

ORDINANCE NO. 2026-010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHINO, CALIFORNIA, ADDING CHAPTER [9.90] (“FLAVORED TOBACCO; NITROUS OXIDE; KRATOM PRODUCTS”) TO TITLE [9] (“PUBLIC PEACE, MORALS AND WELFARE”) OF THE CHINO MUNICIPAL CODE, PROHIBITING THE SALE OF FLAVORED TOBACCO, NITROUS OXIDE, AND KRATOM PRODUCTS WITHIN THE CITY OF CHINO

WHEREAS, pursuant to the authority granted to the City of Chino (“City”) by Article XI, Section 7 of the California Constitution, the City has the police power to regulate matters affecting public health, welfare, and safety within the City; and

WHEREAS, under Federal and State law, the City is authorized to regulate the sale of tobacco products and related retail products; and

WHEREAS, a primary mission of the City Council is to preserve public health and safety, and the sale of flavored tobacco products, nitrous oxide, and certain kratom products presents a significant threat to public health and safety; and

WHEREAS, according to the World Health Organization (WHO), tobacco-related use causes more than 8 million deaths per year worldwide, making it one of the most significant preventable public health threats; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, declaring that smoking is the single most important source of preventable disease and premature death in California (CA Health & Safety Code § 104350(a)(1); and

WHEREAS, in 2020, the California Legislature enacted Senate Bill 793 (“SB 793”), which prohibits the sale of flavored tobacco products to persons under 21 years of age, and permits local agencies to adopt and implement local ordinances that impose greater restrictions on access to tobacco products; and

WHEREAS, flavored tobacco products, including menthol, fruit, candy, and dessert flavors, including flavored electronic smoking devices, are attractive to youth and increase the likelihood of nicotine addiction; and

WHEREAS, nitrous oxide is an odorless, colorless gas sometimes used in medical or dental procedures, industrial processes, and as a food propellant, but is also subject to recreational misuse and abuse; and

WHEREAS, recreational misuse of nitrous oxide can cause severe vitamin deficiencies, neurological damage, paralysis, and death; and

WHEREAS, possession of nitrous oxide with the intent to breathe, inhale, or ingest for the purpose of causing intoxication is a misdemeanor under California Penal Code § 381(b); and

WHEREAS, selling, furnishing, administering, distributing, or giving away nitrous oxide, or offering to do so, to a person under 18 years of age is a misdemeanor under California Penal Code § 381(c);

WHEREAS, despite state regulations, nitrous oxide is often sold in small canisters or devices that are not reasonably intended for legitimate medical, industrial, or culinary purposes, and are instead marketed in ways that facilitate recreational misuse often in brightly colored canisters; and

WHEREAS, kratom (*Mitragyna speciosa*) is a tropical plant whose leaves and extracts contain psychoactive compounds, including mitragynine and 7-hydroxymitragynine (7-OH), which are often consumed in powdered or extract form to produce stimulant, sedative, and opioid-like effects; and

WHEREAS, numerous local governments across California and the United States have adopted regulations or prohibitions on flavored tobacco, nitrous oxide, and kratom products to protect public health and safety; and

WHEREAS, the City of Chino desires to adopt reasonable regulations prohibiting the sale of flavored tobacco products, nitrous oxide, and kratom products in order to protect public health, reduce youth access, and deter harmful business practices; and

WHEREAS, prior to adoption, the City provided all required public notice and conducted a duly noticed public hearing at which members of the public were given the opportunity to comment;

WHEREAS, all prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. The City Council finds that the above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The Chino Municipal Code is hereby amended to add a new Chapter [9.90] ("Flavored Tobacco; Nitrous Oxide; Kratom Products") to Title [9] ("Public Peace, Morals and Welfare") to state, in full, as follows:

"CHAPTER [9.90]: FLAVORED TOBACCO; NITROUS OXIDE; KRATOM PRODUCTS

Sections:

9.90.010 - Definitions.

