

ORDINANCE NO. 25-004

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA ADDING  
DIVISION 19 TO TITLE 3 OF THE CODIFIED ORDINANCES OF THE  
COUNTY OF ORANGE REGARDING THE ORANGE COUNTY HEALTH  
AUTHORITY

The Board of Supervisors of the County of Orange, California ordains as follows:

SECTION 1.

WHEREAS, the County of Orange (County) 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 County is specifically empowered by the California Health and Safety Code, Section 101025, 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 both within the County 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, Nitrous Oxide recreational misuse and abuse has been associated with multiple traffic incidents and criminal incidents throughout the County in the past several years; and

WHEREAS, the County 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 County 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).

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE DOES ORDAIN TO ADD DIVISION 19 TO TITLE 3 OF THE CODIFIED ORDINANCES OF THE COUTNY OF ORANGE.

SECTION 2. Division 19 is added to Title 3 of the Codified Ordinances of the County of Orange to read as follows:

#### Division 19. NITROUS OXIDE

##### Article 1. Prohibition on Sale or Distribution of Nitrous Oxide

#### **Sec. 3-19-1 Authority and Purpose.**

This article is enacted pursuant to the County'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, a dangerous gas that is illicitly used as an intoxicant

#### **Sec. 3-19-2 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," "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. 3-19-3 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.

#### **Sec. 3-19-4 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 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 3-19-2. 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 3-19-3.
- 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, offer 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 maybe 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.

#### **Sec. 3-19-5 Violations and Penalties.**

Any person who violates section 3-19-3 is guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period of not more than six (6) months or by both such fine and imprisonment. This section shall not serve to limit any other legal remedies or actions that the County may have to address violations of section 3-19-3. A violation of section 3-19-3 is grounds for a revocation of a business license, if applicable, pursuant to section 5-2-16 of the Codified Ordinances.

#### **Sec. 3-19-6 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 Board of Supervisors 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.

This ordinance shall take effect and be in full force thirty days from and after its passage. This ordinance shall be published once in an adjudicated newspaper in the County of Orange within fifteen days of its passage.

THE FOREGOING was PASSED and ADOPTED by the following vote of the Orange County Board of Supervisors on February 25, 2025, to wit:

AYES: Supervisors: KATRINA FOLEY, DONALD WAGNER, JANET NGUYEN  
VICENTE SARMIENTO, DOUG CHAFFEE

NOES:

EXCUSED:

ABSTAINED:

\_\_\_\_\_/s/\_\_\_\_

Robin Stieler,

Clerk of the Board of Supervisors of Orange County, California