BOARD of SUPERVISORS

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M E M O R A N D U M

TO: Carol Isen, Director, Department of Human Resources

FROM: Victor Young, Assistant Clerk
Board of Supervisors

DATE: September 2, 2026

SUBJECT: LEGISLATION INTRODUCED – MEET AND CONFER DETERMINATION

The Board of Supervisors' Budget and Finance Committee has received the following Ordinance. This matter is being **referred** to you as it may require the Department of Human Resources to fulfill "**Meet and Confer**" requirements. Please review, assess the impact and provide proper noticing as required and report back to on the status of the "Meet and Confer" requirement.

File No. 260495

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.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please email brent.jalipa@sfgov.org or forward to the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

****

RESPONSE FROM THE DEPARTMENT OF HUMAN RESOURCES - Date: _____

____ Meet and Confer/Noticing requirement has been fulfilled.

____ Meet and Confer/Noticing requirement not applicable.

____ Additional information attached.

_____
Department of Human Resources

c: Gigi Whitley, Department of Human Resources
Aliya Chisti, Department of Human Resources
Ardis Graham, Department of Human Resources
Jonathan Wright, Department of Human Resources

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

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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. For purposes of this Article 40, "sell" includes any display of 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 ~~s~~S*ections 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 the *Nitrous Oxide or Device in violation of* ~~s~~S*ection 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 from time to time*, 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 ~~s~~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 ~~s~~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 $1,000 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: _____
MARC SHAPP
Deputy City Attorney

FILE NO. 260495

REVISED LEGISLATIVE DIGEST

(Amended in Committee, July 22, 2026)

[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.

Existing Law

State law prohibits the retail sale of nitrous oxide to minors and the possession of nitrous oxide with the intent to use it for intoxication.

Amendments to Current Law

This ordinance would prohibit the retail sale of nitrous oxide in the City with exceptions for medical or dental procedures, research and development, manufacturing or industrial operations, and food-product purposes, and declare that possession of defined quantities of nitrous oxide shall give rise to a rebuttable presumption that the person intends to sell. This ordinance would prohibit as a sale the display of nitrous oxide, or any devices that contain, dispense, or administer nitrous oxide. This ordinance would make violations of the prohibition an infraction or misdemeanor, which upon conviction could result in imprisonment or fines, or both. This ordinance would further authorize the Director of Public Health to enforce the prohibition; and make violations of the prohibition a public nuisance, and subject to administrative fines, civil penalties, and revocation of a tobacco sales permit.

Background

On July 22, 2026, the Budget & Finance Committee amended the proposed ordinance to provide that the definition of sale includes the display of nitrous oxide, or any devices that contain, dispense, or administer nitrous oxide.

4921-0016-4031, v. 2

Item 1 **File 26-0495** **(***Continued from 7/22/26 meeting)*	**Department:** Department of Public Health (DPH), Police Department (POL)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the San Francisco Police Code to (a) ban the sale of nitrous oxide in the City and (b) provide a rebuttable presumption that individuals possessing large quantities of nitrous oxide intend to sell it (defined as net content of six pounds or more, or an aggregate of 200 or more standard 8-gram cartridges). The ordinance provides exceptions for commercial and specialized uses, including food preparation, vehicles, medical, dental, pharmaceutical, wholesale transactions, and manufacturing.

Key Points

- State law currently prohibits sale or possession of nitrous oxide if the intended use is intoxication, prohibits sales to minors, and requires vendors to maintain written records of transactions that include identification of all buyers. The California State Legislature is considering amendments to State law that would ban retail sale of nitrous oxide starting in 2027, and several counties and cities in California have already done so.
- The proposed ban on nitrous oxide sales provides for criminal, civil, and administrative fines of up to $1,000 each and/or jail time of up to six months. The Department of Public Health and law enforcement would receive authority to enforce the proposed ban.

Fiscal Impact

- The estimated annual cost to enforce this ordinance is $0.6 million. This cost estimate assumes full-time involvement by 1.4 FTE DPH employees, and half-time involvement by one Police Officer on overtime. Funding would likely be sourced from DPH and POL Department General Funds.

