



THE CITY OF  
**NOVATO**  
CALIFORNIA

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**PLANNING COMMISSION STAFF REPORT**

MEETING

DATE: March 17, 2008

STAFF: Rebecca Markwick, Planner I  
(415) 493-4708

SUBJECT: **PUBLIC HEARING, CONSIDERATION OF AND RECOMMENDATION TO THE CITY COUNCIL TO ADOPT AN ORDINANCE ADDING SECTION 19.06.030(D) TO THE NOVATO MUNICIPAL CODE ESTABLISHING THAT NO LAND USE SHALL BE PERMITTED WHICH WOULD VIOLATE STATE OR FEDERAL LAWS**

**REQUESTED ACTION**

Hold a Public Hearing to consider and adopt a resolution recommending to the City Council an amendment to the Novato Municipal Code to add section 19.60.030 (D) to the Novato Municipal Code establishing that no land use shall be permitted which would violate state or federal law.

**EXECUTIVE SUMMARY**

Section 37100 of the California Government Code provides that general law cities may not enact laws that conflict with the Constitution and laws of the State or the United States. In addition, ordinances of general law cities may not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. As it is currently worded, Chapter 19 of the City Municipal Code permits property owners to use their real properties in specified ways, regardless of such use(s) being in violation of federal or state laws. The objective of the text amendment is to create consistency in the City among local, state and federal government.

**PROJECT DESCRIPTION**

This is a proposal to amend section 19.06 of chapter 19 (Zoning) of the Municipal Code. The proposed amendment is shown in italics.

**19.06.030 - Allowable Land Uses and Permit Requirements**

The uses of land allowed by this Zoning Ordinance in each zoning district are identified in Divisions 19.08, 19.10, 19.12, 19.14, and 19.16, together with the type of land use permit required for each use.

A. **Permit requirements.** Tables 2-2, 2-4, 2-6, 2-7 and 2-9 provide for land uses that:

1. Are permitted subject to compliance with all applicable provisions of this Zoning Ordinance, subject to first obtaining a Zoning Clearance (Section 19.42.020), and any Building Permit or other permit required by the Municipal Code. These are shown as "P" uses in the tables; and
2. May be allowed subject to the approval of a Use Permit (Section 19.42.050), and shown as "UP" uses in the tables.

**Note:** Design Review may also be required prior to the issuance of a Building Permit for certain uses and types of development. Design Review requirements are established by Section 19.42.030.

B. **Multiple uses on a single site.** Where a proposed project includes multiple land uses, and Tables 2-2, 2-5, 2-6, 2-7, and 2-9 require different land use permits for some of the uses, each use shall be authorized through the approval of the permit required for the specific use.

C. **Uses not listed.** Land uses that are not listed in Tables 2-2, 2-4, 2-6, 2-7, or 2-9, or are not shown in a particular zoning district are not allowed, except as otherwise provided by Section 19.02.020.F (Rules of Interpretation - Allowable Uses of Land), or Section 19.06.040 (Exemptions from Land Use Permit Requirements).

4. ***Use violating federal or state laws unlawful.***

*Notwithstanding any other provision of this Title, nothing in this Title shall permit, enable, endorse, allow, or make lawful any use that is in violation of any lawful federal or state statute or provision of the United States or California Constitution. No permit, entitlement, authorization, application, or approval shall be granted or approved, as the case may be, by any employee, officer or agent of the City for any use of real property that is in violation of any lawful federal or state statute or provision of the United States or California Constitution. Any use of real property located within the jurisdictional boundaries of the City that is conducted or maintained in violation of any lawful federal or state statute or provision of the United States or California Constitution shall constitute a violation of this Title and is here by declared to be a public nuisance.*

## **ENVIRONMENTAL ASSESSMENT**

The proposed text amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b)(3). The proposed amendment to the City's zoning regulations is merely declarative of existing law in the no regulation of the City may be in conflict with state or federal law. No new land use changes may be established pursuant to the proposed amendments.

## **STAFF ANALYSIS**

The General Plan is prepared in accordance with State law. The proposed text amendment would be declarative of existing law and would create a consistency between city, state and federal law. Such amendments would be wholly consistent with the goals, objectives and policies of the Novato General Plan, the Downtown Novato Specific Plan, and the Redevelopment Plan. In addition, as stated previously California Government Code section 37100 prohibits cities from enacting laws that conflict with the Constitution and laws of the state or the United States. Staff recommends that the proposed amendment would codify existing laws and recommends approval of the attached resolution recommending the ordinance to the City Council and finding that said zoning text amendment is consistent with the General Plan, the Downtown Novato Specific Plan and the Redevelopment Plan of the City of Novato.

