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ORDINANCE NO.: 13-02

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LIBERTY COUNTY, FLORIDA, PROHIBITING THE SALE, GIVING AWAY, OFFER OR ADVERTISEMENT FOR SALE, OR PUBLIC DISPLAY FOR SALE, OF SYNTHETIC CANNABINOID HERBAL INCENSE AND CONTRA-BAND BATH SALTS THAT MIMIC ILLEGAL DRUGS; PROVIDING DEFINITIONS; PROVIDING FOR SEIZURE AND INJUNCTIVE RELIEF; PROVIDING PENALTIES; AND PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, under the guise of herbal incense and bath salts, labeled “not for human consumption,” certain products sold at local commercial businesses contain chemical compounds designed as synthetic alternatives to controlled substances prohibited under federal or Florida law; and

WHEREAS, synthetic cannabinoids, commonly known as synthetic marijuana, are chemically engineered substances, similar to tetrahydrocannabinol (“THC”), the active ingredient in marijuana, that can produce pharmacological effects similar to those induced by marijuana when smoked or ingested; and

WHEREAS, synthetic cannabinoids have been developed over the last thirty (30) years for research purposes to investigate how cannabinoids interact with the human body; and

WHEREAS, bath salts are chemically engineered psychoactive substances, such as methylmethcathinone, 3,4-methylenedioxymethamphetamine (“MDMA”), 3,4-methylenedioxypropylamphetamine (“MDPV”), fluoromethcathinone, methcathinone, 3,4-methylenedioxymethcathinone (“MDMC”), methoxymethcathinone, and cathinone, which have a stimulant effect on the central nervous system and can produce pharmacological effects similar to those induced by methamphetamine, ecstasy, or cocaine when smoked or ingested; and

WHEREAS, no legitimate non-research uses have been identified for synthetic cannabinoids or bath salts, and they have not been approved by the United States Food and Drug Administration for human consumption; and

WHEREAS, products containing synthetic cannabinoids or bath salts are particularly attractive to children and young adults, due to packaging that resembles candy; and

WHEREAS, such products are available in small packages at convenience stores at minimal costs, and the names given to these substances are intended to appeal to children and young adults; and

WHEREAS, synthetic cannabinoids are typically marketed as herbal incense and are also known as Spice, Fake Pot, Fake Weed, K2, Sage, Genie, or Yucatan Fire, among other names; and

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WHEREAS, bath salts are typically marketed as therapeutic bath crystals, plant food, insect repellent, potpourri, iPod cleaner, or herbal incense, and are also known as Ivory Wave, Cloud Nine, Super Coke, Ocean Magic, Zoom, Vanilla Sky, White Lightning, Bliss, or Bonsai Grow, among other names; and

WHEREAS, synthetic cannabinoids and bath salts may currently be purchased legally for use as an alternative to substances otherwise regulated as controlled substances at the federal and state levels; and

WHEREAS, despite often being labeled as "not for human consumption," synthetic cannabinoids and bath salts are being used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of becoming intoxicated; and

WHEREAS, despite these claims, synthetic cannabinoids and bath salts are often more potent and dangerous than the illegal drugs that they mimic; and

WHEREAS, synthetic cannabinoids and bath salts have been found readily available to adults and youth alike at convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, and truck stops, among other locations, and are reportedly being used predominately by the youth; and

WHEREAS, synthetic cannabinoids and bath salts are abused typically by smoking; however, bath salts have also been abused by injection, snorting, swallowing, and by the use of an atomizer; and

WHEREAS, reports of side effects from synthetic cannabinoids and bath salts include tachycardia, hypertension, anxiety, paranoia, high blood pressure, kidney failure, liver failure, and hallucinations; and

WHEREAS, emergency room physicians have reported that individuals using synthetic cannabinoids and bath salts experience serious side effects including convulsions, seizures, anxiety attacks, combativeness, delirium, panic, dangerously elevated heart rates, increased blood pressure, vomiting, and disorientation; and

WHEREAS, there have been fatal overdoses and suicides which are believed to have resulted from consumption of synthetic cannabinoids and bath salts;

WHEREAS, the American Association of Poison Control Centers has reported increased calls in recent years to poison control centers across the United States related to exposure to synthetic cannabinoids, with 2,906 calls in 2010; 6,959 calls in 2011; and 2,389 calls in the first four (4) months of 2012; and

WHEREAS, the American Association of Poison Control Centers has reported increased calls in recent years to poison control centers across the United States related to exposure to bath salts, with 304 calls in 2010; 6,138 calls in 2011; and 1,007 calls in the first four (4) months of 2012; and

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WHEREAS, Chapter 893, Florida Statutes, sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five (5) schedules, which are used to regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein; and

WHEREAS, the distinguishing factors between each of the different drug schedules are the potential for abuse of the substance listed in each schedule and whether there is a currently accepted medical use for the substance; and

