

ORDINANCE NO. 2348

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE AMENDING CHAPTER 13.130 "SYNTHETIC STIMULANTS AND SYNTHETIC CANNABINOIDS" TO TITLE 13 OF THE VICTORVILLE MUNICIPAL CODE, PROHIBITING SYNTHETIC DRUGS, WITH AN ENVIRONMENTAL EXEMPTION

WHEREAS, on January 20, 2015, the City Council of the City of Victorville (the "City"), (the "City Council"), enacted Victorville Municipal Code Chapter 13.130 "Synthetic Stimulants and Synthetic Cannabinoids" to regulate Synthetic Drugs not otherwise regulated by State and Federal Law; and

WHEREAS, the City Council finds that State and Federal laws are not comprehensive enough to eliminate the possession, distribution, and sale of all Synthetic Drugs in the City, as the makers of Synthetic Drugs continually alter the composition of the compounds to stay outside the scope of said laws; and

WHEREAS, the City Council finds that Synthetic Drugs which are regulated by Victorville Municipal Code Chapter 13.130 have been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal thoughts, cannibalism and death, and therefore are extremely dangerous and a threat to public health and safety; and

WHEREAS, due to the emergence of new synthetic drugs since the original enactment of Chapter 13.130 of the Victorville Municipal Code, Chapter 13.130 ought to be updated to include the latest illicit synthetic drugs being distributed in the City; and

WHEREAS, pursuant to Cal. Gov. Code § 38771, the City Council may declare by ordinance what constitutes a nuisance; and

WHEREAS, the City Council has police power authority to enact regulations to protect the public's health, safety, and welfare (Cal. Const. art. XI, § 7), including regulations designed to eliminate or reduce the occurrence of a nuisance; and

WHEREAS, the City Council therefore desires to update the definitions of Synthetic Drugs in the City and provide more tools for the enforcement of these regulations, and finds that this ordinance will protect health, safety and welfare of the public.

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

Section 1. Recitals

The recitals set forth above are true and correct, and are hereby incorporated by this reference as if set forth in their entirety.

Section 2. Amendment to Chapter 13.130 to the Victorville Municipal Code

The Victorville Municipal Code Chapter 13.130, regulating synthetic stimulants and synthetic cannabinoids, also known as Synthetic Drugs, is amended as follows:

Chapter 13.130 Synthetic Stimulants and Synthetic Cannabinoids

13.130.010 Purpose and Intent.

13.130.020 Definitions.

13.130.030 Possession, Storage, Provision, Display for Sale, Sale, and/or Distribution of Synthetic Drugs Prohibited.

13.130.040 Public Nuisance.

13.130.050 Seizure of Evidence.

13.130.060 Summary Abatement.

13.130.070 Modification, Suspension, or Revocation of Business License.

13.130.080 Penalties, Remedies, and Enforcement.

13.130.090 Exclusions.

13.130.010 - 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 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 chapter is to provide the Ceity with reasonable means to address the dangers to the community posed by the provision, distribution, sale, and/or possession of synthetic drugs not regulated by state or federal law.
- (b) While state synthetic drug laws and *the Federal Controlled Substances Act (the "CSA") (21 USC § 801 et seq.)* 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 Ceity. Specifically, the ~~council~~ 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 as 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 Ceity 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 Ceity 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 Ceity Ceouncil 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 not typically 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 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 Potpurri," "Grape Ape Herbal Incense," "Aurora Incense," "Three Monkey Incense," "Mr. and Mrs.

Marley," "Cloud 9 Incense," and a group of synthetic drugs marketed as those 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 Ceity's administrative, criminal, and civil enforcement procedures, and through the revocation of a business license (pursuant to Title 16, Chapter 7 this 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 chapter shall not apply to any activity already regulated by the state synthetic drug laws or the CSA, or any other applicable state or federal law or regulation.

13.130.020 - Definitions.

- (a) "Consume," "consuming," or "consumption" shall mean to ingest, inhale, inject, smoke, or snort (insufflate).
- (b) "Distribute," "distributing," or "distribution" shall mean to furnish, give away, exchange, transfer, deliver, or supply, whether for monetary gain or not.
- (c) "Person" shall include any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association, and/or similar organization.
- (d) "Possess," "possessing," or "possession" shall mean to have for consumption, distribution, or sale in a person's actual or constructive custody or control, or under a person's authority or power, whether such custody, control, authority, and/or power is exercised solely or jointly with others.
- (e) "Provide," "providing," or "provision" shall mean offering to distribute or sell a product or substance to any person.
- (f) "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 (methylenedioxypropylone), 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 (-keto-N-methylbenzodioxolylbutanamine), a-PPP (-pyrrolidinopropiophenone), MPPP (4'-methyl-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-pyrrolidinopropiophenone), -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 which are manufactured to physically resemble the appearance of a synthetic substances listed under section 13.130.020(f)(1) such that a reasonable person would not be able to distinguish the product claimed or represented to be a synthetic drug from outward appearance, or by physical markings and express or implied representations that would lead a reasonable person to believe that the product would produce psychoactive or psychotropic euphoric effects similar to or the same as synthetic substances listed under section 13.130.020(f)(1); and

(23) 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 sections 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health and Safety Code sections 11053—11058), regulated by the State Synthetic Drug Laws, regulated by the CSA, or approved by the Food and Drug Administration ("FDA").

