

CITY OF WESTMINSTER
ORDINANCE NO. 2636

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, ADDING CHAPTER 9.78 (PROHIBITION ON THE SALE OR DISTRIBUTION OF NITROUS OXIDE) TO TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE WESTMINSTER MUNICIPAL CODE RESTRICTING THE SALE AND DISTRIBUTION OF NITROUS OXIDE

WHEREAS, California Constitution, Article XI, Section 7, authorizes the City to make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Health & Safety Code section 101450 empowers the City to take measures necessary to preserve and protect public health, including the adoption of ordinances, regulations and orders 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 also used for industrial purposes and as a propellant for food products; and

WHEREAS, nitrous oxide is also subject to recreational misuse and abuse, in part, because it is easy to purchase from retail vendors and relatively inexpensive; and

WHEREAS, the recreational misuse and abuse of nitrous oxide can cause permanent vitamin deficiencies and long-term neurological effects, including paralysis and death; and

WHEREAS, the incidence of nitrous oxide recreational misuse and abuse has been on the rise in the County, nationally, and internationally over the past decade, with multiple medical studies noting significant increases in recreational misuse in the past five years as well as a broader medical understanding of the long-term hematological and neurological impacts of nitrous oxide misuse and abuse; and

WHEREAS, nitrous oxide recreational misuse and abuse have been associated with multiple traffic incidents and criminal activity throughout Orange County in the past several years; and

WHEREAS, the City does not currently regulate the sale of nitrous oxide and finds and declares that, without such regulation, there is a significant risk of abuse or misuse, including the sale to individuals who intend to misuse or abuse nitrous oxide; and

WHEREAS, the City desires to adopt regulations prohibiting the sale and distribution of nitrous oxide, except in specific situations, to preserve and protect public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The recitals above are true and correct and are hereby incorporated as findings as fully set forth herein.

SECTION 2. Addition of Chapter 9.78. Chapter 9.78, Prohibition on the Sale or Distribution of Nitrous Oxide, is hereby added to Title 9 of the Westminster Municipal Code to be read as follows:

CHAPTER 9.78 PROHIBITION ON THE SALE OR DISTRIBUTION OF NITROUS OXIDE

- § 9.78.010 Authority and purpose.
- § 9.78.020 Definitions.
- § 9.78.030 Prohibition on sale or distribution of nitrous oxide.
- § 9.78.040 Exceptions to prohibition.
- § 9.78.050 Violation and penalty.

§ 9.78.010 Authority and purpose.

This Chapter is enacted pursuant to the City's police powers to protect the public safety, health and welfare. The express purpose of this Chapter is to protect the public health and safety by eliminating retail access for recreational use of nitrous oxide, a dangerous gas that is illicitly used as an intoxicant.

§ 9.78.020 Definitions.

As used in this Chapter, the following terms shall have the meanings as set forth below:

"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 N₂O, sometimes used in aerosols and 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," and "whippits," among others.

"Person" means any individual or legal entity however constituted or organized.

“Wholesale capacity” means sale or distribution of nitrous oxide or a device to dispense nitrous oxide to a person that will use nitrous oxide or the device in services 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 commercial kitchens, and commercial sale of nitrous oxide for the purpose of producing food products for commercial sale (e.g., whipped cream canisters).

§ 9.78.030 Prohibition on sale or distribution of nitrous oxide.

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.

§ 9.78.040 Exceptions to prohibition.

This Chapter does not apply to the sale, distribution, or other manner of providing nitrous oxide, or a device containing nitrous oxide, in the following circumstances:

- A. If the nitrous oxide is labeled and marketed as food-grade and is contained within a food product for use as a propellant or preservative.
- B. If the nitrous oxide or device is being sold, offered, or distributed in a wholesale capacity by a person of age 18 or older. 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 9.78.030.
- C. If the nitrous oxide or device is being sold, attempted to be sold, or distributed is specifically designed for use in a vehicle to enhance the performance of the vehicle, is flavorless, and is utilized at a facility approved by the California Bureau of Automotive Repair.
- D. If the nitrous oxide is being sold, attempted to be sold, or distributed specifically for the purpose of providing medical or dental care, by or at the discretion 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, offered, distributed, or dispensed by a pharmacist, pharmacist intern, or pharmacy as defined by California Business & 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. Or any other circumstances exempted under law.

Notwithstanding the foregoing, any sale or distribution of nitrous oxide, any device designed to dispense or administer nitrous oxide, or any device containing any quantity of nitrous oxide shall comply with all documentation requirements of California Penal Code section 381e.

§ 9.78.050 Violation and penalty.

- A. Any person in violation of any provisions of this Chapter shall be guilty of a misdemeanor. For purposes of this provision, each day that a failure to comply with the requirements of this Chapter occurs shall constitute a separate violation.
- B. Any person violating any provision of this Chapter may be subject to an administrative citation pursuant to Chapter 1.14 of this Code.
- C. Punishment under this section shall not preclude any other remedies, penalties or procedures that the City may have to address violations of this chapter or as otherwise provided by law. Violations of this Chapter are hereby declared to be a public nuisance.

SECTION 3. Inconsistencies. Any provisions of the Westminster Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 4. Environmental Compliance. Adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15378(b)(5) of the CEQA Guidelines because it is not a “project” and because it can be seen with certainty that there is no possibility that the adoption of this Ordinance will have a significant effect on the environment, as this action is a purely administrative action.

SECTION 5. Severability. If any section, subsection, clause or phrase or portion of this ordinance is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of all other provisions of this ordinance. The City Council of Westminster hereby declares that it would have passed the ordinance codified in this chapter, and every section, subsection, sentence, clause, and phrase or portion thereof, even though any one or more of the sections, subsections, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 6. Certification. The City Clerk certifies that the Mayor and City Council introduced and conducted first reading on the 22nd day of April 2026. The City Clerk further certifies that the Mayor and City Council at its Regular Meeting on the 13th day of May 2026, conducted second reading, passed, and adopted Ordinance No. 2636 and

shall affix their signature and City Seal and that same shall be entered into the Book of Ordinances.

SECTION 7. Attest. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

PASSED, APPROVED, AND ADOPTED this 13th day of May 2026.

CITY OF WESTMINSTER

CHI CHARLIE NGUYEN
MAYOR

ATTEST:

SANDRA MEDINA
INTERIM CITY CLERK

APPROVED AS TO FORM:

SCOTT E. PORTER
CITY ATTORNEY

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CITY OF WESTMINSTER
CITY CLERKS OFFICE

CERTIFICATION
OF
ORDINANCE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, Sandra Medina Interim City Clerk of the City of Westminster, do hereby certify that the foregoing Ordinance No. 2636 was introduced for first reading on the 22nd day of April 2026, and duly passed, approved, and adopted by the City Council of the City of Westminster at a Regular Meeting held on the 13th day of May 2026, with the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Sandra Medina
Interim City Clerk

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