

ORDINANCE NO. .

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

ORDINANCE ADDING CHAPTER 4.124 TO THE SAN MATEO COUNTY ORDINANCE CODE BANNING THE SALE AND DISTRIBUTION OF NITROUS OXIDE SUBJECT TO LIMITED EXCEPTIONS

The Board of Supervisors of the County of San Mateo ("County") hereby finds and declares as follows:

WHEREAS, nitrous oxide is an odorless, colorless chemical with legitimate uses, including for medical or dental procedures in clinical settings, as well as for industrial, research and development, and food-product purposes; and

WHEREAS, nitrous oxide is also misused and abused, in part, because it is easy to purchase from retail vendors and it is relatively inexpensive; and

WHEREAS, the misuse and abuse of nitrous oxide or "whippits" can cause long term negative health effects, including organ and neurological damage, depression, and psychosis; and

WHEREAS, youth are particularly susceptible to the dangers associated with recreational use of nitrous oxide, and, in 2009, the State of California prohibited the sale of nitrous oxide to persons under the age of 18 (with certain exceptions) (Cal. Penal Code, § 381c); and

WHEREAS, the San Mateo County Youth Commission's mission includes identifying issues of concern to young people in the County, and the Youth Commission has raised an important public health concern regarding the use and abuse of nitrous oxide among San Mateo County youth; and

WHEREAS, the Youth Commission, along with San Mateo County's Behavioral Health and Recovery Services, has identified that youth in San Mateo County are at risk for nitrous oxide abuse due to the sale of nitrous oxide at shops in the County, potentially without age verification; and

WHEREAS, despite the State's prohibition on the sale of nitrous oxide to persons under the age of 18, the continued risk of recreational use of nitrous oxide by youth in the County highlights the need for additional action to prevent nitrous oxide abuse; and

WHEREAS, the Board of Supervisors has a substantial interest in protecting youth and other vulnerable residents in the County from the harms of nitrous oxide use; and

WHEREAS, on August 12, 2025, this Board adopted Resolution No. 081349 affirming the County's commitment to preventing youth nitrous oxide abuse and directing the County Executive's Office to have prepared an ordinance banning the sale and distribution of nitrous oxide; and

WHEREAS, the County desires to regulate the sale and distribution of nitrous oxide in order to preserve and protect public health and to dissuade sellers of nitrous oxide products from selling to individuals whom they know or have reason to know intend to use the products for illegal purposes (i.e., recreational ingestion and/or inhalation); and

WHEREAS, a ban on the sale and distribution of nitrous oxide is necessary to protect the health, safety, and welfare of San Mateo County residents, and particularly youth, from the harms of nitrous oxide use.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo

ordains as follows:

SECTION 1. A new Chapter 4.124 is hereby added to the San Mateo County

Ordinance Code to be numbered and entitled and to read as follows:

CHAPTER 4.124 NITROUS OXIDE

4.124.010 Purpose and authority.

This Chapter is enacted pursuant to the County's police powers to protect the public safety, health, and welfare, consistent with state and federal law. The purpose of this Chapter 4.124 is to advance the health, safety, and general welfare of the County of San Mateo citizens by eliminating retail access for recreational use of Nitrous Oxide, a gas that is dangerous when illicitly used as an intoxicant.

4.124.020 Definitions.

For the purposes of this Chapter, the following definitions shall 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 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 and often used as an anesthetic in dentistry. Nitrous oxide is often informally or colloquially referred to as "laughing gas," "NOX," "galaxy gas," or "whippits," among other names.
- (c) "Person" means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee, or any other entity.
- (d) "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.
- (e) "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).

4.124.030 Prohibition on Sale or Distribution of Nitrous Oxide.

- (a) Except as otherwise authorized by law or allowed under this Chapter, 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.
- (b) Except as otherwise authorized by law or in circumstances described in Section 4.124.040 of this Chapter, possession by a Person of (i) any refillable or disposable Nitrous Oxide cylinder with a net content of six (6) pounds or more; (ii) an aggregate of two hundred (200) or more standard 8-gram Nitrous Oxide cartridges; or (iii) any equivalent amount of Nitrous Oxide shall give rise to a rebuttable presumption that the Person is attempting to sell or distribute Nitrous Oxide. This presumption may be rebutted by competent evidence of lawful use or exemption under this Chapter.

4.124.040 Exceptions.

This Chapter does not apply to the sale, attempt to sell, offer, distribution, or other manner of providing Nitrous Oxide, a Device containing Nitrous Oxide, or a Device to administer 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. 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 4.124.030 of this Chapter.
- (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, offered, 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 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 wholesalers licensed by the Board of Pharmacy.
- (f) If the Nitrous Oxide is being sold, attempted to be sold, offered, or distributed specifically for the purpose of Research and Development.
- (g) Any other circumstances exempted under law.

4.124.150 Public Nuisance.

Any violation of this Chapter is hereby declared a public nuisance, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this Ordinance Code and state law, including, but not limited to, an action for abatement or injunctive relief. All remedies provided herein shall be cumulative and not exclusive.

4.124.160 Enforcement.

- (a) Any Person violating, or causing the violation, of any provision of this Chapter 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 such violation continues shall constitute a separate offense.
- (b) A violation of this Chapter is grounds for revocation of a Tobacco Retailer Permit, in accordance with Section 4.98.290 of Chapter 4.98 of this Ordinance Code.
- (c) A violation of this Chapter is grounds for revocation of a license or permit to operate under Title 5 (Business Regulations) of this Ordinance Code, if applicable.
- (d) This Chapter shall not be interpreted to limit the applicable civil or administrative remedies available under law. All available enforcement procedures and remedies remain applicable including, but not limited to, administrative fines set forth in Chapter 1.40 of this Ordinance Code or other applicable law.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or

phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective 30 days from the date of adoption.

* * * * *