

ORDINANCE NO. 3841

AN ORDINANCE AMENDING CHAPTER 16 "OFFENSES" OF THE CODE OF ORDINANCES OF THE CITY OF PINELLAS PARK, FLORIDA, BY CREATING A NEW SECTION 16-125 "ILLCIT SYNTHETIC DRUGS"; PROVIDING FOR DEFINITIONS; PROHIBITING THE POSSESSION, USE, PROVISION, SALE, ADVERTISEMENT, DISPLAY, MANUFACTURE, OR DISTRIBUTION OF "ILLCIT SYNTHETIC DRUGS" INCLUDING "SPICE," SYNTHETIC CANNABINOIDS, SYNTHETIC MARIJUANA, "BATH SALTS," SYNTHETIC CATHINONES, SYNTHETIC STIMULANTS, OR MISBRANDED DRUGS; PROHIBITING PROVISION OR SALE OF A PRODUCT FOR HUMAN CONSUMPTION WHEN THE PRODUCT IS LABELED "NOT FOR HUMAN CONSUMPTION" OR CONTAINS SIMILAR WARNINGS; PROVIDING DEFENSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE INCLUSION OF SUCH AMENDED ORDINANCE IN THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, new herbal and/or chemical mixtures are being marketed and sold in the City which are not necessarily controlled by federal or state law but which are designed and marketed to mimic the effects of illegal narcotics; and

WHEREAS, according to the Drug Enforcement Administration (DEA), synthetic cannabinoids, also known as "Spice" or "K2" are mixtures of herbs and spices that are typically sprayed with a synthetic compound chemically similar to THC, the psychoactive ingredients in marijuana. These products are available for purchase in various retail outlets, tobacco shops, "head shops", and over the internet. The products are often marketed as "incense" that can be smoked. The product sometimes resembles potpourri, but can also be found in liquid form to be smoked in electronic cigarettes, or as a food "additive." These products produce psychological effects similar to those of marijuana, which include, but are not limited to, paranoia, panic attacks, and giddiness. The short term physiological effects include increased heart rate and increased blood pressure and long term physiological effects damages and risks are unknown. The DEA has placed a number of synthetic cannabinoids into Schedule I (the class of substances that carry a high potential for abuse

and have no currently accepted medical use) of the Controlled Substances Act (CSA), 21 USC §§ 81 et seq.), finding that placement into Schedule 1 was necessary to prevent an imminent hazard to the public safety; and

WHEREAS, according to the DEA, synthetic cathinones, also known as "Bath Salts," are chemicals that are synthetic derivatives of cathinones, a central nervous system stimulant. These products are available for purchase in various retail outlets, tobacco shops, head shops, and over the internet. The products are sold in powder, tablet, and capsule form, and are usually ingested by sniffing/snorting but can also be taken orally, smoked, or put into a solution and injected. These products can produce agitation, insomnia, irritability, dizziness, depression, paranoia, delusions, suicidal thoughts, seizures, and panic attacks. Users have also reported effects such as impaired perception of reality, reduced motor control, and decreased ability to think clearly. Cathinone derivatives act as central nervous system stimulants causing rapid heart rate (which may lead to heart attacks and strokes, chest pains, nosebleeds, sweating, nausea and vomiting). Drugs that have similar effects include amphetamines, cocaine, Khat, LSD and MDMA. The DEA has placed a number of chemicals used to make bath salts into Schedule I of the CSA, finding that an order making possession or sale of these chemicals, or the products that contain them, was necessary to prevent an imminent hazard to the public safety; and

WHEREAS, in 2010, the American Association of Poison Control Centers ("AAPCC") received 2,906 calls relating to exposures to synthetic marijuana and 304 calls relating to exposures to bath salts. In 2011, the AAPCC received 6,968 calls relating to exposures to synthetic marijuana and 6,136 calls relating to exposures to bath salts. In 2012, the AAPCC

received 5, 5,202 calls relating to exposures to synthetic marijuana and 2,655 calls relating to exposures to bath salts; and

WHEREAS, during the 2011 session, the Florida Legislature passed HB 1039, Chapter 2011-90, Laws of Florida, which added certain synthetic stimulants to Schedule I of Florida's controlled substance schedule. Following passage of HB 1039, chemists reconfigured the particular synthetic stimulants made illegal by HB 1039, and marketed new products that were not then illegal under Florida law. During the 2012 session, the Legislature passed HB 1175, Chapter 2012-23, Laws of Florida, which added dozens of additional synthetic stimulants to Schedule I of Florida's controlled substance schedule; and

