

Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2026-010

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPT AN AMENDMENT TO TITLE 5 (BUSINESS LICENSES AND REGULATIONS) AND TITLE 20 (PLANNING AND ZONING CODE) ESTABLISHING COMPREHENSIVE REGULATIONS FOR TOBACCO RETAIL BUSINESSES AND CIGAR LOUNGES (PA2025-0171)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Tobacco retailer businesses, also known as smoke shops, have been a source of unlawful activities in the City, which, if not curtailed, present an immediate threat to the public health, safety, and welfare.
2. The Newport Beach Police Department (“NBPD”) served warrants at local tobacco retailer businesses and found evidence of ongoing illegal drug sales to adults and minors.
3. On May 15, 2024, NBPD detectives arrested a store clerk 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.
4. 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.
5. These two cases are part of a troubling trend that endangers the wellbeing 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 by neighboring cities like Anaheim, Orange, La Habra, and Redondo Beach.
6. 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 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.
7. On September 23, 2025, the City Council adopted Ordinance No. 2025-31 by unanimous vote (7 ayes, 0 nays) 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 (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.

8. On October 28, 2025, the City Council adopted Ordinance No. 2025-34 by unanimous vote (7 ayes, 0 nays) 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, also known as smoke shops.
9. A public hearing was held on March 19, 2026, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapter 20.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This Zoning Code Amendment is 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 direct or indirect 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.

SECTION 3. FINDINGS.

1. Amendments to the NBMC are legislative acts. Neither City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. A tobacco retailer is generally defined as a business whose main activity is selling tobacco related products like cigarettes, vapes, chewing tobacco, or smoking accessories to consumers. The sales occur in retail settings including regular storefronts, pop-up or mobile setups, or through online orders delivered within the city. Retail establishments such as grocery stores, convenience stores, and cigar lounges are not identified as tobacco retailers under the proposed definition.
3. The intent of Title 20 (Planning and Zoning) is to promote the orderly development of the City; promote the public health, safety, peace, comfort, and general welfare; protect the character, social and economic vitality of neighborhoods; and ensure the beneficial development of the City. Consistent with the intent of Title 20, the proposed amendments related to tobacco retailer businesses are intended to apply additional

standards to tobacco sales to promote the public health, safety, welfare, and social vitality of neighborhoods.

4. As provided in Section 1 of this resolution, a demonstrated history of nuisances and unlawful activity at certain tobacco retailer businesses in the City necessitate additional regulation and oversight to prevent continued impacts to the City's residents and visitors. Additionally, the ongoing health and safety issues have resulted in additional enforcement needs for both the NBPD and the City's Code Enforcement Division, impacting the City's resources.
5. Zoning Code Amendment PA2025-0171 to Title 5 of the NBMC ("Zoning Amendment") will establish comprehensive regulations for existing and proposed tobacco retailer businesses including the requirement for an administrative permit, the "Tobacco Retailer Permit." The regulations will provide an additional layer of review, inspection, and enforcement for tobacco retail businesses and promote compliance with federal, state and local laws intended to regulate tobacco sales and use.
6. The Zoning Amendment will not prohibit tobacco retailer businesses but will require new businesses or operators of existing businesses to comply with a series of objective standards in Title 5 to prevent the proliferation of such uses within a single neighborhood and reduce potential nuisances. Tobacco retailer businesses will continue to be classified as retail land uses within Title 20 of the NBMC and allowed in all zones that permit such use.
7. The Zoning Amendment requires a buffer between tobacco retailer businesses and sensitive land uses such as schools, places of worship, residential uses, and parks. The buffers to these sensitive uses serve to: (1) protect the quality of life and neighborhoods in the City; (2) discourage the illegal purchase of tobacco products by minors by reducing the presence of tobacco retailer from areas frequented by minors; (3) protect children from being lured into illegal activity through the misconduct of tobacco retailers' (4) protect the City's retail and commercial trade; (5) minimize the potential for nuisances related to the operation of tobacco retailer businesses; (6) protect the well-being, tranquility and privacy of residential areas; and (7) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tobacco businesses.
8. Existing retail uses that sell tobacco products are exempt from the proposed regulations if they fall into the following categories: accessory tobacco sales within visitor accommodations, convenience stores, grocery stores, and retail stores that are permitted to sell alcohol pursuant to an off-sale Alcohol and Beverage Control license.
9. The Zoning Amendment is necessary to address existing tobacco retailer concerns. A demonstrated history of nuisances and unlawful activity at certain tobacco retailers in the City necessitate additional regulation and oversight to prevent continued impacts to the City. Permit requirements which include buffers to sensitive uses are reasonable and efficient means to ensure against the negative secondary effects of tobacco retailer businesses and to balance the various land uses in order to protect the health, safety and welfare of Newport Beach residents and to preserve the quality of life and the

character of surrounding neighborhoods. Newport Beach is comprised of several villages with distinct and unique commercial cores serving families, residents, and visitors.

