

Attachment C

March 19, 2025, Planning Commission
Minutes

Vice Chair Salene closed the public hearing.

Commissioner Rosene stated that this is an area of the City where they are trying to focus on affordable housing generation. He stated that the negative impact of 15% to a developer is significant enough to lead to a reduction to 6%. He expressed his support for the amendment.

Commissioner Gazzano recommended including a clause about offering a developer 8% moderate-level income housing units as an option in addition to 6% at the lower income levels. He agreed that clarity could be added to the amendment about the specific affordability levels.

Commissioner Reed agreed with Commissioner Gazzano.

In response to Commissioner Reed’s inquiry, Community Development Director Murillo clarified that PC-11’s Residential Overlay was created to reduce barriers to the development of lower-income housing during the fourth RHNA cycle. He added that the study included in the staff report was conducted while looking into the feasibility of a potential Citywide inclusionary housing ordinance. He stated that City staff never anticipated the potential of for-sale housing in the JWA area, so it was not included in the original study, with the City’s consultants later being asked to amend their original study to consider the feasibility of for-sale housing in PC-11.

Motion made by Commissioner Gazzano and seconded by Commissioner Rosene to approve the amendment with an addition of including the option of a minimum of 8% of for-sale units be designated for moderate-income, while clarifying that the 6% requirement is specifically for low-income and very-low-income.

- AYES: Gazzano, Reed, Rosene, and Salene
- NOES: None
- ABSTAIN: Harris
- ABSENT: Ellmore, Langford

Chair Harris returned to the meeting.

**ITEM NO. 4 TOBACCO RETAILER BUSINESS AND CIGAR LOUNGE ORDINANCE
 (PA2025-0171)
 Site Location: Citywide**

Summary:

Consistent with the City Council’s initiation on September 9, 2025, the proposed amendments to Title 5 (Business Licenses and Regulations), and Title 20 (Planning and Zoning) of the Newport Beach Municipal Code serve to establish comprehensive regulations related to permitting and operation for tobacco retail businesses and cigar lounges.

Recommended Actions:

1. Conduct a public hearing;
2. Find the Amendment is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code and pursuant to Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment; and
3. Adopt Resolution No. PC2026-010 recommending the City Council approve the code amendments collectively filed as PA2025-0171 establishing comprehensive regulations for tobacco retailer businesses and cigar lounges.

Associate Planner Oscar Orozco reported that there are public safety concerns over the sale of nitrous oxide and flavored tobacco products, with the City seeing a significant rise in arrests for nitrous oxide in recent years, while flavored tobacco and vaping product usage rates are rising among youth. He reported that the Newport Beach Police Department (NBPD) has been involved in enforcement actions around two Corona del Mar vendors that were subsequently closed for selling prohibited products.

Associate Planner Orozco reported that the City Council passed a temporary moratorium on the establishment of any new tobacco retail businesses in September 2025, initiated Newport Beach Municipal Code (NBMC) amendments to create regulations for these businesses and permanently banned the sale of flavored tobacco products along with nitrous oxide at the request of the NBPD. He added that the Council has since extended this moratorium through September to allow staff time to create more solidified NBMC amendments.

Associate Planner Orozco reported that the NBMC does not have a category for these stores, such as "tobacco retailer" or "smoke shop", so they are treated as general retailers, which are permitted in most commercial zones. He added that cigar lounges are prohibited Citywide due to the current definitions. He reported that staff is proposing amending Title 5 of the NBMC to establish a permitting process for tobacco retailers and amending Title 20 to create new definitions and establish standards for tobacco retailer businesses and cigar lounges. He added that the goal of these amendments is to create comprehensive, enforceable standards while protecting public safety and preventing youth access.

Associate Planner Orozco presented the proposed definition of a tobacco retailer, noting that it excludes businesses such as grocery stores and convenience stores to help differentiate businesses that happen to sell tobacco products from those the regulations are intended to focus on that primarily sell tobacco products. He added that if a business is identified as a tobacco retailer by this definition, then it must obtain a Tobacco Retailer Permit (TRP) from the NBPD. He added that these permits would have an annual renewal requirement, be non-transferable, and retailers must comply with City, State, and federal laws. He added that a new separation requirement would not allow a tobacco retailer within 1,000 feet of another one, within 500 feet of uses like a school, park, or religious institution, or within 500 feet of residential use or zoning districts. He reported on operational standards, including no sales between midnight and 6:00 a.m., and a list of prohibited products, including nitrous oxide and flavored tobacco.

Associate Planner Orozco reported that there will be exceptions made for Newport Beach's three existing non-confirming retailers, adding that they must obtain a TRP within 60 days of the Ordinance going into effect, maintain continuous operation, not substantially change ownership and operations, or violate applicable laws.

Associate Planner Orozco stated that cigar lounges are currently prohibited, but the City Council has made a clear distinction for the sale of premium cigars, adding that the NBPD is in support, as they are distinct from smoke shops and issues are not anticipated. He noted that staff have received applications for cigar lounges over the past few years and has identified areas where ones could be opened within select portions of the JWA area and Fashion Island. He added that cigar lounges would have to comply with operational standards, including only allowing patrons who are at least 21 years of age, installing fire sprinklers, providing adequate ventilation, complying with smoke-free workplace rules, prohibiting alcohol sales, and not being within 1,000 feet of another cigar lounge.

Associate Planner Orozco reported that staff's only proposed revisions to the Ordinance are to include hotels and motels in the exceptions section of the definition of a tobacco retailer.

Commissioner Rosene stated that the non-conforming and excluded uses are the interesting parts of this item, noting that Tanar's Tobacco was approved as a convenience store.

In response to Commissioner Rosene's inquiry, Acting Deputy Community Development Director Zdeba stated that staff feel Tanar's is not truly a convenience store. He clarified that they do not have a TRP because those will not exist until this Ordinance is approved by the City Council, but that they would need a TRP in the future if the Ordinance is approved. He confirmed that Tanar's and Piece of Mind Smoke Shop will be permitted to operate despite being less than 1,000 feet apart because they are already existing businesses.

Commissioner Rosene encouraged staff to consider removing convenience stores from the exempted businesses list.

NBPD Civilian Investigator Wendy Joe stated that most convenience stores that sell tobacco products also have Alcoholic Beverage Control (ABC) licenses, whereas this Ordinance is targeting smoke shops that do not sell alcohol and are not governed by any other licenses. She added that, when recently inspecting Tanar's, she found that they had a small refrigerator of sodas, but those were the only beverages.

In response to Commissioner Rosene's inquiry, Civilian Investigator Joe confirmed that whether a store has an ABC license or not is clarified within the Ordinance.

In response to Commissioner Gazzano's inquiries, Associate Planner Orozco confirmed that any existing operator will have to obtain a TRP, adding that the TRP will have an exception for establishments that also require an ABC license. He added that the ABC license provides more means and mechanisms of enforcement to ensure that a convenience store selling alcohol complies with its sales limitations. He clarified that the sale of flavored tobacco and nitrous oxide would be prohibited Citywide, even if a store has an ABC license. Civilian Investigator Joe added that flavored tobacco is covered by State law, but the City's Ordinance provides more local controls. She clarified that the sale of flavored tobacco to an adult is more of an administrative violation through the California Department of Public Health, and this will allow the City to create a higher enforcement standard. She clarified that the age restriction for smoking lounges is 21 years of age and not 18 because of smoking lounges with hashish, noting that hashish is not considered flavored tobacco. Assistant City Attorney Summerhill reported that the legal age to purchase and possess tobacco products in California has recently been changed to 21.

In response to Chair Harris' inquiry, Civilian Investigator Joe clarified that an ABC license requires that you cannot sell drug paraphernalia, such as glass pipes. She added that there are no current mechanisms for the enforcement of things like this with a smoke shop that does not sell alcohol. She added that the TRP is an attempt to bridge the gap.

In response to Vice Chair Salene's inquiries, Associate Planner Orozco stated that when the three existing smoke shops apply for a TRP, the NBPD will confirm that they do not have a history of violations before issuing a TRP. He confirmed that if the three stores have been rule-compliant, they would be issued a TRP.

In response to Chair Harris' inquiry, Associate Planner Orozco confirmed that staff will notify all known existing retailers prior to the City Council's public hearing about the Ordinance.

In response to Chair Harris' inquiry, none of the Commissioners disclosed any ex parte communications about this item, other than Chair Harris, who disclosed speaking with a potential tobacco retail owner.

Chair Harris opened the public hearing.

Mr. Mosher noted that his comments on this item were not submitted in writing like his other comments. He stated that the concept of tobacco “retailing” in proposed NBMC Section 5.55.15(A) is insufficiently defined. He added that proposed NBMC Section 5.55.15(D)(3) is unclear, noting the potential for confusing applications in mixed-use and housing overlay zones. He compared the discussion to the City Council’s restrictions on tattoo parlors and stated that maps comparable to the ones presented at that discussion would be beneficial. He recommended that more specificity about the length of time and types of violations be added to proposed NBMC Section 5.55.15(E)(5), pondering if something unrelated to tobacco sales, like a plumbing violation, could be counted here. He recommended inserting language into proposed NBMC Section 20.70.020(T) as a drug store selling nicotine patches could fit the definition as presented because they sell a “tobacco-related item.” He stated that the focal point of the definition should be that the primary business of a smoke shop is selling tobacco.

Chair Harris closed the public hearing.

Vice Chair Salene agreed with Mr. Mosher on the overly broad nature of the requirement that a retailer have no violations in proposed NBMC Section 5.55.15(E)(5).

In response to Vice Chair Salene’s inquiry, Assistant City Attorney Summerhill agreed that proposed NBMC Section 5.55.15(E)(5) can be tightened up prior to its City Council presentation, along with adding other editorial comments made by Mr. Mosher and the Commission.

Chair Harris stated that he has similar thoughts to Mr. Mosher about needing clarity in proposed NBMC Section 5.55.15(D)(3) relative to the application of these regulations in mixed-use and housing overlay zones.

Motion made by Chair Harris and seconded by Vice Chair Salene to approve the item as revised by staff.

AYES: Gazzano, Harris, Reed, Rosene, and Salene
NOES: None
ABSTAIN: None
ABSENT: Ellmore, Langford

VIII. STUDY SESSION

ITEM NO. 5 STUDY SESSION ON THE NEWPORT BEACH 2050 GENERAL PLAN (PA2022-080) Site Location: Citywide

Summary:

City staff will present relevant background and an overview of the status of the comprehensive General Plan Update with special focus on introducing the Final Draft GPUSC/GPAC General Plan Update, also referred to as the “Newport Beach 2050 General Plan.” This is a study session item only with no action required. It is anticipated the Planning Commission will review and consider recommending the Newport Beach 2050 General Plan for City Council approval at its meeting on April 23, 2026.