

ARTICLE XIII. DESIGNER DRUGS

Sec. 62-345. General findings of fact.

- (a) Sarasota County has broad home rule powers granted by the Florida Constitution to enact ordinances which are not inconsistent with general or special law for the purposes of protecting the public health, safety, and welfare of its citizens. As recognized by the Second District Court of Appeal in *Edwards v. State*, 422 So. 2d 84 (Fla. 2d DCA 1982), nothing in Chapter 893, Florida Statutes, preempts local governments from regulating in the field of drug abuse control. Accordingly, because the regulation of Designer Drugs and Misbranded Consumer Commodities by the State of Florida is incomplete, and the activities of illicit recreational drug use threaten the health, safety and welfare of its citizens, Sarasota County may regulate Designer Drugs and Misbranded Consumer Commodities.
- (b) The use of Designer Drugs, on the rise in Sarasota County among high school students, has increased the number of vehicular accidents and subsequent deaths of youth aged 16 to 19. The Centers for Disease Control and Prevention (CDCP) report that vehicle accidents are the leading cause of death among young people between the ages of 16 and 19 and that these deaths are typically a result of a combination of both inexperience and impaired cognitive and motor abilities due to drug use.
- (c) The process for labeling dangerous drugs on Schedule I of the federal Controlled Substances Act involves a labored and time-consuming process involving evaluation by the Attorney General with the Drug Enforcement Administration and U.S. Department of Health and Human Services. This process limits the ability of prosecutors to charge suspects with drug-related offenses. By the time federal government officials have listed a key ingredient on Schedule I, synthetic drug makers are already distributing newly formulated substances that do not match anything on it.
- (d) Congress enacted the Synthetic Drug Abuse Prevention Act of 2012, which added 31 chemicals used to make synthetic drugs and extended the DEA's emergency scheduling authority. But there is question as to whether this act is effective because of the appearance of newly formulated substances.
- (e) The Federal Analog Act bans substances that are substantially similar in structure and pharmacological effect to controlled substances. However, the substance must be "intended for human consumption."
- (f) During the 2011 session, the Florida Legislature passed HB 1039, Chapter 2011-90, Laws of Florida, which added synthetic stimulants to Schedule I of Florida's controlled substances schedule. Following passage of HB 1039, chemists reconfigured the particular synthetic drugs made illegal by HB 1039, and marketed new products not illegal under Florida law.
- (g) During the 2012 session, the Florida Legislature passed HB 1175, Chapter 2012-23, Laws of Florida, which added dozens of additional drugs to Schedule I of Florida's controlled substance schedule.
- (h) During the 2013 session, the Florida Legislature passed SB 294, Chapter 2013, Laws of Florida, which added additional synthetic drugs to Schedule I of Florida's controlled substance schedule. The new law codified the Attorney General's emergency rule that included several new synthetic cannabinoids, substitute cathinones, and phenethylamines as Schedule I controlled substances.
- (i) F.S. § 893.035, grants the Attorney General rulemaking authority to add new substances to Florida's schedules of controlled substances. However, this process can take time.

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- (j) Despite the best efforts of federal and state legislators to outlaw Designer Drugs, chemists reconfigured the banned substances to produce new synthetic drugs. By altering the molecular structure of the chemicals used in the products, the manufacturers, distributors, and retailers avoid regulation of these Designer Drugs.
 - (k) The consumption of products labeled not for human consumption, for fragrant purposes only, or other similar artifices to avoid regulation creates a public nuisance due to the health hazards associated with the consumption.
 - (l) Designer Drugs are commonly used as alternatives to Controlled Substances. The packaging of Designer Drugs is particularly appealing to youth, who may not know how potentially dangerous such products are to their health.
 - (m) Manufacturers of Designer Drugs often use a disclaimer that the product is "not for human consumption" or "for fragrant purposes only" to avoid regulations requiring the manufacturer to list the product's active ingredients. The products are labeled as incense, bath salts, plant food, or other substance to avoid such regulations.
 - (n) Manufacturers and chemists can quickly create new Designer Drugs once federal or state law makes a particular drug illegal. Therefore, the Board finds that there is a need to declare illegal the manufacture, transport, display, sale, or possession of Designer Drugs.
 - (o) Reducing the illicit use of Designer Drugs provide for better public health and safety of our community.
 - (p) Local regulation is necessary to complement state and federal laws regulating Designer Drugs.
- (Ord. No. 2014-013, § 2, 2-12-2014)

Sec. 62-346. Specific findings of fact regarding synthetic cannabis.

