

ORDINANCE NO. 11-368

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, TOWN OF MOUNT CARMEL, TENNESSEE BY ADDING PROVISIONS MAKING CERTAIN FINDINGS RELATIVE TO SYNTHETIC MARIJUANA, "BATH SALTS" AND SIMILAR COMPOUNDS; MAKING THE USE, PRODUCTION, MANUFACTURE, DISTRIBUTION, TRANSPORT, SELL, OFFERING FOR SALE, TRADE, BARTER, EXCHANGE OR PURCHASE OF CERTAIN SUBSTANCES UNLAWFUL; PROVIDING FOR CERTAIN EXCEPTIONS; FIXING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF THIS ORDINANCE; AND FIXING THE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE TOWN OF MOUNT CARMEL, as follows:

SECTION I. That the Code of Ordinances, Town of Mount Carmel, Tennessee, is hereby amended by adding the following new sections to be appropriately numbered to conform with the numbering system used in the Mount Carmel Municipal Code:

Sec. . Findings.

The board makes the following findings:

1) *Tenn. Code Anno. §39-17-438* pertaining to substances generally known as "synthetic marijuana" and *Tenn. Code Anno. §39-17-452* pertaining to substances generally known as "bath salts" govern certain actions regarding the substances listed in those statutes and certain synthetic derivatives or analogues of compounds listed therein, but the board has been informed that the chemical makeup of these synthetic drugs is or can be changed to avoid using the listed substances, while providing the same effect and detrimental health risk, making enforcement of such the statutes difficult and ineffective.

2) Synthetic marijuana and "bath salts" are being manufactured in a way to avoid the application of existing state and federal laws.

3) Studies have indicated that synthetic marijuana usage includes the dangers associated with using natural marijuana, with additional danger to the public health due, in part, to the unknown nature of any long term effects of this synthetically created substance.

4) The board finds that synthetic marijuana (synthetic cannabinoids) or compounds that emulate or simulate the effects of synthetic cannabinoids through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent have been developed such that it can create similar hallucinogenic qualities to natural marijuana and such items are now being possessed, distributed, and sold in the town.

5) The board finds a manufactured product known as "Bath Salts", "Plant Food", "Fake Bath Salts", "Fake Fertilizer", and/or "Fake Insect Repellent" has been developed, and that compounds that emulate or simulate the effects of such synthetic derivatives or analogues of cathinone or methcathinone or the derivatives or analogues of the chemicals or compounds listed in *Tenn. Code Anno.* §39-17-452 through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent have been developed and are now being possessed, distributed, and sold in the town and the usage of these compounds have effects similar to methamphetamine.

6) The 2011 edition of the U.S. Drug Enforcement Administration's "Drugs of Abuse: A DEA Resource Guide," designates bath salts as a drug of concern which poses risks to users.

7) The use of these types of compounds can be extremely addictive, and are not currently detectable by drug testing procedures commonly used in the workplace.

8) The use of synthetic marijuana or "bath salts", even with the change in chemical compounds, creates a danger to the health and safety of the public, and to protect the health and welfare of the public it is necessary to prohibit the use, sale, possession and distribution of said compounds, not otherwise controlled by state or federal law.

9) Pursuant to the Mount Carmel Municipal Charter the town has the authority to license and regulate all persons, firms, corporations, companies and associations engaged in any business, occupation, calling, profession or trade not prohibited by law; to define and prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, auctions, occupations, callings, trades, uses of property and all other things whatsoever detrimental or liable to be detrimental to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the town and to exercise general police powers; to prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of people may lawfully be established, conducted or maintained.

10) The use, possession, production, manufacture, distribution, transporting, selling, offer for sale, trading, bartering, exchanging or purchase of the substances addressed herein is detrimental to the health, safety, or welfare of the inhabitants of the town, and absent action by board such activity is currently lawful in the town, and to protect the health, safety or welfare of the inhabitants of the town such activity should be made unlawful.

Sec . Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section:

Package means each single unit marketing package or packaging for the substances prohibited herein.

