

ORDINANCE NO. 1677

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA ADDING A NEW DIVISION 1, ARTICLE V TO CHAPTER 16 OF THE FONTANA MUNICIPAL CODE, REGARDING PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE AND OTHER SYNTHETIC DRUGS, PROHIBITING THE DISTRIBUTION AND SALE OF CERTAIN INTOXICATING CHEMICAL COMPOUNDS KNOWN AS SYNTHETIC DRUGS

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

Section 1. The City Council finds as follows:

(a) Synthetic Drugs are extremely dangerous and are gaining popularity at an alarming rate among high school and college aged individuals, as well as among parolees and probationers. These drugs are widely available, despite the State of California's attempt to ban such drugs under Health & Safety Code sections 11357.5 (banning synthetic cannabinoid compounds), 11375.5 (banning synthetic stimulant compounds and derivatives) and 11401 (banning "analogs" of controlled substances) (collectively "State Synthetic Drug Laws") and the Federal Government's attempt to ban such drugs under the Controlled Substances Act (the "CSA") (21 USC §§ 81 et seq.). The City Council further finds that virtually every community in California has recognized the danger of Synthetic Drugs which have been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death.

(b) While State Synthetic Drugs Laws and the CSA prohibit certain compounds that are used to create synthetic drugs, they are not comprehensive enough to eliminate the distribution and sale of all Synthetic Drugs in the City. Specifically, the Council finds that the makers of Synthetic Drugs continually alter the composition of the compounds in their products so as to not come under the purview of State Synthetic Drug Laws,, the CSA and other laws and regulations attempting to prohibit the sale of Synthetic Drugs. In fact, products which plainly are being marketed for use of Synthetic Drugs are now being packaged with advertisements stating that the product does not contain the compounds specifically banned by State Synthetic Drug Laws. Thus, the City Council finds that in order to implement an effective measure prohibiting the distribution and sale of Synthetic Drugs, it is necessary to look at all factors related to the sales and marketing of Synthetic Drugs. These factors will help City officials determine whether a product that does not come under the purview of State Synthetic Drug Laws or the CSA is nevertheless a Synthetic Drug because it is intended for recreational drug use.

(c) While the question of whether a given product is being distributed or sold for use as a recreational drug must be determined on a case-by-case basis, the City Council finds that the following evidentiary factors are helpful in determining whether a given product is in fact a Synthetic Drug:

(1) Marketing: Synthetic Drugs are rarely, if ever, suitable for their marketed uses. For example, a Synthetic Drug in the form of a powder might be marketed as "glass cleaner," even though the powder cannot reasonably be used to clean glass.

(2) Sales Location: Synthetic Drugs are typically sold in liquor stores, smoke shops and gas stations, yet Synthetic Drugs are marketed as products that are not typically sold by these businesses. For example, Synthetic Drugs are often marketed as bath salts, spice, incense, potpourri, skin treatments, cleaning products and plant food; however, these types of products are typically not sold in liquor stores, smoke shops or gas stations.

(3) Warning Labels: Synthetic Drugs often use warning labels such as: "not for human consumption" and "not for purchase by minors." Bona fide bath salts, incense, cleaning products and the like do not typically bear such labels. Of particular relevance are labels that indicate a given product does not contain chemical compounds banned by State Synthetic Drug Laws, which bona fide bath salts, incense, cleaning products and the like would not have any reason to advertise.

(4) Price: Synthetic Drugs are typically more expensive than products that are used for Synthetic Drug's marketed use. For example, a Synthetic Drug marketed as "glass cleaner" might be priced at \$50.00 for an eighth of an ounce, while bona fide glass cleaner is priced at approximately \$5.00 for 26 ounces.

(5) Similarity to Illicit Street Drugs: Synthetic Drugs often resemble illicit street drugs and/or use brand names and packaging that are designed to make the product appear similar to illicit street drugs. For example, many Synthetic Drugs are sold as white powders packaged in vials (resembling cocaine) or dyed green to appear similar to marijuana. Additionally, brand names are often similar to street slang for illicit drugs and have no relation to the products that are purportedly being sold. These brand names are always changing, but include "Eight Ballz," "Spice," "Black Mamba," "K-2," "Puff," "Sugar Sticks," "Green Buddha," "Diable Botanical Incense," "Scooby Snax Potpourri," "Grape Ape Herbal Incense," "Aurora Incense," "Three Monkey Incense," "Mr. and Mrs. Marley," "Cloud 9 Incense" and a group of Synthetic Drugs marketed as from "The Spice Guy."

(d) An effective way to prevent and abate the health, safety and welfare concerns that exist as a result of the marketing, distribution and sale of Synthetic Drugs in manners that brazenly seek to circumvent State and Federal Law is through the enforcement of the City's administrative, criminal and civil enforcement procedures (set forth in Sections 1-7, 2-439 to 2-447 inclusive, and Chapter 18, Article I of the Fontana

Municipal Code) and through the prohibition against the issuance of a business license (pursuant to Section 15-3 of the Fontana Municipal Code). Because the chemical composition of Synthetic Drugs is constantly evolving, it is necessary to look at the circumstances surrounding the marketing (including price), distribution or sale of any given product to determine if the product is being provided, distributed or sold as a recreational drug. This ordinance shall not apply to any activity already regulated by Health and Safety Code Sections 11357.5, 11375.5, 11401, the CSA or pre-empted by any State or Federal law or regulation.

Section 2. A new Chapter 16, Article V, Division 1 of the Fontana Municipal Code is hereby added in its entirety as follows:

**"PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE
AND OTHER SYNTHETIC DRUGS**

SECTIONS:

Sec. 16-138 Purpose and Intent

Sec. 16-139 Definitions

**Sec. 16-140 Provision, Display for Sale, Sale or Distribution of
Synthetic Drugs Prohibited**

**Sec. 16-141 Provision, Display for Sale, Sale or Distribution of
Substances Claimed or Represented to be Synthetic
Drugs Prohibited**

Sec. 16-142 Possession of Synthetic Drugs Prohibited

Sec. 16-143 Public Nuisance

Sec. 16-144 Summary Abatement

Sec. 16-145 Revocation of Business License

Sec. 16-146 Penalties

Sec. 16-147 Seizure of Evidence

Sec. 16-148 Exclusions

Sec. 16-138 Purpose and Intent.

Recreational use of Psychoactive Bath Salts, Psychoactive Herbal Incense and similar products commonly known as "Synthetic Drugs" has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death. While State and Federal laws and regulations prohibit some Synthetic Drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of these laws and regulations. The purpose and intent of this Division is to provide the City with reasonable measure to address the dangers to the community posed by Synthetic Drugs that are not regulated by State or Federal Law.

Sec. 16-139 Definitions.

(a) "Business" shall have the same meaning as the term is defined in Section 15-27 of this Municipal Code.

(b) "Consume," "consuming" or "consumption" shall mean to ingest, inhale, inject, smoke or snort (insufflate).

(c) "Distribute," "distributing," or "distribution" shall mean to furnish, give away, exchange, transfer, deliver or supply, whether for monetary gain or not.

(d) "Person" shall include any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association or similar organization.

(e) "Possess," "possessing" or "possession" shall mean to have for consumption, distribution or sale in one's actual or constructive custody or control, or under one's authority or power, whether such custody, control, authority or power be exercised solely or jointly with others.

(f) "Provide," "providing" or "provision" shall mean offering to distribute or sell a product or substance to any person.

