ORDINANCE NO. 3315

AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ADDING CHAPTER 7.45 TO TITLE 7 OF THE SAN LUIS OBISPO COUNTY CODE, RELATING TO THE REGULATION OF SYNTHETIC DRUGS

The Board of Supervisors of the County of San Luis Obispo, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of the County of San Luis Obispo finds that:

(a) Recreational use of psychoactive bath salts, psychoactive herbal incense, and similar products, commonly known as "synthetic drugs," has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, seizures, rapid heart rate, and death. While state and federal laws and regulation prohibit some synthetic drugs, the makers of these drugs continually alter the composition of the 16 compounds in their products so as to escape the scope of those laws and regulations. The purpose and intent of this chapter is to provide the County with the means to address the dangers to the community posed by synthetic drugs that are not regulated by state or federal Law.

(b) Synthetic drugs are extremely dangerous and are gaining popularity at an alarming rate among high school and college-aged individuals, as well as among parolees and probationers. These drugs are available for purchase in stores and shops throughout the County, despite the State of California's attempt to ban such drugs under Health & Safety Code sections 11375.5 (banning synthetic stimulant compounds and derivatives) and 11401 (banning "analogs" of controlled substances) (collectively " State Synthetic Drug Laws"), and the Federal Government's attempt to ban such drugs under the Controlled Substances Act (the "CSA") (21 U.S.C. § 81, *et seq).* The Board of Supervisors further finds that synthetic drugs, which have been documented to cause hallucinations, agitations, psychosis, aggression, suicidal and homicidal ideations, seizures, rapid heart rate, and death, require regulation.

(c) While the State Synthetic Drug Laws and the CSA prohibit certain compounds that are used to create synthetic drugs, they are not comprehensive enough to eliminate the distribution and sale of all synthetic drugs. Specifically, the Board of Supervisors finds that the makers of synthetic drugs continually alter the composition of the compounds in their products so as to not come under the prohibition of the State Synthetic Drugs Laws, the CSA, and other laws and regulations that attempt to prohibit the sale of synthetic drugs. In fact, products that plainly are being marketed for use as synthetic drugs are now being packaged with advertisements stating that the product does not contain compounds specifically banned by the State Synthetic Drug Laws. Thus the Board of Supervisors finds that in order to implement an effective measure prohibiting the distribution and sale of synthetic drugs, it is necessary to look at all factors related to the sales and marketing of synthetic drugs. These factors will help County officials determine whether a product that does not come under the purview of State Synthetic Drug Laws or the CSA, is nevertheless a synthetic drug because it is intended for recreational drug use.

(d) While the question of whether a given product is being distributed or sold for use as a recreational drug must be determined on a case-by-case basis, the Board of Supervisors finds that the following evidentiary factors are helpful in determining whether a given product is in fact a synthetic drug:

(1) Marketing: synthetic drugs are rarely, if ever, suitable for their marketed uses. For example, a synthetic drug in the form of a powder might be marketed as a "glass cleaner," even though the powder cannot reasonably be used to clean glass.

(2) Sales location: synthetic drugs are typically sold in liquor stores, smoke shops, and gas stations, yet synthetic drugs are marketed as products that are not typically sold by these businesses. For example, synthetic drugs are often marketed as bath salts, spice, incense, potpourri, skin treatments, cleaning products and plant food; however, these types of products are typically not sold in liquor stores, smoke shops, or gas stations.

(3) Warning labels: synthetic drugs often use warning labels such as:

"not for human consumption" and "not for purchase by minors." Bona fide bath salts, incense, cleaning products, and the like do not typically bear such labels. Of particular relevance are labels that indicate a given product does not contain chemical compounds banned by State Synthetic Drug Laws, which bona fide bath salts, incense, cleaning products, and the like would not have any reason to advertise.

(4) Price: synthetic drugs are typically more expensive than products that are used for the synthetic drug's marketed use. For example, a synthetic drug marketed as "glass cleaner" might be priced at $50.00 for an eighth of an ounce, while bona fide glass cleaner is priced at approximately $5.00 for 26 ounces.

(5) Similarity to illicit street drugs: synthetic drugs often resemble illicit street drugs or use brand names and packaging that are designed to make the product appear similar to illicit drugs. For example, many synthetic drugs are sold as white powders packaged in vials (resembling cocaine) or dyed green to appear similar to marijuana. Additionally, brand names are often similar to street slang for illicit drugs and have no relation to the products that are purportedly being sold. These brand names are always changing, but include "Eight Ballz," "Spice," "Black Mamba," "K-2," "Puff," "Sugar Sticks," "Green Buddha," "Diablo Botanical Incense," "Scooby Snax," "Potpourri," "Grape Ape Herbal Incense," "Three Monkey Incense," "Mr. and Mrs. Marley," "Cloud 9 Incense," and a group of synthetic drugs marketed as from "The Spice Guy."