(g) "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 intoxicating chemical compounds:

(A) *Salvia divinorum* or salvinorin 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;

(A~~B~~) Cannabicyclohexanol(2-[(1 R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWFI-018 (naphthalen-1-yl-(1-pentylindol-3-yl)methanone), JWFI-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone), JWFI-200 ((1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-yl)methanone), HU-210 ((6aR,10aR)- 9-(Ftydroxymethyl)- 6,6-dimethyi- 3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol), CP 47,497 (2-[(1 R,3S)-3-hydroxycyclohexyl]- 5-(2-methyloctan-2-yl)phenol) CP 47,497 (2-[(1 R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) or AM-2201 (1 -[(5-fluoropentyl)-1 FI-indol-3-yl]-(naphthalen-1-yl)methanone); **XLR11 (1-(5-Fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone); XLR11 4-pentenyl analogue (1-(Pent-4-en-1-yl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone);**

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

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

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

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

(2) Products which are manufactured to physically resemble the appearance of a synthetic substances listed under section 13.130.020(g)(1) such that a reasonable person would not be able to distinguish the product claimed or represented to be a synthetic drug from outward appearance, or by physical markings and express or implied representations that would lead a reasonable person to believe that the product would produce psychoactive or psychotropic euphoric effects similar to or the same as synthetic substances listed under section 13.130.020(g)(1); and

(2~~3~~)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, Flush, Mystery, Earthquake, 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 section 11000 et seq.), listed in one of the UCSA's schedules

of controlled substances (Health and Safety Code sections 11053—11058), regulated by one of the State Synthetic Drug Laws, regulated by the CSA, or approved by the FDA.

- (h) "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.
- (i) "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.
- (j) "Sell," "selling," or "sale" shall mean to furnish, exchange, transfer, deliver, or supply for monetary gain.
- (k) "Store" shall mean to place or keep in a location for preservation, later use, or disposal.
- (l) "Synthetic Drugs" shall include psychoactive bath salts and psychoactive herbal incense, as those terms are defined hereinabove.

13.130.030 - Possession, storage, provision, display for sale, sale, and/or distribution of synthetic drugs ~~prohibited~~ or represented to be synthetic drugs prohibited.

- (a) It is unlawful for any person to possess, store, provide, distribute, display for sale or otherwise attempt to sell, or sell any synthetic drug within the city **City**.
- (b) Merely disclaiming a synthetic drug is "not safe for human consumption" (or other similar disclaimer) will not avoid application of this chapter.
- (c) It is unlawful for any person to permit the storage, provision, sale (or display for sale or other attempt to sell), or distribution of synthetic drugs from any real property owned, possessed, managed, or controlled by that person in the city **City**.
- (d) It is unlawful for any person to claim or represent that a product that person is storing, providing, displaying for sale, distributing or selling is a synthetic drug within the city City.**

~~An enforcing officer may consider any of the following evidentiary factors to determine whether a product is a synthetic drug:~~

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

- ~~(2) The person providing, 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 feed");~~
- ~~(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 (e.g. a half of a gram of a substance marketed as "glass cleaner" costing multiple times the price of actual glass cleaner);~~
- ~~(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").~~

13.130.040 - Public nuisance.

- (a) It is a public nuisance for any person to possess, store, provide, distribute, display or otherwise attempt to sell, or sell any synthetic drug.
- (b) It is a public nuisance for any person to allow the storage, provision, distribution, display or other attempt to sell, or sale of any synthetic drug on property owned, controlled, or managed by that person.
- (c) To determine if a substance is a synthetic drug subject to this section, an enforcing officer may consider any of the evidentiary factors set forth in section 13.130.030.
- (d) In addition to any penalties provided in this chapter (including section 13.130.080) and this Code, any public nuisance under this section is subject to any and all abatement procedures provided by this Code, including but not limited to summary abatement, or in any other manner provided by law for the abatement of said nuisance. All remedies herein are cumulative and non-exclusive.
- (e) If the ~~city~~**City** elects to perform public nuisance abatement work pursuant to this chapter or if the ~~city~~**City**'s enforcement actions cause the property owner or other responsible party to abate the nuisance, the owner of record of the property shall be liable for all fees and costs of abatement, including but not limited to administrative costs and attorney's fees, incurred by the ~~city~~**City** to abate the public nuisance.

13.130.050 - Seizure of evidence.

