



CITY OF

NEWPORT BEACH

City Council Staff Report

September 23, 2025
Agenda Item No. 4

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David Miner, Chief of Police - 949-644-3701, dminer@nbpd.org

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TITLE: Ordinance No. 2025-27: Adding Chapter 6.40 Prohibition of Sale, Distribution and Use of Nitrous Oxide

ABSTRACT:

For the City Council's consideration is the introduction of Ordinance No. 2025-27, which, if adopted, will add Chapter 6.40 to the Newport Beach Municipal Code, Prohibition of Sale, Distribution and Use of Nitrous Oxide in Newport Beach.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2025-27, *An Ordinance of the City Council 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* and pass to a second reading on October 14, 2025.

DISCUSSION:

Nitrous Oxide, commonly referred to as "laughing gas" or "whippets," has emerged as a public health and safety concern in Newport Beach and Orange County. While nitrous oxide has legitimate commercial and medical uses, it is increasingly misused by youth and young adults as a recreational inhalant. This misuse presents unique challenges that warrant local regulatory action beyond existing state law.

Nitrous oxide is widely available for purchase under the guise of "whipped cream chargers" or "culinary use." These products are inexpensive, packaged in colorful, youth-appealing designs, and sold in smoke shops, convenience stores, and online platforms. Unlike alcohol or cannabis, there are no meaningful point-of-sale restrictions. This accessibility has normalized nitrous oxide as a cheap, easily obtainable drug among youth and young adults.

Recreational use of nitrous oxide is far from benign. Short-term effects include disorientation, nausea, blackouts and impaired motor control, which pose immediate risks

to both users and the public, particularly when combined with driving or public disturbances. More troubling are the long-term effects of chronic misuse, which include vitamin B12 depletion, irreversible nerve damage, paralysis, cognitive impairments and even death.

Newport Beach Police Department nitrous oxide related arrests rose from five in 2020 to 41 in 2024, with 34 arrests already recorded in 2025. This represents more than a 700% increase since 2020, with the City on pace to exceed last year's total by the end of 2025. These figures indicate not only a consistent upward trajectory but also a concentration of activity within our community, underscoring the need for proactive intervention.

California Penal Code §381b makes it illegal to possess or use nitrous oxide for the purpose of intoxication, but the statute does not adequately deter sales under the "culinary use" loophole. As a result, local smoke shops and other retailers continue to profit from the distribution of nitrous oxide for recreational purposes, while law enforcement is left to prove intent at the individual level.

Neighboring jurisdictions including Santa Ana, Costa Mesa and the County of Orange have recently moved to close this loophole by adopting ordinances that directly prohibit the sale, distribution and recreational use of Nitrous Oxide. By adopting a local ordinance, Newport Beach can safeguard public health, and provide law enforcement with a clear and enforceable tool to reduce misuse.

A municipal ban on the sale, distribution and recreational use of nitrous oxide will help close regulatory gaps, reduce youth access, limit public nuisance impacts and affirm the City's commitment to proactive public safety.

FISCAL IMPACT:

There is no fiscal impact related to this item. Should the proposed ordinance be adopted by the City Council, the City will notice retailers regarding the prohibition. Any costs associated with the noticing efforts can be absorbed within the current budget.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action 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, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Ordinance No. 2025-27