10. Existing tobacco retailer businesses in the City would be required to comply with the provisions of Title 5 within 60 days, including obtaining a Tobacco Retailer Permit. If an existing business is nonconforming to the buffer requirements, they may be exempt from said requirements if they are in compliance with all Federal, State, Local laws and the NBMC.
11. The second component of the Zoning Amendment is to establish a new land use for Cigar Lounges. The Zoning Amendment authorizes Cigar Lounges in limited commercial zones and in conjunction with the retail sale of premium cigars. 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 dollars. A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand. Cigar Lounges would be permitted uses within the Office Airport (OA) and Office Regional (OR) zoning districts, which are located in areas designated for commercial and mixed-use development. While these broader land use designations can include residential components, the Office Airport (OA) and Office Regional (OR) zoning districts are generally characterized by a mix of uses that function like commercial environments and generate predominantly commercial activity. The Office Airport (OA) zoning district is in the airport area adjacent to John Wayne Airport and the Office Regional (OR) zoning district is within Newport Center. Smoking lounges would continue to be prohibited in the City.
12. The zoning districts designated for cigar lounges, along with the required separation between them, are appropriate. These specific zones and the required buffer provisions will serve to: (1) protect the quality of life and neighborhoods in the City, (2) protect the City's retail and commercial trade, (3) minimize the potential for nuisances related to the operation of cigar lounge establishments, (4) protect the well-being, tranquility and privacy of the homes located in residential zoning districts, and (5) protect the peace, welfare, and privacy of persons who own, operate and/or patronize tobacco retailers and cigar lounge establishments.
13. 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 Office Airport (OA) and Office Regional (OR) 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.

- 14. The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission of the City of Newport Beach hereby finds this 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.
- 2. The Planning Commission hereby recommends the City Council approve an amendment to Title 5 (Business License and Regulations) and Title 20 (Planning and Zoning) of the NBMC as set forth in Exhibit “A,” which is attached hereto and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED THIS 19th DAY OF MARCH 2026.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Tristan Harris, Chair

BY: _____
Jon Langford, Secretary

Attachment(s): Exhibit A – Code Amendment No. PA2025-0171

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EXHIBIT “A”

CODE AMENDMENT NO. PA2025-0171

TITLE 5 BUSINESS LICENSE AND REGULATIONS

Chapter 5.55 Tobacco Retailer Businesses

5.55.005 Findings and Purpose.

The City Council finds and declares as follows:

- A. It is the purpose and intent of this Chapter to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal, or state law are criminally proscribed or to alter the penalty provided for violations.
- B. The restrictions and requirements contained in this Chapter reduce the burdens on the Police Department and permit the deployment of the police personnel such that more serious crimes may be prevented.

5.55.010 Definitions.

“Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of violations of this Chapter that occurred at the location, is presumed not to be an arm’s length transaction.

“Cigar Lounge” shall have the same meaning as defined in Chapter 20.70.020 (Definitions of Specialized Terms and Phrases.).

“Drug paraphernalia” means any instrument, device, or material used, designed for use, or intended for use in ingesting, inhaling, or preparing cannabis, hashish, hashish oil, cocaine, or other controlled substances, as defined in California Health and Safety Code Sections 11014.5, 11364.5, and 11364.7, as those sections may be amended from time to time.

“E-liquid” means any substance that is intended to be consumed in aerosolized or vaporized form using an electronic smoking device, regardless of the nicotine content or other substance.

“Electronic smoking device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substance in aerosolized or vaporized form to a person, as well as any component, part, or accessory for the device that is used during its preparation, consumption, or operation. Includes, but is not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vape pen, electronic hookahs, cartridges, cartomizers, e-liquid, smoke juice, tanks, vaporizers, tips, atomizers, device batteries, device charges, or any component, part, or accessory of such a device as contained in state law. Does not include any product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes.

“Flavored tobacco product” shall have the same meaning as defined in Chapter 6.30.010 (Definitions).

“Grocery store” shall have the same meaning as defined in Chapter 20.70.020 (Definitions of Specialized Terms and Phrases.).

“Nitrous oxide” shall have the same meaning as defined in Chapter 6.30.010 (Definitions).

“Permittee” means any proprietor who holds a valid tobacco retailer’s permit issued pursuant to this Chapter.

“Premium cigar” shall have the same meaning as defined in Chapter 6.30.010 (Definitions).

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business, other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or shares, control over the day-to-day operations of a business.

“Smoking” means the act of inhaling, exhaling, burning, or carrying any lighted or heated device or substance, including tobacco, as defined in California Business and Professions Code Section 22950.5(c), as that section may be amended from time to time.

“Smoking lounge (land use)” shall have the same meaning as defined in Chapter 20.70.020 (Definitions of Specialized Terms and Phrases.).

“Tobacco paraphernalia” means cigarette papers or wrappers, blunt wraps as defined in California Penal Code Section 308, pipes, holders of smoking materials of all types, cigarette rolling machines, or any other instruments or items designed or marketed for the consumption, preparation, storing, use, smoking or ingestion of tobacco products, as those sections may be amended from time to time.

“Tobacco product” shall have the same meaning as defined in Chapter 6.30.010 (Definitions).

“Tobacco product flavor enhancer” has the meaning set forth in Health and Safety Code Section 104559.5(a)(18), as may be amended from time to time.

“Tobacco retailer business” shall have the same meaning as defined in Chapter 20.70.020 (Definitions of Specialized Terms and Phrases.).

“Tobacco retailer’s permit” means the certificate issued by the Chief of Police, which allows a facility to sell tobacco, tobacco products, and tobacco paraphernalia. The issuance of this permit does not indicate or imply that the facility is in compliance with all state and city regulations related to its operation; and may be suspended or revoked by the department.

5.55.15 Requirements of Operation.

- A. Tobacco Retailer’s Permit Requirement. Except as provided in subsection (E) of this section, no person shall engage in tobacco retailing within the City without first obtaining and maintaining a valid tobacco retailer’s permit for each specific location.
- B. Zoning and Land Use Restrictions.

1. Permits shall not be issued for locations that violate Title 20 (Planning and Zoning) or Title 21 (Local Coastal Program Implementation Plan) of this Code and shall only be located in zoning districts where retail sales are a permitted use.

C. Prohibited Business Types.

1. Tobacco Retailer's Permits shall not be issued or renewed for any premises licensed by the state to serve alcohol for on-site consumption, or restaurants and businesses offering food for on-site consumption.

D. Location Requirements. Tobacco Retailer Businesses shall comply with the following minimum separation requirements:

1. One thousand (1,000) feet from another permitted tobacco retailer business;
2. Five hundred (500) feet from a public or private school, park or playground, civic center, cultural site, or religious institution; or
3. Five hundred (500) feet from the boundary of any residential zoning district or residential use.

E. Nonconforming Use Exception. A tobacco retailer business lawfully operating as of the effective date of this Chapter may continue operating under the following conditions:

1. The tobacco retailer's permit is obtained and renewed without lapse or permanent revocation.
2. A tobacco retailer's permit application is filed within 60 days of the effective date of this Chapter.
3. The tobacco retail business shall not be closed or suspended for more than 60 consecutive days.
4. No substantial change to the premises or operations occurs, including:
 - a. A transfer in ownership unless it is a bona fide arm's length transaction;
 - b. A change made primarily to evade enforcement or penalties.
5. The tobacco retailer business has no recorded violations and remains in full compliance with all applicable laws.
6. If the City finds the operation has substantially changed, the tobacco retailer business bears the burden of proving otherwise by a preponderance of the evidence.
7. Expiration of Legal Nonconforming Use. Permits issued under this section shall be treated as legal nonconforming uses under Chapter 20.38.050 (Nonconforming Uses and Structures) of the NBMC and subject to its provisions and limitations.

F. Permit is Conditional. A tobacco retailer permit grants only a limited and conditional privilege to operate at the location listed on the permit. It does not confer any vested right and does not supersede any other applicable law, including:

1. The City's zoning, building, or business license requirements;
2. Labor Code section 6404.5 regarding smoking in enclosed workplaces.

