

LOCAL LAW PERM 5 OF 2013
LOCAL LAW INTRO. NO. 2 of 2013

“A LOCAL LAW PROHIBITING THE SALE AND POSSESSION OF SYNTHETIC CATHINONES, SYNTHETIC CANNABINOIDS, SYNTHETIC HALLUCINOGENS and SALVIA DIVINOREM

BE IT ENACTED by the Legislature of the County of Broome as follows:

Section 1. Chapter 168 of the Broome County Charter and Code is hereby amended to add a new Article X to read as follows:

Section 168-53 Definitions

For the purposes of this Article, 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. "Synthetic cathinones" 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); 4- methoxymethcathinone (Methedrone); 4-Fluoromethcathinone (Flephedrone); 3-Fluoromethcathinone (3-FMC); naphthylpyrovalerone; Alpha-Pyrrolidinopentiophenon (Alpha-PVP); Pentedrone; Ethylpropion; 4-Methylethcathinone (4-MEC); Alpha-Pyrrolidinobutiopnenone; 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). "Synthetic cathinones" 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) “Synthetic cathinones” as defined herein shall not apply to nonprescription over-the-counter drugs approved or regulated by the Federal Food and Drug Administration.

5. “Synthetic cannabinoids” 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, 497 C8 homologue); 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-[(1 R,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). “Synthetic cannabinoids” 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.

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-nitro-phenyl) 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 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," (S. 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.

8. "Distribute," "distributing" or "distribution" means and covers the following activity: to offer for sale, distribute, furnish, gift, transfer, exchange or give, to any person and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

9. "Mortgagee" - The person who is listed as the mortgagee on any unsatisfied or otherwise open mortgage on the premises recorded in the office of the Broome County Clerk.

10. "Owner" - The person in whose name the premises affected by an order, issued in accordance with this Article, is recorded as the owner in the office of the Broome County Clerk.

11. "Premises"- The building, place, or property whereon a public nuisance is being conducted or exists.

12. "Public nuisance"- (1) For purposes of this article, a public nuisance shall be deemed to exist whenever through violations of any of the following

provisions resulting from separate incidents predicated at events, circumstances or activities occurring on the premises, twelve (12) or more points are accumulated within a period of six (6) months, or eighteen (18) or more points within a period of twelve (12) months, in accordance with the following point system. Where more than one (1) violation occurs during a single incident, the total points for the incident shall be the highest point value assigned to any single violation.

13. "Sheriff" - The Sheriff of the County of Broome or his or her designee.

14. "Salvia Divinorum" shall mean the herb commonly known as "Diviner's Sage," "Maria Pastora," "Sage of the Seers," "The Key," "Purple Salvia," "Purple Haze," or "Sally D," whether sold as a whole plant, loose leaves, or as a concentrated extract of the chemical salvinorin A.

Section 168-54 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.

Section 168-55 Sale or Possession of Salvia Divinorum Prohibited

1. No person shall knowingly possess, sell or offer for sale Salvia divinorum within the County of Broome.

2. The provisions of this section shall not apply to nonprescription over-the-counter drugs approved or regulated by the Federal Food and Drug Administration.

Section 168-56 Enforcement

Sections 168-54 and 168-55 may be enforced by any police officer as that term is defined by the New York State Criminal Procedure Law § 1.20 (34), within the County of Broome.

Section 168-57 Penalties for Offenses

Any person who knowingly and unlawfully violates the provisions of Sections 168-54 or 168-55 shall be guilty of an unclassified misdemeanor as defined by 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.

Section 168-58 Public Nuisance Declared

1. It is hereby declared to be a public nuisance for any person to manufacture, repackage, sell or distribute synthetic cathinones, synthetic hallucinogens and/or synthetic cannabinoids within the County of Broome.

2. It is hereby declared to be a public nuisance for any person to sell, manufacture, repackage, mislabel and/or distribute any product or substance represented as or designed to resemble synthetic hallucinogens, synthetic

cathinones and synthetic cannabinoids within the County of Broome. Indications of distribution of substances represented as or designed to resemble synthetic cathinones, synthetic hallucinogens and/or synthetic cannabinoids shall include, without limitation, one or more of the following: the manner in which such substances are packaged, branded, described, marketed and/or portioned.

3. It is hereby declared to be a public nuisance for any person to permit or allow the distribution of synthetic cathinones, synthetic hallucinogens and synthetic cannabinoids on property owned, controlled or managed by such person within the County of Broome.

4. Merely disclaiming or labeling any synthetic cannabinoids, synthetic hallucinogens and/or synthetic cathinones as "not safe for human consumption" or some similar statement indicating that the product should not be consumed, inhaled or ingested by an individual will not avoid the application of this Section.

Section 168.59 Violations and Points to be Assessed Against Premises.

1. The following violations shall be assigned a point value of six (6) points:

(A) Sale or distribution of synthetic cathinones, synthetic hallucinogens or synthetic cannabinoids to a minor under the age of 18 years of age.

(B) The manufacturing of synthetic hallucinogens, synthetic cathinones or psychoactive herbal incense upon a premises or knowingly selling or repackaging a synthetic hallucinogen, synthetic cannabinoids or synthetic cathinones in bulk where the name of the original manufacturer, price and net weight are not listed upon a package at time of sale.

2. The following violation shall be assigned a point value of four (4) points:

(A) Sale or distribution of synthetic hallucinogens, synthetic cathinones or psychoactive herbal incense to a person of 18 years of age or older.

(B) Knowingly maintaining false books or business records, or issuing false sales receipts at retail which indicate that another product was sold instead of the actual brand name or trade name of the synthetic cathinones, synthetic cannabinoids or synthetic hallucinogen sold at retail.

3. For purposes of this Section, a conviction for an offense in a court of competent jurisdiction or a finding before an administrative tribunal shall not be required. Instead, the County of Broome shall prove by a preponderance of the evidence that the violations have occurred. However, a conviction as defined and applied in accordance with the provisions of Section 1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, shall constitute conclusive proof of a violation. Conviction of an attempt to commit a violation of any of the specified provisions shall be considered a conviction for a violation of the specified provision.

Section 168-60 Remedies to abate public nuisances.

In addition to the enforcement procedures established elsewhere in this Article, the Sheriff or his or her designee, after notice and opportunity for a hearing, shall be authorized:

1. to order the discontinuance of such activity at the premises where such public nuisance exists; and/or

2. to order the closing of the premises to the extent necessary to abate the public nuisance.

Section 168-61 Service of notice.

1. Prior to the issuance of an order by the Sheriff, pursuant to Section 168-60, the Sheriff shall give notice and opportunity for a hearing to the owner, and any other person directly or indirectly in control of the premises wherein the public nuisance is being conducted, maintained or permitted. Such notice and opportunity to be heard shall be given to a mortgagee of the premises. Such notice shall be served upon an owner or any other person directly or indirectly in control of the premises pursuant to Article 3 of the New York State Civil Practice Law and Rules, and upon a mortgagee by means of certified mail, return receipt requested, sent to the mortgagee's last known address, provided that any service other than delivery to the person to be served shall be complete immediately upon delivery, mailing or posting without the necessity of filing proof of service with the clerk of the court.

2. The notice provided for in subsection "A" of this section shall:

- (A) Specify the activity creating the public nuisance;
- (B) Provide thirty (30) days for elimination of the public nuisance;
- (C) Inform the person to whom it is directed of their right to apply within ten (10) days of service of the notice for a hearing before the Sheriff;
- (D) Inform the owner or any other person directly or indirectly in control of the premise that upon expiration of thirty (30) days after service without a hearing before the Sheriff, or upon non-compliance with any written agreement reached at the hearing, the Sheriff shall act to obtain compliance as provided by this article; and
- (E) Inform the owner or any other person directly or indirectly in control of the premises of the obligation to post a copy of the notice within five (5) days, in a conspicuous place, so that all premises occupants and others entering the premises shall have notice that the public nuisance is being conducted, maintained, or permitted on the premises and that upon expiration of thirty (30) days after service of the notice, the Sheriff shall act to obtain compliance as provided in this article, including, but not limited to, closing the premises.

Section 168-62 Lack of knowledge is not a defense.

The lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owner, mortgagees, or any other person directly or indirectly in control of the premises, or having any interest in the premises or in any property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owner, mortgagee or other person.

Section 168-63 Issuance of order.

The Sheriff shall issue the order provided for in Section 168-57 by posting said order on the premises wherein the public nuisance is occurring and mailing a copy, by first class mail, of said order to the owner, mortgagee, or any other persons directly or indirectly in control of the premises, within one (1) business day of the posting of said order on the premises.

Section 168-64 Enforcement of order.

1. No sooner than five (5) business days after the issuance of an order pursuant to sections 168-58 and 168-60 and upon the directive of the Sheriff, Broome County Deputy Sheriffs or any other police officer in the County of Broome are authorized to act upon and enforce such order.
2. Where the Sheriff closes a premises pursuant to this section, such closing shall be for such period as the Sheriff may direct, but in no event shall the closing be for a period of greater than one (1) year from the issuance of the order.
3. Upon receiving a copy of the order issued by the Sheriff, pursuant to this Article, the County Attorney shall maintain a special proceeding to affix a civil penalty in the amount not to exceed five thousand dollars (\$5,000.00), and to collect any costs and expenses incurred by the County of Broome, in commencing the proceeding, closing the premises, and in relocating any occupants on the premises. The County Attorney shall file a notice of pendency of the proceeding in the Broome County Clerk's Office in accordance with the provisions of the CPLR.
4. Any judgment in such proceeding, in favor of the County of Broome, shall establish the penalty sued for with costs and disbursements as a lien upon the premises, subject only to taxes, assessments, water rates, mortgages and mechanics' liens as they exist thereon.

Section 168-65 Judgment and Appointment of Receiver.

1. The County Attorney's Office shall and is hereby authorized, on ex parte application to any court of competent jurisdiction, to seek the appointment of a receiver of rents and profits of the premises for the purposes of collecting the civil penalty established pursuant to this local law, and abating the public nuisance. The receiver shall have the powers, duties, and rights, of a receiver of rents and profits of real estate, as provided by law; provided, however, that the County Attorney shall act as counsel to the receiver, and the receiver shall not be allowed any expenditure for counsel fees, and the receiver's commission shall be no greater than ten (10) percentum of the receiver's collections from the premises, which sum shall be full compensation for the receiver's services and those of any agent or agents whom the receiver may retain. The receivership shall continue until the amount of the County of Broome's liens, with interest at the rate of nine (9) per centum per annum and the receiver's commissions, have been fully paid and the nuisance abated; provided further that nothing in this section shall be construed to prevent any prior lienor from applying to a court in a proper case for a receiver of the premises.
2. At any time after the entry of any judgment establishing a lien upon the premises, the County Attorney, on behalf of the County of Broome, may apply to a court for leave to sell the premises on behalf of the County of Broome. Upon such application, the court may order the premises sold at public auction subject to taxes, assessments, water rates, mortgages and mechanics' liens.

Section 168-66 Closing not possession.

A closing directed by the Sheriff pursuant to this article shall not constitute an act of possession, ownership or control by the County of Broome of the closed premises.

Section 168-67 Disobedience of order.

1. It shall be an unclassified misdemeanor punishable by a fine of \$1,000 or imprisonment for up to one (1) year, or both, for any person to use or occupy, or to permit any other person to use or occupy, the premises, or any portion thereof, ordered closed by the Sheriff.
2. Mutilation or removal of a posted order of the Sheriff shall be a violation punishable by a fine of not more than two hundred fifty dollars (\$250.00), or by imprisonment not exceeding fifteen (15) days, or both, provided such order contains therein a notice of such penalty.
3. Intentional disobedience of or resistance to any provision of the order is issued by the Sheriff in addition to any other punishment prescribed by law, shall be an offense punishable by a fine of not more than five hundred dollars (\$500.00), or imprisonment not exceeding six (6) months, or both.
4. Each day a violation continues shall constitute a separate and distinct offense.

Section 168-68 Promulgation of rules and regulations.

The Sheriff may promulgate such rules, procedures, forms and regulations as may be necessary to carry out the provisions of this local law.

Section 168-69 Applicability.

Section 168-58 to 168-68 shall apply within the County of Broome provided, however, where a local city, town or village has enacted a nuisance abatement law declaring synthetic hallucinogens, psychoactive bath salts or psychoactive herbal incense a public nuisance within the borders of the city, town or village, the local enactment shall pre-empt this local law.

Section 168-70 Exceptions

The provisions of this chapter shall not apply:

- a) to public officers or their employees in the lawful performance of their official duties requiring possession or control of synthetic cathinones, synthetic cannabinoids, synthetic hallucinogens, and salvia divinoven;
- b) to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties;
- c) when such conduct is required or authorized by law or by judicial decree, or is performed by a public servant in the reasonable exercise of his official powers, duties or functions.

Section 2. Applicability

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

Section 3. 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.

Section 4. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State.