Practitioner means (A) any physician, dentist, optometrist, veterinarian, pharmacist, scientific investigator or other person who is licensed, registered, or otherwise lawfully permitted to distribute, dispense, conduct research with respect to, or to administer a synthetic drug as defined herein in the course of professional practice or research in the State of Tennessee; or (B) a pharmacy, hospital or other institution licensed, registered, or otherwise lawfully permitted to distribute, dispense, conduct research with respect to, or to administer a synthetic drug as defined herein in the course of professional practice or research in the State of Tennessee.

Sec . Offenses.

(a) It shall be a civil offense for any person to use, possess, produce, manufacture, distribute, transport, sell, offer for sale, trade, barter, exchange or purchase any amount, including any packet, capsule, pill, or product, of any chemical compound or synthetic drug not governed by *Tenn. Code Anno.* §39-17-438 that emulates, replicates, mimics, simulates or causes a similar reaction to the effects of any synthetic drug or chemical compound listed in *Tenn. Code Anno.* §39-17-438, marijuana, cannabis or synthetic marijuana, including any drug or chemical compound that is privately compounded that circumvents the compounds listed in *Tenn. Code Anno.* §39-17-438 for synthetic cannabinoids, including through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent.

(b) It shall be a civil offense for any person to use, possess, produce, manufacture, distribute, transport, sell, offer for sale, trade, barter, exchange or purchase any amount, including any packet, capsule, pill, or product, of any chemical compound or synthetic drug not governed by *Tenn. Code Anno.* §39-17-452 that emulates, replicates, mimics, simulates or causes effects similar to any synthetic drug or chemical compound listed in *Tenn. Code Anno.* §39-17-452, or a reaction similar to the effects of a psychoactive drug with stimulant properties which acts as a norepinephrine-dopamine reuptake inhibitor (NDRI), including any drug or chemical compound that is privately compounded that circumvents the synthetic derivatives or analogues of cathinone or methcathinone or the derivatives or analogues listed in *Tenn. Code Anno.* §39-17-452, including through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent.

(c) It is not a defense to this offense that the item is not intended for human consumption.

Sec. Exceptions.

(a) An act otherwise prohibited and unlawful pursuant to this ordinance shall be lawful if done by or under the direction, while acting in the course of his professional practice, of a practitioner, as defined herein, provided such act is otherwise permitted by general law.

(b) The provisions of this ordinance shall not apply to any substances regulated as controlled substances by the United States Food and Drug Administration or the Drug Enforcement Administration, including any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the United States Food and Drug Administration as a homeopathic drug.

(c) This ordinance is not intended to and shall not be construed to supersede any other federal or state law pertaining to synthetic drugs now or hereafter in effect, but to supplement any such laws in so far as lawfully permitted.

(d) The provisions of this ordinance shall not apply to a person in possession of a prohibited substance solely for the purpose of transporting such substance from an originating point outside the town to a destination point outside the town.

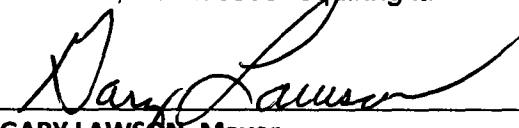
Sec. . Penalty.

Any person violating this ordinance shall be guilty of an offense and shall be assessed a civil fine as a penalty of \$50.00 and court costs for each violation. Each day of violation shall be deemed a separate violation. The possession, production, manufacture, distribution, transportation, sell, offer for sale, trade, barter, exchange or purchase of each separate package containing any prohibited substance as set out herein shall be deemed a separate violation of this ordinance.

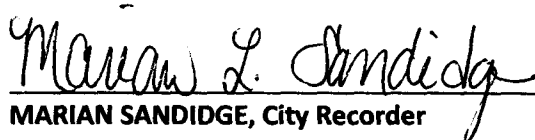
Sec. . Severability.

It is hereby declared that the sections, clauses, sentences and parts of this ordinance are severable, are not matters of mutual essential inducement, and any of them shall be excised if the ordinance would otherwise be unconstitutional or ineffective. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION II. This ordinance shall take effect from and after its date of passage, as the law directs, the welfare of the Town of Mount Carmel, Tennessee requiring it.