5.55.020 Application for Tobacco Retailer Permit.

A. Application Procedure.

1. Applications must be submitted on forms provided by the City and include a non-refundable annual fee as set by City Council resolution.
2. Each application shall include, at minimum, the following:
 - a. Full legal name, date of birth, government-issued identification number, mailing address, phone number, and email for each proprietor;
 - b. Business name, address, phone number, and hours of operation;
 - c. Disclosure of any prior permit suspensions or revocations under this Chapter, including dates and reasons;
 - d. Proof of a valid state tobacco retailer license from the California Department of Tax and Fee Administration;
 - e. Any other information deemed necessary by the Chief of Police for the administration or enforcement purposes;
 - f. A signed certification by each proprietor under penalty of perjury affirming the accuracy of the information provided and compliance with this Chapter.

B. Change of Information. Permittee shall notify the City in writing of any changes to submitted application information within 10 calendar days. A fee as set by City Council resolution may be imposed for processing such changes.

C. Non-Transferability. Tobacco retailer permits are non-transferable between persons, proprietors, or locations. Any attempted transfer shall be null and void. A new permit application is required for any change in ownership or location, subject to all applicable conditions.

D. Effect of Prior Violations at Location. Permit ineligibility due to prior violations at a location shall continue to apply unless:

1. The business has been transferred to a new proprietor or proprietors in a bona fide arm's length transaction; and
2. The new proprietor submits clear and convincing evidence of such transfer to the City's satisfaction.

5.55.025 Tobacco Retailer Permit Issuance and Renewal.

A. Tobacco Retailer's Permit Review and Issuance. The Chief of Police reviews each completed Tobacco Retailer's Permit application and may conduct an investigation to determine compliance with this Chapter and applicable laws. A tobacco retailer's permit may be issued or renewed unless the Chief of Police determines that one or more of the following conditions exist:

1. The application is materially incomplete or contains inaccurate, false, fraudulent, or misleading information;
2. The applicant seeks authorization for tobacco retailing that is prohibited, unlawful or violates this Chapter or other applicable City, County, state, or federal law or regulation;
3. The applicant has not resolved outstanding fines, penalties, fees, or taxes owed to the City in connection with tobacco retailing activities or other applicable laws;
4. The location is currently subject to an active suspension or revocation proceeding, unless:
 - a. The applicant has acquired the business or premises through a good-faith, arm's length transaction and provides satisfactory documentation; or
 - b. At least five years have passed since the date of revocation.

B. Tobacco Retailer Permit Term and Renewal.

1. A permit is valid for one year from the date of issuance and must be renewed annually to continue operation as a tobacco retailer business.
2. To maintain continuity, renewal applications should be submitted at least 30 days before expiration.
3. Any permit not renewed by its expiration date automatically expires at midnight, with no grace period or temporary permit issued thereafter. Once a permit expires, all tobacco retailing must cease. A new application is required, subject to all applicable conditions.
4. If a permit has expired during a suspension or revocation period, the permittee may reapply after the enforcement action has concluded, subject to all applicable conditions of this Chapter.

5.55.030 Prohibitions and Requirements.

A. Compliance with Laws. Tobacco retailer businesses shall operate in accordance with all applicable local, state, and federal laws, including, but not limited to, zoning, building, fire, public health, safety, general welfare and tobacco control regulations.

- B. Fixed Location Required. Tobacco retailing must occur from a fixed, permanent location. Retailing from vehicles, temporary structures, or mobile operations (e.g., carts, pop-up booths) is prohibited.
- C. Prohibited Products and Activities. The following items shall not be sold, distributed, displayed, furnished, administered, exchanged, given away, or possessed with the intent to sell or offered for sale by any tobacco retailer business:
 - 1. Drug paraphernalia;
 - 2. Nitrous oxide or any device used to dispense it as defined by state law and the NBMC;
 - 3. Cannabis, cannabis products, cannabis accessories, or edible cannabis products as defined in state or federal law;
 - 4. Controlled substances, including marijuana where applicable, as governed by California Health and Safety Code Sections 11351, 11352, 11359, 11360, 11366, 11378, and 11379 as may be amended from time to time.
 - 5. Flavored tobacco products and tobacco product flavor enhancer, as prohibited under state or federal law;
 - 6. Electronic smoking devices and related paraphernalia and accessories, unless preempted or otherwise limited by state or federal law at that time;
 - 7. Imitation tobacco products, including, but not limited to, candy cigarettes and bubble gum cigars;
 - 8. Edible tobacco look-alike products, including, but not limited to, snacks packaged or marketed to resemble tobacco products;
 - 9. Disguised vape or electronic smoking devices, including, but not limited to, those made to look like USB drives, pens, markers, phone cases, watches, lipstick, remote keys or other non-tobacco items.
 - 10. Unlawful weapon sales, including, but not limited to, violations of California Penal Code Sections 17235 (switchblade knives over two inches), 20410 (ballistic knives), 21810 (brass knuckles) as may be amended from time to time, and any other applicable local, state or federal laws.
- D. Self-Service Displays. Self-service displays of tobacco products are prohibited as established by state law. All tobacco sales must be conducted by a tobacco retailer business directly assisting the customer. Vending machines shall be prohibited.
- E. Minimum Age and Identification.
 - 1. No person under the minimum legal age determined by the stricter of state or federal law for purchasing or possessing tobacco products may engage in, or assist with tobacco retailing.