For purposes of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

A. "7-OH product" means a product containing 7-hydroxymitragynine.

B. "Attractive to children" means any of the following:

1. Use of images that are attractive to children, including, but not limited to, images of any of the following, except as part of required health warnings:

a) Cartoons, toys, or robots.

b) Any real or fictional humans.

c) Fictional animals or creatures.

d) Fruits or vegetables, except when used to accurately describe ingredients or flavors contained in a product.

2. Likeness to images, characters, or phrases that are popularly used to advertise to children.

3. Imitation of candy packaging or labeling, or other packaging and labeling of cereals, sweets, chips, or other food products typically marketed to children.

4. Use of the terms “candy” or “candies” or variants in spelling such as “kandy” or “kandee.”

5. Brand names or close imitations of brand names of candies, cereals, sweets, chips, or other food products typically marketed to children.

6. Any packaging or labeling that is easily confused with commercially available foods that do not contain kratom and are typically marketed to children.

7. Anything else that is attractive to children in light of all relevant facts and circumstances.

C. “Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

D. “Flavored Tobacco Product” means any tobacco product that imparts a Characterizing Flavor.

E. “Kratom leaf” means the leaf of the kratom plant, also known as *Mitragyna speciosa*, in any form.

F. “Kratom leaf extract” means material obtained by extraction of kratom leaf, kratom leaf extract, or both.

G. “Kratom product” means a product consisting of kratom leaf, kratom leaf extract, or both.

H. “Labeling” means written, printed, or graphic matter upon any Tobacco Product, Nitrous Oxide Device, or any kratom product, or any of its packaging, or accompanying such product.

I. “Nitrous Oxide” means the colorless, nonflammable gas sometimes identified as N₂O, which is used in aerosols and sometimes used 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,” “whippits,” and similar terms.

J. “Nitrous Oxide Device” means any cartridge, compressed gas cylinder, apparatus, container, balloon, attachment, nozzle, or other object used to contain, dispense, or administer nitrous oxide.

K. “Oil Burner” means a glass smoking device that allows users to inhale vaporized oils or other concentrates.

L. "Package" or "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

M. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

N. "Sale" or "Sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

O. "Tobacco Product" means:

1. any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.

2. any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

3. notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

P. "Tobacco Product Flavor Enhancer" means a product designed, manufactured, produced, marketed, or sold to provide a characterizing flavor when added to a tobacco product.

Q. "Tobacco Retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

R. "Total kratom alkaloids" means the sum of mitragynine, speciociliatine, speciogynine, paynantheine, and 7-hydroxymitragynine in a kratom product.

9.90.020 – Sale of Flavored Tobacco Products Prohibited.

A. It shall be a violation of this Chapter for any person to sell or offer for sale, to display for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product or tobacco product flavor enhancer.

B. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more flavored tobacco products, including, but not limited to, individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

C. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a Tobacco Retailer, manufacturer, or any employee or agent of a Tobacco Retailer or manufacturer has:

1. made a public statement or claim that the tobacco product imparts a Characterizing Flavor;

2. used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a Characterizing Flavor; or
3. taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a Characterizing Flavor.

9.90.030 – Sale of Oil Burners Prohibited

A. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, to display for sale, or to possess with intent to sell or offer for sale, any oil burners or colored glass oil burner pipes.

9.90.040 – Sale or Distribution of Nitrous Oxide Prohibited

A. Except as otherwise authorized by law or allowed under this Chapter, it shall be unlawful for any person to sell, attempt to sell, offer for sale, permit to be sold, display for sale, distribute or otherwise provide Nitrous Oxide, a Nitrous Oxide Device, or any device that contains any quantity of Nitrous Oxide.