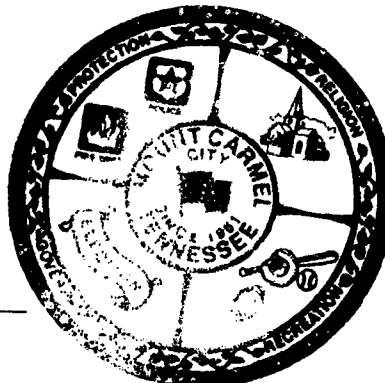

GARY LAWSON, Mayor

ATTEST:


MARIAN SANDIDGE, City Recorder

APPROVED AS TO FORM:


JOSEPH E. MAY, TOWN ATTORNEY



FIRST READING	AYES	NAYS	OTHER
ALDERMAN EUGENE CHRISTIAN	X		
ALDERMAN LEANN DEBORD	X		
ALDERMAN FRANCES FROST	X		
ALDERMAN KATHY ROBERTS			ABSENT
ALDERMAN THOMAS WHEELER	X		
VICE-MAYOR CARL WOLFE	X		
MAYOR GARY LAWSON	X		
TOTALS	6	0	1

PASSED FIRST READING: December 27, 2011

SECOND READING	AYES	NAYS	OTHER
VICE-MAYOR EUGENE CHRISTIAN	X		
ALDERMAN LEANN DEBORD	X		
ALDERMAN FRANCES FROST		X	
ALDERMAN KATHY ROBERTS		X	
ALDERMAN THOMAS WHEELER	X		
VICE-MAYOR CARL WOLFE		X	
MAYOR GARY LAWSON	X		
TOTALS	4	3	0

PASSED SECOND READING: January 24, 2012

PUBLICATION AFTER PASSAGE:

DATE: January 24, 2012

NEWSPAPER: *Kingsport Times-News*

Order Confirmation

<u>Ad Order Number</u>	<u>Customer</u>	<u>Payor Customer</u>
0001006765	TOWN OF MOUNT CARMEL	TOWN OF MOUNT CARMEL
<u>Sales Rep.</u>	<u>Customer Account</u>	<u>Payor Account</u>
Unassigned	59632	59632
<u>Order Taker</u>	<u>Customer Address</u>	<u>Payor Address</u>
sedwards	P O BOX 1421, ,	P O BOX 1421, ,
<u>Ordered By</u>	MT CARMEL TN 37645 USA	MT CARMEL TN 37645 USA
<u>Order Source</u>	<u>Customer Phone</u>	<u>Payor Phone</u>
	615-357-7311	615-357-7311
<u>PO Number</u>	<u>Customer Fax</u>	<u>Customer EMail</u>

<u>Tear Sheets</u>	<u>Proofs</u>	<u>Affidavits</u>	<u>Payment Method</u>
0	0	1	

Invoice Text:

Blind Box Materials

<u>Net Amount</u>	<u>Tax Amount</u>	<u>Total Amount</u>	<u>Payment Amt</u>	<u>Amount Due</u>
\$44.96	\$0.00	\$44.96	\$0.00	\$44.96

<u>Ad Number</u>	<u>Ad Type</u>	<u>Ad Size</u>	<u>Pick Up Number</u>
0001006765-01	LL Legal Liner	1.0 X 36 Li	

Order Notes/Information

PUBLIC NOTICE

The Town of Mount Carmel, Tennessee, on January 24, 2012, passed the following ordinances:
 Ordinance 11-368, An Ordinance Amending the Code of Ordinances, Town of Mount Carmel, Tennessee by Adding Provisions Making Certain Findings Relative to Synthetic Marijuana, "Bath Salts" and Similar Compounds; Making the Use, Production, Manufacture, Distribution, Transport, Sell, Offering for Sale, Trade, Barter, Exchange or Purchase of Certain Substances Unlawful; Providing for Certain Exceptions; Fixing a Penalty for the Violation of this Ordinance; Providing for the Severability of this Ordinance; and Fixing the Effective Date of This Ordinance; and
 Ordinance 11-369, An Ordinance of the Town of Mount Carmel, Tennessee, Amending the Fiscal Year 2011-2012 General Fund Budget, Passed by Ordinance No. 11-359.

