

Attachment C

City Council Staff Report dated
September 23, 2025



CITY OF

NEWPORT BEACH

City Council Staff Report

September 23, 2025
Agenda Item No. 23

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Jaime Murillo, Acting Community Development Director - 949-644-3209, jmurillo@newportbeachca.gov

PREPARED BY: Oscar Orozco, Associate Planner - (949) 644-3219, oorozco@newportbeachca.gov

TITLE: Initiation of Zoning Code and Local Coastal Program Amendments Related to Smoke Shops, Smoking Lounges, and Other Tobacco-Related Businesses and Establishing a Temporary Moratorium of Tobacco Retailer Businesses

ABSTRACT:

For City Council's consideration is an initiation of amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC). The amendments relate to tobacco retail establishments, tobacco accessories, smoke shops, smoking lounges and other tobacco-related businesses. In addition, the City Council will consider a 45-day temporary moratorium on the establishment and operation of new tobacco retailer businesses and the relocation or physical expansion of existing tobacco retailer businesses, also known as smoke shops.

RECOMMENDATIONS:

- a) Determine this action is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15262, Section 15060(c)(2), Section 15060(c)(3), Section 15305, and Section 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3;
- b) Adopt Ordinance No. 2025-31, *An Urgency Ordinance of the City Council of the City of Newport Beach, California, Establishing a Temporary Moratorium on the Establishment and Operation of New Tobacco Retailer Businesses and the Relocation or Physical Expansion of Existing Tobacco Retailer Businesses, Also Known as Smoke Shops*; and
- c) Adopt Resolution No. 2025-64, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Pertaining to Smoke Shops, Smoking Lounges, and Other Tobacco-Related Businesses (PA2025-0171)*.

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. Current trends in 2025 suggest this number may climb to approximately 50 arrests by year-end, marking another 20% increase over the previous year.

The Newport Beach Police Department (NBPB) 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, NBPB has received approximately 15 complaints from parents and community members regarding smoke shops, further emphasizing community concern.

Illegal Activity at Local Tobacco Retailers

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

Tobacco retailer businesses have been a source 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 NBPB 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, NBPB 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 neighboring cities like Anaheim, Orange, La Habra, and Redondo Beach.

Initiation of Zoning Code and Local Coastal Program Amendments

On September 9, 2025, Mayor Pro Tem Kleiman requested initiating zoning code and local coastal program amendments 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 request also directed staff to prepare an Urgency Ordinance to establish a temporary moratorium on the establishments 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.

This agenda item is not a public hearing. If the City Council adopts the attached resolution to initiate the zoning code and local coastal program amendments, specific text changes will be drafted and considered by both the Planning Commission and the City Council at future public hearings. Additionally, amendments to the certified LCP will require certification by the California Coastal Commission to be effective.

Zoning Code Section 20.66.020 (Initiation of Amendment) provides that a code amendment may be initiated by the City Council with or without a recommendation from the Planning Commission. City Council Policy K-1 (General Plan and Local Coastal Program) provides that a City-sponsored amendment to the certified Local Coastal Program (LCP) shall be initiated by the City Council.

Focus of Amendments Proposed for Initiation

The sale of tobacco is currently defined as a “Retail Sales” land use in the NBMC. The retail sales land use 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, Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) do not provide a definition for “Tobacco Retail Sales”, “Tobacco Retailer Business”, or “Smoke Shops”, nor do they include a land use category with 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 Retailer Businesses and Smoke Shops are regulated no differently than a typical retail store.

Title 20 and 21 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 is prohibited in all zoning districts.

Therefore, as part of the amendments staff will study potential changes to Title 20 and 21 related to the regulations of smoking lounges and of the sale of tobacco and tobacco-related products in the City.

Moratorium

The attached Urgency Ordinance (Attachment A) would establish a 45-day temporary moratorium on new tobacco retailer businesses, which are defined in the ordinance as: “any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchange, or offered for exchange.”

City Charter Section 412 provides for the adoption of an urgency ordinance as an emergency measure to preserve the public peace, health or safety by an affirmative vote of at least five City Council members.

Additionally, pursuant to Government Code Section 65858, and in order to protect public safety, health, and welfare, the City Council may adopt an Urgency Ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body, Planning Commission or the Community Development Department is considering or studying or intends to study within a reasonable time. Approval of an Urgency Ordinance requires a minimum of a four-fifths vote of the legislative body for adoption and is effective immediately for 45 days from its date of adoption. After notice, pursuant to Section 65090, and a public hearing, the legislative body may, at a future date, extend the Urgency Ordinance for 10 months and 15 days, and subsequently extend the Urgency Ordinance for one year. These additional extensions will also require a minimum of a four-fifths vote for adoption. No more than two extensions may be adopted by the legislative body.

As noted above, the City Council has directed staff to initiate amendments to the NBMC related to Smoke Shops and an Urgency Ordinance would prevent the establishment of any new Smoke Shops (i.e. tobacco retailer businesses) while the amendments are being drafted for Council review and action. This direction is supported by the evidence of a significant rise in public safety concerns related to the accessibility and use of nitrous oxide and flavored tobacco products among the youth, the significant number of businesses in the City that are currently licensed by the State to sell tobacco, unlawful activity at existing tobacco retailer businesses, and the City Council's concern about this increase and the harmful effect of nitrous oxide and flavored tobacco products on the residents.

As previously described, the City has no regulations specific to retailers whose principal or core business involves selling tobacco products and related paraphernalia, that would

protect minors such as distance requirements from schools, parks, and other youth-oriented areas. In order to provide staff with the time to study options for the regulation of smoke shops, smoking lounges, and other tobacco-related businesses, staff is recommending approval of the subject urgency ordinance.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

The initiation of zoning and LCP amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. No final action on any amendments will occur at this meeting and the initiation of the amendment does not have any legally binding effect upon future consideration of the amendments themselves. The City will conduct an environmental review prior to the consideration of approval of the amendments.

Additionally, the urgency ordinance is not subject to the 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. In addition, the ordinance consists of minor alterations in land use limitations and does not result in any changes in land use or density. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Division 6, Chapter 3, Sections 15305 and 15061(b)(3) of the California Code of Regulations.

NOTICING:

The NBMC does not require notice for the initiation of amendments. Notice of this item appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Should the City Council initiate the amendment, public notice will be provided for subsequent public hearings before the Planning Commission and the City Council as required by the NBMC. Additionally, notice of the LCP amendments will be sent to all persons and agencies on the Notice of the Availability mailing list.

ATTACHMENTS:

Attachment A – Ordinance No. 2025-31 Urgency Ordinance for Moratorium
Attachment B – Resolution No. 2025-64 Initiation of Amendments