Policy Consideration

- Based on review of recently passed and comparable ordinances in other California cities and counties, this ordinance is consistent in its criminal penalty structure: all ordinances our office examined impose criminal fines of up to $1,000 on violators. However, not all other ordinances examined also impose possible civil and administrative fines. In addition, this ordinance does not provide for revoking business licenses, as other jurisdictions do.
- The City government lacks data on the scope of the nitrous oxide problem in San Francisco in part because there is no existing enforcement of the state laws regulating nitrous sales.

Recommendations

(1) Amend the proposed ordinance to require two reports to the Board of Supervisors by June 1, 2027: (a) A report from Environmental Health and Police Department evaluating the scope of the nitrous oxide problem in San Francisco and (b) a report from Environmental Health, Police, District Attorney, and City Attorney, on enforcement actions taken as a result of this ordinance and any legislative changes that may be necessary to manage the nitrous oxide problem in San Francisco. (2) Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

Nitrous oxide is a gas, commonly known as "laughing gas," and is mostly used as a medical/dental sedative, culinary propellant, or automotive engine booster. Within the past decade, nitrous oxide has increasingly been abused as a recreational inhalant. Repeated inhalation of nitrous oxide presents dangers including but not limited to addiction, oxygen deprivation, vitamin B12 depletion, and possible severe neurological and nervous system damage. Nitrous oxide canisters, also known as "whippets," have become increasingly sold at corner stores, gas stations, and smoke shops throughout the country. According to an August 2025 report from the Orange County Health Care Agency, California Emergency Department and Hospitalization Data shows that nitrous oxide-related emergency department visits in California increased by 246% (from 76 to 263 visits) from 2018 to 2023.

Currently, Section 381 of the State Penal Code prohibits nitrous oxide sales to minors, requires that vendors keep written records of all nitrous oxide transactions for at least one year, requires purchasers to present identification to record their names and addresses in the transaction record, and states that it is a misdemeanor to sell or possess nitrous oxide if the intended use is intoxication. Sellers who violate these laws can face up to six months in jail and/or a fine of up to $1,000.

As described in an appendix to this report, the California State Legislature is considering amendments to State law that would ban retail sale of nitrous oxide starting in 2027, and several counties and cities in California have already done so.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the San Francisco Police Code to (a) ban the sale of nitrous oxide in the City and (b) provide a rebuttable presumption that individuals possessing large quantities of nitrous oxide intend to sell it (defined as net content of six pounds or more, or an aggregate of 200 or more standard 8-gram cartridges). The ordinance provides exceptions for commercial and specialized uses, including food preparation, vehicles, medical, dental, pharmaceutical, wholesale transactions, and manufacturing.

Under the proposed ordinance, violators could be liable for criminal, administrative, and civil penalties. Violations of the proposed ban on nitrous oxide sales could be criminally charged with a misdemeanor or infraction and face up to six months jail time and/or criminal fines not

exceeding the maximum fine amount under California Government Code sections 25132[1] and 36901.[2] The Department of Public Health could also levy administrative fines of up to $500 for the first violation, up to $750 for the second violation within five years, and up to $1,000 for each additional violation within five years, with fines deposited into the Public Health Environmental Health Code Compliance Fund. DPH may also recover costs of enforcement, including attorneys' fees. In addition, violators may also be liable for a civil penalty not to exceed $1,000 for each day a violation is committed, to be recovered by a civil action brought by the City Attorney's Office.

In addition, the proposed code changes would declare that violations of the ban are a public nuisance. According to the City Attorney's office, this public nuisance provision allows for a court to apply injunctive relief to address violations of the proposed ban.

Implementation

As proposed, the Department of Public Health and law enforcement would receive authority to enforce the proposed ban. DPH would inspect establishments suspected of violating the ban, document non-compliance, and complete administrative processes to levy fines and revoke violators' DPH-issued Tobacco Sales Permit. DPH and POL already conduct annual compliance inspections to ensure retailers hold valid Tobacco Sales Permits, comply with the citywide flavored tobacco ban, and enforce state age restrictions; however, not all nitrous oxide retailers have tobacco licenses. According to the Police Department, the Department typically dedicates seven to 40 hours per quarter to tobacco compliance enforcement. Law enforcement would be responsible for determining and charging criminal violations.

This ordinance would create additional DPH costs primarily through hiring environmental health inspectors and administrative support. In addition, because the proposed ordinance creates a new crime, the Police Department would need to accompany DPH on inspections, as it does with the City's enforcement of tobacco regulations.

