

ORDINANCE NO. 2025-28

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 10.04.010 (DRINKING IN PUBLIC) OF CHAPTER 10.04 (INTOXICATING LIQUOR) OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO THE POSSESSION OF ALCOHOLIC BEVERAGES

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, it is generally prohibited for any person to possess an opened, partially consumed, or unsealed container of alcoholic beverage in or on public streets, sidewalks, alleys, restrooms, parking lots (public or private), beaches, piers (open to the public), parks, vacant lots, or private property visible to the public, without the consent of the property owner or lawful possessor;

WHEREAS, questions have been raised regarding the interpretation of the term "possession" as used in the prohibition, including whether it refers solely to actual physical possession or also includes constructive, joint or other types of possession, such as when an individual has control over or access to an open container of alcohol even if it is not physically held; and

WHEREAS, the City Council wishes to ensure clarity and consistency in the definition of "possession" for the purposes of enforcing the prohibition, including distinctions between actual, constructive, joint, and other types of possession of alcoholic beverages in public areas.

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

Section 1: Section 10.04.010 (Drinking in Public) of Chapter 10.04 (Intoxicating Liquor) is hereby amended and shall read as follows:

10.04.010 Drinking in Public.

A. No person shall drink or consume any alcoholic beverage in or on any public street or alley, public sidewalk, public or private parking lot, public restroom, public pier, private pier open to the public upon the payment of any fee, public beach, vacant lot, or public park or private property which is open to public view without the consent of the owner or person in lawful possession or control of the private property. The provisions of this section shall also apply to any beach or public parking facility in the area commonly known as Newport Dunes.

B. No person shall possess any can, bottle or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, in or on any public street or alley, public sidewalk, public or private parking lot, public restroom, public pier, private pier open to the public upon the payment of any fee, public beach, vacant lot, or public park, or private property which is open to public view, without the consent of the owner or person in lawful possession or control of the private property. The provisions of this section shall also apply to any beach or public parking facility in the area commonly known as Newport Dunes.

C. As used in Section, the term "possess" shall include: actual possession, which is the physical custody or control of the can, bottle or other receptacle, such as holding or carrying an open container of alcohol; constructive possession, which is the ability and intent to exercise control over the can, bottle or other receptacle, even if it is not physically held, such as when an open container is within one's immediate reach or in a personal vehicle or property under one's control; joint possession, which is where two or more individuals share control or custody of the can, bottle or other receptacle; or any other circumstance in which a person knowingly exercises control or dominion over the can, bottle or other receptacle, whether physically or through indirect means.

D. Alcoholic beverages as used in this section include alcohol, spirits, wine or beer and which contain one-half of one percent or more of alcohol by volume, and which is fit for beverage purposes, either alone or when distilled, mixed or combined with other substance.

E. The provisions of this section shall not apply where the consumption or possession is within premises located in a park or other public place for which a license has been issued pursuant to California Business and Professions Code,

Division 9, pursuant to an approved special event permit in compliance with Chapter 11.03, or where the consumption or possession is within the outdoor area of a lawfully permitted eating and drinking establishment.

F. Any person violating or failing to comply with subsection (B) of this section shall be guilty of an infraction, and subject to punishment as set forth in this Code.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this 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 ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the introduction and adoption of this 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.

Section 5: Except as expressly modified in this 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 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 23rd day of September, 2025, and adopted on the 14th day of October, 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