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WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

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1 anxiety, paranoia, and hallucinations. Psychoactive herbal incense abusers who have been taken
2 to Poison Control Centers report symptoms that include rapid heart rate, vomiting, agitation,
3 confusion, and hallucinations. Nationwide, the American Association of Poison Control Centers
4 (“AAPCC”) reported 6,968 cases of exposure in 2011, 5,230 in 2012, 2,668 in 2013, 3,682 in
2014, and 7,779 in 2015. The AAPCC claims that psychoactive herbal incense can cause
dangerous health effects, is made specifically to be abused, and is not tested for safety; and

5 **WHEREAS**, there is an emerging family of drugs commonly referred to as “bath salts” or
6 “psychoactive bath salts” that contain one or more chemicals relating to cathinone, an
7 amphetamine-like stimulant found naturally in the Khat plant. According to the NIDA,
8 psychoactive bath salts typically take the form of a white or brown crystalline powder and are
9 sold in small plastic or foil packages labeled “not for human consumption.” Psychoactive bath
10 salts are often sold in drug stores under a variety of brand names, such as Ivory Wave, Bloom,
11 Cloud Nine, Lunar Wave, Vanilla Sky, White Lightning, and Scarface and users of psychoactive
12 bath salts can experience euphoria, increased sociability, and sex drive, while others experience
13 paranoia, agitation, and hallucinatory delirium. Some users even display psychotic and violent
14 behavior, with deaths being reported in several instances; and

15 **WHEREAS**, in October 2011, the DEA placed three common synthetic cathinones found
16 in psychoactive bath salts under emergency ban pending further investigation and, in July 2012,
17 President Obama signed the Synthetic Drug Abuse Prevention Act of 2012 (as part of the Federal
18 Drug Administration Safety and Innovation Act) permanently making two of them illegal along
19 with psychoactive herbal incense. On April 12, 2013, the DEA used its emergency scheduling
20 authority to schedule three more types of synthetic cannabinoids, temporarily designating them as
21 Schedule I substances; and

22 **WHEREAS**, the Analog Drug Law codified in California Health and Safety Code Section
23 11400 provides that selling a drug that is an analog of a scheduled controlled substance is a crime
24 subject to criminal prosecution; and

25 **WHEREAS**, according to NIDA, although federal law prohibits chemically similar
26 “analogues” of the specifically banned types of psychoactive herbal incense and psychoactive
27 bath salts, manufacturers are expected to respond by creating new drugs different enough from the
28 banned substances to evade current legal restriction. For example, after the cathinone
mephedrone was banned in the United Kingdom in 2010, a chemical called naphyrone quickly
replaced it, and is now being sold as “jewelry cleaner” under the name “Cosmic Blast”; and

WHEREAS, the AAPCC reported 6,137 cases of exposure in 2011, 2,691 in 2012, 995 in
2013, 582 in 2014, and 522 in 2015. The AAPCC claims that psychoactive bath salts are among
the worst substances the AAPCC has ever seen, has not been tested, and can have permanent side
effects; and

WHEREAS, to avoid the threat to public health, safety, and welfare that would occur if
these intoxicating synthetic chemical compounds were permitted in the City and to ensure the
individual or business which possesses, provides, distributes or sells Synthetic Drugs as defined
herein is a threat to public health, safety and welfare and, as such, is subject to the City’s
administrative, criminal and civil enforcement procedures (including those set forth in Chapters
8.02 and 8.12 of Title 8 of the Colton Municipal Code) and, in the case of a business, prohibition

1 against the issuance of a business license (pursuant to Chapter 5.02 of the Colton Municipal
2 Code); and

