

1 Drug Enforcement Administration (DEA) used its emergency scheduling
2 authority to temporarily control Mephedrone, Methylenedioxypropylone
3 (MDPV), Methylone, and other chemical compounds found in “bath salts”
4 finding that ingestion of these substances can cause serious injury and death.
5 The City Council also finds that death and serious injury can be caused by
6 bath salts.

7 (C) Spice and bath salts are synthetic intoxicants that endanger the
8 public. While distribution of these products is a violation of State law, the
9 available penalties do not appear to adequately deter vendors because the
10 profitability from the sale of these products may outweigh the risks associated
11 with prosecution. Manufacturers and vendors of synthetic intoxicants change
12 the names, labeling, or chemical composition of the products to avoid
13 prosecution. Consumers, including minors, quickly learn the name of the new
14 mock substance by word of mouth or on the internet. Businesses that
15 distribute synthetic intoxicants create a public nuisance in the City as defined
16 by State law and City ordinances.

17 (D) Emergency room physicians report that users of these products
18 experience serious side effects, including convulsions, anxiety, dangerously
19 elevated heart rates, increased blood pressure, vomiting, and disorientation.
20 According to February 8, 2012 data from the American Association of Poison
21 Control Centers, in one year there has been a greater than two-fold increase in
22 the number of calls about exposure to synthetic intoxicants.

23 (E) Field testing technology is inadequate in many cases and the
24 products being sold to the public have to be seized from the vendor and lab
25 tested. Lab testing is costly and time consuming. If a particular brand name
26 product is determined to be an illegal substance, that substance will often be
27 repackaged or relabeled by the time the police return to the business. This
28 subterfuge wastes police resources and further endangers the public.

29 (F) Synthetic Intoxicants tend to avoid drug testing methods used to
30 determine whether a person has consumed a controlled substance. Some of
31 the most dangerous consumers, those prohibited from consumption of illicit
32 drugs or alcohol by court orders or terms of probation, gravitate toward these
33 products because they are difficult to detect or undetectable.

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(G) Synthetic intoxicants endanger the health and safety of the community. This Ordinance is a remedial ordinance promulgated pursuant to the City’s home rule authority.

Section 3. DEFINITIONS.

BATH SALTS. The substance defined by NMSA 1978 § 30-31-6 (C) (20)-(25) and the addition of substances by State regulation, including, but not limited to, 16.19.20 NMAC, Section 65 as amended from time to time.

BUSINESS. The premises, whether it be a main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting business. The term “business” includes the sales persons on site.

BUSINESS DAY. Regular business hours Monday through Friday. The day the business receives a cease and desist order and notice of violation does not count as a business day. If the business has irregular hours or the hours are not posted, a business day shall be the next two full twenty-four hour week days after receipt of a cease and desist order and notice of violation.

BUSINESS OPERATOR. The person or persons on site at the business in actual or apparent control of the business during business hours.

BUSINESS REGISTRATION. The privilege to register to do business and the registration of a business under §§ 13-1-1 et seq. ROA 1994.

CEASE AND DESIST ORDER AND NOTICE OF VIOLATION. Documentation delivered to the business operator ordering the business closed for inspection and testing.

FINAL CEASE AND DESIST ORDER AND NOTICE OF VIOLATION. A Cease and Desist Order and Notice of Violation that was not appealed or was affirmed by a hearing officer or court.

LEGAL HOLIDAYS. The days described by Section 3-1-12 of this code of ordinances.

MAYOR. The Mayor of the City of Albuquerque or any person with authority from the Mayor to enforce the Synthetic Intoxicant Ordinance. The term includes, without limitation, the Mayor’s agents under § 1-1-98(B)(2)(a), and

1 any city employee authorized by law to commence a criminal action in the
2 Metropolitan Court.

3 **PERSON.** An individual, proprietorship, partnership, corporation,
4 association, or other legal entity.

5 **POLICE OFFICER.** A sworn member of the Albuquerque Police Department,
6 the Bernalillo County Sheriff’s Office or the New Mexico State Police.

7 **SALES PERSON.** Any agent or independent contractor of the business
8 employed or engaged to transact business with the public on the premises.

9 **SPICE.** A synthetic cannabinoid as defined by NMSA 1978, § 30-31-6 (2011), or
10 substances added to the definition of a synthetic cannabinoid by State
11 regulation, including, but not limited to, 16.19.20 NMAC, Section 65 as
12 amended from time to time.

13 **SYNTHETIC INTOXICANT.** Bath Salts or Spice.

14 **TRANSFER OF OWNERSHIP OR CONTROL** of a business.

