



NEWPORT BEACH

City Council Staff Report

May 26, 2026
Agenda Item No. 14

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2026-06: Amending Title 5 (Business Licenses and Regulations) and Title 20 (Planning and Zoning) for Tobacco Retailer Businesses and Cigar Lounges

ABSTRACT:

For the City Council's consideration is the introduction of an ordinance amending Title 5 (Business Licenses and Regulations) and Title 20 (Planning and Zoning) to establish comprehensive regulations for tobacco retailer businesses and cigar lounges.

Consistent with the City Council's initiation on September 9, 2025, the ordinance would create new permitting requirements, operational standards, location restrictions, and other provisions, including but not limited to requiring all tobacco retailer businesses to obtain a Tobacco Retailer Permit from the Newport Beach Police Department (NBPD). The ordinance would prohibit tobacco retailer businesses from operating near residential zoning districts, schools, public libraries, parks, and other sensitive uses. As proposed, existing retailers within these buffer areas may be considered legal nonconforming uses but would be required to obtain and maintain a Tobacco Retailer Permit.

The ordinance would further establish a new land use classification for cigar lounges and permit them within the Office Airport (OA) and Office Regional (OR) Zoning Districts subject to certain operational and locational standards.

RECOMMENDATIONS:

- 1) Conduct a public hearing;
- 2) Find this project categorically exempt from 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) Introduce Ordinance No. 2026-06, *An Ordinance of the City Council of the City of Newport Beach, California, Adding Chapter 5.55 (Tobacco Retailer Businesses) to Title 5 (Business Licenses and Regulations) and Amending Title 20 (Planning and Zoning) of the Newport Beach Municipal Code Related to Operation of New Tobacco Retailer Businesses and the Relocation or Physical Expansion of Existing Tobacco*

Retailer Businesses, Also Known as Smoke Shops, and pass to second reading on June 9, 2026.

DISCUSSION:

Nitrous Oxide, Flavored Tobacco & Illegal Activity at Local Tobacco Retailers

Newport Beach is facing increasing public safety concerns tied to nitrous oxide and flavored tobacco, both of which are widely accessible in local smoke shops and illegal dispensaries. These products are especially appealing to youth, and national data shows that most teens who vape use flavored products. Local parents have also raised concerns, submitting multiple complaints about smoke shops over the past two years.

At the same time, several tobacco retailers in the city have been found to be involved in illegal drug sales, including cannabis, psilocybin, nitrous oxide, and prohibited tobacco products. NBPD investigations and search warrants uncovered significant quantities of illegal substances at two locations in Corona del Mar, highlighting a broader pattern of unlawful activity.

Together, these trends point to a clear need for stronger oversight and enforcement, similar to actions already taken in nearby cities such as Anaheim, Orange, Buena Park, Costa Mesa, and Beverly Hills.

Moratorium and Initiation of Code Amendments and Measures Taken to Alleviate the Conditions That Led to the Adoption of the Urgency Ordinance

Based on the aforementioned safety concerns, on September 9, 2025, then-Mayor-Pro-Tem Lauren 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-day 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 the sale and distribution of flavored tobacco products and the sale, distribution and use of nitrous oxide designed

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

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 and allow City staff time to prepare the aforementioned code amendments.

Pursuant to Government Code Section 65858(d), the City is required to issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the interim moratorium at least 10 days prior to the expiration of the ordinance or any extension. The City hereby designates this staff report, made available to the public on May 22, 2026, as the written report required under Section 65858(d).

Planning Commission Review

On March 19, 2026, the Planning Commission considered the proposed amendments establishing a Tobacco Retailer Permit (TRP) program and cigar lounge regulations to Titles 5 and 20 of the NBMC. No public comments were received prior to the public hearing.

During the Planning Commission's deliberations, several Commissioners raised questions regarding the scope of the ordinance, particularly the distinction between smoke shops and convenience stores. Commissioner Rosene encouraged staff to consider removing convenience stores from the list of exempted businesses. The Commissioners also asked if staff would notify those businesses that would become legal nonconforming due to the ordinance. During the public hearing, Mr. Jim Mosher provided oral comments. He stated, as summarized, that the definition of "tobacco retailing" is unclear and that additional clarification of a "residential use" or "residential zone" is necessary. He also suggested revising the ordinance so that only relevant violations affect TRP eligibility and refining the definition of a tobacco retailer business so that drug stores selling nicotine patches are not mistakenly classified as smoke shops. Vice Chair Salene agreed that the ordinance should be revised so that only relevant violations affect TRP eligibility, and Chair Harris supported clarification over mixed-use and housing overlay areas as it relates to the limitations in "residential zones" and "residential use".

At the conclusion of the public hearing, the Planning Commission adopted Resolution No. No. PC2026-009 by a unanimous vote (5 ayes, 0 nays, 2 absent) recommending approval of the amendments. A copy of the March 19, 2026, Planning Commission staff report is included as Attachment B and the meeting minutes are included as Attachment C.