(g) "Psychoactive Bath Salts" shall mean any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term "Psychoactive Bath Salts" includes without limitation:

(1) products that elicit psychoactive or psychotropic stimulant effects and contain any of the following intoxicating chemical compounds:

(A) cathinone (2-amino-1-phenyl-1-propanone), 4-methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1-one), 4-methoxymethcathinone (1-(4-methoxyphenyl)-2-(methylamino)propan-1-one), MDPV (methylenedioxypyrovalerone), MDMA (3, 4-methylenedioxy-*N*-methylamphetamine), methylone (3,4-methylenedioxy-*N*-methylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1-one), flephedrone (4-fluoromethcathinone), 3-FMC (3-fluoromethcathinone), ethcathinone (2-ethylamino-1-phenyl-propan-1-one), butylone (β -keto-*N*-methylbenzodioxolylbutanamine), α -PPP (α -pyrrolidinopropiophenone), MPPP (4'-methyl- α -pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy- α -pyrrolidinopropiophenone), α -PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one);

(B) any derivative of the above listed intoxicating chemical compounds;

(C) any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

(D) any chemical alteration of the above listed intoxicating chemical compounds; or

(E) any other substantially similar chemical structure or compound; and

(2) products that elicit psychoactive or psychotropic stimulant effects and are marketed under any of the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning.

The term "Psychoactive Bath Salts" shall not include any product, substance, material, compound, mixture or preparation that is specifically excepted by the California Uniform Controlled Substances Act ("UCSA") (Health & Safety Code §§ 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health & Safety Code §§ 11053-11058), regulated by one of the UCSA's Synthetic Drug Laws (Health & Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the Federal Controlled Substances Act (the "CSA") (21 USC §§ 81 et seq.) or approved by the Food and Drug Administration ("FDA").

(h) "Psychoactive Herbal Incense" shall mean any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "Psychoactive Herbal Incense" includes without limitation:

(1) products that elicit psychoactive or psychotropic euphoric effects and contain any of the following chemical compounds:

(A) (A)cannabicyclohexanol (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalene-1-yl-(1-pentylindol-3-yl)methanone), JWH-073 (naphthalen-1-yl-(1-butylyndol-3-yl)methanone), JWH-200 ((1-(2-morpholin-4-ylethyl)indol-2-yl)-naphthalen-1-ylmethanone), HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol), CP 47, 497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) CP 47,497 (2-[1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) or AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone);

(B) any derivative of the above listed intoxicating chemical compounds;

(C) any synthetic substance and its isomers with a chemical structure similar to the above listed intoxicating chemical compounds;

(D) any chemical alteration of the above listed intoxicating chemical compounds; or

(E) any other substantially similar chemical structure or compound; and

(2) products that elicit psychoactive or psychotropic euphoric

effects and are marketed under any of the following names: K2, K3, Spice, Genie, Smoke, Potpourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed and Black Mamba.

The Term "Psychoactive Herbal Incense" shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the UCSA (Health & Safety Code §§11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health & Safety Code 11053-11058) regulated by one of the USCA's Synthetic Drug Laws (Health & Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the CSA (21 USC §§ 81 et seq.) or approved by the FDA.

(i) "Psychoactive or psychotropic stimulant effects" shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of cocaine, methylphenidate or amphetamines.

(j) "Psychoactive or psychotropic euphoric effects" shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of cannabis.

(k) "Sell," "selling" or "sale" shall mean to furnish, exchange, transfer, deliver or supply for monetary gain.

(l) "Synthetic Drug" shall include Psychoactive Bath Salts and Psychoactive Herbal Incense, as those terms are defined hereinabove.

Sec. 16-140 Provision, Display for Sale, Sale or Distribution of Synthetic Drugs Prohibited.

(a) It is unlawful for any person to provide, display for sale, distribute or sell any Synthetic Drug within the City of Fontana.

(b) Merely disclaiming a Synthetic Drug as "not safe for human consumption" will not avoid the application of this Section.

Sec. 16-141 Provision, Display for Sale, Sale or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited.

(a) It is unlawful for any person to claim or represent that a product that person is providing, displaying for sale, distributing or selling is a Synthetic Drug within the City of Fontana.

(b) To determine if a person is claiming or representing that a product is a Synthetic Drug, the enforcing officer may consider any of the following evidentiary factors:

(1) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

(2) The business providing, displaying for sale, distributing or selling the product does not typically provide, distribute or sell products that are used for that product's marketed use (such as a liquor store selling "plant food");

(3) The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption," "not for purchase by minors," or "does not contain chemicals banned by section 11357.5");

(4) The product is significantly more expensive than products that are used for that product's marketed use (such as half of a gram of a substance marketed as "glass cleaner" costing \$50.00);

(5) The product resembles an illicit street drug (such as cocaine, methamphetamine or marijuana); or

(6) The product's name or packaging uses images or slang referencing an illicit street drug (such as "Eight Ballz" or "Green Buddha").

(c) Merely disclaiming a substance claimed or represented to be a Synthetic Drug as "not safe for human consumption" will not avoid the application of this Section.

Sec. 16-142 Possession of Synthetic Drugs Prohibited.

It is unlawful for any person to possess any Synthetic Drug within the City of Fontana.

Sec. 16-143 Public Nuisance.

(a) It is a public nuisance for any person to provide, display for sale, distribute or sell any Synthetic Drug within the City of Fontana.

(b) It is a public nuisance for any person to allow the provision, display for sale, distribution or sale of any Synthetic Drug on property owned, controlled or managed by such person within the City of Fontana.

(c) It is a public nuisance for any person to provide, display for sale, distribute or sell any substance claimed or represented to be a Synthetic Drug within the City of Fontana.

(d) It is a public nuisance for any person to allow the provision, display for sale, distribution or sale of any substance claimed or represented to be a Synthetic Drug on property owned, controlled or managed by such person within the City of Fontana.

(e) To determine if a person is claiming or representing that a substance or product is a Synthetic Drug, the enforcing officer may consider any of the evidentiary factors set forth in Section 16-141 of this Division.

Sec. 16-144 Summary Abatement.

Because the use of Synthetic Drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death, any violation of this Division presents a grave and imminent danger not only to the person consuming the Synthetic Drug, but also to the public at large. If the Code Compliance Officer, based on the facts then known, determines that a violation of this Division presents an imminent danger or hazard or is imminently injurious to the public health or safety, then that violation is punishable by the summary abatement procedures set forth section 18-25 of this Code.

Sec. 16-145 Revocation of Business License.

No person holding a City business license and owning or operating a business in the City may use that business to provide, distribute or sell any Synthetic Drug or any substance claimed or represented to be a Synthetic Drug. A violation of this Section by the holder of a City business license, shall constitute grounds for modification, suspension, revocation, or any combination thereof, of said license.

Sec. 16-146 Penalties.

Established by resolution of the City of Fontana City Council.

(a) Misdemeanor Violation. Failure to comply with any of the requirements of this Division is a misdemeanor punishable by imprisonment in the City or County jail for a period not exceeding six (6) months or by fine not exceeding one thousand dollars (\$1,000.00), or by both, provided that where the City Attorney determines that such action would be in the interest of justice, he/she may specify in the accusatory pleading that the offense shall be an infraction.

(b) Infraction Violation. Where the City Attorney determines that, in the interest of justice, a violation of this Division is an infraction, such infraction is punishable by a fine not exceeding one hundred dollars (\$100.00) for a first violation, a fine not exceeding two hundred dollars (\$200.00) for a second violation of the same provision within one (1) year, and a fine not exceeding five hundred dollars (\$500.00) for each additional infraction violation of the same provision within one (1) year. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury and shall not be entitled to have the public defender or other counsel appointed at public expense to represent him/her, unless he/she is arrested and not released on his/her written promise to appear, his/her own recognizance or a deposit of bail. However, any person who has previously been convicted two (2) or more times during any twelve (12) month period for any violation of this Division

for a crime made punishable as an infraction shall be charged with a misdemeanor upon the third violation.

(c) The fine amounts set forth above may be modified, from time to time, by City Council resolution. In no event shall such fine amounts exceed the amounts authorized by State law.