WHEREAS, in response to the efforts by federal and state legislators to outlaw the chemicals in synthetic cannabinoids and synthetic cathinones, chemists immediately reconfigured the specific substances that were prohibited to produce "new" versions of these synthetic drugs. This was accomplished by altering the molecular architecture of the chemicals used in the products to produce a series of different compounds which are closely structurally related to the prohibited substances, but which are not listed in Schedule I of the state or federal controlled substance laws. The National Conference of State Legislatures has found that at least forty-five (45) states have outlawed specific versions of synthetic marijuana or bath salts, but minor variations in the chemical composition of these products create similar drugs not prohibited by then current legislation. In some cases, these manufacturers and/or distributors of these new products went so far as to claim on the packaging that the products contained no prohibited chemicals, were in accordance with state and federal laws, or were "in compliance with New Florida Law HB 1175;" and

WHEREAS, manufacturers of these products are unknown to the consumer because the packaging does not reveal the name and location of the manufacturer or distributor, which is required by federal laws regulating the labeling of consumer commodities. Manufacturers and distributors have not obtained FDA approval of these products as a food product, drug, dietary supplement, or other approved substance. Consumers suffering a reaction to or injury from these products have little chance of obtaining information concerning the contents of the product or identify of the responsible party because the identity and locations of the manufacturers are unknown; and

WHEREAS, although often marked "not for human consumption," or being labeled as otherwise innocuous products (i.e., plant food, incense, potpourri, iPod cleaner, etc.), these products are in fact designed and marketed to the buyer as products that act upon and effect the human body and its systems as a legal method to get high or achieve the effects of illicit drugs. As products intended to act upon the human body, these products are required by Florida state regulations (Chapter 499, Florida Statutes) to carry adequate directions for use and adequate warnings on their labels; instead, these products most often carry no warnings or directions at all, or are labeled with sham or misleading directions (i.e., "place caplet over doorway to enhance mood") in an attempt to avoid application of the regulations applicable to drug branding and labeling; and

WHEREAS, products containing synthetic stimulants are available and being marketed to young adults and children in the City by their availability in small packages at convenience stores and gas stations. Further, the names and packaging of these substances appear to be designed to appeal to children and young adults, and increased usage among high school youths is a concern for both law enforcement and the medical community. The

University of Michigan Institute for Social Research in "Monitoring the Future, National Results on Adolescent Drug Use, Overview of Key Findings 2011" found that 11.4% of high school seniors indicated use of synthetic marijuana; and

WHEREAS, the Police Chief has advised that the Police Department is concerned that the proliferation and availability of these substances presents a threat to public safety, and is attempting to address the provision and marketing of these products through application of current state laws. However, enforcement of current state regulations is not effective due to the chemical variation of the products, and the difficulty in quickly analyzing the specific chemical makeup of the products. It takes several months to obtain the results of tests to determine the specific chemical makeup of the products. The Police Department has verified the availability of a significant number of these products in the City, and supports the adoption of an ordinance that would allow its officers to identify prohibited products through examination of the packaging and/or statements made at the point of sale; and

WHEREAS, the City Council finds that illicit synthetic drugs are distributed, labeled, and marketed in a way that poses dangerous consequences to the consumer; and

WHEREAS, the City Council deems it to be in the best interests of the citizens and residents to prohibit the possession, sale, and distribution of illicit synthetic drugs and misbranded drugs.

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
PINELLAS PARK, PINELLAS COUNTY, FLORIDA, AS FOLLOWS:**

SECTION ONE: That Chapter 16 (Offenses) of the Code of Ordinances of the City of Pinellas Park, Florida is hereby amended by creating a new Sec. 16-125 "Illicit Synthetic Drugs"; which said Section shall hereafter be and read as follows:

Sec. 16-125. ILLICIT SYNTHETIC DRUGS.

(A) The foregoing WHEREAS clauses, as set forth and contained in Pinellas Park Ordinance No. 3841 are hereby adopted as legislative findings of the City Council and are ratified and confirmed as being true and correct, and are hereby made a part of this ordinance.

(B) Purpose. The purpose of this section is to regulate the availability of products which are enhanced with synthetic chemicals, which chemicals mimic the effects of controlled substances on users, because these products are a danger to the public health, safety and welfare.