PUB1T: 01/26/12

Subject: validity of ordinances regulating sales of synthetic drugs

From: Ashburn, Melissa Ann (ashburnm@tennessee.edu)

To: mariansandidge@yahoo.com;

Date: Tuesday, December 13, 2011 9:49 AM

Marion,

I have received a lot of questions about this issue. Below is an email provided for the Police Chiefs Association. The attachment is helpful explaining the OTC medicine issues, and the body of the email below goes into items that are not over the counter drugs. My answer for Mount Carmel is the same. It doesn't matter if you have criminal jurisdiction, as that does not translate into the power to criminalize a substance.

I know a lot of cities have passed these ordinances, but I have not heard of one which is actually taking steps to enforce it, likely due to their attorneys' advice. If the city decides to pass such an ordinance for political purposes (people like these causes, clearly), be sure your attorney does their homework before you try to enforce it, and your board is prepared for a very expensive, likely futile defense to a lawsuit.

Good luck,

Melissa A. Ashburn

Legal Consultant

University of Tennessee

Institute for Public Service

Municipal Technical Advisory Service

(865)974-0411

From: Ashburn, Melissa Ann

<http://us.mg1.mail.yahoo.com/n...>

Print

12/13/2011

Sent: Thursday, December 01, 2011 10:04 AM

To: Barton, Rex D

Subject: validity of ordinances regulating sales of OTC drugs or synthetic drugs

Rex,

Attached is a letter I wrote for Cookeville on the issue of regulating the sale of products containing ephedrine a few years ago. The research is still up to date and applicable. The same analysis applies to any city ordinance attempting to regulate the sale of any over the counter drug.

With regard to some "synthetic" drugs or components that are not over the counter drugs, but other types of products, the barrier is the US Constitution's commerce clause. Cities do not have the power to prohibit or penalize the sale of products that legally enter our state through the stream of commerce. Exception is made specifically by laws – for example our state General Assembly has given cities specific authority to prohibit the sale of beer or alcohol within their borders. No such authority exists for banning or regulating the sale of "bath salts" or other types of synthetic drugs. In fact, by passing laws this year including bath salts and some other synthetic drugs in our state criminal laws, the state of Tennessee has effectively preempted any local regulation of such activities. I understand the formulations are simply adjusted by the manufacturers to get around these state criminal laws, but Tennessee cities simply do not have the power to criminalize the sale of a substance. State legislation would have to be passed granting such power before any such ordinances can be enforced. Then the state would have to either get permission from the federal government or fight the federal government on the commerce clause issues such a law would create.

I know some cities in Tennessee have adopted ordinances making the sale of "bath salts" or other synthetic drugs or drug components illegal, but those ordinances are not enforceable. Maybe it sends the intended message to retailers and voters, but these cities will lose any legal fight launched to enforce those provisions. Passing unenforceable ordinances, whether for political or genuine public safety reasons, is not good policy and costs the taxpayers in the long run. The alternative is to lobby the state legislature for specific authority to enforce such ordinances.

I hope this is helpful,

Melissa A. Ashburn

Legal Consultant

University of Tennessee

Institute for Public Service

Municipal Technical Advisory Service

(865)974-0411

November 22, 2002

T. Michael O'Mara, Esq.
Attorney for City of Cookeville

Via fax no. 931-372-0452

Re: Ability of city to regulate sales of ephedrine

Dear Mike,

The question has been raised in Cookeville of whether the city may regulate the sale of ephedrine, which I understand is purchased in large quantities by persons operating illegal methamphetamine labs.

Ephedrine is a non-prescription, over the counter drug which is regulated by the U.S. Food and Drug Administration. Title 21, Section 751 of the Code of Federal Regulations is titled "National Uniformity for Nonprescription Drugs and Preemption for Labeling or Packaging of Cosmetics." Subparagraph (a) of the section states:

no State or political subdivision of a State may establish or continue in effect any requirement

(1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A) *[these sections of the CFR address prescription drugs]*; and
(2) that is different from, or in addition to, or that is otherwise not identical with, a requirement under this Act... 21CFR§751(a)*[emphasis mine]*.