- (a) Synthetic Cannabis, also known as "Spice," "K2," and other names, is typically created by spraying, applying, mixing or otherwise adding synthetic chemicals to natural herbs, plant material, and/or spices that, when consumed, allegedly mimic the effects of cannabis. The synthetic compounds are often similar to tetrahydrocannabinol ("THC"), the psychoactive ingredient in marijuana. Synthetic Cannabis is often sold in convenience stores, tobacco shops, head shops, and over the internet. Sometimes it is marketed as herbal incense that can be smoked, or is found in liquid form to be smoked through an electronic cigarette. It is also found as a food additive.
- (b) Synthetic Cannabis can produce pharmacological effects similar to those induced by marijuana when smoked or ingested.
- (c) Synthetic Cannabis produces physiological effects such as vomiting, increased heart rate and blood pressure, reduced blood supply to the heart associated with heart attacks, withdrawal and addiction symptoms, and unknown long term consequences. According to the Center for Disease Control (CDC), synthetic marijuana has been causally linked to serious kidney damage requiring hemodialysis.
- (d) Synthetic Cannabis produces psychological effects such as paranoia, panic attacks, and giddiness, extreme anxiety, hallucinations, altered perceptions, violent behavior, and other psychotic effects.
- (e) According to the Substance Abuse and Mental Health Services Administration, in 2010, the public health surveillance system that monitors drug-related Emergency Department visits in the U.S. reported that 44 percent of emergency department patients displaying symptoms associated with Synthetic Cannabis use were aged 12 to 17.
- (f) The National Institute on Drug Abuse observes that many wrongly perceive Synthetic Cannabis as a safe alternative to marijuana, in part because it is advertised as a natural mixture of legal herbs. The packaging fails to disclose that the active ingredients are both harmful and illegal.

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- (g) According to the 2012 Florida Use Substance Abuse Survey conducted by the Florida Department of Children and Families and the Executive Office of the Governor, 21.7 percent of Sarasota County high school students use synthetic marijuana compared to 13.0 percent of all Florida high school students.
 - (h) According to the Florida Department of Children and Families, the use of Synthetic Cannabis among Florida 9th graders increased 78 percent in the single year 2011-2012, and use among 11th graders increased 48 percent in the same time period.
 - (i) According to a 2013 study by the Institute of Forensic Medicine at the University of Bonn, Germany, "Consumption of synthetic cannabinoids can lead to impairment similar to typical performance deficits caused by cannabis use which are not compatible with safe driving."
 - (j) Synthetic Cannabis does not produce positive test results in drug testing for the presence of cannabis. It must be detected using specialized blood and urine tests not typically used by law enforcement and hospital emergency departments.

(Ord. No. 2014-013, § 3, 2-12-2014)

Sec. 62-347. Specific findings of fact regarding synthetic cathinones.

- (a) Synthetic Cathinones, commonly referred to as bath salts, are an emerging family of drugs containing one or more synthetic chemicals related to cathinone, an amphetamine-like central nervous system stimulant found naturally in the Khat plant, producing pharmacological effects similar to those induced by methamphetamine, ecstasy, or cocaine. Like Synthetic Cannabis, Substitute Cathinones are sold in various retail stores, tobacco shops, head shops, and over the internet. They are usually sold in powder, tablet, or capsule form, and can be inhaled, eaten, smoked, or put into solution and injected.
- (b) Substitute Cathinones can produce physiological effects such as nausea and vomiting, nosebleeds, sweating rapid heart rate (sometimes leading to heart attack or stroke), chest pains, and even death.
- (c) Substitute Cathinones can produce psychological effects such as agitation, insomnia, irritability, depression, paranoia, delusions, suicidal thoughts, and panic attacks.
- (d) Synthetic Cathinone users also report effects such as impaired perception of reality, reduced motor control, and decreased ability to think clearly.
- (e) According to a just-released September 18, 2013 national study by the Substance Abuse and Mental Health Services Administration (SAMHSA), there were almost 23,000 emergency department visits for "bath salts." Further, 33 percent of the visits involved bath salts only, 15 percent involved bath salts combined with marijuana or Synthetic Cannabis, and 52 percent involved bath salts combined with other drugs.
- (f) Substitute Cathinones do not produce positive test results in a typical drug urine screen. It must be detected using specialized blood and urine tests not typically used by law enforcement and hospital emergency departments.

