

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1570

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NOVATO ADDING SECTION 18-15 TO THE NOVATO
MUNICIPAL CODE FOR THE ADOPTION OF MOBILE FOOD
VENDING REGULATIONS AND MAKING RELATED
AMENDMENTS TO THE CODE

THE CITY COUNCIL OF THE CITY OF NOVATO DOES ORDAIN AS FOLLOWS:

SECTION 1:

Section 18-15 is hereby added to Chapter 18 of the Novato Municipal Code to read as follows:

18-15 MOBILE FOOD VENDING.

18-15.1 Purpose and intent

The City Council expressly finds that vehicles in which hot and/or cold food are carried for the purpose of retail sale on the public and private streets, pose traffic hazards and special dangers to the public health, safety and welfare of children and residents in the City. It is the purpose and intent of the City Council, in enacting this chapter, to provide responsible companies and persons who engage in the operation of food vending from vehicles with clear and concise regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community. The City Council further finds all of the following:

1. Mobile food vending vehicles often stop and stand within public and private roadways to conduct business transactions, which endangers the person and property of their customers, particularly in areas of heavy traffic volume or in areas where traffic is going at a moderate or high rate of speed;
2. Mobile food vending vehicles often proliferate around public and private school sites within the City, which provide both a distraction to school children and an immediate threat to their health and safety by placing them in a vulnerable position in heavily trafficked areas during regular school hours.
3. Mobile food vending vehicles often create or exacerbate heavy traffic conditions by remaining within locations near schools that are also the site of parents, guardians, and others dropping off, picking up, and transporting school children.
4. Mobile food vending vehicles often create noise and other disturbances to the quiet peace and enjoyment of residents and businesses located in neighborhoods with public and private schools during times that they do business with schoolchildren.

18-15.2 *Regulations for sales from mobile food vending vehicles.*

It is unlawful for any person to sell or offer for sale, or operate any vehicle or conduct any business for the purpose of causing or offering for sale, any goods or merchandise from any vehicle parked, stopped or standing upon any street, alley, parkway, sidewalk or other public property in the City except in accordance with all applicable requirements of this code and in compliance with all provisions of this section 18-15.

18-15.3 *Definitions.*

The following words and terms as used in this chapter shall have the following meanings:

1. “Driver” means any person who drives, operates, or is in actual physical control of a motor vehicle.
2. “Food” means any good or merchandise that is cooked, made, manufactured, bottled, grown, preserved, or prepared for the purpose of being eaten or imbibed.
3. “Mobile food vending vehicle” means a motor vehicle, pushcart, trailer, or wagon or other portable food service unit, engaged in the curbside vending or sale of food as defined above, including but not limited to frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, snack foods, donuts, or soft drinks.
4. “Operator” means any person or entity owning, operating or otherwise controlling any business involving the vending of goods or merchandise from a vehicle.
5. “Roadway” means that portion of the right-of-way that constitutes the vehicular way intended for use by motor vehicles to travel upon and/or park.
6. “Regular school days” means those days that a public or private school is in session.
7. “School” means all public and private schools in which instruction is given from kindergarten through grade 12 or in any one or more such grades.
8. “Vend” or “vending” means the sale or offering for sale of any goods or merchandise to the public from a vehicle.
9. “Vendor” means any person who engages in the act of vending (as defined above) from a vehicle or who drives or otherwise operates any such vehicle for the purpose of vending there from.

18-15.4 *Permits required*

- a. No person shall own, control, manage, lease, or contract with other persons for the operation of a mobile food vending vehicle in the City without having been issued a valid and unexpired commercial solicitation permit under section 14-8 of this code, in addition to any other license or permit required under any other chapter of this code, or other provisions of law including the state and county, for each and every mobile food vending vehicle.
- b. No person shall drive, operate, vend and/or prepare food from any vehicle defined as a mobile food vending vehicle in the City without having been issued a valid and unexpired commercial solicitation permit under section 14-8 of this code.

18-15.5 *Mobile Food Vendor Regulations*

- a. Each operator shall have a commercial solicitation permit in his/her/its possession at all times while engaged in the operation of and/or the actual vending from a mobile food vending vehicle. Each operator shall immediately surrender to the Chief of Police or his/her designee any such commercial solicitation permit upon the suspension, revocation or expiration of such permit or upon leaving employment as an operator.
- b. In addition to the commercial solicitation permit required in subsection a of this section, each person who drives a mobile food vending vehicle that meets the definition of a motor vehicle contained within the California Vehicle Code shall have in his/her possession a current valid California driver's license, and proof of financial responsibility, which he/she shall make available for inspection by law enforcement officers upon request.

18-15.6 *Mobile Food Vending Vehicle Regulations*

All mobile food vending vehicles shall be equipped as follows:

- a. Each mobile food vending vehicle shall have a current, valid County of Marin health inspection sticker affixed to the lower right side of the windshield;
- b. With refuse containers large enough to contain all refuse generated by the operation of such vehicle and the operator of the mobile food vending vehicle, and to carry away all refuse generated by such operation within a twenty-five foot radius of the vehicle's location during vending operations;
- c. Any mobile food vending vehicle that meets the definition of a motor vehicle contained within the California Vehicle Code, shall have warning flashers that are activated immediately upon the vehicle stopping to vend and that are turned off as soon as the vehicle begins to move after vending;
- d. No additional lighting other than that authorized by the California Vehicle Code may be installed or operated on a mobile food vending vehicle;

- e. A back-up alarm audible for a distance of at least 100 feet;
- f. A convex mirror mounted so that the occupant of the driver's seat can see the area in front of the vehicle which is obscured by the vehicle's hood;
- g. There shall be conspicuously displayed on both the right and left side of the mobile food vending vehicle lettering permanently affixed showing the name of the company and/or operator of the food vending vehicle and the business address and telephone number thereof. The lettering for the name of the company or the operator shall not be less than four inches in height and shall be in contrast to the color of the background upon which the lettering is placed. The lettering for business address and telephone number of the company or the operator shall not be less than one inch in height and shall also be in contrast to the color of the background upon which the lettering is placed.

18-15.7. Prohibited conduct.

- a. No person shall vend from a mobile food vending vehicle which is stopped, parked or standing on any public street, alley or highway:
 - 1. When the posted speed limit on the public street, alley or highway is greater than thirty five (35) miles per hour;
 - 2. When the prospective customer is located in that portion of the street, alley or highway which is open to vehicular traffic;
 - 3. When the mobile food vending vehicle is parked in violation of any other provisions of this code or the California Vehicle Code;
 - 4. When the mobile food vending vehicle is within 1500 feet of the nearest property line of any public or private school between the hours of 7:30 am and 4:00 p.m. on regular school days;
 - 5. Between the hours of 9:00 pm and 7:30 am;
 - 6. When the mobile food vending vehicle is parked within seventy-five (75) feet of the nearest point where any two or more intersecting public streets or roadways meet;
 - 7. When the mobile food vending vehicle is within two hundred feet of another mobile food vending vehicle which has already stopped to vend;
 - 8. No person shall vend to any person standing on the left side of the mobile food vending vehicle while it is stopped in the roadway;
 - 9. No person shall back up a mobile food vending vehicle to make or attempt to make a sale;

10. The operator of a mobile food vending vehicle shall not permit any unauthorized person to ride in or on the vehicle. Persons authorized to ride in or on the vehicle shall be only those operators holding a commercial solicitation permit or vendors who are officers or lawfully employed by a commercial solicitation permit holder;

11. No minor under the age of 16 (sixteen) shall ride in or on a mobile food vending vehicle while such vehicle is engaged, or about to be engaged, in the operation of vending, with the exception of the children of the owner or operator of the food vending vehicle, or is a child under the age of 16, who is a legal employee of the owner or operator of the food vending vehicle;

12. No person shall dispense any item other than food from a mobile food vending vehicle.

18-15.8 Enforcement and Penalties

a. If an operator or vendor of a mobile food vending vehicle is found to be in violation of this ordinance, the responding peace officer may issue a Notice of Violation.

b. Any violation of this ordinance shall be an offense punishable as a misdemeanor, subject to a fine not to exceed \$1000.00 per violation, except that the enforcing authority may exercise its discretion to apply the provisions of section 1-5 of this code and prosecute the offense as an infraction, punishable as set forth by section 1-5.

18-15.9. Revocation of permit.

A) Any commercial solicitation permit for a mobile food vending operator or business may be suspended or revoked by the Chief of Police, or his/her designee, for any of the following reasons:

1. Any of the grounds for revocation or suspension specified by section 14-8 of this code.
2. Convictions of any operator or vendor of a mobile food vending business for two or more violations of this section, which offenses have occurred within a 12-month period.

Suspension and revocation procedures set forth by section 14-8 shall be applied to any suspension or revocation of a commercial solicitation permit for a mobile food vending operator or business.

18-15.10 Vending on Private Property

It is unlawful for a mobile food vending vehicle to vend on private property unless:

- 1) It is in compliance with the Zoning Chapter (Chapter XIX) and all other applicable provisions of this Code; and
- 2) The operator or vendor of the mobile food vending vehicle has in his/her possession written consent signed by the owner or the owner's authorized agent that allows the vehicle to vend on the property. The operator or vendor of a mobile food vending vehicle on private property shall have possession of the written consent required by this section at all times that the vehicle is vending on the property and shall produce written consent immediately upon request of a police or code enforcement officer, or any other person authorized to investigate a violation of this code.

SECTION 2:

Section 18-7.20 of the Municipal Code is amended to read as follows:

18-7.20 Unlawful Parking: Peddlers, Vendors.

a. Except as otherwise provided in this subsection, no person shall stand or park any vehicle, wagon, or pushcart from which goods, wares, services, merchandise, fruits, vegetables, or food stuffs are sold, displayed, solicited or offered for sale or bartered or exchanged, or any lunch wagon or eating car or vehicle, on any portion of any street within the City, except that such vehicles, wagons, or pushcarts may stand or park only at the request of a bona fide purchaser for a period of not to exceed 10 minutes at any one place. The provisions of this subsection shall not apply to persons delivering such articles upon order of, or by agreement with, a customer from a store or other fixed place of business of distribution.

b. Nothing in this subsection 18-7.20 shall apply to a mobile food vending vehicle as defined by section 18-15 of this code.

SECTION 3:

Subsection 14-8.16 of section 14-8 of the Municipal Code is amended to read as follows:

14-8.16 Permit Revocation or Suspension and Appeal Thereof.

a. A commercial solicitation permit may be revoked or suspended, by the Chief of Police for any of the following reasons:

1. Information contained in the application or supplemental information requested from the applicant is false in any material detail.

The applicant has failed to notify the Chief of Police of a change in facts subsequent to filing of the application as required in subsection 14-8.4b of this code.

3. The permittee is engaging in commercial solicitation at residential dwellings and has been convicted of any of the offenses specified in subsection 13-8.6a.4 of this code.

4. The permittee is a minor under 18 years of age and is not in possession of a valid work permit as specified in subsection 14-8.4a.16 of this code.

5. Any of the grounds for revocation or suspension of a permit for a mobile food vending operator or business provided under section 18-15 of this code.

b. Notice of the permit revocation or suspension stating the grounds therefor shall be personally served or served by mail on the permittee. Service by mail shall be deemed complete upon posting in the United States mail. The applicant may appeal a permit suspension or revocation by filing a notice of appeal with the City Clerk within 10 days of service by the Chief of Police of the permit revocation or suspension. If an appeal is timely filed, the City Council shall hold a hearing at its next regular meeting. The appeal must be filed no later than noon, the week preceding the next regular meeting to be placed on that meeting's agenda. The City Council may affirm, modify or overrule the decision of the Chief of Police.

SECTION 4: 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 5 : Publication and Effective Date:

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 thirty (30) 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 13th day of December, 2011, and was passed and adopted at a regular meeting of the Novato City Council on the 10th day of January, 2012.

AYES:	Councilmembers	Eklund, Kellner, Lucan, MacLeamy, Athas
NOES:	Councilmembers	None
ABSTAIN:	Councilmembers	None
ABSENT:	Councilmembers	None

/Denise Athas/

Mayor of the City of Novato

Attest:

/Sheri Hartz/

City Clerk of the City of Novato

Approved as to form:

/Jeffrey Walter/

City Attorney of the City of Novato