(e) An effective way to prevent and abate the health, safety, and welfare concerns that exist as a result of the marketing, distribution, and sale of synthetic drugs in manners that brazenly seek to circumvent State and Federal Law is through the administrative, civil, and criminal enforcement procedures set forth in Title 1 of the County Code. This chapter shall not apply to any activity already regulated by the State Synthetic Drug Laws, the CSA, or any other applicable state or federal law or regulation.

SECTION 2. Chapter 7.45 is added to Title 7 of the San Luis Obispo County Code, to read:

Chapter 7.45: Synthetic Stimulants and Synthetic Cannabinoids

7.45.010 Purpose and Intent.

7.45.020 Definitions.
7.45.030 Provision, Sale, and/or Distribution of Synthetic Drugs Prohibited.
7.45.040 Provision, Sale, and/or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited.
7.45.050 Possession of Synthetic Drugs Prohibited.
7.45.060 Public Nuisance.
7.45.070 Seizure of Evidence.
7.45.080 Summary Abatement.
7.45.090 Modification, Suspension, or Revocation of Permit, License, or Other Grant of Authority.
7.45.100 Enforcement, Remedies, and Penalties.
7.45.110 Exclusions.
7.45.120 Severability.
7.45.10 Purpose and Intent.

Recreational use of psychoactive bath salts, psychoactive herbal incense, and similar products, commonly known as “synthetic drugs," has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, seizures, rapid heart rate, and death. While state and federal laws and regulations prohibit some synthetic drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of these laws and regulations.

The purpose and intent of this chapter is to provide the County of San Luis Obispo with reasonable means to address the dangers to the community posed by the provision, distribution, sale, and/or possession of those synthetic drugs not regulated by state or federal law.

7.45.020 Definitions.

(a) **“Consume*,″ "consuming”*** or ***"consumption"*** shall mean to ingest, inhale, inject, smoke, or snort (insufflate).

(b) ***"Distribute," "distributing,"*** or ***"distribution"*** shall mean to furnish, give away, exchange, transfer, deliver, or supply, whether for monetary gain or not.

(c) ***"Person"*** shall include any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association, and/or similar organization.

(d) ***"Possess," "possessing,"*** or ***"possession"*** shall mean to have for consumption, distribution, or sale in a person's actual or constructive custody or control, or under a person's authority or power, whether such custody, control, authority, and/or power is exercised solely or jointly with others.

(e) ***"Provide," "providing,"*** or ***"provision"*** shall mean offering to distribute or sell a product or substance to any person.

(f) ***"Psychoactive bath salts"*** shall mean any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term "psychoactive bath salts" includes without limitation:

(1) Products that elicit psychoactive or psychotropic stimulant effects and contain any of the following intoxicating chemical compounds:

(a) Cathinone (2-amino·1·phenyl-1-propanone), 4-methylmethcathinone (2·methylamino-1-(4-methylphenyl)propan-1-one), 4-methoxymethcathinone (1-(4-methoxyphenyl)-2-(methylamino)propan-1 -one), MDP (methylenedioxypyrovalerone), MDMA (3,4-methylenedioxy-N-methylamphetamlne), methylone (3,4-methylenedioxy-N-methylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1-one), flephedrone (4-fluoromethcathinone), 3-FMC (3-fluoromethcathinone), ethcathinone (2-ethylamino-1-phenyl-propan-1-one), butylone (-keto-N-methylbenzodioxolylbutanamlne), a-PPP (-pyrrolidinopropiophenone), MPPP (4'-methyl-pyrrolidinopropiophenone), MDPPP (3',4 -methylenedioxy-pyrrolidinopropiophenone), -PVP (1-phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2-pyrrolidin-1-ylpentan-1-one);

(b) Any derivative of the above listed intoxicating chemical compounds;

(c) Any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

(d) Any chemical alteration of the above listed intoxicating chemical compounds; or

(e) Any other substantially similar chemical structure or compound; and

(2) Products that elicit psychoactive or psychotropic stimulant effects and are marketed under any of the following trade names: Bliss, Blizzard, Blue Silk, Banzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning.