(Ord. No. 2014-013, § 4, 2-12-2014)

Sec. 62-348. Specific findings of fact regarding Kratom.

- (a) Due to its psychotropic and addictive nature, the U.S. Army and Navy banned use of Kratom and the Drug Enforcement Agency has placed Kratom on the DEA Watch List.
- (b) Kratom has been shown to be addictive, evidencing a clear set of effects and side effects, ranging from dry mouth, insomnia, and anorexia to hallucinations, delusion, and confusion, and a consistent withdrawal syndrome (including symptoms of limb spasticity, hostility, aggression, and emotional lability).

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- (c) Despite its dangers in use, Kratom is promoted as a legal psychoactive product.
 - (d) Kratom is not currently scheduled under the Controlled Substances Act, but is controlled in Thailand, Malaysia, and Myanmar, where it is indigenous.

(Ord. No. 2014-013, § 5, 2-12-2014)

Sec. 62-349. Applicability.

This Article shall be applicable in both the unincorporated and incorporated areas of Sarasota County, except to the extent that a municipality has adopted or adopts its own ordinance in conflict with this article. To the extent that this article is applicable within a municipality, the County and the municipality shall have concurrent authority and jurisdiction to apply and enforce the ordinance within the entirety of their jurisdictional boundaries.

(Ord. No. 2014-013, § 6, 2-12-2014)

Sec. 62-350. Definitions.

For purposes of this Article, the following definitions shall apply:

Bona Fide Use shall mean a lawful use of a substance as set forth in Section 62-351 of this Code.

Code Enforcement Officer means any designated employee or agent of Sarasota County whose duty it is to enforce codes and ordinances enacted by Sarasota County, or designated employee or agent of the municipalities whose duty is to enforce codes and ordinances of the municipalities, respectively. Employees or agents who may be Code Enforcement Officers for purposes of this Article may include, but are not limited to, code inspectors, law enforcement officers and law enforcement civilian employees, animal control officers, building inspectors, or fire safety inspectors.

Consumer Commodity shall mean any tangible good, such as products or merchandise, as distinguished from services, which is customarily produced or distributed for sale through Retail Sales for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.

Controlled Substance means any of the controlled substances listed in Schedules I-V in F.S. § 893.03, as may be amended from time to time, or as promulgated by the Department of Legal Affairs, from time to time.

Designer Drug shall have the same meaning as specified in Section 62-351 of this Code.

Drug shall have the same meaning as specified in F.S. § 499.003 as may be amended from time to time.

Kratom (Mitragyna speciosa korth) is a tropical tree indigenous to Thailand, Malaysia, Myanmar and other areas of Southeast Asia used as an herbal drug whose primary active alkaloid is mitragynine described as producing both stimulant, sedative, and hallucinogenic effects at various doses.

Label means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing on a package containing any Consumer Commodity.

Misbranded Consumer Commodities shall mean any Consumer Commodity with a Label that does not meet the requirements of this Article.

Package or Packaging means any container or wrapping in which a Consumer Commodity is enclosed for use in the delivery or display of that Consumer Commodity to retail purchasers, but does not include:

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- (1) Shipping containers or wrappings used solely for the transportation of any Consumer Commodity in bulk or in quantity to manufacturers, packers, or processor, or to wholesale or retail distributors thereof; or
 - (2) Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrapping bear no printed matter pertaining to any particular commodity.

Person means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Principal Display Panel means that part of a Label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

Retail Sales shall mean the Sales Oriented Principal Uses outlined in Chapter 124 of this Code.

Substituted Cathinone means any synthetic derivative of cathinone (except bupropion).

Synthetic Cannabis means a drug created by spraying, applying, mixing or otherwise adding synthetic chemicals to natural herbs, plant material, and/or spices that, when consumed, allegedly mimic the effects of cannabis. It is often known by the brand names "K2," "Spice," and other names. Synthetic cannabis includes, but is not limited to, naphthoylindoles, naphthylmethylindenes, naphthoylpyrroles, phenylacetylindoles, cyclohexylphenols, adamantoylindoles, benzoylindoles, or cyclopropanols.

(Ord. No. 2014-013, § 7, 2-12-2014; Ord. No. 2018-047, § 3B., 11-27-2018)

Sec. 62-351. Regulation of designer drugs and misbranded consumer commodities.

- (a) *Prohibitions—Designer Drugs.* It shall be a violation of this Article for any Person to do any of the following:
 - (1) Alter the chemical structure of any Controlled Substance, Drug, medicine, or other substance to create a Designer Drug.
 - (2) Manufacture or otherwise create a Designer Drug.
 - (3) Package a Designer Drug.
 - (4) Transport a Designer Drug.
 - (5) Possess a Designer Drug.
 - (6) Display, offer for sale, sell, deliver or purchase a Designer Drug.
- (b) *Prima Facie Evidence—Designer Drug.* A Designer Drug is:
 - (1) Any capsule, pill, powder, liquid, vegetative material, product, or other substance, however constituted, including but not limited to any Synthetic Cannabis, Substituted Cathinone, or Kratom.
 - (2) Designed, intended, marketed, manufactured, engineered, or otherwise in furtherance of impairing a person's normal faculties.
 - (3) Designed to be injected, ingested, inhaled or otherwise introduced into the human body.
 - (4) In determining whether a product is a Designer Drug, a court, Code Enforcement Special Magistrate, or jury shall consider, in addition to all other logically relevant factors, the following:
 - a. The Packaging of the substance indicates, suggests, or implies that a product mimics the pharmacological effects of any Controlled Substance through euphoric pleasure, heightened

senses, increased orgasm, relaxation, awareness, focuses energy, energizes, improves memory, improves dreams, or provides mood alteration or enhancement.

- b. The Packaging of the substance claims that it is a homeopathic, herbal, or natural substitute for a Controlled Substance.
- c. The name of the substance uses slang referencing a street drug or Controlled Substance, including but not limited to any of the following: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High Atomic, G-20, Guerilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OGM, Demon, Barely In, Pineapple Express, Haze, Bliss, Blue Silk, Drone, Energy-1, Ivory Wave, Lunar Wave, Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightening, Blizzard, Bonzai Grow, Charge Plus, Charlie Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, or MCAT.
- d. The substance resembles a Controlled Substance in its appearance.
- e. The quantity of the substance indicates, suggests, or implies that the product is intended for individual human consumption, such small amounts that might be injected, ingested, inhaled, or otherwise introduced into the human body within a short time period.
- f. The display of the substance near or alongside other products intended for human consumptions indicates, suggests, or implies that the product is also intended for human consumption.
- g. There is a significant difference between the price at which the substance is sold and the price for which a substance of that type (i.e., potpourri, plant food, eyeglass cleaner, bath salts, incense, etc.) is normally sold.
- h. The seller provides oral or written statements or representations concerning the substance that indicates the method, use, or effect of the product as part of human consumption.
- i. The Packaging of the substance fails to list all active ingredients or compounds.
- j. The Packaging of the substance falsely lists its active ingredients or compounds.
- k. The Packaging of the substance fails to accurately identify the commodity contained inside.
- l. The Packaging of the substance fails to identify, or inaccurately identifies, the quantity of the commodity contained inside.
- m. The Packaging of the substance fails to identify the name and place of business of the manufacturer, packer, or distributor.
- n. The Packaging of the substance contains false information about the name and place of business of the manufacturer, packer, or distributor.
- o. The Packaging is surreptitious in its attempts to hide the true nature of the substance through the use of materials commonly associated with transport or sale of Controlled Substances such as tinfoil, plastic bags, balloons, cigarette cartons, cigar tubes, etc.
- p. The substance is sold using a code word or password.

