

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL AMENDING SECTION 2.8 OF THE NOVATO MUNICIPAL CODE RELATING TO PURCHASING OF SUPPLIES AND CONTRACTUAL SERVICES TO PROVIDE A LOCAL VENDOR PREFERENCE

WHEREAS, the City of Novato spends a considerable amount purchasing goods, supplies, equipment and services. A substantial portion of the funds used to make these purchases come from taxes and fees derived from local businesses. The City Council has determined that funds generated in the community should, to the extent reasonably possible, be placed back in the local economy; and

WHEREAS, businesses that provide goods, supplies, equipment and services within the City of Novato are at a competitive disadvantage because doing business within the City is more expensive due to higher costs in labor, insurance and rent, among other things; and

WHEREAS, this competitive disadvantage generally results in higher costs and, therefore, higher bids from local businesses who respond to the City's requests for materials, supplies, equipment and services; and

WHEREAS, the City Council has determined that funds generated in the local community, should, to the extent possible, stay in the local economy in order to promote the economic health of the City and to encourage local participation in the procurement of goods, supplies, equipment and services. Some of the economic benefits derived by the City through purchasing from local businesses include the return of sales tax to the City; and

WHEREAS, strategies that encourage people to buy locally are an important component of economic sustainability, and the City Council finds that, to the extent possible, the City should support and preserve these local businesses in order to stimulate economic growth within the City; and

WHEREAS, the City Council further finds that amending the City's Municipal Code as described in this ordinance to adopt a local preference program is an important strategy for fostering economic sustainability in the City because retaining local dollars within a community reduces economic export and increases the financial productivity of taxpayer funds and increases the consumption of local goods; and

WHEREAS, the City Council has further determined that in light of the above facts and findings, it is in the best interest of the City to adopt and approve a local vendor preference program to give a minimal preference to local businesses or vendors when the City makes certain purchases and enters into contracts for the purchase of such goods and services; and

WHEREAS, the City Council hereby finds and determines that this action is necessary to reduce the competitive disadvantage to local businesses described above, and to preserve and retain local businesses that serve Novato.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NOVATO, DOES ORDAIN AS FOLLOWS:

Section 1. Purpose

The purpose of this ordinance is to contribute to the economic well-being of all the residents of the City by providing a contracting preference for local businesses and to create a situation in which local businesses, as defined, will be able to effectively compete when responding to solicitations for proposals for materials, supplies, and equipment and when otherwise contracting with the City. This preference encourages City and regional economic development by providing to the City local economic benefit that is not provided by non-local businesses.

Section 2. Authority

The City Council enacts this ordinance under the authority granted to Cities by Article XI, Section 7 of the California Constitution.

Section 3. Amendment

The following section 2-8.17 will be added to the Novato Municipal Code to read as follows:

2-8.17 Local Vendor Preference Program

a. *Statement of Policy and Granting of Preference.*

In order to promote the economic health of the City and to encourage local participation in the procurement of goods, supplies, equipment and services by the City, preference shall be granted to each responsible local vendor by an amount equal to five percent (5%) of the total price bid by each of the responsible local vendors.

A bid or proposal from a local vendor for goods, supplies, equipment, and/or services will be tabulated as if it were five (5%) percent below the total figure actually set forth in the bid or proposal.

b. *Definition and Verification of Local Vendor*

1. "Local Vendor" shall mean and refer to a supplier or provider of goods, supplies, equipment and/or services that:
 - a. Has a fixed place of business within the City limits as defined in section 8-1.3;
 - b. Has a current business license issued by the City;
 - c. Has paid all business assessments and fees imposed by the City; and
 - d. Began doing business within the City at least one year prior to the date the City invites bids or quotations for the relevant purchase to which the local vendor is responding.

2. “Responsible local vendor” shall mean a local vendor who (i) is not barred from government contracts for prior misconduct, (ii) has not engaged in conduct that would cause him/her/it to be considered non-responsible under the bidding provisions of the California Public Contract Code and/or the authorities interpreting that Code, (iii) has not had performance issues with prior contracts or is not in active litigation with the City, (iv) has the necessary materials, personnel and equipment to perform the work and/or services at issue, and (v) complies with all City bid procedures.

3. Verification of Local Vendor

Any vendor claiming to be a local vendor shall so certify in the bid or proposal. The City Manager shall have the final discretion to determine if a vendor meets the definition of local vendor set forth above.

c. *Exceptions to Local Vendor Preference Policy*

Notwithstanding anything to the contrary stated in this section, the local vendor preference granted by this section 2-8.17 shall not apply to the following purchases or contracts:

1. Professional services;
2. Procurement of goods, supplies, equipment and/or services with an estimated cost of \$5,000 or less;
3. Public projects governed under the State of California Public Contract Code Section 21000, et seq.
4. Emergency purchases as defined in the California Public Contract Code or local ordinance;
5. Sole source purchases made by the City;
6. Procurement of goods, supplies, equipment and/or services which are funded in whole or in part by a governmental entity and the laws, regulations, and policies governing such funding prohibit application of a local preference;
7. Where no bids have been received by the City following bid announcements;
8. Specialized services combined with equipment and/or products governed by section 2-8.16;
9. Procurement of goods, supplies, equipment and/or services with an estimated cost of \$200,000 or greater; and
10. Procurement of goods, supplies, equipment and/or services at Marin Valley Mobile Country Club.

In addition, in its sole discretion, the City Council shall have the authority to waive application of these local vendor preference provisions in connection with contracts over which the City Council has contracting and/or approval authority.

d. *Quality and Fitness*

The local preference set forth in this section shall in no way be construed to inhibit, limit or restrict the right and obligation of the City Council and the City Manager to compare quality and fitness for use of supplies, equipment, and services proposed for purchase and compare

the qualifications, character, responsibility, and fitness of all persons, firms, or corporations submitting bids or proposals. In addition, the preferences set forth in this section shall in no way be construed to prohibit the right of the City Council or the City Manager from giving any other preference permitted by law. Notwithstanding the provisions of section c.1 above, if the City Manager finds a local professional services vendor is equally responsive in meeting the needs of the City, including, but not limited to, price, qualifications, character, responsibility and fitness, he/she may give preference to a local professional services vendor, recognizing the value of local knowledge and expertise.

e. Application

The local vendor preference provided in this section shall apply to new contracts and purchases for goods, supplies, equipment and materials first solicited on or after 30 days after the adoption of this ordinance.

f. Findings

Whenever soliciting proposals for the provision of goods, supplies, equipment and/or services governed by this section, the findings shall be included in the notification to all bidders.

Section 4. Promulgation of Administrative Rules

The City Manager is authorized and directed to promptly adopt administrative rules supplemental to the provisions of this ordinance as necessary or appropriate to implement the ordinance. The provisions of this ordinance and rules adopted by the City Manager shall be provided to potential bidders, vendors, and contractors to the widest extent practical.

Section 5. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional on their face or as applied.

Section 6. Publication and Effective Date

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

publishing the entire ordinance once in 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 a newspaper of general circulation 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 thirty (30) days after the date of its passage and adoption.

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers
RECUSE: Councilmembers

Jeanne MacLeamy, Mayor

/Sheri Hartz/
Sheri Hartz, City Clerk