the Novato Smoke-Free Air and Health Protection Ordinance.

**Section 7-3.2 Definitions.**

The following words and phrases, whenever used in this section, shall have the following meanings to be interpreted in accord with state statute if a contradiction appears:

A. "Bar" means 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 such beverages. Although a restaurant may contain a Bar, the term "Bar" shall not include the restaurant dining area.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other Business entity formed for profit-making purposes.

C. "City" means the City of Novato.

D. "Employee" means any Person who is employed by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for a Nonprofit entity.

E. "Employer" means any Person, partnership, corporation, including a municipal corporation, or Nonprofit entity, which employs the services of one or more individual Persons or utilizes volunteers.

F. "Enclosed" means:

1. any covered or partially covered space having more than 50% of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or
2. any space open to the sky having more than 75% of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard;
3. 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.

G. "Landlord" means 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.

H. "Minor" shall mean any individual who is less than eighteen years old.

I. "Multi-Unit Residence" means a Premises that contains two (2) or more Units which are unoccupied by a Landlord of the Premises.

J. "Multi-Unit Common Area" means 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.

K. "Nonprofit entity" means 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 "Nonprofit entity" within the meaning of this section.

L. "No Smoking Sign" means 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).

M. "Openings" shall include main entrances, exits, operable windows and ventilation intake systems.

N. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

O. "Place of employment" means 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, bingos and gaming facilities, long term health facilities, warehouses, and private residences used as child/elder care or health care facilities subject to licensing requirements.

P. "Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same natural Person or by legal Persons under common control.

Q. "Public Place" means 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 mean within private vehicles in or on Public Places.

R. "Retail tobacco store" means 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.

S. "Reasonable Distance" means a distance of at least twenty (20) feet.

T. "Recreation Area" means 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.

U. "Self-service merchandising" means 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-aways), to which the public has access without the assistance of an Employee. A vending machine is a form of self service displays.

V. "Service Area" means any 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.

W. "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.

X. "Tobacco Paraphernalia" means 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.

Y. "Tobacco Product" means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U. S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

Z. "Tobacco Vending Machine" means a 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.

AA. "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.

BB. "Unit" means: (1) 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; and (2) senior citizen housing and single room occupancy hotels, 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).

### **Section 7-3.3 City-Owned Vehicles and Enclosed facilities.**

All city-owned vehicles, including jitneys and buses and other means of public transit under the authority of the City, and all Enclosed facilities owned or controlled by the City, including City vehicles and Enclosed meeting facilities of any board, council, commission and agency of the City shall be subject to the provisions of this section.

### **Section 7-3.4 Prohibition of Smoking in Enclosed Public Places and Places of employment.**

A. Except as otherwise provided, Smoking shall be prohibited in all Enclosed Public Places within the City, including, but not limited to:

1. Places of Employment;
2. Buses, taxicabs, and other means of public transit under the authority of the City 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;

B. A minimum of eighty percent of guest rooms in every hotel and motel, and bed-and-breakfast facilities must be permanently designated as completely nonsmoking.

### **Section 7-3.5 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. If Smoking is permitted in the unenclosed area of a stand-alone Bar, the entire Smoking section must be limited to one designated area clearly marked with signs, and must be located at least twenty (20) feet from any doorway or Opening into an Enclosed area. Smoking in an unenclosed area of a Bar may only take place if the smoke does not enter adjacent Businesses, residences and areas in which Smoking is prohibited.

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;
2. A Reasonable Distance of Service Areas;

3. Courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers;
4. 20 feet of working road or building and construction crews;
5. Recreation Areas;
6. Service Areas;
7. Public events including but not limited to, sports events, entertainment, speaking performances, ceremonies, pageants, parades, fairs and farmer's markets;
8. Public Places; and
9. 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 section.

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.

#### **7-3.6 Prohibition of Smoking in certain Multi-Unit Residences.**

A. Smoking is prohibited in all Multi-Unit Residence Common Areas except that a Landlord may designate a portion of the outdoor area of Premises as a Smoking area as provided in paragraph (B) below.

B. A designated Smoking area:

1. Must be located a Reasonable Distance from any indoor area where Smoking is prohibited;
2. Must not include, and must be a Reasonable Distance from, outdoor areas primarily used by children including, but not limited to, areas improved or designated for play or swimming;
3. Must be no more that 25% of the total outdoor area of the Premises for which it is designated;
4. Must have a clearly marked perimeter;



5. Must be identified by conspicuous signs; and
6. 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.

C. **Smoke-Free Buffer Zones:** Smoking is prohibited on the Premises of a Multi-Unit Residence within a Reasonable Distance of any entrance, Opening, or other vent into an enclosed area of a Multi-Unit Residence in which Smoking is prohibited by this chapter, other provisions of this Code, state law, or federal law. For example, and without limitation, Smoking on balconies, porches, or patios within a Reasonable Distance of a window or door of a non-smoking Unit is prohibited. This provision does not apply inside a designated Smoking Unit pursuant to Section 7-3.6(F).

