

CITY OF ALAMEDA ORDINANCE NO. _____

AMENDING THE ALAMEDA MUNICIPAL CODE AMENDING ARTICLE XVIII (TOBACCO RETAILERS) OF CHAPTER VI (BUSINESSES, OCCUPATIONS, AND INDUSTRIES) PROHIBITING THE SALE AND DISTRIBUTION OF NITROUS OXIDE BY TOBACCO RETAILERS, CONVENIENCE STORES, AND OTHER RETAIL ESTABLISHMENTS

WHEREAS, the City of Alameda ("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, 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; 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 City finds that recreational use of nitrous oxide has been identified by medical authorities as a serious and growing public health threat, particularly among youth, and that misuse of this substance can cause long-term physical injuries including asphyxiation, paralysis, neurological damage, and even death; and

WHEREAS, studies show that the abuse of nitrous oxide has increased nationwide in recent years, a trend accelerated since the COVID-19 pandemic, and that this increase has been especially pronounced among teenagers and young adults; and

WHEREAS, while state law prohibits the sale of nitrous oxide for recreational use, nitrous oxide remains readily available in tobacco retail stores, also known as smoke shops, as well as convenience stores, which routinely and knowingly sell the product without the safeguards required by law, thereby undermining the effectiveness of state regulation and implicitly condoning recreational misuse; and

WHEREAS, the widespread commercial availability of nitrous oxide in tobacco, convenience, and other retail stores within the City both enables abuse and contributes to related harms, including dangerous driving, littering, and other negative impacts on public health, safety, and the environment; and

WHEREAS, the City does not currently regulate the retail sale of nitrous oxide, and finds that in the absence of such regulation, sales by vendors create a significant risk of misuse and abuse by individuals who purchase the product for recreational purposes; and

WHEREAS, the City desires to regulate the sale of nitrous oxide to close this loophole, reduce the availability of nitrous oxide for recreational use, and to preserve and protect the health, safety, and welfare of the residents of the City.

NOW THEREFORE, the City Council of the City of Alameda does hereby ordain as follows:

SECTION 1. The City Council of the City of Alameda finds that the foregoing recitals, as well as the contents of the related staff report, are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2: The Alameda Municipal Code is hereby amended by adding to Article XVII (Tobacco Retailers) as follows:

6-60.5 - Purpose.

This Chapter is enacted pursuant to the City's police powers to protect the public health, safety, and welfare, consistent with state and federal law. The purpose of this Chapter is to safeguard the community from the dangers associated with the recreational misuse of nitrous oxide, a substance that poses serious health risks when used as an intoxicant. By prohibiting the retail sale of nitrous oxide in smoke shops and similar establishments, the City seeks to reduce opportunities for abuse, reinforce state restrictions, and promote the overall well-being of the City's residents.

6-60-10 - Definitions.

Nitrous oxide means the colorless, nonflammable gas sometimes identified as N₂O, which is sometimes used in aerosols or as an anesthetic, which, when inhaled, produces loss of sensibility to pain, often preceded by exhilaration and laughter. It is also used as an anesthetic in dentistry. Nitrous oxide is commonly or referred to as "laughing gas," "NOX," "galaxy gas," or "whippits."

Nitrous oxide device means any cartridge, compressed gas cylinder, apparatus, container, balloon, attachment, nozzle, or other object used to contain, dispense, or administer nitrous oxide.

Wholesale capacity means the sale of or distribution of nitrous oxide or a nitrous oxide device 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 nitrous oxide 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 (e.g., whipped cream canisters).

6-60.180 - Prohibition on Sale or Distribution of Nitrous Oxide.

a. Except as otherwise authorized by law or allowed under this article, it shall be unlawful for any person to sell, attempt to sell, offer, or distribute nitrous oxide or any nitrous oxide device.

b. Except as otherwise authorized by law or allowed under Section 6-60.210, it shall be unlawful for any property owner, landlord, lessor, or person in control of real property within the City of Alameda to knowingly allow the sale, offer of sale, distribution, or provision of nitrous oxide or any nitrous oxide device on said real property. Any such property owner, landlord, lessor, or person in control of real property shall be jointly and

severally liable with any seller or distributor of nitrous oxide or any nitrous oxide device on said real property.

6-60.190 - Exceptions to Prohibition.

This article does not apply to the sale, attempt to sell, distribution, or other manner of providing nitrous oxide or a nitrous oxide device 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 a nitrous oxide device is provided 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 6-60-210.
- c. If the nitrous oxide or nitrous device is specifically designed, marketed, and safety-labeled for industrial use exclusively for automotive purposes, and used or provided at a licensed automotive facility that is approved by the California Bureau of Automotive Repair and in compliance with all City zoning laws.
- d. If the nitrous oxide or nitrous oxide device is being provided 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 governing the lawful prescription, order, or administration of nitrous oxide.
- e. If the nitrous oxide or a nitrous oxide device is being provided by a pharmacist, pharmacist intern, or pharmacy as defined by California Business & Professions Code §§ 4030, 4036, and 4037, as may be amended, in the course of their duties.
- f. Any other circumstances exempted under law.

6-60.200 - Documentation Requirements.

Any sale or distribution of nitrous oxide or any nitrous oxide device shall comply with all documentation requirements set forth in California Penal Code Section 381e.

6-60.210 - 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 Code and state law, including, but not limited to, an action for abatement or injunctive relief.

6-60.-220 - Violations and Penalties.

- a. Any violation of this section shall be a misdemeanor and, upon conviction thereof, punishable by imprisonment in the County jail for a period not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000), or both. Every day such violation continues shall constitute a separate offense.
- b. A violation of this section is grounds for suspension or revocation of a City of Alameda Business License pursuant to Section 5-3.7, or a Tobacco Retailer License pursuant to Section 6-60.130.

c. 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 Section 1-7.4 or other applicable law.

SECTION 2: Environmental Compliance. Pursuant to the provisions of the California Environmental Quality Act (“CEQA”) (California Public Resources Code Section 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.), the City Council’s adoption of this Ordinance does not constitute a “project” therefore no further environmental review under CEQA is required. On a separate and independent basis, pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that there is no possibility that the City Council’s adoption of this Ordinance may have a significant effect on the environment, either directly or indirectly, and therefore no further environmental review under CEQA is required,

SECTION 3. Severability. If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

SECTION 4. Implied Repeal. Any provision of the Alameda Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effect the provisions of this Ordinance.

SECTION 5. This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the 5th day of May 2026, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 6th day of May 2026.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda