

**ORDINANCE
2014-1**

CITY OF ORR

**AN ORDINANCE BANNING THE SALE, POSSESSION, TRANSFER
OR MANUFACTURE OF SYNTHETIC OR ALTERNATIVE DRUGS**

The City Council of the City of Orr does ordain as follows:

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**, 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 Orr; and
4. **WHEREAS**, these substances can be created more rapidly than they can be identified and controlled by action of the Federal and State Legislature; and,
5. **WHEREAS**, these substances are sold in many different forms including loose, leafy, granular, powder, crystalline, tablet and/or liquid forms; and
6. **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
7. **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
8. **WHEREAS**, it is therefore the will of the Orr City Council to provide for a prohibition on the sale, possession, transfer, manufacture and use of these substances as defined by these ordinances 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, 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 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 any of the following:
 - a. Any substance containing a synthetic cannabinoid, stimulant, psychedelic, depressant or hallucinogenic; or
 - b. Salvia Divinorum or any substance known by this name or any version of this name; or
 - c. Substances described as herbal blends, botanical blends, botanical sachet, herbal sachet, herbal potpourri, herbal incense, spice, salts, or any blend or combination of these, even though 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
 - d. Any substance defined in subsequent portions of this ordinance; or

- e. 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
- f. Any substance marketed 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:
 - i. 3,4-Methylenedioxymethcathinone (Methylone)
 - ii. 3,4-Methylenedioxypropylone (MDPV)
 - iii. 4-Methymethcathinone (Mephedrone)
 - iv. 4-Methoxymethcathinone (Methedrone)
 - v. 4-Fluoromethcathinone (Flephedrone)
 - vi. 3-Fluoromethcathinone (3-FMC)
 - vii. Naphthylpyrovalerone
 - viii. 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 repellant, 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.
- d. Synthetic stimulants, as defined in this ordinance, shall exclude normal, typical bath salts and bath additives which do not contain synthetic chemicals 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, including, but not limited to any quantity of a synthetic material, mixture, preparation, substance, and their

analogues (including isomers, ester, ethers, salts and salts of isomers) containing a cannabinoid receptor agonist, regardless of whether the substance is marketed for the purpose of being consumed.

- 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 Cannabinoids/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.
- d. Synthetic Marijuana/Synthetic Cannabinoids/Herbal Smoking Product shall exclude typical, standard incense and potpourri that is sold as incense sticks, oils or cones that is commonly used for 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.
- 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.

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 Orr deems synthetic and alternative drugs dangerous and detrimental to the citizens, guests and fabric of the community of Orr, it bans the sale, possession, transfer and/or manufacturing of synthetic drugs or alternative drugs.

Individuals involved in the sale, transfer or manufacturing: A civil penalty of each offense will be \$500.00 for the first violation; \$1,000.00 for the second violation and any violations thereafter shall be charged as a misdemeanor, with up to 90 days in jail, and subject to the sanctions of the District Court, including the cost of prosecution. Each day a violation shall occur shall constitute a separate violation.

Individuals that are in possession: A civil penalty of each possession offense will be \$100.00 for the first offense; \$300.00 for the second offense; \$500.00 for the third offense; \$800.00 for the fourth offense; and every offense thereafter \$1,000.00.

Severability: If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances shall be adjusted 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.

EFFECTIVE DATE: This ordinance shall take effect and be enforced from and after passage, adoption and publication, but no earlier than July 17, 2014.

Passed by motion of Councilor Lloyd Scott and supported by Councilor Tom Kennebeck on the 9th day of June, 2014, by the following vote:

Ayes: Ericka Cote
Lloyd Scott
Tom Kennebeck
Bruce Black

Nays: None

APPROVED: _____

Mayor

ATTEST: _____

City Clerk/Treasurer