



Agenda Item

City Council

Item #: 10.3.

6/10/2025

File #: 25-0277

TO: Honorable Mayor and Members of the City Council

THRU: Tom Kisela, City Manager

FROM: Russell Bunim, Community Development Director

1. SUBJECT

Introduction and First Reading of Ordinance No. 09-25, adding Chapter 9.44 to the Orange Municipal Code regulating the retail sale and distribution of nitrous oxide.

2. SUMMARY

The proposed Ordinance establishes regulations prohibiting the sale and/or distribution of nitrous oxide by any person or retail establishment within the City limits. Currently, the Orange Municipal Code does not have any regulations related to nitrous oxide, yet the substance has proved to be a factor in traffic accidents, arrests for misuse and illegally sold for recreational use by local tobacco retailers.

3. RECOMMENDED ACTION

Introduce and conduct First Reading of Ordinance No. 09-25: An Ordinance of the City Council of the City of Orange adding Chapter 9.44 of the Orange Municipal Code regulating nitrous oxide.

4. FISCAL IMPACT

None.

5. STRATEGIC PLAN GOALS

Goal 1: Maintain Strong Emergency and Safety Services

6. DISCUSSION AND BACKGROUND

Nitrous oxide, commonly known as laughing gas, is a colorless, non-flammable gas widely used by healthcare professionals for medical and dental anesthesia. Nitrous oxide takes effect rapidly and dissipates from the human body, making it a primary choice for effective pain relief and minor medical procedures. When administered under the supervision of a licensed healthcare provider, nitrous oxide is considered safe and effective.

Beyond medical applications, nitrous oxide has various industrial and commercial uses. It can be utilized to enhance engine performance in the automotive industry and serve as a food preservative or propellant for dispensing and preserving whipped cream, as well as producing other aerated foods, desserts, or beverages. It is also frequently sold at tobacco-related establishments, including

vape shops, cigar shops, smoke shops, and other retail outlets.

Nitrous oxide is sometimes misused as an illegal recreational substance. The availability of nitrous oxide in retail establishments can facilitate recreational misuse, making it easily accessible to youth and adults. This euphoric inhalant, often perceived as harmless, is gaining popularity at an alarming rate, particularly among college students, high schoolers, and even middle school-aged children.

Medical and public health authorities have linked the recreational misuse of nitrous oxide to serious health problems and even death.

Regulation of nitrous oxide falls under the jurisdiction of the Food and Drug Administration (FDA). Nitrous oxide is not classified as an illegal substance in the United States due to its numerous legitimate applications. It is neither regulated by the Drug Enforcement Agency (DEA) nor controlled under the Controlled Substances Act, making its possession lawful, provided it is used for legitimate purposes. The sale or distribution of nitrous oxide for human consumption without a valid medical prescription is prohibited. Violations are classified as federal misdemeanors, carrying penalties of up to one year in federal prison and fines of up to \$100,000.

Several states have enacted laws to regulate the sale and recreational misuse of nitrous oxide. In California, for instance, it's a misdemeanor to sell, use, or possess nitrous oxide for the purpose of intoxication. The California Penal Code addresses various criminal elements and penalties pertaining to the sale, illegal use, and possession of nitrous oxide. The selling of nitrous oxide to individuals under the age of 18 is illegal in several states, including California. Additionally, several California cities have adopted ordinances prohibiting its sale or distribution.

Recently, the Orange County Board of Supervisors enacted an ordinance prohibiting the sale and distribution of nitrous oxide in unincorporated areas of Orange County and are also encouraging local municipalities to implement similar regulations.

Recreational misuse of nitrous oxide in the City of Orange has been linked to multiple documented vehicle accidents over the past few years. One incident involved a 21-year-old driver crashing into an occupied residential apartment building, resulting in litigation involving our City, Santa Ana, and private parties. Another fatal accident saw a 42-year-old driver collide with a tree in Old Towne Orange's Plaza Park. In a separate case, an 18-year-old driver, found in possession of nitrous oxide and contributing to the delinquency of a minor, was arrested after crashing into the historic fountain just months after its restoration from a previous accident. Additionally, a 21-year-old driver lost his life after crashing into an electrical pole. Most tragically, a fiery high-speed rollover crash claimed three lives, including the 19-year-old driver, and left four others hospitalized. Police discovered a nitrous oxide tank and balloons at the scene, suspecting driver impairment.

The Orange Police Department has documented arrests associated to possession of nitrous oxide by year:

Year	# of Arrests
2023	50
2024	59
2025 (January to March)	15
Total	124

The Orange Police Department and Code Enforcement Division of the Community Development Department, through joint operations funded by a tobacco enforcement grant, have identified 20 out of 25 retail establishments including vape, cigar and smoke shops engaging in substantial sale of nitrous oxide. These products are prominently displayed in more than 20 flavors, including original, mocha, vanilla, and various fruit options. They are available in multiple forms, such as chargers, canisters, cylinders, bottles, tanks, and other devices, in varying quantities, some ranging from 8 grams to as much as 20 pounds. The widespread availability of these products is particularly concerning, as it significantly increases the risk of misuse, especially among youth, for unlawful intoxication. These tobacco retailers sell nitrous oxide products with packs of balloons, facilitating easy filling and inhalation for recreational misuse. None of the retailers indicated their sale of nitrous oxide products were intended for food preparation, either as a propellant or preservative.

Banning the sale and distribution of nitrous oxide in the City could significantly reduce its recreational misuse as an intoxicating drug, thereby promoting public health, safety, and welfare. While the California Penal Code includes provisions addressing the sale, illegal use, and possession of nitrous oxide, these regulations are not comprehensive enough to fully prevent its sale or distribution. Implementing a citywide ordinance to prohibit its sales and distribution, with certain exceptions, could be a life-saving measure.

Proposed Ordinance

The proposed ordinance would prohibit the sale, offering, distribution, or provision of nitrous oxide, its dispensers, and any device such as cartridges or canisters containing any amount of nitrous oxide.

To accommodate legitimate legal uses of nitrous oxide, the proposed ordinance includes the following exemptions:

1. Use as a food preservative or propellant.
2. Wholesalers supplying medical and dental facilities.
3. Industrial applications for vehicle performance.
4. Medical or dental care or treatment purposes.
5. Use by licensed pharmacists, pharmacist interns, or pharmacies.
6. Industrial gas manufacturers.
7. Any individual explicitly exempted under State law.

The proposed ordinance makes the violation of its provisions a misdemeanor, punishable by county jail or by a fine of \$1,000, or both. In addition, the City may issue administrative citations which carry escalating fines from \$100, \$200, and \$500 per offense / per day.

Staff plans to collaborate with property owners and retail establishments to achieve the goal of eliminating nitrous oxide from being sold, offered, or distributed, prioritizing compliance over punitive or abatement measures. However, punitive or abatement actions will be reserved for special cases where there is a lack of cooperation or a failure to comply with the Code.

7. ATTACHMENTS

- Ordinance No. 09-25