FISCAL IMPACT

Exhibit 1 below summarizes the estimated costs of the proposed ordinance, which total approximately $0.6 million annually.

[1] California Government Code section 25132 states that an infraction is punishable by the following maximum fines: $100 for a first violation, $200 for a second violation within the same year, $500 for each additional violation within the same year.

[2] California Government Code section 36901 states that a fine shall not exceed $1,000.

Exhibit 1: Sources and Costs of Proposed Nitrous Oxide Ban

Department of Public Health	FY 2026-27	FY 2027-28
Salary and Benefits	$239,992	$258,965
Other Direct Costs	$158,174	$167,342
Indirect Costs	$75,645	$81,626
Subtotal	**$473,811**	**$507,833**
Police Department		
Police Officer Overtime	$118,546	$122,126
Total Costs	**$592,357**	**$630,059**

Source: DPH, POL, and BLA budgetary estimates

Note: Police Officer overtime calculated based on assumption of 840 hours of service.

Funding would likely have to be sourced from DPH and POL Department General Funds. The DPH-funded estimates above are comparable to what is currently allocated for DPH-conducted tobacco sales inspections. DPH services would be provided by the Environmental Health Division.

DPH activities would require hiring 1.00 FTE 6122 Senior Environmental Health Inspector, 0.20 FTE 6124 Principal Environmental Health Inspector, 0.20 FTE Senior Clerk. As of June 1, 2026, DPH had seven 6120 Environmental Health Inspectors, one 6122 Senior Environmental Health Inspector, and two 6124 Principal Environmental Health Inspectors, primarily in the Food safety program, which is primarily funded by the General Fund (not fees). In addition, DPH had thirteen 1406 Senior Clerk vacancies.

We assume at least one Police Officer would accompany the Environmental Health Inspectors on overtime and that the inspector would spend half of their productive hours (840 hours annually) on inspections. Inspections may include more or less Police Department involvement depending on how frequent inspections are. We believe the Public Health, Police Department, District Attorney, and Public Defender (if applicable) could absorb these new responsibilities within their existing budgets.

POLICY CONSIDERATION

The proposed ordinance would tighten restrictions currently imposed by the State on nitrous oxide sales by banning most retail sales of this substance. As noted above, State law currently prohibits sale or possession of nitrous oxide if the intended use is intoxication, prohibits sales to minors, and requires vendors to maintain written records of transactions that include identification of all buyers. There does not appear to be any existing enforcement of these laws in San Francisco.

Other Jurisdictions

Based on review of recently passed and comparable ordinances in other California cities and counties, this ordinance is consistent in its criminal penalty structure: all ordinances our office examined impose criminal fines of up to $1,000 on violators. However, not all other ordinances

examined also impose possible civil and administrative fines; Santa Cruz County, for example, only imposes criminal fines. Additionally, this ordinance extends prohibition not only to businesses but to individuals who possess a certain size of nitrous oxide deemed to be a sellable amount. Of the city and counties examined, this provision is consistent only with the ordinance passed in San Mateo County.

In addition, the proposed ordinance does not provide for revocation of a business license, which Orange, Humboldt, and San Mateo Counties do in their bans. San Jose also provides for property owner liability if tenants sell nitrous oxide. The Board of Supervisors should consider adding these provisions to this proposed ordinance, as it could strengthen enforcement efforts.

Enforcement

The City government lacks data on the scope of the nitrous oxide problem in San Francisco in part because there is no existing enforcement of the state laws regulating nitrous sales. Other counties (Humboldt and Orange) conducted local surveys - such as retailer or point-of-sale assessments - to measure the extent and growth of recreational nitrous oxide use within their jurisdictions. They also reviewed hospitalization and first responder data to assess the scope of the problem. The Board of Supervisors should request that Environmental Health and SFPD conduct a similar analysis, which may include community surveys, publicly-available hospital encounter/discharge data, and retail audits. Additionally, the City should require reports from the Environmental Health division, Police Department, and District Attorney report back on their implementation and enforcement actions taken as a result of this ordinance by the end of the fiscal year. This context could allow for less costly and more targeted enforcement strategies. Additionally, the City could undertake a campaign to educate retailers and the public on the dangers of nitrous oxide and details of this legislation.

