ORDINANCE NO. O-07-16

AN ORDINANCE OF THE OF THE CITY COUNCIL OF THE CITY OF COLTON ADDING A NEW CHAPTER 9.23 TO TITLE 9 OF THE COLTON MUNICIPAL CODE REGARDING PSYCHOACTIVE HERBAL INCENSE, PSYCHOACTIVE BATH SALTS AND OTHER SYNTHETIC DRUGS, PROHIBITING THE DISTRIBUTION AND SALE OF CERTAIN INTOXICATING CHEMICAL COMPOUNDS KNOWN AS SYNTHETIC DRUGS

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California State Law, through Health & Safety Code Sections 11357.5 and 11375.5, prohibits the sale or any other distribution of certain synthetic drugs often marketed as "bath salts" or "incense" in response to increased incidents, particularly among adolescents, resulting from the use of these drugs; and

WHEREAS, according to the National Institute on Drug Abuse ("NIDA"), synthetic cannabinoid compounds or synthetic cannabinoid derivative products (hereinafter "psychoactive herbal incense") contain dried, shredded plant material and chemical additives that are responsible for psychoactive (mind-altering) effects. NIDA also confirms that these products are sold under many names including Spice, K2, fake weed, Yucatan Fire, Skunk, Moon Rocks and others. Labels on psychoactive herbal incense products often claim the products contain "natural" psycho-active material taken from a variety of plants, but chemical analyses shows that the active ingredients in psychoactive herbal incense are synthetic (or designed) cannabinoid compounds. For many years, psychoactive herbal incense mixtures have been easy to purchase in head shops, gas stations, and via the Internet. Some psychoactive herbal incense products are sold as "incense," often closely resemble potpourri, and are often sold with a warning label that the products "are not for human consumption." Like marijuana, psychoactive herbal incense is abused mainly by smoking, but can sometimes be mixed with marijuana or prepared as an herbal infusion for drinking; and

WHEREAS, because the chemicals in psychoactive herbal incense have a high potential for abuse and no medical benefit the Drug Enforcement Administration ("DEA") has designated the five active chemicals most frequently found in psychoactive herbal incense as Schedule I controlled substances, making it illegal to sell, buy, or possess them under federal law. These five chemicals are also included in Health and Safety Code Section 11357.5, subdivision (b)(1)-(5) as the chemicals specifically prohibited by Section 11357.5; and

WHEREAS, according to NIDA, psychoactive herbal incense products are popular among young people and, of the illicit drugs used by high school seniors, psychoactive herbal incense is second only to marijuana; and

WHEREAS, psychoactive herbal incense often causes users to have experiences similar to marijuana, while some users experience even stronger psychotic effects such as extreme

anxiety, paranoia, and hallucinations. Psychoactive herbal incense abusers who have been taken to Poison Control Centers report symptoms that include rapid heart rate, vomiting, agitation, confusion, and hallucinations. Nationwide, the American Association of Poison Control Centers ("AAPCC") reported 6,968 cases of exposure in 2011, 5,230 in 2012, 2,668 in 2013, 3,682 in 2014, and 7,779 in 2015. The AAPCC claims that psychoactive herbal incense can cause dangerous health effects, is made specifically to be abused, and is not tested for safety; and

WHEREAS, there is an emerging family of drugs commonly referred to as "bath salts" or "psychoactive bath salts" that contain one or more chemicals relating to cathinone, an amphetamine-like stimulant found naturally in the Khat plant. According to the NIDA, psychoactive bath salts typically take the form of a white or brown crystalline powder and are sold in small plastic or foil packages labeled "not for human consumption." Psychoactive bath salts are often sold in drug stores under a variety of brand names, such as Ivory Wave, Bloom, Cloud Nine, Lunar Wave, Vanilla Sky, White Lightning, and Scarface and users of psychoactive bath salts can experience euphoria, increased sociability, and sex drive, while others experience paranoia, agitation, and hallucinatory delirium. Some users even display psychotic and violent behavior, with deaths being reported in several instances; and

