

ORDINANCE NO. ()

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, ADDING ARTICLE VII TO CHAPTER 14 OF THE SONOMA COUNTY CODE TO RESTRICT THE RETAIL SALES AND DISTRIBUTION OF NITROUS OXIDE, SUBJECT TO LIMITED EXCEPTIONS

The Board of Supervisors of the County of Sonoma, State of California, (“Board”) ordains as follows:

WHEREAS, California Health and Safety Code § 101025 empowers county boards of supervisors to adopt ordinances as necessary to preserve and protect public health in unincorporated areas, so long as such ordinances do not conflict with general laws; and

WHEREAS, Nitrous Oxide is a colorless gas that has legitimate and beneficial uses when administered as an anesthetic in a medically supervised clinical setting and for various commercial, industrial, scientific, automotive, and food-related applications; and

WHEREAS, unlike many legitimate uses of Nitrous Oxide in commercial, industrial, scientific, medical, and professional settings that are subject to oversight, use restrictions, or other safeguards designed to promote their intended purpose, certain retail Nitrous Oxide products may be readily acquired for non-medical inhalation, increasing the risk of misuse and associated public health harms; and

WHEREAS, the non-medical inhalation of Nitrous Oxide has become an increasing public health concern due to its association with acute and chronic adverse health effects, including oxygen deprivation, impaired judgment, loss of consciousness, and other serious health consequences that may increase the risk of traffic collisions, accidental injuries, and emergency medical responses; and

WHEREAS, repeated non-medical inhalation of Nitrous Oxide may result in compulsive use patterns, substance use disorders, vitamin B12 depletion, neurological injury, and other long-term health consequences, creating significant risks to individual and community health; and

WHEREAS, records, reports, investigations, and community complaints received by Sonoma County departments and agencies document Nitrous Oxide-related traffic collisions, impaired driving incidents, emergency medical responses, emergency department visits, fatalities, and other adverse public health and safety impacts within Sonoma County; and

WHEREAS, the Board finds that the widespread retail availability of Nitrous Oxide products marketed, packaged, or sold in a manner facilitating non-medical inhalation increases access to such products and contributes to the incidence of Nitrous Oxide misuse and its associated public health harms; and

WHEREAS, California Health and Safety Code § 25218 recognizes household hazardous waste management as a local government responsibility, and Sonoma County agencies have documented an increase in discarded Nitrous Oxide cylinders within local waste streams creating litter, disposal, and waste management challenges that burden local agencies and contribute to environmental, and public health and safety impacts; and

WHEREAS, during inspections conducted pursuant to Sonoma County's Tobacco Retail License program, County staff documented retail sales of Nitrous Oxide products marketed in ways that appeal to youth and young adults and facilitate non-medical inhalation, including flavored products, colorful packaging, youth-oriented branding, and sale alongside accessories commonly used for inhalation; and

WHEREAS, during inspections conducted pursuant to Sonoma County's Tobacco Retail License program, County staff documented the retail sales of Nitrous Oxide in large-capacity cylinders and canisters containing hundreds or thousands of grams of Nitrous Oxide, quantities that facilitate repeated non-medical inhalation and may increase the risk of serious health consequences, environmental impacts, and other adverse community effects; and

WHEREAS, during inspections conducted pursuant to Sonoma County's Tobacco Retail License program, County staff documented that Nitrous Oxide products are frequently sold alongside tobacco products, smoking paraphernalia, and accessories commonly associated with inhalation, further indicating that such products are being marketed and distributed for purposes other than traditional culinary, industrial, scientific, or medical uses; and

WHEREAS, County staff conducted retailer outreach regarding existing California laws governing Nitrous Oxide sales and associated public health risks, yet continued to document the widespread retail availability of Nitrous Oxide products marketed and sold for non-medical inhalation; and

WHEREAS, the County of Sonoma desires to regulate the sale and distribution of Nitrous Oxide in order to preserve and protect public health and to discourage the sale of Nitrous Oxide products for non-medical inhalation and other uses associated with the public health harms identified herein; and

WHEREAS, the Board finds that reducing the availability of Nitrous Oxide products intended for non-medical inhalation is reasonably related to protecting the public health, safety, and welfare of County residents, particularly youth and young adults, by preventing avoidable injuries, neurological harm, impaired driving, and other adverse community impacts associated with Nitrous Oxide misuse;

NOW, THEREFORE, the Board ordains as follows:

Section 1. Adoption of Article VII to Chapter 14. Article VII, entitled Restrictions on the Retail Sales and Distribution of Nitrous Oxide, as set forth in Exhibit A shall be codified in Chapter 14 of the Sonoma County Code.

Section 2. Undertaking Limited to Promotion of the General Welfare. In undertaking the enforcement of this ordinance, the County is assuming a duty solely to promote the general welfare. It does not assume or impose on its officers and employees an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 3. Preemption. This Article complements and does not conflict with state and federal law. It shall not apply to conduct governed, authorized, or prohibited by state or federal law, and shall not be enforced where such enforcement would create a conflict with state or federal law. To the extent state or federal law preempts local regulation, this Article shall be inoperative as to the preempted subject matter.

Section 4. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 5. Effective Date and Publication. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California. Pursuant to Government Code Section 25124, complete copies of Exhibit “A” are on file with the Clerk of the Board of Supervisors and are available for public inspection and copying during regular business hours in the office of the Clerk of the Board of Supervisors, 575 Administration Drive, Room 100A, Santa Rosa.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the X day of X, 2026, and finally passed and adopted this X day of X, 2026, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Rabbitt: Coursey: Gore: Hopkins: Hermosillo:

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

David Guhin,
Clerk of the Board of Supervisors

EXHIBIT A

ARTICLE VII RESTRICTIONS ON THE RETAIL SALES AND DISTRIBUTION OF NITROUS OXIDE

14-7-010 Purpose and Authority.

This Article is enacted pursuant to the County's police powers to protect public health, safety, and welfare. Its purpose is to eliminate retail access to Nitrous Oxide products susceptible to recreational inhalation while preserving lawful and legitimate uses of Nitrous Oxide, including medical, dental, industrial, research, and food production uses. This Article applies to all Persons engaged in Retail Sales within the unincorporated area of Sonoma County, including holders of Tobacco Retailer Licenses under Chapter 32A. This Article applies only within the unincorporated areas of the County unless adopted independently by an incorporated city. Compliance with this Article is a condition of maintaining a Tobacco Retailer License issued pursuant to Chapter 32A.

14-7-020 Definitions.

For the purposes of this Article, the following definitions shall apply:

- (a) **Device.** "Device" means any cartridge, compressed gas cylinder, apparatus, container, attachment, nozzle, or other object designed to contain, dispense, or administer Nitrous Oxide, including but not limited to whipped cream chargers and similar cartridges. "Device" does not include a finished Food Product as defined in this Article.
- (b) **Food Product.** "Food Product" means a commercially packaged consumable product, factory-sealed by the original manufacturer, containing Nitrous Oxide solely for use as a propellant or preservative, and sold as a finished food or beverage item. Loose cartridges, cylinders, tanks, or dispensing devices are not Food Products.
- (c) **Food Grade N₂O Cartridge.** "Food Grade N₂O Cartridge" means a factory-sealed Nitrous Oxide cartridge or container intended solely for food or beverage preparation—such as whipping cream, culinary foams, or cocktail aeration—that:
 - (1) complies with applicable food grade purity standards as certified by the manufacturer;
 - (2) is not flavored or marketed in a manner suggesting recreational inhalation;
 - (3) is labeled clearly and conspicuously for food or beverage preparation only, and not for inhalation; however, labeling alone is not sufficient to establish that a product is intended solely for food or beverage preparation where other factors indicate recreational use, including but not limited to the factors listed in Section 14-7-030.
- (d) **Nitrous Oxide.** "Nitrous Oxide" means the colorless nonflammable gas sometimes identified as N₂O, including Nitrous Oxide in compressed gas, cartridge, cylinder, or similar form. Nitrous Oxide is often informally or colloquially referred to as "laughing gas," "NOX," "galaxy gas," or "whippits," among other names.

