

ORDINANCE NUMBER O- 20660 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 14 2016

AN EMERGENCY ORDINANCE PURSUANT TO SAN DIEGO  
CHARTER SECTION 295, AMENDING CHAPTER 5,  
ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY  
ADDING A NEW DIVISION 33, TITLED PROHIBITING THE  
MANUFACTURING, SALE, DISTRIBUTION, AND  
POSSESSION OF FEDERAL SCHEDULE I DRUGS, NOVEL  
SYNTHETIC DRUGS, AND NOVEL PSYCHOACTIVE  
DRUGS

WHEREAS, in the City of San Diego, there is an immediate threat to the public safety and welfare, in that unregulated novel drugs, including synthetic drugs, some of which are commonly known as “spice” or “bath salts,” continue to proliferate at an alarming rate due to easy access, low price, and powerful effect; and

WHEREAS, on May 23, 2016, the Council of the City of San Diego introduced a non-emergency ordinance to prohibit the manufacturing, sale, distribution, and possession of unregulated novel drugs; and

WHEREAS, on May 23, 2016, the Council of the City of San Diego considered the San Diego Police Department’s Report to the City Council (16-050), as well as additional documentation, describing the nature and harmful effects of unregulated novel drugs, and the serious medical effects experienced by local users of such drugs since November 2015; and

WHEREAS, on May 23, 2016, the Council of the City of San Diego also heard a presentation by the San Diego Police Department and the City Attorney’s Office providing additional details regarding the nature of unregulated novel drugs, the increased calls for police and medical service due to novel drug overdoses, the harmful effects on the human body, and the limitations of state law for enforcement and prosecution; and

WHEREAS, the Council of the City of San Diego voted unanimously (with one member absent) to approve the non-emergency ordinance and proceed to the second reading; and

WHEREAS, the material considered by the Council of the City of San Diego on May 23, 2016, in Docket Item 200, and the legislative findings made in Ordinance O-2016-125 are incorporated by reference; and

WHEREAS, the information presented to the Council of the City of San Diego on May 23, 2016, raised heightened awareness and concern for the broad community problem posed by unregulated novel drugs and the immediate threat they pose to public peace, safety, health, and welfare; and

WHEREAS, use of unregulated novel drugs has been documented to produce psychological effects similar to those of cocaine, marijuana, MDMA (commonly known as “ecstasy” or “molly”), and methamphetamine, including paranoia, panic attacks, psychotic episodes, aggression, and suicidal ideations, as well as physiological effects including increased blood pressure, agitation, anxiety, nausea, vomiting, tachycardia, tremors, seizures, intense hallucinations, kidney damage, catatonia, or death; and

WHEREAS, according to the San Diego Fire-Rescue Department, emergency medical personnel have responded to over 650 “spice” synthetic drug related incidents between April 2015 and March 2016; and

WHEREAS, the ordinance introduced on May 23, 2016, will likely not be adopted until June 14, 2016, and will not be effective until at least July 13, 2016; and

WHEREAS, the Council of the City of San Diego finds that unregulated novel drugs, as defined in the proposed ordinance, pose an immediate threat to the peace, safety, health, and welfare of the citizens of San Diego; and

WHEREAS, the adoption of this emergency ordinance fills significant gaps in state law currently limiting enforcement and prosecution abilities in the City; and

WHEREAS, the adoption of this emergency ordinance is necessary and appropriate to address the threat posed by unregulated novel drugs, and immediately prohibit sales of such drugs; and

WHEREAS, under Charter section 280(a)(3), this ordinance is not subject to veto by the Mayor because it is an emergency ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 2, of the San Diego Municipal Code is amended by adding a new Division 33, and new sections 52.3301, 52.3302, 52.3303, 52.3304, 52.3305, 52.3306, 52.3307, and 52.3308 to read as follows:

**Article 2: Police — Police Regulations — Offenses Against Government**

**Division 33**

**Manufacturing, Sale, Distribution, and Possession of Federal Schedule I Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs**

**§ 52.3301 Purpose and Intent**

The Council for the City of San Diego finds and declares that:

- (a) Use of *Federal Schedule I Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs* has been documented to cause effects such as hallucinations, agitation, psychosis, aggression, suicidal ideations and death, a significant increase in medical aid emergencies, and may also lead to an increase in associated criminal activity. Some of these drugs are commonly known as “spice” or “bath salts.”

