

## S U M M A R Y

This ordinance amends Chapter 31 of the 2019 Detroit City Code, *Offenses*; Article V, *Offenses Against Public Peace*, to add Section 31-5-18, *Nitrous oxide*, to provide for definitions and prohibit the possession, sale, and consumption of nitrous oxide for recreational purposes.

BY COUNCIL MEMBER \_\_\_\_\_ :

AN ORDINANCE to amend Chapter 31 of the 2019 Detroit City Code, *Offenses*, Article V, *Offenses Against Public Peace*, to add Section 31-5-18, *Nitrous oxide*, to provide for definitions and prohibit the possession, sale, and consumption of nitrous oxide for recreational purposes.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. That Chapter 31 of the 2019 Detroit City Code, *Offenses*; Article V, *Offenses Against Public Peace*, be amended to read as follows:

## CHAPTER 31. OFFENSES

### ARTICLE V. OFFENSES AGAINST PUBLIC PEACE

#### Sec. 31-5-18. Nitrous Oxide.

(a) Definitions. For the purposes of this section, the following words and phrases shall have the meaning respectively ascribed to them by this subsection:

Device means any cartridge, compressed gas cylinder, apparatus, container, or any other object used to contain, and/or dispense, and/or administer nitrous oxide.

Nitrous oxide means a colorless, nonflammable gas, N<sub>2</sub>O, oftentimes used as an anesthetic and in aerosols; when inhaled it produces loss of sensibility to pain preceded by exhilaration and sometimes laughter, and is used especially as an anesthetic in dentistry; it is also known as “laughing gas.”

Paraphernalia means any equipment, product, material, or combination of equipment, products or materials, which are specifically designed for use in manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging,

storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body nitrous oxide, including, but not limited to:

- (1) Testing equipment specifically designed for use in identifying or in analyzing the strength, effectiveness or purity of nitrous oxide;
- (2) A weight scale or balance specifically designed for use in weighing or in measuring nitrous oxide;
- (3) A diluent or adulterant specifically designed for cutting nitrous oxide;
- (4) An object specifically designed for use in ingesting, inhaling, or otherwise introducing nitrous oxide into the human body, such as a balloon or nasal mask;
- (5) A kit specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing nitrous oxide;
- (6) A device, commonly known as a nitrous kit, laughing gas kit, or balloon kit, that is specifically designed for use in ingesting, inhaling, or otherwise introducing nitrous oxide into the human body, and which consists of any quantity or combination of the following: a dispenser, a device containing nitrous oxide, a balloon, gloves, or a cracker;
- (7) A device, commonly known as a whippet, whippit, whip-it, canister, cartridge, charger, bulb, or nang, that is specifically designed to contain, dispense, or administer a measured amount of nitrous oxide;
- (8) A device, commonly known as a cracker, that is specifically designed to discharge a measured amount of nitrous oxide to the user;
- (9) A capsule, balloon, bag, or other container used, intended for use, or specifically designed to deliver a measured amount of nitrous oxide to the user; and

(10) A container and other objects used, intended for use, or designed for use in storing or concealing nitrous oxide.

In determining whether an object is paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in possession of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in possession of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of nitrous oxide on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in possession of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in possession of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as nitrous oxide paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in possession of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of nitrous oxide;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use.

Recreational use means use for the purpose of causing a condition of intoxication, impairment, euphoria, excitement, exhilaration, sexual enhancement, stupefaction, or dulling of the senses or nervous system, but does not mean use of anesthesia for medical or dental purposes.

(b) Possession, sale, or consumption of nitrous oxide prohibited.

(1) It shall be unlawful for any person within the City to display, offer, distribute, sell, or otherwise provide to a person any device that contains any quantity of nitrous oxide, or any paraphernalia used to dispense or administer nitrous oxide, for recreational purposes.

(2) It shall be unlawful for any person within the City to use, transport, or possess nitrous oxide for recreational purposes, a device that contains any quantity of nitrous oxide for recreational purposes, or any paraphernalia used to dispense or administer nitrous oxide for recreational purposes.

(c) The prohibitions set forth in this section shall not apply nitrous oxide that has been denatured or unfit for human consumption or to any of the following:

(1) A person licensed under chapter VII of the Food Law, MCL 289.7101 et seq., who sells or otherwise distributes the device as a grocery product;

(2) A person engaged in the business of selling or distributing catering supplies only or food processing equipment only, or selling or distributing compressed gases for industrial or medical use who sells or otherwise distributes the device in the course of that business;

(3) A pharmacist, pharmacist intern, or pharmacy as defined in section 17707 of the Public Health Code, being MCL 333.17707, who dispenses the device in the course of his or her duties as a pharmacist or pharmacist intern or as a pharmacy; or

(4) A health care professional who possesses and dispenses nitrous oxide in the course of medical and dental treatment.

(d) A person in violation of Subsection (b)(1) and Subsection (b)(2) of this section is misdemeanor punishable by imprisonment for not more than 93 days, or a fine of not more than \$100.00, or both.

**Secs. 31-5-19—31-5-40. Reserved.**

**Section 2.** This ordinance is hereby declared necessary to preserve the public peace, health, safety, and welfare of the People of the City of Detroit.

**Section 3.** All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

**Section 4.** In the event this ordinance is passed by two-thirds (2/3) majority of City Council Members serving, it shall be given immediate effect and become effective upon publication in accordance with Section 4-118 of the 2012 Detroit City Charter. Where this ordinance is passed by less than a two-thirds (2/3) majority of City Council Members serving, it shall become effective on the thirtieth (30) day after enactment, or on the first business day thereafter, in accordance with Section 4-118 of the 2012 Detroit City Charter.

Approved as to form:

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Lawrence T. García  
Corporation Counsel