3 **WHEREAS**, the City Council hereby finds that many communities in California have
4 recognized the dangers of Synthetic Drugs, which have been documented to cause hallucinations,
5 agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death. While
6 state and federal law prohibit certain compounds that are used to create synthetic drugs, they are
7 not comprehensive enough to eliminate the distribution and sale of all Synthetic Drugs in the City.
8 Specifically, the Council finds that the makers of Synthetic Drugs continually alter the
9 composition of the compounds in their products so as to not come under the purview of state and
10 federal law and other laws and regulations attempting to prohibit the sale of Synthetic Drugs. In
11 fact, products which plainly are being marketed for use of Synthetic Drugs are now being
12 packaged with advertisements stating that the product does not contain the compounds
13 specifically banned by state or federal law. Thus, the City Council finds that in order to
14 implement an effective measure prohibiting the distribution and sale of Synthetic Drugs, it is
15 necessary to look at all factors related to the sales and marketing of Synthetic Drugs. These
16 factors will help City officials determine whether a product that does not come under the purview
17 of state or federal law is nevertheless a Synthetic Drug because it is intended for recreational drug
18 use; and

19 **WHEREAS**, while the question of whether a given product is being distributed or sold for
20 use as a recreational drug must be determined on a case-by-case basis, the City Council finds that
21 the following evidentiary factors are helpful in determining whether a given product is in fact a
22 Synthetic Drug:

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

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

31 3. Warning Labels: Synthetic Drugs often use warning labels such as: “not for human
32 consumption” and “not for purchase by minors.” Bona fide bath salts, incense, cleaning
33 products and the like do not typically bear such labels. Of particular relevance are labels
34 that indicate a given product does not contain chemical compounds banned by state law,
35 which bona fide bath salts, incense, cleaning products and the like would not have any
36 reason to advertise.

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

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

12 **WHEREAS**, the City Council further finds that, given the recent state and federal laws
13 making the certain identified chemicals in psychoactive herbal incense and psychoactive bath
14 salts illegal and the public peace, health, safety and welfare concerns associated with the sale and
15 use of psychoactive herbal incense and psychoactive bath salts as mentioned herein, the City finds
16 that the sale and the use of psychoactive herbal incense and psychoactive bath salts each create a
17 nuisance that threatens the health, safety, and property of users, their families, and any person or
18 property nearby and therefore, by adding Chapter 9.23 to the Colton Municipal Code by this
19 Ordinance, wishes to prohibit, without encroaching upon any field of law occupied by state or
20 federal law, the sale and use of psychoactive herbal incense and psychoactive bath salts (as those
21 phrases are defined in this Ordinance) in the City. To avoid the threat to public health, safety, and
22 welfare that would occur if these intoxicating synthetic chemical compounds were permitted in
23 the City and to ensure the individual or business which possesses, provides, distributes or sells
24 Synthetic Drugs as defined herein is a threat to public health, safety and welfare and, as such, is
25 subject to the City's administrative, criminal and civil enforcement procedures (including those
26 set forth in Chapters 8.02 and 8.12 of Title 8 of the Colton Municipal Code) and, in the case of a
27 business, prohibition against the issuance of a business license (pursuant to Chapter 5.02 of the
28 Colton Municipal Code); and

19 **WHEREAS**, an effective way to prevent and abate the health, safety and welfare
20 concerns that exist as a result of the marketing, distribution and sale of Synthetic Drugs in
21 manners that brazenly seek to circumvent State and Federal Law is through the enforcement of
22 the City's administrative, criminal and civil enforcement procedures and through the prohibition
23 against the issuance of a business license. Because the chemical composition of Synthetic Drugs
24 is constantly evolving, it is necessary to look at the circumstances surrounding the marketing
25 (including price), distribution or sale of any given product to determine if the product is being
26 provided, distributed or sold as a recreational drug. This ordinance shall not apply to any activity
27 already regulated by Health and Safety Code Sections 11357.5, 11375.5, 11401, the federal
28 Controlled Substances Act or pre-empted by any State or Federal law or regulation; and

25 **WHEREAS**, by enacting this Ordinance, the City ordains that nothing herein shall be
26 deemed to conflict with federal law, including but not limited to its treatment of controlled
27 substances, state law, including but not limited to Health and Safety Code Section 11357.5 and
28 Section 11375.5, or otherwise or to license any activity that is prohibited thereunder except as
 mandated by such laws.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON,
CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. The City Council of the City of Colton adopts Chapter 9.23 to Title 9 in its entirety to read as follows:

“Chapter 9.23
PSYCHOACTIVE HERBAL INCENSE, PSYCHOACTIVE BATH SALTS AND OTHER
SYNTHETIC DRUGS

- | | |
|----------|--|
| 9.23.010 | Purpose and intent. |
| 9.23.020 | Definitions. |
| 9.23.030 | Provision, display for sale, sale or distribution of synthetic drugs prohibited. |
| 9.23.040 | Provision, display for sale, sale or distribution of substances claimed or represented to be synthetic drugs prohibited. |
| 9.23.050 | Possession of synthetic drugs prohibited. |
| 9.23.060 | Public nuisance. |
| 9.23.070 | Summary abatement. |
| 9.23.080 | Revocation of business license. |
| 9.23.090 | Penalties. |
| 9.23.100 | Seizure of evidence. |
| 9.23.110 | Exclusions. |

9.23.010 Purpose and intent.

Recreational use of psychoactive herbal incense, psychoactive bath salts and similar products 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.

It is the purpose and intent of this Chapter to prohibit the sale or possession of psychoactive herbal incense and psychoactive bath salts, as those terms are defined herein, in the City in order to protect and preserve the public peace, safety, health, and welfare of those within the City and to provide the City with reasonable measures to address the dangers to the community posed by synthetic drugs, including those not regulated by state or federal law. Nothing in this Chapter shall be construed to cease or limit or encroach in any way upon any field of law occupied by federal law or by the laws of the state of California.

The prohibition of psychoactive herbal incense and psychoactive bath salts is necessary and in the interests of the public health, safety and general welfare because there is the substantial likelihood of the sale and use of these illegal drugs in the City of Colton. The sale and use of

1 psychoactive herbal incense and psychoactive bath salts in the City would result in undesirable
2 impacts to the community. Among these impacts are: increased potential for the sale of these
3 controlled substances to minors and adults for their use, increased dependency on these controlled
4 substances, increased harm to the users of these controlled substances, and increased risk of
5 injury to persons or property by users of these controlled substances.

6 **9.23.020 Definitions.**

7 The following words, terms and phrases, when used in this division, shall have the
8 meanings ascribed to them in this section, except where the context clearly indicates a different
9 meaning:

10 *Business* shall have the same meaning as the term is defined in section 5.02.020 of this Municipal
11 Code.

12 *Consume, consuming or consumption* shall mean to ingest, inhale, inject, smoke or snort
13 (insufflate).

14 *Distribute, distributing, or distribution* shall mean to furnish, give away, exchange, transfer,
15 deliver or supply, whether for monetary gain or not.

16 *Person* shall include any natural person, business, firm, company, corporation, public corporation,
17 club, trust, partnership, association or similar organization.

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

21 *Provide, providing or provision* shall mean offering to distribute or sell a product or substance to
22 any person.

23 *Psychoactive bath salts* shall mean any crystalline or powder product that contains a synthetic
24 chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects.
25 The term "psychoactive bath salts" includes without limitation:

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

28 (A) *Salvia Divinorum* or *Salvinorum A*; all parts of the plant presently classified
botanically as *Salvia Divinorum*, whether growing or not, the seeds thereof, any extract from any
part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of
such plant, its seeds or extracts;

(B) Cathinone (2-amino-1-phenyl-1-propanone), 4- methylmethcathinone (2-
methylamino-1-(4-methylphenyl)propan-1-one), 4-methoxymethcathinone (1-(4-methoxyphenyl)-
2-(methylamine)propan-1-one), MDPV (methylenedioxypropylone), MDMA (3, 4-
methylenedioxy-N-methylamphetamine), methylene (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), a-PPP (a- pyrrolidinopropiophenon), MPPP (4'-methyl-a-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-a-pyrrolidinopropiophenone), a-PVP (1- phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2- pyrrolidin-1-ylpentan-1-one), 6-APDB (6(2aminopropyl)2,3 dihydrobenzo-furan), and analogs of MDA (3,4-methylenedioxymethamphetamine);

(C) Any derivative of the above listed intoxicating chemical compounds;

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

(E) Any chemical alteration of the above listed intoxicating chemical compounds;
or

(F) 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 and Safety Code §§ 11000 et seq.), listed in one of the UCSA’s schedules of controlled substances (Health and Safety Code §§ 11053-11058), regulated by one of the UCSA's Synthetic Drug Laws (Health and Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the Federal Controlled Substances Act (the “CSA”) (21 USC §§ 801 et seq.) or approved by the Food and Drug Administration (“FDA”).