- (b) Although state and federal laws prohibit some synthetic drugs, drug makers continually alter the composition of the compounds in their products so as to escape the purview of the law.
- (c) While newly created drugs often go unregulated in California for years, many new drugs receive emergency scheduling in the federal drug schedules within months of their discovery.
- (d) The purpose and intent of this Division is to provide the City with reasonable measures to address the dangers to the community posed by *Federal Schedule I Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs*.
- (e) This Division is not intended to apply to any drug or chemical compound already regulated or prohibited by California law or approved by the United States Food and Drug Administration and dispensed or possessed in accordance with state and federal law.

**§ 52.3302 Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*Analog(s)* means either of the following:

- (a) A substance the chemical structure of which is substantially similar to the chemical structure of a *Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug*; or

(b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a *Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug.*

*Distribute, distributing, or distribution* means to furnish, give away, exchange, transfer, deliver or supply, whether or not for monetary gain.

*Federal Schedule I Drug(s)* means any drug scheduled in Schedule I, as listed in 21 C.F.R. § 1308.11, as may be amended from time to time, and any *analog* of these drugs, that is not regulated or prohibited by state law.

*Manufacture* and *manufacturing* have the same meaning as in 21 U.S.C. § 802(15).

*Novel Psychoactive Drug* means any compound, mixture, preparation, or substance, or its *analog* (including salts, isomers, esters, ethers, and salts of isomers), containing substances which have a psychedelic, psychotropic, hallucinogenic or other effect on the central nervous system or brain similar to the effect of any Federal Schedule I Drug or Federal Schedule II Drug, as listed in 21 C.F.R. §§ 1308.11 – 1308.12, not otherwise regulated or prohibited by state law. Examples of *Novel Psychoactive Drugs* include:

1. 1-[1-(3-methoxyphenyl)cyclohexyl]-piperidine
2. 1-(3-chlorophenyl)piperazine
3. 1-(4-bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine

4. 1,4-dibenzylpiperazine
5. 1-(4-methoxyphenyl)piperazine
6. 1-[4-(trifluoromethylphenyl)]piperazine
7. 1-(5-methoxy-1H-indol-3-yl)propan-2-amine
8. 1-(thiophen-2-yl)-2-methylaminopropane
9. ((2-aminopropyl)-2,3-dihydrobenzofuran)
10. ((2-aminopropyl)benzofuran
11. 2-(2-chlorophenyl)-2-(ethylamino)cyclohexanone
12. 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine
13. 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
14. 2,3-dihydro-1H-inden-2-amine
15. 2-(4-bromo-2,3,6,7-tetrahydrofurobensofuran-8-yl)-1-methyl-ethylamine
16. 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine
17. 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
18. 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
19. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-fluorophenyl)methyl]ethanamine
20. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine

21. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2,3-methylenedioxyphenyl)methyl]ethanamine
22. 2-(4-trifluoromethyl-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
23. 2,5-dimethoxy-4-bromoamphetamine
24. 2,5-dimethoxy-4-chloroamphetamine
25. 2,5-dimethoxy-4-ethylthiophenethylamine
26. 2,5-dimethoxy-4-iodoamphetamine
27. 2,5-dimethoxy-4-isopropylthiophenethylamine
28. 2,5-dimethoxy-4-propylphenethylamine
29. 2,5-dimethoxy-4-(n)-propylthiophenethylamine
30. 2-(7-bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine
31. 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine
32. 2-(10-bromo-2,3,4,7,8,9-hexahydropyrano [2,3-g]chromen-5-yl)ethanamine
33. 2-fluoromethamphetamine
34. 3-[1-(ethylamino)cyclohexyl]phenol
35. 3-[2-(1-amino-1-methylethyl)-1-hydroxycyclohexyl]phenol
36. 3-(2-diethylaminoethyl)-1H-indol-4-yl acetate
37. 3-(2-[isopropyl(methyl)amino]ethyl)-1H-indol-4-ol
38. 3-(2-[methyl(propyl)amino]ethyl)-1H-indol-4-ol
39. 3,4-methylenedioxy-N-ethylcathinone (ethylone)