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- q. The substance is not kept in open display, but rather behind a counter or otherwise hidden from the ordinary view of the public.
 - r. The substance is kept in close proximity to drug paraphernalia, as that term is defined in F.S. § 893.145 as may be amended from time to time.
 - s. The substance acts as a stimulant, depressant, hallucinogen, or otherwise has a psychoactive effect on the central nervous system.
 - t. The substance tested has a chemical structure similar to substances in the same drug classification as a Controlled Substance.
- (c) *Prohibitions—Misbranded Consumer Commodities.* It shall be a violation of this Article for any Person to do any of the following:
- (1) Manufacture or otherwise create a Misbranded Consumer Commodity.
 - (2) Transport a Misbranded Consumer Commodity.
 - (3) Possess a Misbranded Consumer Commodity.
 - (4) Display, offer for sale, sell, deliver or purchase a Misbranded Consumer Commodity.
 - (5) Possess with intent to sell a Misbranded Consumer Commodity.
- (d) *Packaging and Labeling Requirements.* A Consumer Commodity is a Misbranded Consumer Commodity when it is in a Package with a Label that does not conform to the following provisions:
- (1) The Label must correctly provide the identity of the Consumer Commodity. A failure to provide the identity of the Consumer Commodity, or providing a false identity, shall both be treated as misbranding.
 - (2) The Label must correctly provide name and place of business of the manufacturer, packer, or distributor. A failure to provide the name and place of business, or providing false information regarding same, shall both be treated as misbranding.
 - (3) The Label must correctly list the active ingredients in the Consumer Commodity. A failure to list active ingredients, or providing a false list of active ingredients, shall both be treated as misbranding.
 - (4) The Label must provide the net quantity of the contents (in terms of weight or mass, measure, or numerical count) in a uniform location upon the Principal Display Panel of that Label.
- (e) *Prohibition—Aiding a Violation.* It is a violation of this Article for any person to intentionally aid another in the violation of this Article, consistent with and in the same manner as set forth in the provisions of Chapter 777, Florida Statutes.
- (f) *Exemptions and Affirmative Defense of Bona Fide Use.* It shall be an affirmative defense to a violation of this Article when a person can prove that a substance has a Bona Fide Use and is therefore exempt from the provisions of this Article, notwithstanding any prima facie evidence to the contrary. In determining whether a product has a Bona Fide Use and is therefore exempt, a court, Code Enforcement Special Magistrate, or jury shall consider, in addition to the absence of indicia of the logically relevant factors outlined in subsection (2) of this section, evidence or argument from the alleged violator that the substance is in compliance with the following laws:
- (1) the Florida Comprehensive Drug Abuse Prevention and Control Act (Chapter 893, Florida Statutes) and any regulations promulgated pursuant thereto;
 - (2) the Florida Drug and Cosmetic Act (F.S. ch. 499) and any regulations promulgated thereto;
 - (3) the Florida Food Safety Act (F.S. ch. 500) and any regulations promulgated thereto;

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- (4) the Florida statutory provisions under the chapter governing Tobacco Products (F.S. ch. 569) and the regulations governing the tobacco industry enforced by the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco;
 - (5) The regulations of the Florida Department of Agriculture and Consumer Services;
 - (6) The Federal Controlled Substances Act (21 U.S.C. §§ 801 et seq.) and any regulations promulgated pursuant thereto;
 - (7) The Federal Fair Packaging and Labeling Act (15 U.S.C. §§ 1451 et seq.) and any regulations promulgated pursuant thereto.
 - (8) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.) and any regulations promulgated pursuant thereto.
 - (9) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136) and any regulations promulgated pursuant thereto.
 - (10) The Federal Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.) and any regulations promulgated pursuant thereto.

For the purposes of this affirmative defense, the mere non-regulation of a particular substance by these acts, rules, or agencies, without a specific regulatory exemption, will not render a substance one which has a Bona Fide Use.