Lastly, given the existing collaboration between DPH and POL to carry out tobacco compliance inspections, the Departments should add nitrous oxide inspections to these existing operations in order to promote efficiency and cost savings. However, as noted, some nitrous oxide vendors lack tobacco licenses and would therefore fall outside tobacco compliance inspections, meaning enforcement efforts would need to expand to cover these vendors.

The Budget and Legislative Analyst considers approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed ordinance to require two reports to the Board of Supervisors by June 1, 2027: (a) A report from Environmental Health and Police Department evaluating the scope of the nitrous oxide problem in San Francisco and (b) a report from Environmental Health, Police, District Attorney, and City Attorney, on enforcement actions taken as a result of this ordinance and any legislative changes that may be necessary to manage the nitrous oxide problem in San Francisco.
2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

Appendix: Other Nitrous Oxide Bans

Evaluation of Senate Bill 936

Louisiana and Nebraska have recently passed legislation to ban the recreational sale of nitrous oxide. California legislators are considering a similar ban through Senate Bill (SB) 936. This bill would impose a state-mandated local program to prohibit the sale and distribution of over 8 grams of nitrous oxide. This ban is detailed in the table below. Committee analysis of SB 936 states that this bill would not only curb recreational use of nitrous oxide but would minimize nitrous oxide cylinder waste and alleviate local waste management expenses. This bill may be passed into law in 2026 but would not go into effect until January 1, 2027.

Exhibit 2 below compares penalties, enforcement mechanisms, and other characteristics of recently passed nitrous oxide sales bans.

Exhibit 2: San Francisco Ordinance in Comparison to Other State/County/City Bans

Jurisdiction	Status / Approved Date	Scope of Ban	Key Penalties	Business License Impact	Property Penalties	Public Nuisance Provision	Enforcement	Violations Data
San Francisco	Introduced by Supervisor Sauter on May 5, 2026	Sale/distribution of nitrous oxide of any size, individual possession of a certain size (cylinder with 6 pounds or more, aggregate of 200 or more 8-gram cartridges, or equivalent amount)	Infraction or misdemeanor, fine ($500 for first, $750 for second, $1,000 for each additional violation)	Possible revocation of Tobacco Sales Permit, possible administrative fines	None	☒	Department of Public Health, Police Department and District Attorney's Office	N/A
Statewide	Being heard in Assembly committees	Sale/distribution of nitrous oxide containers over 8 grams, flavored nitrous oxide	Infraction, possible fine ($500 for first, $1,000 for second, $2,000 for each additional violation)	Possible suspension of business license issued by state, city, or county for up to one year, possible suspension of Tobacco/Cigarette license for up to one year	None	None	Local Police Departments/Sheriff's Offices	N/A

Jurisdiction	Status / Approved Date	Scope of Ban	Key Penalties	Business License Impact	Property Penalties	Public Nuisance Provision	Enforcement	Violations Data
Orange County	February 2025	Sale/distribution of nitrous oxide of any size	Up to 6 months' jail time and/or up to $1,000 fine	Possible business license revocation	None	None	Sheriff's Office, code enforcement Note: County mostly providing supporting role to city enforcement, such as by sending cease and desist letters to identified retailers	Note: Cities with bans may have issued citations.
Humboldt County	June 2025	Sale/distribution of nitrous oxide of any size	Up to 6 months' jail time and/or up to $1,000 fine	Possible tobacco retailer license and business license revocation	None	☒	Department of Health and Human Services, Public Health Division of Environmental Health, Sheriff's Office, Planning and Building Department	No violations recorded as of 7/8/26 Note: Cities with bans may have issued citations.