40. 3-hydroxyphencyclidine
41. 3-methoxyeticyclidine
42. 3-trifluoromethylphenylpiperazine
43. 4-acetoxy-N,N-dimethyltryptamine
44. 4-acetoxy-N,N-dipropyltryptamine
45. 4-chlorophenylisobutylamine
46. 4-ethyl-2,5-dimethoxyphenethylamine
47. 4-fluoromethamphetamine
48. 4-hydroxy-di-isopropyl-tryptamine
49. 4-hydroxy-N-methyl-N-ethyltryptamine
50. 4-iodo-2,5-dimethoxyphenethylamine
51. 4-methyl- $\alpha$ -ethyltryptamine
52. 4-methoxy-N-methyl-N-isopropyltryptamine
53. 4-methoxyphencyclidine
54. 5-(2-aminopropyl)-2,3-dihydrobenzofuran
55. 5-(2-aminopropyl)benzofuran
56. 5-iodo-2-aminoindane
57. 5-methyl-ethylone
58. 5-methoxy-diisopropyltryptamine
59. 6-(2-aminopropyl)-2,3,-dihydrobenzofuran
60. 6-(2-aminopropyl)benzofuran
61. 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-  
1,4-benzodiazepin-2-one



62. 7-hydroxymitragynine
63. Benzothiophenylcyclohexylpiperidine
64. Butyrylfentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide]
65. Deschloroketamine
66. Fluoroamphetamine
67. Fluoromethamphetamine
68. Methyl-alpha-pyrrolidinohexiophenone
69. Methylenedioxypropetadronone (Pentylone)
70. Methoxyketamine
71. Mitragynine
72. N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-propylpropan-1-amine
73. N-(2-hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine
74. N-(2-methoxybenzyl)-1-[(7R)-3-bromo-2,5-dimethoxybicyclo[4.2.0]octa-1,3,5-trien-7-yl]methanamine
75. N-(2-methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane
76. N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine
77. N-(2-methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine
78. NBOMe compounds, including 2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine derivatives; 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine

79. N-isopropyl-N-methyltryptamine
80. N-methyltryptamine
81. N,N-diethyl-5-methoxytryptamine
82. N,N-diallyl-5-methoxytryptamine
83. N,N-diisopropyltryptamine
84. N,N-dipropyltryptamine
85. Para-fluoroamphetamine
86. Para-fluorophenylpiperazine
87. Para-methoxy-N-methylamphetamine
88. (R)-3-(N-methylpyrrolidin-2-ylmethyl)-4-hydroxyindole
89. (R)-3-(N-methylpyrrolidin-2-ylmethyl)-5-methoxyindole
90. (R,S)2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone
91. Valerylfentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenypentanamide]

*Novel Synthetic Drug* means any *Synthetic Cannabinoid* or *Synthetic Cathinone* not regulated or prohibited by state law.

*Property Owner* has the same meaning as in Municipal Code section 11.0210.

*Public Nuisance* has the same meaning as in Municipal Code section 11.0210.

*Responsible Person* has the same meaning as in Municipal Code section 11.0210.

*Sell, selling, or sale* means to furnish, exchange, transfer, deliver, or supply for monetary gain.