## **COMMISSION ALTERNATIVES**

1. Recommend approval to City Council.
2. Modify proposed changes.
3. Continue for the addition of additional language.
4. Recommend denial.

## **RECOMMENDATION**

Recommend approval to City Council.

## **FURTHER ACTION**

The Planning Commission's recommendation will be forwarded to the City Council for consideration at a future public hearing.

## **ATTACHMENTS**

1. Resolution recommending approval of the Zoning Ordinance text amendments.

PLANNING COMMISSION RESOLUTION

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE PLANNING COMMISSION  
RECOMMENDING APPROVAL OF AN AMENDMENT TO  
DIVISION 19.06.- DEVELOPMENT AND LAND USE  
APPROVAL REQUIREMENTS OF CHAPTER XIX, THE ZONING  
ORDINANCE OF THE CITY OF NOVATO MUNICIPAL CODE

WHEREAS, the City of Novato Zoning Ordinance was revised and adopted in April 2001;  
and

WHEREAS, from time to time it is necessary to amend the Zoning Ordinance to reflect  
changes in local, state and federal law; and

WHEREAS, the Zoning Ordinance is enacted based on the authority vested in the City of  
Novato by the State of California, including but not limited to: the State Constitution; the Planning  
and Zoning Law (Government Code Section 65000 et seq.); and

WHEREAS, as it is currently worded, Chapter 19 of the City Municipal Code permits  
property owners to use their real properties in specified ways, regardless of such use(s) being in  
violation of federal or state laws; and

WHEREAS, a public notice describing the Planning Commission's public hearing on the  
proposed Zoning Ordinance amendment was published in the Marin Independent Journal, a  
newspaper of local circulation, on March 7, 2008 pursuant to Novato Municipal Code Section  
19.58.020; and

WHEREAS, the Planning Commission held a public hearing on the proposed Zoning  
Ordinance amendments on March 17, 2008.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby  
recommends that the City Council adopt the proposed amendment to Zoning Ordinance Division  
19.06- Development and Land Use Approval Requirements as described in Exhibit A attached, based  
on information presented in the staff report and the findings required by Section 19.56.070C of the  
Municipal Code as follows:

1. The proposed amendments, attached and described in exhibit A, are internally consistent  
with the General Plan and would further the goals, objectives, policies and programs of the  
General Plan in that the General Plan is prepared in accordance with State law. The  
proposed text amendment would be declarative of existing law and would create a  
consistency between city, state and federal law. Said amendments require that no land use  
shall be permitted which is in violation of state or federal law. The text amendment would

create a consistency between city, state and federal law. Such amendments would be wholly consistent with the goals, objectives and policies of the Novato General Plan, the Downtown Novato Specific Plan, and the Redevelopment Plan.

2. The proposed code amendment would not result in any physical improvements or activities that would be detrimental to the public interest, health, safety, convenience, or welfare of the City at large. The proposed amendment would result in land use regulations that would not violate state and federal laws.
3. The proposed has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA), and the Novato Environmental Review Guidelines. The proposed text amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b)(3). The proposed amendment to the City's zoning regulations is merely declarative of existing law in that no regulation of the City may be in conflict with state or federal law. No new land use changes may be established pursuant to the proposed amendments.
4. The proposed amendment is internally consistent with other applicable provisions of this Zoning Ordinance as it prohibits land uses that would violate state and federal laws.

Passed and adopted at a regular meeting of the Planning Commission of the City of Novato held on the \_\_\_ day of \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the resolution which was adopted by the Planning Commission, City of Novato, County of Marin, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Chair

## EXHIBIT "A"

### PROPOSED ZONING ORDINANCE TEXT AMENDMENTS ZONING ORDINANCE DIVISION 19.06-DEVELOPMENT AND LAND USE APPROVAL REQUIREMENTS

Section 19.06.030D shall be added to the Zoning Code to read as follows:

#### **19.06.030D-Use Violating federal or state laws unlawful**

- ***Use violating federal or state laws unlawful.***  
*Notwithstanding any other provision of this Title, nothing in this Title shall permit, enable, endorse, allow, or make lawful any use that is in violation of any lawful federal or state statute or provision of the United States or California Constitution. No permit, entitlement, authorization, application, or approval shall be granted or approved, as the case may be, by any employee, officer or agent of the City for any use of real property that is in violation of any lawful federal or state statute or provision of the United States or California Constitution. Any use of real property located within the jurisdictional boundaries of the City that is conducted or maintained in violation of any lawful federal or state statute or provision of the United States or California Constitution shall constitute a violation of this Title and is here by declared to be a public nuisance.*