



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
May 6, 2025

TOPIC: Ordinance Adding Article XIV to Chapter 10 (Crimes and Miscellaneous Law Enforcement Provisions) of the Santa Ana Municipal Code Prohibiting the Sale or Distribution of Nitrous Oxide

AGENDA TITLE

Ordinance Adding Article XIV to Chapter 10 (Crimes and Miscellaneous Law Enforcement Provisions) of the Santa Ana Municipal Code Prohibiting the Sale or Distribution of Nitrous Oxide

RECOMMENDED ACTION

Conduct a first reading and adopt an ordinance adding Article XIV to Chapter 10 (Crimes and Miscellaneous Law Enforcement Provisions) of the Santa Ana Municipal Code prohibiting the sale or distribution of nitrous oxide:

ORDINANCE NO. NS-XXXX entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA ADDING ARTICLE XIV TO CHAPTER 10 OF THE SANTA ANA MUNICIPAL CODE (CRIMES AND MISCELLANEOUS LAW ENFORCEMENT PROVISIONS) PROHIBITING THE SALE OR DISTRIBUTION OF NITROUS OXIDE

GOVERNMENT CODE §84308 APPLIES: No

DISCUSSION

This Ordinance is proposed by the Police Department in response to concerns from the City Council and community about the increasing misuse of nitrous oxide for recreational purposes, which poses risks to public health and safety. Adopting this ordinance will bring the City on par with other regional jurisdictions who have adopted similar ordinances and aid in preserving and protecting public health. Nitrous oxide, commonly known as “laughing gas,” “nox,” or “whippets,” is a colorless, odorless gas legitimately used in medical, dental, industrial, and food production settings. However, the recreational misuse and abuse of nitrous oxide due to its intoxicating effects has surged regionally and within Santa Ana. The surge in use is driven by its affordability and accessibility through retail vendors who sell the nitrous oxide due to loopholes in existing law. Medical studies highlight significant health risks associated with the

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recreational misuse of nitrous oxide. Within Santa Ana, nitrous oxide poses a growing threat to public safety.

The possession and sale of nitrous oxide is currently regulated under the California Penal Code Section 381:

- It is illegal to possess nitrous oxide with the intent to breathe, inhale, or ingest the substance in order to get intoxicated under Penal Code section 381b.
- It is illegal to sell, furnish, administer, distribute, or give away nitrous oxide, or offer to do so, to a person under 18 years of age under Penal Code section 381c. Also, Penal Code section 381e requires that a person dispensing or distributing nitrous oxide keep records of each transaction, available for inspection to law enforcement and employees of the California State Board of Pharmacy.
- Finally, under Penal Code section 381d, a person who dispenses or distributes nitrous oxide to any person, and knows or should know that the person to whom they are dispensing or distributing nitrous oxide intends to breathe, inhale, or ingest the substance, is guilty of a misdemeanor if that person causes great bodily injury or death to themselves or another person.

Despite existing state law, the recreational misuse and abuse of nitrous oxide continues. Currently, the City does not regulate the sale of nitrous oxide. In the absence of such regulation, nitrous oxide remains available for misuse through sales to individuals who intend to misuse the product. Local regulation of nitrous oxide will preserve and protect public health by dissuading sellers of nitrous oxide products from selling to individuals whom they know, or have reason to know, intend to use the product for illegal purposes.

The proposed ordinance would prohibit 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. The ordinance would not apply in the following exempt circumstances:

- If the nitrous oxide is contained in a food product for use as a propellant;
- 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) of section 10-901. 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 10-902;
- If the nitrous oxide or device being sold, attempted to be sold, offered, or distributed is specifically designed for the purpose of enhancing vehicle performance;

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- If the nitrous oxide 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;
- If the nitrous oxide or device being sold, attempted to be sold, offered, distributed, or dispensed by a pharmacist, pharmacist intern, or pharmacy as defined by California Business & Professions Code §§ 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;
- Or any other circumstances explicitly exempted under law.

Every violation of the provisions of this ordinance may be charged as either a misdemeanor or as an infraction in the discretion of the citing officer or City Attorney, and, upon conviction thereof, shall be punishable as provided for in Section 1-8 of the Santa Ana Municipal Code.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S)

1. Ordinance

Submitted By: Robert Rodriguez, Police Chief

Approved By: Alvaro Nuñez, City Manager