

Attachment B

March 19, 2026, Planning Commission
Staff Report (Without Attachments)

Staff Report with attachments available
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CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

March 19, 2026
Agenda Item No. 4

SUBJECT: Tobacco Retailer Business and Cigar Lounge Ordinance (PA2025-0171)
▪ Business Licenses and Regulations Code Amendment (Title 5)
▪ Zoning Code Amendment (Title 20)

SITE LOCATION: Citywide

APPLICANT: City of Newport Beach

PLANNER: Oscar Orozco, Associate Planner
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PROJECT 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.

RECOMMENDATION

- 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 (Attachment No. PC 1) recommending the City Council approve the code amendments collectively filed as PA2025-0171 establishing comprehensive regulations for tobacco retailer businesses and cigar lounges.

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DISCUSSION

Background

Nitrous Oxide and Flavored Tobacco

In recent years, Newport Beach has experienced a significant rise in public safety concerns related to the accessibility and use of nitrous oxide and flavored tobacco products among the youth. Arrests involving nitrous oxide have surged by 720% from just five arrests in 2020 to 41 in 2024. While 2025 data is not yet available, preliminary review shows trend continuing with another 20% increase over the previous year.

The Newport Beach Police Department (NBPD) has identified nitrous oxide being sold in local smoke shops and illegal dispensaries, contributing to its widespread availability. This accessibility poses a growing risk to the health and safety of young residents and underscores the need for stronger regulatory oversight.

Additionally, flavored tobacco products remain a major driver of youth vaping. According to the Centers for Disease Control and Prevention (CDC), 87.6% of U.S. students who vaped in 2024 used flavored products. In California, 85.6% of high school tobacco users reported using flavored varieties. These statistics highlight the disproportionate appeal of flavored tobacco to minors. Over the past two years, NBPD has received community input, including approximately 15 formal complaints from parents and community members regarding smoke shops, further emphasizing community concern.

Illegal Activity at Local Tobacco Retailers

According to State of California (State) records, as of September 5, 2025, there are 41 locations within Newport Beach that are licensed by the State for the retail sale of tobacco. Retailers range from large grocery store chains to gas stations and convenience markets to retailers that primarily sell tobacco.

Especially in recent years, tobacco retailer businesses have been sources of unlawful activity in the City. The City has served warrants at local tobacco retailer businesses and found evidence of ongoing illegal drug sales to adults and minors. Specifically, on May 15, 2024, the NBPD detectives arrested an employee at Plugged N Smoke & Sneakers, located at 3555 East Coast Highway in Corona del Mar, following a lengthy investigation that uncovered ongoing sales of illegal marijuana, controlled substances, and prohibited tobacco products to both minors and adults.

Additionally, on June 10, 2025, NBPD detectives served a search warrant at Tobacco and Accessories, located at 3617 East Coast Highway in Corona del Mar, seizing over 454 pounds of illegal cannabis, psilocybin (magic mushrooms), nitrous oxide, and prohibited tobacco products.

These two cases are part of a troubling trend that endangers the well-being of the City's residents, especially minors, highlighting the urgent need for swift and decisive action, as demonstrated by aggressive enforcement and stricter regulations recently adopted in other cities in Orange County and Los Angeles County such as the cities of Anaheim, Orange, Buena Park, Costa Mesa and Beverly Hills. A comparison of regulations in other cities is provided as Attachment No. PC 4 of this report.

Moratorium and Initiation of Code Amendments

Based on the aforementioned safety concerns, on September 9, 2025, then-Mayor-Pro-Tem Kleiman requested initiating amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) related to tobacco retail establishments, tobacco accessories/paraphernalia, smoke shops, smoking lounges and other smoke-related businesses pursuant to City Council Policy A-1. In addition to the code update, the City Council also directed staff to prepare an Urgency Ordinance to establish a temporary moratorium on the establishment of new smoke shops pending the outcome of the code amendment review. The City Council voted unanimously (6-0), via a straw poll, in favor of staff returning with an item.

On September 23, 2025, the City Council unanimously (7-0) adopted Ordinance No. 2025-31 imposing a 45-moratorium on the establishment and operation of new tobacco retailer businesses as well as the relocation or physical expansion of existing tobacco retailer businesses. In addition, the City Council adopted Resolution No. 2025-64 initiating amendments to Title 20 and Title 21 of the NBMC pertaining to smoke shops, smoking lounges, and other tobacco related businesses¹.

On September 23, 2025, the City Council unanimously (7-0) adopted Ordinance Nos. 2025-26 and 2025-27, establishing a permanent prohibition on sale and distribution of flavored tobacco products and the sale, distribution and use of nitrous oxide designed to address the same issues that prompted the temporary moratorium. Chapters 6.30 (Prohibition of Sale and Distribution of Flavored Tobacco Products) and 6.40 (Prohibition of Sale, Distribution, and Use of Nitrous Oxide) of Title 6 (Health and Sanitation) of the NBMC now govern flavored tobacco products and nitrous oxide. These chapters expressly prohibit the sale and distribution of flavored tobacco products, and they also prohibit the sale, distribution, and use of nitrous oxide within the City.

On October 28, 2025, the City Council unanimously (7-0) adopted Ordinance No. 2025-34 extending the temporary moratorium on the establishment and operation of new tobacco retailer businesses and the relocation or physical expansion of existing tobacco retailer businesses. The temporary moratorium would end by September 23, 2026.

¹ Amendments to Title 5 of the NBMC do not require initiation by the City Council.

Existing Tobacco Regulations

Tobacco Retailer Businesses

The sale of tobacco and tobacco related products is currently defined as a “Retail Sales” land use in Chapter 20.70 (Definitions) of the NBMC, which is permitted by right in most zoning districts with a few exceptions. The NBMC does not include specific standards for retail sales of tobacco or tobacco related products. Additionally, neither Title 20 nor Title 21 provides a definition for “Tobacco Retail Sales”, “Tobacco Retailer Business”, or “Smoke Shops”, and there are no objective land use regulations, such as limits on hours of operations, appropriate zoning districts, and/or separation requirements. Therefore, despite the aforementioned public safety implications, tobacco related retail sales are regulated no differently than a typical retail store.

Cigar Lounges Prohibited

Titles 20 and 21 of the NBMC include a definition and a land use classification for “Smoking Lounge,” which is defined as “an establishment that is dedicated, in whole or part, to providing tobacco or other substances for smoking by patrons on the premises for a fee, including but not limited to establishments known as cigar lounges, hookah lounges, tobacco clubs, or tobacco bars. It does not include a “retail or wholesale tobacco shop,” which sells tobacco products and smoking accessories, but does not provide for on-premises use of tobacco products”. The smoking lounge land use classification includes cigar lounges and is prohibited in all zoning districts.

Proposed Amendments

Tobacco Retailer Businesses

The proposed code amendments would establish comprehensive regulations governing tobacco retailer businesses within Newport Beach. The amendment introduces a ministerial permitting framework for businesses defined as a “Tobacco Retailer Business” in Title 5 of the NBMC. The sale of tobacco would remain a “Retail Sales” land use within Title 20 but would include a reference to Title 5 that will contain comprehensive regulations and the requirement for a Tobacco Retailer Permit (TRP).

As proposed in the Title 5 of the NBMC, a “Tobacco retailer business” means any person who sells, offers for sale, distributes, furnishes, or otherwise exchanges, with or without compensation, a tobacco product, tobacco paraphernalia, or tobacco-related item, to a consumer or end user, whether conducted in a physical storefront, through mobile or temporary setups, or via online or delivery-based platforms operating within the City of Newport Beach. It does not include “Grocery Store”, “Convenience Market”, “Cigar Lounge” or the sale of “Premium Cigars”.

The ordinance includes references to definitions in Chapters 6.30 (Prohibition of Sale and Distribution of Flavored Tobacco Products) and 6.40 (Prohibition of Sale, Distribution, and Use of Nitrous Oxide) and introduces new definitions for tobacco paraphernalia, premium cigars, electronic smoking devices, imitation tobacco products, and related terms. These definitions provide clarity for enforcement and distinguish tobacco retailers from other commercial and retail uses.