2. A tobacco retailer business must request and check a valid, government-issued photo identification of any person who appears under 30 years of age, to ensure the customer meets the minimum age to purchase and possess tobacco products as required by the stricter of state or federal law.

F. Packaging, Labeling, and Pricing.

1. Tobacco products must be sold in the original manufacturer's packaging, compliant with all federal and state labeling and child-resistant packaging laws.
2. Prices must be clearly displayed on the product or nearby shelf or signage.

G. Display of Licenses and Permits. The City-issued tobacco retailer's permit, business license, and all applicable state or federal licenses must be visibly posted within five feet of the point-of-sale register.

H. Premises Regulations.

1. The tobacco retailer business must maintain a clearly designated front entrance for customers. All non-emergency public access must occur through this entrance.
2. Front entrance doors must remain unlocked during regular business hours, unless temporarily secured for safety or emergency response.
3. No business shall engage in tobacco retailing between the hours of 12:00 a.m. and 6:00 a.m. of the same day.

I. Signage Compliance. Tobacco retailer businesses must comply with all signage requirements in Title 20 of the NBMC and all applicable state and federal laws related to tobacco warnings, age restrictions, and advertising. In addition to the aforementioned signage compliance, retailers must also adhere to the following:

1. **Limitation on Storefront Advertising.** No more than twenty (20) percent of the total transparent area of the windows and clear doors of a physical storefront used for Tobacco Retailing may bear advertising or signage of any kind. All advertising and signage shall be placed and maintained in a manner that ensures law enforcement personnel have a clear and unobstructed view of the interior of the Premises, including the area where the cash registers are located, from the exterior public sidewalk or entrance.

J. **Special Events and Temporary Retailing Prohibited.** Tobacco retailing at special events, outdoor markets, street fairs, or temporary setups is not permitted under this Chapter.

5.55.035 Compliance Monitoring and Right of Entry.

The City may enter any permitted tobacco retailer business location during business hours for the purpose of making reasonable inspections to observe and enforce compliance with provisions of this Chapter and any other applicable regulations, laws, and statutes. to inspect for compliance with this Chapter and applicable laws. Inspections may be routine,

unannounced, complaint-based, or involve youth decoy operations. Refusal to allow entry or impeding or delaying an inspection may constitute a violation of this Chapter.

5.55.040 Violations - Suspension or Revocation.

- A. Grounds for Enforcement. In addition to any other penalties and remedies provided by law or this Code, a tobacco retailer’s permit may be subject to suspension, or revocation if the permittee or their agents or employees:
 - a. Violate any provision of this Code or Chapter;
 - b. Are found liable in court or administrative proceedings for violating federal, or state, laws and regulations governing tobacco products; or
 - c. Admit to or plead guilty or no contest to such violations.
- B. Conditions During Suspension or Revocation. During a suspension or revocation period:
 - a. All tobacco products and related items must be removed from customer view and/or stored in a secured, non-public area.
 - b. A City-issued notice must be posted at all public entrances and points of sale, stating the reason and duration of the enforcement action.
- C. Notwithstanding any other portion of this section, any violation of subsections (C) and (E) of Section 5.55.030 shall be considered an egregious violation of this Chapter and a public nuisance that is imminently dangerous to life, health, safety, or adjacent property, such that it requires immediate correction or elimination. Such a violation shall subject the tobacco retailer business to immediate suspension of the tobacco retailer’s permit. A permittee or applicant may request administrative review of immediate suspensions pursuant to 5.55.045(B).

