

April 5, 2017

City Council  
City of Novato  
922 Machin Avenue  
Novato, CA 94945

We, the undersigned, recognize the negative impacts of smoking and support policies which move smokers towards less harmful alternatives. At the same time, we remain dedicated to preserving individual property rights, freedom of contract and equal treatment for citizens under the law.

Ordinance 1616 runs afoul of these American bedrock principles and constructs a legal paradigm that will lead to a number of unintended negative consequences—especially if similar ordinances are adopted by neighboring cities.

The ordinance flatly ignores a range of studies that have established the significant reduction in health risk posed by e-cigarettes when measured against combustible cigarettes. In 2016, the Royal College of Physicians, one of the oldest, most venerable professional medical bodies in the world, published an [authoritative report](#)<sup>[1]</sup> demonstrating that the long-term health hazard posed by e-cigarettes is less than 5% of the harm from smoking. As the Royal College of Physicians recommends, tailoring policies to recognize the distinction provides an incentive for smokers to move toward lower-risk alternatives.

Ordinance 1616 is also ripe for discrimination against people of lower socioeconomic status and lesbian, bisexual, gay and transgendered (LGBT) renters. According to the U.S. Centers for Disease Control and Prevention (CDC), Americans “living below the poverty level and people having lower levels of educational attainment have higher rates of cigarette smoking than the general population.”<sup>[2]</sup> The CDC has also found, “Cigarette smoking among LGB individuals in the U.S. is higher than among heterosexual/straight individuals. Nearly 1 in 4 LGB adults smoke cigarettes compared with about 1 in 6 heterosexual/straight adults.”<sup>[3]</sup>

Ordinance 1616’s “required and implied lease terms for units in multi-family residences” interferes with private contracts and creates an unjustly low standard for residents to materially breach lease and rental agreements due to tobacco-related “offenses.”

As a result, landlords looking to replace lower-income or LGBT tenants have an extremely easy excuse to do so. For example, if a tenant’s out-of-town guest uses a vapor product



“in any common area of the property other than in a designated smoking area,” the tenant is in “material breach” of his or her rental agreement. According to the March 2017 National [Apartment List](#) Rent Report, San Francisco’s “affordability crisis is now beginning to extend out to its more affordable metros.”<sup>[4]</sup> As rental prices for units in multi-family residences increase due to demand radiating from San Francisco, Novato’s Ordinance 1616 becomes a tempting tool for landlords to end rent agreements in favor of new higher-paying tenants.

Finally, the ordinance is so broad that it imposes fines, assesses penalties and permits private causes of action for completely innocent conduct, such as disposing cigarette butt litter found in an impermissible smoking location. Doing so could easily be interpreted as “concealing a violation.” That’s simply too low of a threshold to impose the serious legal penalties contemplated by the Ordinance 1616.

While we applaud the City Council’s interest in reducing the harms of smoking, Ordinance 1616 creates many unintended consequences and misses a real opportunity to incentivize smokers to move towards less-harmful alternatives. As such, we ask the City Council to reconsider Ordinance 1616 to address each of these concerns.

Sincerely,

R Street Institute  
Americans for Tax Reform  
American Vaping Association  
Competitive Enterprise Institute  
Consumer Advocates for Smoke-Free Alternatives Association  
Council for Citizens Against Government Waste  
Libertarian Party of California  
Log Cabin Republicans  
Smoke Free Alternatives Trade Association

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[1] <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

[2] <https://www.cdc.gov/tobacco/disparities/low-ses/index.htm>

[3] Centers for Disease Control and Prevention. [Current Cigarette Smoking Among Adults—United States, 2005–2014](#). Morbidity and Mortality Weekly Report 2015;64(44):1233–40 [accessed 2017 Mar 22]

[4] <https://www.apartmentlist.com/rentonomics/national-rent-data/>