

1 **Summary of Ordinance**

2
3 The purpose of this Ordinance is to declare illegal the sale, giving away, offer or advertisement
4 for sale, and public display for sale, of synthetic drugs that mimic illegal controlled substances,
5 which have not yet been categorized as illegal controlled substances under federal or state law.
6 The ordinance will also rename Chapter 3, Lake County Code, to Community Protection, and will
7 incorporate the new provisions regarding synthetic substances, along with other existing
8 provisions similar in nature.
9

10 **ORDINANCE NO. 2014-__**

11
12 **AN ORDINANCE OF LAKE COUNTY, FLORIDA; CREATING ARTICLE V,**
13 **CHAPTER 3, LAKE COUNTY CODE, TO BE ENTITLED SYNTHETIC DRUGS;**
14 **PROHIBITING THE SALE, GIVING AWAY, OFFER OR ADVERTISEMENT FOR**
15 **SALE, AND PUBLIC DISPLAY FOR SALE, OF SYNTHETIC DRUGS THAT MIMIC**
16 **ILLEGAL CONTROLLED SUBSTANCES; PROVIDING FOR DEFINITIONS IN**
17 **ARTICLE I, CHAPTER 3, LAKE COUNTY CODE; RENAMING CHAPTER 3, LAKE**
18 **COUNTY CODE, TO COMMUNITY PROTECTION; RENUMBERING ARTICLE XI,**
19 **CHAPTER 13, LAKE COUNTY CODE, ENTITLED TOBACCO MERCHANDISING TO**
20 **ARTICLE VI, CHAPTER 3, LAKE COUNTY CODE; RENUMBERING SECTION 14-7,**
21 **LAKE COUNTY CODE, ENTITLED RESTRICTIONS FOR PERSONS CONVICTED OF**
22 **CERTAIN SEX OFFENSES TO ARTICLE VII, CHAPTER 3, LAKE COUNTY CODE;**
23 **RENUMBERING ARTICLE VII, CHAPTER 14, LAKE COUNTY CODE, ENTITLED**
24 **PAIN MANAGEMENT CLINICS, TO ARTICLE VIII, CHAPTER 3, LAKE COUNTY**
25 **CODE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR**
26 **SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE;**
27 **AND PROVIDING FOR AN EFFECTIVE DATE.**
28

29 **WHEREAS,** pursuant to Article 8 of the Florida Constitution and Chapter 125, Florida
30 Statutes, the County possesses police powers to enact ordinances in order to protect the health,
31 safety, and welfare of its citizens; and
32

33 **WHEREAS,** synthetic drugs are commonly marketed for sale to young adults and
34 teenagers as a safe and legal alternative to marijuana or other controlled substances; and
35

36 **WHEREAS,** the Board of County Commissioners has been advised by law enforcement
37 of a significant increase in the use of synthetic drugs and substances by young adults and
38 teenagers; and
39

40 **WHEREAS,** synthetic cannabinoids, bath salts, and other dangerous chemicals,
41 commonly referred to as synthetic drugs, are being added by producers and manufacturers to
42 products in an effort to mimic the effects of illegal drugs when ingested into the human body; and
43

44 **WHEREAS,** due to the manner in which these substances are marketed, the manufacture
45 or production of synthetic drugs is not regulated by the Federal Drug Administration; and
46

1 **WHEREAS**, synthetic drugs may be more potent and dangerous than the controlled
2 substances they are designed to mimic due to the unapproved chemicals and chemical compounds
3 contained in them; and
4

5 **WHEREAS**, ingestion of synthetic drugs has been known to produce undesired and
6 dangerous side effects such as headaches, agitation, nausea, vomiting, hallucinations, loss of
7 consciousness, elevated blood pressure, tremors, seizures, paranoid behavior, anxiety, increased
8 heart rate, and even death; and
9

10 **WHEREAS**, according to the American Association of Poison Control Centers, exposure
11 to, or ingestion of synthetic drugs resulted in 2,906 emergency medical calls in 2010, 6,959 calls
12 in 2011, and 1,901 calls in the first three months of 2012 to poison control centers across the
13 United States; and
14

15 **WHEREAS**, the manufacture, sale, and use of synthetic drugs has become a major
16 problem negatively effecting the health, safety and welfare of the citizens of Lake County; and
17

