

ORDINANCE NO. 1530

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIALTO,
AMENDING CHAPTER 9.43 ("PSYCHOACTIVE BATH SALTS,
PSYCHOACTIVE HERBAL INCENSE, AND OTHER SYNTHETIC
DRUGS") OF TITLE 9 OF THE RIALTO MUNICIPAL CODE
PROHIBITING THE DISTRIBUTION AND SALE OF CERTAIN
INTOXICATING CHEMICAL COMPOUNDS KNOWN AS SYNTHETIC
DRUGS

THE CITY COUNCIL OF THE CITY OF RIALTO ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Rialto hereby amends Chapter 9.43 of Title 9 of
the Rialto Municipal Code to read in its entirety as follows:

Chapter 9.43

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

9.43.010 Purpose and Intent

9.43.020 Definitions

**9.43.030 Possession, Storage, Provision, Sale, and Distribution of Synthetic
Drugs Prohibited**

9.43.040 Public Nuisance

9.43.050 Confiscation of Synthetic Drugs

9.43.060 Suspension or Revocation of Business License

9.43.070 Penalties

9.43.080 Seizure of Evidence

9.43.090 Exclusions

9.43.010 Purpose and Intent.

A. 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

1 State and Federal laws and regulations prohibit some Synthetic Drugs, the makers of these drugs
2 continually alter the composition of the compounds in their products so as to escape the scope of
3 these laws and regulations. The purpose and intent of this Chapter is to provide the City with
4 measures to address the dangers to the community posed by Synthetic Drugs that are not regulated by
5 State or Federal Law.

6 B. Synthetic Drugs are extremely dangerous and are gaining popularity at an alarming
7 rate among high school and college-aged individuals, as well as among parolees and probationers.
8 These drugs are widely available in stores throughout the City, despite the State of California's
9 attempt to ban such drugs under Health & Safety Code section 11375.5 ("Section 11375.5") and the
10 Federal Government's attempt to ban such drugs under the Controlled Substances Act (the "CSA")
11 (21 U.S.C. § 81, *et seq.*). The City Council further finds that the dangers of Synthetic Drugs, which
12 have been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and
13 homicidal ideations, cannibalism, and death, require regulation.

14 C. While Section 11375.5 and the CSA prohibit certain compounds that are used to create
15 synthetic drugs, they are not comprehensive enough to eliminate the distribution and sale of all
16 Synthetic Drugs in the City. Specifically, the Council finds that the makers of Synthetic Drugs
17 continually alter the composition of the compounds in their products so as to not come under the
18 prohibition of Section 11375.5, the CSA and other laws and regulations that attempt to prohibit the
19 sale of Synthetic Drugs. In fact, products which plainly are being marketed for use as Synthetic
20 Drugs are now being packaged with advertisements stating that the product does not contain the
21 compounds specifically banned by Section 11375.5. Thus, the City Council finds that this ordinance
22 is necessary to implement effective measures to prohibit the distribution and sale of Synthetic Drugs.

23 D. An effective way to prevent and abate the health, safety, and welfare concerns that
24 exist as a result of the marketing, distribution, and sale of Synthetic Drugs in manners that brazenly
25 seek to circumvent State and Federal Law is through the enforcement of the City's administrative,
26 criminal, and civil enforcement procedures (set forth in Chapters 1.10 and 1.16 of the Rialto
27 Municipal Code) and through the suspension or revocation of business licenses (pursuant to Section
28 5.04.285 of the Rialto Municipal Code). This ordinance shall not apply to any activity already

regulated by Health and Safety Code Section 11375.5, the CSA, or any other applicable State or Federal law or regulation.

9.43.020 Definitions.

A. "Business" shall have the same meaning as the term is defined in Section 5.04.020 of this Municipal Code.

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

C. "Distribute", "distributing", and "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 and/or similar organization.

E. "Possess", "possessing", and "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 and/or power be exercised solely or jointly with others.

F. "Provide", "providing", and "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 substances:

(a) cathinone (S)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 03-

keto-N-methylbenzodioxolylbutanamine), a-PPP (a-pyrrolidinopropiophenone), MPPP (4'-methyl-a-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 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 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.

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 substances:

(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) cannabicyclohexanol 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalen-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-3-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, 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);

(c) any derivative of the above listed 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 compounds;

(f) any other substantially similar chemical structure or compound; or

(g) any other synthetic cannabinoid; and

(2) Products that elicit psychoactive or psychotropic euphoric effects and are marketed under any of the following trade 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.

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

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

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

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

9.43.030 Possession, Storage, Provision, Sale, and Distribution of Synthetic Drugs Prohibited.

A. It is unlawful for any person to possess, store, provide, distribute, or sell any Synthetic Drug within the City of Rialto.