B. This Section does not prohibit the sale, attempt to sell, offer for sale, permit to be sold, display for sale, distribution, or any other manner of providing Nitrous Oxide or a Nitrous Oxide Device, in the following circumstances:

1. If the nitrous oxide is contained in a food product for use as a propellant.
2. If the nitrous oxide or device is being sold, attempted to be sold, offered, or distributed in a wholesale capacity, for uses similar to those described in subsection (D) of Section 9.90.050, provided the wholesaler does not know or have reason to know that the recipient intends to use the Nitrous Oxide or Nitrous Oxide Device in violation of subsection (A) above.
3. If the Nitrous Oxide or Nitrous Oxide Device being sold or offered is specifically designed for use in a vehicle to enhance the performance of the vehicle.
4. If the Nitrous Oxide is being sold or offered specifically for the purpose of providing medical or dental care, by or at the direction of, 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.
5. If the Nitrous Oxide or Nitrous Oxide Device is being sold, attempted to be sold, offered, distributed, or dispensed by a pharmacist, pharmacist intern, or pharmacy as defined by Sections 4030, 4036, and 4037 of the California Business & Professions Code, as may be amended, in the course of their duties as a pharmacist or pharmacist intern, or by wholesalers licensed by the Board of Pharmacy.
6. Any other circumstances exempted under law.

9.90.050 — Prohibition on Sale and Distribution of Kratom and 7-OH Products

A. Except as otherwise authorized by law, it shall be unlawful for any person to sell, attempt to sell, offer for sale, permit to be sold, display for sale, distribute, or otherwise provide to any person a kratom product or 7-OH product to any person under 21 years of age.

B. Except as otherwise authorized by law, it shall be unlawful for any person to sell, attempt to sell, offer for sale, permit to be sold, display for sale, distribute, or otherwise provide to any person a kratom product or 7-OH product with a level of 7-OH that is greater than 2 percent of the total kratom alkaloids in the product.

C. Except as otherwise authorized by law, it shall be unlawful for any person to sell, attempt to sell, offer for sale, permit to be sold, display for sale, distribute, or otherwise provide to any person a kratom product or 7-OH product that is attractive to children.

D. No person or entity shall offer for sale any kratom product that contains or is adulterated with synthesized or semi-synthesized kratom alkaloids or kratom constituents.

9.90.060 — Violations and Penalties

A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Any person violating any provision of this Chapter shall be guilty of a misdemeanor, as defined by Section 1.12.010 of the Chino Municipal Code, for each day such violation continues.

C. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

D. Any person violating the provisions of this Chapter shall also be liable for civil penalties of not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for each day the violation continues, and may also be subject to administrative citations and civil fines pursuant to Chapter 1.15 of the Chino Municipal Code.

E. A violation of this Chapter shall additionally be grounds for revocation of a business license, if applicable, pursuant to the relevant licensing provisions of the Chino Municipal Code.

F. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

G. In addition to the penalties provided by this Chapter, any condition caused, maintained, allowed, or permitted to exist in violation of any provision of this Chapter shall be deemed a public nuisance and may be abated by the City through all legal means available, including but not limited to injunctive relief, as provided by Section 1.12.010 of the Chino Municipal Code.”

SECTION 3. Section 20.24.020 (“Definitions”) of the Chino Municipal Code is hereby revised as follows (additions in underline; deletions in ~~striketrough~~):

“*Hookah bar.* An establishment where patrons communally smoke ~~flavored tobacco-~~ or other legal substances through a water pipe.”

SECTION 4. CEQA. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines Section 15061(b)(3) in that the Ordinance is not anticipated to result in a direct or reasonably foreseeable indirect physical change in the environment, nor will the proposed changes have the potential for causing a significant effect on the environment. Additionally, the proposed action is not a “project” under State CEQA Guidelines Section 15378(b)(5), which excludes the “organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment,” as this Ordinance is not anticipated to result in a direct or indirect physical change in the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted this

Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

SECTION 7. Certification. The City Clerk of the City of Chino shall certify as to the passage of this Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Chino.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2026

Eunice M. Ulloa, Mayor

ATTEST:

City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) §
CITY OF CHINO)

I, Natalie Gonzaga, City Clerk of the City of Chino do hereby certify that the foregoing Ordinance of the City of Chino was duly adopted by said City Council at a regular meeting held on the ____ day of ____ 2026 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

By: NATALIE GONZAGA, CITY CLERK