18 **WHEREAS**, the State of Florida, in an attempt to curtail the marketing, sale, and
19 consumption of synthetic drugs, has added in Chapter 893, Florida Statutes, several dozen of the
20 chemicals and chemical compounds used in the manufacturing of synthetic drugs as controlled or
21 prohibited substances; and
22

23 **WHEREAS**, due to the ease of making slight molecular alterations of these chemicals or
24 chemical compounds, law enforcement agencies have found it extremely difficult to bring
25 criminal charges against the manufacturers, producers, and marketers of synthetic drug products;
26 and
27

28 **WHEREAS**, undercover investigations by law enforcement into the manufacturing,
29 marketing, sale, use and consumption of synthetic drugs have proven to be lengthy, costly, and
30 man-power intensive; and
31

32 **WHEREAS**, it is not the intent of this ordinance to interfere with the legitimate actions
33 and conduct of individuals which are protected under the constitutions and laws of the United
34 States and the State of Florida; and
35

36 **WHEREAS**, the Board of County Commissioners has determined that this ordinance is
37 in the best interests of the citizens of Lake County, Florida.
38

39 **NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of
40 Lake County, Florida that:

41 **Section 1. Recitals.** The foregoing recitals are true and correct and incorporated
42 herein by reference.
43

44 **Section 2. Creation.** Article V, Chapter 3, Lake County Code, to be entitled
45 Synthetic Drugs, shall be created to read as follows:
46
47

1 **ARTICLE V. SYNTHETIC DRUGS**

2
3 **3-48. Purpose and intent.** The County finds and declares that:

- 4
5 (a) The products and synthetic drugs described hereunder are commonly used as alternatives
6 to marijuana, psychoactive drugs, stimulants and other illegal drugs.
7
8 (b) These synthetic drugs are particularly appealing to youth, are potentially dangerous to
9 users in the short term, and the long term effects are not yet known.
10
11 (c) Products which contain these synthetic drugs often use a disclaimer that the product is
12 "not for human consumption," in order to avoid regulations requiring the manufacturer to
13 list the product's active ingredients.
14
15 (d) Drug designers and chemists can quickly create new synthetic drugs once federal or state
16 law makes a particular synthetic drug illegal.
17

18 As such, there is a need to declare illegal the sale, giving away, offer or advertisement for sale,
19 and public display for sale, of synthetic drugs that mimic illegal controlled substances, which
20 have not yet been categorized as illegal controlled substances under federal or state law. The
21 County further finds that it is proper and necessary for the County to exercise its authority to
22 safeguard and protect the public health, safety, and welfare by taking action.
23

24 **3-49. Application and Jurisdiction.** This Article shall be applicable in the incorporated and
25 unincorporated areas of Lake County, with the enforcement of this Article being the
26 responsibility of Lake County, unless a municipality elects to pass a companion ordinance
27 enforceable by the municipality. However, if this Article is in conflict with a municipal
28 ordinance, this Article shall not be effective within the municipality to the extent of the conflict.
29

30 **3-50. Prohibition.** It shall be unlawful for any person to sell, give away, offer or advertise for
31 sale, or publicly display for sale, synthetic drugs, which includes synthetic cannabinoids, and/or
32 contraband bath salts, as defined in Article I, Chapter 3.
33

34 **3-51. Determining that Product is a Synthetic Drug.** The following factors, taken in the
35 totality of the circumstances, may be considered in determining whether a product, substance, or
36 other material should be classified as a synthetic drug. For the purposes of enforcement pursuant
37 to Section 3-54 below, the establishment of two or more of these factors shall constitute *prima*
38 *facie* evidence and shall create a rebuttable presumption on the part of the person or entity in
39 which enforcement action is being taken, that the product is a synthetic drug:
40

- 41 (a) Marketing. A product routinely advertised to be a substance for which it is rarely, if ever,
42 suitable to be used for (i.e. – incense, potpourri, food additive, therapeutic bath crystals,
43 plant food, insect repellent, iPod cleaner, glass cleaner, etc.)
44
45 (b) Sales Location. Products displayed and sold in businesses such as liquor stores, smoke
46 shops, and gas/convenience stores where such advertised products are not typically sold.
47
48
49
50