B. Merely disclaiming a Synthetic Drug as “not safe for human consumption” will not avoid the application of this Section.

C. It is unlawful for any person to store, provide, sell, or distribute, or to permit the storage, provision, sale, or distribution of Synthetic Drugs from any real property owned, possessed, managed, or controlled by that person in the City of Rialto.

9.43.040 Public Nuisance.

A. The storage, provision, sale, or distribution of any Synthetic Drug from any property, structure, or building in the City of Rialto is declared to be a public nuisance.

B. Civil Remedies Available; Remedies Cumulative. In addition to the penalties provided in Section 9. 43.070, any property used in violation of any provision of this Chapter shall constitute a public nuisance and may be abated by the City by civil process by means of a restraining order, a preliminary or permanent injunction, or in any manner provided by law for the abatement of such nuisance. All remedies herein are cumulative and non-exclusive.

C. Attorneys’ Fees. Any person, including the City of Rialto, who prevails in any action or proceeding for the abatement of a public nuisance as provided herein shall be entitled to recover attorneys’ fees incurred in any such action or proceeding.

9.43.050 Confiscation of Synthetic Drugs.

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 Chapter presents a grave and imminent danger not only to the person consuming the Synthetic Drug, but also to the public at large. Any Police Officer who issues a criminal citation under this Chapter shall confiscate any Synthetic Drugs and store them, pending the conclusion of the criminal case.

9.43.060 Suspension or Revocation of Business License.

No person holding a validly issued 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

(Original printed on acid-free paper)

1 claimed or represented to be a Synthetic Drug. A violation of this Chapter by the holder of a validly
2 issued City business license shall constitute grounds for suspension, or revocation of a business
3 license in accordance with the procedures set forth in Section 5.04.285 of this Municipal Code.

4 **9.43.070 Penalties.**

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

10 B. Separate Offense. Each person committing, causing, or maintaining a violation of this
11 Chapter or failing to comply with the requirements set forth herein shall be deemed guilty of a
12 separate offense for each and every day during any portion of which any violation of any provision of
13 this Chapter is committed, continued, maintained, or permitted by such person and shall be punishable
14 accordingly.

15 D. Additional Penalties; Costs of Abatement. In any administrative, civil, or criminal
16 proceeding involving the abatement of a public nuisance, the City shall also be entitled to recover its
17 full reasonable costs of abatement, including, but not limited to, investigation, analysis, and
18 prosecuting the enforcement against the responsible party.

19 **9.43.080 Seizure of Evidence.**

20 Any product(s) or substance(s) possessed, provided, distributed, or sold in violation of any
21 provision of this Chapter shall be seized and stored in accordance with law.

22 **9.43.090 Exclusions.**

23 A. This Chapter shall not apply to drugs or substances lawfully prescribed or to
24 intoxicating chemical compounds that have been approved by the federal Food and Drug
25 Administration or are specifically permitted by California law.

26 B. This Chapter shall not apply to drugs or substances that are prohibited by State or
27 Federal law, including without limitation, California Health and Safety Code section 11375.5 and the
28 Federal Controlled Substances Act.

1 C. This Chapter shall not be deemed to prohibit any act that is permitted, prohibited, or
2 preempted by any State or Federal law or regulation.

3 Section 2. Severability.

4 If any subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid
5 or unconstitutional by a decision of any court of competent jurisdiction or preempted by State or
6 Federal legislation, such decision or legislation shall not affect the validity of the remaining portions
7 of this Chapter. The City Council declares that it would have passed this Chapter and each and every
8 subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any
9 such decision or preemptive legislation.

10 Section 3. The Mayor shall sign and the City Clerk shall certify passage and adoption of
11 this Ordinance, and shall cause the same to be published and posted pursuant to the provisions of law
12 in this regard, and this Ordinance shall take effect thirty (30) days after its final passage.

13
14 **PASSED, APPROVED AND ADOPTED** this 25th day of June, 2013.

15
16 
17 DEBORAH ROBERTSON, Mayor

18 ATTEST:

19
20 
21 BARBARA McGEE, City Clerk

22
23 APPROVED AS TO FORM

24
25 
26 JIMMY A. GUTIERREZ, City Attorney
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)

4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing
5 Ordinance No. **1530** was duly passed and adopted at a regular meeting of the City Council of the City
6 of Rialto held on the 25th day of June, 2013.

7 Upon motion of Councilmember Palmer, seconded by Councilmember Baca Jr., the foregoing
8 Ordinance No. **1530** was duly passed and adopted.

9 Vote on the Motion:

10 AYES: Mayor Robertson, Councilmembers: Palmer, Baca Jr., O'Connell, Hirtz

11 NOES: None

12 ABSENT: None

13 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
14 Rialto, this 9th day of July, 2013.

15 
16 Barbara A. McGee, City Clerk