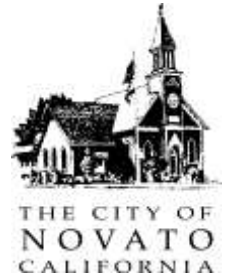


PUBLIC CONVENIENCE OR NECESSITY POLICY PAPER



The Issue: Retail Alcohol Availability in Novato

Evidence from numerous studies shows that a high density of alcohol outlets is associated with increases in alcohol consumption in a given geographic area. Increased alcohol consumption can lead to automobile crashes, alcohol-related hospital admissions, injury, death, and increased crime.

Public convenience or necessity is a tool for local governments and communities to limit the issuance of new Alcoholic Beverage Control (ABC) licenses and alcohol outlets. Current state law limits the issuance of new licenses in geographical areas defined as areas of “*undue concentration*”. New alcohol outlets can be allowed in areas of undue concentration only if it is determined by the City of Novato that they would serve a “*public convenience or necessity*” (PCN). In addition to making zoning decisions regarding alcohol outlet locations and operations, it is important that the City of Novato establish criteria that approves or disapproves a determination of PCN in order to address the issue of undue concentration.

Purpose of Policy Paper

The purpose of this policy paper is to: 1) provide an overview of the City of Novato’s process and criteria for a public convenience or necessity determination; 2) establish criteria for the public and prospective ABC license applicants in the form of an informational handout; and 3) allow the City of Novato Planning Division staff to use this document to respond to an issue of undue concentration and a determination of public convenience or necessity.

Undue Concentration

Undue concentration can be best understood by either excess crime in a reporting district or a higher ratio of licenses per census tract area. As defined in the California Business and Professions Code section 23958.4(a), undue concentration exists when:

- The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

- For both on-and-off-sale retail license applications, the ratio of on-and-off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-and-off-sale retail licenses to population in the county in which the applicant premises are located.

An area of undue concentration is commonly found in downtown business districts because these districts are primarily comprised of retail and office uses, and typically fewer residents live in these census tracts where business districts exist.

Understanding how many licenses have been issued for a specific area or census tract can be determined by contacting the ABC for this information. Information about crimes in the crime reporting area can be determined by contacting the Novato Police Department for this data.

Making a Determination of Public Convenience or Necessity

California Business and Professions Code section 23817.5 restricts the issuance of new off-sale beer and wine licenses in cities and counties where the number of these licenses exceeds one license for each 2,500 residents, such as Marin County. However, a determination of public convenience or necessity can be made by either the state ABC or the City of Novato to allow the issuance of additional alcohol licenses. The determination of public convenience or necessity is required for all proposed ABC licenses in areas of the City of Novato that have been found to have an undue concentration of retail alcohol outlets. A determination of PCN from the City of Novato is required when applying for any off-sale retail ABC licenses such as Type 20 (off-sale beer and wine) and Type 21 (off-sale general) within a census tract or crime reporting area that currently has an undue concentration. The determination of PCN is made by the ABC for certain types of on-sale licenses. The table below describes whether the City of Novato or the ABC makes a determination of public convenience or necessity.

Making a determination of Public Convenience or Necessity	
Jurisdictional Authority	License Types
State Department of Alcoholic Beverage Control	On-sale: Restaurants Lodging-based license Non-retail licenses
City of Novato	All other On-sale and all Off-Sale Retail Establishments Liquor stores Convenience stores Bars

Allowing a Determination of Public Convenience or Necessity

It is the applicant’s responsibility to demonstrate how public convenience *OR* necessity will be served by the existence of a new use where alcohol is to be served. The applicant does not need to prove that both public convenience *and* necessity will be served by the new use - demonstrating that either public convenience *or* necessity will be served is enough to meet the burden of proof.

The following criteria will be considered by City staff in evaluating the applicant’s request for an additional determination of Public Convenience or Necessity:

- Identify the special and unusual circumstances present to justify a new retail alcohol outlet when similar alcohol uses exist nearby, or how it will provide a needed service not currently being met.
- Prove the proposed alcohol outlet cannot operate profitably without a liquor license.
- Prove/demonstrate how the economic benefit of the alcohol outlet outweighs potential negative impacts to the community as a whole.
- Contact the Novato Police Department to determine the crime statistics for the location or census tract where the use is proposed.
- Demonstrate reasonable efforts to seek community input on the proposed outlet.

