

# PROPOSED

ORDINANCE NO. 2014-\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO DISTRIBUTION OF KRATOM; AMENDING CHAPTER 8½ OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"), PERTAINING TO CIVIL PENALTIES; AMENDING SECTION 20-13 OF THE CODE TO PROHIBIT THE SALE, GIVING AWAY, OFFER OR ADVERTISEMENT FOR SALE, OR PUBLIC DISPLAY FOR SALE OF KRATOM; PROVIDING FOR DEFINITIONS; PROVIDING FOR SEIZURE BY LAW ENFORCEMENT PERSONNEL; PROVIDING FOR PENALTIES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Kristin Jacobs and Commissioner Dale V.C. Holness)

WHEREAS, kratom, a tropical tree indigenous to Thailand, Malaysia, Myanmar, and other areas of Southeast Asia, is used as an herbal drug that produces stimulant and hallucinogenic effects at various doses; and

WHEREAS, due to its psychotropic and addictive nature, the U.S. Army and Navy have banned the use of kratom, and the Drug Enforcement Agency (DEA) has placed kratom on the DEA watch list; and

WHEREAS, in February 2014, the Food and Drug Administration (FDA) issued an alert that permits the FDA to detain products which contain ingredients that are found in kratom; and

WHEREAS, kratom has been shown to be addictive and, according to the FDA, consumption of kratom can lead to a number of health problems including respiratory depression, nervousness, agitation, aggression, sleeplessness, hallucinations, delusions, loss of libido, tremors, skin hyperpigmentation, nausea, vomiting, constipation, and severe withdrawal signs and symptoms; and

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1 WHEREAS, despite its dangers, kratom is promoted as a legal psychoactive  
2 product; and

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

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

10 WHEREAS, at this time, kratom is not currently on Florida's schedule of  
11 controlled substances, but the Broward County Board of County Commissioners desires  
12 to prohibit distribution of kratom; and

13 WHEREAS, across the United States, numerous other counties, municipalities,  
14 and states are taking action to prohibit or restrict the sale of kratom due to its potential  
15 health effects; and

16 WHEREAS, the distribution of kratom has a substantial and detrimental impact  
17 on the public health, safety, and welfare of the residents of Broward County; and

18 WHEREAS, kratom poses public health, safety, and welfare issues for Broward  
19 County and it is, therefore, necessary to identify and control new substances that mimic  
20 illegal drugs,

21  
22 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
23 BROWARD COUNTY, FLORIDA:

24  
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underscoring type are additions.

1 Section 1. Chapter 8½-16 of the Broward County Code of Ordinances,  
2 "Schedule of civil penalties," is hereby amended to read as follows:

3 **Sec. 8½-16. Schedule of civil penalties.**

4 ...

5 (f) *Miscellaneous provisions:*

		<i>Fine</i>	
	<i>Violation</i>	<i>First Violation</i>	<i>Repeat Violation</i>
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11	(33) Prohibited sale, giving away, offer or advertisement for sale, or public display for sale, of synthetic cannabinoid herbal incense, <u>and</u> contraband bath salts, <u>and</u> <u>kratom</u> (sec. 20-13)	500.00	500.00
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15 Section 2. Section 20-13 of the Broward County Code of Ordinances, "Sale,  
16 giving away, offer or advertisement for sale, or public display for sale, of synthetic  
17 cannabinoid herbal incense, and contraband bath salts prohibited," is hereby amended  
18 to read as follows:

19 **Sec. 20-13. Sale, giving away, offer or advertisement for sale, or public display**  
20 **for sale, of synthetic cannabinoid herbal incense, and contraband bath salts, and**  
21 **kratom prohibited.**

22 (a) *Purpose and Intent.* The Broward County Board of County  
23 Commissioners ("Board") finds and declares that kratom and the products and synthetic  
24 substances described hereunder are commonly used as alternatives to marijuana,

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1 psychoactive drugs, stimulants, and other illegal drugs. The Board finds that kratom  
2 and these synthetic substances are particularly appealing to youth, are potentially  
3 dangerous to users in the short term, and the long term effects are not yet known. The  
4 Board finds that, despite the significant dangers of kratom, it is promoted as a legal  
5 psychoactive product. The Board finds that products which contain these synthetic  
6 substances often use a disclaimer that the product is "not for human consumption," in  
7 order to avoid regulations requiring the manufacturer to list the product's active  
8 ingredients. The Board also finds that drug designers and chemists can quickly create  
9 new synthetic drugs and stimulants once federal or state law makes a particular  
10 synthetic drug or stimulant illegal. As such, the Board finds that there is a need to  
11 declare illegal the sale, giving away, offer or advertisement for sale, and public display  
12 for sale, of kratom and synthetic substances that mimic illegal controlled substances,  
13 which have not yet been categorized as illegal controlled substances under federal or  
14 state law. The Board further finds that it is proper and necessary for the Board to  
15 exercise its authority to safeguard and protect the public health, safety, and welfare by  
16 taking this action.

17 . . .

18 (d) *Definitions.* For purposes of this section, the following words and  
19 phrases shall have the following meanings:

20 . . .

21 (3) Kratom shall mean any parts of the plant *mitragyna speciosa*, whether  
22 growing or not, and any compound, manufacture, salt, derivative, mixture,  
23 or preparation of that plant, including but not limited to mitragynine and 7-  
24 hydroxymitragynine.