As proposed in Title 20 of the NBMC, tobacco retailers would continue to be permitted in most office, commercial, industrial, and mixed-use zoning districts (depicted in Figure 1), however, they would be subject to the separation requirements identified in Table 1. These districts reflect commercial environments where tobacco retailing is expected to be compatible with surrounding uses and sufficiently separated from residential areas.

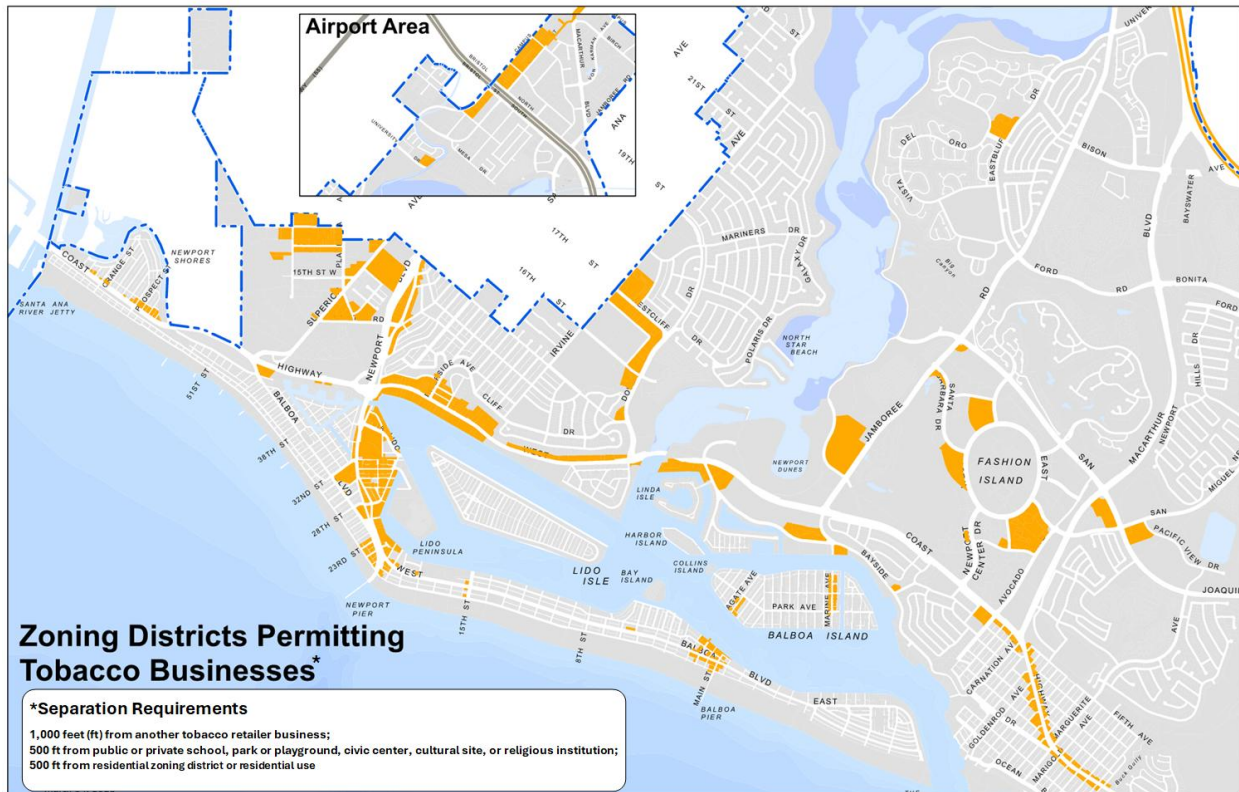


Figure 1, Zoning Districts where Tobacco Retailer Businesses are Permitted

Tobacco Retailer Permit Requirements

All businesses that meet the definition of a tobacco retailer business would be subject to the standards identified in Title 5 including obtaining a TRP. Administrative responsibility for TRPs will be conducted by the NBPD. The proposed ordinance establishes robust separation and locational standards to mitigate secondary effects, limit tobacco retailer businesses near sensitive uses, and prevent overconcentration. It also incorporates extensive operating standards to ensure responsible business practices and reduce the

likelihood of unlawful activity. A summary of the proposed regulations for Tobacco Retailer Businesses is provided in Table 1 below.