WHEREAS, Schedule I substances, such as cannabis, THC, cathinone, methylenedioxymethamphetamine, ecstasy, and cocaine have a high potential for abuse and have no currently accepted medical use in Florida; and

WHEREAS, on May 31, 2011, the Governor of Florida signed Session Law 2011-73 ("HB 39"), which amended Section 893.03, Florida Statutes, by adding several synthetic cannabinoids and synthetic cannabinoid-mimicking compounds to Schedule I of Florida's controlled substance schedule, authorizing law enforcement officials and prosecutors to arrest and prosecute the possession and sale of these particular substances under Florida law; and

WHEREAS, following passage of HB 39 and HB 1039, chemists reconfigured the particular synthetic cannabinoids and bath salts made illegal by HB 39 and HB 1039 and marketed new products that were not illegal under Florida law; and

WHEREAS, on March 23, 2012, the Governor of Florida signed Session law 2012-23 (HB 1175), which amended Section 893.03, Florida Statutes, by adding several additional synthetic cannabinoid and bath salt chemical compounds to Schedule I of Florida's controlled substance schedule; and

WHEREAS, on May 31, 2011, the Governor of Florida also signed Session Law 2011-90 ("HB 1039"), which amended Section 893.03, Florida Statutes, by adding bath salts to Schedule I of Florida's controlled substance schedule, authorizing law enforcement officials and prosecutors to arrest and prosecute the possession and sale of these particular substances under Florida law; and

WHEREAS, it is anticipated that drug designers and chemists will again take the particular chemical compounds that the Legislature made illegal during the 2012 session and reconfigure the molecular structure of the compounds, resulting in a similar structural make-up, but using new and different chemical compounds not listed as controlled substances in Chapter 893, Florida Statutes, and therefore not illegal; and

WHEREAS, these reconfigured synthetic cannabinoids and bath salts will likely nonetheless carry the same, or perhaps even further, heightened dangers associated with illegal drugs; and

WHEREAS, Section 893.035, Florida Statutes, grants Florida's Attorney General rulemaking authority to add new substances to Florida's schedules of controlled substances, but the rulemaking process can take time; and

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WHEREAS, across the United States, numerous other counties, municipalities, and states are taking action to prohibit the sale of synthetic cannabinoids and bath salts due to overdoses and illnesses; and

WHEREAS, the distribution and sale of synthetic cannabinoids and bath salts have a substantial and detrimental impact on the public health, safety and welfare of the residents of Liberty County; and

WHEREAS, synthetic cannabinoids and bath salt products pose public health safety, and welfare issues for the County and it is, therefore, necessary to identify and control new substances that mimic illegal drugs,

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LIBERTY COUNTY, FLORIDA AS FOLLOWS:

- 1. The sale, giving away, offer or advertisement for sale, or public display for sale, of synthetic cannabinoid herbal incense and contraband bath salts are hereby prohibited.**

Any person violating any provision of this section may be prosecuted in accordance with Section 125.69, Florida Statutes, and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment not to exceed sixty (60) days in the County jail, or by both such fine and imprisonment.

- 2. Purpose and Intent.** The Liberty County Board of County Commissioners ("Board") finds and declares that the products and synthetic substances described hereunder are commonly used as alternatives to marijuana, psychoactive drugs, stimulants, and other illegal drugs. The Board finds that these synthetic substances are particularly appealing to youth, are potentially dangerous to users in the short term, and the long term effects are not yet known. The Board finds that products which contain these synthetic substances often use a disclaimer that the product is "not for human consumption," in order to avoid regulations requiring the manufacturer to list the product's active ingredients. The Board finds that drug designers and chemists can quickly create new synthetic drugs and stimulants once federal or state law makes a particular synthetic drug or stimulant illegal. As such, the Board finds that there is a need to declare illegal the sale, giving away, offer or advertisement for sale, and public display for sale, of synthetic substances that mimic illegal controlled substances, which have not yet been categorized as illegal controlled substances under federal or state law. The Board further finds that it is proper and necessary for the Board to exercise its authority to safeguard and protect the public health, safety, and welfare by taking this action.
- 3. Application.** This section shall be applicable in the incorporated and unincorporated areas of Liberty County, with the enforcement of this section in the unincorporated areas being the responsibility of Liberty County and the enforcement of this section in the incorporated areas being the responsibility of the respective municipalities.

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that indicates, suggests, or implies that a product mimics the pharmacological effects of marijuana, such as "fake pot" or "fake weed," shall create a presumption that the product contains a synthetic drug, as defined herein. "Synthetic drug" shall not include any substance currently listed in the controlled substance schedules in Chapter 893, Florida Statutes, as amended, or otherwise prohibited by federal or state law.

