

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, 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

WHEREAS, the City of Costa Mesa (City) is empowered pursuant to California Constitution, article XI, section 7 to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Nitrous Oxide is an odorless, colorless chemical that can be inhaled for legitimate purposes associated with medical or dental procedures in a clinical setting, and is legitimately used for industrial purposes and as a propellant for food products; and

WHEREAS, Nitrous Oxide is also subject to recreational misuse and abuse, in part, because it is easy to purchase from retail vendors and relatively inexpensive; and

WHEREAS, the recreational misuse and abuse of Nitrous Oxide can cause permanent vitamin deficiencies in the blood, and can cause long-term neurological effects, including paralysis and death; and

WHEREAS, the incidence of Nitrous Oxide recreational misuse and abuse has been on the rise both within the City and internationally over the past decade, with multiple medical studies noting significant increases in recreational misuse in the past five years, as well as a broader medical understanding of the long-term hematological and neurological impacts of Nitrous Oxide misuse and abuse; and

WHEREAS, the City does not currently regulate the sale of Nitrous Oxide and finds and declares that in the absence of local regulation, Nitrous Oxide remains subject to significant risk of misuse and abuse through sale to individuals who intend to misuse or abuse the product; and

WHEREAS, the City desires to regulate the sale of Nitrous Oxide in order to preserve and protect public health and to dissuade sellers of Nitrous Oxide products from selling to individuals who they know or have reason to know intend to use the products for illegal purposes (i.e., recreational ingestion and/or inhalation).

WHEREAS, on February 25, 2025, the County of Orange Board of Supervisors adopted Ordinance No. 25-004, adding Division 19 to Title 3 of the Codified Ordinances of the County of Orange to prohibit the sale of nitrous oxide in the county, except when sold for culinary use, wholesale, for use in a vehicle, for the purpose of providing medical or dental care, or by a pharmacist. The ordinance was supported by the Orange County District Attorney, the Orange County Sheriff's Department, and the Costa Mesa Police Department; and

WHEREAS, the City of Costa Mesa, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code section 21000, *et seq.*) and State CEQA guidelines (section 15000, *et seq.*) has determined that the ordinance is not a "project" and further, that it is exempt from the provisions of CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment, such that no environmental review under CEQA is required; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The City Council finds that all the recitals, facts and conclusions set forth above in the preamble of this Ordinance are true and correct.

Section 2. Chapter XVI (Prohibition on Sale or Distribution of Nitrous Oxide) of Title 11 (Offenses – Miscellaneous) of the Costa Mesa Municipal Code is hereby added as follows:

Chapter XVI. PROHIBITION ON SALE OR DISTRIBUTION OF NITROUS OXIDE

11-404. Definitions.

For purposes of this article, the following definitions apply.

A. "Device" means any cartridge, compressed gas cylinder, apparatus, container, balloon, attachment, nozzle, or other object used to contain, dispense or administer nitrous oxide.

B. "Nitrous oxide" means the colorless nonflammable gas sometimes identified as N₂O, which is sometimes used in aerosols and sometimes used as an anesthetic, and which, when inhaled, produces loss of sensibility to pain, often preceded by exhilaration and laughter. Nitrous oxide is often informally or colloquially referred to as "laughing gas," "NOX," "galaxy gas," and "whippits," amongst others.

C. "Person" means any individual or legal entity however constituted or organized.

D. "Wholesale capacity" means sale of or distribution of nitrous oxide or a device to dispense nitrous oxide to a person that will use nitrous oxide or the device in service or products for resale. Examples include, but are not limited to, commercial sale of dentistry supplies to dentists or dentistry offices, commercial sale of devices for the use in food production or in a commercial kitchen, and/or commercial sale of nitrous oxide for the purpose of producing food products for commercial sale (e.g., whipped cream canisters).

11-405. Prohibition on Sale or Distribution of Nitrous Oxide

Except as otherwise authorized by law or allowed under this article, it is 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.

11-406. Exceptions to Prohibition.

This article does not apply to the sale, attempt to sell, distribution, or other manner of providing nitrous oxide, or a device containing nitrous oxide, in the following exempt circumstances:

- A. If the nitrous oxide is contained in a food product for use as a propellant.
- B. If the nitrous oxide or device is being sold, attempted to be sold, offered, or distributed in a wholesale capacity, for uses similar to those described in subsection (D) section 11-404. This exemption only applies if the wholesaler does not know or have reason to know that the recipient intends to use the nitrous oxide or device in violation of section 11-405.
- C. If the nitrous oxide or device that is being sold, attempted to be sold, offered, or distributed is specifically designed for use in a vehicle to enhance the performance of the vehicle, sold by a licensed retailer, and is flavorless.
- D. If the nitrous oxide is being sold, attempted to be sold, offered, or distributed specifically for the purpose of providing medical or dental care, by or at the direction and under the supervision of, a medical or dental practitioner licensed by the State of California and in accordance with all applicable rules and regulations.
- E. If the nitrous oxide or device is being sold, attempted to be sold, offered, distributed, or dispensed by a pharmacist, pharmacist intern, or pharmacy as defined by California Business & Professions Code sections 4030, 4036, and 4037, as may be amended, in the course of their duties as a pharmacist or pharmacist intern, or wholesalers licensed by the Board of Pharmacy.
- F. Or any other circumstances exempted under law.

Any sales or distributions of Nitrous Oxide contemplated under this section shall comply with all documentation requirements set forth in California Penal Code §381e.

11-407. Violations and Penalties.

- a. Any person who violates this chapter is guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the County Jail for a period of not more than six (6) months or by both such fine and imprisonment. Each day any violation of any said provision of this chapter shall continue shall constitute a separate offense.

- b. Alternatively, violations may be addressed through the use of civil citations as set forth in Title 1, Chapter II (Civil Citations), Sections 1-34, *et seq.*
- c. Use of criminal enforcement and/or administrative citations shall not prevent or preclude the City from seeking injunctive relief and civil penalties in court for violation of this article. This section shall not serve to limit any other legal remedies or actions that the City may have to address violations of this chapter. A violation of this chapter is grounds for a revocation of a business license, if applicable, pursuant to Section 9-119 of the Costa Mesa Municipal Code.

Section 3. Environmental Compliance. Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code section 21000, *et seq.*) and State CEQA guidelines (Sections 15000 *et seq.*) the ordinance is not a "project" and further, that it can be seen with certainty that there is no possibility that the ordinance in question may have a significant effect on the environment, either directly or indirectly, and that therefore no environmental review under CEQA is required, pursuant to CEQA Guidelines section 15061(b)(3).

Section 4. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

Section 7. Certification. The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

PASSED AND ADOPTED this ____ day of _____, 2025.

John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney