

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
ADDING CHAPTER 10 OF ARTICLE 28 OF THE FRESNO
MUNICIPAL CODE, RELATING TO THE REGULATION OF
THE SALE AND DISTRIBUTION OF KRATOM PRODUCTS
WITHIN THE CITY LIMITS

WHEREAS, the City of Fresno is authorized by the California Constitution, Article XI, Section 7 to make and enforce within its limits all local, police, sanitary and other ordinance and regulations not in conflict with general laws; and

WHEREAS, pursuant to the Controlled Substance Act (21 U.S.C. section 801), substances classified as Schedule I are considered to have no accepted medical use and a high potential for abuse; and

WHEREAS, Novel Synthetic and psychoactive substances are continuously being produced to circumvent existing controlled substances laws, thereby posting a significant risk to the public health and safety; and

WHEREAS, 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; and

WHEREAS, eliminating the manufacturing, sale, distribution, and possession of Federal Schedule I Drugs, Novel Synthetic Drugs, and Novel Psychoactive Drugs within the City's jurisdictional boundaries will reduce the number of persons in possession of

1 of 11

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: 

Ordinance No.

and who use synthetic drugs and will promote the public health safety and welfare, particularly of our community's youth population.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 28 of Chapter 10 is added to the Fresno Municipal Code to read:

ARTICLE 28

MANUFACTURING, SALE, DISTRIBUTION, AND POSSESSION OF FEDERAL SCHEDULE I DRUGS, NOVEL SYNTHETIC DRUGS, AND NOVEL PSYCHOACTIVE DRUGS

Section	10-2801.	Title
Section	10-2802.	Purpose
Section	10-2803.	Definitions
Section	10-2804.	Prohibition on the Manufacturing, Sale Distribution or Possession of Synthetic Drugs
Section	10-2805.	Public Nuisance
Section	10-2806.	Property Owner and Responsible Personal Liability
Section	10-2807.	Seizure of Evidence
Section	10-2808.	Suspension/Revocation of Business License
Section	10-2809.	Exceptions to Prohibition
Section	10-2810.	Violations and Penalties

SECTION 10-2801. - TITLE. This article shall be known as the "Controlled Substances Prohibition Ordinance."

SECTION 10-2802. - PURPOSE. The purpose of this article is to protect the public health and safety by regulating access to Federal Schedule I Drugs, Novel Synthetic Drugs and Novel Psychoactive Drugs commonly known as synthetic drugs, thereby reducing potential risks to public health and safety.

SECTION 10-2803. - DEFINITIONS. For the purpose of this article, the following definitions apply unless the context indicates or requires a different meaning.

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

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

(c) “Manufacture and manufacturing” means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term “manufacturer” means a person who manufactures a drug or other substance.

(d) “Novel Psychoactive Drugs” means any compound, mixture, preparation or substance, or its chemical variant or analog (including salts, isomers, esters, ethers, and salts of isomer), 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. sections 1308.11-1308.12, not otherwise regulated or prohibited by state law. For example, Mitragynine, 7-Hydroxymitragynine (7-OH) or other Alkaloids (such as speciociliatine, paynantheine, corynantheidine, and others.)

(e) “Novel Synthetic Drugs” means any synthetically created substance intended to replicate or mimic the pharmacological effects of a Schedule I or II controlled substance but not yet scheduled under federal or state law.

(f) “Person” means any natural person, proprietor, business, firm, company, corporation, public corporation, club, trust, partnership, association or similar organization.

(g) “Possess, possessing or possession” means to have physical custody or control of a substance, whether actual or constructive.

(h) “Provide, providing, or provision” means to distribute, give away, or sell a synthetic drug to any person.

(i) “Sell, selling or sale” means to furnish, exchange, transfer, deliver, or supply for monetary gain.

(j) “Synthetic drug” means any synthetic cathinone, synthetic cannibinoid, novel psychoactive substance, and any other substance containing intoxicating, psychoactive or psychotropic compounds or chemicals, whether in crystalline, powder, granular, organic or liquid form, and which causes psychoactive or psychotropic stimulant or euphoric effects on the central nervous system and brain. The term "synthetic drug" shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the California UCSA (Health and Safety Code §§11000 et seq.), listed in one of the California UCSA's schedules of controlled substances (Health and Safety Code §§11053-11058), regulated by one of the California UCSA's synthetic drug laws (Health and Safety Code §§11357.5, 11375.5 and 11401), regulated by the CSA (21 USC §§ 81 et seq.) or approved by the FDA.

