

ORDINANCE NO. 480

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLUSA AMENDING THE CITY OF COLUSA CITY CODE BY ADDING ARTICLE 1 “PSYCHOACTIVE BATH SALTS AND PSYCHOACTIVE HERBAL INCENSE AND OTHER SYNTHETIC DRUGS,” TO CHAPTER 11B “PUBLIC SAFETY, MORALS AND WELFARE,” OF THE CITY CODE

WHEREAS, the City Council is concerned for the safety and health of Colusa residents because the use, sale and distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense pose serious threats to their health, safety and general welfare; and

WHEREAS, Synthetic cannabinoids commonly known as “Spice” or “K2,” and synthetic stimulants commonly known as “bath salts” are growing in use and have become an increasingly significant problem in California, as discussed in California Assembly Concurrent Resolution No. 69 (hereinafter “ACR-69”) (September 6, 2011); and

WHEREAS, due to sophisticated marketing, the products that contain these synthetic cannabinoids or stimulants are perceived as “legal” alternatives to marijuana and cocaine despite the fact they are typically advertised as herbal incense, bath salts or plant food (ACR-69); and

WHEREAS, Synthetic cannabinoids are referred to as the new marijuana and synthetic stimulants as the new cocaine, and are gaining popularity at an alarming rate among high school and college students (ACR-69); and

WHEREAS, while having the same or stronger physiological effects as high-potency marijuana, synthetic marijuana products do not show a positive reading in a urinalysis test, which adds to the desirability and increased growth among drug abusers and increases the threat to public health and safety by making detection difficult (ACR-69); and

WHEREAS, according to credible news reports and authorities, Psychoactive Bath Salts and Psychoactive Herbal Incense have caused or been linked to numerous deaths, medical emergencies, acts of violence, and other incidents throughout the United States and Europe; and

WHEREAS, calls to the United States Poison Control Center have substantially increased over the past year with regard to the ill-effects of Psychoactive Bath Salts and Psychoactive Herbal Incense; and

WHEREAS, the chemical compounds in Psychoactive Bath Salts and Psychoactive Herbal Incense are intoxicating and/or hallucinogenic to humans upon ingestion, and are often used as alternatives to marijuana; that these chemical compounds are potentially dangerous to users in that their long term health effects are unknown; and these intoxicating chemical compounds create a significant health and safety risk to the residents of the City of Colusa; and

WHEREAS, Psychoactive Bath Salts have been falsely marketed as standard bath salts for use in one's bath, but in fact have been ingested, snorted and used intravenously by many people throughout the United States with serious, deleterious effects to such persons' health including extreme anxiety/agitation, sometimes progressing to violent behavior, extreme

paranoia, delusional thinking, visual and auditory hallucinations, suicidal thoughts/actions, increased blood pressure and heart rate, renal and kidney failure; and

WHEREAS, Psychoactive Bath Salts, are in fact "designer drugs" which have been manufactured with chemical substances that are intended to mimic and recreate the effects of cocaine and methamphetamine which are illegal, controlled substances under state and federal law; and

WHEREAS, Psychoactive Herbal Incense has been falsely marketed as standard incense used for its aromatic qualities, but in fact is being ingested or smoked by many people throughout the United States with serious, deleterious effects to the person's health including cardiac arrest, seizures, anxiety/agitation, sometimes progressing to violent behavior, extreme paranoia, delusional thinking, visual and auditory hallucinations, suicidal thoughts/actions, increased blood pressure and heart rate, renal and kidney failure; and

WHEREAS, Psychoactive Herbal Incense, are in fact "designer drugs" which have been manufactured with chemical substances that are intended to mimic and recreate the euphoric effects of marijuana which is an illegal, controlled substance under federal law; and

WHEREAS, California and many other states have banned the use, sale, and distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense and the chemical substances contained therein; and

WHEREAS, the Federal Drug Enforcement Agency ("DEA") has used its emergency powers under the Controlled Substances Act to declare many of the chemical substances contained in Psychoactive Bath Salts and Psychoactive Herbal Incense illegal; and

WHEREAS, in October 2011, the DEA announced that several of the synthetic stimulants used to make bath salts will be controlled for at least twelve months (12), with the possibility of a six month extension. The substances are designated as Schedule I substances, the most restrictive category under the Controlled Substances Act. Schedule I status is reserved for those substances with a potential for abuse, no currently accepted use for treatment in the United States and a lack of accepted safety for use of the drug under medical supervision; and

