

ORDINANCE NO. 2014-11

**AN ORDINANCE OF THE CITY OF JURUPA VALLEY, CALIFORNIA,
ADDING CHAPTER 11.20, PSYCHOACTIVE BATH SALTS,
PSYCHOACTIVE HERBAL INCENSE, AND OTHER SYNTHETIC
DRUGS, TO THE JURUPA VALLEY MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF JURUPA VALLEY DOES ORDAIN AS
FOLLOWS:**

Section 1. Enactment of Chapter 11.20. Chapter 11.20, Psychoactive Bath Salts, Psychoactive Herbal Incense, and other Synthetic Drugs, is hereby added to Title 11, Peace, Morals and Safety, of the Jurupa Valley Municipal Code to read as follows:

**“Chapter 11.20 - PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL
INCENSE, AND OTHER SYNTHETIC DRUGS**

Sections:

11.20.010 – Purpose and Intent.

11.20.020 – Definitions.

**11.20.030 – Possession, Storage, Provision, Sale and Distribution of Synthetic Drugs
Prohibited.**

11.20.040 – Public Nuisance.

11.20.050 – Confiscation of Synthetic Drugs.

11.20.060 – Business Registration Certificate.

11.20.070 – Penalties.

11.20.080 – Exclusions.

11.20.010 – 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 scope of those laws and regulations. The purpose and intent of this Chapter is to provide the City with measures to address the dangers to the community posed by synthetic drugs that are not regulated by state or federal law.

(b) Synthetic drugs are extremely dangerous and are gaining popularity at an alarming rate among high school and college aged individuals, as well as among parolees and probationers. These drugs are widely available in stores throughout the City, despite the state of California’s attempt to ban such drugs under Health and Safety Code sections 11375.5 (banning synthetic stimulant compounds and derivatives) and 11401 (banning “analogs” of controlled substances) (collectively “state synthetic drug laws”), and the

federal government's attempt to ban such drugs under the Controlled Substances Act (the "CSA") (21 USC § 81 *et seq.*). The City Council further finds that the dangers of synthetic drugs, which have been documented to cause hallucinations, agitations, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death, require regulation.

(c) While the state synthetic drug laws and 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 City. Specifically, the City 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 prohibition of the state synthetic drug laws, the CSA, and other law and regulations that attempt 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 compounds specifically banned by the state synthetic drug laws. Thus the City 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 City 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.

(d) 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 City Council 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 a "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 typically not 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 the synthetic drug's marketed use. For example, a synthetic drug marketed as "glass cleaner" might be priced at fifty dollars (\$50.00) for an eighth ($\frac{1}{8}$) of

an ounce, while bona fide glass cleaner is priced at approximately five dollars (\$5.00) for twenty six (26) ounces.

(5) Similarity To Illicit Street Drugs. Synthetic drugs often resemble illicit street drugs or use brand names and packaging that are designed to make the product appear similar to illicit 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 Potpourri”, “Grape Ape Herbal Incense”, “Three Monkey Incense”, “Mr. And Mrs. Marley”, “Cloud 9 Incense”, and a group of synthetic drugs marketed as from “The Spice Guy”.

(e) 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 administrative, civil and criminal enforcement procedures set forth in Title 1 of this Code. This Chapter shall not apply to any activity already regulated by the state synthetic drug laws, the CSA or any other applicable state or federal law or regulation.

11.20.020 – Definitions.

As used in this Chapter, the following words, terms and phrases shall have the following meanings, unless a different meaning is apparent from the context or is specified elsewhere in this Chapter:

- (a) “Business” is defined as set forth in Section 5.01.020 of this Code.
- (b) “Consume,” “consuming” and “consumption” means to ingest, inhale, inject, smoke or snort (insufflate).
- (c) “Distribute,” “distributing” and “distribution” means to furnish, give away, exchange, transfer, deliver or supply, whether for monetary gain or not.
- (d) “Person” includes any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association and similar organization.
- (e) “Possess,” “possessing” and “possession” means 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 or power be exercised solely or jointly with others.
- (f) “Provide,” “providing” and “provision” means offering to distribute or sell a product or substance to any person.

(g) “Psychoactive Bath Salts” means 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:

i. *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;

ii. Kratom or Biak-Biak; all parts of the plant presently classified botanically as *Mitragyna Speciosa*, 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;

iii. Cathinone (2-amino-1-phenyl-1-propane), 4-methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1-one), 4-methoxymethcathinone (1-(4-methoxyphenyl)-2-(methylamine)propan-1-one), MDPV (methylenedioxypropylvalerone), 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-methylbenzodioxolylbutamine), a-PPP (a-pyrrolidinopropiophenone), MPPP (4-methyl-a-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-a-pyrrolidinopropiophenone), -PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one);

iv. Any derivative of the above listed compounds;

v. Any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

vi. Any chemical alteration of the above listed compounds; or

vii. 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” means 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:

i. 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-butylindol-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);

ii. Any derivative of the above listed compounds;

iii. Any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

iv. Any chemical alteration of the above listed compounds;

v. Any other substantially similar chemical structure or compound; or

vi. 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, Stinger, Ocean Blue, Serenity, Fake Weed, and Black Mamba.

(i) “Psychoactive or psychotropic euphoric effects” means 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.

(j) “Psychoactive or psychotropic stimulant effects” means 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.

