

ORDINANCE NO. 1588

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
RIALTO, CALIFORNIA, AMENDING THE RIALTO MUNICIPAL
CODE, TO ADD A NEW CHAPTER 9.44 PROHIBITING THE
SALE AND DISTRIBUTION OF NITROUS OXIDE

WHEREAS, the City of Rialto ("City") is authorized by the 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 of Rialto finds that 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 the sale and distribution of nitrous oxide can be harmful to the public, health, safety and welfare.

WHEREAS, nitrous oxide continues to gain popularity at an alarming rate, especially among college aged, high school aged, and middle school aged children.

WHEREAS, a number of traffic accidents have been attributed to nitrous oxide as a causation of those accidents. Nitrous oxide has also been linked to the crime of rape.

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 completely eliminate the uncontrolled possession, distribution and sale of nitrous oxide in the City of Rialto.

WHEREAS, eliminating the uncontrolled sales and distribution of nitrous oxide in the City of Rialto will reduce the number of persons, in possession and use, of nitrous oxide as an intoxicating drug and will promote public health, safety and welfare.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO FINDS AND ORDAINS AS FOLLOWS:

Section 1. The above recitals are all true and correct and are hereby adopted as findings.

Section 2. The Rialto Municipal Code is hereby amended to add a new Chapter 9.44, entitled "Nitrous Oxide," to read in full as follows:

"Chapter 9.44 - NITROUS OXIDE

9.44.010 - Definitions.

The following words and phrases used in this chapter shall be defined as follows:

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

1 "Nitrous Oxide" refers to colorless, nonflammable gas (N2O) sometimes used in
2 aerosols and sometimes used as an anesthetic, which, when inhaled, produces loss of
3 sensibility to pain, oftentimes preceded by exhilaration and laughter and used often as an
4 anesthetic in dentistry. Nitrous Oxide is oftentimes called, "laughing gas."

5 "Person" refers to any individual or other entity howsoever organized or constituted.

6 **9.44.020 - Sale or Distribution of Nitrous Oxide.**

7 It shall be unlawful for any person in the City to attempt to sell, offer, distribute, or
8 otherwise provide to any person nitrous oxide, a device to dispense or administer nitrous
9 oxide, or any device that contains a quantity of nitrous oxide.

10 **9.44.030 - Exceptions.**

11 Prohibitions in this chapter shall not apply to the following:

12 A. A pharmacist, pharmacist intern, or pharmacy as defined by Cal. Bus. & Prof.
13 Code § 4036, Cal. Bus. & Prof. Code §4030, and Cal. Bus. & Prof. Code §4037, as may be
14 amended, who dispenses the device in the course of his duties as a pharmacist or pharmacist
15 intern, or wholesalers licensed by the Board of Pharmacy or manufacturers classified under
16 the North American Industry Classification System pursuant to Cal. Penal Code § 381e, as
may be amended, who dispense the device in the course of their duties.

17 B. A health care professional who possesses and dispenses nitrous oxide in the
18 course of medical or dental treatment.

19 C. Any person who is under the influence of nitrous oxide or any material
20 containing nitrous oxide duly received pursuant to exception B or C above.

21 D. Any person that possesses or distributes nitrous oxide under an express
22 exemption pursuant to Cal. Penal Code § 381b-e.

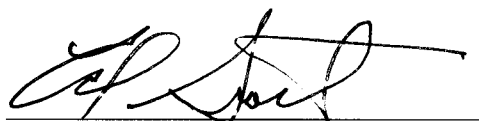
23 **9.44.040 - Violations and Penalties.**

24 Any violation of this chapter shall be a misdemeanor and, upon conviction thereof,
25 punishable by county jail or by a fine of \$1000, or both."

26 **Section 3.** If any word, sentence, phrase or clause of this chapter is deemed to be invalid
27 pursuant to a court of competent jurisdiction, the balance of this chapter shall remain in full force and
28 effect, this chapter being deemed as severable.

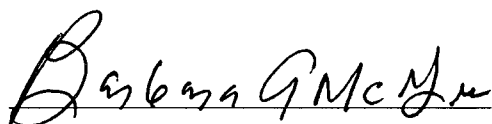
Section 4. This chapter is deemed to be an emergency ordinance and shall become effective immediately upon adoption and publication. Pursuant to the provisions of Subsection (b) of s 36937 of the Government Code of the State of California, this ordinance is for the immediate preservation of the public peace, health and safety and shall take effect immediately. The facts constituting the urgency are as follows: The City Council finds that 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 the sale and distribution of nitrous oxide can be harmful to the public, health, safety and welfare. Eliminating the possession, sales, and distribution of nitrous oxide in the City of Rialto will reduce the number of persons, in possession and use, of nitrous oxide as an intoxicating drug and will promote public health, safety and welfare.

1 PASSED, APPROVED AND ADOPTED this 14th day of March, 2017.

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5 Ed Scott, Mayor Pro Tem

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7 ATTEST:

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10 BARBARA A. McGEE, City Clerk

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13 APPROVED AS TO FORM

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17 FRED GALANTE, City Attorney

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)
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5 I, Barbara A. McGee, City Clerk of the City of Rialto, do hereby certify that the
6 foregoing Ordinance No. 1588 was duly passed and adopted at a regular meeting of the City Council
7 of the City of Rialto held on the 14th day of March, 2017.

8 Upon motion of Councilmember Baca Jr., seconded by Councilmember Trujillo, the
9 foregoing Ordinance No. 1588 was duly passed and adopted.

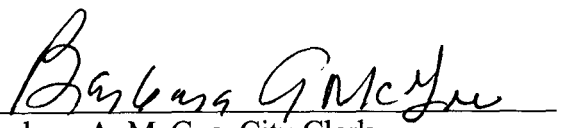
10 Vote on the Motion:

11 AYES: Mayor Pro Tem Scott, Councilmembers: Baca Jr., Trujillo, Carrizales

12 NOES: None

13 ABSENT: Mayor Robertson

14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the
15 City of Rialto, this 28th day of March, 2017.
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20 Barbara A. McGee, City Clerk
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