(C) Definitions. For purposes of the following sections, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Bath Salts, synthetic cathinones, synthetic stimulants means any crystalline or powder product in crystalline, loose-powder, block, tablet, or capsule form, or any stimulant-type product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity, and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave, Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightning, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone, MCAT. This definition shall include any product to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has

no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

Drug means an article that is intended to affect the function of the body of humans.

Illicit synthetic drugs means spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, and misbranded drugs as defined herein.

Misbranded drug means a drug or product that violates Section 499.007, Florida Statutes, including but not limited to drugs for which (1) the label is in any way false or misleading; (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use.

Spice, synthetic cannabinoids, synthetic marijuana means any aromatic plant material in granular, loose leaf or powder form, or in liquid or as a food additive, or any herbal-incense-type stimulant or hallucinogen product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG, Demon, Barely In, Pineapple Express, Hayze.

This definition shall include any plant material to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

Synthetic Chemical or Synthetic Chemical Compound" means any chemical or chemical compound whose molecular make up is similar to those substances listed as controlled substances in Ch. 893, F.S. (including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of such substances) and whose intended use when introduced into the human body is to mimic or simulate the effects of a controlled substance.

(D) Prohibition of Illicit Synthetic Drugs.

1. It is unlawful for any person (to include not only an individual but any person in charge of or in control of any business entity and also to include the business entity itself), to possess, use, provide, sell, produce, manufacture, or distribute, market, or advertise for sale, any illicit synthetic drug or any product or item packaged, which violates the terms of this ordinance.
2. In determining whether a product is prohibited by this division, statements on package labeling such as "not for human consumption" may be disregarded when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this division. Other relevant factors that may be used to determine whether a product or sale is prohibited by this division include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggesting that the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.

3. Defense. It shall be a defense to the prosecution of a violation of this division that a product: is specifically excepted by, or regulated within, the Florida Comprehensive Drug Abuse Prevention and Control Act (Ch. 893, Fla. Stat.) or the Federal Controlled Substances Act (21 USC §§ 81 et seq.); is a food product, drug, dietary supplement, cosmetic, or other substance regulated by the Food and Drug Administration (FDA) and in compliance with that agency's requirements; is regulated by and in compliance with the labeling requirements of the Federal Trade Commission; is regulated by and in compliance with the Federal Fair Packaging and Labeling Act; is regulated by and in compliance with the Federal Food, Drug, and Cosmetic Act; is regulated by and in compliance with the regulations of the Florida Department of Agriculture and Consumer Services; or is a tobacco product regulated by and in compliance with the regulations governing the tobacco industry enforced by the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco. For the purposes of this section, it shall not be a defense that a product is not subject to regulation by the act or agencies listed above unless the product is specifically exempt from regulation; mere "non-regulation" by these acts without a specific regulatory exemption does not render a product exempt under this section.

(E) Sale of Certain Products for Human Consumption Prohibited. It is unlawful for any person to provide or sell a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

(F) Violation and Seizure.

1. Each package possessed, used, provided, sold, produced, manufactured, distributed, offered, displayed, marketed or advertised for sale, shall be considered a separate violation. The fine for each violation shall be \$500. In addition, the City shall be entitled to all of its Court costs, costs of prosecution and attorney's fees in the prosecution or enforcement of this ordinance.

2. Any products found in violation of this section may be seized and held as evidence to be used in any future proceeding and may be disposed of as appropriate after their use for evidentiary purposes is no longer required.

SECTION FOUR: It is the intention of the City Council that the provisions of this Ordinance and all parts of sub-parts thereof shall be deemed to be severable and independent of each other, and in the event any portion or subsection of this Ordinance is found to be invalid or unenforceable, such findings shall not affect any remaining portions of this Ordinance.

SECTION FIVE: That all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance be, and they are hereby repealed insofar as the same affect this Ordinance.

SECTION SIX: It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the "Code of Ordinances" of the City of Pinellas Park, Florida, and the publisher of the Code of Ordinances may renumber, reclassify or otherwise insert this ordinance in an appropriate place to accomplish such intention.

SECTION SEVEN: That this Ordinance shall be in full force and effect immediately after its passage and approval in the manner provided by law.

FIRST READING THE _____ DAY OF _____, 2013.

PUBLISHED THE _____ DAY OF _____, 2013.

PUBLIC HEARING THE _____ DAY OF _____, 2013.

PASSED THIS _____ DAY OF _____, 2013.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS _____ DAY OF _____, 2013.

Sandra L. Bradbury
MAYOR

ATTEST:

Diane M. Corna, MMC
CITY CLERK