The term "psychoactive bath salts" shall not include any product, substance, material, compound, mixture or preparation that is specifically excepted by the California Uniform Controlled Substances Act ("UCSA") (Health and Safety Code sections 11000 et seq.), listed In one of the UCSA's schedules of controlled substances (Health and Safety Code sections 11053-11058), regulated by one of the UCSA's Synthetic Drug Laws (Health and Safety Code sections 11357.5, 11375.5, and 11401), regulated by the Federal Controlled Substances Act (the "CSA") (21 .S.C. section 81 et seq.) or approved by the Food and Drug Administration ("FDA").

(g) ***"Psychoactive herbal Incense"*** shall mean any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "psychoactive herbal incense" includes without limitation:

(1) Products that elicit psychoactive or psychotropic euphoric effects and contain any of the following intoxicating chemical compounds:

(a) Cannabicyclohexanol (2-[(1R,3S)-3-hydroxycyclohexyl]- 5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalen-1- yl-(1-pentylindol-3 yl)methanone), JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl) methanone), JWH-200 ((1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone), HU-210 ((6aR, 10aR)- 9-(Hydroxymethyl)- 6,6-dimethyl- 3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo

[c]chromen- 1-ol), CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]- 5-(2-methyloctan-2-yl)phenol) CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) or AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl) methanone);

(b) Any derivative of the above listed intoxicating chemical compounds;

(c) Any synthetic substance and Its isomers with a chemical structure similar to the above listed intoxicating chemical compounds;

(d) Any chemical alteration of the above listed intoxicating chemical compounds; or

(e) Any other substantially similar chemical structure or compound; and

(2) Products that elicit psychoactive or psychotropic euphoric effects and are marketed under any of the following trade names: K2, K3, Spice, Genie, Smoke, Potpourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Ocean Blue, Stinger, Serenity, Fake Weed, and Black Mamba.

The term "psychoactive herbal incense" shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the UCSA (Health and Safety Code section 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health and Safety Code sections 11053-11058), regulated by one of the UCSA's Synthetic Drug Laws (Health and Safe Code sections 11357.5,11375.5, and 11401), regulated by the CSA (21 U.S.C. section 81 et seq.), or approved by the FDA.

(h) ***"Psychoactive or psychotropic stimulant effects"*** shaII mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition, and/or behavior in ways that are similar to the effects of cocaine, methylphenidate, or amphetamines.

(i) ***"Psychoactive or psychotropic euphoric* effects"** shaII mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition, and/or behavior in ways that are similar to the effects of cannabis.

(j) **"Sell," *"selling,"*** or **"sale"** shall mean to furnish, exchange, transfer, deliver, or supply for monetary gain.

(k) ***"Synthetic drug"*** shall include psychoactive bath salts and psychoactive herbal incense, as those terms are defined hereinabove.

7.45.030 Provision, Sale, and/or Distribution of Synthetic Drugs Prohibited.

(a) It is unlawful for any person to provide, distribute, or sell any synthetic drug.

(b) Merely disclaiming a synthetic drug as "not safe for human consumption" will not avoid the application of this chapter.

7.45.040 Provision, Sale, and/or Distribution of Substances Claimed or Represented to be Synthetic Drugs Prohibited.

(a) It is unlawful for any person to claim or represent that a product that the person is providing, distributing, or selling is a synthetic drug.

(b) To determine if a person is claiming or representing that a product is a synthetic drug, the enforcing officer may consider any of the following evidentiary factors:

(1) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

(2) The person providing, 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”);

(3) 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," "not for purchase by minors," or "does not contain chemicals banned by Section 11357.5”);

(4) The product is significantly more expensive than products that are used for that product's marketed use (e.g. a half of a gram of a substance marketed as "glass cleaner" costing multiple times the price of actual glass cleaner);

(5) The product resembles an Illicit street drug such as cocaine, methamphetamine, or marijuana); or

(6) The product's name or packaging uses images or slang referencing

an illicit street drug (such as "Eight Ballz" or "Green Buddha”).

(c) Merely disclaiming a substance claimed or represented to be a synthetic drug as "not safe for human consumption" will not avoid the application of this chapter.

7.45.050 Possession of Synthetic Drugs Prohibited.

It is unlawful for any person to possess any synthetic drug for the purpose of providing, distributing, or selling the synthetic drug.

7.45.060 Public Nuisance.

(a) It is a public nuisance for any person to provide, distribute, or sell any synthetic drug.

(b) It is a public nuisance for any person to allow the provision, distribution, or sale of any synthetic drug on property owned, controlled, or managed by such person.