D. **Non-Smoking Units Required in Multi-Unit Residences**

1. **New Multi-Unit Residences:**

- (a) In every Multi-Unit Residence substantially completed more than six (6) months after the effective date of this chapter and containing ten (10) or more Units, at least seventy-five percent (75%) of the Units (including private outdoor spaces associated with such Units, such as balconies, patios and decks), shall be designated as non-smoking Units. All Units may be designated non-smoking. 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. **Existing Multi-Unit Residences:**

- (a) In every Multi-Unit Residence existing on the effective date of this chapter, not subject to subsection (a) above, and containing ten (10) or more Units, at least fifty percent (50%) of the Units (including private outdoor spaces associated with such Units, such as balconies, patios, and decks), must be designated as non-smoking Units. All Units may be designated non-smoking Units. Non-smoking Units must be grouped together (e.g., horizontally and/or vertically) and physically separated from Smoking Units to the maximum extent practicable.
- (b) A Unit designated non-smoking by action of the Landlord or by the force of this chapter shall not be subject to the Smoking restrictions of this section while the legal tenant(s) in occupancy on the effective date of this chapter continuously lease the Unit.

E. Required Lease Terms:

1. Except as provided in Section 7-3.6(D)(2)(b) every new lease, 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 subsection (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 subsection (a).
3. A tenant who breaches the Smoking regulations of a lease or knowingly allows another person to do so shall be liable to: (i) the Landlord; and (ii) to any lawful occupant of the Multi-Unit Residence who is exposed to secondhand smoke as a result of that breach. A Landlord shall not be liable to any person for a tenant's breach of Smoking regulations if the Landlord has fully complied with subsection (a).
4. Failure to enforce any Smoking regulation of a lease or agreement on one or more occasions shall not continue 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.

F. 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.

**G. 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, this 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. 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.
3. "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.

**Section 7-3.7 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 section:

1. Private 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 section 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 7-3.9.

**Section 7-3.8 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.

#### **Section 7-3.9 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 section.

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 section.

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 7-3.4, 7-3.5 and 7-3.10 of this Chapter and applicable state and/or federal law.

#### **Section 7-3.10 Regulating the sale of Tobacco Products.**

A. Any Person, Business, tobacco retailer or other establishment subject to this section 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 section 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 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 section 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.

### **Section 7-3.11. Secondhand Smoke Exposure.**

The uninvited presence of secondhand smoke in or within a Reasonable Distance of any entrance opening or other vent into any Enclosed place of human habitation is a nuisance and a trespass, including, but not limited to the following places as defined in Chapter 19 of the City of Novato Municipal Code:

- A. Residential Uses and Structures
- B. Assisted Living Facilities
- C. Board and Care Homes
- D. Child Daycare Facilities
- E. Congregate Care Facilities
- F. Convalescent Hospitals
- G. Dwellings, Dwelling Units or Housing Units
- H. Group Care Facilities
- I. Group Homes
- J. Medical Services – Hospitals
- K. Medical Services – Extended Care Facilities
- L. Residential Care Facilities for the Elderly
- M. Residential Care Homes
- N. Rooming and Boarding Houses
- O. Skilled Nursing Facilities

### **Section 7-3.12. Enforcement**

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

B. Notice of this section will be provided to all applicants for a Business license or renewal thereof. However, lack of such notice shall be no defense to a violation of this chapter.

C. Enforcement of this chapter shall be implemented by the city manager or his/her designee. Before a civil penalty is levied, the Person charged with the violation shall be given

a written warning by the Marin County Department of Health Services of the proposed action, including the nature of the violation and the amount of the proposed penalty.

D. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the city manager or his/her designee.

E. The city code compliance officer shall require, while an establishment is undergoing otherwise mandatory inspections, certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

F. 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, such violations shall be reported in writing by the county health department, on a quarterly basis, to the administrative authority in the jurisdiction where such violations occur.

G. Notwithstanding any other provision of this section, a private citizen may bring legal action to enforce this section.

### **Section 7-3.13. Violations and Penalties**

A. The remedies provided by this section are not intended to preclude any other remedy available at law or inequity.

B. It is unlawful to cause, permit, aid, abet, or conceal a violation of any provision of this chapter.

C. It is unlawful for any Person who owns, manages, operates or otherwise controls the use of any Premises subject to regulation under this chapter to refuse to comply with any of its provisions, or to permit any Employee or patron to violate this chapter.

D. It shall be unlawful for any Person to smoke in any area where Smoking is prohibited under this chapter.

E. 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.

F. Any Person, Business, tobacco retailer, or owner who violates any provision of this chapter shall be deemed guilty of an infraction, punishable by:

1. a fine, not exceeding one hundred (\$100.00) dollars and/or five days of community service, for the first violation.
2. a fine, not exceeding two hundred (\$200.00) dollars and/or ten days of community service, for a second violation of this section within one year.
3. A fine not exceeding five hundred (\$500.00) dollars and/or 15 days of community service, for a third violation or any subsequent violation of this section within one year.

**Section 7-3.14 Non-retaliation.**

No Person or Employer shall discharge or in any manner retaliate against any Employee because such Employee exercises any right to a smoke free environment afforded by this chapter.

**Section 7-3.15 Public Education.**

The City 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. However, lack of such education shall be no defense to a violation of this chapter.

**Section 7-3.16 Governmental agency cooperation.**

The City Manager or his/her designee may annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this section. 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.

**SECTION III. CONSTRUCTION, SEVERABILITY**

It is the intent of the City Council of the City of Novato 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 section shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws.

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 AND PUBLICATION**

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in the *Novato Advance*, a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

publishing the title or appropriate summary in the *Novato Advance* at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance, and

This ordinance shall go into effect ninety (90) days after the date of its passage and adoption.

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THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 8<sup>th</sup> day of April, 2008, and was passed and adopted at a regular meeting of the Novato City Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AYES: Councilmembers

NOES: Councilmembers

ABSTAIN: Councilmembers

ABSENT: Councilmembers

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

Attest:

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