In response to the questions and concerns raised by the Planning Commission, staff has incorporated revisions to the draft code language, which are reflected in the attached draft ordinance.

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. Neither Title 20 nor Title 21 provide 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.

Tobacco Retailer Businesses Amendment

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 Title 5 and Title 20 of the NBMC, a “Tobacco retailer business” means any person or establishment 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. Does not include "Grocery Store," "Supermarket," "Hotel", "Motel", "Alcohol Sales (off-sale)," "Alcohol Sales (off-sale), Accessory Only," "Cigar Lounge," or the "Sale of Premium Cigars." At the recommendation of the Planning Commission, “Convenience Markets” and “Service Station” have been removed from the proposed definition² and as proposed would be

² Convenience stores which include "Alcohol Sales (off-sale)," or "Alcohol Sales (off-sale), Accessory Only," are exempt from obtaining a TRP because they are already required to obtain an alcohol license from the California Department of

required to obtain a TRP. A copy of the Amendments to Title 5 and Title 20 in redlined format are included as attachments D and E.

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, electronic smoking devices, and related terms. These new 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 office, commercial, industrial, and mixed-use zoning districts, provided they obtain a TRP and comply with the additional regulations, including the separation and location requirements identified in Table 1.

Tobacco Retailer Permit Requirements

All businesses that meet the definition of a tobacco retailer business would be subject to the standards proposed 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, subject to prohibited locations and separation requirements discussed below.	Limits tobacco retailing to compatible commercial and mixed-use areas.
Where Retailers Are Prohibited	Prohibited in residential zones, 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; and 500 ft from residential zoning district or residential use.	Prevents overconcentration and protects residential neighborhoods and minors.

Alcoholic Beverage Control (ABC). The ABC license provides a regulatory and enforcement mechanism that allows the Police Department to oversee and address alcohol-related compliance issues, making a separate TRP unnecessary.

Category	Key Rules	Purpose / Effect
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 certain conditions.
Prohibited Products	Nitrous oxide, cannabis, flavored tobacco, disguised electronic smoking devices, imitation tobacco.	Reduces illegal activity and protects public safety.
Operational Standards	No self-service displays (e.g., vending machines); Age verification required; Original packaging only; and Posted permits.	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, or outstanding fines.	Ensures only compliant operators remain in business.

Existing Tobacco Retailer Businesses

There are many existing, known, tobacco retailer businesses within the city that are legally permitted to operate under current zoning regulations and identified in Figure 1. 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 ordinance, maintain continuous operation without lapse, and remain consistent with Section 20.38.050 (Nonconforming Uses) of the NBMC and proposed Title 5 regulations. At the recommendation of the Planning Commission, revisions to the amendment have been made to help clarify the standards that apply to legal nonconforming businesses to remove any ambiguity regarding how prior violations are evaluated.



Figure 1, Existing Known Tobacco Retailer Businesses

Cigar Lounges Amendment

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 cigars³ only.

As proposed, cigar lounges would be permitted 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 districts are generally characterized by a mix of uses that function more like quasi-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 changes proposed to the prohibition on Smoking Lounges, which would continue to be prohibited citywide.

³ 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.

