



THE CITY OF SAN DIEGO

## Report to the City Council

DATE ISSUED: May 10, 2016 REPORT NO. 16-050

ATTENTION: Honorable City Council President Sherri Lightner and Members of the City Council

SUBJECT: Proposed amendment to San Diego Municipal Code Chapter 5, Article 2 to add Division 33, titled Prohibiting the Manufacturing, Sale, Distribution and Possession of Federal Schedule I Drugs, Novel Synthetic Drugs and Novel Psychoactive Drugs.

**REQUESTED ACTION:**

Approve an ordinance to amend Chapter 5, Article 2 of the San Diego Municipal Code to add Division 33, titled Prohibiting the Manufacturing, Sale, Distribution, and Possession of Federal Schedule I Drugs, Novel Synthetic Drugs and Novel Psychoactive Drugs.

**STAFF RECOMMENDATION:**

Approve requested action.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

**FACTUAL BACKGROUND**

In November 2015 an unprecedented number of people in San Diego became ill due to the effects of a substance they ingested by smoking it in a manner consistent with smoking a tobacco or marijuana cigarette. Many people were overcome by the effects of the substance and some required one of many levels of medical treatment, including on-scene intervention by public safety personnel, transport to a hospital, admittance to a hospital or obtaining treatment through their private medical provider.

Public safety officials immediately launched an investigation and attributed the outbreak to a substance that came on the scene in many communities throughout the United States over a decade ago, commonly known as "spice." Over the course of the next several months there were a significant number of reported cases of people overcome by the effects of spice primarily in three areas of the city. Evidence showed that the level of medical distress experienced by some patients was serious enough to require immediate medical attention and that there was a potential for anyone who ingested spice to experience a serious illness.

A multi-pronged stabilization plan was developed to combat this outbreak primarily through reducing the availability of spice. The strategy included enforcement, education and compliance. The goal of the San Diego Police Department was to enhance public safety by enforcing laws prohibiting the use and trafficking of illegal substances, by creating awareness of the dangers associated with smoking spice and in appealing to those who were legally selling spice products to consider a moratorium on sales in the interests of public safety until the source of the medical effects could be identified, isolated and neutralized.

As the stabilization plan proceeded police and prosecutors identified limitations in state law that impacted the City's ability to effectively utilize the enforcement prong of the stabilization plan. Officials recognized that the spice industry was largely unregulated, that only a handful of substances were outlawed and that spice could be packaged and marketed to lure an unwitting public to smoke the drug for mind altering effects without any responsibility on the manufacturer to provide for consumer safety of the public through quality control of the product and appropriate warnings.

Meanwhile, reports of people overcome by spice continued to pour in; requiring an immediate response from police and fire personnel. In the first three weeks of the outbreak spice related overdoses continued steadily with over 40 persons being transported to local hospitals for medical treatment. The number of spice related calls peaked in February 2016 and continued to reach unprecedented levels through March 2016.

Several of the interactions between patients and first responders turned violent because of the behavior exhibited by the patient; behaviors attributed to the effects of spice on the body and brain. Also, many of the reported incidents involved multiple patients requiring a large number of emergency personnel and equipment to manage the scope of each situation.

### The Outbreak

Officers from the San Diego Police Department responded to approximately 204 calls for service related to spice from November 22, 2015, when the initial outbreak of cases were reported, through March 2016 in the 92101, 92103 and 92113 zip code areas. These three areas had the most significant increases in calls for service related to spice as illustrated by the following table:

	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Total
Zip Code						
92101	20	28	23	66	39	176
92103	0	2	3	7	6	17
92113	1	0	7	2	1	11
Total	21	30	33	75	46	204

92101 East Village (beat 521), Core-Columbia (524), Cortez (526), Petco Park (541), Gaslamp (523), Horton Plaza (525), Marina (522), Little Italy (528), Harborview (527), Balboa Park (531)  
 92103 Hillcrest (627), Mission Hills (626), Midtown (628) and Park West (529)  
 92113 Barrio Logan (511), Logan Heights (512), Shelltown (443), Southcrest (442), Mountain View (441)

One of the initial calls for service related to spice occurred on November 22, 2015 when police and fire personnel responded to the areas of 1200-1400 Imperial Avenue and 6<sup>th</sup> Avenue and C Street for an outbreak of spice related cases that resulted in approximately 17 people requiring some level of medical treatment. Five patients were transported to UCSD Hospital and another three were transported to Scripps Mercy Hospital. One 13 year old patient was transported to Children's Hospital.