1 (c) Labels and Packaging.
2

3 1. Products marketed as common non-consumable products which contain warnings
4 may be similar, but not limited to, “not for human consumption,” “not for
5 purchase by minors,” etc.; or
6

7 2. Products containing notices on the package not normally found on similar
8 products such as, but not limited to, “does not contain any chemical compounds
9 prohibited by state law,” “contains no prohibited chemicals,” “product is in
10 accordance with State and Federal laws,” “product is in compliance with new
11 Florida Law HB 1175,” “does not contain AM2201 or any DEA banned
12 substance,” “legal herbal substance,” “100% compliant guaranteed,” etc.; or
13

14 3. Products whose package labeling suggests that the user will achieve a “high,”
15 euphoria, relaxation, mood enhancement, or that the product has other effects on
16 the body.
17

18 (d) Price. The prices of the advertised product is much more expensive than other products
19 marketed in the area for the same or similar use.
20

21 (e) Misleading Directions. The product contains directions for the product’s use, which is
22 not consistent for the type of product advertised. (Example: “place caplet over door to
23 enhance mood.”)
24

25 (f) Similarity to Illicit Street Drugs.
26

27 1. Products designed to make the substance appear similar to illicit street drugs
28 (such as white powder made to resemble cocaine, or an herbal substance dyed
29 green to resemble marijuana).
30

31 2. Products advertised using brand names and packaging designed to make the
32 product appear similar to illicit street drugs, or labeled with names that have no
33 relation to the advertised use of the product being sold. (Common brand names
34 include, but are not limited to, AK-47, Aroma, Galaxy Gold, Ocean Burst, Pixie
35 Dust, etc.)
36

37 (g) Ingredients. A product which has been enhanced with a synthetic chemical or synthetic
38 chemical compound that has no legitimate relation to the advertised use of the product
39 which mimics the effects of a controlled substance when the product, or the smoke from
40 the burned product, is introduced into the human body.
41

42 (h) Verbal or Written Representation. Verbal or written representations made at the place of
43 sale or display regarding the purpose, methods, use, or effect of the product.
44

45 **3-52. Affirmative Defenses.** It shall be an affirmative defense to prosecution of a violation of
46 this Article if the sale, giving away, offer or advertisement for sale, or public display for sale, of
47 any synthetic drug is pursuant to the direction or prescription of a licensed physician or dentist
48 authorized in the State of Florida to direct or prescribe such synthetic drug.
49

50 **3-53. Subsequent Federal or State Action.** Pursuant to Chapter 893, Florida Statutes, it is
51 unlawful for any person to sell substances named or described in the controlled substance

1 schedules of said Chapter, and the State, the Department of Law Enforcement, and all peace
2 officers of the State shall enforce said provisions. In recognition that Florida law preempts local
3 government regulation of such controlled substances, the following limitations are placed on the
4 prohibitions and restrictions contained in this Article:

5
6 (a) In the event that the United States Congress or a federal agency amends federal law to
7 include a particular substance or otherwise enacts or amends a federal law providing for
8 criminal penalties for the prohibitions of substances set forth in this Article, then upon the
9 effective date of such enactment or amendment, the provisions of this Article addressed
10 by federal law shall no longer be effective. Any violations of this Article committed
11 prior to Congress or a federal agency enacting such federal law may be prosecuted.

12
13 (b) In the event that the Florida Legislature amends the controlled substance schedules in
14 Section 893.03, Florida Statutes, to include a particular substance or otherwise enacts or
15 amends a state statute providing for criminal penalties for the prohibitions of substances
16 set forth in this Article, then upon the effective date of such enactment or amendment, the
17 provisions of this Article addressed by the state statute shall no longer be effective. Any
18 violations of this Article committed prior to the Florida Legislature enacting such statute
19 may be prosecuted.

20
21 (c) In the event that the Florida Attorney General, pursuant to the rulemaking authority
22 provided in Section 893.035, Florida Statutes, adds any substance regulated hereunder to
23 the controlled substance schedules in Section 893.03, Florida Statutes, then upon the
24 effective date of such rule, the provisions of this Article addressed by the rule shall no
25 longer be effective. Any violations of this Article committed prior to the Florida
26 Attorney General promulgating such rules may be prosecuted.