*Synthetic Cannabinoid(s)* means:

- (a) Any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law, that contains 1,1-dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-butyl-3-(1-naphthoyl)indole; 1-pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any compound in the following structural classes:
- (1) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM- 2201;
- (2) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether

or not substituted in the phenyl ring to any extent. Examples of this structural class include JWH-167, JWH-250, JWH-251, and RCS-8;

- (3) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;
- (4) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include CP 47,497 and its C8 homologue (cannabicyclohexanol);
- (5) Naphthylmethyloindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-

- piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-175, JWH-184, and JWH-185;
- (6) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;
- (7) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-176; or

- (8) Indazoles: Any compounds with indazole scaffolds and featuring L-valinamide or L-*tert*-leucinamide side chains such as N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (APINACA).
- (b) This definition includes any *analogs* of the chemical compounds listed in subsection (a).

*Synthetic Cathinone* means:

- (a) Any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law, not including bupropion, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one or more of the following ways:
- (1) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents. Examples of this class include 3,4-methylenedioxcathinone (bk-MDA);
  - (2) By substitution at the 3-position with an acyclic alkyl substituent. Examples of this class include 2-methylamino-1-phenylbutan-1-one (Buphedrone);

- (3) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure. Examples of this class include Dimethylcathinone, Ethcathinone, and  $\alpha$ -Pyrrolidinopropiophenone ( $\alpha$ -PPP).
- (b) This definition includes any *analogs* of the chemical compounds listed in subsection (a).

**§ 52.3303 Manufacture, Distribution, and Sale Prohibited**

It is unlawful to *manufacture, sell, offer to sell, offer for sale, distribute, or possess for sale* any *Federal Schedule I Drug, Novel Synthetic Drug, or Novel Psychoactive Drug*.

**§ 52.3304 Possession Prohibited**

It is unlawful to possess any *Federal Schedule I Drug, Novel Synthetic Drug, or Novel Psychoactive Drug*.

**§ 52.3305 Evidentiary Factors**

The following factors, in addition to the specific circumstances of each situation, may be considered to determine if a violation of this Division has occurred:

- (1) Marketing: The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as “glass cleaner”);
- (2) Sales Location: The business providing, displaying for sale, distributing or selling the product does not typically provide, distribute or sell products that are used for that product’s marketed use (such as a liquor store selling “plant food” or “potpourri”);

- (3) Warning Labels: The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption," or "does not contain chemicals banned by the Federal Controlled Substances Act, Cal. Health & Safety Code § 11357.5 or § 11375.5");
- (4) Price: The product is significantly more expensive than products actually used for that product's marketed use (such as half of a gram of a substance marketed as "glass cleaner" costing \$50.00);
- (5) Similarity to Illicit Street Drugs: The product resembles the form or consistency of an illicit street drug (such as cocaine, methamphetamine, or marijuana);
- (6) Brand Names Targeting Youth: The product's name or packaging uses images or slang targeted at youth or referencing an illicit street drug (such as Eight Ballz, Green Buddha, Black Mamba, Fruit Punch, Joker, K-2, Next Generation, OMG, Puff, Purple Diesel, Scooby Snax Potpourri, Spice, Strawberry Smacked, or Tropical Punch Smacked);
- (7) Effect: Aspects of the packaging or labeling suggesting the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other psychoactive or psychotropic effects on the brain or body;
- (8) Distribution: The methods by which the substance is distributed, including any methods similar to unlawful distribution of illicit street drugs;



- (9) Display: The product is not displayed in a business such as lawful products are displayed but is hidden away or can only be purchased through secretive means;
- (10) Age Restrictions: The product label contains a restriction that it is not for sale to minors or anyone under the age of 18 when the product's marketed use would not contain such restrictions;
- (11) Verbal or Written Communication: Verbal or written representations regarding the purpose, methods, use, or effect of the product.

Disclaiming a *Federal Schedule I Drug*, a *Novel Synthetic Drug*, or a *Novel Psychoactive Drug* as "not safe for human consumption" will not avoid the application of this Division.

**§ 52.3306 Public Nuisance**

The *manufacturing, sale, offering to sell, distribution, or possession for sale* of a *Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug* is a *public nuisance*.