- (g) *Inspection.* Code Enforcement Officers may enter and inspect any retail establishment open to the public to determine compliance with federal law, Florida Statutes and rules, and this Article. Entry and inspection shall be limited to only those times where the retail establishment is open for business. No person who operates a retail establishment shall refuse to permit a lawful inspection of those areas open to the public by a Code Enforcement Officer. In the event that a retail establishment refuses a lawful inspection, then a Code Enforcement Officer may seek all remedies available in law or equity, including but not limited to an inspection warrant pursuant to F.S. §§ 933.20—933.30, search warrant, subpoena after any required notice, or other court order from a court of competent jurisdiction.
- (h) *Seizure and Destruction of Designer Drugs and Misbranded Consumer Commodities.* All Designer Drugs and Misbranded Consumer Commodities may be seized by Code Enforcement Officers and may be destroyed in the same manner used to destroy Controlled Substances once the seized item(s) no longer possess evidentiary value in any judicial or code enforcement proceeding. Any items seized pursuant to a violation of this Article shall no longer possess evidentiary value in the event of any of the following:
 - (1) The Code Enforcement Special Magistrate enters a compliance order after an evidentiary hearing and the time for filing any appeal has passed;
 - (2) A court of competent jurisdiction enters a judgment finding a person liable for a misdemeanor offense, regardless of whether the person is adjudicated, and the time for filing any appeal has passed;
 - (3) A court of competent jurisdiction enters a judgment otherwise finding a violation of this Article, and the time for filing any appeal has passed; or
 - (4) A person enters a plea of guilty or no contest, regardless of whether the person is adjudicated, or completes a pre-trial diversion program, for a violation of this Article.
- (i) *Return of Alleged Designer Drugs or Misbranded Consumer Commodities.* Notwithstanding any other remedies available under the law, no alleged Designer Drug or Misbranded Consumer Commodity seized by any Code Enforcement Officer shall be returned without a court order:
 - (1) Identifying the rightful owner when multiple claims of ownership are made;
 - (2) Determining by a preponderance of the evidence that the substance is not a Designer Drug or Misbranded Consumer Commodity; and

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- (3) Determining that the alleged Designer Drug or Misbranded Consumer Commodity no longer possesses evidentiary value.

The person claiming ownership of the alleged Designer Drug or Misbranded Consumer Commodity shall provide notice to the seizing agency and all parties to any litigation to provide an opportunity to be heard at any hearing, prior to issuance of any court order.

- (j) *Landlord Responsibility.* It is a violation of this Article for any landlord which knows, or in the exercise of reasonable care should know, that a retail establishment is operating in violation of this Article. A landlord shall have the legal duty to stop or take reasonable steps to prevent violations of this Article on the leased premises. In the absence of direct evidence establishing the landlord's knowledge of unlawful activities, a Code Enforcement Officer shall provide notice of the requirements of this Article to a landlord through either a Notice of Violation or other written notice consistent with the provisions of Chapter 162, Florida Statutes, before charging a landlord with either a criminal or civil violation of this Article. The Notice of Violation or other written notice shall provide the landlord with a reasonable opportunity to correct the violation.
- (k) *Declaration of Public Nuisance and Enabling Private Attorney General.* Designer Drugs and Misbranded Consumer Commodities are hereby declared to be a public nuisance. Therefore, any person including any local government or constitutional officer may institute proceedings in the courts of Florida to enforce the prohibitions of this Article, or seek damages associated with its violation, including but not limited to medical expenses and wrongful death. Upon prevailing, any such plaintiff shall be entitled to reasonable costs of enforcement, including attorneys' fees. Additionally, each plaintiff shall be entitled to treble damages resulting from any violation. Notwithstanding this language, nothing herein shall create an obligation on local governments or constitutional officers or any waiver of sovereign immunity under section 768.28, Florida Statutes.
- (l) *Savings Clause.* Nothing in this Article is intended to conflict with the provisions of the Florida Constitution or Florida Statute. In the event of direct and express conflict between the Article and either the Florida Constitution or Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, control. In the event that the United States government or State of Florida amend the law to include a particular substance as being regulated under one of the controlled substance schedules, then upon the effective date of such enactment, the portion of the provisions of this Article addressed by that law shall no longer be effective. Any violations of this Article committed prior to the effective date of such law may be prosecuted.

