

ATTACHMENT A

ORDINANCE NO. 2025-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CHAPTER 6.25 (REGULATION OF SMOKING IN PUBLIC AREAS) AND ADDING CHAPTER 6.30 (PROHIBITION OF SALE AND DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS) TO TITLE 6 (HEALTH AND SANITATION) OF THE NEWPORT BEACH MUNICIPAL CODE, RELATING TO SMOKING AND TOBACCO SALES

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach (“City”), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs, subject only to the restrictions and limitations contained in the City Charter and the State Constitution, and further grants the City Council the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

WHEREAS, California Health and Safety Code Section 104559.5 (“Section 104559.5”) prohibits the sale and distribution of flavored tobacco products, largely because these flavored products were marketed to youth and young adults, and young smokers were more likely than older smokers to have tried these products;

WHEREAS, Section 104559.5 specifically provides that a city may adopt local laws that impose greater restrictions on access to tobacco products than state law;

WHEREAS, in 2023, the California Department of Health and Safety reported that 21.6% of California high school students had used a tobacco product and of those students who were currently using tobacco products, 85.6% reported using flavored tobacco products (*Results of the 2023 California Youth Tobacco Survey*);

WHEREAS, California law allows the sale of flavored shisha (hookah tobacco) under specific conditions, which has allowed greater access to underage users;

WHEREAS, use of flavored tobacco by underage users has been shown to increase the likelihood that underage users of tobacco will become a long-term tobacco users;

WHEREAS, flavored tobacco and flavored products used in electronic nicotine delivery systems present health, welfare, and public safety issues for cities, in particular the youth;

WHEREAS, flavored tobacco products contain addictive nicotine which increases the risk for future addiction to other drugs, especially in children, and potentially expose

both the users and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs;

WHEREAS, Section 6.25.060 (Penalties) limits prosecution for violations of Chapter 6.25 (Regulation of Smoking in Public Areas) to an infraction; however, the City has seen an increase in smoking in prohibited locations, and law enforcement needs the discretion to have these crimes prosecuted as misdemeanors; and

WHEREAS, in the interest of the health, welfare, and safety of the residents and visitors to Newport Beach, the City Council finds that greater penalties are necessary to deter smoking on public property and additional regulations are needed to limit the sale and distribution of flavored tobacco products to those who are underage.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Section 6.25.010 (Definitions), of Chapter 6.25 (Regulation of Smoking in Public Areas), of Title 6 (Health and Sanitation), of the NBMC is hereby amended and shall read as follows.

6.25.010 Definitions.

For the purpose of this chapter, certain words and phrases shall be construed herein as set forth in this section unless it is apparent from the context that a different meaning is intended:

“Enclosed” means closed in by a roof and four walls with appropriate openings for ingress and egress.

“Characterizing flavor” means a taste or odor, distinguishable by an ordinary consumer either prior to or during the consumption of a tobacco product, other than the taste or odor of tobacco, including, but not limited to, tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice, or a cooling sensation distinguishable by an ordinary consumer during the consumption of a tobacco product.

“Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the

manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

“Flavored tobacco product” means a tobacco product that contains a constituent that imparts a characterizing flavor including, but not limited to, flavored shisha tobacco, flavored shish tobacco products and fluids, flavored cigarette wraps, as well as any tobacco product which is not listed on the Unflavored Tobacco List established and maintained by the Attorney General pursuant to California Health and Safety Code Section 104559.1, other than flavored loose-leaf tobacco and premium cigars.

“Premium cigar” means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper, which is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

“Tobacco product” means a product containing, made, or derived from tobacco or nicotine that is intended for human consumption including a flavored tobacco product, cigarettes, cigars, little cigars, pipe tobacco; and an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including an electronic cigarette, cigar, pipe, or hookah.

“Smoke” or “smoking” means inhaling, exhaling, burning, or carrying any lighted smoking equipment for any tobacco product, cannabis, or any other weed or plant. “Smoke” and “smoking” shall include inhaling or exhaling e-liquid, vape juice, nicotine, cannabis, cannabidiol, terpenes, synthetic cannabinoids or other chemicals or substances in an aerosolized or vaporized form.