**§ 52.3307 Property Owner and Responsible Person Liability**

It is unlawful for a *property owner* or other *responsible person*, after receiving written notice by the City of a violation of this Division, to fail to abate the *public nuisance* within 30 calendar days from the date of the notice.

**§ 52.3308 Exclusions**

- (a) This Division shall not apply to persons who *manufacture, sell, offer to sell, distribute, or possess* drugs or substances that have been approved by the United States Food and Drug Administration and are dispensed or possessed in accordance with state and federal law, or to persons who are

otherwise specifically permitted by federal or state law to possess such drugs or substances based on the laws in effect at the time of the *manufacture, sale, distribution, or possession.*


- (b) This Division does not affect the recommendation or regulation of medical marijuana pursuant to the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, or Chapter 4, Article 2, Divisions 13 and 15 of this Code, or Chapter 14, Article 1, Division 6 of this Code.
- (c) This Division shall not apply to any drug listed in one of the California Uniform Controlled Substances Act schedules of controlled substances (Cal. Health & Safety Code §§ 11053-11058), or that is otherwise regulated by California or local law in effect at the time.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. This ordinance is declared to be an emergency measure required for the immediate preservation of the public peace, safety, health, and welfare pursuant to San Diego Charter section 295, and shall take effect immediately from the day of adoption by the affirmative vote of at least six members of the City Council.

Section 4. This ordinance expires on JUL 15 2016, the effective date of ordinance number O- 20657. The City Clerk is instructed to insert the ordinance number and effective date, once known.


APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Michelle A. Garland  
Deputy City Attorney

MAG:jvg:ccm  
May 31, 2016  
Or.Dept: Police  
Doc. No.: 1294282\_6

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 14 2016.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

## STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~  
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN EMERGENCY ORDINANCE PURSUANT TO SAN DIEGO  
CHARTER SECTION 295, AMENDING CHAPTER 5,  
ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY  
ADDING A NEW DIVISION 33, TITLED PROHIBITING THE  
MANUFACTURING, SALE, DISTRIBUTION, AND  
POSSESSION OF FEDERAL SCHEDULE I DRUGS, NOVEL  
SYNTHETIC DRUGS, AND NOVEL PSYCHOACTIVE  
DRUGS

**Article 2: Police — Police Regulations — Offenses Against Government**  
**Division 33**

**Manufacturing, Sale, Distribution, and Possession of Federal Schedule I**  
**Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs**

**§ 52.3301 Purpose and Intent.**

The Council for the City of San Diego finds and declares that:

- (a) Use of Federal Schedule I Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs has been documented to cause effects such as hallucinations, agitation, psychosis, aggression, suicidal ideations and death, a significant increase in medical aid emergencies, and may also lead to an increase in associated criminal activity. Some of these drugs are commonly known as “spice” or “bath salts.”

- (b) Although state and federal laws prohibit some synthetic drugs, drug makers continually alter the composition of the compounds in their products so as to escape the purview of the law.
- (c) While newly created drugs often go unregulated in California for years, many new drugs receive emergency scheduling in the federal drug schedules within months of their discovery.
- (d) The purpose and intent of this Division is to provide the City with reasonable measures to address the dangers to the community posed by *Federal Schedule I Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs.*
- (e) This Division is not intended to apply to any drug or chemical compound already regulated or prohibited by California law or approved by the United States Food and Drug Administration and dispensed or possessed in accordance with state and federal law.

**§ 52.3302**      **Definitions**

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

*Analog(s)* means either of the following:

- (a) A substance the chemical structure of which is substantially similar to the chemical structure of a *Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug*; or
- (b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous

system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug.

Distribute, distributing, or distribution means to furnish, give away, exchange, transfer, deliver or supply, whether or not for monetary gain.

Federal Schedule I Drug(s) means any drug scheduled in Schedule I, as listed in 21 C. F.R. § 1308.11, as may be amended from time to time, and any analog of these drugs, that is not regulated or prohibited by state law.

Manufacture and manufacturing have the same meaning as in 21 U.S.C. § 802(15).

