

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) OF THE SUNNYVALE MUNICIPAL CODE BY ADDING A NEW CHAPTER 9.29 REGULATING THE SALE AND DISTRIBUTION OF NITROUS OXIDE.

WHEREAS, Nitrous Oxide, commonly known as "laughing gas," is a colorless, nonflammable gas used in medical, industrial, and food preparation settings, yet its misuse presents significant health and safety risks; and

WHEREAS, the use of Nitrous Oxide continues to be an urgent public health challenge, with medical authorities linking its recreational use to serious health problems, including physical illness, mental health issues, injury, and even death; and

WHEREAS, recreational use of Nitrous Oxide by minors is particularly concerning due to its availability and promotion on social media; and

WHEREAS, while Nitrous Oxide has legitimate purposes, including its use in cooking, cake decorating, and automotive performance enhancement, it has also become widely accessible for illicit use as a drug; and

WHEREAS, California Penal Code, Section 381b, establishes that intentionally inhaling or ingesting Nitrous Oxide for intoxication is a misdemeanor, with offenders also guilty of a misdemeanor upon intoxication; and

WHEREAS, California Penal Code, Section 381c, prohibits the sale or distribution of Nitrous Oxide to individuals under the age of 18, except when administered by a licensed medical or dental practitioner; and

WHEREAS, California Penal Code, Section 381e, mandates that any distributor of Nitrous Oxide must inform purchasers that it is a violation of state law to dispense the substance to any individual intending to use it for intoxication; and

WHEREAS, despite existing state regulations, Nitrous Oxide cartridges can be sold in bulk quantities without effective oversight, posing a serious risk to public health and safety; and

WHEREAS, restricting the sale and distribution of Nitrous Oxide within the City of Sunnyvale will serve to reduce its availability for illicit use and promote the public health, safety, and welfare of the community; and

WHEREAS, the City of Sunnyvale has an affirmative duty to protect the health, safety, and welfare of all its residents and takes the issue of Nitrous Oxide abuse seriously.

NOW, THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the city to encourage the ban to sell or attempt to sell, offer, distribute, or otherwise provide any person Nitrous Oxide.

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

SECTION 1. Chapter 9.29 ADDED. Chapter 9.29 (Nitrous Oxide) of Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code is hereby added to read as follows:

Chapter 9.29
Nitrous Oxide

Section 9.29.010. Purpose.

The city council of the city of Sunnyvale does hereby find that Nitrous Oxide is detrimental to the health, safety and welfare of the public, and that the city council finds that it must safeguard the community from the dangers associated with the recreational misuse of Nitrous Oxide. While state law prohibits the sale of Nitrous Oxide for recreational use, it remains readily available in smoke shops, which routinely and knowingly sell the product without the safeguards required by law, thereby undermining the effectiveness of state regulation and promulgating recreational misuse. Widespread commercial availability of Nitrous Oxide in retail establishments in the City have contributed to related harms including litter, and impacts on health, safety, and the environment.

Section 9.29.020. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- 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 (N₂O), sometimes used in aerosols and sometimes used as an aesthetic, 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 called "laughing gas," "NOX," "galaxy gas," or "whippets," among other names.

- c. "Person" means any individual or entity howsoever organized or constituted.
- d. "Wholesale" 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 dental offices, commercial sales of devices in food production or a commercial kitchen, or the commercial sale of Nitrous Oxide for the purpose of producing food products for commercial sale, such as whipped cream canisters.

Section 9.29.030. Prohibition on Sale or Distribution of Nitrous Oxide.

- a. Except as otherwise explicitly authorized by law or allowed under this Chapter, it shall be unlawful for any person to 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.
- b. It shall be unlawful for any property owner, landlord, lessor, or person in control of real property to knowingly permit the sale, offer for sale, or offer for distribution Nitrous Oxide in violation of this Chapter on any premises owned, leased, or controlled by that person. Any such property owner, landlord, lessor, or person in control of real property shall be jointly and severally liable with the business operator for violations of this Chapter occurring on the premises.
- c. Any violation of this chapter is declared to be a public nuisance.

Section 9.29.040. Exceptions.

This Chapter shall not apply to the following:

- a. A pharmacist, pharmacist intern, or pharmacy as defined by California Business and Professions Code sections 4030, 4036, and 4037, as may be amended, who dispenses a device or Nitrous Oxide in the course of duties as a pharmacist or pharmacy intern, or wholesalers licensed by the Board of Pharmacy and in accordance with all applicable rules and regulations.
- b. A health care professional licensed in California who possesses and dispenses nitrous oxide in the course of medical or dental treatment.
- c. Where the Nitrous Oxide is contained in a food product for use as a propellant.

- d. Any person under the influence of Nitrous Oxide or in possession of any material containing Nitrous Oxide duly received pursuant to exceptions stated in this section.
- e. Any person who sells, attempts to sell, offers, or distributes Nitrous Oxide in a wholesale capacity. This exemption only applies if the wholesaler does not know or does not have reason to know that the recipient intends to use the Nitrous Oxide in violation of this Chapter.
- f. Any other circumstances exempted under the law.

Section 9.29.050. Enforcement.

The city manager may designate enforcement authority for this chapter, including but not limited to, peace officers and code enforcement officials.

Section 9.29.070. Penalties.

- a. Each instance in violation of this chapter shall constitute a separate violation.
- b. Any person violating any provision of this chapter shall be guilty of an infraction punishable as set forth in Chapter 1.04 of this code. Subsequent violations within a twelve-month period may, in the discretion of the city attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- c. Violations of this article may be subject to a civil action brought by the city, punishable by a fine of not less than two hundred and fifty dollars and not exceeding one thousand dollars per violation.
- d. The remedies provided in this chapter are cumulative and not exclusive, and shall be in addition to any and all other remedies available to the city.

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions 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, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
Date of Attestation: _____

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

REBECCA L. MOON
City Attorney