On November 26, 2015, police and fire personnel responded to the area of 1200-1400 Imperial Avenue on several reports of spice overdoses. At least four patients were attended to. There were indications at each call that all four patients were overcome by spice. On

November 28, 2015 at 12:00 noon, police and fire personnel were dispatched to 1400 Imperial Avenue for possibly five victims of spice. Officers contacted three people; all of whom admitted to smoking spice. Police and Fire personnel began to recognize some of the same people as being overcome by spice on multiple occasions. One patient was nicknamed “spice” after being transported to the hospital on three separate occasions in one day.

Citywide, emergency medical personnel from the San Diego Fire-Rescue Department (SDFD) responded to over 650 spice synthetic drug related incidents between November 2015 and March 2016. The following table illustrates the fluctuation in spice related call volume for SDFD in the three geographic regions of the City that had the most significant increases in calls for service related to spice:

	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Total
Zip Code						
92101*	38	42	32	120	70	302
92103**	1	5	8	48	16	78
92113***	6	3	10	7	6	32
Total	45	50	50	175	92	412#

*92101 East Village, Core-Columbia, Cortez, Petco Park, Gaslamp, Horton Plaza, Marina, Little Italy, Harborview, Balboa Park*

*92103 Hillcrest, Mission Hills, Midtown and Park West*

*92113 Barrio Logan, Logan Heights, Shelltown, Southcrest, Mountain View*

\*monthly average, April-October 2015, 7 calls/month

\*\* 2 calls total in all of April-October 2015 combined

\*\*\* monthly average, April-October 2015, 3 calls/month

#59 total calls in the three areas combined between April-October 2015

San Diego Fire-Rescue Department personnel reported that during spice related responses patients often required chemical and physical restraints because they were combative and posed a threat to first responders. Spice calls also resulted in multi-patient incidents, requiring multiple emergency units per incident which always had the potential to compromise overall Department readiness.

### The Criminal Investigation

San Diego Police Department Narcotics Section detectives investigated the recent outbreak of spice related incidents. Detectives interviewed those patients who were willing to provide a statement. From those patients who were interviewed investigators learned that all of them either smoked spice that they purchased themselves or obtained it from someone they either knew or had no association with. Most of those who were overcome by spice were either in the area of 300-500 C Street or 1200-1300 Imperial Avenue. The age range of those who were transported to the hospital was 13 to 59. Many of those who fell ill to spice were homeless and/or had used spice or other drugs in the past.

The locations where most spice overdoses occurred were clustered around areas that were both mass transit corridors and had a history of drug sales and usage. As such, locations where spice could be obtained were well known to those who sold and ingested the product and were easy to access. The manner in which spice was purchased and consumed was consistent with other more traditional street drugs and consisted of the following:

- The buyer would approach the seller who would either sell spice directly or facilitate the hand to hand transaction by escorting the buyer to the dealer who was typically somewhere in the vicinity.
- The buyer would exchange money for the spice and both the buyer and the seller would then separate.
- Spice, like other drugs, is typically bought and sold among those who have some degree of familiarity with one another.
- The seller is cautious of law enforcement and limits their scope of who they conduct business with to those they know.
- The buyer will return to a source who he or she knows provided a satisfactory product in the past.

Given the urgency caused by the outbreak of cases and the threat to public safety investigators turned to different strategies to locate the origins of the spice product and to eradicate it from circulation in San Diego. Those strategies included regulatory inspections of businesses and undercover operations designed to confiscate spice for purposes of laboratory analysis. Meanwhile, the federal Drug Enforcement Administration (DEA) took an active interest in the San Diego spice cases and requested samples of product to be tested and potentially linked to spice outbreaks occurring in other parts of the country. DEA staff also interviewed some patients to obtain additional information on their habits, behaviors and on the specific spice product they ingested.

Surveillance video of spice incidents obtained by investigators showed in some cases the buyer smoking the spice immediately after the purchase; oftentimes sharing the product with other people in a group setting. This occurred usually on the sidewalk while adjacent to a building, providing the consumer some degree of concealment. What investigators saw next in the surveillance video was alarming. Several of the users became incapacitated immediately after ingesting the spice. Many fell directly to their knees and shortly thereafter, lost consciousness. Some began stumbling and had difficulty standing or walking. Many had to hold onto the side of a building, a nearby tree, newspaper stand or some other sturdy object to prevent from falling. Witnesses became concerned for many who were in obvious medical distress and called for medical intervention. As first responders arrived on the scene some were met with a violent response by the user. The user was delirious to the point of not being able to decipher that public safety personnel were trying to intervene on his or her behalf by rendering first aid. Instead, they resisted such efforts at times, some to the point of having to be restrained. Investigators determined that many who became distressed medically after ingesting spice did so because of the high potency of chemicals contained in the spice product.

With much of the attention on eradicating spice focused in the Downtown and East Village areas, many of those who sought to ingest spice gravitated north to the Hillcrest area where police and fire personnel reported many of the same trends in the violent, unpredictable and dangerous condition of some patients as they experienced Downtown and in the East Village. A source of spice was discovered at a smoke shop on University Avenue. The Police Department worked in conjunction with the City Attorney's Office on a joint operation to stop the sale of spice from this location using civil remedies in the absence of criminal

sanctions. The operation has been successful in that the City Attorney's Office obtained agreements by the store owner to stop selling spice.

The ability for the City to intercede on behalf of the community and continue to combat any potential proliferation of spice in San Diego neighborhoods, in the overall interests of public safety given the medical effects spice can have on the human body, would be greatly enhanced by having criminal sanctions prohibiting the manufacturing, sale, distribution, and possession of Federal Schedule I Drugs, Novel Synthetic Drugs and Novel Psychoactive Drugs.

### **THE SCIENCE OF SYNTHETIC DRUGS**

While "spice" is the common term associated with the cause of the recent outbreak in San Diego, the term "spice" itself is somewhat of a misnomer and is misunderstood by the general public. Popular culture, the media and even many peace officers and prosecutors consider spice to be a synthetic form of marijuana. That association is made because of how spice looks and the manner in which it is ingested. Scientifically, spice is manufactured so that the chemicals attach themselves to the same receptors in the brain as THC, the active chemical found in marijuana. There are other synthetic drugs that pose health hazards to the consumer in ways different from spice. They too were developed to have the same effect on the human body and brain as other common drugs. Bath salts is a good example. While spice is designed to affect the body in ways similar to marijuana, bath salts have stimulant properties in them, and therefore, affect the body in ways similar to common stimulant drugs such as cocaine and amphetamines.

Spice is a mixture of herbs and spices that is typically sprayed with a synthetic compound chemically similar to THC, the psychoactive ingredient in marijuana. According to the United States Department of Justice, Drug Enforcement Administration, marijuana is a mind-altering (psychoactive) drug produced by the cannabis sativa plant. Marijuana contains over 400 chemicals. THC, or delta-9-tetrahydrocannabinol, is believed to be the main chemical ingredient in marijuana that produces the psychoactive effect. Marijuana, like spice, is typically smoked. The THC enters the bloodstream through the lungs then latches onto cannabinoid receptors on nerve cells and starts to influence the activity of those cells. Many of the receptors are in the brain and influence pleasure, memory, thought, concentration, sensory and time perception and coordination. According to the DEA, marijuana use typically causes problems with concentration, memory, coordination, motivation and judgment.

In order to circumvent the law, chemists determined a way to forge the right molecules to create a synthetic brand of marijuana, or spice, in order for consumers to continue to reap the effects of marijuana without the concern of being held criminally liable. In other words, spice is a designer drug in that it is developed synthetically to achieve the same results that substances such as THC found naturally in cannabis has on the human body and brain without using any illegal substances.

According to the list of federal Schedule I controlled substances in the federal Controlled Substances Act, there are several variations of spice chemicals prohibited by federal law, but which can be used to legally manufacture spice in California. Each one is produced by changing the molecular structure of one of the five spice chemicals prohibited in California. All of these variations were created by chemists who were able to isolate and substitute one

molecule in the prohibited spice substance to alter the chemical backbone of that substance and therefore, create a novel substance not prohibited in California.

Spice is prepared for ingestion by spraying the synthetic cannabinoid chemical, a substitute for THC, onto a leafy substance that is then rolled into a cigarette or placed in a pipe and smoked. Spice can look and feel like marijuana. However, it can be much more potent than marijuana and the effects each variation of spice could have on the consumer are unpredictable. This is largely due to the unknown nature of the chemical structure of the spice product about to be ingested. Spice is sold under more than 500 names including bombay blue, fake weed, mojo, scooby snax, annihilation, black mamba and K2. K2 is a common name for spice but has no relevancy to the chemical make-up of the product.

