

UPDATED 44-26


Introduced by: Legislator Rose Marie Walker

Co-Sponsored by: Presiding Officer Howard J. Kopel, Deputy Presiding Officer Thomas McKeivitt, Alternate Deputy Presiding Officer Michael Giangregorio, and Legislators Patrick Mullaney, John J. Giuffre, Scott Strauss, Mazi Melesa Pilip, Kayla Knight, Samantha Goetz, and James Kennedy

LOCAL LAW NO. ____

A LOCAL LAW TO PROHIBIT THE SALE OF NITROUS OXIDE WHIPPED CREAM CHARGERS IN NASSAU COUNTY EXCEPT TO BUSINESSES WITH APPROPRIATE FOOD SALE PERMITS OR LICENSES

APPROVED AS TO FORM



Majority Counsel

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BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. Short Title. This law shall be known as the “Nitrous Oxide Consumer Protection Act” and shall appear in the Miscellaneous Laws of Nassau County as Title 94.

§2. Legislative Intent. The Nassau County Legislature finds that whipped cream chargers, which contain nitrous oxide gas, are often misused for recreational inhalation that pose significant health risks including abnormal blood counts, asphyxiation, blood clots, frostbite, headache, impaired bowel and bladder function, lightheadedness, limb weakness, loss of consciousness, numbness, palpitations, paralysis, psychiatric disturbances (delusions, hallucinations, paranoia, depression), tingling, trouble walking, vitamin B12 deficiency, neurological damage including spinal cord and brain damage, and in some cases, death. While state law already regulates certain aspects of their sale, additional local restrictions are necessary to prevent unauthorized access and misuse. This local law aims to limit the sale of nitrous oxide containers to legitimate food-related businesses that hold permits under relevant New York State laws, thereby limiting the likelihood of abuse.

§3. Definitions. Unless otherwise expressly stated in this Local Law, the following terms shall be defined as:

- a. “Nitrous Oxide Container” shall mean a cylinder or cartridge filled with nitrous oxide (N2O) that is used as a whipping agent in a whipped cream dispenser. This definition shall not apply to nitrous oxide that has been premixed with a dairy product or a dairy-like product for the purpose of making a whipped topping or pre-pressurized whipped cream dispensers where the nitrous oxide charger is fully incorporated into the product’s sealed design, such as single-use cans intended for direct dispensing of whipped cream, and where the charger cannot be accessed, removed, or repurposed for non-culinary uses without destroying the product.
- b. “Person” shall mean any individual, company, partnership, corporation, limited partnership, joint venture or other legal entity.
- c. “Food Sale Permit” shall mean a valid permit or license issued pursuant to: (i) The New York State Sanitary Code (10 NYCRR Part 14) or other provisions of the New York State Public Health Law authorizing the operation of a food service establishment or the sale of food; or (ii) The New York State Agriculture and Markets Law, including but not limited to Article 20-C (Licensing of Food Processing Establishments) or Article 28 (Retail Food Stores), or (iii) the Nassau County Public Health Ordinance.

§4. Prohibitions.

- a. No Person shall sell or offer for sale any Nitrous Oxide Container to any Person unless the Person possesses a current and valid Food Sale Permit as defined in Section 3(c) of this local law.
- b. Prior to any sale, the seller shall verify that the purchaser holds a valid Food Sale Permit by inspecting a copy of such permit or obtaining written certification from the purchaser attesting to the permit’s validity, including the permit number, issuing authority, and expiration date. The Person selling Nitrous Oxide Containers shall maintain records of such verifications for a period of at least two years, which shall be made available for inspection by the Nassau County Department of Health, the Nassau County Department of Consumer Affairs, the Nassau County Police Department or other authorized enforcement officials upon request.
- c. This section shall not apply to sales between manufacturers, distributors, or wholesalers of whipped cream chargers where both parties are licensed under applicable state or federal laws for such activities, provided that the end Purchaser complies with subsection (a).

§5. Enforcement and Penalties.

1. This law shall be enforced by the Nassau County Department of Health, the Nassau County Department of Consumer Affairs, and the Nassau County Police Department or other authorized enforcement officials.

2. Any Person that violates section 4 of this title shall be guilty of a misdemeanor punishable by a fine of not more than one thousand (\$1,000.00) dollars or imprisonment of not more than one year, or both.
 - a. An additional fine of one thousand five hundred (\$1,500.00) dollars may be added for each subsequent violation of section 4.
3. Any Person that violates section 4 of this title by selling, offering for sale or otherwise distributing any Nitrous Oxide Container to a Minor shall be guilty of a misdemeanor punishable by a fine of not more than one-thousand five hundred (\$1,500.00) dollars or imprisonment of not more than one year, or both.
 - a. An additional fine of two thousand five hundred (\$2,500.00) dollars may be added for each subsequent violation of section 4.
4. In addition to fines, the County may seek injunctive relief to prevent continued violations, and repeated violations may result in the suspension or revocation of any county-issued business licenses or permits held by the violator.

§6. **Severability.** If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership entity or circumstance directly involved in the controversy in which order or judgment shall be rendered.

§7. **SEQRA Determination.** It is hereby determined by the Nassau County Legislature, the lead agency, and pursuant to the provisions of the State Environmental Quality Review Act ("SEQRA"), 8 NYECL section 0101 et seq. and its implementing regulations, Part 617 of 6 NYCRR, and Section 1611 of the County Government Law of Nassau County, that this Local Law will not have a significant impact on the environment and that no further environmental review or action is required.

§8. **Effective Date.** This law shall take effect immediately after becoming a law.