

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1669

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO  
ADDING SECTION 7-11 TO CHAPTER VII OF THE NOVATO  
MUNICIPAL CODE REGARDING PROTECTION OF CRITICAL  
INFRASTRUCTURE, WILDFIRE RISK AREAS AND YOUTH-  
SERVING FACILITIES, AND AMENDING SECTION 14-20  
REGARDING UNLAWFUL CAMPING

**SECTION I. FINDINGS**

The City Council of the City of Novato hereby finds and declares as follows:

**WHEREAS**, a principal threat to the public health, safety, and welfare is the potential destruction of, damage to, or interference with, infrastructure that is critical to the provision of public services such as law enforcement, fire prevention, educational services, transportation, and utilities including communication, water, and waste disposal; and

**WHEREAS**, destruction of, damage to, or interference with, critical infrastructure is often caused by fire, contamination, restricting access to such infrastructure by police, fire and other emergency response personnel, or other similar causes; and

**WHEREAS**, destruction of, damage to, or interference with, critical infrastructure is often caused by persons whose activities are not permitted or authorized in, on, or near critical infrastructure; and

**WHEREAS**, increased camping activities on public property obscure adverse and illegal activity from public view, contributes substantially to the accumulation of litter, clutter and visual blight, can interfere with pedestrian circulation, can obstruct or interfere with the lawful use of public spaces by the general public for their intended recreational uses, and inhibit the effective regulation and enforcement against illegal activities; and

**WHEREAS**, the City desires to establish its ability to prevent individuals from camping, occupying camp facilities, or using/storing camp paraphernalia near certain critical infrastructure in order to reduce the risk of destruction or damage to such infrastructure, or interference with the provision of services to and from such infrastructure.

**WHEREAS**, the City further desires to establish its ability to prevent individuals from camping, occupying camp facilities, or using/storing camp paraphernalia near youth-serving facilities, including child day care facilities, schools, and City playgrounds, in order to protect minor children from potentially deleterious effects of such activities.

**NOW THEREFORE, the City Council of the City of Novato does ordain as follows:**

**SECTION II.** Section 7-11 of the Novato Municipal Code titled “Protection of Critical Infrastructure and Wildfire Risk Areas” is hereby added to read as follows:

### **7-11.1 Purpose and scope**

The purpose of this section to mitigate the threat of fire and other potential causes of destruction and damage to and interference with, critical infrastructure, in order to protect the health, safety, and welfare of the public, by authorizing the removal of persons and their personal property in, on, or near critical infrastructure. The purpose of this section is further to protect the health, safety and welfare of minor children while using facilities specifically designed to serve that population.

### **7-11.2 Regulated areas**

When used in this section, the following words and phrases have the following meanings:

*Camp* has the same meaning as in section 14-20.2 of this Code.

*Camp Facilities* has the same meaning as in section 14-20.2 of this Code.

*Camp Paraphernalia* has the same meaning as in section 14-20.2 of this Code.

*Critical Infrastructure* means any real property or facility, whether privately or publicly owned, as designated by the City Council by resolution, that the City Council determines in its discretion is so vital and integral to the operation or functioning of the city that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety, or welfare. Critical infrastructure may include, but is not limited to, government buildings, such as schools, fire stations, police stations, jails, or courthouses; hospitals; structures, such as antennas, bridges, roads, train tracks, drainage systems, or levees; or systems, such as computer networks, public utilities, electrical wires, natural gas pipes, telecommunication centers, or water sources.

*Facility* means a building, structure, equipment, system, or asset.

*Hazardous Waste* has the same meaning as in California Public Resources Code section 40141.

*Infectious Waste* has the same meaning as in California Code of Regulations, title 14, section 17225.36.

*Wildfire Risk Area* has the same meaning as in California Code of Regulations, title 24, part 9, section 202.

*Youth-Serving Facility* means child day care facilities, public or private preschool, public or private primary or secondary school, public or private college and/or university, and public or private playgrounds.

### **7-11.3 Prohibited activities and conditions**

- a. It is unlawful and a public nuisance for any person, including persons who would otherwise be entitled to camp on public property pursuant to Section 14-20.8, to camp, occupy camp facilities, or use camp paraphernalia at the following locations:

1. Critical infrastructure;

2. Within 50 feet of critical infrastructure;
  3. Within 50 feet of a vehicular or pedestrian entrance to or exit from critical infrastructure;
  4. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies; or
  5. Wildfire risk area.
  6. Youth-serving facilities.
  7. Within 50 feet of youth-serving facilities.
- b. It is unlawful and a public nuisance for any person, including persons who would otherwise be entitled to camp on public property pursuant to Section 14-20.8, to store personal property, including camp paraphernalia and camp facilities, in the following locations without the written consent of the property owner:
1. Critical infrastructure;
  2. Within 50 feet of critical infrastructure;
  3. Within 50 feet of a vehicular or pedestrian entrance to or exit from of critical infrastructure;
  4. On those portions of a right-of-way that are required by local, state, or federal law to be free of obstruction to first responders, including but not limited to members of law-enforcement, fire-prevention, or emergency-medical-services agencies; or
  5. Wildfire risk area.
  6. Youth-serving facilities.
  7. Within 50 feet of youth-serving facilities.
- c. This section is not intended to prohibit overnight camping on private residential property by friends or family of the property owner.
- d. Nothing in this section is intended to prohibit or make unlawful the activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and nothing is intended to prohibit or make unlawful the activities of a property owner or other lawful user if such activities are expressly authorized by this Code or other laws, ordinances, and regulations.

