

ORDINANCE NO. 3217

ORDINANCE OF THE CITY OF CHULA VISTA ENACTING
MUNICIPAL CODE CHAPTER 9.24 MAKING THE
DISTRIBUTION OF PSYCHOACTIVE BATH SALTS AND
PSYCHOACTIVE HERBAL INCENSE A PUBLIC NUISANCE
SUBJECT TO CIVIL PENALTIES AND ENFORCEMENT

WHEREAS, the City Council is concerned for the safety and health of Chula Vista citizens because the use, sale and distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense pose serious threats to their health, safety and general welfare; and

WHEREAS, according to credible news reports and authorities Psychoactive Bath Salts and Psychoactive Herbal Incense have caused or been linked to numerous deaths, medical emergencies, acts of violence, and other incidents throughout the United States and Europe; and

WHEREAS, calls to the United States Poison Control Center have substantially increased over the past year with regard to the ill-effects of Psychoactive Bath Salts and Psychoactive Herbal Incense; and

WHEREAS, Psychoactive Bath Salts have been falsely marketed as standard bath salts for use in one's bath, but in fact have been ingested, snorted and used intravenously by many people throughout the United States with serious, deleterious effects to the person's health including extreme anxiety/agitation, sometimes progressing to violent behavior, extreme paranoia, delusional thinking, visual and auditory hallucinations, suicidal thoughts/actions, increased blood pressure and heart rate, renal and kidney failure; and

WHEREAS, Psychoactive Bath Salts, are in fact "designer drugs" which have been manufactured with chemical substances that are intended to mimic and recreate the effects of cocaine and methamphetamine which are illegal, controlled substances under state and federal law; and

WHEREAS, Psychoactive Herbal Incense has been falsely marketed as standard incense used for its aromatic qualities, but in fact have been ingested or smoked by many people throughout the United States with serious, deleterious effects to the person's health including cardiac arrest, seizures, extreme anxiety/agitation, sometimes progressing to violent behavior, extreme paranoia, delusional thinking, visual and auditory hallucinations, suicidal thoughts/actions, increased blood pressure and heart rate, renal and kidney failure; and

WHEREAS, Psychoactive Herbal Incense, are in fact "designer drugs" which have been manufactured with chemical substances that are intended to mimic and recreate the euphoric effects of marijuana which is an illegal, controlled substance under federal law; and

WHEREAS, recently a local youth attending Olympian High School in Chula Vista suffered a cardiac arrest after smoking Psychoactive Herbal Incense; and

WHEREAS, Sweetwater Union High School District recently banned Psychoactive Bath Salts and Psychoactive Herbal Incense on school property; and

WHEREAS, California and many other states have banned the use, sale, and distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense and the chemical substances contained therein; and

WHEREAS, the Federal Drug Enforcement Agency has used its emergency powers under the Controlled Substances Act to declare many of the chemical substances contained in Psychoactive Bath Salts and Psychoactive Herbal Incense illegal; and

WHEREAS, notwithstanding the federal and state laws, there remains serious gaps in the law that warrant further action at a local level; and

WHEREAS, Chula Vista retailers are or should be aware of the significant ill-effects of Psychoactive Bath Salts and Psychoactive Herbal Incense, yet some continue to sell these dangerous products; and

WHEREAS, the ordinance is not designed to control the use, sale or distribution of normal bath salts or incense that do not contain designer chemical compounds that elicit psychotropic effects; and

WHEREAS, based upon the facts described above, and other good and reliable information presented to and considered thereby, the City Council determined that the distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Chula Vista constitutes a public nuisance because it is injurious to the health, safety and general welfare of Chula Vista citizens; and

WHEREAS, the City has the authority to regulate matters relating to municipal affairs pursuant to its Charter in addition to the authority provided by Government Code § 38771 authorizing municipalities to declare public nuisances; and

WHEREAS, the City Council determined that emergency measures are warranted given the immediate and serious threat to the public peace, health, safety and general welfare of the community posed by Psychoactive Bath Salts and Psychoactive Herbal Incense.

NOW, THEREFORE, the City Council of the City of Chula Vista does, hereby, ordain as follows:

SECTION I. Based upon the facts described above, and other good and reliable information presented to and considered thereby, the City Council finds, determines and declares that:

A. The distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Chula Vista is a public nuisance; and

B. This ordinance is necessary as a measure for preserving the public peace, health, safety and general welfare of the community given the immediate and serious threat thereto posed by the distribution and use of Psychoactive Bath Salts and Psychoactive Herbal Incense.

SECTION II. Chapter 9.24 of Chula Vista Municipal Code is hereby approved and enacted as follows:

Chapter 9.24

DISTRIBUTION OF PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE AND LIKE PRODUCTS A PUBLIC NUISANCE

Sections:

9.24.010 Purpose and Intent.

9.24.020 Definitions.

9.24.030 Public Nuisance.

9.24.040 Enforcement.

9.24.050 Exemption for approval by FDA or California Law.

9.24.060 Severability.

9.24.010 Purpose and Intent.

The purpose and intent of this ordinance is to address the dangers to the community posed by the distribution and use of Psychoactive Bath Salts, Psychoactive Herbal Incense, and similar products, and to provide the City with reasonable measures to abate the public nuisance created by such conduct.