27
28 **3-54. Enforcement and Penalties.**

29 (a) A person who violates this subsection commits a misdemeanor of the second degree,
30 punishable as provided for by law.

31 (b) This Article may be enforced in the same manner as any other violation of the Lake
32 County Code through the code enforcement process. In the event the County enforces this
33 Section utilizing the code enforcement process, the recommended penalty for a violation of this
34 Article is a fine of five hundred dollars (\$500.00) for the first offense and one thousand dollars
35 (\$1,000.00) for any repeat violation within five (5) years of a previous offense.

36 (c) Law enforcement officers shall be designated as code enforcement officers for the
37 purposes of issuing notices of violation pursuant to Chapter 8, Lake County Code, and Chapter
38 162, Florida Statutes, and shall have the power to enforce this section through the code
39 enforcement process.

40 (d) The County shall have the authority to seek an injunction or declaratory relief against any
41 person violating the provisions of this section. In any action seeking an injunction or declaratory
42 relief, the County shall be entitled to collect its enforcement expenses, including forensic costs,
43 law enforcement costs, and reasonable attorney fees and costs incurred at trial and on appeal.

44
45 (e) The County shall have the ability to utilize any other action or enforcement method
46 allowable by law.

47
48 **3-55. Reserved.**

49

1 **Section 4. Renaming Chapter.** Chapter 3, Lake County Code, shall be renamed
2 from Alcoholic Beverages to Community Protection. The Table of Contents shall be replaced in
3 its entirety to read as follows:
4

5 **Chapter 3 COMMUNITY PROTECTION**

6 ARTICLE I – ~~IN GENERAL DEFINITIONS~~

7 ARTICLE II – ALCOHOLIC BEVERAGES

8 ARTICLE III- PUBLIC NUDITY

9 ARTICLE IV – ADULT ENTERTAINMENT

10 ARTICLE V - SYNTHETIC SUBSTANCES

11 ARTICLE VI – TOBACCO MERCHANDISING

12 ARTICLE VII – RESTRICTIONS FOR PERSON CONVICTED OF CERTAIN SEX
13 OFFENSES

14 ARTICLE VIII – PAIN MANAGEMENT CLINICS
15
16

17 **Section 5. Renumbering.** Article XI, Chapter 13, Lake County Code, entitled
18 Tobacco Merchandising, shall be renumbered and incorporated into Article VI, Chapter 3, as
19 follows:

<u>Old Section</u>	<u>New Section of Chapter 3</u>
ARTICLE XI	ARTICLE VI
Sec. 13-270	Sec. 3-56
Sec. 13-271	Sec. 3-57
Sec. 13-272	Sec. 3-58
Sec. 13-273	Sec. 3-59

26 *{The old sections shall be labeled as “Reserved” after the effective date of this ordinance.}*
27

28 **Section 6. Renumbering.** Section 14-7, Article I, Chapter 14, Lake County
29 Code, entitled Restrictions for Persons Convicted of Certain Sex Offenses, shall be renumbered
30 and incorporated into Article VII, Chapter 3, Section 3-60, Lake County Code. *{The old section*
31 *shall be labeled as “Reserved” after the effective date of this ordinance.}*
32

33 **Section 7. Renumbering.** Article VII, Chapter 14, Lake County Code, entitled
34 Pain Management Clinics, shall be renumbered and incorporated into Article VIII, Chapter 3, as
35 follows:

<u>Old Section</u>	<u>New Section of Chapter 3</u>
ARTICLE VII	ARTICLE VIII
Sec. 14-100	Sec. 3-61
Sec. 14-101	Sec. 3-62
Sec. 14-102	Sec. 3-63
Sec. 14-103	Sec. 3-64

42 *{The old sections shall be labeled as “Reserved” after the effective date of this ordinance.}*
43

44 **Section 8. Inclusion in the Code.** It is the intent of the Board of County
45 Commissioners that the provisions of this Ordinance shall become and be made a part of the Lake
46 County Code and that the sections of this Ordinance may be renumbered or re-lettered and the
47 word “ordinance” may be changed to “section,” “article,” or such other appropriate word or
48 phrase to accomplish such intentions.
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