

ORDINANCE 2025-778

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA ADDING CHAPTER 8.45 TO TITLE 8, MAKING IT UNLAWFUL FOR ANY PERSON IN THE CITY TO SELL, OFFER, DISTRIBUTE, OR PROVIDE NITROUS OXIDE TO ANY PERSON

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORTUNA AS
FOLLOWS:**

WHEREAS, nitrous oxide use continues to be an urgent public health challenge; and

WHEREAS, medical authorities have linked the recreational use of nitrous oxide to serious health problems, including physical illness, mental illness, injury, and even death and

WHEREAS, nitrous oxide continues to gain popularity at an alarming rate, especially among college-aged, high school-aged, and middle school-aged children; and

WHEREAS, nitrous oxide has legitimate purposes, including its use in cooking and cake decorating, and is commonly known to boost performance in automobiles. However, nitrous oxide has found its way to illegitimate purposes as an intoxicating drug; and

WHEREAS, the California Penal Code, Section 381b, makes it a misdemeanor for anyone to intentionally inhale or ingest nitrous oxide for the purpose of causing intoxication, and anyone who is so intoxicated is also guilty of a misdemeanor; and

WHEREAS, the California Penal Code, Section 381c, makes it a misdemeanor to sell or distribute nitrous oxide to anyone under the age of 18 (unless administered by and for medical or dental purposes by a licensed practitioner); and

WHEREAS, the California Penal Code, Section 381e, requires that anyone dispensing or distributing nitrous oxide must inform the purchaser that it is a violation of state law to knowingly distribute or dispense nitrous oxide to a person who intends to breathe, inhale, or ingest it for the purpose of intoxication; and

WHEREAS, in spite of the state law prohibitions, there are loopholes that allow the distribution of nitrous oxide cartridges in quantities of many hundreds at a time without meaningful oversight, which puts members of the community at risk; and

WHEREAS, eliminating the sale and distribution of nitrous oxide in the City of Fortuna will reduce the number of persons in possession of and who use nitrous oxide as an intoxicating drug and will promote the public health, safety, and welfare; and

WHEREAS, the City has the duty to protect the health, safety, and welfare of all its citizens and takes nitrous oxide abuse seriously; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FORTUNA FINDS AND ORDAINS AS FOLLOWS:

SECTION 1. The above recitals are all true and correct and are hereby adopted as findings of the City Council.

SECTION 2. The Fortuna Municipal Code is hereby amended to add Chapter 8.45 to Title 8, entitled “Sales of Nitrous Oxide,” to read as follows:

CHAPER 8.45 SALES OF NITROUS OXIDE.

8.45.010 DEFINITIONS. The following words and phrases as used in this section are defined as follows.

- A. **DEVICE.** “Device” means any cartridge, compressed gas cylinder, apparatus, container, or other object used to contain, dispense or administer nitrous oxide.
- B. **NITROUS OXIDE.** “Nitrous oxide” means the colorless nonflammable gas (N2O) sometimes used in aerosols and sometimes used as an anesthetic, which, when inhaled, produces loss of sensibility to pain, oftentimes preceded by exhilaration and laughter and used often as an anesthetic in dentistry. Nitrous oxide is also called, “laughing gas.”
- C. **PERSON.** “Person” refers to any individual or other entity howsoever organized or constituted.

8.45.020 SALE OR DISTRIBUTION OF NITROUS OXIDE.

It is unlawful for any person not excepted hereafter to sell or 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 a quantity of nitrous oxide.

8.45.030 EXCEPTIONS.

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

1. This section does not apply to the sale of Nitrous Oxide contained in food products for use as a propellant.
2. If the nitrous oxide is being administered 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.
3. If the nitrous oxide or device is being dispensed 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 as a pharmacist or pharmacist intern, or wholesalers licensed by the Board of Pharmacy.
4. This section shall not apply to the sale or distribution of nitrous oxide by a wholesaler licensed by the Board of Pharmacy or manufacturer classified under Code Number 325120 or 424690 of the North American Industry Classification System (NAICS).

8.45.040 VIOLATIONS AND PENALTIES.

Any person violating this chapter is guilty of a misdemeanor and, upon conviction thereof, may be punished by a term in the county jail of up to six months or by a fine of one thousand dollars (\$1,000.00), or both.

The City Council further declares that any condition caused or permitted to exist in violation of any of the provisions of this chapter constitute a public nuisance in accordance with Section 8.16.060 et seq of the Fortuna Municipal Code. The City may require abatement of such nuisance and recover costs of abatement as provided by law.

The City may also impose administrative citations for violations of this chapter in accordance with the City's Administrative Citations code, Chapter 1.09.

SECTION 3. CEQA DETERMINATION. This Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), and the CEQA Guidelines, and has been found to be exempt pursuant to Section 15061(b)(3) (general rule) of the CEQA Guidelines, because the City Council hereby finds with certainty that there is no possibility the passage of this Ordinance will have a significant effect on the environment.

SECTION 4. SEVERABILITY. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. PUBLICATION. The City Clerk shall cause this ordinance to be published in a newspaper of general circulation in Humboldt County once within 15 days of its adoption in accordance with the requirements of Government Code Section 36933.

SECTION 6. EFFECTIVE DATE. This Ordinance will be effective 30 days after the date of its adoption by the City Council.

INTRODUCTION AND FIRST READING CONDUCTED at a regular meeting of the Fortuna City Council on this 17th day of November 2025 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Mike Johnson, Mayor

ATTEST:

Siana L. Emmons, City Clerk

SECOND READING AND ADOPTION CONDUCTED at a regular meeting of the Fortuna City Council on this 1st day of December 2025, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Mike Johnson, Mayor

ATTEST:

Siana L. Emmons, City Clerk