### **THE EFFECTS ON THE HUMAN BODY AND BRAIN**

According to the DEA and the National Alliance for Model State Drug Laws, the use of synthetic and psychoactive drugs has been documented to cause effects such as hallucinations, agitation, psychosis, aggression, suicidal ideation and death. These drugs can also cause paranoia, panic attacks, racing heart rate, increased blood pressure, anxiety, nausea, vomiting, tachycardia, tremors and seizures. The effects of synthetic and psychoactive drugs on the human body and brain are often unpredictable and dependent on the chemical structure of the product consumed. Those who smoke spice are known to experience psychosis, delusion, paranoia, irrational thoughts and behaviors and an inability to stand upright and be cognizant of their surroundings which at times leads to violent reactions towards first responders and good Samaritans who try to assist them. Spice is more toxic to the brain and more addictive than natural cannabis (marijuana). Spice has no recognized medical use in the United States and has a high potential for abuse and dependency. Spice users oftentimes vomit and lose consciousness immediately or shortly after ingestion. Their body slows down as the chemicals react in ways similar to marijuana; delaying and inhibiting judgment, decision making, awareness of surroundings and coordination.

Marijuana contains THC which is derived naturally from the cannabis plant. THC is the chemical naturally contained in marijuana that creates the effect on the human body and brain. THC works by attaching itself to the CB-1 and CB-2 receptors in the brain. Spice is manufactured to also attach itself to the CB-1 and CB-2 receptors. It is a synthetic substance that takes the place of THC. Not only is the chemical structure of each packaged spice product unknown to the consumer, the dose of each chemical is also unknown as is the saturation level of each chemical sprayed on the activator (leafy substance.) For these reasons the potential for spice to cause serious illness or to be abused and or to become addictive is much greater than that of its natural counterpart, marijuana. The outbreak in San Diego and the impact spice can have on a vulnerable consumer is evidence of this.

Some forms of spice and other synthetic drugs are controlled substances, scheduled in the federal Controlled Substances Act. All Schedule I drugs listed in the Controlled Substances Act are illegal under federal law. Schedule I controlled substances have no accepted medical use in the United States, are not safe to use even under medical supervision and have a high abuse potential. Examples include heroin, LSD and ecstasy. Each federally scheduled form of spice or synthetic drug has a unique chemical structure yet similar effects on the body and brain.

The California Health and Safety Code (Health and Safety Code) contains criminal laws that prohibit synthetic drugs. Not all synthetic drugs are illegal in California. However, not all synthetic drugs are illegal in California. Only five versions of spice out of the approximately 22 different spice substances listed in Schedule I and five versions of another synthetic drug commonly referred to as “bath salts” are illegal according to California’s Health and Safety Code, the only criminal laws available to peace officers in San Diego to enforce. The variations not listed in the Health and Safety Code are currently legal to manufacture, distribute and sell in San Diego. This exacerbates the availability of dangerous drugs in San Diego because the synthetic drug can be altered to create a version that is either not prohibited by law or is unrecognizable to authorities

Any Schedule I drug in the Controlled Substances Act is vulnerable to reincarnation chemically in order to provide the same effect on the body as the common drug but in a way that could circumvent the law if the substance is constructed using chemical ingredients that are lawful or not locally enforced. Synthetic drugs are chemically constructed. Any manufacturer of synthetic drugs who understands the law (and most do) knows how to chemically alter a synthetic drug that in its unaltered form is illegal. By changing the molecular structure of a prohibited synthetic drug a legal variation of the illegal drug can be created. This is done to avoid arrest and prosecution. Using spice as an example, manufacturers can take any of the five spice structures prohibited in California, change the chemical backbone and create a legal alternative that affects the body and brain in ways similar to the outlawed substance.

Some variations created by chemists are known to law enforcement and prosecutors. Others are in various forms of development, a process that is on-going due to the demand for these substitute drugs.

## **THE ORDINANCE:**

### Summary

The ordinance before the San Diego City Council adds an entire Division 33 to the San Diego Municipal Code (Municipal Code) under Chapter 5; Public Safety, Morals and Welfare, Article 2; Police Regulations – Offenses Against Government. The ordinance will prohibit the manufacturing, sale, distribution, and possession of Federal Schedule I Drugs, Novel Synthetic Drugs and Novel Psychoactive Drugs.

The absence of more robust laws hampered efforts by law enforcement and prosecutors to slow down the recent outbreak of spice related illnesses in San Diego. The San Diego Police Department, in partnership with the Criminal Division of the San Diego City Attorney’s Office, crafted an ordinance designed to enhance public safety by prohibiting synthetic drugs using the same template the federal government uses to classify and criminalize controlled substances, as well as account for new synthetic and psychoactive drugs not scheduled federally or in California.