(c) It is a public nuisance for any person to provide, distribute, or sell any substance claimed or represented to be a synthetic drug.

(d) It is a public nuisance for any person to allow the provision, distribution, or sale of any substance claimed or represented to be a synthetic drug on property owned, controlled, or managed by such person.

7.45.070 Seizure of Evidence.

Any product or substance provided, distributed, or sold, or possessed for the purpose of providing, distributing, or selling the product or substance, in violation of any provision of this chapter, may be seized by any peace officer who issues a criminal citation under this chapter and may be removed and stored as evidence in accordance with law.

7.45.080 Summary Abatement.

Because the use of synthetic drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, seizures, rapid heart rate, and death, any violation of this chapter presents a grave and imminent danger not only to the person consuming the synthetic drug, but also to the

public at large. Thus, if the enforcing officer, based on the facts then known, determines that a violation of this chapter has occurred or is occurring, then that violation may be subject to the summary abatement procedures authorized by the County Code or other law.

7.45.090 Modification, Suspension, or Revocation of Permit, License, or Other Grant of Authority.

If a person violates any provision of this chapter and is convicted of such violation, then in addition to any other enforcement action or remedy authorized by the County Code or other applicable law, such conviction may be grounds for modification, suspension, or revocation of any permit, license, or other grant of authority by the County issued to the person, or issued to any business, firm, company, corporation, public corporation, club, trust, partnership, association, and/or similar organization owned, controlled, or managed by such person, in accordance with the procedure of the County Code or other law applicable to the respective permit, license, or other grant of authority.

7.45.100 Enforcement, Remedies, and Penalties.

In addition to any enforcement action and remedy authorized by this chapter, a violation of any requirement of this chapter may be subject to the enforcement and remedy provisions of Chapter 1 of Title 1 of the County Code and any other applicable enforcement and remedy provisions as may be provided by state law.

(a) Penalties

(1) Misdemeanor violation. Failure to comply with any of the requirements of this Chapter is a misdemeanor punishable by imprisonment in the county jail for a period not exceeding six (6) months or by a fine not exceeding one thousand dollars ($1,000.00), or by both, provided that where the District Attorney determines that such action would be in the interest of justice, he/she may specify in the accusatory pleading that the offense shall be an infraction.

(2) Infraction violation. Where the District Attorney determines that, in the interest of justice, a violation of this Chapter is an infraction, such an infraction is

punishable by a fine not exceeding one hundred dollars ($100.00) for a first violation, a fine not exceeding two hundred dollars ($200.00) for a second violation of the same provision within one (1) year, and a fine not exceeding five hundred dollars ($500.00) for each additional infraction violation of the same provision within one (1) year.

7.45.110 Exclusions.

(a) This chapter shall not apply to drugs or substances lawfully prescribed or to chemical compounds that are approved by the Food and Drug Administration or that are permitted by state law, including compounds that are exempt under the California Uniform Controlled Substances Act (Health and Safety Code section 11000 et seq.).

(b) This chapter shall not apply to drugs or substances that are prohibited by state or federal law, including, without limitation, Health and Safe Code sections 11357.5, 11375.5, 11401 and the Federal Controlled Substances Act.

(c) This chapter shall not be deemed to prescribe any act that is permitted by any state or federal law or regulation.

7.45.120 Severability.

If any subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state or federal legislation, such decision or legislation shall not affect the validity of the remaining portions of this chapter. The Board of Supervisors declares that it would have passed this chapter and each and every subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

SECTION 3. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

Introduced at a regular meeting of the Board of Supervisors held on the 5th day of January, 2016, and passed and adopted by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 2nd day of February, 2016, by the following roll call vote, to wit:

AYES: Supervisors Mecham, Arnold, Gibson, Hill and Chairperson Compton

NOES: None

ABSENT: None

Lynn Compton
_____
Chairperson of the Board of Supervisors
of the County of San Luis Obispo State
of California

ATTEST:

Tommy Gong_____
County Clerk and Ex-Officio Clerk of the
Board of Supervisors, County of San
Luis Obispo, State of California
By: */s/Sandy Currens*_____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA NEAL
County Counsel

By: */s/Ann Duggan*
Deputy County Counsel

Dated: December 28, 2015

STATE OF CALIFORNIA) ss.

COUNTY OF SAN LUIS OBISPO)

I, **TOMMY GONG**, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors on March 30, 2016.

TOMMY GONG,

County Clerk and Ex-Officio Clerk of the Board of Supervisors

By:_____
Deputy Clerk