

ORDINANCE NO. 2025- 34

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF NEWPORT BEACH, CALIFORNIA,
EXTENDING 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, Government Code Section 65858 provides that to protect against any current and immediate threat to the public health, safety, or welfare, the City Council may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying or intends to study;

WHEREAS, the City Council adopted Urgency Ordinance 2025-31 on September 23, 2025, establishing a 45-day moratorium on the approval of granting of any permit, license, and land use entitlement for any new tobacco retailer business within the City to allow the City time to study viable solutions and municipal code amendments necessary to reasonably regulate tobacco retailers as more fully described in Ordinance No. 2025-31;

WHEREAS, the 45-day moratorium will expire on November 7, 2025;

WHEREAS, California Government Code section 65858(a) provides that, after notice pursuant to Government Code section 65090 and a public hearing, the City Council may extend Urgency Ordinance No. 2025-31 for ten months and fifteen days and subsequently extend Urgency Ordinance No. 2025-31 for one year;

WHEREAS, due notice for a public hearing requesting this temporary moratorium was given as required by Government Code Section 65090;

WHEREAS, pursuant to Government Code Section 65858(d), the City has taken steps to alleviate the conditions that necessitated the adoption of Ordinance No. 2025-31 and has issued a report describing the steps taken, which is attached as Exhibit "A" and incorporated herein by reference;

WHEREAS, pursuant to Government Code Section 65858 and City Charter Sections 412 and 416(d) an extension of an urgency measure requires a vote of at least six (6) City Councilmembers for adoption, and the extension shall be of no further force and effect ten months and fifteen days from the effective date of November 8, 2025;

WHEREAS, Government Code Section 65858(c) provides that the legislative body shall only extend any interim ordinance pursuant to this section if the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, for reasons set forth above and in Ordinance No. No. 2025-31, which recitals are incorporated herein by reference, this urgency ordinance is declared by the City Council to be necessary, as without this ordinance, the approval of additional licenses, permits, and land use entitlements for any new tobacco retailers or the like would result in a current, immediate, and direct threat to the health, safety, and welfare of the community, and the recitals above and in Ordinance No. 2025-31 taken together constitute the City Council's statements of the reasons constituting such necessity and urgency.

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 and in Ordinance No. 2025-31 into this urgency ordinance and finds, determines and declares that this urgency ordinance is adopted pursuant to Government Code Section 65858 and City Charter Section 412.

Section 2: Moratorium Extended.

Section 4(A) shall be amended to read as follows:

- 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, Urgency Ordinance No. 2025-31 shall be extended for a period of 10 months and fifteen days commencing November 8, 2025, and expiring on September 23, 2026. During this extended period, the following prohibitions shall apply: (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.

All other provisions of Ordinance No. 2025-31 shall remain in full force and effect during the extended term of the moratorium.

Section 3: 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 4: This urgency ordinance extending Ordinance No. 2025-31 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 be in effect from November 8, 2025 for a period of ten (10) months and fifteen (15) days and by operation of law be of no further force and effect after September 23, 2026. However, 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 up to one year. Ten days prior to the expiration of this urgency ordinance or any extension, 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 5: 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 6: 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 7: The Mayor shall sign and the City Clerk shall attest to the passage of this urgency ordinance, which shall be effective as of November 8, 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 28th day of October, 2025, by the following vote, to wit:

AYES: _____

NAYS: _____

ABSENT: _____

Joe Stapleton, Mayor

ATTEST:

Lena Shumway, City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp, City Attorney

Attachments: Exhibit A – City Report Describing Steps Taken to Alleviate
Conditions Necessitating Adoption of Ordinance No.
2025-31

EXHIBIT A

10-Day Report on the City of Newport Beach's 45-day Urgency Moratorium Ordinance moratorium ordinance placing a temporary moratorium on the establishment and operation of new tobacco retailer businesses as well as the relocation or physical expansion of existing tobacco retailer businesses within the city of Newport Beach pending the study and development of reasonable regulations as required by government code section 65858(d)

BACKGROUND:

On September 23, 2025, pursuant to Government Code Sections 65858 and 36937, the City Council adopted Ordinance No. 2025-31, a 45-day urgency moratorium ordinance. Ordinance No. 2025-0031 was adopted in an effort to protect the public health, safety, and welfare by placing a 45-day moratorium on all new tobacco retailers with the City of Newport Beach pending completion of anticipated study and development of reasonable regulations for tobacco retailers.

Under Government Code Section 65858(d), at least 10 days prior to the expiration of the 45-day ordinance, the City is to issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the moratorium. Issuance of this report satisfies the requirements of Government Code Section 65858(d). The 45-day moratorium is set to expire on November 7, 2025.

Measures taken to alleviate the conditions that led to the adoption of the urgency ordinance:

1. Since September 23, 2025, City staff have been developing a community engagement plan to receive input from stakeholders, including school organizations, and residents on the contemplated municipal code amendments. This effort has included compiling a list of stakeholders to engage in the community input process.
2. The City has assembled an internal legal team that will be needed to study and implement potential new regulations.
3. City staff has started reviewing municipal code regulations of peer cities with regard to regulations on tobacco retailers.
4. City staff has started to assemble an inter-departmental team that would be tasked with the enforcement and review of potential new regulations related to tobacco retailers.
5. City staff has started developing lists of tobacco retailers in the City and any potential police activity associated with the business.

The above reflects actions undertaken during this short period. Conditions continue to exist that make it necessary to extend the interim urgency ordinance currently in effect to provide staff with the necessary time to complete its analysis and research, develop appropriate regulations, and ensure the protection of the public health, safety, and welfare.

CONTINUED NEED FOR THE MORATORIUM

Actions addressing the underlying need for the moratorium are on-going. Specifically, at the direction of Council, staff is studying and will develop reasonable regulations for tobacco retailers, including a potential use permit, to address community concerns regarding underage access, public notification of licenses, and proliferation of retailers. These contemplated regulation changes require potential public outreach, additional study, a public hearing before the Planning Commission, and a second public hearing before the City Council. These tasks cannot be completed within the initial 45-day period which ends on November 7, 2025. Therefore, the need for the moratorium remains and staff recommends the City Council adopt an ordinance extending the current moratorium for a period of 10 months and 15 days. Unless extended by Council, the moratorium would automatically expire on November 7, 2025. Staff intends to return to Council with code amendments in early 2026, and the extension would allow staff with sufficient time to process the code amendments.

OPPORTUNITY FOR PUBLIC COMMENT: Members of the public will have the opportunity to comment on the extension of the Urgency Ordinance at the City Council hearing to be held on October 28, 2025. The City will publish notice for this meeting pursuant to Government Code § 65090.