[Police Code - Prohibiting the Retail Sale of Nitrous Oxide]

Ordinance amending the Police Code to prohibit the retail sale of nitrous oxide, with exceptions for medical or dental procedures, research and development, manufacturing or industrial operations, and food-product purposes; make violations of the prohibition an infraction or misdemeanor, subject to imprisonment and or fine; authorize the Director of Public Health to enforce the prohibition; and make violations of the prohibition a public nuisance, subject to administrative fines, civil penalties, and revocation of a tobacco sales permit.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Police Code is hereby amended by adding Article 40, consisting of Sections 4000 to 4010, to read as follows:

ARTICLE 40: RETAIL SALE OF NITROUS OXIDE

SEC. 4000. FINDINGS AND PURPOSE.

(a) 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. But nitrous oxide is also misused and abused, in part because it is easy to purchase from retail vendors, and it is relatively inexpensive. The incidence of nitrous oxide recreational misuse

and abuse has been on the rise over the past decade, with multiple medical studies noting significant increases in the past five years.

(b) The misuse and abuse of nitrous oxide or "whippits" can cause long-term negative health effects, including severe consequences such as cardiac arrhythmias, seizures, brain damage, paralysis, and death, as well as less severe effects including euphoria, nausea, dizziness, disorientation, frostbite, ear or lung injury, anxiety, depression, hallucinations, paranoia, weakened immune function, hematologic abnormalities, and vitamin B12 deficiency.

(c) 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). 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 City highlights the need for additional action to prevent nitrous oxide abuse. Nitrous oxide has been linked to serious vehicle collisions in California, including a 2024 accident that killed the 20-year-old driver under the influence of the drug, left his 21-year-old passenger unable to walk or talk due to severe traumatic brain injury, and killed the two people in the other vehicle.

(d) The City has a substantial interest in protecting youth and other residents in the City from the harms of nitrous oxide use, and preventing the use of nitrous oxide for illegal purposes (i.e., recreational ingestion and/or inhalation). A ban on the retail sale and distribution of nitrous oxide, with certain exceptions, is necessary to protect the health, safety, and welfare of San Francisco residents, and particularly youth, from the harms of nitrous oxide misuse and abuse.

(e) This Article 40 is enacted to advance the health, safety, and general welfare of City residents by eliminating retail access for recreational use of Nitrous Oxide, a gas that is dangerous when illicitly used as an intoxicant.

SEC. 4001. DEFINITIONS.

For the purposes of this Article 40, the following terms have the following meanings:

"Device" means any cartridge, compressed gas cylinder, apparatus, container, balloon, attachment, nozzle, or other object used to contain, dispense, or administer Nitrous Oxide.

"Nitrous Oxide" means the colorless nonflammable gas sometimes identified as N20, 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.

"Person" means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee, or any other entity.

"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 development, or other 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.

"Tobacco Sales Permit" means a permit issued under Health Code Section 19H.3.

"Wholesale Capacity" means the sale or distribution of Nitrous Oxide or a Device to dispense or administer 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 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).

SEC. 4002. SALE OR DISTRIBUTION OF NITROUS OXIDE PROHIBITED.

(a) Except as allowed under this Article 40, 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, administer, or contain Nitrous Oxide, or any Device that contains any quantity of Nitrous Oxide.

(b) Except as allowed under this Article 40, possession by a Person of (1) any refillable or disposable Nitrous Oxide cylinder with a net content of six pounds or more; (2) an aggregate of two 200 or more standard 8-gram Nitrous Oxide cartridges; or (3) any equivalent amount of Nitrous Oxide shall give rise to a rebuttable presumption that the Person is attempting to sell, attempt to sell, offer, distribute, or otherwise provide Nitrous Oxide. This presumption may be rebutted by competent evidence of lawful use under this Article.

SEC. 4003. EXCEPTIONS TO THE PROHIBITION.

The prohibition set forth in sections 4002(a) and (b) shall 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, distributed, or otherwise 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 Nitrous Oxide or Device in violation of section 4002.

(c) If the Nitrous Oxide or Device that is being sold, attempted to be sold, offered, distributed, or otherwise provided 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, distributed, or otherwise 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.

(e) If the Nitrous Oxide or Device is being sold, attempted to be sold, offered, distributed, dispensed, or otherwise provided by a pharmacist, pharmacist intern, or pharmacy as defined by Business and Professions Code Sections 4030, 4036, and 4037, as said sections 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, distributed, or otherwise provided specifically for the purpose of Research and Development.

(g) If the Nitrous Oxide is being sold, attempted to be sold, offered, distributed, or otherwise provided for use by a manufacturer as part of a manufacturing process or industrial operation.