Table 1, Summary of Proposed Regulations for Tobacco Retailer Businesses

Category	Key Rules	Purpose / Effect
Permit Requirement	All tobacco retailers must obtain a City TRP from the NBPD; non-transferable; annual renewal required.	Ensures oversight, accountability, and compliance with local/state law.
Where Retailers Are Allowed	Permitted in OA, OG, OM, OR, CC, CG, CM, CN, MU-V, MU-MM, MU-DW, MU-CV/15th St., MU-W1, MU-W2, and IG Zoning Districts	Limits tobacco retailing to compatible commercial areas. No changes proposed.
Where Retailers Are Prohibited	Prohibited in residential zones, smoking lounges, restaurants, and alcohol-serving establishments.	Prevents incompatible or high-risk co-locations.
Separation Requirements	1,000 feet (ft) from another tobacco retailer business; 500 ft from public or private school, park or playground, civic center, cultural site, or religious institution; 500 ft from residential zoning district or residential use.	Prevents overconcentration and protects residential neighborhoods and minors.
Nonconforming Retailers	May continue if they obtain a permit within 60 days, avoid lapses, and do not substantially change operations.	Allows existing businesses to operate under strict conditions.
Prohibited Products	Drug paraphernalia, nitrous oxide, cannabis, controlled substances, flavored tobacco, electronic smoking devices (unless preempted), imitation tobacco, disguised vape devices, unlawful weapons.	Reduces illegal activity and protects public safety.
Operational Standards	No self-service displays (e.g., vending machines); age verification required; original packaging only; posted permits; restricted hours (no sales 12 a.m.– 6 a.m.).	Promotes orderly, lawful, and transparent operations.
Signage Limits	No more than 20% of window/door transparency area may contain signage and must comply with Chapter 20.42 (Sign Standards).	Maintains visibility and reduces visual blight.
Fixed Location Requirement	No mobile, temporary, or vehicle-based tobacco retailing.	Prevents unregulated or transient operations.
Permit Denial / Revocation	May occur for incomplete applications, false information, outstanding fines, prior violations, or unlawful activity.	Ensures only compliant operators remain in business.

Existing Tobacco Retailer Businesses

There are several existing, known, tobacco retailer businesses within the City that are legally permitted to operate under current zoning regulations, which are identified in Figure 2 on the following page. Upon adoption of the proposed ordinance, these businesses would become legal nonconforming uses due to the newly established standards applicable to tobacco retailers. As legal nonconforming uses, these retailers would be allowed to continue operating provided they obtain a Tobacco Retailer Permit within 60 days of the effective date of the resolution, maintain continuous operation without lapse, and refrain from any substantial change in ownership or business activity,

consistent with Section 20.38.050 (Nonconforming Uses) of the NBMC and proposed Title 5 regulations. Any expansion, intensification, relocation, or operational modification that constitutes a substantial change would require full compliance with the new ordinance, including all locational standards. Any existing Tobacco Retailer Businesses that violate local, state, and/or federal laws would not be eligible for a TRP.