- Provide a beverage service training program for alcohol serving employees to help identify someone who has had too much to drink.
- The proposed outlet's consistency with the *Novato Downtown Specific Plan*, <http://novato.org/home/showdocument?id=3126>, and *Novato 2028 – A Vision for the Future* (Community Strategic Plan) <http://novato.org/government/community-development/planning-division/documents> to encourage restaurants, businesses, and entertainment uses that create a viable night life for residents.
- Demonstrate how the proposed use will not be detrimental to the character of development in the immediate neighborhoods and will be in harmony with the overall objectives of the General Plan.

On a case-by-case basis, additional information may be requested, or required, in making a PCN determination.

Not Allowing a Determination of Public Convenience or Necessity

The City of Novato *can refuse* to make a determination of PCN if any of the following instances occur:

- The proposed use is to be located in an existing targeted law enforcement area as documented by specific and abnormally high general health and safety indicators that have some nexus with alcohol use.
- The proposed use is within a crime reporting area that exhibits an excess amount of alcohol related crimes, greater than a 20% increase of the reported crimes from the previous year.
- The proposed use is within 600 feet to sensitive land uses including schools, parks and playgrounds, hospitals, churches, treatment centers, and childcare facilities.

City Process for Taking Action on Determination of Public Convenience or Necessity

The City of Novato requires a Use Permit for an Alcoholic Beverage Establishment (ABE) pursuant to Section 19.34.050 of the Novato Zoning Code. The purpose of the provisions of Section 19.34.050 is to

avoid or minimize the potential adverse effects (e.g., littering, loitering, and others) on the peace, health, safety and welfare of residents in nearby areas that may arise from the undue proliferation and/or inappropriate location of establishments selling alcoholic beverages.

Unless required by the ABC, the following uses are exempt from obtaining a Use Permit:

- a) The incidental sale and serving of alcohol beverages for on-premise consumption in conjunction with a restaurant. This exemption does not apply to uses classified as night clubs and bars.
- b) The retail sale of alcoholic beverages for off-premise consumption, when the alcoholic beverages are packaged with non-beverage items as a minor component of the product being sold (for example, food gift baskets including wine);
- c) Wholesale-only operations (no direct sales to consumers).

No alcoholic beverage establishment, unless exempted from a Use Permit requirement as stated above, shall be approved unless the Review Authority¹ first makes the findings required for the approval of a Use Permit in Section 19.42.050,² and the following additional findings:

1. The proposed use will not adversely affect the welfare of the area residents, or result in an undue concentration of establishments dispensing alcoholic beverages in the area, as determined by the Review Authority.
2. The proposed use is located at an appropriate distance from:
 - a. Residential uses;
 - b. Religious facilities, schools, public parks and playgrounds, and other similar uses; and
 - c. Other establishments dispensing alcoholic beverages.

¹ The Review Authority may be either the Zoning Administrator or the Planning Commission depending on the elements of the project.

² See Exhibit A for the Use Permit findings.

3. The size and proposed activity level (i.e., music, entertainment activities, food service, arcade games, or other amusement activities, etc.) will be compatible with the uses in and/or character of, the surrounding area.
4. The signs and other advertising on the exterior of the premises will be compatible with the character of the area.
5. The applicant has committed to voluntarily provide a beverage service training program, should one be made available locally on a no-charge basis for employees who sell or dispense alcoholic beverages, and would provide them with the knowledge and skills needed to comply with their responsibilities under State law, including the following topics:
 - a. State laws relating to alcoholic beverages, particularly ABC regulations and penal provisions concerning sales to minors and intoxicated persons, driving under the influence, hours of legal operation, and penalties for violations of these laws;
 - b. The potential legal liabilities of owners and employees of businesses dispensing alcoholic beverages to patrons who may subsequently injure, kill, or harm themselves or innocent victims as a result of the excessive consumption of alcoholic beverages;
 - c. Alcohol as a drug and its effects on the body and behavior, including the operation of motor vehicles;
 - d. Methods of dealing with intoxicated customers and recognizing underage customers;
 - e. Methods to appropriately pace customer drinking to reduce the risk that the customer will leave the premises in an intoxicated manner; and

- f. Knowledge of mixology, including marketable alternatives to alcoholic beverages.

Exhibit A

Use Permit findings from Section 19.42.050 of the Novato Zoning Code:

1. The proposed use is consistent with the General Plan and any applicable specific plan;
2. The proposed use is allowed with a Use Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Ordinance and any relevant Master Plan and/or Precise Development Plan;
3. The establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
4. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
5. The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.