(h) Any other circumstances exempted under law.

SEC. 4004. CRIMINAL ENFORCEMENT.

Any person who violates any provisions of Section 4002 shall be deemed guilty of a misdemeanor or an infraction.

(a) If charged as an infraction, the penalty, upon conviction, shall be by a fine up to but not exceeding the maximum fine allowed under California Government Code section 25132, as may be amended from time to time;

(b) If charged as a misdemeanor, the penalty, upon conviction, shall be by imprisonment in the County Jail for a period not to exceed six months or by a fine up to but not exceeding the maximum fine allowed under California Government Code section 36901, as may be amended from time to time, or by both such fine and imprisonment;

(c) The complaint charging such violation shall specify whether the violation charged is a misdemeanor or an infraction. Such charging decisions shall be at the sole discretion of the District Attorney;

(d) Every day such violation continues shall constitute a separate offense.

SEC. 4005. PUBLIC NUISANCE.

Any violation of this Article 40 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 Article, and state law, including, but not limited to, an action for abatement or injunctive relief.

SEC. 4006. ADMINISTRATIVE AND CIVIL ENFORCEMENT; FINES AND PENALTIES.

(a) The Department of Public Health (DPH) shall administer and enforce this Article 40, except for Section 4004. The Director of DPH or the Director's designee (in either event, "Director") may adopt rules, regulations, and guidelines to carry out the provisions and purposes of this Article.

(b) Violations of this Article 40 or of any rule or regulation issued under this Article shall be punishable by administrative fines imposed pursuant to administrative citations. Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as may be amended from time to time, is hereby incorporated and shall govern the issuance and enforcement of administrative citations, and collection and review of administrative fines, to enforce this Article and any rule or regulation adopted pursuant to this Article, with the following qualifications and exceptions for purposes of this Article:

(1) The duties assigned to the Controller by Sections 100.1 - 100.15 of Administrative Code Chapter 100 shall be assumed and performed by the Director;

(2) Each day that Nitrous Oxide is offered for sale, distribution, provision or attempt thereof shall constitute a separate violation;

(3) A person who receives an administrative citation from the Director shall have 24 hours, or such greater time as deemed reasonable under the circumstances by the Director, to correct or otherwise remedy the violation prior to the imposition of administrative fines;

(4) The fine for any violation issued pursuant to this Article shall be paid to the Treasurer of the City and County of San Francisco and credited to the Department of Public

Health Environmental Health Code Compliance Fund for use in enforcement and prevention of violations of the Health Code;

(5) The amount of the fine for violation of this Article or of any rule or regulation issued under this Article shall be up to $500 for a first violation; up to $750 for a second violation within five years of the date of the first violation; and up to $1,000 for each additional violation within five years of the date of a second or subsequent violation; and

(6) The Director may recover any costs and fees, including but not limited to attorneys' fees, for enforcement initiated through this Article.

(c) Upon a decision by the Director that a Person or their employee operating under a Tobacco Sales Permit has engaged in any conduct that violates this Article 40, the Director may revoke the Person's Tobacco Sales Permit, impose administrative fines, or both revoke the permit and impose administrative fines under this Section 4006.

(d) Any Person that violates this Article 40 may be liable for a civil penalty not to exceed $1000 for each day such violation is committed or continues. Such penalty may be assessed and recovered in a civil action brought in the name of the people of the City and County of San Francisco by the City Attorney.

(e) In assessing the amount of the civil penalty, the Court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to the following: (1) the nature and seriousness of the misconduct; (2) the number of violations; (3) the persistence of the misconduct; (4) the length of time over which the misconduct occurred; (5) the willfulness of the defendant's misconduct; and (6) the defendant's assets, liabilities, and net worth.

(f) Any penalty assessed and recovered in an action brought pursuant to subsection (d) shall be paid to the City and credited to the Department of Public Health Environmental Health Code Compliance Fund for use in enforcement and prevention of violations of the Health Code.

(g) In any civil proceeding filed by the City Attorney to collect civil penalties under this Article 40, the Court may award the City its costs and fees, including but not limited to attorneys' fees.

SEC. 4007. REMEDIES CUMULATIVE.

(a) All remedies provided herein shall be cumulative and not exclusive.

(b) This Article 40 shall not be interpreted to limit any otherwise applicable civil or administrative remedies available under law.

SEC. 4008. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article 40 shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

SEC 4009. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Article 40, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing 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.

SEC. 4010. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 40, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article. The Board of Supervisors hereby declares that it would have passed this Article, and each section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Article or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Effective Date. This ordinance shall become effective on the 31st day after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/Jana Clark
JANA CLARK
Deputy City Attorney