Novel Psychoactive Drug means any compound, mixture, preparation, or substance, or its analog (including salts, isomers, esters, ethers, and salts of isomers), containing substances which have a psychedelic, psychotropic, hallucinogenic or other effect on the central nervous system or brain similar to the effect of any Federal Schedule I Drug or Federal Schedule II Drug, as listed in 21 C.F.R. §§ 1308.11 – 1308.12, not otherwise regulated or prohibited by state law. Examples of Novel Psychoactive Drugs include:

1. 1-[1-(3-methoxyphenyl)cyclohexyl]-piperidine
2. 1-(3-chlorophenyl)piperazine
3. 1-(4-bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine
4. 1,4-dibenzylpiperazine
5. 1-(4-methoxyphenyl)piperazine

6. 1-[4-(trifluoromethylphenyl)]piperazine
7. 1-(5-methoxy-1H-indol-3-yl)propan-2-amine
8. 1-(thiophen-2-yl)-2-methylaminopropane
9. ((2-aminopropyl)-2,3-dihydrobenzofuran)
10. ((2-aminopropyl)benzofuran
11. 2-(2-chlorophenyl)-2-(ethylamino)cyclohexanone
12. 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine
13. 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
14. 2,3-dihydro-1H-inden-2-amine
15. 2-(4-bromo-2,3,6,7-tetrahydrofurobensofuran-8-yl)-1-methyl-ethylamine
16. 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine
17. 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
18. 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
19. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-fluorophenyl)methyl]ethanamine
20. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
21. 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2,3-methylenedioxyphenyl)methyl]ethanamine

22. 2-(4-trifluoromethyl-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
23. 2,5-dimethoxy-4-bromoamphetamine
24. 2,5-dimethoxy-4-chloroamphetamine
25. 2,5-dimethoxy-4-ethylthiophenethylamine
26. 2,5-dimethoxy-4-iodoamphetamine
27. 2,5-dimethoxy-4-isopropylthiophenethylamine
28. 2,5-dimethoxy-4-propylphenethylamine
29. 2,5-dimethoxy-4-(n)-propylthiophenethylamine
30. 2-(7-bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine
31. 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine
32. 2-(10-bromo-2,3,4,7,8,9-hexahydroprvano [2,3-g]chromen-5-yl)ethanamine
33. 2-fluoromethamphetamine
34. 3-[1-(ethylamino)cyclohexyl]phenol
35. 3-[2-(1-amino-1-methylethyl)-1-hydroxycyclohexyl]phenol
36. 3-(2-diethylaminoethyl)-1H-indol-4-yl acetate
37. 3-(2-[isopropyl(methyl)amino]ethyl)-1H-indol-4-ol
38. 3-(2-[methyl(propyl)amino]ethyl)-1H-indol-4-ol
39. 3,4-methylenedioxy-N-ethylcathinone (ethylone)
40. 3-hydroxyphencyclidine
41. 3-methoxyeticyclidine



42. 3-trifluoromethylphenylpiperazine
43. 4-acetoxy-N,N-dimethyltryptamine
44. 4-acetoxy-N,N-dipropyltryptamine
45. 4-chlorophenylisobutylamine
46. 4-ethyl-2,5-dimethoxyphenethylamine
47. 4-fluoromethamphetamine
48. 4-hydroxy-di-isopropyl-tryptamine
49. 4-hydroxy-N-methyl-N-ethyltryptamine
50. 4-iodo-2,5-dimethoxyphenethylamine
51. 4-methyl- $\alpha$ -ethyltryptamine
52. 4-methoxy-N-methyl-N-isopropyltryptamine
53. 4-methoxyphencyclidine
54. 5-(2-aminopropyl)-2,3-dihydrobenzofuran
55. 5-(2-aminopropyl)benzofuran
56. 5-iodo-2-aminoindane
57. 5-methyl-ethylone
58. 5-methoxy-diisopropyltryptamine
59. 6-(2-aminopropyl)-2,3-dihydrobenzofuran
60. 6-(2-aminopropyl)benzofuran
61. 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-  
1,4-benzodiazepin-2-one
62. 7-hydroxymitragynine
63. Benzothiophenylcyclohexylpiperidine

64. Butyrylfentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide]
65. Deschloroketamine
66. Fluoroamphetamine
67. Fluoromethamphetamine
68. Methyl-alpha-pyrrolidinohexiophenone
69. Methylenedioxypropetadron (Pentylone)
70. Methoxyketamine
71. Mitragynine
72. N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-propylpropan-1-amine
73. N-(2-hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine
74. N-(2-methoxybenzyl)-1-[(7R)-3-bromo-2,5-dimethoxybicyclo[4.2.0]octa-1,3,5-trien-7-yl]methanamine
75. N-(2-methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane
76. N-[2-(5-methoxy-1H-indol-3-yl)ethyl]-N-methylpropan-2-amine
77. N-(2-methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine
78. NBOMe compounds, including 2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine derivatives; 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.
79. N-isopropyl-N-methyltryptamine
80. N-methyltryptamine
81. N,N-diethyl-5-methoxytryptamine

- 82. N,N-diallyl-5-methoxytryptamine
- 83. N,N-diisopropyltryptamine
- 84. N,N-dipropyltryptamine
- 85. Para-fluoroamphetamine
- 86. Para-fluorophenylpiperazine
- 87. Para-methoxy-N-methylamphetamine
- 88. (R)-3-(N-methylpyrrolidin-2-ylmethyl)-4-hydroxyindole
- 89. (R)-3-(N-methylpyrrolidin-2-ylmethyl)-5-methoxyindole
- 90. (R,S)-2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone
- 91. Valeryl fentanyl [N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide]

Novel Synthetic Drug means any Synthetic Cannabinoid or Synthetic Cathinone not regulated or prohibited by state law.

Property Owner has the same meaning as in Municipal Code section 11.0210.

Public Nuisance has the same meaning as in Municipal Code section 11.0210.

Responsible Person has the same meaning as in Municipal Code section 11.0210.

Sell, selling, or sale means to furnish, exchange, transfer, deliver, or supply for monetary gain.

Synthetic Cannabinoid(s) means:

- (a) Any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law, that contains 1,1-

dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-butyl-3-(1-naphthoyl)indole; 1-pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any compound in the following structural classes:

- (1) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM- 2201;
- (2) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include JWH-167, JWH-250, JWH-251, and RCS-8;
- (3) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring

by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

- (4) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include CP 47,497 and its C8 homologue (cannabicyclohexanol);
- (5) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-175, JWH-184, and JWH-185;

- (6) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;
- (7) Naphthylmethylenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include JWH-176; or
- (8) Indazoles: Any compounds with indazole scaffolds and featuring L-valinamide or L-tert-leucinamide side chains such as N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (APINACA).
- (b) This definition includes any *analogs* of the chemical compounds listed in subsection (a).

Synthetic Cathinone means:

- (a) Any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law, not including bupropion, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one or more of the following ways:
- (1) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents. Examples of this class include 3,4-methylenedioxcathinone (bk-MDA);
  - (2) By substitution at the 3-position with an acyclic alkyl substituent. Examples of this class include 2-methylamino-1-phenylbutan-1-one (Buphedrone);
  - (3) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure. Examples of this class include Dimethylcathinone, Ethcathinone, and  $\alpha$ -Pyrrolidinopropiophenone ( $\alpha$ -PPP).
- (b) This definition includes any *analogs* of the chemical compounds listed in subsection (a).

**§ 52.3303**      **Manufacture, Distribution, and Sale Prohibited.**

It is unlawful to manufacture, sell, offer to sell, offer for sale, distribute, or possess for sale any Federal Schedule I Drug, Novel Synthetic Drug, or Novel Psychoactive Drug.

