

# DRAFT 060514

## THE CITY OF GAINESVILLE CODE OF ORDINANCES

### ARTICLE \_\_\_\_ SYNTHETIC DRUG ORDINANCE

#### **Sec. xx-001. Intent.**

It is the intent of the City of Gainesville City Commissioners to protect the health, safety, and welfare of its citizens by prohibiting the possession, use, sale, and manufacture of synthetic substances as defined herein which, when consumed, mimic the effects of narcotics or controlled substances.

#### **Sec. xx-002. Title.**

This article shall be known and may be cited as the "Synthetic Drug Ordinance."

#### **Sec. xx-003. Definitions.**

- (a) *Synthetic chemical or synthetic chemical compound* refers to a chemical or chemical compound whose molecular composition is similar to, or mimics any of those substances listed as controlled substances in Chapter 893, Florida Statutes, and whose intended use when introduced into the human body is to mimic the effects of a controlled substance. "Substantially similar chemical structure" of a controlled substance is described in Section 893.0356, Florida Statutes.
- (b) *Synthetic cannabinoids* means any herbal, vegetal or liquid material which has been soaked, sprayed, blended, combined or otherwise enhanced with a synthetic chemical or synthetic chemical compound that enables the herbal, vegetal or liquid material, or the smoke or vapor emitted from its burning, or vaporization, to mimic or simulate the effects of a controlled substance, tetrahydrocannabinol (THC), when inhaled, ingested, or otherwise introduced into the human body or otherwise affects the function of the human body. Any herbal, vegetal or liquid material described above shall be considered a synthetic cannabinoid regardless of the labeling posted on the packaging for the material and regardless of whether the labeling states that its contents are "not for human consumption," "not for smoking," or other similar statement. The fact that a herbal, vegetal or liquid material, packaged and advertised as a food additive, potpourri, herbal incense, etc., has been soaked, sprayed, blended, combined or otherwise enhanced with a synthetic chemical or synthetic chemical compound which has no legitimate relation to the advertised use of the product may be considered in determining whether the product is considered a synthetic cannabinoid. This term specifically does not include any herbal, vegetal or liquid material containing synthetic chemicals or chemical compounds which: (1) require a prescription; (2) are approved by the United States Food and Drug Administration; and (3) are dispensed in accordance with Florida and Federal law.
- (c) *Synthetic Cathinones*, also known as *bath salts*, means any granular, crystalline, powdered, pill, encapsulated, stick, or block material form of synthetic chemical or synthetic chemical compound that enables the material, or the smoke or vapor emitted from its burning or vaporization, to mimic or simulate the effects of a narcotic or other controlled substance when inhaled, ingested, injected or otherwise introduced into the human body or otherwise affects the function of the human body. Any material described above shall be considered a synthetic drug regardless of the labeling posted on the packaging for the material and regardless of whether the labeling states that its contents are "not for human consumption," "not for smoking," or contains some other similar statement. Material packaged and advertised as a cleaning agent, food additive, therapeutic bath crystals, plant food, insect repellent, etc. is, in fact, a synthetic chemical or synthetic chemical compound which has no legitimate relation to the advertised use of the product and is considered a synthetic drug. This term specifically does not include any legitimate, traditional materials known as bath salts or Epsom salts containing synthetic chemicals or chemical compounds which may: (1) require a prescription; (2) are approved by the United States Food and Drug Administration; and (3) are dispensed in accordance with Florida and Federal law.

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- (d) *Controlled substance* means any substance defined or listed in Schedule I, II, III, or IV of F.S. § 893.03, as amended including any analogues, isomers, esters, ethers, salts, and salts of isomers, esters and ethers of such substances.
- (e) *Drug* means an article or substance that is Intended to affect the structure or any function of the body of humans as defined in F.S. § 499.003.
- (f) *Misbranded drug* means a drug that violates Section 499.007, F.S., including, but not limited, to drugs for which (1) the label is in any way false or misleading; (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use.
- (g) *Drug paraphernalia* means other than devices to ingest or inject prescription drugs, any object used, intended for use of designed for use in ingesting, inhaling or otherwise introducing illicit drugs or controlled substances into the human body. In determining whether an object is drug paraphernalia, a court may consider any of the factors enumerated in § 893.146, F.S.

#### **Sec. xx-004. Determination of a product as a synthetic drug.**

The following factors, taken in the totality of the circumstances, may be considered in determining whether a product, substance, or other material should be classified as a synthetic drug. For the purposes of enforcement pursuant to Section xx-005(d) of this article, the establishment of two or more of these factors shall constitute prima facie evidence that the product is a synthetic drug.

- (1) *Marketing*: A product routinely advertised to be a substance for which it is rarely, if ever, suitable to be used for (i.e. - incense, potpourri, food additive, therapeutic bath crystals, plant food, insect repellent, communication device screen cleaner, jewelry cleaner, glass cleaner, etc.).
- (2) *Sales location*: Products, whether displayed or not, but offered or sold in, or through, businesses such as liquor stores, smoke shops, and gas/convenience stores where such advertised products are not typically sold.
- (3) *Labels and packaging*:
  - a. Products marketed as common non-consumable products which contain warnings not normally found on such products. The warnings may be similar, but not limited to, "not for human consumption", "not for purchase by minors", etc., or
  - b. Products containing notices on the package not normally found on similar products such as, but not limited to, "does not contain any chemical compounds prohibited by State law," "contains no prohibited chemicals," "product is in accordance with State and Federal laws," "product is in compliance with new Florida Law HB 1175," "does not contain AM2201 or any DEA banned substance", "legal herbal substance," "aromatherapy only," "legal in 50 States," "100% compliant guaranteed," etc.
  - c. Products whose package labeling or design suggests the user will achieve a "high", euphoria, relaxation, mood enhancement, or that the product has other drug-like effects on the body or otherwise affects the function of the human body.
  - d. Products using brand names and packaging designed to make the product appear similar to illicit street drugs or commonly used street slang for illicit drugs or their effects or employs symbols, terms or effects of illegal drugs, such as marijuana leaf, blunts, red eyes or crossed-out eyes.