WHEREAS, in October 2011, the DEA placed three common synthetic cathinones found in psychoactive bath salts under emergency ban pending further investigation and, in July 2012, President Obama signed the Synthetic Drug Abuse Prevention Act of 2012 (as part of the Federal Drug Administration Safety and Innovation Act) permanently making two of them illegal along with psychoactive herbal incense. On April 12, 2013, the DEA used its emergency scheduling authority to schedule three more types of synthetic cannabinoids, temporarily designating them as Schedule I substances; and

WHEREAS, the Analog Drug Law codified in California Health and Safety Code Section 11400 provides that selling a drug that is an analog of a scheduled controlled substance is a crime subject to criminal prosecution; and

WHEREAS, according to NIDA, although federal law prohibits chemically similar "analogues" of the specifically banned types of psychoactive herbal incense and psychoactive bath salts, manufacturers are expected to respond by creating new drugs different enough from the banned substances to evade current legal restriction. For example, after the cathinone mephedrone was banned in the United Kingdom in 2010, a chemical called naphyrone quickly replaced it, and is now being sold as "jewelry cleaner" under the name "Cosmic Blast"; and

WHEREAS, the AAPCC reported 6,137 cases of exposure in 2011, 2,691 in 2012, 995 in 2013, 582 in 2014, and 522 in 2015. The AAPCC claims that psychoactive bath salts are among the worst substances the AAPCC has ever seen, has not been tested, and can have permanent side effects; and

WHEREAS, to avoid the threat to public health, safety, and welfare that would occur if these intoxicating synthetic chemical compounds were permitted in the City and to ensure the individual or business which possesses, provides, distributes or sells Synthetic Drugs as defined herein is a threat to public health, safety and welfare and, as such, is subject to the City's administrative, criminal and civil enforcement procedures (including those set forth in Chapters 8.02 and 8.12 of Title 8 of the Colton Municipal Code) and, in the case of a business, prohibition

against the issuance of a business license (pursuant to Chapter 5.02 of the Colton Municipal Code); and

WHEREAS, the City Council hereby finds that many communities in California have recognized the dangers of Synthetic Drugs, which have been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death. While state and federal law prohibit certain compounds that are used to create synthetic drugs, they are not comprehensive enough to eliminate the distribution and sale of all Synthetic Drugs in the City. Specifically, the Council finds that the makers of Synthetic Drugs continually alter the composition of the compounds in their products so as to not come under the purview of state and federal law and other laws and regulations attempting to prohibit the sale of Synthetic Drugs. In fact, products which plainly are being marketed for use of Synthetic Drugs are now being packaged with advertisements stating that the product does not contain the compounds specifically banned by state or federal law. Thus, the City Council finds that in order to implement an effective measure prohibiting the distribution and sale of Synthetic Drugs, it is necessary to look at all factors related to the sales and marketing of Synthetic Drugs. These factors will help City officials determine whether a product that does not come under the purview of state or federal law is nevertheless a Synthetic Drug because it is intended for recreational drug use; and

WHEREAS, while the question of whether a given product is being distributed or sold for use as a recreational drug must be determined on a case-by-case basis, the City Council finds that the following evidentiary factors are helpful in determining whether a given product is in fact a Synthetic Drug:

1. Marketing: Synthetic Drugs are rarely, if ever, suitable for their marketed uses. For example, a Synthetic Drug in the form of a powder might be marketed as "glass cleaner," even though the powder cannot reasonably be used to clean glass.

2. Sales Location: Synthetic Drugs are typically sold in liquor stores, smoke shops and gas stations, yet Synthetic Drugs are marketed as products that are not typically sold by these businesses. For example, Synthetic Drugs are often marketed as bath salts, spice, incense, potpourri, skin treatments, cleaning products and plant food; however, these types of products are typically not sold in liquor stores, smoke shops or gas stations.

3. Warning Labels: Synthetic Drugs often use warning labels such as: "not for human consumption" and "not for purchase by minors." Bona fide bath salts, incense, cleaning products and the like do not typically bear such labels. Of particular relevance are labels that indicate a given product does not contain chemical compounds banned by state law, which bona fide bath salts, incense, cleaning products and the like would not have any reason to advertise.

