ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ADDING CHAPTERS 6.48 AND 6.50 TO TITLE 6 OF THE GARDEN GROVE MUNICIPAL CODE PROHIBITING THE SALE AND DISTRIBUTION OF KRATOM PRODUCTS AND RESTRICTING THE SALE AND DISTRIBUTION OF NITROUS OXIDE PRODUCTS.

City Attorney Summary

This Ordinance enacts a prohibition on the sale, distribution and possession of kratom products for commercial purposes, and enacts restrictions on the sale and distribution of nitrous oxide products. There will be specific exemptions to the nitrous oxide products restrictions such as when contained within a food product for use as a propellant or for use in medical or dental practices.

WHEREAS, California Constitution, Article XI, Section 7, authorizes the City of Garden Grove ("City") to adopt and enforce local police, sanitary, and other ordinances and regulations that are not in conflict with general laws; and

WHEREAS, California Health & Safety Code section 101450 empowers the City Council to take measures necessary to preserve and protect public health, including adopting ordinances, regulations, and orders that are not in conflict with general laws; and

WHEREAS, California courts in *Cohen v. Board of Supervisors*, (1985) 40 Cal.3d 277, *Bravo Vending v. City of Rancho Mirage*, (1993) 16 Cal.App.4th 383, and *Prime Gas v. City of Sacramento*, (2010) 184 Cal.App.4th 697, have affirmed the power of local jurisdictions to regulate business activity to protect public health and safety and in order to discourage violations of law; and

WHEREAS, the kratom plant (*Mitragyna speciosa*) is a tropical evergreen native to Southeast Asia containing psychoactive compounds which can produce stimulant, or sedative, opioid-like effects; and

WHEREAS, the active compounds in kratom include mitragynine and 7-ydroxymitragynine. While mitragynine is present in higher concentrations, 7-hydroxymitragynine is more potent and is largely responsible for the stronger pain-relieving, sedative, and euphoric effects; and

WHEREAS, 7-hydroxymitragynine binds to opioid receptors in the brain and has been shown to have euphoric and mood-enhancing effects, particularly at higher doses, which can increase its appeal for recreational use; and

WHEREAS, 7-hydroxymitragynine is believed to be more potent than morphine in terms of pain relief. Research has shown that it binds to opioid receptors in the brain with greater affinity than morphine, making it significantly more powerful in relieving pain. This

greater potency raises significant concerns about its safety profile, especially regarding the potential for addiction, overdose, and adverse physical and psychological effects, including nausea, vomiting, and potential psychosis.

WHEREAS, scientific research and health advisories have raised concerns over the safety of kratom products, particularly those with higher concentrations of 7-hydroxymitragynine, which may increase the potential for abuse and harm to public health; and

WHEREAS, kratom products are not subject to federal safety checks, resulting in a lack of oversight regarding purity, dosage, contamination, labeling accuracy, and consumer warnings; and

WHEREAS, the City seeks to prohibit the sale and distribution of kratom products within its limits as a reasonable and necessary exercise of its police powers to safeguard the health, safety, and welfare of its residents; and

WHEREAS, Nitrous Oxide is an odorless, colorless chemical that can be inhaled for legitimate purposes associated with medical or dental procedures in a clinical setting, and is legitimately used for industrial purposes and as a propellant for food products; and

WHEREAS, Nitrous Oxide is also subject to recreational misuse and abuse, in part, because it is easy to purchase from retail vendors and relatively inexpensive; and

WHEREAS, the recreational misuse and abuse of Nitrous Oxide can cause permanent vitamin deficiencies in the blood, and can cause long-term neurological effects, including paralysis and death; and

WHEREAS, the incidence of Nitrous Oxide recreational misuse and abuse has been on the rise both within Orange County and internationally over the past decade, with multiple medical studies noting significant increases in recreational misuse in the past five years, as well as a broader medical understanding of the long-term hematological and neurological impacts of Nitrous Oxide misuse and abuse; and

WHEREAS, Nitrous Oxide recreational misuse and abuse has been associated with multiple traffic incidents and criminal incidents throughout Orange County in the past several years; and

WHEREAS, the City of Garden Grove does not currently regulate the sale of Nitrous Oxide and finds and declares that in the absence of local regulation, Nitrous Oxide remains subject to significant risk of misuse and abuse through sale to individuals who intend to misuse or abuse the product; and

WHEREAS, the City of Garden Grove desires to regulate the sale of Nitrous Oxide in order to preserve and protect public health and to dissuade sellers of Nitrous Oxide products from selling to individuals which they know or have reason to know intend to use the products for illegal purposes (i.e., recreational ingestion and/or inhalation); and

WHEREAS, the City Council is committed to safeguarding the health and well-being of its residents by ensuring that products available for sale do not pose undue health risks.