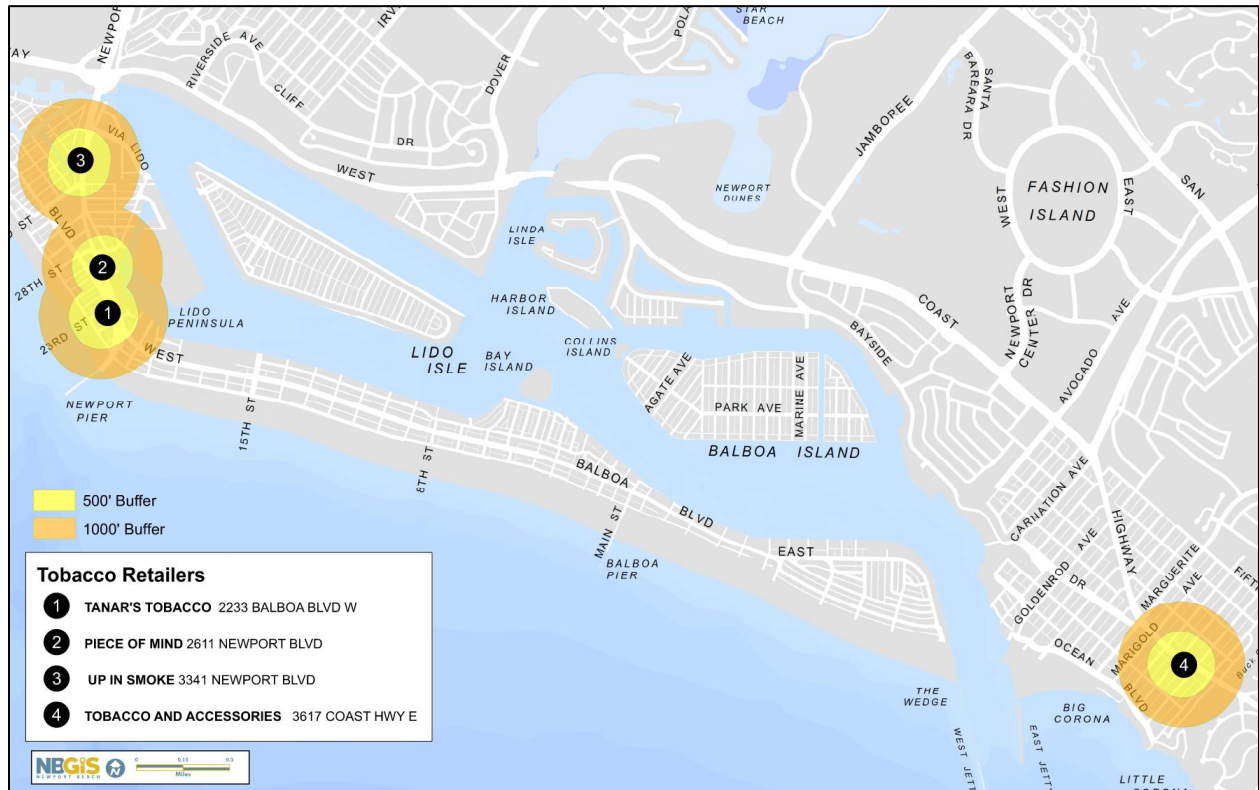


Figure 2, Existing Known Tobacco Retailer Businesses

Cigar Lounges

Additional amendments are proposed to Title 20 that would establish a new land use specifically for cigar lounges. The amendments authorize cigar lounges in limited commercial zones and in conjunction with the retail sale of premium cigars, which are exempt from the TRP requirements previously outlined. The amendments would modify the existing definition of “Smoking Lounges” to remove cigar lounges and create a new definition that would allow the smoking of premium cigars² only.

As proposed, cigar lounges would be permitted uses within the OA (Office Airport) and OR (Office Regional) Zoning Districts. These Districts, depicted in Figure 3 below, were intentionally selected for their commercial intensity, distance from established residential neighborhoods, and reduced likelihood of conflict with sensitive uses. The OA and OR

² Premium cigars are generally defined as any cigar that is handmade, or hand rolled, 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 \$12 each. A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.

districts are generally characterized by a mix of uses that function more like urban mixed-use environments and generate predominantly commercial activity. The OA District is adjacent to John Wayne Airport and the OR District is within Newport Center. There are no other changes proposed to the prohibition on Smoking Lounges, which would continue to be prohibited Citywide.