4. Price: Synthetic Drugs are typically more expensive than products that are used for a Synthetic Drug's marketed use. For example, a Synthetic Drug marketed as "glass cleaner" might be priced at $50.00 for an eighth of an ounce, while bona fide glass cleaner is priced at approximately $5.00 for 26 ounces.

5. Similarity to Illicit Street Drugs: Synthetic Drugs often resemble illicit street drugs and/or use brand names and packaging that are designed to make the product appear similar to illicit street drugs. For example, many Synthetic Drugs are sold as white powders packaged in vials (resembling cocaine) or dyed green to appear similar to marijuana. Additionally, brand names are often similar to street slang for illicit drugs and have no relation to the products that are purportedly being sold. These brand names are always changing, but include "Eight Ballz," "Spice," "Black Mamba," "K-2," "Puff," "Sugar Sticks," "Green Buddha," "Diablo Botanical Incense," "Scooby Snax Potpourri," "Grape Ape Herbal Incense," "Aurora Incense," "Three Monkey Incense," "Mr. and Mrs. Marley." "Cloud 9 Incense," and a group of Synthetic Drugs marketed as from "The Spice Guy"; and

WHEREAS, the City Council further finds that, given the recent state and federal laws making the certain identified chemicals in psychoactive herbal incense and psychoactive bath salts illegal and the public peace, health, safety and welfare concerns associated with the sale and use of psychoactive herbal incense and psychoactive bath salts as mentioned herein, the City finds that the sale and the use of psychoactive herbal incense and psychoactive bath salts each create a nuisance that threatens the health, safety, and property of users, their families, and any person or property nearby and therefore, by adding Chapter 9.23 to the Colton Municipal Code by this Ordinance, wishes to prohibit, without encroaching upon any field of law occupied by state or federal law, the sale and use of psychoactive herbal incense and psychoactive bath salts (as those phrases are defined in this Ordinance) in the City. To avoid the threat to public health, safety, and welfare that would occur if these intoxicating synthetic chemical compounds were permitted in the City and to ensure the individual or business which possesses, provides, distributes or sells Synthetic Drugs as defined herein is a threat to public health, safety and welfare and, as such, is subject to the City's administrative, criminal and civil enforcement procedures (including those set forth in Chapters 8.02 and 8.12 of Title 8 of the Colton Municipal Code) and, in the case of a business, prohibition against the issuance of a business license (pursuant to Chapter 5.02 of the Colton Municipal Code); and

WHEREAS, an effective way to prevent and abate the health, safety and welfare concerns that exist as a result of the marketing, distribution and sale of Synthetic Drugs in manners that brazenly seek to circumvent State and Federal Law is through the enforcement of the City's administrative, criminal and civil enforcement procedures and through the prohibition against the issuance of a business license. Because the chemical composition of Synthetic Drugs is constantly evolving, it is necessary to look at the circumstances surrounding the marketing (including price), distribution or sale of any given product to determine if the product is being provided, distributed or sold as a recreational drug. This ordinance shall not apply to any activity already regulated by Health and Safety Code Sections 11357.5, 11375.5, 11401, the federal Controlled Substances Act or pre-empted by any State or Federal law or regulation; and

WHEREAS, by enacting this Ordinance, the City ordains that nothing herein shall be deemed to conflict with federal law, including but not limited to its treatment of controlled substances, state law, including but not limited to Health and Safety Code Section 11357.5 and Section 11375.5, or otherwise or to license any activity that is prohibited thereunder except as mandated by such laws.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLTON, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. The City Council of the City of Colton adopts Chapter 9.23 to Title 9 in its entirety to read as follows:

"Chapter 9.23
PSYCHOACTIVE HERBAL INCENSE, PSYCHOACTIVE BATH SALTS AND OTHER SYNTHETIC DRUGS

9.23.010 Purpose and intent.
9.23.020 Definitions.
9.23.030 Provision, display for sale, sale or distribution of synthetic drugs prohibited.
9.23.040 Provision, display for sale, sale or distribution of substances claimed or represented to be synthetic drugs prohibited.
9.23.050 Possession of synthetic drugs prohibited.
9.23.060 Public nuisance.
9.23.070 Summary abatement.
9.23.080 Revocation of business license.
9.23.090 Penalties.
9.23.100 Seizure of evidence.
9.23.110 Exclusions.