NOW, THEREFORE, The City Council of the City of Garden Grove hereby ordains as follows:

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

SECTION 2. Chapter 6.48 is added to Title 6 of the Garden Grove Municipal Code to read as follows:

Chapter 6.48

Kratom Products

§ 6.48.010 Authority and Purpose.

This chapter is enacted pursuant to the City's police powers to protect public safety, health and welfare. The purpose of this chapter is to protect public health and safety by prohibiting the commercial sale and distribution of kratom and kratom products within the City due to their opioid-like effects, lack of regulatory oversight, and demonstrated risk of abuse, dependence, and adverse health outcomes.

§ 6.48.020 Definitions.

Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

"7-OH product" means any product containing any detectable amount of 7-hydroxymitragynine.

"Distribute" means to furnish, give away, exchange, transfer, deliver or supply, whether or not for monetary gain.

"Kratom alkaloids" means any detectable amount of mitragynine, speciociliatine, speciogynine, paynantheine, 7-OH, or any natural, synthetic, or semi-synthetic alkaloid, derivative, isolate, metabolite, or structurally related constituent of *Mitragyna speciosa*.

"Kratom" or "Kratom product means any product consisting of, or labeled or marketed as consisting of, any part of the leaf of *Mitragyna speciosa* in fresh, dehydrated, or dried form; including any extract, isolate, derivative, metabolite, or alkaloid, whether natural,

synthetic, or semi-synthetic, regardless of concentration. The term includes any food, dietary ingredient, supplement, tea, gummies, beverage, vaping liquid, smoking wrap, smoking accessories or paraphernalia, and any other substances intended for human consumption or inhalation that contains any part of the leaf of *Mitragyna speciosa*, or any extract, synthetic alkaloid, or synthetically derived compound of the plant or its leaf. This definition includes, but is not limited to, powders, capsules, pills, teas, gummies, beverages, vape liquids, smoke wraps, smoking accessories or paraphernalia, and any other substances intended for consumption or inhalation.

“Kratom leaf” means the leaf of the kratom plant, also known as mitragyna speciosa, any form.

“Kratom leaf extract” means the material obtained by extraction of kratom leaves by any means.

“Possess for commercial purposes” means to possess with intent to sell, offer for sale, furnish, exchange, distribute, or otherwise provide in the course of business operations, including display, storage, warehousing, stocking, or holding for sale or distribution.

“Sell” or **“Sale”** means to furnish, exchange, transfer, deliver, or supply for monetary gain including but not limited to any transfer or title or possession for consideration, exchange, or barter, in any manner or by any means.

"Synthesized" means an alkaloid or alkaloid derivative or constituent that has been created by chemical synthesis or biosynthetic means (including but not limited to; fermentation, recombinant techniques, yeast derived, enzymatic techniques), rather than traditional food preparation techniques such as heating or extracting. It also includes alkaloids that have been further exposed to chemicals or processes that would confer a structural change in the alkaloids contained within the extract.

§ 6.48.030 Prohibition on the Sale or Distribution of Kratom and 7-OH Products.

Except as otherwise authorized by law, an individual, business, or other entity shall not sell, attempt to sell, offer for sale, provide, distribute, display, furnish, administer, exchange, give away, or possess for commercial purposes:

A. Any kratom or kratom product containing any detectable amount of kratom alkaloids.

B. Any kratom product that contains or is adulterated with synthesized or semi-synthesized kratom alkaloids, ingredients, or constituents.

C. Any kratom product whose packaging indicates, implies, advertises, or suggests the presence of kratom or kratom alkaloids.

D. Any kratom product whose packaging has had the manufacturer's or distributor's label removed or altered to conceal, disguise, or modify the presence of kratom alkaloids or synthesized or semi-synthesized kratom constituents.