I interpret this language to mean that a city may not impose any regulations on sales of non-prescription drugs, or at least no regulations that differ from the federal regulations imposed by the FDA. I have enclosed a copy of this CFR section for your review.

As you review the further language of Section 751, you will note that a political subdivision may make application to the Secretary of the FDA for permission to impose additional regulations. The Secretary may grant the application if three conditions in subsection (b)(1) are met. Although public health and safety is a concern for which this subsection states such permission may be granted, the measure cannot have an adverse impact on interstate commerce. 21CFR§751(b)(1). I have searched the Federal Register for any record of a successful application for exception to the operation of this regulation, and found nothing. This leads me to conclude that exception to this regulation is rarely, if ever, granted.

In my opinion, Cookeville may not impose any regulation on the sale of ephedrine, whether the

city wishes to merely move the product behind the counter or impose a limit on the amount sold. If the city is willing to invest a lot of time and money, an application may be made to the Secretary of the FDA for permission to pass an ordinance containing such a regulation, but I am very doubtful that such an attempt will be successful.

I hope this information is helpful. Please feel free to contact me should you have any questions or need further assistance.

Thank you for consulting with MTAS.

Sincerely,

Melissa A. Ashburn
Legal Consultant

cc: Warren Nevad
Municipal Management Consultant

FOCUS™ Terms

Search Within Original Results (1 - 1)



Advanced...

View

Full

1 of 1

[Return to Results](#) | [Book Browse](#)**Tenn. Code Ann. § 39-17-452** (Copy w/ Cite)*Tenn. Code Ann. § 39-17-452*[View Tutorial](#)

Pages: 2

TENNESSEE CODE ANNOTATED
© 2011 by The State of Tennessee
All rights reserved

*** CURRENT THROUGH THE 2011 REGULAR SESSION ***

Title 39 Criminal Offenses
Chapter 17 Offenses Against Public Health, Safety and Welfare
Part 4 Drugs

Tenn. Code Ann. § 39-17-452 (2011)

39-17-452. Synthetic derivatives or analogues of methcathinone.

(a) It is an offense to knowingly produce, manufacture, distribute, sell, offer for sale or possess with intent to produce, manufacture, distribute, sell, or offer for sale any capsule, pill, or other product composed of or containing any amount of the following synthetic derivatives or analogues of methcathinone, or any combination of such derivatives or analogues:

(1) 3,4-Methylenedioxymethcathinone (Methylone);

(2) 3,4-Methylenedioxypyrovalerone (MDPV);

(3) 4-Methylmethcathinone (Mephedrone);

(4) 4-Methoxymethcathinone (Methedrone);

(5) 4-Fluoromethcathinone (Flephedrone); or

(6) 3-Fluoromethcathinone (3-FMC).

(b) Subsection (a) shall not apply to drugs or substances lawfully prescribed or to drugs or substances which have been approved by the federal food and drug administration.

(c) A violation of subsection (a) is a Class A misdemeanor.

HISTORY: Acts 2011, ch. 169, § 1.

View

Full

1 of 1

[Return to Results](#) | [Book Browse](#)**Tenn. Code Ann. § 39-17-452** (Copy w/ Cite)

LexisNexis

About LexisNexis Privacy Policy Terms & Conditions Contact Us
Copyright © 2011 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

FOCUS™ Terms

Search Within Original Results (1 - 1)



Advanced...

View Tutorial

View Full

1 of 1

[Return to Results](#) | [Book Browse](#)**Tenn. Code Ann. § 39-17-438** (Copy w/ Cite)

Pages: 3

Tenn. Code Ann. § 39-17-438

TENNESSEE CODE ANNOTATED

© 2011 by The State of Tennessee

All rights reserved

*** CURRENT THROUGH THE 2011 REGULAR SESSION ***

Title 39 Criminal Offenses

Chapter 17 Offenses Against Public Health, Safety and Welfare

Part 4 Drugs

Tenn. Code Ann. § 39-17-438 (2011)

39-17-438. Production, manufacture, distribution or possession of salvia divinorum A.