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- e. Packages are misleading, deceptive or misbranded, including but not limited to (1) the label is in any way false or misleading; (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use and/or the product contains contradictory warnings/directions for the product's use, which is not consistent for the type of product advertised. (Example: "For fragrance or aromatherapy only" which requires human inhalation and/or "blueberry flavor" upon packages that also read "not for human consumption" or similar statements.)
- (4) *Price*: The price of the synthetic drug product is incongruent with other products marketed in the City for legitimate use as incense, plant food, etc.
- (5) *Similarity to illicit street drugs*: Products designed to make the substance appear similar to illicit street drugs (Examples: a white powder made to resemble, in color and texture, cocaine, or dried vegetal material resembling marijuana).
- (6) *Ingredients*: A product which is, or has been enhanced with, a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product but mimics the effects of a controlled substance when the product, or the smoke or vapor from the burned or vaporized product, is introduced into the human body.
- (7) *Verbal or written representations*: Verbal or written representations made at the place of sale or display regarding the purpose, methods, use, or effect of the product on the human body.
- (8) *Co-sale*: Offers or suggestions to purchase products such as cigars, pipes, cigarette papers or e-cigarettes that are used with synthetic drugs and demonstrate intent for human consumption.
- (9) *Subterfuge*: Use of passwords, signs, vouching or other means to vet purchasers and hiding product from general view or offsite to evade law enforcement as to the product's presence.

(Ord. No. , § 2013)

#### **Sec. xx-005. Prohibited acts.**

- (a) The possession, use, sale, distribution, production, or manufacture of synthetic drugs, as defined in this article, is prohibited in the City of Gainesville.
- (b) The display for sale or marketing of synthetic drugs, as defined in this article, in retail stores is prohibited in the City of Gainesville.
- (c) The display for sale, marketing, advertisement, or other offer for sale or trade of any product described in Subsections (1) through (10) of Section xx-004 above is prohibited, and may be enforced administratively as a City Code violation.
- (d) No person in control of the premises of any place of business selling or displaying drug paraphernalia shall allow or permit any person under the age of 18 to enter or remain on the premises unless the minor person is accompanied by one of his or her parents or by his or her guardian.
- (e) Such premises must prominently display a sign approved by or provided by the City of Gainesville posted at the entrance, stating that drug paraphernalia is located within the premises, and prohibiting persons under 18 from entering the establishment without their parent or guardian.

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#### **Sec. xx-006. Laboratory analysis.**

Any laboratory analysis of suspected synthetic drug products shall be conducted by an ISO State certified laboratory, competent to provide expert testimony in a court of law as to the chemical contents of the product. The City Commissioners shall provide funding for such laboratory analysis and any required expert testimony (chemistry and/or pharmacology). Upon the administrative determination of a violation, costs for such analysis and expert testimony shall be assessable against the person or entity charged with the violation.

#### **Sec. xx-007. Enforcement and penalties.**

(a) Primary responsibility for the enforcement of this article shall be with any law or code enforcement officer. Any products found in violation of this section may be seized and held by the enforcing entity as evidence to be used in any further proceeding. This article may be enforced administratively as a code enforcement violation pursuant to Chapter XX, Article XX of the City Code of Ordinances, as amended. This article is administratively enforceable against any natural person, business entity, trust, partnership, corporation, lessee, or property owner. Due to the dangerous medical and health effects the products prohibited by this article can have on the user of the product, each violation shall be considered a serious threat to the public health, safety, and welfare of the citizens of the City of Gainesville. For the purposes of administrative enforcement, municipal code enforcement or code compliance officers are specifically authorized and designated to enforce this article within the city limits of their jurisdiction to the extent such authorization/designation is required by law. County consumer protection or code enforcement officers may enforce this article within the municipalities pursuant to a valid interlocal agreement. This article shall not preempt any municipal ordinance governing the subject area herein that conflicts with, or is more stringent than, this article or that prohibits a substance or product that is not prohibited by this article.

A duly appointed [Special Magistrate] of the City of Gainesville, upon determining that a violation of this article has occurred, shall order the violator(s) to pay a fine of \$500.00 for each violation. Upon determining that a repeat violation of this article has occurred within one year of a previous violation, the [Special Magistrate] shall order the violator(s) to pay a fine of \$1,000.00 for each violation. For the purposes of administrative enforcement of this article, each package containing a synthetic drug or misbranded drug shall be considered a separate code violation. In any order finding a violation of this article, the Special Magistrate, shall order that, in addition to the above referenced fine, a daily fine shall be assessed for failure to comply with the order within 30 calendar days of its execution. In any order finding a violation of this article, the Special Magistrate, shall also order the violator(s) to pay any laboratory analysis and expert testimony costs incurred by the City in the enforcement of this article. All orders not complied with within 30 days shall be recorded in the Public Records of The City of Gainesville and shall become a lien on the violator's property or any property later acquired by the violator.

(b) Nothing contained herein shall prevent the City from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this article including but not limited to:

- (1) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;
- (2) Initiating an action to recover any and all damages that may result from a violation of, or a refusal to comply with, any part of this article; or
- (3) Utilizing any other action or enforcement method allowable by law.

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## **Sec. xx-008. Conflict with State law.**

Nothing in this article is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a direct and express conflict between this article and either the Florida Constitution or the Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, control.