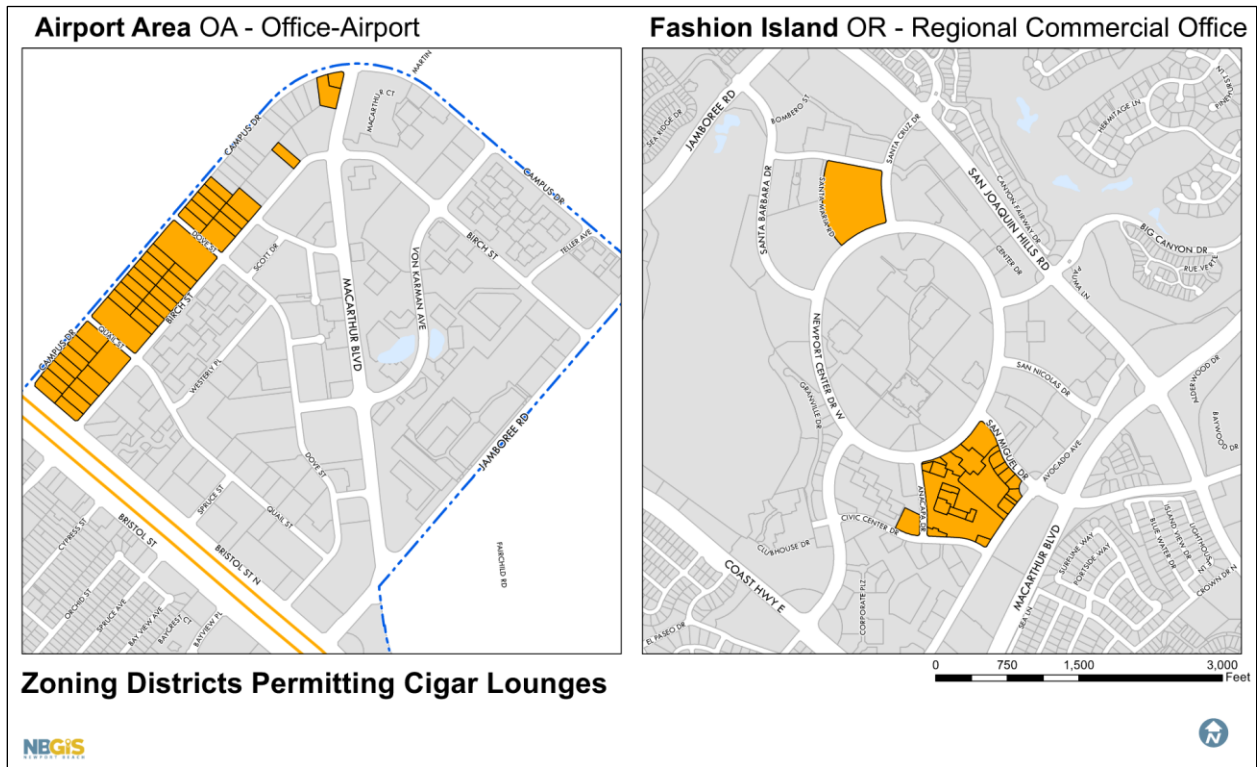


Figure 3, Zoning Districts where Cigar Lounges would be permitted

The proposed code amendment would also establish regulations for cigar lounges, recognizing their operational characteristics while ensuring they remain compatible with surrounding land uses and consistent with the City’s broader public health and safety objectives. A summary of the proposed regulations for Cigar Lounges is provided in Table 2 below.

Table 2, Summary of Proposed Regulations for Cigar Lounges

Category	Key Rules	Purpose / Effect
Permitted Zoning Districts	OA and OR	Cigar lounges may operate only in these two commercial zones, selected for their distance from residential areas and compatibility with higher-intensity commercial uses.
Prohibited Zoning Districts	All other zones, including residential, mixed-use, and neighborhood-serving commercial districts.	Prevents cigar lounges from locating near homes, schools, or resident-oriented commercial areas.