**§ 52.3304**      **Possession Prohibited**

It is unlawful to possess any Federal Schedule I Drug, Novel Synthetic Drug, or Novel Psychoactive Drug.

**§ 52.3305**      **Evidentiary Factors**

The following factors, in addition to the specific circumstances of each situation, may be considered to determine if a violation of this Division has occurred:

- (1)    Marketing: The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as “glass cleaner”);
- (2)    Sales Location: The business providing, displaying for sale, distributing or selling the product does not typically provide, distribute or sell products that are used for that product’s marketed use (such as a liquor store selling “plant food” or “potpourri”);
- (3)    Warning Labels: The product contains a warning label that is not typically present on products that are used for that product’s marketed use (such as “not for human consumption,” or “does not contain chemicals banned by the Federal Controlled Substances Act, Cal. Health & Safety Code § 11357.5 or § 11375.5”);



- (4) Price: The product is significantly more expensive than products actually used for that product's marketed use (such as half of a gram of a substance marketed as "glass cleaner" costing \$50.00);
- (5) Similarity to Illicit Street Drugs: The product resembles the form or consistency of an illicit street drug (such as cocaine, methamphetamine, or marijuana);
- (6) Brand Names Targeting Youth: The product's name or packaging uses images or slang targeted at youth or referencing an illicit street drug (such as Eight Ballz, Green Buddha, Black Mamba, Fruit Punch, Joker, K-2, Next Generation, OMG, Puff, Purple Diesel, Scooby Snax Potpourri, Spice, Strawberry Smacked, or Tropical Punch Smacked);
- (7) Effect: Aspects of the packaging or labeling suggesting the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other psychoactive or psychotropic effects on the brain or body;
- (8) Distribution: The methods by which the substance is distributed, including any methods similar to unlawful distribution of illicit street drugs;
- (9) Display: The product is not displayed in a business such as lawful products are displayed but is hidden away or can only be purchased through secretive means;
- (10) Age Restrictions: The product label contains a restriction that it is not for sale to minors or anyone under the age of 18 when the product's marketed use would not contain such restrictions;

(11) Verbal or Written Communication: Verbal or written representations regarding the purpose, methods, use, or effect of the product.

Disclaiming a Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug as “not safe for human consumption” will not avoid the application of this Division.

**§ 52.3306**      **Public Nuisance**

The manufacturing, sale, offering to sell, distribution, or possession for sale of a Federal Schedule I Drug, a Novel Synthetic Drug, or a Novel Psychoactive Drug is a public nuisance.

**§ 52.3307**      **Property Owner and Responsible Person Liability**

It is unlawful for a property owner or other responsible person, after receiving written notice by the City of a violation of this Division, to fail to abate the public nuisance within 30 calendar days from the date of the notice.

**§ 52.3308**      **Exclusions**

(a) This Division shall not apply to persons who manufacture, sell, offer to sell, distribute, or possess drugs or substances that have been approved by the United States Food and Drug Administration and are dispensed or possessed in accordance with state and federal law, or to persons who are otherwise specifically permitted by federal or state law to possess such drugs or substances based on the laws in effect at the time of the manufacture, sale, distribution, or possession.

(b) This Division does not affect the recommendation or regulation of medical marijuana pursuant to the Compassionate Use Act of 1996, the Medical

Marijuana Program Act, the Medical Marijuana Regulation and Safety Act, or Chapter 4, Article 2, Divisions 13 and 15 of this Code, or Chapter 14, Article 1, Division 6 of this Code.

- (c) This Division shall not apply to any drug listed in one of the California Uniform Controlled Substances Act schedules of controlled substances (Cal. Health & Safety Code §§ 11053-11058), or that is otherwise regulated by California or local law in effect at the time.

MAG:jvg  
May 31, 2016  
Or.Dept: Police  
Doc. No.: 1294283\_2

Passed by the Council of The City of San Diego on JUN 14 2016, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 14 2016.

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JUN 14 2016, said ordinance being of the kind and character authorized for passage on its introduction by Section 280(a)(3) of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.  
By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20660