(a) (1) It is an offense to knowingly produce, manufacture, distribute, possess or possess with intent to produce, manufacture, or distribute the active chemical ingredient in the hallucinogenic plant salvia divinorum or the following synthetic cannabinoids:

(A) (6a,10a)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; including, but not limited to HU 210 or HU 211;

(B) Naphthoylindoles being any compound structurally derived from 3-(1-naphthoyl) indole with substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)lmethyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-018, JWH-019, JWH-073, or JWH-200;

(C) Naphthylmethylindoles being any compound structurally derived from a 1 H-indole-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)lmethyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-175, JWH-184, or JWH-199;

(D) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl) pyrrole with substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl 1-(N-methyl-2-piperidiny)lmethyl, or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-307;

(E) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl) indene with substitution at the 3-position of the indene ring by alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)lmethyl, or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent; including, but not limited to JWH-176;

(F) Phenylacetylindoles, being any compound structurally derived from 3-

phenylacetylindole with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent; including, but not limited to JWH-250, JWH-251, or RCS-8;

(G) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl) phenol with substitution at the 5-position of the phenolic ring with alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the whether or not substituted in the cyclohexyl ring to any extent; including, but not limited to CP 47,497, or the dimethylhexyl, dimethyloctyl or dimethylnonyl homologues of CP 47,497;

(H) Tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin;

(I) Benzoylindoles, being any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring with a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent; including, but not limited to AM-694, Pravadoline (WIN 48, 09) or RCS-4; or

(J) WIN-55,212-2 or 2,3-Dihydro-5-methyl-3-(4 Morpholinylmethyl) pyrrolo [1,2,3-de]-1,4--benzoxazin-6-yl]-1-napthalenylmethanone.

(2) Subdivision (a)(1) concerning synthetic cannabinoids shall not apply to drugs or substances lawfully prescribed or to drugs or substances which have been approved by the federal food and drug administration.

(b) The provisions of this section shall not apply to the possession, planting, cultivation, growing, or harvesting of the hallucinogenic plant strictly for aesthetic, landscaping, or decorative purposes.

(c) The provisions of this section shall not apply to any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the federal food and drug administration as a homeopathic drug.

(d) A violation of subsection (a) is a Class A misdemeanor

HISTORY: Acts 2006, ch. 700, § 1; 2010, ch. 922, § 1; 2011, ch. 274, § 1.

View

1 of 1

[Return to Results](#) | [Book Browse](#)

Tenn. Code Ann. § 39-17-438 (Copy w/ Cite)



LexisNexis

About LexisNexis Privacy Policy Terms & Conditions Contact Us
Copyright © 2011 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

ORDINANCES

Definition

Any city ordinance passed by the local governing body is binding upon the community, but it is not a "law" in the legal sense. Municipal courts have long been considered "civil" courts rather than "criminal" courts. Unless a municipal court has concurrent general sessions criminal jurisdiction, only ordinance violations can be heard in municipal court.

Municipalities are authorized to adopt ordinances that mirror, substantially duplicate, or reference certain state laws for offenses that are Class C misdemeanors. The penalty for violating the ordinance cannot exceed \$50 with no imprisonment. Many cities have older ordinances in their codes that cannot be enforced, as the state offenses mirrored are not Class C misdemeanors.

Cities having a population of more than 150,000 may also adopt state laws for driving without a valid driver's license, reckless driving, and adult underage purchasing or possession of alcoholic beverages. Smaller cities may no longer enforce ordinances adopting such offenses, as they are Class A and B misdemeanors under state law.

Mirroring a state law means that the ordinance reads exactly the same as the state law, and "substantially duplicating" means that the ordinance contains the same general language or intent. Adopting a state statute by reference allows the city to pass an ordinance adopting a specific state statute by referencing the "citation" number of the statute. While the full content of the state statute would be in the ordinance, any future changes in the state law would automatically be included in the ordinance.

MTAS recommends that cities specifically name the violation being adopted by reference. While a city could pass an ordinance that adopts a statute by mentioning the statute citation, it is much clearer to cite the statute and the name of the offense. For instance, the ordinance could cite the state statute number for the financial responsibility law, but MTAS recommends the adopting ordinance also include the name "Financial Responsibility Law."

