



CITY OF BANGOR

ORDINANCE, Establishing Chapter 274, Synthetic Drugs, of the Code of the City of Bangor

WHEREAS, new herbal and/or chemical mixtures are being marketed and sold in the City which are not necessarily controlled by federal or state law but which are designed and marketed to mimic the effects of controlled substances;

WHEREAS, according to the Drug Enforcement Administration (DEA), synthetic cannabinoids, also known as "Spice" or "K2," are mixtures of herbs and spices that are typically sprayed with a synthetic compound chemically similar to THC, the psychoactive ingredients in marijuana. These products are available for purchase in various retail outlets, tobacco shops, head shops, and over the internet. The products are often marketed as "incense" that can be smoked. The product sometimes resembles potpourri, but can also be found in liquid form to be smoked in electronic cigarettes, or as a food "additive." These products produce psychological effects similar to those of marijuana, which include, but are not limited to, paranoia, panic attacks, and giddiness. The short term physiological effects include increased heart rate and increased blood pressure, and the long term physiological effects are unknown. The DEA has placed a number of synthetic cannabinoids into Schedule I (the class of substances that carry a high potential for abuse and have no currently accepted medical use) of the Controlled Substances Act (CSA), 21 USC §§ 81 et seq., finding that placement into Schedule I was necessary to prevent an imminent hazard to the public safety;

WHEREAS, according to the DEA, synthetic cathinones, also known as "Bath Salts," are chemicals that are synthetic derivatives of cathinones, a central nervous system stimulant. These products are available for purchase in various retail outlets, tobacco shops, head shops, and over the internet. The products are sold in powder, tablet, and capsule form, and are usually ingested by sniffing/snorting but can also be taken orally, smoked, or put into a solution and injected. These products can produce agitation, insomnia, irritability, dizziness, depression, paranoia, delusions, suicidal thoughts, seizures, and panic attacks. Users have also reported effects such as impaired perception of reality, reduced motor control, and decreased ability to think clearly. Cathinone derivatives act as central nervous system stimulants causing rapid heart rate, which may lead to heart attacks and strokes, chest pains, nosebleeds, sweating, nausea and vomiting. Drugs that have similar effects include amphetamines, cocaine, Khat, LSD and MDMA. The DEA has placed a number of chemicals used to make bath salts into Schedule I of the CSA, finding that an order making possession or sale of these chemicals, or the products that contain them, was necessary to prevent an imminent hazard to the public safety;

WHEREAS, in response to the efforts by federal and state legislators to outlaw the chemicals in synthetic cannabinoids and synthetic cathinones, chemists have reconfigured the specific substances that were prohibited to produce "new" versions of these synthetic drugs. This was accomplished by altering the molecular architecture of the chemicals used in the products to produce a series of different compounds which are closely structurally related to the prohibited substances, but which are not listed in the state or federal controlled substance laws. In some cases, these manufacturers and/or distributors of these new products went so far as to claim on the packaging that the products contained no prohibited chemicals, or were in accordance with state and federal laws;

WHEREAS, manufacturers of these products are unknown to the consumer because the packaging does not reveal the name and location of the manufacturer or distributor, which is required by federal laws regulating the labeling of consumer commodities. Manufacturers and distributors have not obtained FDA approval of these products as a food product, drug, dietary supplement, or other approved substance. Consumers suffering a reaction to or injury from these products have little chance of obtaining information concerning the contents of the product because the identity and locations of the manufacturers are unknown;

WHEREAS, although often marked "not for human consumption," or being labeled as otherwise innocuous products (i.e., plant food, incense, potpourri, iPod cleaner, etc.), these products are in fact designed and marketed to the buyer as products that act upon and effect the human body and its systems as a legal method to get high or achieve the effects of illicit drugs;

WHEREAS, products containing synthetic stimulants are available and, by the design and appearance of the names and packaging of these substances, appear to be marketed to young adults and children. Increased usage among high school youths is a concern for both law enforcement and the medical community. The University of Michigan Institute for Social Research in "Monitoring the Future, National Results on Adolescent Drug Use, Overview of Key Findings 2011" found that 11.4% of high school seniors indicated use of synthetic marijuana; and

WHEREAS, the Police Chief has advised that the Police Department is concerned that the proliferation and availability of these substances presents a threat to public safety, and is attempting to address the provision and marketing of these products through application of current state laws. However, enforcement of current state regulations is not effective due to the chemical variation of the products, and the difficulty in quickly analyzing the specific chemical makeup of the products. It takes several months to obtain the results of tests to determine the specific chemical makeup of the products. The Police Department has verified the availability of a significant number of these products in the City, and supports the adoption of an ordinance that would allow its officers to identify prohibited products through examination of the packaging and/or statements made at the point of sale; and

WHEREAS, the City Council finds that illicit synthetic drugs are distributed, labeled, and marketed in a way that poses dangerous consequences to the consumer; and*

WHEREAS, the City Council deems it to be in the best interests of the citizens and residents to prohibit the possession, sale, and distribution of illicit synthetic drugs and misbranded drugs.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANGOR AS FOLLOWS, THAT

Chapter 274 of the Code of the City of Bangor be created as follows:

Chapter 274. SYNTHETIC DRUGS

§ 274-1. Purpose.

The purpose of this chapter is to regulate the availability of products which are enhanced with synthetic chemicals, which chemicals mimic the effects of controlled substances on users, because these products are a danger to the public health, safety and welfare.

§ 274-2. Definitions.

For purposes of interpreting this chapter, the following terms, phrases, words and their derivatives shall have the meanings given herein unless the context clearly indicates or requires a different meaning:

SPICE, SYNTHETIC CANNABINOIDS, SYNTHETIC MARIJUANA

Any aromatic plant material in granular, loose leaf or powder form, or in liquid or as a food additive, or any herbal-incense-type stimulant or hallucinogen product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG, Demon, Barely In, Pineapple Express, Hayze. This definition shall include any plant material to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

BATH SALTS, SYNTHETIC CATHINONES, SYNTHETIC STIMULANTS

Any crystalline or powder product in crystalline, loose-powder, block, tablet, or capsule form, or any stimulant-type product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity, and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave, Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightning, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone, MCAT. This definition shall include any product to which any Synthetic Chemical or Synthetic Chemical Compound has been added which has no legitimate relation to the advertised use of the product whether or not the label meets the requirements herein.

DRUG

An article that is intended to affect the function of the body of humans.

MISBRANDED DRUG

Any drug 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.

ILLICIT SYNTHETIC DRUGS

Spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, and misbranded drugs as defined herein.

SYNTHETIC CHEMICAL OR SYNTHETIC CHEMICAL COMPOUND

Any chemical or chemical compound whose molecular make up is similar to those substances listed as controlled substances in 17-A M.R.S. § 1101(16-A) (including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of such substances) and whose intended use when introduced into the human body is to mimic or simulate the effects of a controlled substance.

§ 274-3. Prohibition of Illicit Synthetic Drugs.

- A. It is unlawful for any person to possess, use, provide, sell, produce, manufacture, or distribute, or to offer, display, market, or advertise for sale, any illicit synthetic drug.
- B. In determining whether a product is prohibited by this chapter, statements on package labeling such as "not for human consumption" may be disregarded when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this chapter. Other relevant factors that may be used to determine whether a product or sale is prohibited by this chapter include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggesting that the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.
- C. Defense. It shall be a defense to the prosecution of a violation of this chapter that a product is specifically excepted by, or regulated within and in compliance with, state or federal law. For the purposes of this section, it shall not be a defense that a product is not subject to regulation unless the product is specifically exempt from regulation; mere "non-regulation" by these acts without a specific regulatory exemption does not render a product exempt under this section.

§ 274-4. Sale of Certain Products for Human Consumption Prohibited.

It is unlawful for any person to provide, sell, or offer for sale a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

§ 274-5. Violation and Seizure.

- A. Each package shall be a separate violation. The fine for each violation shall be \$500.
- B. Any products found in violation of this section may be seized and held as evidence to be used in any future proceeding and may be disposed of as appropriate after their use for evidentiary purposes is no longer required.