(f) *Synthetic stimulant* shall mean any chemical or mixture of chemicals, however packaged, that has a stimulant effect on the central nervous system and is structurally similar to fluoromethcathinone, 3,4-methylenedioxypropylamphetamine ("MDPV"), cathinone, methylmethcathinone, methoxymethcathinone, methcathinone, 3,4-methylenedioxymethamphetamine ("MDMA"), 3,4-methylenedioxymethcathinone ("MDMC"), or any mimicking compounds of such chemicals, including related salts, isomers, and salts of isomers that are listed in the controlled substance schedules in Chapter 893, Florida Statutes, as amended, or otherwise prohibited by federal or state law. Packaging that indicates, suggests, or implies that a product mimics the pharmacological effects of cathinone, methcathinone, methylemethcathinone, MDPV, MDMC, MDMA, methoxymethcathinone, fluoromethcathinone, amphetamine, ecstasy, or cocaine shall create a presumption that the product contains a synthetic stimulant, as defined herein. "Synthetic stimulant" shall not include any substance currently listed in the controlled substance schedules in Chapter 893, Florida Statutes, as amended, or otherwise prohibited by federal or state law.

6. ***Sale, giving away, offer or advertisement for sale, or public display for sale, of synthetic cannabinoid herbal incense and contraband bath salts prohibited.*** It shall be unlawful for any person to sell, give away, offer or advertise for sale, or publicly display for sale, synthetic cannabinoid herbal incense and contraband bath salts, as defined herein.
7. ***Affirmative defense.*** It shall be an affirmative defense to prosecution of a violation of this section if the sale, giving away, offer or advertisement for sale, or public display for sale, of any synthetic cannabinoid herbal incense or contraband bath salts is pursuant to the direction or prescription of a licensed physician or dentist authorized in the state of Florida to direct or prescribe such synthetic substances.
8. ***Seizure and destruction of synthetic cannabinoid herbal incense and contraband bath salts.*** Synthetic cannabinoid herbal incense and contraband bath salts prohibited herein may be seized by law enforcement officers and may be destroyed in the same manner used to destroy narcotics and contraband substances, after their use for evidentiary purposes in any judicial proceedings is no longer required.

9. ***Injunctive Relief.*** Liberty County shall have the authority to seek an injunction against any person violating the provisions of this section. In any action seeking an injunction, Liberty County shall be entitled to collect its enforcement expenses, including forensic costs, law enforcement costs, and reasonable attorney fees and costs incurred at trial and on appeal.
10. ***Subsequent federal or state action.*** Pursuant to Chapter 893, Florida Statutes, it is unlawful for any person to sell substances named or described in the controlled substance schedules of said chapter, and the state, the Department of Law Enforcement, and all peace officers of the state shall enforce said provisions. In recognition that Florida law preempts local government regulation of such controlled substances, the following limitations are placed on the prohibitions and restrictions contained in this section:
- (1) In the event that the United States Congress or a federal agency amends federal law to include a particular substance or otherwise enacts or amends a federal law providing for criminal penalties for the prohibitions of substances set forth in this Ordinance, then upon the effective date of such enactment or amendment, the provisions of this Ordinance addressed by federal law shall no longer be effective. Any violations of this Ordinance committed prior to Congress or a federal agency enacting such federal law may be prosecuted.
 - (2) In the event that the Florida Legislature amends the controlled substance schedules in Section 893.01, Florida Statutes, to include a particular substance or otherwise enacts or amends a state statute providing for criminal penalties for the prohibitions of substances set forth in this Ordinance, then upon the effective date of such enactment or amendment, the provisions of this Ordinance addressed by the state statute shall no longer be effective. Any violations of this Ordinance committed prior to the Florida Legislature enacting such statute may be prosecuted.
 - (3) In the event that the Florida Attorney General, pursuant to the rulemaking authority provided in Section 893.035, Florida Statutes, adds any substance regulated hereunder to the controlled substance schedules in Section 893.01, Florida Statutes, then upon the effective date of such rule, the provisions of this Ordinance addressed by the rule shall no longer be effective. Any violations of this Ordinance committed prior to the Florida Attorney General promulgating such rules may be prosecuted.
 - (4) Any person violating any provision of this section may be prosecuted in accordance with Section 125.69, Florida Statutes, and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment not to exceed sixty (60) days in the County jail, or by both such fine and imprisonment.
 - (5) Any person who violates any provision of this section and is convicted, pleads guilty, pleads nolo contendere, or imposed civil penalties against shall be ordered to pay all administrative fees and costs to the designated enforcement agency for the testing of the substance(s) collected and any other actual costs arising therefrom, as applicable to said violation.

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Section 2. SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

Section 3. EFFECTIVE DATE.

This Ordinance shall become effective as provided by law.

ENACTED on this 4th day of April, 2013.

**BOARD COUNTY COMMISSIONERS
LIBERTY COUNTY, FLORIDA**

BY: Jim Johnson
JIM JOHNSON, CHAIRMAN

ATTEST: Kathleen E. Brown
KATHLEEN E. BROWN
LIBERTY COUNTY CLERK OF COURT