Jurisdiction	Status / Approved Date	Scope of Ban	Key Penalties	Business License Impact	Property Penalties	Public Nuisance Provision	Enforcement	Violations Data
San Mateo County	August 2025	Sale/distribution of nitrous oxide of any size, individual possession of a certain size (cylinder with 6 pounds or more, aggregate of 200 or more 8-gram cartridges, or equivalent amount)	Up to 6 months' jail time and/or up to $1,000 fine	Possible Tobacco Retailer Permit and business license revocation	None	☒	Sherriff's Office, County Narcotics Task Force, County Environmental Health Services Division	No violations recorded as of 7/9/26 Note: Cities with bans may have issued citations.
Santa Cruz County	September 2025	Sale/distribution of nitrous oxide of any size	Jail time and/or up to $1,000 fine	None	None	None	Sherriff's Office (Alcohol/Tobacco enforcement officer), Environmental Health Division of Santa Cruz County Health Services Agency	No violations recorded as of 7/16/26 Note: Cities with bans may have issued citations.
City of San Jose	November 2025	Sale/distribution of nitrous oxide of any size, property owner liability for knowingly permitting sales	Jail time and/or up to $1,000 fine	Possible revocation of Tobacco Retailer License, Notice of Completed Registration	☒	☒	Planning, Building & Code Enforcement Dept. (with Police and City Attorney)	

Source: BLA analysis of SB 936 bill text, outreach to and review of other jurisdictions

All bans included in the table above include exemptions for use of nitrous oxide for medical/dental administration, culinary propellant use, and automotive engine usage.

In addition to the bans listed above, according to media reports, 18 cities across California (Cloverdale, Eureka, Ferndale, Rio Dell, San Jose, Santa Cruz, Anaheim, Buena Park, Costa Mesa, Fullerton, Garden Grove, Huntington Beach, Laguna Niguel, Newport Beach, Santa Ana, Stanton, Orange, and Westminster) have also passed ordinances to ban the retail sale of nitrous oxide.

Item 4 File 26-0495	Department: Department of Public Health (DPH), Police Department (POL)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the San Francisco Police Code to (a) ban the sale of nitrous oxide in the City and (b) provide a rebuttable presumption that individuals possessing large quantities of nitrous oxide intend to sell it (defined as net content of six pounds or more, or an aggregate of 200 or more standard 8-gram cartridges). The ordinance provides exceptions for commercial and specialized uses, including food preparation, vehicles, medical, dental, pharmaceutical, wholesale transactions, and manufacturing.

Key Points

- State law currently prohibits sale or possession of nitrous oxide if the intended use is intoxication, prohibits sales to minors, and requires vendors to maintain written records of transactions that include identification of all buyers. The California State Legislature is considering amendments to State law that would ban retail sale of nitrous oxide starting in 2027, and several counties and cities in California have already done so.
- The proposed ban on nitrous oxide sales provides for criminal, civil, and administrative fines of up to $1,000 each and/or jail time of up to six months. The Department of Public Health and law enforcement would receive authority to enforce the proposed ban.

Fiscal Impact

- The estimated annual cost to enforce this ordinance is $0.6 million. This cost estimate assumes full-time involvement by 1.4 FTE DPH employees, and half-time involvement by one Police Officer on overtime. Funding would likely be sourced from DPH and POL Department General Funds.

Policy Considerations

- Based on review of recently passed and comparable ordinances in other California cities and counties, this ordinance is consistent in its criminal penalty structure: all ordinances our office examined impose criminal fines of up to $1,000 on violators. However, not all other ordinances examined also impose possible civil and administrative fines. In addition, this ordinance does not provide for revoking business licenses, as other jurisdictions do.
- The City government lacks data on the scope of the nitrous oxide problem in San Francisco in part because there is no existing enforcement of the state laws regulating nitrous sales.

Recommendations

(1) Amend the proposed ordinance to require two reports to the Board of Supervisors by June 1, 2027: (a) A report from Environmental Health and Police Department evaluating the scope of the nitrous oxide problem in San Francisco and (b) a report from Environmental Health, Police, District Attorney, and City Attorney, on enforcement actions taken as a result of this ordinance and any legislative changes that may be necessary to manage the nitrous oxide problem in San Francisco. (2) Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

Nitrous oxide is a gas, commonly known as "laughing gas," and is mostly used as a medical/dental sedative, culinary propellant, or automotive engine booster. Within the past decade, nitrous oxide has increasingly been abused as a recreational inhalant. Repeated inhalation of nitrous oxide presents dangers including but not limited to addiction, oxygen deprivation, vitamin B12 depletion, and possible severe neurological and nervous system damage. Nitrous oxide canisters, also known as "whippets," have become increasingly sold at corner stores, gas stations, and smoke shops throughout the country. According to an August 2025 report from the Orange County Health Care Agency, California Emergency Department and Hospitalization Data shows that nitrous oxide-related emergency department visits in California increased by 246% (from 76 to 263 visits) from 2018 to 2023.