(k) “Sell,” “selling” and “sale” mean to furnish, exchange, transfer, deliver or supply for monetary gain.

(l) “Synthetic Drug” includes “psychoactive bath salts” and “psychoactive herbal incense,” as those terms are defined in this Section.

11.20.030 – 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.

(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.

(d) It is unlawful for any person to store, provide, sell or distribute or to permit the storage, provision, sale or distribution of a substance that has been placed on the United States Drug Enforcement Agency watch list or the United States Food and Drug Administration recall or important alert advisory from any real property owned, possessed, managed or controlled by that person in the City.

(e) The enforcing officer may consider any of the following evidentiary factors to determine if the product is a synthetic drug:

(1) The product is not suitable for its marketed use (such as crystalline or powder being marketed as “glass cleaner”);

(2) The business 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 food”);

(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 Health and Safety Code section 11375.5”);

(4) The product is significantly more expensive than products that are used for that product’s marketed use (such as a half of a gram of a substance marketed as “glass cleaner” costing fifty dollars (\$50.00));

(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 drug (such as “Eight Ballz” or “Green Buddha”); or

(7) The product's name or ingredient can be found on the United States Drug Enforcement Agency watch list or the United States Food and Drug Administration recall or important alert advisory.

11.20.040 – Public Nuisance.

(a) Declared a Public Nuisance. The storage, provision, sale or distribution of any synthetic drug from any property, structure or building in the City is declared to be a public nuisance.

(b) Civil Remedies Available; Remedies Cumulative. In addition to the penalties provided in Section 11.20.070 of this Chapter, 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.

11.20.050 – Confiscation of Synthetic Drugs.

(a) 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.

(b) Any products or substances possessed, provided, distributed or sold in violation of any provision of this Chapter shall be seized and stored in accordance with law.

11.20.60 – Business Registration Certificate.

No person holding a validly issued city business registration certificate and owning or operating a business in the City may use that business to provide, distribute or sell any synthetic drug or any substance claimed or represented to be a synthetic drug. A violation of this Chapter by the holder of a validly issued City business registration certificate is subject to the procedures and penalties set forth in Title 1 of this Code.

11.20.070 – Penalties.

(a) Failure to comply with any of the requirements of this Chapter is a misdemeanor punishable by imprisonment in the county jail for a period not exceeding six (6) months or by fine not exceeding one thousand dollars (\$1,000.00), or by both, provided that where the city attorney determines that such action would be in the interest of justice, the city attorney may specify in the accusatory pleading that the offense shall be an infraction.

(b) Administrative Citations. Any person who violates Sections 11.15.050 or 11.15.060 of this Chapter shall be guilty of violating the Jurupa Valley Municipal Code and may be issued an administrative citation and be subject to the applicable punishments pursuant to Chapter 1.20 of Title 1 of the Jurupa Valley Municipal Code.

(c) Non-exclusivity. Nothing in this Chapter shall limit or preclude the enforcement of any other applicable laws or remedies available for violations of this Chapter, including but not limited to, the enforcement provisions of Title 1 of the Jurupa Valley Municipal Code.

(d) Daily Offense. Each person committing, causing, or maintaining a violation of this Chapter or failing to comply with the requirements set forth in this Chapter shall be deemed 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 punishable accordingly.

11.20.080 – Exclusions.

(a) This Chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds that have been approved by the federal food and drug administration or are specifically permitted by California law.

(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 the federal controlled substances act.

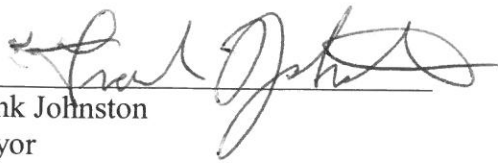
(c) This Chapter shall not be deemed to prohibit any act that is permitted, prohibited or preempted by any state or federal law or regulation.”

Section 2. Severability. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

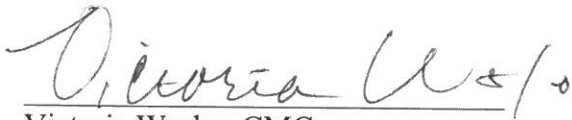
Section 3. Effect of Ordinance. This Ordinance is intended to supersede any ordinance or resolution of the County of Riverside in conflict with the terms of this ordinance.

Section 4. Certification. The City Clerk of the City of Jurupa Valley shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Jurupa Valley on this 4th day of December, 2014.


Frank Johnston
Mayor

ATTEST:


Victoria Wasko, CMC
City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF JURUPA VALLEY)

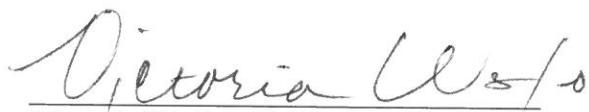
I, Victoria Wasko, CMC, City Clerk of the City of Jurupa Valley, do hereby certify that the foregoing Ordinance was regularly introduced at a regular meeting of the City Council held on the 20th day of November, 2014 and thereafter at a regular meeting held on the 4th day of December, 2014, it was duly passed and adopted by the following vote of the City Council:

AYES: BERKSON, HANCOCK, JOHNSTON, LAURITZEN, ROUGHTON

ABSENT: NONE

ABSTAIN: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Jurupa Valley, California, this 4th day of December, 2014


Victoria Wasko, CMC, City Clerk
City of Jurupa Valley