9.23.010 Purpose and intent.

Recreational use of psychoactive herbal incense, psychoactive bath salts and similar products known as "synthetic drugs" has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death. While state and federal laws and regulations prohibit some synthetic drugs, the makers of these drugs continually alter the composition of the compounds in their products so as to escape the purview of these laws and regulations.

It is the purpose and intent of this Chapter to prohibit the sale or possession of psychoactive herbal incense and psychoactive bath salts, as those terms are defined herein, in the City in order to protect and preserve the public peace, safety, health, and welfare of those within the City and to provide the City with reasonable measures to address the dangers to the community posed by synthetic drugs, including those not regulated by state or federal law. Nothing in this Chapter shall be construed to cease or limit or encroach in any way upon any field of law occupied by federal law or by the laws of the state of California.

The prohibition of psychoactive herbal incense and psychoactive bath salts is necessary and in the interests of the public health, safety and general welfare because there is the substantial likelihood of the sale and use of these illegal drugs in the City of Colton. The sale and use of

psychoactive herbal incense and psychoactive bath salts in the City would result in undesirable impacts to the community. Among these impacts are: increased potential for the sale of these controlled substances to minors and adults for their use, increased dependency on these controlled substances, increased harm to the users of these controlled substances, and increased risk of injury to persons or property by users of these controlled substances.

9.23.020 Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business shall have the same meaning as the term is defined in section 5.02.020 of this Municipal Code.

Consume, *consuming* or *consumption* shall mean to ingest, inhale, inject, smoke or snort (insufflate).

Distribute, *distributing*, or *distribution* shall mean to furnish, give away, exchange, transfer, deliver or supply, whether for monetary gain or not.

Person shall include any natural person, business, firm, company, corporation, public corporation, club, trust, partnership, association or similar organization.

Possess, *possessing* or *possession* shall mean to have for consumption, distribution or sale in one's actual or constructive custody or control, or under one's authority or power, whether such custody, control, authority or power be exercised solely or jointly with others.

Provide, *providing* or *provision* shall mean offering to distribute or sell a product or substance to any person.

Psychoactive bath salts shall mean any crystalline or powder product that contains a synthetic chemical compound that, when consumed, elicits psychoactive or psychotropic stimulant effects. The term "psychoactive bath salts" includes without limitation:

(1) Products that elicit psychoactive or psychotropic stimulant effects and contain any of the following intoxicating chemical compounds:

(A) Salvia Divinorum or Salvinorum A; all parts of the plant presently classified botanically as Salvia Divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts;

(B) Cathinone (2-amino-1-phenyl-1-propanone), 4- methylmethcathinone (2-methylamino-1-(4-methylphenyl)propan-1-one), 4-methoxymethcathinone (1-(4-methoxyphyenyl)-2-(methylamine)propan-1-one), MDPV (methylenedioxypyrovalerone), MDMA (3, 4-methylenedioxy-N-methylamphetamine), methylene (3,4-methylenedioxy- N-methylcathinone), methcathinone (2-(methylamino)-1-phenyl-propan-1- one), flephedrone (4-fluoromethcathinone), 3-FMC (3- fluoromethcathinone), ethcathinone (2-ethylamino-1-phenyl-propan-1-one), butylone

(β-keto-N-methylbenzodioxolylbutanamine), a-PPP (a- pyrrolidinopropiophenon), MPPP (4'-methyl-a-pyrrolidinopropiophenone), MDPPP (3',4'-methylenedioxy-a-pyrrolidinopriopiophenone), a-PVP (1- phenyl-2-(1-pyrrolidinyl)-1-pentanone) or naphyrone (1-naphthalen-2-yl-2- pyrrolidin-1-ylpentan-1-one), 6-APDB (6(2aminopropyl)2,3 dihydrobenzo-furan), and analogs of MDA (3,4-methylenedioxymethamphetamine);

(C) Any derivative of the above listed intoxicating chemical compounds;

(D) Any synthetic substance and its isomers with a chemical structure similar to the above listed compounds;