- (e) **Person.** “Person” means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee, or any other entity.
- (f) **Retail Sales.** “Retail Sales” means the sale, distribution, offer, or other provision to a consumer for personal use, rather than commercial, medical, dental, industrial, research, or food-production use.
- (g) **Research and Development.** “Research and Development” means the systematic investigation, experimentation, or development undertaken to acquire new knowledge, test hypotheses, evaluate or improve products, processes, or technologies, or create new applications, when conducted by, or under the supervision of:
 - (1) an accredited academic or vocational institution;
 - (2) a business entity engaged in bona fide scientific, engineering, medical, or technological product development; or
 - (3) a government agency or recognized nonprofit research organization. Research and Development does not include activities primarily intended for personal, recreational, or other non-scientific purposes.
- (h) **Wholesale Capacity.** “Wholesale Capacity” means the sale or distribution of Nitrous Oxide, a Device designed to dispense or administer Nitrous Oxide, or any Device that contains any quantity of Nitrous Oxide, when the sale or distribution is for commercial resale or for other commercial operations. Examples include, but are not limited to, commercial sale of dental supplies to dentists or dentistry offices, commercial sale of Devices for use in food production or in a commercial kitchen, and commercial sale of Nitrous Oxide for the purpose of producing Food Products for commercial sale, including whipped cream canisters.

14-7-030 Restrictions on Retail Sales and Distribution of Nitrous Oxide.

- (a) **Prohibited Conduct.** Except as otherwise authorized by law or permitted by this Article, it is unlawful for any Person to engage in Retail Sales of Nitrous Oxide, a Device designed to dispense or administer Nitrous Oxide, or any Device that contains any quantity of Nitrous Oxide.
- (b) **Presumption of Unlawful Intent to Sell or Distribute.** Except as otherwise authorized by law or permitted under Section 14-7-040 of this Article, possession by a Person of any of the following shall give rise to a rebuttable presumption that the Person is attempting to sell or distribute Nitrous Oxide in violation of this Article:
 - (1) any refillable or disposable Nitrous Oxide cylinder with a net content of six (6) pounds or more;
 - (2) an aggregate of two hundred (200) or more standard 8-gram Nitrous Oxide cartridges; or
 - (3) any equivalent amount of Nitrous Oxide.

This presumption may be rebutted by credible evidence of lawful use or exemption under this Article.

- (c) **Determining Knowledge or Reason to Know.** In determining whether a Person knew or had reason to know that Nitrous Oxide or a Device would be used for unlawful recreational inhalation, relevant factors may include, but are not limited to:
- (1) whether the business engages in the sale of Tobacco Products, as defined in Chapter 32A of this Code;
 - (2) product packaging or advertising promoting inhalation or euphoric effects;
 - (3) flavoring, cartoon imagery, candy references, or other marketing reasonably likely to appeal to minors;
 - (4) sale in combination with balloons, inhalation masks, crackers, or similar accessories commonly associated with recreational inhalation;
 - (5) statements or conduct by the purchaser indicating intended recreational use;
 - (6) the quantity, frequency, or circumstances of the sale; and
 - (7) any other relevant circumstances reasonably indicating unlawful recreational use.
- (d) **Lawful Possession Clarified.** Nothing in this Article prohibits mere possession of Nitrous Oxide or a Device absent evidence of unlawful sale, distribution, or other conduct prohibited by this Article.

14-7-040 Exceptions.

This Article does not apply to the sale, attempted sale, offer, distribution, or other provision of Nitrous Oxide, a Device containing Nitrous Oxide, or a Device to administer Nitrous Oxide under any of the following circumstances:

- (a) **Food Product.** Nitrous Oxide is contained within a Food Product intended for consumer consumption.
- (b) **Food Grade N₂O Cartridges.** Nitrous Oxide is contained within a Food Grade N₂O Cartridge sold, offered, or distributed solely for food or beverage preparation.
- (c) **Wholesale Capacity.** Nitrous Oxide or a Device is sold, attempted to be sold, offered, or distributed in a Wholesale Capacity to a business entity for use in the entity's lawful business operations and solely for exempt purposes under this Article, and the wholesaler does not know or have reason to know that the recipient intends to violate Section 14-7-030. Any Person claiming this exception shall maintain business records such as invoices, resale certificates, purchase orders, demonstrating the lawful commercial purpose of the transaction for a period of at least two (2) years, and shall make such records available for inspection within a reasonable time upon lawful request by authorized County personnel, and shall maintain such records at the business location or at a designated business office.
- (d) **Vehicle Performance.** The Nitrous Oxide or Device is specifically designed and labeled for use in a vehicle to enhance vehicle performance.
- (e) **Medical/Dental.** The Nitrous Oxide is sold 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.

