

## ORDINANCE 2016-05

**AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, CREATING ARTICLE IV OF CHAPTER 42 OF THE CODE OF ORDINANCES RELATING TO SYNTHETIC DRUGS; PROVIDING FOR INTENT, DEFINITIONS, SYNTHETIC DRUG SUBSTANCE DETERMINATION, PROHIBITED ACTS, ENFORCEMENT AND PENALTIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Article VIII of the Florida Constitution and Section 166.021, Florida Statutes, the City of Madeira Beach possesses the police power to enact ordinances in order to protect the health, safety and welfare of its citizens; and

**WHEREAS**, synthetic drugs are commonly marketed for sale to young adults and teenagers as a safe and legal alternative to marijuana or other controlled substance; and

**WHEREAS**, the Board of Commissioners of the City of Madeira Beach has been advised by the Pinellas County Sheriff's Office of a significant increase in the use of synthetic drugs and substances by young adults and teenagers; and

**WHEREAS**, synthetic cannabinoids, bath salts, and other dangerous chemicals commonly referred to as synthetic drugs, are being added by producers and manufacturers to products in an effort to mimic the effects of illegal drugs when ingested into the human body; and

**WHEREAS**, due to the manner in which these substances are marketed, the manufacture or production of synthetic drugs is not regulated by the Federal Drug Administration; and

**WHEREAS**, synthetic drugs may be more potent and dangerous than the controlled substances they are designed to mimic due to the unapproved chemicals and chemical compounds contained therein; and

**WHEREAS**, ingestion of synthetic drugs has been known to produce undesired and dangerous side effects such as headaches, agitation, nausea, vomiting, hallucinations, loss of consciousness, elevated blood pressure, tremors, seizures, paranoid behavior, anxiety, increased heart rate, and even death; and

**WHEREAS**, according to the American Association of Poison Control Centers, 5,230 cases of exposure to, or ingestion of synthetic drugs were reported to poison control centers in 2012, 2,668 cases in 2013, 3,682 cases in 2014, 7,794 cases in 2015 and 567 cases in the first two months of 2016; and

**WHEREAS**, the manufacture, sale and use of synthetic drugs has become a major problem negatively effecting the health, safety and welfare of the citizens and visitors of Madeira Beach; and

**WHEREAS**, the State of Florida, in an attempt to curtail the marketing, sale and consumption of synthetic drugs has added in Section 893.03, Florida Statutes, several dozen of the chemicals and chemical compounds used in the manufacture of synthetic drugs as controlled or prohibited substances; and

**WHEREAS**, the Pinellas County Sheriff's Office has been determined that the manufacturers and producers of synthetic drugs can slightly alter the molecular make-up of the chemicals or chemical compounds to avoid regulation under the state statutes; and

**WHEREAS**, due to the ease of making slight molecular alterations of these chemicals or chemical compounds, law enforcement agencies have found it extremely difficult to bring criminal charges against the manufacturers, producers and marketers of synthetic drug products; and

**WHEREAS**, undercover investigations by the Pinellas County Sheriff's Office into the manufacture,

marketing, sale, use and consumption of synthetic drugs have proven to be lengthy, costly and man-power intensive; and

**WHEREAS**, continued enforcement of synthetic drugs under the state statutes has been, and continues to be, hampered merely by the slight changing of the molecular make-up or recipe of the chemicals or chemical compounds used in the manufacture of synthetic drugs in order to defeat law enforcement investigations; and

**WHEREAS**, it is not the intent of this ordinance to interfere with legitimate actions and conduct of individuals which are protected under the constitutions and laws of the United States and the State of Florida.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA:**

SECTION 1. That Article IV of Chapter 42 of the Code of Ordinances of the City of Madeira Beach is hereby created to read as follows:

**ARTICLE IV. – SYNTHETIC DRUGS**

**Sec. 42-40. – Intent.**

It is the intent of the City of Madeira Beach to protect the health, safety, and welfare of the public by prohibiting the possession, sale, and manufacture of synthetic drugs as defined herein which, when consumed, mimic the effects of narcotics or controlled substances. 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 public.

**Sec. 42-41. – Definitions.**

*Synthetic drug* means synthetic chemical, synthetic chemical compound, synthetic cannabinoids, synthetic cathinones, and those substances meeting two or more of the factors described in Section 42-42.

*Synthetic chemical or synthetic chemical compound* refers to a chemical or chemical compound whose molecular composition is substantially similar to, or mimics any of those substances listed as controlled substances in F.S. § 893.03, and whose intended use when introduced into the human body is to mimic the effects of a controlled substance. "Substantially similar" to a controlled substance is described as a "controlled substance analog" in F.S. § 893.0356.

*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: require a prescription; are approved by the United States Food and Drug Administration; and are dispensed in accordance with Florida and federal law.

*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. 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:

- a. Require a prescription;
- b. Are approved by the United States Food and Drug Administration; or
- c. Are dispensed in accordance with Florida and Federal law.

*Controlled substance* means any substance defined or listed in Schedule I, II, III, IV or V of F.S. § 893.03, including any analogues, isomers, esters, ethers, salts, and salts of isomers, esters and ethers of such substances.

*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.

*Misbranded drug* means a drug that is misbranded pursuant to F.S. § 499.007, including, but not limited, to drugs for which (a) the label is in any way false or misleading; (b) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (c) the label does not bear adequate directions for use; or (d) the label does not bear adequate warnings against use.

*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 F.S. § 893.146.