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1        ~~(3)~~ (4) Structurally similar shall mean chemical substitutions of a common  
2                    chemical backbone associated with synthetic cannabinoids, contraband  
3                    bath salts, or any mimicking compounds of such chemicals, including any  
4                    related salts, isomers, and salts of isomers that are listed in the controlled  
5                    substance schedules in Chapter 893, Florida Statutes, ~~as amended~~, or  
6                    otherwise prohibited by federal or state law.

7        ~~(4)~~ (5) Synthetic cannabinoid herbal incense shall mean aromatic or nonaromatic  
8                    plant material or product, containing a synthetic drug or to which a  
9                    synthetic drug has been sprayed, applied, or otherwise added, that is  
10                   distributed in a loose, leafy, powder, or granular form or in a compressed  
11                   block or blocks that can be crushed to result in a powder or granular form,  
12                   and can be placed into a pipe, cigarette paper, atomizer, or drug  
13                   paraphernalia for purposes of ingestion by smoking, inhaling, or other  
14                   method, regardless of whether the substance is marketed as not for the  
15                   purpose of human consumption, and regardless of how the substance is  
16                   labeled.

17        ~~(5)~~ (6) Synthetic drug shall mean any chemical or mixture of chemicals, however  
18                   packaged, that is structurally similar to synthetic cannabinoids,  
19                   tetrahydrocannabinol ("THC"), or any mimicking compounds of such  
20                   chemicals, including any related salts, isomers, and salts of isomers that  
21                   are listed in the controlled substance schedules in Chapter 893, Florida  
22                   Statutes, ~~as amended~~, or otherwise prohibited by federal or state law.  
23                   Packaging that indicates, suggests, or implies that a product mimics the  
24                   pharmacological effects of marijuana, such as "fake pot" or "fake weed,"

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1 shall create a presumption that the product contains a synthetic drug, as  
2 defined herein. "Synthetic drug" shall not include any substance currently  
3 listed in the controlled substance schedules in Chapter 893, Florida  
4 Statutes, ~~as amended~~, or otherwise prohibited by federal or state law.

5 ~~(6)~~ (7) Synthetic stimulant shall mean any chemical or mixture of chemicals,  
6 however packaged, that has a stimulant effect on the central nervous  
7 system and is structurally similar to fluoromethcathinone,  
8 3,4-methylenedioxypropylamphetamine ("MDPV"), cathinone,  
9 methylmethcathinone, methoxymethcathinone, methcathinone,  
10 3,4-methylenedioxymethamphetamine ("MDMA"),  
11 3,4-methylenedioxymethcathinone ("MDMC"), or any mimicking  
12 compounds of such chemicals, including any related salts, isomers, and  
13 salts of isomers that are listed in the controlled substance schedules in  
14 Chapter 893, Florida Statutes, or otherwise prohibited by federal or state  
15 law. Packaging that indicates, suggests, or implies that a product mimics  
16 the pharmacological effects of cathinone, methcathinone,  
17 methylmethcathinone, MDPV, MDMC, MDMA, methoxymethcathinone,  
18 fluoromethcathinone, amphetamine, ecstasy, or cocaine shall create a  
19 presumption that the product contains a synthetic stimulant, as defined  
20 herein. "Synthetic stimulant" shall not include any substance currently  
21 listed in the controlled substance schedules in Chapter 893, Florida  
22 Statutes, ~~as amended~~, or otherwise prohibited by federal or state law.

23 (e) Sale, giving away, offer or advertisement for sale, or public display for  
24 sale, of synthetic cannabinoid herbal incense, ~~and~~ contraband bath salts, and kratom

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1 prohibited. It shall be unlawful for any person to sell, give away, offer or advertise for  
2 sale, or publicly display for sale, synthetic cannabinoid herbal incense, ~~and~~ contraband  
3 bath salts, and kratom, as defined herein.

4 (f) Affirmative defense. It shall be an affirmative defense to prosecution of a  
5 violation of this section if the sale, giving away, offer or advertisement for sale, or public  
6 display for sale, of any synthetic cannabinoid herbal incense, ~~or~~ contraband bath salts,  
7 or kratom is pursuant to the direction or prescription of a licensed physician or dentist  
8 authorized in the state of Florida to direct or prescribe kratom or such synthetic  
9 substances.

10 (g) Seizure and destruction of synthetic cannabinoid herbal incense, ~~and~~  
11 contraband bath salts, and kratom. Synthetic cannabinoid herbal incense, ~~and~~  
12 contraband bath salts, and kratom prohibited herein may be seized by law enforcement  
13 officers and may be destroyed in the same manner used to destroy narcotics and  
14 contraband substances, after their use for evidentiary purposes in any judicial  
15 proceeding is no longer required.

16 . . .

17 Section 3. SEVERABILITY.

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

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1 Section 4. INCLUSION IN CODE.

2 It is the intention of the Board of County Commissioners that the provisions of  
3 this Ordinance shall become and be made a part of the Broward County Code; and that  
4 the sections of this Ordinance may be renumbered or relettered and the word  
5 "ordinance" may be changed to "section," "article," or such other appropriate word or  
6 phrase in order to accomplish such intentions.

7 Section 5. EFFECTIVE DATE.

8 This Ordinance shall become effective as provided by law.

9  
10 ENACTED

11 FILED WITH THE DEPARTMENT OF STATE

12 EFFECTIVE

**PROPOSED**

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14  
15 Approved as to form and legal sufficiency:  
16 Joni Armstrong Coffey, County Attorney

17  
18 By /s/ Annika E. Ashton 10/13/14  
19 Annika E. Ashton (date)  
Assistant County Attorney

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22  
23 AEA/lw  
10/13/14  
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