WHEREAS, notwithstanding the federal and state laws, there remain serious gaps in the applicable law that warrant further action at a local level including, but not limited to, rapid alteration of the chemical structure, compound or content of Psychoactive Bath Salts and Psychoactive Herbal Incense to avoid earlier enacted bans and regulations; and

WHEREAS, Colusa retailers are or should be aware of significant ill-effects of Psychoactive Bath Salts and Psychoactive Herbal Incense, yet some continue to sell these dangerous products; and

WHEREAS, certain businesses, entities and individuals within the City limits are currently selling such intoxicating chemical compounds within the city, described as incense or aromatics, but typically used for human ingestion; and labeled with brand names such as "Spice," "Black Mamba," "K-2," "Puff," and "Sugar Sticks," which are gaining in popularity at

an alarming rate among high school and college aged individuals, as well as parolees and probationers; and

WHEREAS, while having similar or stronger physiological effects than high potency marijuana, these intoxicating chemical compounds do not show a positive reading in traditional law enforcement drug testing, which adds to the desirability and increased use among drug abusers and increases the threat to the public health and safety by the avoidance of detection; and

WHEREAS, the ordinance is not designed to control the use, sale or distribution of normal bath salts or incense that do not contain designer chemical compounds that elicit psychotropic effects; and

WHEREAS, the intoxicating chemical compounds described hereunder are not yet categorized as controlled substances under State or Federal Law; and

WHEREAS, parents in the City of Colusa have testified to the Council that children in the City have used bath salts and/or spice, and that the threat to the community is real; and

WHEREAS, the California Legislature called upon law enforcement, first responders, schools, local elected officials, and parents to educate youth about the risks associated with synthetic drugs in ACR-69; and

WHEREAS, based upon the facts described above, and other good and reliable information presented to and considered thereby, the City Council determined that the distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Colusa constitutes a public nuisance because it is injurious to the health, safety and general welfare of Colusa citizens; and

WHEREAS, the City has the authority to regulate matters relating to municipal affairs pursuant to its Charter in addition to the authority provided by Government Code § 38771 authorizing municipalities to declare public nuisances; and

WHEREAS, the City Council determined that emergency measures are warranted given the immediate and serious threat to the public peace, health, safety and general welfare of the community posted by Psychoactive Bath Salts and Psychoactive Herbal Incense.

NOW THEREFORE, the City Council of the City of Colusa does hereby ordain as follows:

SECTION I. Based upon the facts described above, and other good and reliable information presented to and considered thereby, the City Council finds, determines and declares that:

- A. The distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Colusa is a public nuisance; and
- B. This ordinance is necessary as an emergency measure for preserving the public peace, health and general welfare of the community given the immediate and

serious threat thereto posted by the distribution and use of Psychoactive Bath Salts and Psychoactive Herbal Incense.

SECTION II. Addition of Chapter 11B to the City Code. Chapter 11B “Public Safety, Morals and Welfare” is hereby added to the Colusa City Code, and shall contain Article I “Psychoactive Bath Salts and Psychoactive Herbal Incense and other Synthetic Drugs,” which shall read as follows:

11B-1 Purpose and Intent.

The purpose and intent of this ordinance is to address the dangers to the community posed by the distribution, use, purchase or advertisement of Psychoactive Bath Salts, Psychoactive Herbal Incense, and similar products, and to provide the City with reasonable measures to abate the public nuisance created by such conduct.

11B-2 Definitions.

(a) “Advertising” means printed matter that calls the public’s attention to things for sale.

(b) “Distribute”, “distributing” or “distribution” means and covers the following activity: to offer for sale, distribute, furnish, gift, transfer, exchange or give, to any person and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

(c) “Person” means any individual, corporation, business trust, estate, trust, partnership or association, or any other entity responsible for “distributing” Psychoactive Bath Salts and Psychoactive Herbal Incense.

(d) “Possession” means having for use or sale in one’s actual or constructive custody and/or control, and/or under one’s authority or power, whether such custody, control, authority and/or power be exercised solely or jointly with others.

(e) “Psychoactive Bath Salts” are defined as follows:

(1) Any crystalline or powder product that contains a synthetic chemical compound that elicits psychoactive or psychotropic stimulant effects including, but not limited to, the following substances: 3,4- Methylenedioxymethcathinone (Methylone), 3,4- Methylenedioxypropylvalerone(MDPV), 4-Methylmethcathinone (Mephedrone), 4-Methoxymethcathinone (Methedrone, 4-Fluoromethcathinone (Flephedrone), 3-Fluoromethcathinone (3-FMC), naphthylpyrovalerone and 2-amino-1-phenyl-1-propanone (cathinone) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

(2) Psychoactive Bath Salts are commonly marketed under 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 but may be marketed under other trade names and contain a common disclaimer that these products are “not safe for human consumption.”