Penalties

The constitution of the state of Tennessee provides that no fine shall exceed \$50 unless it is assessed by a jury. Municipal courts do not have statutory authority to hold jury trials. The Tennessee Supreme Court has ruled that the constitutional limitation on fines applies to penalties for municipal ordinance violations that are punitive in nature, rather than remedial. *City of Chattanooga v. Davis* and *Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W.3d 248 (Tenn. 2001). In the *Davis* opinion, the Court describes briefly the requirements that must be met in order to qualify a fine as remedial. These requirements include providing a detailed statement of expenses incurred by the city due to the individual offense cited. The Court admits that it is difficult for cities to make the distinction between remedial and punitive fines. It has

ORDINANCE NO. 6156

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE BY ADDING PROVISIONS MAKING CERTAIN FINDINGS RELATIVE TO SYNTHETIC MARIJUANA, "BATH SALTS" AND SIMILAR COMPOUNDS; MAKING THE USE, POSSESSION, PRODUCTION, MANUFACTURE, DISTRIBUTION, TRANSPORT, SELL, OFFERING FOR SALE, TRADE, BARTER, EXCHANGE OR PURCHASE OF CERTAIN SUBSTANCES UNLAWFUL; PROVIDING FOR CERTAIN EXCEPTIONS; FIXING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF THIS ORDINANCE; AND FIXING THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended by adding the following new sections to be appropriately numbered to conform with the numbering system used in the Kingsport City Code:

Sec. __. Findings.

The board makes the following findings:

1) T.C.A. section 39-17-438 pertaining to substances generally known as "synthetic marijuana" and T.C.A. section 39-17-452 pertaining to substances generally known as "bath salts" govern certain actions regarding the substances listed in those statutes and certain synthetic derivatives or analogues of compounds listed therein, but the board has been informed that the chemical makeup of these synthetic drugs is or can be changed to avoid using the listed substances, while providing the same effect and detrimental health risk, making enforcement of such the statutes difficult and ineffective.

2) Synthetic marijuana and "bath salts" are being manufactured in a way to avoid the application of existing state and federal laws.

3) Studies have indicated that synthetic marijuana usage includes the dangers associated with using natural marijuana, with additional danger to the public health due, in part, to the unknown nature of any long term effects of this synthetically created substance.

4) The board finds that synthetic marijuana (synthetic cannabinoids) or compounds that emulate or simulate the effects of synthetic cannabinoids through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent have been developed such that it can create similar hallucinogenic qualities to natural marijuana and such items are now being possessed, distributed, and sold in the city.

5) The board finds a manufactured product known as "Bath Salts", "Plant Food", "Fake Bath Salts", "Fake Fertilizer", and/or "Fake Insect Repellant" has been developed, and that compounds that emulate or simulate the effects of such synthetic derivatives or analogues of cathinone or methcathinone or the derivatives or analogues of the chemicals or compounds listed in T.C.A. section 39-17-452 through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent have been developed and are now being possessed, distributed, and sold in the city and the usage of these compounds have effects similar to methamphetamine.

6) The 2011 edition of the U. S. Drug Enforcement Administration's "Drugs of Abuse: A DEA Resource Guide," designates bath salts as a drug of concern which poses risks to users.

7) The use of these types of compounds can be extremely addictive, and are not currently detectable by drug testing procedures commonly used in the workplace.

8) The use of synthetic marijuana or "bath salts", even with the change in chemical compounds, creates a danger to the health and safety of the public, and to protect the health and welfare of the public it is necessary to prohibit the use, sale, possession and distribution of said compounds, not otherwise controlled by state or federal law.

9) Pursuant to the Kingsport City Charter the city has the authority to license and regulate all persons, firms, corporations, companies and associations engaged in any business, occupation, calling, profession or trade not prohibited by law; to define and prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, business, auctions, occupations, callings, trades, uses of property and all other things whatsoever detrimental or liable to be detrimental to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the city and to exercise general police powers; to prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of people may lawfully be established, conducted or maintained.