§ 6.48.040 Violations, Enforcement, and Penalties.

A. Misdemeanor. A violation of this chapter is a misdemeanor and shall be punished pursuant to Chapter 1.04 of this Code.

B. Administrative Citation. Any person violating any provision of this Section may be subject to an administrative citation pursuant to Chapter 1.22 of this Code.

C. Nonexclusive Remedies and Penalties. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. Punishment under this section shall not preclude any other remedies, penalties or procedures that the City may have to address violations of this chapter or as otherwise provided by law. Violations of this Chapter are hereby declared to be public nuisances.

SECTION 3. Chapter 6.50 is added to Title 6 of the Garden Grove Municipal Code to read as follows:

Chapter 6.50

Nitrous Oxide

§ 6.50.010 Authority and Purpose.

This article is enacted pursuant to the City's police powers to protect the public safety, health and welfare. The express purpose of this article is to protect the public health and safety by eliminating retail access for recreational use of nitrous oxide, a dangerous gas that is illicitly used as an intoxicant.

§ 6.50.020 Definitions.

Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

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

"Nitrous oxide" means the colorless nonflammable gas sometimes identified as N20, which is sometimes 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," amongst others.

"Person" means any individual or legal entity however constituted or organized.

"Wholesale capacity" means sale of or distribution of nitrous oxide or a device to dispense nitrous oxide to a person that will use nitrous oxide or the device in service or products for resale. Examples include, but are not limited to, commercial sale of dentistry supplies to dentists or dentistry offices, commercial sale of devices for the use in food production or in a commercial kitchen, and/or commercial sale of nitrous oxide for the purpose of producing food products for commercial sale (e.g., whipped cream canisters).

§ 6.50.030 Prohibition on Sale or Distribution of Nitrous Oxide.

Except as otherwise authorized by law or allowed under this chapter, it is unlawful for any person to sell, offer, distribute, display for sale, or otherwise provide to any person nitrous oxide, a device to dispense or administer nitrous oxide, or any device that contains any quantity of nitrous oxide.

§ 6.50.040 Exceptions to Prohibition.

This article does not apply to the sale, distribution, or other manner of providing nitrous oxide, or a device containing nitrous oxide, in the following circumstances:

A. If the nitrous oxide is labeled and marketed as food-grade and is contained within a food product for use as a propellant or preservative.

B. If the nitrous oxide or device is being sold, offered, or distributed in a wholesale capacity. This exemption only applies if the wholesaler does not know or have reason to know that the recipient intends to use the nitrous oxide or device in violation of section 6.50.030.

C. If the nitrous oxide or device is specifically designed, marketed, and safety-labeled for industrial use exclusively for automotive purposes, it must be utilized at a licensed automotive facility approved by the California Bureau of Automotive Repair.

D. If the nitrous oxide is being sold, offered or distributed specifically 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.

E. If the nitrous oxide or device is being sold, offered, distributed, or dispensed by a pharmacist, pharmacist intern, or pharmacy as defined by California Business & Professions Code §§ 4030, 4036, and 4037, as maybe amended, in the course of

their duties as a pharmacist or pharmacist intern, or wholesalers licensed by the Board of Pharmacy.

F. Or any other circumstances exempted under law.

Notwithstanding the foregoing, any sale or distribution of nitrous oxide, any device designed to dispense or administer nitrous oxide, or a device containing any quantity of nitrous oxide shall comply with all requirements of California Penal Code sections 381b through 381e.

§ 6.50.050 Violations and Penalties.

A. Misdemeanor. A violation of this chapter is a misdemeanor and shall be punished pursuant to Chapter 1.04 of this Code.

B. Administrative Citation. Any person violating any provision of this Section may be subject to an administrative citation pursuant to Chapter 1.22 of this Code.

C. Nonexclusive Remedies and Penalties. Punishment under this section shall not preclude any other remedies, penalties or procedures that the City may have to address violations of this chapter or as otherwise provided by law. Violations of this Chapter are hereby declared to be public nuisances.

SECTION 4. Severability Clause. If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION 5. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause a certified copy of this Ordinance to be published or posted within fifteen (15) days after this Ordinance is passed and adopted, as required by law.