(3) Psychoactive Bath Salts do not include normal, standard bath salts that do not contain synthetic chemical compounds such as those listed above that elicit psychoactive or psychotropic stimulant effects. Standard bath salts primarily contain magnesium sulfate (Epsom salts), sodium chloride (table salt), sodium bicarbonate (baking soda), sodium hexametaphosphate (Calgon, amorphous/glassy sodium metaphosphate), sodium sesquicarbonate and borax.

(f) “Psychoactive Herbal Incense” is defined as follows:

(1) Any organic product consisting of plant material that contains a synthetic chemical compound that elicits psychoactive or psychotropic euphoric effects including but not limited to the following: any synthetic cannabinoid compound that contains 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1-butyl-3-(1-naphthoyl) indole (JWH-073), 1-2-(4-morpholinyl) ethyl]-3-(1-naphthoyl) indole (JWH-200), 5-(1,1-dimethylheptyl)-2-(1R, 3S)-3-hydroxycyclohexyl]-phenol, (CP-47, 497), 5-(1,1-dimethyloctyl)-2-(1R, 3S)-3-hydroxycyclohexyl]-phenol, (cannabicyclohexanol; CP-47, 497 C8 homologue) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

(2) Psychoactive Herbal Incense products are commonly marketed under the following names: K2, K3, Spice, Genie, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed, Black Mamba, but may be marketed under other trade names and may contain a common disclaimer that these products are “not safe for human consumption.”

(3) Psychoactive Herbal Incense does not include normal, standard incense that are sold as incense sticks, oils or cones that are commonly used for their aromatic qualities that do not contain any synthetic chemical compounds listed above that elicit psychoactive or psychotropic euphoric effects.

11B-3 Possession of Synthetic Cannabinoids or Substituted Cathinones Prohibited.

It is unlawful for any person to possess any Synthetic Cannabinoid or Substituted Cathinones within the City of Colusa.

11B-4 Public Nuisance.

(a) It is a public nuisance for any person to distribute Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Colusa.

(b) It is a public nuisance for any person to distribute any product or substance represented as or designed to resemble Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Colusa. Indications of distribution of substances represented as or designed to resemble Psychoactive Bath Salts and Psychoactive Herbal Incense shall include, without limitation, one or more of the following: the manner in which such substances are packaged, branded, described, marketed and/or portioned.

(c) It is a public nuisance for any person to allow the distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense on property owned, controlled or managed by such person within the City of Colusa.

(d) Merely disclaiming these products as “not safe for human consumption” will not avoid the application of this ordinance.

(e) These declarations of public nuisance are based upon the declaration, findings and determinations by the City Council contained in Ordinance No. ____ adopted by the City Council on June 19, 2012.

11B-5 Enforcement.

(a) Violation of any provision of this chapter or failure to comply with any requirement of this chapter shall be punishable in accordance with the provisions of Chapter 12B or Chapter 12C of the Colusa City Code. At the discretion of the prosecutor, a violation of this chapter may be charged as a misdemeanor.

(b) Civil Action. In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. The City Attorney may file a civil action seeking an injunction to obtain compliance for abatement of this public nuisance, and any other civil action that the City Attorney deems appropriate for the abatement, including but not limited to, seeking an abatement order or warrant to confiscate the Psychoactive Bath Salts or Psychoactive Herbal Incense.

(c) Administrative Citation. Alternatively, any violation of this Chapter may be enforced by administrative action brought by the City pursuant to Chapter 12C of this code, to include civil fines not exceeding one thousand dollars (\$1,000.00) per offense and per occurrence.

11B-6 Exemption for approval by FDA or California Law.

This chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds which have been approved by the federal Food and Drug Administration or which are specifically permitted by California law.

SECTION III. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The

City Council of the City of Colusa hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION IV. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and/or posted as required by law.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Colusa, California, held on June 19, 2012, and was passed and adopted at a regular meeting of the City Council held on July 17, 2012 by the following vote:

AYES: Reische, Critchfield, Kelleher, Hosmer and Landreth.

NOES: None

ABSENT: None

ABSTAINING: None

PATRICK W. LANDRETH, MAYOR

ATTEST:

Shelly Kittle, City Clerk