5.55.045 Suspension, Revocation, Denial and Appeal.

- A. Notice of Action. Except as provided in Section 5.55.040(C), before denying, suspending, or revoking a tobacco retailer’s permit or following the seizure of items prohibited under this Chapter, the Chief of Police shall issue written notice to the permittee or applicant. The notice shall include:
 - 1. The proposed enforcement action;
 - 2. A brief summary of the reason(s) and applicable code section(s); and
 - 3. Instructions for requesting an administrative review.
- B. Right to Request Review. A permittee or applicant may request administrative review by submitting a written request to the Chief of Police within 10 calendar days of the notice. The request must include any applicable appeal fee as set by City Council.
- C. Scheduling the Review. Upon receiving a timely request, the City shall schedule an administrative review. The review shall be conducted within a reasonable time, and notice shall be provided to the appellant at least 10 calendar days in advance.

D. Hearing Process.

1. The hearing shall be conducted by a hearing officer.
2. Both parties may present evidence, provide written statements or oral testimony, and be represented by legal counsel.
3. Formal rules of evidence do not apply, but relevant and reliable evidence will be considered.
4. Hearings may be continued for good cause.

E. Burden of Proof. The City bears the burden of proving the violation by a preponderance of the evidence.

F. Failure to Participate. If the appellant fails to appear or otherwise participate in the hearing, the appeal will be deemed withdrawn and considered a waiver of the right to exhaust administrative remedies.

G. Final Decision. The hearing officer shall issue a written decision within a reasonable time following the hearing. The decision shall include findings and be final upon issuance. Judicial review is available under California Code of Civil Procedure Sections 1094.5 and 1094.6.

H. Permit Ineligibility Following Revocation. If a permit is revoked, no new or renewal permit shall be issued for the same business location for up to five years, unless the City determines that substantial changes in ownership or operations justify reconsideration.

5.55.45 Enforcement.

A. The remedies provided in this Chapter are in addition to any other remedies available under local, state, or federal law. Nothing in this Chapter limits the City's authority to pursue any available legal remedy, including, but not limited to, nuisance abatement, permit or business license suspension or revocation, or enforcement under Chapter 20.68 of the Newport Beach Municipal Code.

B. Seizures may be appealed through the procedures set forth in this Chapter. If not appealed or if upheld after review, seized items shall be destroyed in accordance with Police Department policy and applicable law.

C. Evidence of Violations. If a violation is partially based on the involvement of a person under the age of 18 years old, that individual is not required to appear or testify in any civil or administrative enforcement process brought to enforce this Chapter. The alleged violation will be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

Title 20 Planning and Zoning

20.70.020 Definitions of Specialized Terms and Phrases.

C. “C” Definitions

“Cigar Lounge” Any facility or location ancillary to whose business operation, whether as a primary use or an ancillary use, is characterized by the sale of premium cigars and includes a private room within or attached to the establishment for smoking.

G. “G” Definitions

“Grocery store” is defined as a retail use of which greater than 1/2 of the floor area is devoted to the sale of food items and small household goods intended for consumption or use off the premises, excluding alcoholic beverages.

S. “S” Definitions

“Smoking lounge (land use)” means 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 hookah lounges, vape lounges, e-cigarette club, tobacco clubs, or tobacco bars.

T. “T” Definitions

“Tobacco retailer business” means any person or business 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”, “Convenience Market”, “Alcohol Sales (off-sale)”, “Alcohol Sales (off-sale), Accessory Only” and “Cigar Lounge” or the sale of “Premium Cigars”.

20.20.020 Commercial Zoning Districts Land Uses and Permit Requirements.

A. Allowed Land Uses. Tables 2-4 and 2-5 indicate the uses allowed within each zoning district and the permit required to establish the use, if any, in compliance with Part 5 of this title (Planning Permit Procedures).

B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.

C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-4 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Office Zoning Districts Permit Requirements *				
	P CUP MUP LTP —	Permitted by Right Conditional Use Permit (Section 20.52.020) Minor Use Permit (Section 20.52.020) Limited Term Permit (Section 20.52.040) Not allowed *			
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	OA	OG	OM	OR	Specific Use Regulations
Retail Trade Uses					
Alcohol Sales (off-sale)	MUP	MUP	MUP	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	MUP	MUP	P	
Retail Sales (less than 10,000 sq. ft.) ⁴	MUP	P	P	P	
Retail Sales (10,000 sq. ft. or greater) ^{1,4}	CUP	—	—	—	
Pharmacy, Medical Supplies	P	P	P	P	
Other Uses					
Cigar Lounges ⁵	P	—	—	P	

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district are not allowed, except as otherwise provided by Section 20.12.020 (Rules of Interpretation).

