

County of Tioga

Local Law No. 3 of the Year 2012.

A LOCAL LAW PROHIBITING THE SALE AND POSSESSION OF PSYCHOACTIVE BATH SALTS, PSYCHOACTIVE HERBAL INCENSE AND SYNTHETIC HALLUCINOGENS WITHIN THE COUNTY OF TIOGA

Be It Enacted by the Legislature of the County of Tioga as follows:

**Article 1. Purpose and Intent**

The Legislature of the County of Tioga finds that psychoactive bath salts, psychoactive herbal incense also known as synthetic marijuana, synthetic hallucinogens and other synthetic drugs are dangerous substances, public nuisances, pose an immediate threat to the public health and safety within the County of Tioga, all of which substantially and seriously interfere with the interest of the public in the quality of life, the total community environment, commerce in the county, property values, the common good and are detrimental to the public health, safety and welfare.

The Tioga County Legislature further finds that the sale and/or possession of said substances are unlawful, detrimental to the health, safety and welfare of the residents of the County of Tioga and visitors thereto. It is the purpose of this local law to criminalize the sale and/or possession of psychoactive bath salts, psychoactive herbal incense also known as synthetic marijuana, synthetic drugs and synthetic hallucinogens and to deter or eradicate same and such powers may be exercised either in conjunction with, or apart from, the powers contained in other laws without prejudice to the use of procedures and remedies available under such other laws. The Tioga County Legislature further finds that the sanctions and penalties imposed by this local law constitute an additional and appropriate response to the proliferation of the above described dangerous substances. The sanctions and penalties are reasonable and necessary in order to protect the health and safety of the people of the County of Tioga and to promote the general welfare and safety pursuant to the county's police powers and municipal home rule authority.

## **Article 2. Definitions**

For the purposes of this local law, the following terms shall have the meanings indicated, unless the context clearly requires otherwise:

1. **"Sale"** shall mean and cover the following activities: to offer for sale, to sell, to distribute, to furnish, to gift, to transfer, to barter, exchange or give, to any person or minor and each and every transaction of the same or similar nature made by any person, whether as principal, proprietor, agent, servant, or employee, with or without actual consideration.
2. **"Person"** shall mean any individual, minor, corporation, business trust, estate, trust, partnership or association, or any other entity or business organization of any kind.
3. **"Possession"** shall mean to possess on one's own person or possession by a person exercising dominion or control over the immediate area where contraband is found whether in a vehicle, vessel, container, snowmobile, dwelling, building or structure or whether upon public or private property.
4. **"Psychoactive Bath Salts"** shall be defined herein as follows:

(A). Any crystalline or powder product that contains a synthetic chemical compound that elicits psychoactive or psychotropic stimulant effects including but not limited to the following substances: 3,4-Methylenedioxymethcathinone (Methylone); 3,4-Methylenedioxypyrovalerone (MDPV); 4-Methylmethcathinone (Mephedrone); 4-Methoxymethcathinone (Methedrone); 4-Fluoromethcathinone (Flephedrone); 3-Fluoromethcathinone (3-FMC); naphthylpyrovalerone; 2-amino-1-phenyl-1-propanone (cathinone); or any derivatives, analogues, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

(B). "Psychoactive bath salts" are commonly marketed under the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Glass Cleaner, Hurricane, Ivory Snow, Ivory Wave, Legal Phunk, Tranquility, Zoom, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Plant Food, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky,

White Dove, White Night and White Lightning, but may be marketed under other trade names and contain a common disclaimer that these products are "not safe for human consumption" or similar disclaimer.

(C). "Psychoactive bath salts" as defined herein shall exclude normal, typical bath salts which do not contain synthetic chemical compounds listed above that elicit psychoactive or psychotropic stimulant effects. Standard bath salts primarily contain magnesium sulfate (Epsom salts), sodium chloride (table salt), sodium bicarbonate (baking soda), sodium hexametaphosphate (Calgon, amorphous/glassy sodium metaphosphate), sodium sesquicarbonate and borax.

5. **"Psychoactive herbal incense"** shall be defined herein as follows:

(A). Any organic product consisting of plant material that contains a synthetic chemical compound that elicits *psychoactive* or psychotropic euphoric effects including, but not limited to the following: any synthetic cannabinoid compound that contains 1-pentyl-3-(1-naphthoyl) indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole(JWH-073), 1-2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-(1R,3S)-3-hydroxycyclohexyl]-phenol, (CP-47,497), 5-(1,1-dimethyloctyl)-2-(1R,3S)-3-hydroxycyclohexyl]-phenol, (cannabicyclohexanol;CP-47,497C8homologue); 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent; 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent; 3-(1-naphthoyl) pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent; 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent; 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent; 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-

47,497); 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog); 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678); 1-butyl-3-(1-naphthoyl)indole (JWH-073); 1-hexyl-3-(1-naphthoyl)indole (JWH-019); 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200); 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250); 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081); 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122); 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398); 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201); 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694); 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4); 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8); and 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

(B). "Psychoactive herbal incense" products are commonly marketed under the following names: K2, K3, Spice, Genie, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Serenity, Fake Weed, but may be marketed under other trade names and contain a common disclaimer that these products are "not safe for human consumption" or similar disclaimer.

(C). "Psychoactive herbal incense" shall exclude typical, standard incense that is sold as incense sticks, oils or cones that is commonly used for their aromatic qualities that do not contain any synthetic chemical compounds listed above which elicit psychoactive or psychotropic euphoric effects.

6. **"Synthetic Hallucinogens"** shall be defined as any crystalline or powder product or any organic plant material that is laced with or contains a synthetic chemical compound that elicits psychoactive or psychotropic stimulant effects including, but not limited to the following substances:

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E); 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D); 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C); 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I); 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2); 2-[4-(Isopropylthio)-2,5-

dimethoxyphenyl]ethanamine (2C-T-4); 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H); 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C-N); and, 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P) or any derivatives, synthetic substances and their isomers with similar chemical structure or any chemical alteration of these compounds which exhibit the same effects and/or any other substantially similar chemical structure or compound.

- (7) **"Synthetic Marihuana"** or **"Synthetic Cannabanoids"** shall include the definition of psychoactive herbal incense herein.
- (8) **"Synthetic Drug"** shall include the definitions contained in paragraphs 4 through 7 of this section and shall additionally be defined as:
- (a) Any substance prohibited in the federal "Synthetic Drug Abuse Prevention Act of 2012," (§. 3187); and
- (b) Any synthetic drug *analog which* shall include a substance prohibited by 21 U.S.C. 813, the Federal Analog Act, or any synthetic drug prohibited hereunder where:
1. The chemical structure of which is substantially similar to the chemical structure of a Synthetic Drug as described above; or
  2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a Synthetic Drug as described above; or
  3. Which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a Synthetic Drug as described above.

**Article 3. Enforcement**

This local law may be enforced by any police officer, as that term is defined by New York State Criminal Procedure Law § 1.20(34), within the County of Tioga

**Article 4. Sale or Possession of Synthetic Drugs Prohibited**

1. **Unlawful Possession of a Synthetic Drug** - A person is guilty of unlawful possession of a synthetic drug when said person knowingly and unlawfully possesses a substance containing psychoactive bath salts, psychoactive herbal incense and/or a synthetic hallucinogen unless otherwise prescribed by a licensed physician.
2. **Criminal Sale of a Synthetic Drug** - A person is guilty of criminal sale of a Synthetic Drug when said person knowingly and unlawfully sells a substance containing psychoactive bath salts, psychoactive herbal incense and/or a synthetic hallucinogen unless otherwise licensed by the U.S. Drug Enforcement Agency, the Food and Drug Administration or NYS Department of Health.

**Article 5. Penalties for offenses**

Any person who knowingly and unlawfully violates the provisions of Article 5 of this local law shall be guilty of an unclassified misdemeanor as defined by this local law and NYS Penal Law § 55.10.(2)(c) and, upon conviction, shall be punishable by a fine of up to \$1,000 or up to one year's imprisonment, or both.

**Article 6. Applicability**

This local law shall apply to all actions occurring on or after the effective date of this local law.

**Article 7. Severability**

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to

the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Article 8. Reverse Preemption**

This local law shall be null and void on the date that statewide legislation goes into effect, incorporating either the same or substantially similar provisions under the New York State Penal Law and/or New York State Public Health Law as are contained in this local law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Tioga. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide or federal legislation has been enacted for the purposes of triggering the provisions of this section.

**Article 9. Administrative liability**

Neither the County of Tioga, nor any officer, agent, or employee thereof, shall be personally liable for any damage resulting from any official determination, order or action required or permitted by or under this local law.

**Article 10. SEQRA Determination**

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20),(21) and/or (27) of Title 6 of the New York Code of Rules and Regulations (6 NYCRR) and within the meaning of Section 8-0109(2) of the New York State Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Clerk of the Legislature is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance as may be necessary in accordance with this local law.

**Article 11. Effective Date**

This Local Law shall take effect immediately upon filing in the Office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2012 of the (County) of Tioga was duly passed by the Tioga County Legislature on December 11, 2012, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County) (City) (Town) (Village) of was duly passed by the on , 20 , and was (approved)(not disapproved)(repassed after disapproval) by the and was deemed duly adopted on , 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of was duly passed by the on , 20 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 20 . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on , 20 , in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of was duly passed by the on , 20 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 20 . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of , 20 , in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on , 20 , become operative.

---

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_, 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1\_\_\_\_, above.

\_\_\_\_\_  
Clerk of the County legislative body, City, Town  
or Village Clerk or officer designated by local  
legislative body

(Seal)

Date: December 11, 2012

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

State of New York

County of Tioga

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature  
Judith M. Quigley  
Title County Attorney  
County of Tioga  
City  
Town  
Village

Date: December 11, 2012