

*Rio Dell City Hall
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August 20, 2024

TO: Rio Dell City Council

FROM: Kyle Knopp, City Manager

SUBJECT: Discussion on Possible Ordinance Change Banning the Sale, Provision or Distribution of Nitrous Oxide within the City Limits

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Provide direction to staff or take no action.

BACKGROUND AND DISCUSSION

Staff was approached by personnel from the City of Eureka to propose a ban on Nitrous Oxide sales, not just in Eureka but across all various jurisdictions. The request follows a May 22, 2024 fatal vehicle vs. pedestrian accident in Eureka where the driver allegedly was using or had very recently used nitrous oxide and was impaired as a result, causing the fatal accident. At this time, it is our understanding that the other cities and County will be taking this proposal to their elected bodies for direction. No ordinance for Rio Dell has been developed, but attached is Eureka's draft ordinance which would likely be substantively similar, if the Council so directs it be drafted.

Nitrous Oxide has several legal and legitimate uses, including in the making of whipping cream and as a vehicle performance enhancer. However, the material is also extensively abused with real consequences. It is also unclear if such a ban in placed would impact or be enforceable for the online sale of this material. Exceptions from the ban for medical and dental related use are included in Eureka's draft ordinance.

Attachment: Eureka's Draft Ordinance as of July 29, 2024.

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**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EUREKA
ADDING SECTION 130.15 TO TITLE XIII, CHAPTER 130, MAKING IT UNLAWFUL
FOR ANY PERSON IN THE CITY, WITH EXCEPTIONS, TO SELL OR ATTEMPT TO
SELL, OFFER, DISTRIBUTE, OR PROVIDE NITROUS OXIDE TO ANY PERSON**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA 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 Eureka 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 affirmative 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 EUREKA 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 Eureka Municipal Code is hereby amended to add Section 130.15 to Title XIII, Chapter 130, entitled "Sales of Nitrous Oxide," to read as follows:

§ 130.15 SALES OF NITROUS OXIDE.

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

1. ***DEVICE.*** "Device" means any cartridge, compressed gas cylinder, apparatus, container, or other object used to contain, dispense or administer nitrous oxide.
2. ***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."
3. ***PERSON.*** "Person" refers to any individual or other entity howsoever organized or constituted.

B. 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.

This section shall not apply to the sale of nitrous oxide contained in food products for use as a propellant.

C. EXCEPTIONS.

The following persons are excepted from the prohibitions of this Chapter:

1. This section shall not apply to any person who administers nitrous oxide for the purpose of providing medical or dental care, if administered by a medical or dental practitioner licensed by this state or at the direction or under the supervision of a practitioner licensed by this state
2. 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).

D. 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 or by a fine of one thousand dollars (\$1,000.00), or both.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the ____ day of _____, 2024 by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

Leslie Castellano, Mayor Pro Tem

THE ABOVE ORDINANCE WAS PRESENTED TO THE MAYOR on the ____ day of _____, 2024, and hereby approved.

Kim Bergel, Mayor

Approved as to Administration:

Approved as to form:

Miles Slattery, City Manager

Autumn E. Luna, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the ____ day of _____, 2024.

Pamela J. Powell, City Clerk