

ORDINANCE NO. 2025-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADDING CHAPTER 6.40 (PROHIBITION OF SALE, DISTRIBUTION, AND USE OF NITROUS OXIDE) TO TITLE 6 (HEALTH AND SANITATION) OF THE NEWPORT BEACH MUNICIPAL CODE, RELATING TO NITROUS OXIDE SALES

WHEREAS, Section 200 of the City Charter, of the City of Newport Beach ("City"), vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs, subject only to the restrictions and limitations contained in the City Charter and the State Constitution, and further grants the City Council the power to exercise, or act pursuant to any and all rights, powers, and privileges or procedures granted or prescribed by any law of the State of California;

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;

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;

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;

WHEREAS, the incidence of nitrous oxide recreational misuse and abuse has been on the rise within the City, and has been associated with multiple criminal incidents throughout the City in the past few months; and

WHEREAS, in the interest of the health, welfare, and safety of Newport Beach residents and visitors, the City Council desires to prohibit the misuse and abuse of nitrous oxide by restricting the sale, distribution and use of nitrous oxide within the jurisdictional boundaries of the City.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The table for contents for Title 6 (Health and Sanitation) of the Newport Beach Municipal Code is hereby amended and shall read as follows:

Title 6 HEALTH AND SANITATION

Chapters:

- 6.04 Garbage, Refuse and Cuttings**
- 6.05 Use of Expanded Polystyrene Disposable Food Service Ware**
- 6.06 State Mandated Municipal Solid Waste Diversion Programs**
- 6.08 Food Handling Services**
- 6.25 Regulation of Smoking in Public Areas**
- 6.30 Prohibition of Sale and Distribution of Flavored Tobacco Products**
- 6.40 Prohibition of Sale, Distribution, and Use of Nitrous Oxide**

Section 2: Chapter 6.40 (Prohibition of Sale, Distribution, and Use of Nitrous Oxide) of Title 6 (Health and Sanitation) of the Newport Beach Municipal Code is hereby added and shall read as follows:

Chapter 6.40 PROHIBITION OF SALE, DISTRIBUTION, AND USE OF NITROUS OXIDE

Sections:

- 6.40.010 Definitions.**
- 6.40.020 Use of Nitrous Oxide Prohibited.**
- 6.40.030 Sale and Distribution of Nitrous Oxide Prohibited.**
- 6.40.040 Exceptions to Prohibition.**

6.40.010 Definitions.

For the purposes of this chapter, the following words and phrases have the meaning set forth in this section:

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

"Distribute" means to furnish, giveaway, exchange, transfer, deliver or supply, whether or not for monetary gain.

"Nitrous oxide" means the colorless nonflammable gas sometimes identified as N₂O, 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.

“Wholesale capacity” means the sale of or distribution of nitrous oxide or devices in large/bulk quantities to retailers, resellers, or professionals, and not to an individual consumer or end user.

“Sell” or “sale” means to furnish, exchange, transfer, deliver, or supply for monetary gain.

6.40.020 Use of Nitrous Oxide Prohibited.

It shall be unlawful to use or attempt to use nitrous oxide within the City, unless the use of the nitrous oxide is authorized by the exceptions set forth in Section 6.40.040.

6.40.030 Sale and Distribution of Nitrous Oxide Prohibited.

It shall be unlawful for any person in the City to sell, advertise for sale, offer for sale, attempt to sell, distribute, or otherwise provide to any person, directly or indirectly, nitrous oxide, any device to dispense or administer nitrous oxide, or any device that contains any quantity of nitrous oxide, unless authorized by the exceptions set forth in Section 6.40.040.

6.40.040 Exceptions to Prohibition.

This chapter shall not apply in the following circumstances:

- A. When nitrous oxide is contained in a food product and used solely as a propellant.
- B. When nitrous oxide or any associated device is sold, advertised, offered for sale, attempted to be sold, distributed, or otherwise provided in a wholesale capacity.
- C. When nitrous oxide or any associated device is used, sold, advertised, offered for sale, attempted to be sold, distributed, or otherwise provided solely for the purpose of enhancing vehicle performance.
- D. When nitrous oxide is used, sold, advertised, offered for sale, attempted to be sold, distributed, or otherwise provided for medical or dental care, under the supervision of a State licensed medical or dental practitioner and in accordance with all applicable rules and regulations of the State.

- E. When a person uses nitrous oxide pursuant to a valid prescription issued by a medical practitioner licensed by the State, and such use is consistent with the terms of the prescription.
- F. When nitrous oxide or any associated device is sold, advertised, offered for sale, attempted to be sold, distributed, or otherwise provided by: a State licensed pharmacist, pharmacist intern, or pharmacy as defined by California Business & Professions Code §§ 4030, 4036, and 4037; or a wholesaler licensed by the California State Board of Pharmacy.
- G. Any other circumstances exempted under law.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality 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 or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 23rd day of September, 2025, and adopted on the 14th day of October, 2025, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

Joe Stapleton, Mayor

ATTEST:

Molly Perry, Interim City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney