

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

WHEREAS, California Constitution, Article XI, Section 7, authorizes the City of Orange (“City”) to adopt and enforce local police, sanitary, and other ordinances and regulations that are 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, automotive performance booster 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 use of nitrous oxide as an intoxicating inhalant is an urgent public health challenge; and

WHEREAS, the City has connected the recreational use of nitrous oxide to several serious traffic accidents in recent years, which have caused property damage to an apartment building and the historic fountain in Old Towne Orange’s Plaza Park, as well as resulting in multiple injuries and fatalities; and

WHEREAS, medical authorities have linked the recreational use of nitrous oxide to serious health problems which can cause physical illness, mental illness, injury and/or even death; and

WHEREAS, although existing provisions of the California Penal Code address the sale, illegal use, and possession of nitrous oxide, they are not comprehensive enough to eliminate the uncontrolled possession, distribution, and sale of nitrous oxide in the City or County; and

WHEREAS the Orange County Board of Supervisors recently adopted an ordinance to prohibit the sale or distribution of nitrous oxide in unincorporated Orange County, and encourages local municipalities to adopt similar regulations; and

WHEREAS, the City does not currently regulate the sale or distribution 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 or distribution to individuals who intend to misuse or abuse the product; and

WHEREAS, the City desires to regulate the sale or distribution of nitrous oxide in order to preserve and protect public health and to dissuade sellers of nitrous oxide products from selling

to individuals whom they know or have reason to know intend to use the products for illegal purposes (i.e., recreational ingestion and/or inhalation); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I:

The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines (Guidelines) Sections 15060(c)(2) and 15060(c)(3) because review and evaluation of potential impact of the Ordinance demonstrate that it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not a "project" as defined in Guideline 15378.

SECTION II:

New Chapter 9.44 of the Orange Municipal Code (Public Peace, Morals and Welfare – Nitrous Oxide) is hereby added to read as follows:

Chapter 9.44

NITROUS OXIDE

Sections:

- 9.44.010 Purpose.**
- 9.44.020 Definitions.**
- 9.44.030 Prohibition on Sale or Distribution of Nitrous Oxide.**
- 9.44.040 Exceptions to Prohibition.**
- 9.44.050 Enforcement.**

9.44.010 Purpose.

This Chapter is enacted pursuant to the City's police powers to protect the public safety, health, and welfare. The express purpose of this Chapter is to protect the public health and safety by eliminating retail access for recreational use of nitrous oxide, a very dangerous gas that is illicitly used as an intoxicant. This Chapter does not prohibit lawful use of nitrous oxide in medical, dental, or commercial applications as permitted by law.

9.44.020 Definitions.

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

"Nitrous oxide" means any of the following substances: N₂O, dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas, as defined in California Penal Code Section 381c(a) as may be amended from time to time. Nitrous oxide is a colorless nonflammable gas sometimes

informally or colloquially referred to as “nitro”, “NOX”, “galaxy gas”, “whippits”, amongst other names.

“Wholesale capacity” means to sell nitrous oxide or a device to dispense nitrous oxide to a person that will use said product in the performance of its service or the production of its goods.

9.44.030 Prohibition on Sale or Distribution of Nitrous Oxide.

Except as otherwise allowed under this Chapter, it is unlawful for any person to sell, offer, distribute, display for sale, 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.

9.44.040 Exceptions to Prohibition.

- A. This Chapter does not apply to the sale, offer, distribution, display for sale, or any other manner of providing nitrous oxide, or a device containing any quantity of nitrous oxide, in the following circumstances:
1. If nitrous oxide is labeled and marketed as food-grade and is contained within a food product for use as a propellant or preservative, it must comply with City zoning laws under Title 17 when utilized in restaurants, food service establishments, retail convenience stores, grocery markets, or in houseware or grocery products.
 2. If the nitrous oxide or device is being sold, offered, or distributed in a wholesale capacity. This exemption only applies provided the wholesaler does not know, nor should reasonably know, that the recipient intends to use the nitrous oxide or device in violation of section 9.44.030.
 3. If the nitrous oxide or device is specifically designed, marketed, and safety-labeled for industrial use exclusively for automotive purposes, it must be utilized at a licensed automotive facility that is approved by the California Bureau of Automotive Repair and in compliance with City zoning laws under Title 17.
 4. If the nitrous oxide is being administered for the purposes of medical or dental care only when prescribed, directed, or supervised by a medical or dental practitioner licensed by the State of California. The administration must adhere to all applicable laws, regulations, and standards governing the lawful prescription, order, or administration of nitrous oxide to the patient.
 5. If the nitrous oxide or device is being 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.
 6. If the nitrous oxide or device is by a manufacturer classified under Code Number 325120 (industrial gas manufacturer) or 424690 (other chemical and allied products)

merchant wholesalers) by the North American Industry Classification System (NAICS) as part of a manufacturing process or industrial operation.

7. Any person that possesses or distributes nitrous oxide under an express exemption pursuant to the California Penal Code §§ 381b-e as may be amended from time to time.
8. Or any other circumstances exempted under law.

9.44.050 Enforcement.

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. In addition to any other remedy, any person violating any provision of this Chapter shall be guilty of a misdemeanor for each day such violation continues.
- C. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.
- D. Any violation of this Chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this Chapter.
- E. Violations of this Chapter are hereby declared to be public nuisances subject to abatement by the City.
- F. Nothing in this Chapter shall limit the City from pursuing administrative, civil, or criminal citations or to abate public nuisances or violations of this Chapter in accordance with 1.08 and 1.10 of the Orange Municipal Code.

SECTION III:

If any section, subdivision, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION IV:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2025.

Daniel R. Slater, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

APPROVED AS TO FORM:

Wayne W. Winthers,
Interim City Attorney, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the 10th day of June, 2025, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2025 was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange