

**AN ORDINANCE CREATING A NEW DIVISION (DIVISION 3. DRUGS AND DRUG PARAPHERNALIA) IN ARTICLE II (OFFENSES INVOLVING PUBLIC SAFETY) OF CHAPTER 66 (OFFENSES AND MISCELLANEOUS PROVISIONS) OF THE PASCO COUNTY CODE OF ORDINANCES, RELATING TO ILLICIT SYNTHETIC DRUGS AND DRUG PARAPHERNALIA; PROHIBITING THE POSSESSION, PROVISION, SALE, OR DISTRIBUTION OF "ILLICIT SYNTHETIC DRUGS" INCLUDING "SPICE," SYNTHETIC CANNABINOIDS, SYNTHETIC MARIJUANA, "BATH SALTS," SYNTHETIC CATHINONES, SYNTHETIC STIMULANTS, OR MISBRANDED DRUGS; PROHIBITING PROVISION OR SALE OF A PRODUCT FOR HUMAN CONSUMPTION WHEN THE PRODUCT IS LABELED "NOT FOR HUMAN CONSUMPTION" OR CONTAINS SIMILAR WARNINGS; PROVIDING EXEMPTIONS; DEFINING DRUG PARAPHERNALIA; PROHIBITING SALE, PROVISION OR DISPLAY OF DRUG PARAPHERNALIA TO PERSONS UNDER THE AGE OF 18; PROHIBITING POSSESSION OF DRUG PARAPHERNALIA BY PERSONS UNDER THE AGE OF 18; PROVIDING POSTING REQUIREMENTS AND REQUIRING SALE AND DISPLAY IN A SEPARATE ROOM FOR BUSINESSES SELLING OR DISPLAYING DRUG PARAPHERNALIA; PROVIDING DEFENSES; PROVIDING FOR APPLICABILITY IN UNINCORPORATED PASCO COUNTY AND IN MUNICIPALITIES; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR FILING OF ORDINANCE AND AN EFFECTIVE DATE.**

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

**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, and include paranoia, panic attacks, and giddiness. The physiological effects include increased heart rate and increased blood pressure; 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 1 was necessary to prevent an imminent hazard to the public safety; and

**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; and

**WHEREAS**, in 2010, the American Association of Poison Control Centers (“AAPCC”) received 2,906 calls relating to exposures to synthetic marijuana and 304 calls relating to exposures to bath salts. In 2011, the AAPCC received 6,959 calls relating to exposures to synthetic marijuana and 6,138 calls relating to exposures to bath salts. As of April 2012, the AAPCC has received 2,389 calls relating to exposures to synthetic marijuana and 1,007 calls relating to exposures to bath salts; and

**WHEREAS**, during the 2011 session, the Florida Legislature passed HB 1039, Chapter 2011-90, Laws of Florida, which added synthetic stimulants to Schedule I of Florida’s controlled substance schedule. Following passage of HB 1039, chemists reconfigured the particular synthetic stimulants made illegal by HB 1039, and marketed new products that were not illegal under Florida law. During the 2012 session, the Legislature passed HB 1175, Chapter 2012-23, Laws of Florida, which added dozens of additional synthetic stimulants to Schedule I of Florida’s controlled substance schedule; and

**WHEREAS**, in response to the efforts by federal and state legislators to outlaw the chemicals in synthetic cannabinoids and synthetic cathinones, chemists immediately 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

Schedule I of the state or federal controlled substance laws. The National Conference of State Legislatures has found that forty-three (43) states have outlawed specific versions of synthetic marijuana or bath salts, but minor variations in the chemical composition of these products create similar drugs not prohibited by current legislation. 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, were in accordance with state and federal laws, or were “in compliance with New Florida Law HB 1175;” and

**WHEREAS**, manufacturers of these products are unknown to the consumer, as the packaging does not reveal the name and location of the manufacturer or distributor as required by federal laws pertaining to 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, as the identity and locations of the manufacturers are unknown; and

**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. As products intended to act upon the human body, these products are required by Florida state regulations (Chapter 499, Florida Statutes) to carry adequate directions for use and adequate warnings on their labels; instead, these products most often carry no warnings or directions at all, or are labeled with sham or misleading directions (i.e., “place caplet over doorway to enhance mood”) in an attempt to avoid application of the regulations applicable to drug branding and labeling; and

**WHEREAS**, products containing synthetic stimulants are available and being marketed to young adults and children in Pasco County by their availability in small packages at convenience stores. Further, the names and packaging of these substances appear to be designed to appeal to children and young adults, and 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 Pasco Sheriff’s Office (PSO) has advised that the agency 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 and through a voluntary program encouraging retailers not to sell these products. 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. The PSO has verified the availability of a significant number of these products in Pasco County, and urges 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 PSO further urges adoption of regulations that would prohibit sales of drug paraphernalia to minors and to require parents to be present when persons under 18 are exposed to displays of drug paraphernalia. Currently, drug paraphernalia such as bongs, marijuana pipes, and cocaine vials are sold openly in Pasco County at certain convenience stores and other retail establishments. There are no regulations prohibiting the sale or display of such items to minors, or warning parents of such displays before entering these stores; and

**WHEREAS**, the Pasco County Board of County Commissioners finds that illicit synthetic drugs are distributed, labeled, and marketed in a way that poses dangerous consequences to the consumer; and

**WHEREAS**, the Pasco County Board of County Commissioners 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; further, the Board finds it in the public interest to prohibit sale of drug paraphernalia to persons under the age of 18, and to prohibit a business from displaying drug paraphernalia to minors without the presence of a parent or guardian; and

**WHEREAS**, laws offering additional protections and/or duplicating state and federal regulations concerning misbranded drugs and mislabeled commodities are not preempted.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Pasco County, Florida, as follows:

## **SECTION 1. AUTHORITY.**

This Ordinance is enacted pursuant to Chapter 125, Florida Statutes (2011), and under the home rule powers of the County, and in accordance with the proscriptions on local regulation imposed by the Fair Packaging and Labeling Act, 15 U.S.C § 1461.

## **SECTION 2. LEGISLATIVE FINDINGS OF FACT.**

The foregoing WHEREAS clauses are hereby adopted as legislative findings of the Board of County Commissioners and are ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

## **SECTION 3. AMENDMENT TO CHAPTER 66, ARTICLE II OF THE PASCO COUNTY CODE OF ORDINANCES.**

Chapter 66 (Offenses and Miscellaneous Provisions), Article II. Offenses Involving Public Safety, of the Pasco County Code, shall be amended by creating a new Division 3. Drugs and Drug Paraphernalia, as follows:

### **DIVISION 3. DRUGS AND DRUG PARAPHERNALIA**

**Sec. 66-61.** Definitions. For purposes of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (a) “Spice/synthetic cannabinoids/synthetic marijuana” shall mean 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.
- (b) “Bath Salts/synthetic cathinones/synthetic stimulants” shall mean 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 Lightening, 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.
- (c) “Drug” shall mean an article that is intended to affect the function of the body of humans.

- (d) “Misbranded drug” means a drug that violates Section 499.007, Florida Statutes, 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.
- (e) “Illicit synthetic drugs” shall include spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, or misbranded drugs.
- (f) “Drug paraphernalia” means, other than devices to ingest or inject prescription drugs, any object used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, or other illicit drugs or controlled substances into the human body, including but not limited to: metal, wooden, acrylic, glass, stone, plastic or ceramic pipes (with or without screens, permanent screens, hashish heads or punctured metal bowls); water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips, miniature cocaine spoons and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bong; ice pipes or chillers. In determining whether an object is drug paraphernalia, a court may consider any of the factors enumerated in § 893.164, Fla. Stat. (“Determination of paraphernalia”).
- (g) “Minor” means person under 18 years of age.
- (h) “Premises” means any part of the buildings located on a lot or parcel of land utilized in whole or part for the commercial sale or commercial display of drug paraphernalia.

**Sec. 66-62.** Possession, Provision, Sale or Distribution of Synthetic Drugs Prohibited. It is unlawful for any person to possess, provide, sell or distribute, within the incorporated or unincorporated area of Pasco County, any illicit synthetic drug as defined in this division.