Section 2: Section 6.25.020 (Regulation of Smoking in Public Places) is hereby amended, and shall read as follows:

6.25.020 Regulation of Smoking in Public Places.

Within the jurisdiction of the City, it shall be unlawful for a person to:

A. Smoke tobacco products in elevators in buildings generally used by and open to the public, including elevators in office, hotel and multifamily buildings;

- B. Smoke tobacco products in public areas of health care facilities and hospitals, as defined in California Health and Safety Code Section 1250, except in specially designated smoking areas, which may be all or part of a public area;
- C. Smoke tobacco products in hearing rooms, conference rooms, chambers, and places of public assembly in which public business is conducted;
- D. Smoke tobacco products in a publicly or privately owned theater, auditorium, or other similarly enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage production, musical recital, sporting event, or any other performance;
- E. Smoke tobacco products in service lines in which more than one person is giving or receiving services of any kind;
- F. Smoke tobacco products within fifty (50) feet of any area posted as a nonsmoking area;
- G. Smoke tobacco products within one thousand (1,000) feet of a school or day care center;
- H. Smoke tobacco products within fifty (50) feet of any outdoor dining area lawfully provided by an eating and drinking establishment;
- I. Smoke tobacco products in any vehicle that is parked on public property, if the smoking is detectable outside of the vehicle;
- J. Smoke tobacco products in any public park, park facility, beach, or the oceanfront boardwalk or within one hundred (100) feet of a public park, park facility, beach, or the oceanfront boardwalk, while the person is located on public property. This prohibition shall not apply to a person in a car or truck that is being driven;
- K. Smoke tobacco products within fifty (50) feet of any farmers' market or event that is being conducted pursuant to a special event permit issued by the City; or
- L. Smoke a flavored tobacco product on public property, including, but not limited to, parks, sidewalks, public buildings, and schools.

Section 3: Section 6.25.060 (Penalties), of Chapter 6.25 (Regulation of Smoking in Public Areas), of Title 6 (Health and Sanitation), of the NBMC is hereby repealed in its entirety, allowing a violation of Chapter 6.25 (Regulation of Smoking in Public Areas) to be prosecuted as an infraction or misdemeanor.

Section 4: The table for contents for Title 6 (Health and Sanitation) of the NBMC is hereby amended and shall read as follows:

**Title 6
HEALTH AND SANITATION**

Chapters:

- 6.04 Garbage, Refuse and Cuttings**
- 6.05 Use of Expanded Polystyrene Disposable Food Service Ware**
- 6.06 State Mandated Municipal Solid Waste Diversion Programs**
- 6.08 Food Handling Services**
- 6.25 Regulation of Smoking in Public Areas**
- 6.30 Prohibition of Sale and Distribution of Flavored Tobacco Products**

Section 5: Chapter 6.30 (Prohibition of Sale and Distribution of Flavored Tobacco Products) of Title 6 (Health and Sanitation) of the NBMC is hereby added and shall read as follows:

**Chapter 6.30
PROHIBITION OF SALE AND DISTRIBUTION OF FLAVORED
TOBACCO PRODUCTS**

Sections:

- 6.30.010 Definitions.**
- 6.30.020 Sale and Distribution of Flavored Tobacco Products Prohibited.**
- 6.30.010 Definitions.**

For the purposes of this chapter, the following words and phrases have the meaning set forth in this section:

“Characterizing flavor” means a taste or odor, distinguishable by an ordinary consumer either prior to or during the consumption of a tobacco product, other than the taste or odor of tobacco, including, but not limited to, tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice, or a cooling sensation distinguishable by an ordinary consumer during the consumption of a tobacco product.

“Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

“Distribute” means to furnish, give away, exchange, transfer, deliver or supply, whether or not for monetary gain.

“Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor including, but not limited to, flavored shisha tobacco, flavored shish tobacco products and fluids, flavored cigarette wraps, as well as any tobacco product which is not listed on the Unflavored Tobacco List established and maintained by the Attorney General pursuant to California Health and Safety Code Section 104559.1, other than flavored loose-leaf tobacco and premium cigars.

“Premium cigar” means any cigar that is handmade, is not mass produced by use of mechanization, has a wrapper, which is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

“Sell” or “sale” means to furnish, exchange, transfer, deliver, or supply for monetary gain.

“Tobacco product” means any of the following: a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff; an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including an electronic cigarette, cigar, pipe, or hookah; or any component, part, or accessory

of a tobacco product, whether or not sold separately. A Tobacco product does not include a nicotine replacement product approved by the United States Food and Drug Administration.

6.30.020 Sale and Distribution of Flavored Tobacco Products Prohibited.

It shall be unlawful for any person to sell, advertise for sale, offer for sale, or distribute, directly or indirectly, any flavored tobacco product in the City.

Section 6: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 7: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 9: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 10: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 23rd day of September, 2025, and adopted on the 14th day of October, 2025, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

Joe Stapleton, Mayor

ATTEST:

Molly Perry, Interim City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp, City Attorney