(1) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public past 11:00 p.m. any day of the week.

(2) Permitted or Minor Use Permit Required.

a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.

b. Except as provided in (2)(a), a minor use permit shall be required for any use located within five hundred (500) feet of any residential zoning district.

c. A minor use permit shall be required for any use that maintains late hours.

- (3) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.
- (4) Tobacco Retailer Businesses are subject to the standards of Chapter 5.55 (Tobacco Retailer Businesses) including but not limited to the distance requirements contained therein.
- (5) A Cigar Lounge shall be restricted to persons aged twenty-one (21) years of age or older. Cigar Lounges shall be fire sprinklered and comply with all Building and Fire Codes. A Cigar Lounge shall provide adequate ventilation. A Cigar Lounge shall not be located within one thousand (1,000) feet of another Cigar Lounge.

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail Zoning Districts Permit Requirements *						
	P Permitted by Right CUP Conditional Use Permit (Section 20.52.020) MUP Minor Use Permit (Section 20.52.020) LTP Limited Term Permit (Section 20.52.040) — Not allowed *						
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	CC	CG	CM	CN	CV	CV-LV	Specific Use Regulations
Retail Trade Uses							
Alcohol Sales (off-sale)	MUP	MUP	MUP	MUP	MUP	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	P	P	P	P	P	
Bulk merchandise	—	P	—	P	—	—	
Marine Rentals and Sales							
Boat Rentals and Sales	—	CUP	CUP	—	CUP	P	

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail Zoning Districts Permit Requirements *						
	P Permitted by Right CUP Conditional Use Permit (Section 20.52.020) MUP Minor Use Permit (Section 20.52.020) LTP Limited Term Permit (Section 20.52.040) — Not allowed *						
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	CC	CG	CM	CN	CV	CV-LV	Specific Use Regulations
Marine Retail Sales	P	P	P	—	P	P	
Retail Sales ⁵	P	P	P	P	—	—	
Visitor-Serving Retail	P	—	—	—	P	P	

Notes:

- (1) All development and the subdivision of land shall comply with the requirements of Title 19 (Subdivisions).
- (2) In the CG Zoning District, when 0.3/0.5 is shown on the Zoning Map, the FAR may be increased to a maximum of 0.5 when two or more legal lots are merged to accommodate larger commercial development projects in compliance with General Plan Policy LU 6.19.13 and Title 19 (Subdivisions).
- (3) Portions of legal lots that are submerged lands or tidelands shall be included in the land area of the lot for the purpose of calculating the allowable floor area for structures.
- (4) Architectural features such as domes, towers, cupolas, spires, and similar structures may be up to 65 feet in height.
- (5) Tobacco Retailer Businesses are subject to the standards of Chapter 5.55 (Tobacco Retailer Businesses) including but not limited to the distance requirements contained therein.

20.22.020 Mixed-Use Zoning Districts Land Uses and Permit Requirements.

- A. Allowed Land Uses. Tables 2-8, 2-9, and 2-10 indicate the uses allowed within each zoning district and the permit required to establish each use, in compliance with Part 5 of this title (Planning Permit Procedures).
- B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.
- C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-8 ALLOWED USES AND PERMIT REQUIREMENTS	Mixed-Use Zoning Districts Permit Requirements				
	P	Permitted by Right			
	CUP	Conditional Use Permit (Section 20.52.020)			
	MUP	Minor Use Permit (Section 20.52.020)			
	LTP	Limited Term Permit (Section 20.52.040)			
	—	Not Allowed *			
Land Use	MU-V	MU-MM (6)	MU-DW	MU-CV/15th St. (7)	Specific Use Regulations
See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.					
Retail Trade Uses					
Alcohol Sales (off-sale)	MUP	MUP	—	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	P	P	P	
Marine Rentals and Sales					
Boat Rentals and Sales	CUP	P	—	CUP	
Marine Retail Sales	P	P	P	P	
Retail Sales ⁸	P	P	P	P	

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section 20.12.020 (Rules of Interpretation).

(1) Allowed only as part of a mixed-use development. Refer to Section 20.48.130 (Mixed-Use Projects) for additional development standards.