(E) Any chemical alteration of the above listed intoxicating chemical compounds; or

(F) Any other substantially similar chemical structure or compound; and

(2) Products that elicit psychoactive or psychotropic stimulant effects and are marketed under any of the following trade names: Bliss, Blizzard, Blue Silk, Bonzai Grow, Charge Plus, Charlie, Cloud Nine, Euphoria, Hurricane, Ivory Snow, Ivory Wave, Lunar Wave, Ocean, Ocean Burst, Pixie Dust, Posh, Pure Ivory, Purple Wave, Red Dove, Scarface, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Night and White Lightning. The term "psychoactive bath salts" shall not include any product, substance, material, compound, mixture or preparation that is specifically excepted by the California Uniform Controlled Substances Act ("UCSA") (Health and Safety Code §§ 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health and Safety Code §§ 11053-11058), regulated by one of the UCSA"s Synthetic Drug Laws (Health and Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the Federal Controlled Substances Act (the "CSA") (21 USC §§ 801 et seq.) or approved by the Food and Drug Administration ("FDA").

Psychoactive herbal incense shall mean any organic product consisting of plant material that contains a synthetic stimulant compound that, when consumed, elicits psychoactive or psychotropic euphoric effects. The term "psychoactive herbal incense" includes without limitation:

(1) Products that elicit psychoactive or psychotropic euphoric effects and contain any of the following chemical compounds:

(A) Cannabicyclohexanol (2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol), JWH-018 (naphthalene-1-yl-(1-pentylindol-3-yl)methanone), JWH-073 (napththalen-1-yl-(1-butylindol-3-yl)methanone), JWH-200 ((1-(2-morpholin-4- ylethyl)indol-2-yl)-naphthalen-1-ylmethanone), HU-210 or 1.1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol) ((6aR,10aR)-9- (Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol), CP 47, 497 (2-[(1R,3S)-3- hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) and the dimethylhexyl, dimethyloctyl and dimethylnonyl homologues of CP 47,497 (2-[1R,3S)-3- hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) or AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(napthalen-1-yl)methanone), 1-Pentyl-3 (2-methoxyphenylacetyl)indole (also known as JWH-250), 1-Hexyl-3-(1- naphthoyl)indole (also known as JWH-019), 1-Pentyl-3-(4-chloro-1- naphthoyl)indole (also known as JWH-398), N-

benzylpiperazine (also known as BZP), 1-(3-trifluoromethylphenyl)piperazine (also known as TFMPP);

(B) Any derivative of the above listed intoxicating chemical compounds;

(C) Any synthetic substance and its isomers with a chemical structure similar to the above listed intoxicating chemical compounds;

(D) Any chemical alteration of the above listed intoxicating chemical compounds;

(E) Any other substantially similar chemical structure or compound; or

(F) Any other synthetic cannabinoid.

(2) Products that elicit psychoactive or psychotropic euphoric effects and are marketed under any of the following names: K2, K3, Spice, Genie, Smoke, Potpourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Black Mamba, Stinger, Ocean Blue, Stinger, Serenity, Fake Weed and Black Mamba. The term "psychoactive herbal incense" shall not include any product, substance, material, compound, mixture, or preparation that is specifically excepted by the UCSA (Health and Safety Code §§ 11000 et seq.), listed in one of the UCSA's schedules of controlled substances (Health and Safety Code §§ 11053—11058) regulated by one of the USCA's Synthetic Drug Laws (Health and Safety Code §§ 11357.5, 11375.5 and 11401), regulated by the CSA (21 USC §§ 81 et seq.) or approved by the FDA.

Psychoactive or *psychotropic stimulant effects* shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of cocaine, methylphenidate or amphetamines.

Psychoactive or *psychotropic euphoric effects* shall mean affecting the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of cannabis.

Sell, selling or *sale* shall mean to furnish, exchange, transfer, deliver or supply for monetary gain.

Synthetic drug shall include psychoactive bath salts and psychoactive herbal incense, as those terms are defined hereinabove.

9.23.030 Provision, display for sale, sale or distribution of synthetic drugs prohibited.

(a) It is unlawful for any person to store, provide, display for sale, distribute or sell any synthetic drug within the City of Colton.

