

**Proposed Ordinance banning the sale, possession, transfer, or manufacture of synthetic or alternative drugs**

**CITY OF GILBERT  
Ordinance No. 13- 01**

**Sale, Possession, Transfer, Manufacture of Synthetic or Alternative Drugs**

1. **WHEREAS**, new substances are being created which are being used for recreational purposes and as an alternative to otherwise regulated controlled substances banned at the State and Federal levels; and,
2. **WHEREAS**, many of these substances can be designed to produce a desired pharmacological effect and have the potential for abuse similar to or greater than that of controlled substances; and,
3. **WHEREAS**, City authorities have encountered these substances in products being sold and used in the City limits; and,
4. **WHEREAS**, the uncontrolled importation, manufacture, distribution, possession, and use of these substances have a substantial and detrimental impact on the health and safety of the residents and visitors of the City of Gilbert; and,
5. **WHEREAS**, these substances can be created more rapidly than they can be identified and controlled by action of the Federal and State Legislature; and,
6. **WHEREAS**, these substances are sold in many different forms including loose, leafy, granular, powder, crystalline, tablet, and/or liquid forms; and,
7. **WHEREAS**, such products are known under many names in order to avoid detection and identification, and are labeled as incense, herbal incense, herbal potpourri, psychoactive herbal incense, herbal blends, bath salts, psychoactive bath salts, bath additives, synthetic marijuana, synthetic drug, synthetic hallucinogens, and other names and purchased by consumers for the purpose of ingestion notwithstanding any markings on the packaging to the contrary; and,

8. **WHEREAS**, such products may be as or more dangerous to humans than controlled substances according to the Drug Enforcement Administration (DEA) due to the unapproved, unknown, and ever-changing nature of the chemical compounds they contain; and,

9. **WHEREAS**, it is therefore the will of the Gilbert City Council to provide for a prohibition on the sale, possession, transfer, distribution, manufacture, and use of these substances as defined by this ordinance and to provide for the enforcement thereof and in the best interest of the public's health, safety, and general welfare.

### **Prohibitions**

#### **Sale, Possession, Transfer, Manufacture of Synthetic or Alternative Drugs**

1. A person is guilty of a violation of this ordinance if they sell, possess, distribute, transfer, or manufacture any substance or product containing any quantity of synthetic or alternative drug as defined under this ordinance.

2. All substances made unlawful by this ordinance shall constitute contraband, subject to immediate seizure by law enforcement and shall be destroyed upon a conviction for a violation of this ordinance.

3. The substances defined in this ordinance shall not include medications or substances for which the possessing party holds a valid prescription or beer, wine, or intoxicating liquors as defined by local, State, and Federal laws.

4. Products commercially available and sold which have common, proven, and lawful uses under local, State, and Federal law shall not be deemed unlawful by this ordinance. Such examples are prescription and over the counter medications, health supplements where the ingredients are listed on the packaging, food and drink products, etc.

5. In addition to the definitions provided in this ordinance, the following additional factors shall be considered in making the determination if a substance is unlawful under this ordinance:

A. Scope of legitimate uses of the product.

B. Physical and testimonial evidence provided by officers and prosecutors regarding known uses of the product.

- C. Statements made by persons selling, possessing, and using the product.
- D. Availability of the product to include types and number of area businesses selling it.
- E. The ratio of the price of the product compared to the quantity sold.
- F. The proximity of the product in relation to devices used to ingest or consume controlled substances.

