

## ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADDING FULLERTON MUNICIPAL CODE TITLE 7 (PUBLIC SAFETY AND MORALS) CHAPTER 7.14 (PROHIBITION ON SALE OR DISTRIBUTION OF NITROUS OXIDE) TO ESTABLISH REGULATIONS PROHIBITING THE UNLAWFUL SALE OR DISTRIBUTION OF NITROUS OXIDE IN THE CITY

WHEREAS, California Constitution, Article XI, Section 7 empowers the City of Fullerton (City) to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

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 legitimately used for industrial purposes and as a food product propellant.

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

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

WHEREAS, the incidence of Nitrous Oxide recreational misuse and abuse increased both within the City and internationally over the past decade, with multiple medical studies noting significant increases in recreational misuse over 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.

WHEREAS, the City does not 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.

WHEREAS, the City desires to regulate the sale of Nitrous Oxide to preserve and protect public health and to dissuade Nitrous Oxide product sellers 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).

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

WHEREAS, the City of Fullerton determined the ordinance is not a "project" pursuant to the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) and finds it exempt from CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that this Ordinance will not have an effect on the environment and no CEQA environmental review is required.

WHEREAS, all legal prerequisites prior to adopting this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON ORDAINS AS FOLLOWS:

SECTION 1. City Council finds all recitals, facts and conclusions set forth in the preamble of this Ordinance are true and correct.

SECTION 2. City Council adds Fullerton Municipal Code Title 7 (Public Safety and Morals) Chapter 7.14 (Prohibition on Sale or Distribution of Nitrous Oxide) as follows:

Chapter 7.14. PROHIBITION ON SALE OR DISTRIBUTION OF NITROUS OXIDE

7.14.10. 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 N<sub>2</sub>O, 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" 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).

#### 7.14.20. 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.

#### 7.14.30. 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 Section 7.14.10(D). 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 7.14.20.
- 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 and 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 Section 381e.

7.14.30. 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 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 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.

SECTION 3. Environmental Compliance. Pursuant to 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 Fullerton 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 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. 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 days following adoption.

SECTION 7. Certification. The City Clerk shall certify the passage and adoption of this Ordinance and be post or publish in the manner as required by law.

ADOPTED BY THE FULLERTON CITY COUNCIL ON \_\_\_\_\_.

\_\_\_\_\_  
Fred Jung  
Mayor

ATTEST:

\_\_\_\_\_  
Lucinda Williams, MMC  
City Clerk

\_\_\_\_\_  
Date