#### **Sec. 42-42. – Determination of a substance 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 of this article, the establishment of two or more of these factors shall constitute prima facie evidence that the product is a synthetic drug.

- (a) **Marketing.** The substance is advertised to be a product for which it is rarely, if ever, suitable to be used for (such as, but not limited to, incense, potpourri, food additive, therapeutic bath crystals, plant food, insect repellent, communication device screen cleaner, jewelry

cleaner, glass cleaner).

- (b) 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 products are not typically sold.
- (c) Labels and packaging.
  - 1. 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"; or
  - 2. 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".
  - 3. 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.
  - 4. 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.
  - 5. Packages are misleading, deceptive or misbranded, including but not limited to:
    - i. The label is in any way false or misleading;
    - ii. The label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug;
    - iii. The label does not bear adequate directions for use; or
    - iv. 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.)
- (d) Price. The price of the product is incongruent with other similar products marketed for legitimate use, such as incense, potpourri, food additive, therapeutic bath crystals, plant food, insect repellent, communication device screen cleaner, jewelry cleaner, glass cleaner.
- (e) Similarity to illicit street drugs. Products designed to make the substance appear similar to illicit street drugs (such as, but not limited to, a white powder made to resemble, in color and texture, cocaine, or dried vegetal material resembling marijuana).
- (f) 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.

- (g) 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.
- (h) 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.
- (i) 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.

**Sec. 42-43. – Prohibited acts.**

The following are prohibited within the city:

- (a) The possession with intent to sell, sale, distribution, production, or manufacture of synthetic drugs.
- (b) The display for sale, marketing, advertisement, or other offer for sale or trade of synthetic drugs in retail stores.
- (c) Allowing or permitting any person under the age of 18 to enter or remain on the premises of any place of business selling or displaying drug paraphernalia, unless the minor person is accompanied by his or her parent or guardian. Such premises must prominently display a sign 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.

**Sec. 42-44. – Laboratory analysis.**

The city may utilize laboratory analysis or expert testimony (chemistry and/or pharmacology) to test suspected synthetic drugs. Any laboratory analysis of suspected synthetic drug 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.

**Sec. 42-45. – Enforcement and penalties.**

- (a) Primary responsibility for the enforcement of this article shall be with any law enforcement officer. Any products found to be synthetic drugs possessed in violation of this section may be seized and held by the city as evidence to be used in any further proceeding.
- (b) This article may be enforced administratively as a code violation pursuant to Article VII of Chapter 2 of the Code of Ordinances. This article is administratively enforceable against any person or legal entity. For the purposes of administrative enforcement, law enforcement officers are specifically authorized and designated to enforce this article within the city limits to the extent such authorization/designation is required by law.

- (c) Each violation shall be considered a separate offense, which can be prosecuted separately. 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. A violation of this article shall result in the assessment of a \$250.00 penalty per offense. In any order finding a violation of this article, the violator shall be ordered to pay, in addition to the penalty, for any laboratory analysis and expert testimony costs incurred by the city in the enforcement of this article.
- (d) Nothing contained herein shall prevent the city from taking such other action in law or 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 section; or
  - 3. Utilizing any other action or enforcement method allowable by law.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance of the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of this ordinance that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinance in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. That this Ordinance shall become effective immediately upon its passage and adoption.

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PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF MADEIRA BEACH, FLORIDA THIS 14<sup>TH</sup> DAY OF JUNE, 2016.

APPROVED AS TO FORM:



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TOM TRASK, City Attorney



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TRAVIS PALLADENO, Mayor

ATTEST:



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AIMEE SERVEDIO, City Clerk

PASSED ON FIRST READING:	<u>04/12/2016</u>
PUBLISHED:	<u>05/27/2016</u>
PASSED ON SECOND READING:	<u>06/14/2016</u>

# NOTICE OF PUBLIC HEARING THE CITY OF MADEIRA BEACH, FL

In accordance with the City of Madeira Beach Code of Ordinances, the City of Madeira Beach Charter, and Florida Statutes §166.041 (3)(c)(2):

**NOTICE IS HEREBY GIVEN**, the Board of Commissioners of the City of Madeira Beach will conduct a second and final reading of **Ordinance 2016-5** on **Tuesday, June 14, 2016** at 6:00 p.m. City of Madeira Beach Commission Chambers, located at 300 Municipal Drive, Madeira Beach, FL 33708.

The title of said Ordinance is as follows:

## **ORDINANCE 2016-05**

A FIRST READING OF AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, CREATING ARTICLE IV OF CHAPTER 42 OF THE CODE OF ORDINANCES RELATING TO SYNTHETIC DRUGS; PROVIDING FOR INTENT, DEFINITIONS, SYNTHETIC DRUG SUBSTANCE DETERMINATION, PROHIBITED ACTS, ENFORCEMENT AND PENALTIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

Copies of the proposed Ordinance are available for inspection in the Office of the City Clerk between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

All persons are hereby advised that any presentation they make to the Board of Commissioners will be encouraged to be as precise as possible. The Board of Commissioners may limit the time of each individual to permit maximum participation by the public at large. Any person who decides to appeal any decision of the Board of Commissioners with respect to any matter considered at this meeting will need a record of proceedings, and for such purposes may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Therefore, the applicant must make the necessary arrangements with a private reporter or private recording firm and bear the resulting expense. Any person with a disability requiring reasonable accommodation in order to participate in this meeting should call (727) 391-9951 or fax a written request to (727) 391-1131.

Aimee Servedio

City Clerk

5/27/16