- (a) Factors That May Be Disregarded and/or Considered in Determining Violation. In determining whether a product or sale is prohibited by this division, 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 division. Other relevant factors that may be used to determine whether a product or sale is prohibited by this division 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 suggest 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.
- (b) Exemptions. This provisions of this section do not apply to any product that is specifically excepted by, or regulated within, the Florida Comprehensive Drug Abuse Prevention and Control Act (Ch. 893, Fla. Stat.) or the Federal Controlled Substances Act (21 USC §§ 81 et seq.); is a food product, drug, dietary supplement, cosmetic, or other substance regulated by the Food and Drug Administration (FDA) and in compliance with that agency’s requirements; is regulated by and in compliance with the labeling requirements of the Federal Trade Commission; is regulated by and in compliance with the Federal Fair Packaging and Labeling Act;

is regulated by and in compliance with the Federal Food, Drug, and Cosmetic Act; is regulated by and in compliance with the regulations of the Florida Department of Agriculture and Consumer Services; or is a tobacco product regulated by and in compliance with the regulations governing the tobacco industry enforced by the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco. For the purposes of this section, products that are not subject to regulation by the act or agencies listed above are not exempt unless the product is specifically exempt from regulation; mere "non-regulation" by these acts without a specific regulatory exemption will not render a product exempt under this section.

**Sec. 66-63.** Sale of Certain Products for Human Consumption Prohibited. It is unlawful for any person to provide or sell a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

**Sec. 66-64.** Restrictions on businesses that sell or display drug paraphernalia; signage required; unaccompanied minors prohibited.

- (a) 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 legal guardian.
- (b) Such premises must prominently display a sign (approved by or provided by Pasco County) 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.
- (c) Exemption: These restrictions do not apply to premises (1) that prohibit the entry of persons under the age of 18; or (2) premises where sale and display of drug paraphernalia is located in a separate room from which persons under 18 are excluded without a parent or guardian, and provided that a sign (approved by or provided by Pasco County) is posted at the entrance to the room, stating that drug paraphernalia is located within the room, and prohibiting persons under 18 from entering the room without their parent or guardian. The room must contain a door, which is to remain closed except when in active use to enter or exit the room. The door shall contain a window of a minimum size of 18" x 18", located at a minimum height of 5' from the floor. This window shall remain unobstructed to allow law enforcement officers and persons in charge of the premises to view persons inside the room without the necessity of entry into the room. This provision is not intended to require permission, or special authority or a search warrant for law enforcement officers to enter the room.

**Sec. 66-65.** Sale or provision of paraphernalia to minors prohibited; possession by minors prohibited. No person shall sell or provide drug paraphernalia to any person under the age of 18. No person under the age of 18 shall possess drug paraphernalia.

- (a) Defenses. A person who violates the provisions of this section shall have a defense to any civil action for violation of these provisions if, at the time of the violation: (1) the person under 18 falsely evidenced that he or she was at least 18 years of age; (2) the appearance of the person was such that an ordinarily prudent person would believe him or her to be at least 18 years of age; (3) the violator carefully checked one of the following forms of identification with respect to the minor: a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States Uniformed Services identification card; and (4) the violator acted in good faith and in reliance upon the representation and the appearance of the person under 18.

**Sec. 66-66.** Enforcement. This division may be enforced by 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.

#### **SECTION 4. APPLICABILITY AND EXEMPTIONS.**

This Article and Division shall be applicable in both the unincorporated and incorporated areas of Pasco County, except to the extent that a municipality has adopted or adopts its own Ordinance in conflict with this Ordinance. To the extent that this Ordinance is applicable within a municipality, the County and the municipality shall have concurrent authority and jurisdiction to apply and enforce the Ordinance within the entirety of their jurisdictional boundaries. In addition to law enforcement officers who have the authority to enforce these provisions within their jurisdictions, municipal code compliance officers are specifically authorized and designated to enforce these provisions within the city limits of their jurisdiction to the extent such authorization/designation is required by law. County code compliance officers may enforce these provisions within the municipalities pursuant to a valid interlocal agreement.

#### **SECTION 5. REPEALER.**

Any Ordinance provisions in conflict herewith are hereby repealed only to the extent of such conflict.

#### **SECTION 6. SEVERABILITY.**

It is declared to be the intent of the Board of County Commissioners of Pasco County, Florida, that if any section, subsection, sentence, clause or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause, or provisions and shall not be affected by such holding.

#### **SECTION 7. INCLUSION IN CODE.**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pasco County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and the word "Ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

**SECTION 8. EFFECTIVE DATE.**

A certified copy of this Ordinance shall be filed with the Department of State by the Clerk to the Board within ten (10) days after adoption of this Ordinance, and this Ordinance shall take effect upon filing with the Department of State.

**ADOPTED** with a quorum present and voting this 7<sup>th</sup> day of November, 2012.

( S E A L )

BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

ATTEST:

By: \_\_\_\_\_  
PAULA S O'NEIL, Ph.D.  
CLERK & COMPTROLLER

By: \_\_\_\_\_  
ANN HILDEBRAND, CHAIRMAN