This ordinance is designed to provide protections against synthetic substances known currently and those that may be developed in the future. The ordinance achieves that objective by prohibiting substances based upon how they react in the body and brain, not by the type of common drug they are designed to replace. Synthetic drugs are molecular

mutations of the more common drug on the market. The number of mutations that could be discovered is infinitesimal.

The ordinance is crafted in such a way as to prohibit the use of any molecular variations that have a similar effect on the body and brain as spice, stimulants and any drug that affects the central nervous system, even variations not yet known to authorities. The Federal Schedules of Controlled Substances are updated on a regular basis and allow for emergency scheduling. Thus, if additional synthetic drugs are added to Federal Schedule I, but not to the California Schedules of Controlled Substances, the ordinance would automatically prohibit the new drugs. While newly created drugs often go unregulated in California for years, many new drugs receive emergency scheduling in the Federal drug schedules within months of their discovery.

### Definitions

The following summarized definitions apply in the ordinance:

Federal Schedule I Drug – any drug currently scheduled in Schedule I of the Federal Controlled Substances Act.

Novel Synthetic Drug – any synthetic cannabinoid or synthetic cathinone not prescribed or prohibited by federal or state law.

Novel Psychoactive Drug – any natural or synthetic substance, and their analog, which have a psychedelic, psychotropic, hallucinogenic or other similar effect on the central nervous system or brain.

These broad definitions include not only spice, the lone source of the recent outbreak, but also other synthetic and psychoactive drugs affecting the central nervous system.

### Prohibitions

The ordinance prohibits the manufacturing, sale, distribution, and possession of all Federal Schedule I Drugs not already controlled by California law. This includes synthetic drugs currently listed in the Federal Schedule I, but not listed in California's Health and Safety Code sections 11357.5 or 11375.5.

The ordinance also prohibits the manufacturing, sale, distribution, and possession of Novel Synthetic Drugs. Synthetic drugs are synthetic cannabinoids and synthetic cathinones. A Novel Synthetic Drug is a new chemical variation to one of the known synthetic cannabinoids and synthetic cathinones, an alternative that is oftentimes legal due to a change in the molecular structure of the substance. Additionally, the ordinance prohibits the manufacturing, sale, distribution, and possession of Novel Psychoactive Drugs. These drugs may be natural or synthetic and are unregulated by either state or federal law.

### Enforcement

The ordinance may be enforced criminally, civilly, or administratively using existing authority and remedies in the Municipal Code.

### Conclusion

The addition of this Division to the Municipal Code will enable the City to enhance public safety by prohibiting the manufacture, sale, distribution and possession of substances that are unregulated by California law, but just as dangerous as traditional controlled substances. This ordinance puts into place a structure that prohibits known and novel substances from being manufactured, trafficked and possessed in San Diego.

Existing laws have proven to be inadequate to protect our citizens and visitors. These laws simply do not provide the level of accountability required to slow and eventually stop some within the industry from “peddling” this synthetic drug on the consumer. Because of the on-going threat to public safety the San Diego Police Department, in conjunction with the City Attorney’s Office, believes this ordinance will provide the City the enforcement and prosecution capabilities needed to assist with eradicating spice from our communities. Our hope is that the adoption of a local ordinance will provide an immediate tool for law enforcement officers enabling them to hold manufacturers, distributors and those who possess spice accountable under provisions set forth in the San Diego Municipal Code.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective #1:1. Protect lives, property, and the environment through timely and effective response in all communities

Objective #2: Reduce and prevent crime

FISCAL CONSIDERATIONS:

There are no fiscal considerations.

EQUAL OPPORTUNITY CONTRACTING INFORMATION:

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

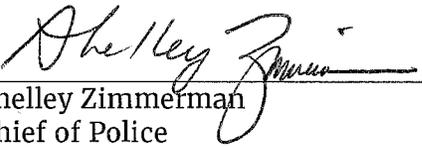
No previous Council and/or Committee actions.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

Public notice of the requested Council Action and the public’s right to be present was posted to the City and Police Department’s public website.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Stakeholders include the City, City Attorney’s Office, San Diego Police Department and additional law enforcement agencies working within the City of San Diego, San Diego Fire-Rescue Department, Emergency Medical Services, retail establishments such as convenience stores and smoke shops, citizens and visitors to the City. The ordinance will enhance public safety.

  
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Shelley Zimmerman  
Chief of Police  
San Diego Police Department