- (f) **Pharmacy/Pharmacists.** The Nitrous Oxide or Device is sold or distributed by a pharmacist, pharmacist intern, or pharmacy as defined by California Business and Professions Code Sections 4030, 4036, and 4037, as may be amended, in the course of their duties as a pharmacist or pharmacist intern, or by wholesalers licensed by the Board of Pharmacy.
- (g) **Research and Development.** The Nitrous Oxide is sold or distributed specifically for the purpose of Research and Development.
- (h) **Federal/State Exceptions.** Any other circumstances exempted under state or federal law.

14-7-050 Public Nuisance.

Any violation of this Article constitutes a public nuisance and may be addressed through any remedy authorized by law, including but not limited to civil actions for injunction or other equitable relief. Any Nitrous Oxide, Device, or related item possessed, sold, offered, or distributed in violation of this Article constitutes a public nuisance and may be seized, impounded, or abated by authorized enforcement personnel pursuant to applicable nuisance abatement procedures under any applicable provision of the Sonoma County Code or state law.

Nothing in this Article shall be construed to impose liability or abatement duties upon a property owner unless the owner caused, permitted, or participated in the violation. Nothing in this Article requires the County to initiate abatement, lien procedures, or other property-based remedies against a property owner absent such participation.

14-7-060 Enforcement.

- (a) **Misdemeanor.** Any Person violating, or causing the violation, of any provision of this Article shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment in the County Jail for a term not exceeding six (6) months, or by both such fine and imprisonment. Every day a violation continues constitutes a separate offense.
- (b) **Civil Penalties.** Any Person who violates this Article is subject to a civil penalty of up to one thousand dollars (\$1,000.00) per violation, recoverable in a civil action brought by County Counsel. Each day of violation constitutes a separate violation. In any civil action to enforce this Article, the County shall be entitled to recover its reasonable attorneys' fees and costs to the extent permitted by law. Civil penalties may be sought independently of, or in addition to, any criminal enforcement.
- (c) **Administrative Enforcement.** Violations of this Article may also be enforced through administrative citations and administrative penalties pursuant to any applicable provision of the Sonoma County Code. Each day of violation constitutes a separate violation.
- (d) **Tobacco Retailer License Enforcement.**

- (1) Compliance with this Article is a condition of maintaining a Tobacco Retailer License issued pursuant to Chapter 32A of the Sonoma County Code.
 - (2) Any violation of this Article by a holder of a Tobacco Retailer License, or by the holder's agents or employees acting within the course and scope of their employment, constitutes a violation of Chapter 32A and provides an independent basis for suspension, revocation, nonrenewal, administrative penalties, or any other enforcement action authorized under Chapter 32A.
 - (3) A holder of a Tobacco Retailer License shall permit compliance inspections as authorized under Chapter 32A-13, of all areas of the licensed premises during business hours. Failure to provide or arrange for access to the licensed premises for any inspection or investigation constitutes a violation of Chapter 32A.
 - (4) For purposes of applying the progressive enforcement provisions of Section 32A-14, a violation of this Article shall be deemed a violation of Chapter 32A and shall be counted in determining the number of violations occurring at a licensed location.
- (e) **Inspections.** Any business premises subject to this Article may be inspected during regular business hours by authorized County officials for the limited purpose of determining compliance with this Article and any applicable licensing requirements.
- (f) **Cumulative Remedies.** All enforcement remedies under this Article are cumulative and may be exercised independently or concurrently. Nothing in this Article limits any other civil, criminal, or administrative enforcement remedies authorized by this Code or state law. All available remedies remain applicable.

14-8-020 Headings.

The section and subsection headings in this Article are for convenience only and shall not be construed to limit or expand the meaning of any provision of this Article.