Separation From Other Cigar Lounges	1,000 feet of another Cigar Lounge	Ensure cigar lounges do not cluster or create overconcentration within permitted districts.
Operational Compatibility	Restricted to people 21 years of age or older. Shall be fire sprinklered and provide adequate ventilation.	Ensure cigar lounges operate in a controlled, contained manner consistent with City health and safety objectives.

State Laws Pertaining to Cigar Lounges

The California Attorney General issued an opinion (Opinion No. 09-507) that provides clear guidance regarding the applicability of state smoke-free workplace laws to private smokers' lounges. The Opinion concludes that a private smokers' lounge located in or attached to a retail or wholesale tobacco shop is not exempt from the requirements of Labor Code section 6404.5 when the establishment serves alcoholic beverages to patrons. Therefore, the service of alcohol (such as a restaurant) would be prohibited in conjunction with a cigar lounge.

The Opinion further explains that cigar lounges operating as enclosed smoking environments constitute assembly-type occupancies under the California Building Standards Code and therefore must comply with applicable fire and life safety requirements, including the installation of automatic fire sprinkler systems. This requirement reflects the heightened fire risk associated with indoor smoking and the need to ensure adequate protection for employees, patrons, and adjacent businesses.

The proposed ordinance incorporates this state guidance by limiting cigar lounges to specific commercial zoning districts and by requiring full compliance with all applicable building, fire, and workplace safety regulations as a condition of operation. As a result, any cigar lounge permitted under the amendment shall:

- Comply with Labor Code section 6404.5, including smoke-free workplace requirements when alcohol is served.
- Install and maintain fire sprinklers and any other fire and life safety systems required by Code.
- Obtain all required building, fire, and operational permits prior to occupancy.

By explicitly requiring cigar lounges to meet these state-mandated standards, the ordinance ensures that such establishments operate safely, responsibly, and in full compliance with State law.

General Plan Consistency

The proposed code amendment establishing regulations for tobacco retailer businesses and cigar lounges is consistent with the City of Newport Beach 2006 General Plan because it does not introduce any new General Plan Land Use Categories or expand the range of uses permitted beyond those already contemplated within the City's nonresidential districts. Tobacco retailers and cigar lounges would continue to be located

only within established commercial, office, mixed-use, and industrial land use designations that already accommodate a broad mix of retail, service, and commercial activities. These designations expressly support uses that serve residents, sustain the local economy, and provide employment opportunities, consistent with the following policies:

1. LU 2.1 Resident-Serving Land Uses Accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces. (Imp 1.1, 2.1)
2. LU 2.2 Sustainable and Complete Community Emphasize and support the development of uses that enable Newport Beach to be a complete community that maintains the ability to provide locally accessible opportunities for retail, goods and services, and employment. (Imp 1.1, 24.1)
3. LU 2.4 Economic Development Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)

Limiting cigar lounges to the Office Airport (OA) and Office Regional (OR) Districts aligns with the General Plan's intent to maintain a development pattern that complements existing neighborhoods and directs more intensive commercial uses to appropriate locations, consistent with the following policies:

1. LU 3.1 Neighborhoods, Districts, Corridors, and Open Spaces Maintain Newport Beach's pattern of residential neighborhoods, business and employment districts, commercial centers, corridors, and harbor and ocean districts. (Imp 1.1)
2. LU 3.2 Growth and Change Enhance existing neighborhoods, districts, and corridors, allowing for re-use and infill with uses that are complementary in type, form, scale, and character. Changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service. (Imp 1.1, 2.1, 5.1, 10.2, 16.2, 16.3, 17.1, 18.1, 19.1, 22.1, 23.1, 23.2)

These areas are characterized by higher-intensity commercial and employment uses and are appropriately separated from residential neighborhoods and sensitive land uses,

supporting the General Plan's emphasis on protecting community character and quality of life as articulated in the following policies:

1. LU 1.1 Unique Environment Maintain and enhance the different villages, neighborhoods, business districts, and harbor that define Newport Beach through neighborhood preservation. Locate and design development in a way that reflects Newport Beach's topography and architectural diversity while emphasizing the City's coastal orientation, including public views. (Imp 1.1)
2. LU 1.4 Growth Management Implement a conservative growth strategy that enhances the quality of life of residents and balances the needs of all constituencies with the preservation of open space and natural resources. (Imp 1.1, 10.2)