Currently, Section 381 of the State Penal Code prohibits nitrous oxide sales to minors, requires that vendors keep written records of all nitrous oxide transactions for at least one year, requires purchasers to present identification to record their names and addresses in the transaction record, and states that it is a misdemeanor to sell or possess nitrous oxide if the intended use is intoxication. Sellers who violate these laws can face up to six months in jail and/or a fine of up to $1,000.

As described in an appendix to this report, the California State Legislature is considering amendments to State law that would ban retail sale of nitrous oxide starting in 2027, and several counties and cities in California have already done so.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the San Francisco Police Code to (a) ban the sale of nitrous oxide in the City and (b) provide a rebuttable presumption that individuals possessing large quantities of nitrous oxide intend to sell it (defined as net content of six pounds or more, or an aggregate of 200 or more standard 8-gram cartridges). The ordinance provides exceptions for commercial and specialized uses, including food preparation, vehicles, medical, dental, pharmaceutical, wholesale transactions, and manufacturing.

Under the proposed ordinance, violators could be liable for criminal, administrative, and civil penalties. Violations of the proposed ban on nitrous oxide sales could be criminally charged with a misdemeanor or infraction and face up to six months jail time and/or criminal fines not

exceeding the maximum fine amount under California Government Code sections 25132[1] and 36901.[2] The Department of Public Health could also levy administrative fines of up to $500 for the first violation, up to $750 for the second violation within five years, and up to $1,000 for each additional violation within five years, with fines deposited into the Public Health Environmental Health Code Compliance Fund. DPH may also recover costs of enforcement, including attorneys' fees. In addition, violators may also be liable for a civil penalty not to exceed $1,000 for each day a violation is committed, to be recovered by a civil action brought by the City Attorney's Office.

In addition, the proposed code changes would declare that violations of the ban are a public nuisance. According to the City Attorney's office, this public nuisance provision allows for a court to apply injunctive relief to address violations of the proposed ban.

Implementation

As proposed, the Department of Public Health and law enforcement would receive authority to enforce the proposed ban. DPH would inspect establishments suspected of violating the ban, document non-compliance, and complete administrative processes to levy fines and revoke violators' DPH-issued Tobacco Sales Permit. DPH and POL already conduct annual compliance inspections to ensure retailers hold valid Tobacco Sales Permits, comply with the citywide flavored tobacco ban, and enforce state age restrictions; however, not all nitrous oxide retailers have tobacco licenses. According to the Police Department, the Department typically dedicates seven to 40 hours per quarter to tobacco compliance enforcement. Law enforcement would be responsible for determining and charging criminal violations.

This ordinance would create additional DPH costs primarily through hiring environmental health inspectors and administrative support. In addition, because the proposed ordinance creates a new crime, the Police Department would need to accompany DPH on inspections, as it does with the City's enforcement of tobacco regulations.

FISCAL IMPACT

Exhibit 1 below summarizes the estimated costs of the proposed ordinance, which total approximately $0.6 million annually.

[1] California Government Code section 25132 states that an infraction is punishable by the following maximum fines: $100 for a first violation, $200 for a second violation within the same year, $500 for each additional violation within the same year.

[2] California Government Code section 36901 states that a fine shall not exceed $1,000.

Exhibit 1: Sources and Costs of Proposed Nitrous Oxide Ban

Department of Public Health	FY 2026-27	FY 2027-28
Salary and Benefits	$239,992	$258,965
Other Direct Costs	$158,174	$167,342
Indirect Costs	$75,645	$81,626
Subtotal	**$473,811**	**$507,833**
Police Department		
Police Officer Overtime	$118,546	$122,126
Total Costs	**$592,357**	**$630,059**

Source: DPH, POL, and BLA budgetary estimates

Note: Police Officer overtime calculated based on assumption of 840 hours of service.

Funding would likely have to be sourced from DPH and POL Department General Funds. The DPH-funded estimates above are comparable to what is currently allocated for DPH-conducted tobacco sales inspections. DPH services would be provided by the Environmental Health Division.

DPH activities would require hiring 1.00 FTE 6122 Senior Environmental Health Inspector, 0.20 FTE 6124 Principal Environmental Health Inspector, 0.20 FTE Senior Clerk. As of June 1, 2026, DPH had seven 6120 Environmental Health Inspectors, one 6122 Senior Environmental Health Inspector, and two 6124 Principal Environmental Health Inspectors, primarily in the Food safety program, which is primarily funded by the General Fund (not fees). In addition, DPH had thirteen 1406 Senior Clerk vacancies.

We assume at least one Police Officer would accompany the Environmental Health Inspectors on overtime and that the inspector would spend half of their productive hours (840 hours annually) on inspections. Inspections may include more or less Police Department involvement depending on how frequent inspections are. We believe the Public Health, Police Department, District Attorney, and Public Defender (if applicable) could absorb these new responsibilities within their existing budgets.

POLICY CONSIDERATIONS

The proposed ordinance would tighten restrictions currently imposed by the State on nitrous oxide sales by banning most retail sales of this substance. As noted above, State law currently prohibits sale or possession of nitrous oxide if the intended use is intoxication, prohibits sales to minors, and requires vendors to maintain written records of transactions that include identification of all buyers. There does not appear to be any existing enforcement of these laws in San Francisco.

Other Jurisdictions

Based on review of recently passed and comparable ordinances in other California cities and counties, this ordinance is consistent in its criminal penalty structure: all ordinances our office examined impose criminal fines of up to $1,000 on violators. However, not all other ordinances

examined also impose possible civil and administrative fines; Santa Cruz County, for example, only imposes criminal fines. Additionally, this ordinance extends prohibition not only to businesses but to individuals who possess a certain size of nitrous oxide deemed to be a sellable amount. Of the city and counties examined, this provision is consistent only with the ordinance passed in San Mateo County.

In addition, the proposed ordinance does not provide for revocation of a business license, which Orange, Humboldt, and San Mateo Counties do in their bans. San Jose also provides for property owner liability if tenants sell nitrous oxide. The Board of Supervisors should consider adding these provisions to this proposed ordinance, as it could strengthen enforcement efforts.

Enforcement

The City government lacks data on the scope of the nitrous oxide problem in San Francisco in part because there is no existing enforcement of the state laws regulating nitrous sales. Other counties (Humboldt and Orange) conducted local surveys - such as retailer or point-of-sale assessments - to measure the extent and growth of recreational nitrous oxide use within their jurisdictions. They also reviewed hospitalization and first responder data to assess the scope of the problem. The Board of Supervisors should request that Environmental Health and SFPD conduct a similar analysis, which may include community surveys, publicly-available hospital encounter/discharge data, and retail audits. Additionally, the City should require reports from the Environmental Health division, Police Department, and District Attorney report back on their implementation and enforcement actions taken as a result of this ordinance by the end of the fiscal year. This context could allow for less costly and more targeted enforcement strategies. Additionally, the City could undertake a campaign to educate retailers and the public on the dangers of nitrous oxide and details of this legislation.

Lastly, given the existing collaboration between DPH and POL to carry out tobacco compliance inspections, the Departments should add nitrous oxide inspections to these existing operations in order to promote efficiency and cost savings. However, as noted, some nitrous oxide vendors lack tobacco licenses and would therefore fall outside tobacco compliance inspections, meaning enforcement efforts would need to expand to cover these vendors.

The Budget and Legislative Analyst considers approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed ordinance to require two reports to the Board of Supervisors by June 1, 2027: (a) A report from Environmental Health and Police Department evaluating the scope of the nitrous oxide problem in San Francisco and (b) a report from Environmental Health, Police, District Attorney, and City Attorney, on enforcement actions taken as a result of this ordinance and any legislative changes that may be necessary to manage the nitrous oxide problem in San Francisco.
2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

Appendix: Other Nitrous Oxide Bans

Evaluation of Senate Bill 936

Louisiana and Nebraska have recently passed legislation to ban the recreational sale of nitrous oxide. California legislators are considering a similar ban through Senate Bill (SB) 936. This bill would impose a state-mandated local program to prohibit the sale and distribution of over 8 grams of nitrous oxide. This ban is detailed in the table below. Committee analysis of SB 936 states that this bill would not only curb recreational use of nitrous oxide but would minimize nitrous oxide cylinder waste and alleviate local waste management expenses. This bill may be passed into law in 2026 but would not go into effect until January 1, 2027.