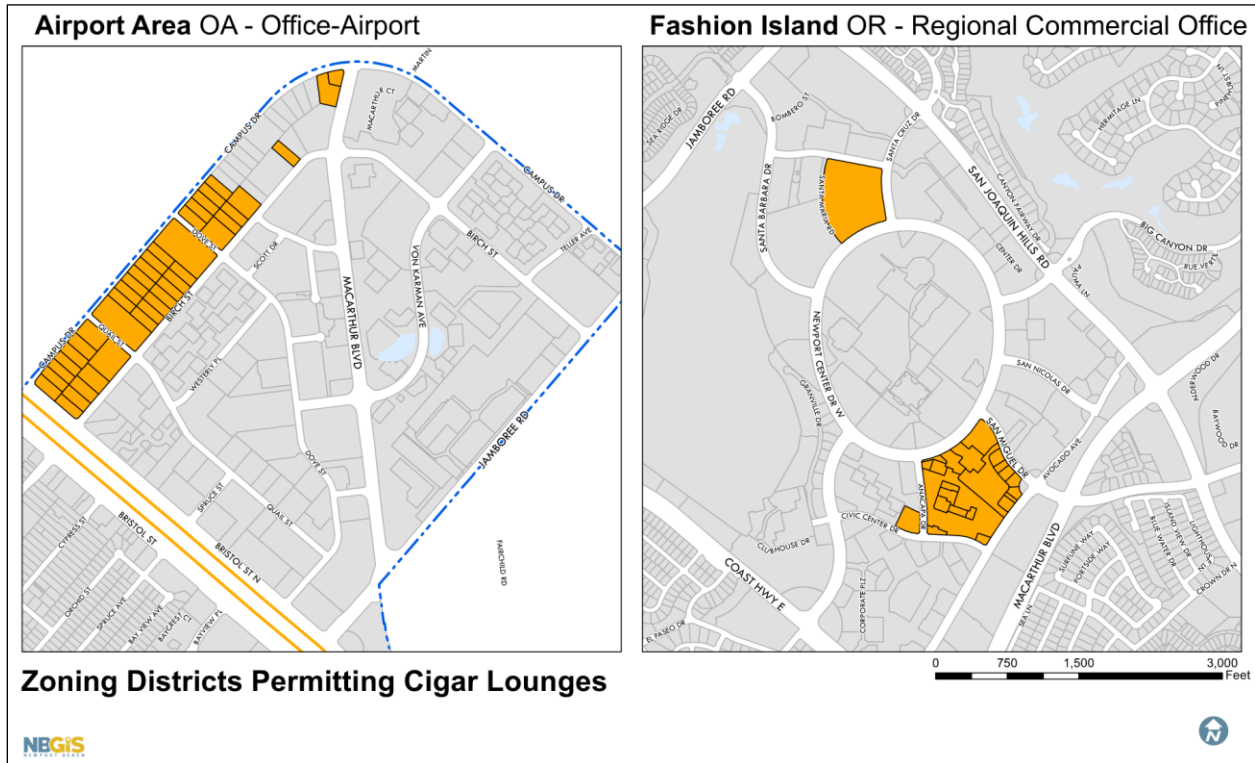


Figure 3, Zoning Districts where Cigar Lounges would be permitted

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 (Office Airport) and OR (Office Regional)	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

California's Attorney General has clarified that cigar lounges attached to retail or wholesale tobacco shops must follow State smoke-free workplace laws if they serve alcohol, meaning alcohol service is not allowed in conjunction with indoor smoking.

The opinion also states that cigar lounges are considered assembly occupancies under the California Building Standards Code. As a result, they must meet all relevant fire and life safety requirements, including installing automatic fire sprinkler systems, due to the increased fire risk of indoor smoking.

The proposed ordinance incorporates these State rules by allowing cigar lounges only in certain commercial zones and requiring full compliance with all building, fire and workplace safety regulations. Any approved cigar lounge must:

- Follow Labor Code §6404.5, including smoke-free rules when alcohol is served
- Install required fire sprinklers and safety systems
- Obtain all necessary building, fire and operational permits

Overall, the ordinance ensures cigar lounges operate safely and in full alignment with state law.

General Plan Consistency

The proposed code amendment regulating tobacco retailers and cigar lounges is consistent with the Newport Beach 2006 General Plan because it maintains the City's existing land use structure and does not introduce new land use categories or expand permitted uses. Tobacco retailers and cigar lounges would continue to operate only within established commercial, office, mixed-use, and industrial areas that already support a wide range of resident-serving and economically sustaining activities.

The amendment aligns with General Plan policies that promote resident-serving uses, support a complete and sustainable community, and encourage economic vitality. Restricting cigar lounges to the Office Airport (OA) and Office Regional (OR) districts is consistent with policies directing higher-intensity commercial uses to appropriate locations while preserving the character of residential neighborhoods. These districts are already characterized by employment and commercial activity and are suitably separated from sensitive land uses. This approach supports General Plan goals related to neighborhood preservation, growth management, and maintaining the City's unique community character. The amendment's operational standards, separation requirements, and permitting framework further reinforce General Plan objectives by ensuring compatibility with surrounding uses, protecting public welfare, and contributing to a balanced and economically healthy community.

Overall, the proposed code amendment is fully consistent with the General Plan because it supports orderly commercial development, protects residential areas, and advances Newport Beach's long-term vision for a safe, vibrant and well-balanced community. A full

analysis and breakdown of the amendment's general plan consistency is included in the attached Planning Commission Staff Report (Attachment B).

Local Coastal Program

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. Additionally, the OA (Office Airport) and OR (Office Regional) zoning districts where cigar lounges would be permitted are located outside the Coastal Zone and are therefore not addressed by Title 21. Therefore, no amendments to Title 21 are necessary.

FISCAL IMPACT:

The proposed amendments will have no fiscal impact. To ensure these costs are fully recovered, a new permit fee is being established. This fee is structured to capture the staff time and administrative resources necessary to implement and enforce the updated regulatory framework.

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.

NOTICING:

Notice of this hearing was published in the Daily Pilot as an eighth-page advertisement, consistent with the provisions of the NBMC. The item also appears on the agenda for this meeting, which was posted at City Hall and on the City website.

In addition, direct notice was provided to the nine existing known tobacco retailer businesses affected by this amendment.

ATTACHMENTS:

Attachment A – Ordinance No. 2026-06

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

Attachment C – March 19, 2026, Planning Commission Minutes

Attachment D – Amendments to Title 5 (Business Licenses and Regulations), Proposed
Redlined Code Changes

Attachment E – Amendments to Title 20 (Planning and Zoning Code), Proposed Redlined
Code Changes