- (2) Not allowed to front onto Coast Highway. Coast Highway frontage shall be limited to nonresidential uses. See Table 2-10 (Development Standards for Vertical and Horizontal Mixed-Use Zoning Districts).
- (3) Not allowed on lots at street intersections unless part of a mixed-use or live-work structure.
- (4) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public after 11:00 p.m. any day of the week.
- (5) Permitted or Minor Use Permit Required.
 - a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.
 - b. Except as provided in (5)(a), a minor use permit shall be required for any use located within five hundred (500) feet of any residential zoning district.
 - c. A minor use permit shall be required for any use that maintains late hours.
- (6) Properties fronting on Coast Highway shall be developed with nonresidential uses as allowed in Table 2-9. Properties to the rear of the commercial frontage may be developed for freestanding nonresidential uses, multi-unit residential dwelling units, or mixed-use structures that integrate multi-unit residential above the ground floor with nonresidential uses on the ground floor. See Table 2-10 (Development Standards for Vertical and Horizontal Mixed-Use Zoning Districts).
- (7) Mixed-use or commercial structures are required on lots at street intersections and are allowed, but not required, on other lots.
- (8) Tobacco Retailer Businesses are subject to the standards of Chapter 5.55 (Tobacco Retailer Businesses) including but not limited to the distance requirements contained therein.

TABLE 2-9 ALLOWED USES AND PERMIT REQUIREMENTS	Mixed-Use Zoning Districts Permit Requirements		
	P CUP MUP LTP —	Permitted by Right Conditional Use Permit (Section 20.52.020) Minor Use Permit (Section 20.52.020) Limited Term Permit (Section 20.52.040) Not allowed *	
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	MU-W1 (5)(6)	MU-W2	Specific Use Regulations
Retail Trade Uses			
Alcohol Sales (off-sale)	MUP	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	P	
Marine Rentals and Sales			
Boat Rentals and Sales	P	P	
Marine Retail Sales	P	P	
Retail Sales ⁸	P	P	
Visitor-Serving Retail	P	P	

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section 20.12.020 (Rules of Interpretation).

- (1) May only be located on lots with a minimum of two hundred (200) lineal feet of frontage on Coast Highway. Refer to Section 20.48.130 (Mixed-Use Projects) for additional development standards.
- (2) May only be located above a commercial use and not a parking use. Refer to Section 20.48.130 (Mixed-Use Projects) for additional development standards.
- (3) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public past 11:00 p.m. any day of the week.
- (4) Permitted or Minor Use Permit Required.
 - a. For Take-Out Service – Fast Casual (up to 20 seats), a minor use permit shall be required for any use located within one hundred (100) feet of any residential zoning district.

b. Except as provided in (4)(a), a minor use permit shall be required for any use located within five hundred (500) feet of any residential zoning district.

c. A minor use permit shall be required for any use that maintains late hours.

(5) Approval of a minor site development review, in compliance with Section 20.52.080, shall be required prior to any development to ensure that the uses are fully integrated and that potential impacts from their differing activities are fully mitigated.

(6) A minimum of fifty (50) percent of the square footage of a mixed-use development shall be used for nonresidential uses.

(7) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.

(8) Tobacco Retailer Businesses are subject to the standards of Chapter 5.55 (Tobacco Retailer Businesses) including but not limited to the distance requirements contained therein.

20.24.020 Industrial Zoning District Land Uses and Permit Requirements.

A. Allowed Land Uses. Table 2-12 indicates the uses allowed within each zoning district and the permit required to establish each use, in compliance with Part 5 of this title (Planning Permit Procedures).

B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.

C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-12 ALLOWED USES AND PERMIT REQUIREMENTS	Industrial Zoning District Permit Requirements	
	P	Permitted by Right Conditional Use Permit (Section 20.52.020)
	CUP	Minor Use Permit (Section 20.52.020)
	MUP	Limited Term Permit (Section 20.52.040)
	LTP	— Not allowed *
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	IG	Specific Use Regulations
Retail Trade Uses		
Alcohol Sales (off-sale)	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	
Building Materials and Services	P	
Contractor’s Storage Yards	MUP	
Marine Rentals and Sales		
Boat Rentals and Sales	MUP	
Marine Retail Sales	P	
Retail Sales ³	P	

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section 20.12.020 (Rules of Interpretation).

- (1) Wine Tasting Room Hours of Operation. The permitted hours of operation shall be limited to Monday through Friday from 4:00 p.m. to 11:00 p.m., and Saturday and Sunday from 12:00 p.m. to 11:00 p.m.
- (2) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.
- (3) Tobacco Retailer Businesses are subject to the standards of Chapter 5.55 (Tobacco Retailer Businesses) including but not limited to the distance requirements contained therein.