



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-379

Meeting Date: 9/2/2025

TITLE:

INTRODUCTION OF AN ORDINANCE ADDING CHAPTER XVI (PROHIBITION ON SALE OR DISTRIBUTION OF NITROUS OXIDE) TO TITLE 11 (OFFENSES-MISCELLANEOUS) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH REGULATIONS PROHIBITING THE UNLAWFUL SALE OR DISTRIBUTION OF NITROUS OXIDE IN THE CITY

DEPARTMENT: POLICE DEPARTMENT

PRESENTED BY: JASON CHAMNESS, CAPTAIN

CONTACT INFORMATION: JASON CHAMNESS, CAPTAIN, (714) 754-5272

RECOMMENDATION:

Staff recommends the City Council introduce for first reading, by title only, Ordinance No. 2025-xx, adding Chapter XVI (Prohibition on Sale or Distribution of Nitrous Oxide) to Title 11 (Offenses-Miscellaneous) of the Costa Mesa Municipal Code to establish regulations prohibiting the unlawful sale or distribution of nitrous oxide in the City.

BACKGROUND:

From January 2020 through May 2025, Costa Mesa has seen a concerning rise in nitrous oxide-related activity, posing increasing risks to public safety. Incident reports involving nitrous oxide (found property, possession, or use) have steadily increased, with a 100% rise from 2023 to 2024. Calls for service related to nitrous oxide similarly increased by 125% during the same period. Arrests associated with nitrous oxide offenses also grew by 125% from 2023 to 2024, reflecting enhanced enforcement efforts alongside the growing prevalence of abuse. Additionally, the report noted a slight increase of nitrous oxide involvement in traffic collisions and overdose cases. Since 2020, there has been two overdose deaths likely associated to nitrous oxide. The continued escalation of these incidents underscores the need for targeted prevention, and enforcement at the point of sale, to address the public health and safety impacts of nitrous oxide abuse in Costa Mesa.

This ordinance is being brought forward in response to concerns raised by City Council members, community, and law enforcement professionals about the escalating misuse of nitrous oxide for intoxication and the absence of a local law prohibiting its sale and distribution. The adoption of this ordinance will align Costa Mesa with several neighboring jurisdictions that have already enacted similar regulations to better safeguard community health and safety.

Often referred to as “laughing gas,” “nox,” or “whippets,” nitrous oxide is a colorless and odorless gas with legitimate applications in medical, dental, industrial, and food preparation. However, the rise in non-medical, recreational use, driven by its low cost and easy retail access, has become a public health issue. Some retailers have chosen to sell nitrous oxide due to legal gaps, even when it is clear that the purchaser intends to misuse the substance. Scientific studies have documented the serious health risks associated with recreational inhalation, further highlighting the need for local regulation.

Under California Penal Code Section 381:

- **Section 381b** prohibits possession of nitrous oxide with intent to inhale for intoxication.
- **Section 381c** makes it unlawful to sell or distribute nitrous oxide to anyone under the age of 18.
- **Section 381e** requires those who sell or dispense the gas to maintain transaction records available for inspection.
- **Section 381d** makes it a misdemeanor to provide nitrous oxide to someone who is known-or should reasonably be known-to intend inhalation, particularly if such use results in great bodily harm or death.

Despite these state-level restrictions, local availability and misuse continue to persist due to a lack of local regulations. Costa Mesa currently has no municipal restrictions in place governing the sale or distribution of nitrous oxide. This proposed ordinance seeks to address that gap by reducing unlawful access and discouraging irresponsible sales practices.

The proposed ordinance would make it unlawful for any individual to sell, offer, distribute, or otherwise provide nitrous oxide or devices intended for its administration to any person. However, several important exceptions are included to protect legitimate commercial and medical uses:

- Products containing nitrous oxide as a propellant in food items;
- Wholesale transactions where the seller does not have reason to believe the product will be misused;
- Devices and canisters used specifically for enhancing automotive performance;
- Medical or dental uses under the supervision of licensed professionals;
- Sales by pharmacists, pharmacy interns, or licensed wholesalers in accordance with state law;
- Any other exceptions as provided under applicable laws.

Violations of the ordinance may be prosecuted as misdemeanors at the discretion of the citing Officer or City Attorney. Upon conviction, penalties may include a fine of up to \$1,000, imprisonment for up to six months in County Jail, or both.

ANALYSIS:

The residents of Costa Mesa and the Costa Mesa Police Department need a dedicated ordinance to address the growing concerns surrounding the recreational use and abuse of nitrous oxide for several reasons:

- Decrease the amount of nitrous oxide readily available to the public for recreational use.
- Decrease the amount of health and safety related incidents, including overdoses, impaired driving, and public disturbances.
- Decrease the incidence of neurological damage, nerve impairment, and even death demonstrated by medical studies to occur with recreational use of nitrous oxide.
- Close loopholes in State law which do not specifically regulate local sales or prevent easy access through retail vendors.
- Give Police Officers the ability to act to discourage distribution and sales of nitrous oxide to the public for recreational use.

The proposed ordinance would add a new Chapter XVI (Prohibition on Sale or Distribution of Nitrous Oxide) to Title 11 (Offenses - Miscellaneous) of the Costa Mesa Municipal Code. The proposed ordinance makes it unlawful for any person to sell, attempt to sell, offer, distribute, or otherwise provide to any person nitrous oxide, a device to dispense or administer nitrous oxide, or any device that contains any quantity of nitrous oxide. This ordinance does apply to those exceptions identified in 11-406 (Exceptions to Prohibition).

Costa Mesa needs this ordinance to preserve the safety and well-being of our most vulnerable community members (youth). This ordinance is a preventative measure that targets the root causes of a growing problem, while maintaining legitimate access for medical, industrial, and commercial use.

ALTERNATIVES:

City Council could elect to not pass the proposed ordinance, leaving law enforcement with fewer options to combat the growing trend of the illegal distribution and recreational use of nitrous oxide, absent future changes to State law.

FISCAL REVIEW:

There is no fiscal impact with this action.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report and approved it as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the City Council Goal: Strengthen the public's safety and improve the quality of life.

CONCLUSION:

Staff recommends the City Council:

Introduce for first reading, by title only, Ordinance No. 2025-xx, adding Chapter XVI (Prohibition on Sale or Distribution of Nitrous Oxide) to Title 11 (Offenses-Miscellaneous) of the Costa Mesa Municipal Code to establish regulations prohibiting the unlawful sale or distribution of nitrous oxide in the City.