#### **7-11.4 Abatement**

- a. Any violation of sections 7-11 and/or 7-12 may be abated by the city upon 24 hours of prior notice; but a violation of sections 7-11 and/or 7-12 may be abated immediately by the city without prior notice, if the violation poses an imminent threat to public health or safety.
- b. Abatement pursuant to subsection a., above, may include, but is not limited to: removal of camp facilities, camp paraphernalia, personal property, garbage, hazardous waste, infectious waste, junk, or debris; and securing the perimeter of the property with fencing, gates, or barricades to prevent further occurrences of the nuisance activity.
- c. Regardless of the city's authority to conduct abatement pursuant to this section, every owner, occupant, or lessee of real property, and every holder of any interest in real property, is required to maintain the property in compliance with local, state, and federal law; and is liable for violations thereof.
- d. The cost of abatement, including all administrative costs of any action taken hereunder, may be assessed against the subject premises as a lien, made a personal obligation of the owner, or both, in accordance with procedures in section 1-6 of this code.
- e. No person shall willfully prevent, delay, resist, obstruct, or otherwise interfere with a city official, employee, contractor or agent in their execution of an abatement pursuant to this section.

#### **7-11.5 Violations**

Any violation of this section shall be punishable as a misdemeanor in accordance with section 1-5 of this Code and shall be deemed a public nuisance. Nothing in this section shall prevent the city from initiating a civil or administrative action, or any other legal or equitable proceeding, to obtain compliance with the provisions of this section. The remedies provided by this section are intended to be alternative methods of obtaining compliance and/or discouraging noncompliance with the provisions of this section and are expressly intended to be in addition to any other civil, criminal, or administrative remedies provided by law, including, but not limited to, Penal Code sections 602 and 647.

**SECTION III.** Sections 14-20.5 and 14-20.6 of the Novato Municipal Code are hereby renumbered as Sections 14-20.6 and 14-20.7, respectively.

**SECTION IV.** Section 14-20.5 of the Novato Municipal Code is hereby added to read as follows:

*14-20.5 Fires on public property.* It is unlawful and a public nuisance for any person to do the following on any public property:

- a. Light or maintain any fire, unless such fire is lighted and maintained only in an apparatus or receptacle (including a fire pit, stove, barbeque or fire circle) provided by, owned, or maintained by the City of Novato for that particular purpose.

- b. Leave a fire unattended by an adult or leave a location where a fire has been started, kindled and/or maintained until the fire has been completely extinguished and is cold to the touch.

**SECTION V.** Section 14-20.7 of the Novato Municipal Code is hereby renumbered as Section 14-20.8 and is amended to read as follows:

Nothing in this section shall prohibit any person from camping on public property between the hours of 9 p.m. and 7 a.m. when all of the following circumstances are present:

- a. At the time that the person is camping there are no beds in any shelter or other accommodation for homeless persons within the City or otherwise reasonably accessible from the place where that person is camping that are available to that same person; and
- b. The person is not engaging in camping as a voluntary act. Under this section "voluntary act" shall mean camping during such time as there is shelter or lodging available to that person which that person willfully refuses to avail him/herself of for any reason unrelated to the exercise of a First Amendment or other state or federal constitutional right.

**SECTION VI. CEQA**

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and the State CEQA Guidelines and it has been determined that approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions without any physical project being approved, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

**SECTION VII. SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION VIII. ENFORCEABILITY OF ORDINANCE**

In light of the existing COVID-19 public health emergency, this Ordinance shall not be enforced to clear encampments existing as of the Effective Date of this Ordinance until the earlier of the following:

- 1. The Centers for Disease Control and Prevention amends or revokes its Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Official to no longer recommend local agencies allow individuals living unsheltered or in encampments to remain where they are.

2. COVID-19 vaccinations are accessible for individuals experiencing homelessness, at least 90 percent of County residents 16 year and older have been fully vaccinated, as defined by the California Division of Occupational Safety and Health, and the County meets the State of California requirements for the Yellow (Minimal) Tier in place as of May 25, 2021.

**SECTION IX. CITY MANAGER TO PROMULGATE RULES AND REGULATIONS**

The City Manager is hereby authorized to promulgate rules and regulations to implement this Ordinance.

**SECTION X. 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, published in the City of Novato, 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.

This ordinance shall become effective 30 days after the date of its passage and adoption.

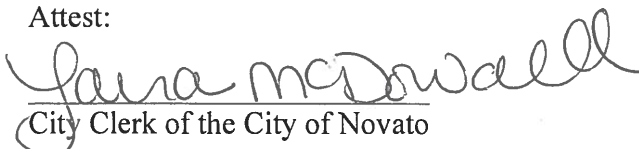
\* \* \* \* \*

I HEREBY CERTIFY that the foregoing ordinance was first introduced at a regular meeting of the Novato City Council on the 25<sup>th</sup> day of May, 2021, and was passed and adopted a regular meeting of the Novato City Council on the 8<sup>th</sup> day of June, 2021, by the following vote, to wit:

AYES: Councilmembers Athas, Peele, Wernick, Lucan, Eklund  
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