15 (1) The sale, lease, or sublease of the business;

16 (2) The transfer of securities that constitute a controlling interest in
17 the business, whether by sale, exchange, or similar means; or

18 (3) The establishment of a trust, gift, or other similar legal device that
19 transfers the ownership or control of the business, except for transfer by
20 bequest or other operation of law upon the death of the person possessing the
21 ownership or control.

22 **Section 4. VIOLATION.**

23 It is a violation of the Synthetic Intoxicant Ordinance for a Business to
24 manufacture, stock, sell, distribute, dispense, possess, purchase, advertise
25 for sale, publicly display for sale, give, trade, offer to sell, order, or offer to
26 order a Synthetic Intoxicant.

27 **Section 5. ENFORCEMENT.**

28 (A) If the Mayor or a Police Officer has probable cause to believe a
29 violation has occurred, the Mayor or the Police Officer shall obtain a sample of
30 the substance believed to be a Synthetic Intoxicant. The sample shall be
31 tested by methods commonly utilized by law enforcement labs to determine
32 whether a substance is a Synthetic Intoxicant. If the test determines that the
33 substance is a Synthetic Intoxicant, the Mayor or the Police Officer shall issue

1 and deliver a Cease and Desist Order and Notice of Violation upon the
2 Business Operator and seize the entire inventory of the Synthetic Intoxicant
3 from the Business. The Cease and Desist Order and Notice of Violation shall
4 be filed with the City Clerk. When the Cease and Desist Order and Notice of
5 Violation is delivered to the Business, if the Mayor or a Police Officer has
6 probable cause to believe that the Synthetic Intoxicant has been relabeled,
7 repackaged or incorporated into other substances, those substances shall
8 also be seized and tested. If the test is negative, the inventory shall be
9 returned to the Business. The Transfer of Ownership or Control of the
10 Business does not avoid the seizure authorized by this paragraph.

11 (B) Upon receipt of the Cease and Desist Order and Notice of Violation
12 by the Business Operator, the Business shall immediately allow and not
13 interfere with the seizure of the inventory which is a Synthetic Intoxicant or is
14 reasonably believed to be a Synthetic Intoxicant that has been relabeled,
15 repackaged or incorporated into other substances. Any interference with the
16 seizure is a violation of the Synthetic Intoxicant Ordinance punishable
17 pursuant to § 1-1-99 ROA, 1994.

18 (C) If a Business is assessed a second Final Cease and Desist Order and
19 Notice of Violation within five years of a first Final Cease and Desist Order and
20 Notice of Violation, the Business shall close and cease transacting business
21 for three Business Days after the second Final Cease and Desist Order and
22 Notice of Violation is assessed. During the three day closure, the Mayor or a
23 Police Officer, in cooperation with other agencies if required, shall inspect the
24 premises, find and seize any remaining Synthetic Intoxicants or precursor
25 chemicals or materials on site. The Transfer of Ownership or Control of the
26 Business does not avoid the process authorized by this paragraph. No
27 inventory, merchandise, personal property, chattel property or other property
28 shall be received by or taken off the Business premises during closure unless
29 authorized by a Police Officer or the Mayor.

30 (D) If a Business is assessed a third Final Cease and Desist Order and
31 Notice of Violation within five years of a second Final Cease and Desist Order
32 and Notice of Violation, the Business shall cease conducting business in the
33 City and will be barred from Business Registration for a period of one year

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1 from the date the third Final Cease and Desist Order and Notice of Violation is
2 assessed. The Transfer of Ownership or Control of the Business does not
3 avoid the operation of this paragraph.

4 (E) The City of Albuquerque shall have the authority to seek an
5 injunction to compel compliance with the Synthetic Intoxicant Ordinance on
6 grounds that the Business is causing irreparable harm to the community by
7 distributing Synthetic Intoxicants.

8 Section 6. APPEAL.

9 (A) Upon delivery of a Cease and Desist Order and Notice of Violation,
10 the Business has ten days to appeal to a hearing officer under this Code of
11 Ordinances.

12 (B) The decision of the hearing officer may be appealed to a court of
13 competent jurisdiction.”

14 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
15 clause, word or phrase of this Ordinance is for any reason held to be invalid or
16 unenforceable by any court of competent jurisdiction, such decision shall not
17 affect the validity of the remaining provisions of this Ordinance. The Council
18 hereby declares that it would have passed this Ordinance and each section,
19 paragraph, sentence, clause, word or phrase thereof irrespective of any
20 provision being declared unconstitutional or otherwise invalid.

21 SECTION 3. COMPILATION. This Ordinance shall be incorporated in and
22 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

23 SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect five days
24 after publication by title and general summary.

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