SECTION 10-2804. – PROHIBITION ON THE MANUFACTURING, SALE, DISTRIBUTION OR POSSESSION OF SYNTHETIC DRUGS.

(a) 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.

(b) It is unlawful to possess any Federal Schedule I Drug, Novel Synthetic Drug or Novel Psychoactive Drug. This article does not apply to the use of kava and kava-containing foods/dietary supplements.

(c) Evidence that a given product is a synthetic drug may be found from its intended use, which can be determined from its price,

packaging, marketing, and the location and manner in which a given synthetic drug is displayed or delivered for use as a synthetic drug must be evaluated on its specific facts, the City finds that, to determine if a Person is selling, offering to sell, distributing, displaying, or delivering a synthetic drug, the enforcing officer shall consider the following evidentiary factors:

(1) Marketing: The product is not suitable for its marketed use (such as a crystalline or powder product being marked 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 marked use (such as a liquor store selling “plant food” or “potpourri”);

(3) Warning Labels: The product contains a warning label that is not typically presented on products that are used for that product’s marked use (such as “not for human consumption” or “does not contain chemicals banned by the Federal Controlled Substances Act, Cal. Health & Safety Code sections 11357.5 or 11375.5”);

(4) Price: The product is significantly more expensive than products that are used for the product’s marketed use (such as half of a gram marketed “glass cleaner” costing fifty dollars (\$50));

(5) Similarity to Illicit Street Drugs: The product resembles 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 you or referencing an illicit street drugs (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, relation, 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 eighteen (18) when the product's marked 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.

SECTION 10-2805. – 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.

SECTION 10-2806. – 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 article, to fail to abate the Public Nuisance within thirty (30) calendar days from the date of the notice.

SECTION 10-2807. – SEIZURE OF EVIDENCE.

(a) Any Schedule I Controlled Substance, Novel Synthetic Drug, Novel Psychoactive Substance, or related devices contrivances, instruments, or paraphernalia, possessed, provided, distributed, sold or found in violation of any provision of this article shall be subject to seizure by any peace officer or authorized enforcing official.

(b) Any person convicted of any section of this article shall be deemed to have maintained or conducted a drug-related nuisance. The building, premises, furnishing, fixtures, equipment, money and any other real or personal property used in or to facilitate the offense(s) that constituted the drug-related nuisance are subject to seizure, closure, and/or sale pursuant to Health and Safety Code sections 11570, 11581-11582.

SECTION 10-2808. – SUSPENSION/REVOCAION OF BUSINESS LICENSE.

(a) No person holding a City of Fresno business license and owning or operating a business in the city may use that business to display, provide, distribute, possess, or sell any synthetic drug, any substance claimed or represented to be a synthetic drug, or any mislabeled/misbranded product.

(b) Any business that continues to operate in violation of this article shall not operate during the pendency of any business license suspension or revocation process and/or appeal pursuant to Chapter 1, Article 4 of the Fresno Municipal Code.

SECTION 10-2809. – EXCEPTIONS TO PROHIBITION.

(a) This article shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds that have been approved by the federal Food and Drug Administration, or which are specifically permitted by California law, including without limitation intoxicating chemical compounds that are specifically excepted by the California UCSA (Health and Safety Code section 1100) or the CSA (21 USC section 801).

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

(c) This article shall not apply to food products, drugs, dietary supplements, cosmetics or other substances regulated by the Food and

Drug Administration and that are in compliance with the agency's requirements.

(d) This article shall not be deemed to prescribe any act that is positively permitted, prohibited or preempted by any state or federal law or regulation.

SECTION 10-2810. – VIOLATIONS AND PENALTIES. Any Person who violates this article is guilty of a misdemeanor offense and upon conviction, may be fined up to \$1,000 and sentenced up to six (6) months in the county jail. Additionally, any person who violates this article is subject to administrative citation in accordance with Chapter 1, Article 3 of the Fresno Municipal Code. All other violations shall be enforceable only as infractions pursuant to sections 1-308, et seq. Appeal of an administrative citation may be made pursuant to sections 1-308, et seq. This section shall not serve to limit any other legal remedies or actions that the City may have to address violations of this article.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2025.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2025
Mayor Approval/No Return: _____, 2025
Mayor Veto: _____, 2025
Council Override Vote: _____, 2025

TODD STERMER, MMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Angela M. Karst Date
Senior Deputy City Attorney