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) 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-butylindol-3-yl)methanone), JWH-200 ((1-(2-morpholin-4-ylethyl)indol-2-yl)-naphthalen-1-ylmethanone), HU-210 or 1.1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol ((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) and the dimethylhexyl, dimethyloctyl and dimethylnonyl homologues of 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), 1-Pentyl-3 (2-methoxyphenylacetyl)indole (also known as JWH-250), 1-Hexyl-3-(1- naphthoyl)indole (also known as JWH-019), 1-Pentyl-3-(4-chloro-1- naphthoyl)indole (also known as JWH-398), N-

benzylpiperazine (also known as BZP), 1-(3-trifluoromethylphenyl)piperazine (also known as TFMPP);

(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;

(E) Any other substantially similar chemical structure or compound; or

(F) Any other synthetic cannabinoid.

(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 and Safety Code §§ 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health and Safety Code §§ 11053—11058) regulated by one of the USCA's Synthetic Drug Laws (Health and Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the CSA (21 USC §§ 81 et seq.) or approved by the FDA.

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.

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.

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

Synthetic drug shall include psychoactive bath salts and psychoactive herbal incense, as those terms are defined hereinabove.

9.23.030 Provision, display for sale, sale or distribution of synthetic drugs prohibited.

(a) It is unlawful for any person to store, provide, display for sale, distribute or sell any synthetic drug within the City of Colton.

(b) It is unlawful for any person to permit the storage, provision, display for sale, distribution or sale of any synthetic drugs from any real property owned, possessed, managed or controlled by such person in the City of Colton.

(c) Merely disclaiming a synthetic drug as "not safe for human consumption" will not avoid the application of this section.

1 **9.23.040 Provision, display for sale, sale or distribution of substances claimed or**
2 **represented to be synthetic drugs prohibited.**

3 (a) It is unlawful for any person to claim or represent that a product that person is
4 storing, providing, displaying for sale, distributing or selling is a synthetic drug within the City of
5 Colton.

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

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

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

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

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

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

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

23 (c) Merely disclaiming a substance claimed or represented to be a synthetic drug as
24 "not safe for human consumption" will not avoid the application of this section.

25 **9.23.050 Possession of synthetic drugs prohibited.**

26 It is unlawful for any person to possess any synthetic drug within the City of Colton.

27 **9.23.060 Public nuisance.**

28 (a) It is a public nuisance for any person to store, provide, display for sale, distribute
29 or sell any synthetic drug within the City of Colton.

30 (b) It is a public nuisance for any person to allow the storage, provision, display for
31 sale, distribution or sale of any synthetic drug on property owned, controlled or managed by such
32 person within the City of Colton.

33 (c) It is a public nuisance for any person to provide, display for sale, distribute or sell
34 any substance claimed or represented to be a synthetic drug within the City of Colton.

1 (d) It is a public nuisance for any person to allow the provision, display for sale,
2 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 Colton.

3 (e) To determine if a person is claiming or representing that a substance or product is
4 a synthetic drug, the enforcing officer may consider any of the evidentiary factors set forth in
section 9.23.040 of this Chapter.

5 (f) A criminal conviction is not required for establishing the occurrence of nuisance
6 activity pursuant to this Chapter. The occurrence of nuisance activity may be established by
7 documented evidence that the nuisance activity was witnessed by a code enforcement officer,
peace officer or other witness willing to testify.

8 (g) The remedies set forth in this Chapter are cumulative and additional to any and all
9 other legal remedies available whether set forth elsewhere in the Colton Municipal Code, or in
state or federal laws, regulations, or case law.

10 **9.23.070 Summary abatement.**

11 Because the use of synthetic drugs has been documented to cause hallucinations, agitation,
12 psychosis, aggression, suicidal and homicidal ideations, cannibalism and death, any violation of
13 this Chapter presents a grave and imminent danger not only to the person consuming the synthetic
14 drug, but also to the public at large. If the code enforcement officer, based on the facts then
known, determines that a violation of this division presents an imminent danger or hazard or is
15 imminently injurious to the public health or safety, then that violation is punishable by the
summary abatement procedures set forth in Section 8.04.150 of this Municipal Code.