(Ord. No. 2014-013, § 8, 2-12-2014)

Sec. 62-352. Violations and penalties.

- (a) *Federal and State Law Incorporated by Reference.* All violations of Florida Statutes and rules promulgated by state agencies regarding Designer Drugs or Misbranded Consumer Commodities as may be enacted from time to time shall also constitute violations of this Article.
- (b) *Investigation of Code Violations.* Investigations related to possible violations of this Article shall be conducted by Code Enforcement Officers. Any Code Enforcement Officer may seek all available remedies in law or equity, including but not limited to an injunction from a court of competent jurisdiction to enforce or restrict any relevant law.
- (c) *Code Enforcement Process.* All violations of this Article may be processed according to Chapter 2, Article VIII, of the Sarasota County Code of Ordinances, per the provisions of any municipal ordinances for code enforcement, as applicable, and per provisions of Parts I or II of F.S. ch. 162, as may be applicable. A Code Enforcement Officer is specifically authorized to issue a citation for each violation, consistent with the provisions of Part II of Chapter 162.

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- (d) *Separate and Distinct Offenses.* Each day of any such violation shall constitute a separate and distinct offense. Further, each separately packaged substance that contains a Designer Drug or a Misbranded Consumer Commodity shall constitute a separate and distinct offense or cause of action.
- (e) *Revocation of Certificate of Occupancy.* For violation of this Article, a retail establishment may have its Certificate of Occupancy revoked or placed on probation up to a period of six months for the first violation, and one year for any following violations, by the Code Enforcement Special Magistrate. A retail establishment cannot provide goods or services to the public without a Certificate of Occupancy. In determining the necessity or length of probation or revocation, the Code Enforcement Special Magistrate shall take into consideration the following factors in making a decision:
- (1) The gravity of any violation, including the probability that death or serious physical or emotional harm may occur;
 - (2) The number of current violations;
 - (3) The number of repeat violations;
 - (4) The actions taken by the retail establishment to correct a violation;
 - (5) The financial benefits that the retail establishment derived from committing or continuing to commit the violation.
- (f) *Civil Fines.* Consistent with the provisions of Part II of Chapter 162, Florida Statutes, any civil citation issued pursuant to this Article may be contested in county court. The amount of a civil fine for a civil infraction shall not be less than \$250.00 for each violation, and may not exceed \$500.00, for each violation consistent with F.S. ch. 162. A civil fine in the amount of \$250.00 for each violation shall be assessed in each instance in which the person does not contest a citation in county court. In determining the amount of a civil fine for a citation or during a code enforcement proceeding, a county judge or Code Enforcement Special Magistrate, respectively, may take the following factors into consideration in making a decision:
- (1) The gravity of any violation, including the probability that death or serious physical or emotional harm may occur;
 - (2) The number of current violations;
 - (3) The number of repeat violations;
 - (4) The actions taken by the retail establishment to correct a violation;
 - (5) The financial benefits that the retail establishment derived from committing or continuing to commit the violation.
- (g) *Additional Remedies.* The County, or its municipalities, and any constitutional officer, may also enforce this Article by action in equity, including injunctive or declaratory relief, in the appropriate court of competent jurisdiction. In the event that the County, municipalities, or constitutional officer prevails in any such action, the County, municipalities, or constitutional officer shall be entitled to an award of its costs and reasonable attorneys' fees.
- (h) *Criminal Violation.* A person commits a misdemeanor, and shall be punished in the same manner as a misdemeanor, as provided by general law, when that person commits a violation of this Article.

(Ord. No. 2014-013, § 8, 2-12-2014)

Sec. 62-353. Severability.

It is declared to be the intent of the Board of County Commissioners that if any section, subsection, sentence, clause, phrase or provision of this article is for any reason held or declared to be invalid, unconstitutional,

inoperative or void, such ruling or holding shall not be so construed as to render invalid, unconstitutional, inoperative or void the remaining portions of this article. If this article or any provision thereof shall be held to be inapplicable to any person, property, or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

(Ord. No. 2014-013, § 9, 2-12-2014)