Exhibit 2 below compares penalties, enforcement mechanisms, and other characteristics of recently passed nitrous oxide sales bans.

Exhibit 2: San Francisco Ordinance in Comparison to Other State/County/City Bans

Jurisdiction	Status / Approved Date	Scope of Ban	Key Penalties	Business License Impact	Property Penalties	Public Nuisance Provision	Enforcement	Violations Data
San Francisco	Introduced by Supervisor Sauter on May 5, 2026	Sale/distribution of nitrous oxide of any size, individual possession of a certain size (cylinder with 6 pounds or more, aggregate of 200 or more 8-gram cartridges, or equivalent amount)	Infraction or misdemeanor, fine ($500 for first, $750 for second, $1,000 for each additional violation)	Possible revocation of Tobacco Sales Permit, possible administrative fines	None	☒	Department of Public Health, Police Department and District Attorney's Office	N/A
Statewide	Being heard in Assembly committees	Sale/distribution of nitrous oxide containers over 8 grams, flavored nitrous oxide	Infraction, possible fine ($500 for first, $1,000 for second, $2,000 for each additional violation)	Possible suspension of business license issued by state, city, or county for up to one year, possible suspension of Tobacco/Cigarette license for up to one year	None	None	Local Police Departments/Sheriff's Offices	N/A

Jurisdiction	Status / Approved Date	Scope of Ban	Key Penalties	Business License Impact	Property Penalties	Public Nuisance Provision	Enforcement	Violations Data
Orange County	February 2025	Sale/distribution of nitrous oxide of any size	Up to 6 months' jail time and/or up to $1,000 fine	Possible business license revocation	None	None	Sheriff's Office, code enforcement Note: County mostly providing supporting role to city enforcement, such as by sending cease and desist letters to identified retailers	Note: Cities with bans may have issued citations.
Humboldt County	June 2025	Sale/distribution of nitrous oxide of any size	Up to 6 months' jail time and/or up to $1,000 fine	Possible tobacco retailer license and business license revocation	None	☒	Department of Health and Human Services, Public Health Division of Environmental Health, Sheriff's Office, Planning and Building Department	No violations recorded as of 7/8/26 Note: Cities with bans may have issued citations.

Jurisdiction	Status / Approved Date	Scope of Ban	Key Penalties	Business License Impact	Property Penalties	Public Nuisance Provision	Enforcement	Violations Data
San Mateo County	August 2025	Sale/distribution of nitrous oxide of any size, individual possession of a certain size (cylinder with 6 pounds or more, aggregate of 200 or more 8-gram cartridges, or equivalent amount)	Up to 6 months' jail time and/or up to $1,000 fine	Possible Tobacco Retailer Permit and business license revocation	None	☒	Sherriff's Office, County Narcotics Task Force, County Environmental Health Services Division	No violations recorded as of 7/9/26 Note: Cities with bans may have issued citations.
Santa Cruz County	September 2025	Sale/distribution of nitrous oxide of any size	Jail time and/or up to $1,000 fine	None	None	None	Sherriff's Office (Alcohol/Tobacco enforcement officer), Environmental Health Division of Santa Cruz County Health Services Agency	No violations recorded as of 7/16/26 Note: Cities with bans may have issued citations.
City of San Jose	November 2025	Sale/distribution of nitrous oxide of any size, property owner liability for knowingly permitting sales	Jail time and/or up to $1,000 fine	Possible revocation of Tobacco Retailer License, Notice of Completed Registration	☒	☒	Planning, Building & Code Enforcement Dept. (with Police and City Attorney)	

Source: BLA analysis of SB 936 bill text, outreach to and review of other jurisdictions

All bans included in the table above include exemptions for use of nitrous oxide for medical/dental administration, culinary propellant use, and automotive engine usage.

In addition to the bans listed above, according to media reports, 18 cities across California (Cloverdale, Eureka, Ferndale, Rio Dell, San Jose, Santa Cruz, Anaheim, Buena Park, Costa Mesa, Fullerton, Garden Grove, Huntington Beach, Laguna Niguel, Newport Beach, Santa Ana, Stanton, Orange, and Westminster) have also passed ordinances to ban the retail sale of nitrous oxide.