16 **9.23.080 Revocation of business license.**

17 No person holding a city business license and owning or operating a business in the city
18 may use that business to store, provide, distribute or sell any synthetic drug or any substance
19 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
20 combination thereof, of said license.

21 **9.23.090 Penalties.**

22 (a) *Misdemeanor violation.* Failure to comply with any of the requirements of this
Chapter is a misdemeanor punishable by imprisonment in the city or county jail for a period not
23 exceeding six months or by fine not exceeding \$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
24 accusatory pleading that the offense shall be an infraction.

25 (b) *Infraction violation.* Where the City Attorney determines that, in the interest of
justice, a violation of this Chapter is an infraction, such infraction is punishable by a fine not
26 exceeding \$100.00 for a first violation, a fine not exceeding \$200.00 for a second violation of the
same provision within one year, and a fine not exceeding \$500.00 for each additional infraction
27 violation of the same provision within one year. An infraction is not punishable by imprisonment.
28 A person charged with an infraction shall not be entitled to a trial by jury and shall not be entitled

1 to have the public defender or other counsel appointed at public expense to represent him/her,
2 unless he/she is arrested and not released on his/her written promise to appear, his/her own
3 recognizance or a deposit of bail. However, any person who has previously been convicted two or
4 more times during any 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.

5 (c) *Separate Offense; Cumulative Remedies.* Each person committing, causing, or
6 maintaining a violation of this Chapter or failing to comply with the requirements set forth herein
7 shall be deemed guilty of a separate offense for each and every day during any portion of which
8 any violation of any provision of this Chapter is committed, continued, maintained, or permitted
by such person and shall be punishable accordingly. The remedies set forth in this Chapter are
cumulative and additional to any and all other legal remedies available whether set forth
elsewhere in the Colton Municipal Code, or in state or federal laws, regulations, or case law.

9 (d) *Administrative Citations.* In lieu of issuing a criminal citation, the city may issue
10 an administrative citation pursuant to Chapters 8.02 and 8.04 of the Colton Municipal Code to
any person responsible for committing, causing or maintaining a violation of this Chapter.

11 (e) *Additional Penalties; Costs of Abatement.* In any administrative, civil, or criminal
12 proceeding involving the abatement of a public nuisance, the City shall also be entitled to recover
13 its full reasonable costs of abatement, including, but not limited to, investigation, analysis, and
14 prosecuting the enforcement against the responsible party. The prevailing party in any
15 proceeding associated with the abatement of a public nuisance shall be entitled to recovery of
attorneys' fees incurred in any such proceeding, where the City has elected at the initiation of that
individual action or proceeding to seek recovery of its own attorneys' fees.

16 **9.23.100 Seizure of evidence.**

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

19 **9.23.110 Exclusions.**

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

24 (b) This Chapter shall not apply to drugs or substances that are prohibited by state or
25 federal law, including without limitation, California Health and Safety Code §§ 11357.5, 11375.5,
11401 and the Federal Controlled Substances Act.

26 (c) This Chapter shall not be deemed to prohibit any act that is positively permitted,
27 prohibited or preempted by any state or federal law or regulation.”

28 **SECTION 4. CEQA.** The City Council finds that this ordinance is not subject to the
California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections

1 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA
2 Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA
3 Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a
significant effect or physical change to the environment.

4 **SECTION 5. Severability.** If any section, subsection, subdivision, sentence, clause,
5 phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the
6 decision of any court of competent jurisdiction, such decision shall not affect the validity of the
7 remaining portions of this Ordinance. The City Council hereby declares that it would have
8 adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or
9 portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions,
10 sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

11 **SECTION 6. Effective Date.** This Ordinance shall become effective thirty (30) days
12 after its adoption.

13 **PASSED, APPROVED AND ADOPTED** this 19th day of April, 2016

14

Richard A. DeLaRosa, Mayor

15 ATTEST:

16

Carolina R. Padilla, City Clerk

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19 APPROVED AS TO FORM:

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21

Best Best & Krieger LLP
22 City Attorney