10) The use, possession, production, manufacture, distribution, transporting, selling, offer for sale, trading, bartering, exchanging or purchase of the substances addressed herein is detrimental to the health, safety, or welfare of the inhabitants of the city, and absent action by board such activity is currently lawful in the city, and to protect the health, safety or welfare of the inhabitants of the city such activity should be made unlawful.

Sec ____. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section:

Package means each single unit marketing package or packaging for the substances prohibited herein.

Practitioner means any physician, dentist, optometrist, veterinarian, pharmacist, scientific investigator or other person who is licensed, registered, or otherwise lawfully permitted to distribute, dispense, conduct research with respect to, or to administer a synthetic drug as defined herein in the course of professional practice or research in the State of Tennessee; or (B) a pharmacy, hospital or other institution licensed, registered, or otherwise lawfully permitted to distribute, dispense, conduct research with respect to, or to administer a synthetic drug as defined herein in the course of professional practice or research in the State of Tennessee.

Sec ____ Offenses.

(a) It shall be a civil offense for any person to use, possess, produce, manufacture, distribute, transport, sell, offer for sale, trade, barter, exchange or purchase any amount, including any packet, capsule, pill, or product, of any chemical compound or synthetic drug not governed by T.C.A. section 39-17-438 that emulates, replicates, mimics, simulates or causes a similar reaction to the effects of any synthetic drug or chemical compound listed in T.C.A. section 39-17-438, marijuana, cannabis or synthetic marijuana, including any drug or chemical compound that is privately compounded that circumvents the compounds listed in T.C.A. section 39-17-438 for synthetic cannabinoids, including through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent.

(b) It shall be a civil offense for any person to use, possess, produce, manufacture, distribute, transport, sell, offer for sale, trade, barter, exchange or purchase any amount, including any packet, capsule, pill, or product, of any chemical compound or synthetic drug not governed by T.C.A. section 39-17-452 that emulates, replicates, mimics, simulates or causes effects similar to any synthetic drug or chemical compound listed in T.C.A. section 39-17-452, or a reaction similar to the effects of a psychoactive drug with stimulant properties which acts as a norepinephrine-dopamine reuptake inhibitor (NDRI), including any drug or chemical compound that is privately compounded that circumvents the synthetic derivatives or analogues of cathinone or methcathinone or the derivatives or analogues listed in T.C.A. section 39-17-452, including through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent.

(c) It is not a defense to this offense that the item is not intended for human consumption.

Sec. ____ Exceptions.

(a) An act otherwise prohibited and unlawful pursuant to this ordinance shall be lawful if done by or under the direction, while acting in the course of his professional practice, of a practitioner, as defined herein, provided such act is otherwise permitted by general law.

(b) The provisions of this ordinance shall not apply to any substances regulated as controlled substances by the United States Food and Drug Administration or the Drug Enforcement Administration, including any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the United States Food and Drug Administration as a homeopathic drug.

(c) This ordinance is not intended to and shall not be construed to supersede any other federal or state law pertaining to synthetic drugs now or hereafter in effect, but to supplement any such laws in so far as lawfully permitted.

(d) The provisions of this ordinance shall not apply to a person in possession of a prohibited substance solely for the purpose of transporting such substance from an originating point outside the city to a destination point outside the city.

Sec. _____. Penalty.

Any person violating this ordinance shall be guilty of an offense and shall be assessed a civil fine as a penalty of \$50.00 and court costs for each violation. Each day of violation shall be deemed a separate violation. The possession, production, manufacture, distribution, transportation, sell, offer for sale, trade, barter, exchange or purchase of each separate package containing any prohibited substance as set out herein shall be deemed a separate violation of this ordinance.

Sec. _____. Severability.

It is hereby declared that the sections, clauses, sentences and parts of this ordinance are severable, are not matters of mutual essential inducement, and any of them shall be excised if the ordinance would otherwise be unconstitutional or ineffective. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION II. This ordinance shall take effect from and after its date of passage, as the law directs, the welfare of the City of Kingsport, Tennessee requiring it.

DENNIS R. PHILLIPS, Mayor

ATTEST:

ANGELA MARSHALL
Deputy City Recorder

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: November 15, 2011

PASSED ON 2ND READING: December 6, 2011