

20. 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

Department(s):

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



Police Department
www.santa-ana.org/pd
Item # 20

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:

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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

ORDINANCE NO. NS-XXXX

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

WHEREAS, the City of Santa Ana (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, the City is specifically empowered by the California Health and Safety Code, Section 101450, as may be hereafter amended or renumbered, to take measures as may be necessary to preserve and protect the public health, including the adoption of ordinances, regulations, and orders not in conflict with the 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 within the county, nationally, 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 which they know or have reason to know intend to use the products for illegal purposes (i.e., recreational ingestion and/or inhalation).

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. New Article XIV is hereby added to Chapter 10 of the Santa Ana Municipal Code (CRIMES AND MISCELLANEOUS LAW ENFORCEMENT PROVISIONS) to read in full as follows:

ARTICLE XIV. - PROHIBITION ON SALE OR DISTRIBUTION OF NITROUS OXIDE

Sec. 10-900. - Authority and Purpose.

This article is enacted pursuant to the City's plenary police powers to protect the public safety, health and welfare. The express purpose of this article is to protect the public health and safety by eliminating retail access for recreational use of nitrous oxide, which is a dangerous gas that may be illicitly used as an intoxicant.

Sec. 10-901 - 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 and often used as an anesthetic in dentistry. Nitrous oxide is often informally or colloquially referred to as "laughing gas," "NOX," "galaxy gas," "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).

Sec. 10-902 - Prohibition on Sale or Distribution of Nitrous Oxide.

Except as otherwise explicitly 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.

Sec. 10-903 - 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) 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.
- (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.
- (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 §§ 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 explicitly 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.

Sec. 10-904 - Violations and Penalties.

Every violation of the provisions of this article 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 this Code. Each day any violation of any said provision of this chapter shall continue shall constitute a separate offense. Alternatively, violations may be addressed through the use of an administrative citation as set forth in Sections 1-21.1 through 1-21.9. 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 violations 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 section 10-902.

Sec. 10-905 - Severability.

If any section, paragraph, sentence, clause, phrase or portion of this article is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have adopted this article irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the article be enforced.

Secs. 10-906 – 10-999. - Reserved

Section 2. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA). Pursuant to CEQA and Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines. Furthermore, the proposed ordinance falls within the "common sense" CEQA" exemption set forth in CEQA Guidelines section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

Section 3. This ordinance shall become effective thirty (30) days after its adoption.

Section 4. The City Clerk shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2025.

Valeria Amezcua
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: _____

Jonathan T. Martinez
Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, _____, City Clerk, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

City Clerk
City of Santa Ana