### **Definitions**

1. **Sale/Transfer**: to offer for sale, to advertise for sale, to sell, to distribute, to furnish, to transfer, to barter, or to exchange to any person or entity with or without an exchange of compensation or service.
2. **Possession**: to possess on one's own person or possession by a person exercising dominion or control over the immediate area where contraband is found whether in a vehicle, vessel, container, dwelling, building, or other structure, whether upon public or private property.
3. **Manufacture**: to complete, blend, formulate, package, repackage, or develop by any means any substance made unlawful by this ordinance.
4. **Synthetic / Alternative Drug** means:
  - A. Any of the following:
    1. Any substance containing a synthetic cannabinoid, stimulant, psychedelic, depressant, or hallucinogenic; or,
    2. Salvia Divinorum or any substance known by this name or any version of this name; or,
    3. Substances described as herbal blends, botanical blends, botanical sachet, herbal sachet, herbal potpourri, herbal incense, spice, salts, or any blend or combination of these, regardless of it the substance is marketed as "not for human consumption" which if ingested causes intoxication, euphoria, giddiness, paralysis, irrational behavior, or in any manner changes, distorts, or disturbs the auditory, visual, or mental process; or,
    4. Any substance defined in subsequent portions of this ordinance; or,
    5. Any substance which has a stimulant, depressant, psychedelic, psychotropic, or hallucinogenic effect on the body that is substantially similar to or greater than that of any controlled substance or unlawful drug; or,
    6. Any substance marked or packaged under any name listed in Appendix A of this

ordinance.

5. **Synthetic Stimulant** means:

A. A product that contains a synthetic chemical compound that elicits psychoactive or psychotropic stimulant effects, especially where those products are in a powder, crystal, or granular form, including but not limited to the following:

1. 3,4-Methylenedioxyamphetaminone (Mephedrone)
2. 3,4-Methylenedioxypropylamphetamine (MDPV)
3. 4-Methylmethcathinone (Mephedrone)
4. 4-Methoxymethcathinone (Methedrone)
5. 4-Fluoromethcathinone (Flephedrone)
6. 3-Fluoromethcathinone (3-FMC)
7. Naphthylpropylamphetamine
8. 2-amino-1-phenyl-1-propanone (Cathinone)

B. Synthetic Stimulants, despite their labeling, are commonly identified by being sold in small packets, tubs, and vials, packaged under various retail names, often identified as bath salts, plant food, fertilizer, insect repellent, etc, and are usually powder or granular in form, sold without a listing of ingredients, and sold with disclaimers warning against ingestion and stating they are free of controlled substances. By virtue of this ordinance, such products are unlawful.

C. Synthetic Stimulants, often referred to as "Bath Salts" are commonly marketed under various commercial trade names, which change often, and contain a common disclaimer that the products are "not safe for human consumption", "novelty item", or similar disclaimer. Refer to Appendix A for a listing of commercial names commonly used to advertise and portray these substances.

D. Synthetic Stimulants, as defined in this ordinance, shall exclude normal, typical bath salts and bath additives which do not contain synthetic chemical compounds listed herein 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.

## **6. Synthetic Marijuana / Synthetic Cannabinoids / Herbal Smoking Product**

means:

A. A natural or man-made substance that elicits psychoactive or psychotropic euphoric effects, or, a natural or man-made compound that functions similar to the active ingredient in Marijuana (tetrahydrocannabinol “THC”) including, but not limited to any quantity of a synthetic material, compound, mixture, preparation, substance, and their analogs (including isomers, esters, ethers, salts, and salts of isomers) containing a cannabinoid receptor agonist, regardless of whether the substance is marketed for the purpose of being consumed, including any of the following:

1. 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent
2. 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.
3. 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.
4. 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent
5. 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent
6. 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497)
7. 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)
8. 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678)
9. 1-butyl-3-(1-naphthoyl)indole (JWH-073)
10. 1-hexyl-3-(1-naphthoyl)indole (JWH-019)
11. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200)
12. 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250)
13. 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081)

14. 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)
15. 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398)
16. 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201)
17. 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)
18. 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4)
19. 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8)
20. 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203)

B. Herbal Smoking Products, despite their labeling, are commonly identified by being sold in small packets containing natural or man-made substances, packaged under various retail names, identified as herbal potpourri, herbal sachet, herbal aromatherapy, etc, sold without a listing of ingredients, and sold with disclaimers warning against ingestion and stating they are free of controlled substances. By virtue of this ordinance, such products are unlawful.