9.24.020 Definitions.

A. Psychoactive Bath Salts are defined as follows:

1. Any crystalline or powder product that contains a synthetic chemical compound that elicits psychoactive or psychotropic stimulant effects including but not limited to the following substances: 3,4-Methylenedioxymethcathinone (Methylone), 3,4-Methylenedioxypyrovalerone (MDPV), 4-Methylmethcathinone (Mephedrone), 4-methoxymethcathinone (Methedrone), 4-Fluoromethcathinone (Flephedrone), 3-Fluoromethcathinone (3-FMC), naphthylpyrovalerone and 2-amino-1-phenyl-1-propanone (cathinone) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

2. Psychoactive Bath Salts are commonly marketed under 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 but may be marketed under other trade names and contain a common disclaimer that these products are “not safe for human consumption.”

3. Psychoactive Bath Salts do not include normal, standard bath salts that do not contain synthetic chemical compounds listed above that elicit psychoactive or psychotropic stimulant effects. Standard bath salts primarily contain magnesium sulfate (Epsom salts), sodium chloride (table salt), sodium bicarbonate (baking soda), sodium hexametaphosphate (Calgon, amorphous/glassy sodium metaphosphate), sodium sesquicarbonate and borax.

B. Psychoactive Herbal Incense is defined as follows:

1. Any organic product consisting of plant material that contains a synthetic chemical compound that elicits psychoactive or psychotropic euphoric effects including but not limited to the following: any synthetic cannabinoid compound that contains 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-(1R,3S)-3-hydroxycyclohexyl]-phenol, (CP-47,497), 5-(1,1-dimethyloctyl)-2-(1R,3S)-3-hydroxycyclohexyl]-phenol, (cannabicyclohexanol; CP-47, 497 C8 homologue) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

2. Psychoactive Herbal Incense products are commonly marketed under the following names: K2, K3, Spice, Genie, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed, Black Mamba, but may be marketed under other trade names and contain a common disclaimer that these products are “not safe for human consumption.”

3. Psychoactive Herbal Incense does not include normal, standard incense that are sold as incense sticks, oils or cones that are commonly used for their aromatic qualities that do not contain any synthetic chemical compounds listed above that elicit psychoactive or psychotropic euphoric effects.

C. “Distribute”, “distributing” or “distribution” means and covers the following activity: to offer for sale, distribute, furnish, gift, transfer, exchange or give, to any person and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

- D. "Person" means any individual, corporation, business trust, estate, trust, partnership or association, or any other entity responsible for "distributing" Psychoactive Bath Salts and Psychoactive Herbal.

9.24.030 Public Nuisance.

- A. It is a public nuisance for any person to distribute Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Chula Vista.
- B. It is a public nuisance for any person to distribute any product or substance represented as or designed to resemble Psychoactive Bath Salts and Psychoactive Herbal Incense within the City of Chula Vista. Indications of distribution of substances represented as or designed to resemble Psychoactive Bath Salts and Psychoactive Herbal Incense shall include, without limitation, on or more of the following: the manner in which such substances are packaged, branded, described, marketed and/or portioned.
- C. It is a public nuisance for any person to allow the distribution of Psychoactive Bath Salts and Psychoactive Herbal Incense on property owned, controlled or managed by such person within the City of Chula Vista.
- D. Merely disclaiming these products as "not safe for human consumption" will not avoid the application of this ordinance.
- E. These declarations of public nuisance are based upon the declaration, findings and determinations by the City Council contained in Ordinance No. 3216 adopted by the City Council on November 1, 2011.

9.24.040 Enforcement.

In addition to the procedures and remedies for enforcement listed Chapter 1.30 "Abatement of Public Nuisance" the City Attorney may file a civil action seeking an injunction to obtain compliance for the abatement of this public nuisance, and any other civil procedure cause of action and remedy the City Attorney deems appropriate for abatement including but not limited to seeking an order or warrant to confiscate Psychoactive Bath Salts or Psychoactive Herbal Incense.

9.24.050 Exemption for approval by FDA or California Law.

This chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds which have been approved by the Federal Food and Drug Administration or which are specifically permitted by California law.

9.24.060 Severability.


This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

SECTION III. EFFECTIVE DATE.

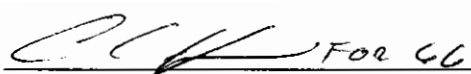
This ordinance will take effect and be in force thirty days after final passage.

Presented by

Approved as to form by



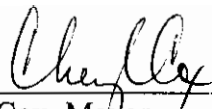
Chance Hawkins
Deputy City Attorney



Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 15th day of November 2011, by the following vote:

- | | | |
|---------|-----------------|-----------------------------|
| AYES: | Councilmembers: | Aguilar, Bensoussan and Cox |
| NAYS: | Councilmembers: | None |
| ABSENT: | Councilmembers: | Castaneda and Ramirez |



Cheryl Cox, Mayor

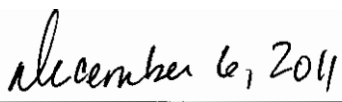
ATTEST:



Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3217 had its first reading at a regular meeting held on the 1st day of November 2011 and its second reading and adoption at a regular meeting of said City Council held on the 15th day of November 2011; and was duly published in summary form in accordance with the requirements of state law and the City Charter.



Dated



Donna R. Norris, CMC, City Clerk