Sec. 16-147 Seizure of Evidence

Any product(s) or substance(s) possessed, provided, distributed or sold in violation of any provision of this Division shall be seized by the enforcing officers and removed, stored and disposed of in accordance with law.

Sec. 16-148 Exclusions

(a) This Division shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds that have been approved by the federal Food and Drug Administration or which are specifically permitted by California law, including without limitation, intoxicating chemical compounds that are specifically excepted by the California Uniform Controlled Substances Act (Health and Safety Code § 11000 et seq.).

(b) This Division shall not apply to drugs or substances that are prohibited by State or Federal law, including without limitation, California Health and Safety Code Sections 11357.5, 11375.5, 11401 and the Federal Controlled Substances Act

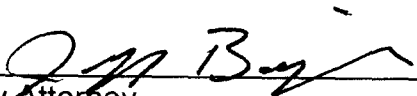
(c) This Division shall not be deemed to prescribe any act that is positively permitted, prohibited or preempted by any State or Federal law or regulation."

Section 2. If any section, subsection, sentence, clause, or phrase of this division is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this division, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 3. This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of the fifteen (15) days from the passage thereof, the Ordinance or a summary of the Ordinance shall be published at least once in the Herald News, a newspaper of general circulation in the City of Fontana. Thereafter, this Ordinance shall be in full force and effect.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Fontana, California, at a regular meeting held on the 23rd day of July, 2013.

READ AND APPROVED AS TO LEGAL FORM:



City Attorney


I, Tonia Lewis, City Clerk of the City of Fontana and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance introduced at a regular meeting of said City Council on the 9th day of July, 2013 and was finally passed and adopted not less than five (5) days thereafter on the 23rd day of July 2013 by the following vote to wit:

AYES: Mayor Warren, Mayor Pro Tem Roberts, Council Members Sandoval, Tahan and Wibert

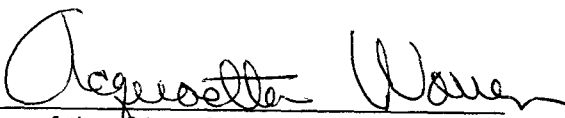
NOES:

ABSENT:

ABSTAIN:

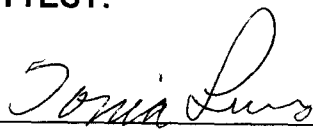


City Clerk of the City of Fontana



Mayor of the City of Fontana

ATTEST:



City Clerk

TO: HERALD NEWS
EMAIL: LEGALS@FONTANAHERALDNEWS.COM
FROM: FONTANA CITY CLERK'S DEPARTMENT
DATE: July 10, 2013

PUBLICATION OF SUMMARY OF PROPOSED ORDINANCE NO. 1677

PUBLISH ONE TIME ONLY ON OR BEFORE JULY 19, 2013. ONE AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF PROPOSED ORDINANCE NO. 1677

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on July 9, 2013 in the Grover W. Taylor City Council Chambers, 8353 Sierra Avenue, Fontana, California, considered adoption of **Ordinance No. 1677**, an ordinance of the City Council of the City of Fontana, California, adding Chapter 16, Article V, Division 1 to the Fontana Municipal Code regarding Bath Salts; and that the reading of the title constitutes the first reading thereof.

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor

Tonia Lewis
City Clerk

P.O. #800496

TO: HERALD NEWS
EMAIL: LEGALS@FONTANAHERALDNEWS.COM
FROM: FONTANA CITY CLERK'S DEPARTMENT
DATE: July 24, 2013

PUBLICATION OF SUMMARY OF ADOPTED ORDINANCE NO. 1677

PUBLISH ONE TIME ONLY ON OR BEFORE August 2, 2013. ONE AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF ADOPTED ORDINANCE NO. 1677.

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on July 23, 2013 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, adopted **Ordinance No. 1677**, an ordinance of the City Council of the City of Fontana, California, adding Chapter 16, Article V, Division 1 to the Fontana Municipal Code regarding Bath Salts.

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor

Tonia Lewis
City Clerk

cf
P.O. #800496