C. Synthetic Marijuana / Synthetic Cannabanoids / Herbal Smoking Product are commonly marketed under various commercial trade names, which change often, and contain a common disclaimer that the products are “not safe for human consumption”, “novelty item”, or similar disclaimer. Refer to Appendix A for a listing of commercial names commonly used to advertise and portray these substances.

D. Synthetic Marijuana / Synthetic Cannabanoids / Herbal Smoking Product shall exclude typical, standard incense and potpourri that is sold as incense sticks, oils, or cones that is commonly used for their aromatic qualities and do not contain any synthetic chemical compounds, do not provide a prohibition against ingestion, and do not elicit psychoactive or psychotropic euphoric effects.

**7. Synthetic Psychedelics / Hallucinogens means:**

A. A substance that mimics the effects of any Federally or State controlled substance, including but not limited to, any natural or man-made substance, compound, mixture, preparation, or is laced with a synthetic chemical compound that elicits a psychedelic/hallucinogenic effect including but not limited to the following:

1. 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)
2. 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)
3. 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)
4. 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)
5. 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)
6. 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)
7. 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)
8. 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)
9. 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)

B. Synthetic Psychedelics / Hallucinogens, despite their labeling, are commonly identified by being sold in small packets, tubs, or vials and are often in tablet, capsule, and liquid form and packaged under various retail names, sold without a listing of ingredients, and often sold with disclaimers warning against ingestion and stating they are free of controlled substances. By virtue of this ordinance, such products are unlawful.

C. Synthetic Psychedelics / Hallucinogens are commonly marketed under various commercial trade names, which change often, and contain a common disclaimer that the products are “not safe for human consumption”, “novelty item”, or similar disclaimer. They may also be marked in a consumable pill form under various names. Refer to Appendix A for a listing of commercial names commonly used to advertise and portray these substances.

8. Salvia Divinorum / Salvinorum means all parts of the plant presently classified botanically as salvia divinorum whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts.

**Enforcement and Civil Penalty:** whereas the City of Gilbert deems synthetic and alternative drugs dangerous and detrimental to the citizens, guests and fabric of the community of Gilbert, it bans the sale, possession, transfer, distribution and/or manufacturing of synthetic drugs or alternative drugs. A civil penalty for each offense will be \$100 for the first offense; \$300 second offense; \$500 third offense; \$800 for fourth offense; and \$1000 for every offense thereafter.

## **Severability**

If any clause, sentence, paragraph, subdivision, section, or part of this ordinance or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

## **Appendix A**

Substances described in this ordinance and distributed under the commercial/retail names contained in this Appendix shall be deemed to be unlawful and a synthetic drug, especially if they are packaged in a manner that indicates the product is "not for human consumption" or if it fails to disclose the products ingredients. Products commercially sold under similar or like names which have common, proven and lawful uses and which list their ingredients and directions for use shall not be deemed unlawful under this ordinance.

#- 8-BALL, 251, 2C-1

**A-** AFGAN BLACK, AM-HI-CO (ALL TYPES), APHRODISIA, ATOMIC BOMB, AZTEC GOLD, AZTEC MIDNIGHT WIND TEZCATLIPOCA

**B-** BACK DRAFT, BAD 2 THE BONE, BANANA CREAM NUKE, BATH SALT, BAYOU BLASTER, BIGDADDY, BLACK DIAMOND, BLACK MAGIC SALVIA, BLACK MAMBA, BLISS (ALL TYPES), BLIZZARD, BLUE SILK, BLUEBERRY HAYZE, BLUEBERRY HAZE, BOMBAY BLUE, BONZAI, BROMO-DRAGONFLY, BUZZ



CITY OF GILBERT

\_\_\_\_\_  
Michael Skenzich  
Mayor

\_\_\_\_\_  
Debra Sakrison  
Clerk-Treasurer

I, Debra Sakrison, the undersigned Clerk-Treasurer of the City of Gilbert hereby certify that the above Ordinance was duly passed, adopted and approved by the Gilbert City Council on October \_\_\_\_, 2013.

\_\_\_\_\_  
Debra Sakrison, Clerk-Treasurer

Date: \_\_\_\_\_