

Attachment A

Ordinance No. 2025-31: Urgency
Ordinance for Moratorium

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**

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach ("City"), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the City Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

WHEREAS, pursuant to Government Code Section 65858, the City Council may adopt an interim urgency ordinance prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time, if the members of the City Council by a vote of four-fifths (4/5) majority find that there is a current and immediate threat to the public safety, health, and welfare of the community;

WHEREAS, 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;

WHEREAS, City Charter Section 416(d) allows an urgency ordinance to take effect immediately;

WHEREAS, 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;

WHEREAS, 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;

WHEREAS, 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;

WHEREAS, 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;

WHEREAS, 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 by neighboring cities like Anaheim, Orange, La Habra, and Redondo Beach; and

WHEREAS, the purpose of this urgency ordinance is to prohibit the establishment and operation of a new tobacco retailer businesses as well as the relocation or physical expansion of existing tobacco retailer businesses for 45 days, to give the City the opportunity to explore effective regulatory options that ensure the immediate protection of the public health, safety, and welfare.

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council hereby incorporates the recitals set forth above into this urgency ordinance and finds, determines and declares that this urgency ordinance adopted pursuant to Government Code Section 65858 and City Charter Section 412 , is necessary because:

- A. Tobacco retailer businesses pose an immediate threat to the public health, safety, and welfare.
- B. The establishment and operation of new tobacco retailer businesses as well as the relocation or physical expansion of existing tobacco retailers under current City regulations, would further jeopardize the public health, safety, and welfare.
- C. The adoption of this urgency ordinance is essential to provide the City the time needed to study and evaluate various regulatory options to more

effectively manage tobacco retailer businesses and ensure the immediate protection of the public health, safety, and welfare.

Section 2: In the interest of safeguarding the health, safety, and welfare of the residents of and visitors to the City of Newport Beach, the purpose and intent of this urgency ordinance is to impose a temporary moratorium on the establishment and operation of new tobacco retailer businesses as well as the relocation or physical expansion of existing tobacco retailers including, but not limited to, the issuance of any new permits, licenses, or other entitlements for tobacco retailer businesses, commonly known as smoke shops, within the jurisdictional boundaries of the City of Newport Beach.

Pursuant to Government Code Section 65858 and Charter Section 412, the City Council is authorized to adopt this urgency ordinance without following the standard procedures required for ordinance adoption, to protect public health, safety, and welfare. This ordinance is being adopted to protect the public health, safety and welfare by prohibiting uses that conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, Planning Commission, or Community Development Department is currently considering, studying, or intends to study within a reasonable timeframe.

Section 3: For purposes of this urgency ordinance, the following definitions shall apply:

- A. "Person" means and includes any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.
- B. "Premium cigar" means 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 twelve dollars (\$12). A premium cigar does not have a filter, tip, or nontobacco mouthpiece and is capped by hand.
- C. "Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of a tobacco product.
- D. "Tobacco product" means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, aerosolized, vaporized, or ingested by any other means, including, but not

limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis, kreteks, snuff, e-liquids, or vape juice; and (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device, including, but not limited, to an electronic cigarette (or "e-cigarette"), electronic cigar (or "e-cigar"), electronic pipe (or "e-pipe"), vape pen, electronic hookah (or "e-hookah"), cigars, or pipes, whether or not the device or component is sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose nor does it include loose-leaf tobacco and premium cigars.

- E. "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.

Section 4: Moratorium Imposed.

- A. In accordance with the authority granted to the City of Newport Beach under Article XI, Sections 5 and 7 of the California Constitution, City Charter Sections 412 and 416(d) and California Government Code Section 65858, from and after the effective date of this urgency ordinance, and for a period of 45 days: (1) no new tobacco retailer businesses shall be established or operate in the City of Newport Beach; (2) no existing tobacco retailer business shall relocate or expand its business in the City of Newport Beach; and (3) no entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, minor use permit or other land use approval, shall be approved or issued by the City of Newport Beach for the establishment or operation of a new tobacco retailer business and/or for the relocation or physical expansion of an existing tobacco retailer business. Additionally, the establishment and operation of a new tobacco retailer business or the relocation, or physical expansion of an existing tobacco retailer business is hereby expressly prohibited in all areas and zoning districts of the City of Newport Beach.

- B. This urgency ordinance shall not prohibit the renewal of a business license for an existing tobacco retailer business, provided that the renewal seeks to maintain the business without physical expansion at its current location, and the tobacco retailer business is operating in a manner, and housed within a building, which complies with all City, State, Federal, or otherwise applicable, codes, rules, regulations, or laws.
- C. The provisions of this urgency ordinance shall be enforceable pursuant to the general enforcement provisions in Title 1 of the Newport Beach Municipal Code. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 5: A code amendment to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code is initiated by Resolution No. 2025-____. The Community Development Department and Planning Commission are hereby directed to analyze the desirability/appropriateness of smoke shops within the City of Newport Beach including, but not limited to, the potential direct and indirect impact of tobacco retail businesses, and if such facilities be thought appropriate, the extent of any zoning and regulatory controls necessary to protect the public health, safety, and welfare.

Section 6: Except as expressly modified in this urgency ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 7: This urgency ordinance is adopted pursuant to Government Code Section 65858 and City Charter Sections 412 and 416(d) and shall take effect immediately upon its passage by a vote of at least six (6) City Councilmembers. This urgency ordinance shall by operation of law be of no further force and effect 45 days from September 23, 2025; provided, however, that after proper notice and a public hearing, the City Council may by a four-fifths (4/5) vote extend this urgency ordinance for an additional period of time of up to 10 months, 15 days, and subsequently extend the urgency ordinance for one year. Ten days prior to the expiration of this urgency ordinance, a written report describing the measures taken to alleviate the condition that led to the adoption of this ordinance shall be issued by the City of Newport Beach and shall be available online and at the City Clerk's Office.

Section 8: If any section, subsection, sentence, clause, or phrase of this urgency ordinance is, for any reason, held to be invalid or unconstitutional such decision shall not affect the validity or constitutionality of the remaining portions of this urgency

ordinance. The City Council hereby declares that it would have passed this urgency ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

Section 9: The City Council finds that this urgency ordinance is not subject to the California Environmental Quality Act ("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 CEQA review pursuant to Title 14, Division 6, Chapter 3, Sections 15305 and 15061(b)(3) of the California Code of Regulations.

Section 10: The Mayor shall sign and the City Clerk shall attest to the passage of this urgency ordinance, which shall be effective as of September 23, 2025. The City Clerk shall cause this urgency ordinance, or a summary thereof, to be published pursuant to all applicable laws including Charter Section 414.

This ordinance was introduced and adopted as an urgency measure at a regular meeting of the City Council of the City of Newport Beach, held on the 23rd day of September, 2025, by the following vote, to wit:

AYES: _____

NAYS: _____

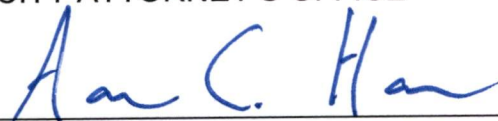
ABSENT: _____

Joe Stapleton, Mayor

ATTEST:

Molly Perry, Interim City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp, City Attorney