The proposed separation requirements, operational standards, and permitting framework further reinforce General Plan objectives by ensuring that tobacco retailers and cigar lounges operate in a manner compatible with surrounding uses, maintain the safety and welfare of residents, and contribute positively to the City's commercial vitality. These measures support the General Plan's overarching goals of preserving neighborhood livability, sustaining economic health, and maintaining a balanced mix of land uses, consistent with the following policy:

1. LU 1.5 Economic Health Support the local economy through the identification and development of housing opportunities, as well as adequate commercial, office, medical, industrial, and marine-oriented uses that provide employment and local revenue opportunities to support high-quality community services for residents, businesses, and visitors. (Imp 1.1, 24.1)

Accordingly, the proposed code amendment is fully consistent with the Newport Beach General Plan because it maintains the established land use structure, supports orderly commercial development, protects residential neighborhoods, and advances the City's long-term vision for a safe, vibrant, and well-balanced community.

Local Coastal Plan

An amendment to Title 21 (Local Coastal Program Implementation Plan) is not required because tobacco retailer businesses will continue to be classified as "Retail" uses under Titles 20 and 21 of the NBMC and will remain permitted in all zones where retail uses are allowed. Title 21 already identifies retail sales as an allowed use, and the proposed amendments to Titles 5 and 20 do not change the zoning districts in which retail uses are permitted. Additionally, the OA (Office Airport) and OR (Office Regional) zoning districts where cigar lounges are proposed to be allowed are located outside the Coastal Zone and are therefore not addressed by Title 21. As a result, no amendments to Title 21 are necessary.

Summary

These comprehensive regulations for tobacco retailer businesses would establish separation requirements and detailed operational standards intended to address documented public safety concerns while ensuring compatibility with surrounding land uses. The proposed regulations respond to a pattern of unlawful activity associated with certain tobacco retailers, as evidenced by recent NBPD investigations, and are designed to protect public health, safety, and welfare while maintaining the character and vitality of the City's commercial areas. As described in the resolution (Attachment No. PC 1), the ordinance is supported by substantial evidence of negative secondary effects associated with smoke shops, including illegal drug sales and the attraction of criminal activity, particularly near sensitive uses such as schools and residential neighborhoods.

The proposed amendments for cigar lounges would establish clear separation requirements and operational standards intended to ensure that these businesses operate in a manner compatible with surrounding commercial and residential areas. As outlined in the accompanying resolution, the regulations are intended to safeguard public health, safety, and welfare while preserving the character and economic vitality of the City's commercial districts.

Alternatives

The Planning Commission may recommend revisions to the proposed code amendments, such as changing location, separation requirements, and hours of operation. If the changes are substantial the Planning Commission may direct staff to return to the Planning Commission with a revised code amendment addressing the recommended revisions prior to recommending approval of the code amendments to the City Council.

Environmental Review

The proposed action is statutorily and categorically exempt from environmental review under 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. While this amendment would modify standards for tobacco retailer businesses and cigar lounges within the City, it does not authorize new development that would directly result in physical changes to the environment. There is no evidence or known special circumstances that amending the regulations for tobacco retailer businesses and cigar lounges would result in any new effects on the environment.

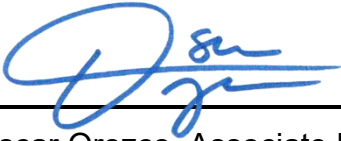
Public Notice

Notice of this hearing was published in the Daily Pilot as an eighth-page advertisement at least 20 days before the scheduled meeting, consistent with the provisions of the

NBMC and State Law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:



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Acting Deputy Community
Development Director

LAW/oo

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Amendments to Title 5 (Business Licenses and Regulations), proposed redlined code changes
- PC 3 Amendments to Title 20 (Planning and Zoning Code), proposed redlined code changes
- PC 4 Comparison of Tobacco Regulations in other cities