Any product(s) or substance(s) provided, distributed, sold (or which are being displayed or otherwise attempted to be sold), or possessed in violation of this chapter, may be seized by any city police officer or a city Enforcement Officer as defined in section 1.05.040 of this Code who issues a criminal citation under this chapter, and removed and stored as evidence in accordance with the law.

13.130.060 - 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 chapter presents a grave and imminent danger not only to a person consuming the synthetic drug, but also to the public. Thus, if an enforcing officer, based on the facts then known, determines that a violation of this chapter has occurred or is occurring, then that violation may be subject to the summary abatement procedures authorized by this Code or any other law.

13.130.070 - Modification, suspension, or revocation of business license.

No person holding a validly issued business license and owning or operating a business in the ~~city~~**City** may use that business to provide, distribute, sell, display for sale or attempt to sell any synthetic drug. In addition to any other penalties, remedies, or enforcement actions applicable to violations of this chapter under this Code and any other law, any violation of this chapter by the holder of a business license of a business engaged in the foregoing prohibited actions shall be grounds for the modification, suspension, or revocation of said license, in accordance with the business license revocation procedures set forth in this Code.

13.130.080 - Penalties, remedies, and enforcement.

- (a) 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 exceeding six (6) months or by fine not exceeding one thousand dollars (\$1,000.00), or by both.

However, the ~~city~~**City** Attorney may determine that in the interest of justice, said violation should instead constitute an infraction violation, and said violation shall be punishable pursuant to chapter 1.04 of this Code.

- (b) Each person committing, causing, or maintaining a violation of this chapter or failing to comply with the requirements set forth herein shall be determined to be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, maintained, or permitted by such person and shall be punished accordingly.
- (c) In lieu of or in addition to the criminal penalties provided in this section, the ~~city~~**City** may issue an administrative citation for any violation of this chapter pursuant to Chapter 1.05 of this Code. Said administrative violation shall be punishable pursuant to chapter 1.04 of this Code, and therefore pursuant to section 1.04.010, may constitute a misdemeanor or an infraction violation, in the discretion of the enforcing officer and/or ~~city~~**City** Attorney. Where a violation is deemed an infraction violation said violation shall be punishable by the fines set forth in section 1.04.010(b).
- (d) In addition to or in lieu of the penalties provided in this section and chapter, the ~~city~~**City** may pursue any and all other civil and/or administrative remedies available in this Code and at law, including but not limited to nuisance abatement (as also

provided in section 13.130.040), which may involve obtaining a restraining order, preliminary injunction, and/or permanent injunction, **nuisance abatement order**, and the modification, suspension, and/or revocation of any ~~city~~**City** entitlement(s) which is (are) allowing the public nuisance condition to exist, including but not limited to a certificate of occupancy and/or business license.

- (e) This chapter may be enforced by the ~~city~~**City**, including its sheriffs department and/or ~~city~~**City** code enforcement, and ~~city~~**City** Attorney.

13.130.090 - Exclusions.

- (a) This chapter shall not apply to drugs or substances lawfully prescribed or to chemical compounds that are approved by the Food and Drug Administration or that are permitted by State law, including compounds that are excepted by the California Uniform Controlled Substances Act (Health and Safety Code section 11000 et seq.).
- (b) This chapter shall not apply to drugs or substances that are prohibited by state or federal law, including, without limitation, the state synthetic drug laws and CSA.
- (c) This chapter shall not be deemed to proscribe any act that is permitted, prohibited, or preempted by any state or federal law or regulation.

Section 3. Repeal of Conflicting Provisions.

All the provisions of the Victorville Municipal Code as heretofore adopted by the City that are in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability.

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. CEQA Exemption.

The City Council finds that this project is categorically exempt from the California Environmental Quality Act (CEQA) based upon CEQA Guidelines Section 15061(b)(3), as there is no possibility that the proposed amendment will have a significant effect on the environment since it does not increase land use allowances or modify existing standards that will negatively affect the environment, and it is intended only to improve the general health, safety and welfare by prohibiting and regulating synthetic drugs.

Section 6. Effective Date.

This Ordinance shall take effect thirty (30) days after its final passage.

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ORDINANCE NO. 2348

THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT ON DECEMBER 3, 2015.

PASSED, APPROVED AND ADOPTED THIS 3rd DAY OF NOVEMBER 2015.

Stelloria Garcia
MAYOR OF THE CITY OF VICTORVILLE

ATTEST:

Carlee Bates
CITY CLERK

11-5-15
DATE

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

I, CAROLEE BATES, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Urgency Ordinance No. 2348 which was duly adopted at a meeting held on the 3rd day of November 2015 by the following roll call vote, to wit:

AYES: Councilmembers Garcia, Cox, Kennedy, McEachron and ~~Negrete~~

NOES: None

ABSENT: None

ABSTAIN: ~~None~~ Councilmember Negrete

Carlee Bates
CITY CLERK OF THE CITY OF VICTORVILLE