(b) It is unlawful for any person to permit the storage, provision, display for sale, distribution or sale of any synthetic drugs from any real property owned, possessed, managed or controlled by such person in the City of Colton.

(c) Merely disclaiming a synthetic drug as "not safe for human consumption" will not avoid the application of this section.

9.23.040 Provision, display for sale, sale or distribution of substances claimed or represented to be synthetic drugs prohibited.

(a) It is unlawful for any person to claim or represent that a product that person is storing, providing, displaying for sale, distributing or selling is a synthetic drug within the City of Colton.

(b) To determine if a person is claiming or representing that a product is a synthetic drug, the enforcing officer may consider any of the following evidentiary factors:

(1) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

(2) The business providing, displaying for sale, distributing or selling the product does not typically provide, distribute or sell products that are used for that product's marketed use (such as a liquor store selling "plant food");

(3) The product contains a warning label that is not typically present on products that are used for that product's marketed use (such as "not for human consumption," "not for purchase by minors," or "does not contain chemicals banned by section 11357.5");

(4) The product is significantly more expensive than products that are used for that product's marketed use (such as half of a gram of a substance marketed as "glass cleaner" costing $50.00);

(5) The product resembles an illicit street drug (such as cocaine, methamphetamine or marijuana); or

(6) The product's name or packaging uses images or slang referencing an illicit street drug (such as "Eight Ballz" or "Green Buddha").

(c) Merely disclaiming a substance claimed or represented to be a synthetic drug as "not safe for human consumption" will not avoid the application of this section.

9.23.050 Possession of synthetic drugs prohibited.

It is unlawful for any person to possess any synthetic drug within the City of Colton.

9.23.060 Public nuisance.

(a) It is a public nuisance for any person to store, provide, display for sale, distribute or sell any synthetic drug within the City of Colton.

(b) It is a public nuisance for any person to allow the storage, provision, display for sale, distribution or sale of any synthetic drug on property owned, controlled or managed by such person within the City of Colton.

(c) It is a public nuisance for any person to provide, display for sale, distribute or sell any substance claimed or represented to be a synthetic drug within the City of Colton.

(d) It is a public nuisance for any person to allow the provision, display for sale, distribution or sale of any substance claimed or represented to be a synthetic drug on property owned, controlled or managed by such person within the City of Colton.

(e) To determine if a person is claiming or representing that a substance or product is a synthetic drug, the enforcing officer may consider any of the evidentiary factors set forth in section 9.23.040 of this Chapter.

(f) A criminal conviction is not required for establishing the occurrence of nuisance activity pursuant to this Chapter. The occurrence of nuisance activity may be established by documented evidence that the nuisance activity was witnessed by a code enforcement officer, peace officer or other witness willing to testify.

(g) The remedies set forth in this Chapter are cumulative and additional to any and all other legal remedies available whether set forth elsewhere in the Colton Municipal Code, or in state or federal laws, regulations, or case law.

9.23.070 Summary abatement.

Because the use of synthetic drugs has been documented to cause hallucinations, agitation, psychosis, aggression, suicidal and homicidal ideations, cannibalism and death, any violation of this Chapter presents a grave and imminent danger not only to the person consuming the synthetic drug, but also to the public at large. If the code enforcement officer, based on the facts then known, determines that a violation of this division presents an imminent danger or hazard or is imminently injurious to the public health or safety, then that violation is punishable by the summary abatement procedures set forth in Section 8.04.150 of this Municipal Code.

9.23.080 Revocation of business license.

No person holding a city business license and owning or operating a business in the city may use that business to store, provide, distribute or sell any synthetic drug or any substance claimed or represented to be a synthetic drug. A violation of this section by the holder of a city business license, shall constitute grounds for modification, suspension, revocation, or any combination thereof, of said license.

9.23.090 Penalties.

(a) *Misdemeanor violation.* Failure to comply with any of the requirements of this Chapter is a misdemeanor punishable by imprisonment in the city or county jail for a period not exceeding six months or by fine not exceeding $1,000.00, or by both, provided that where the city attorney determines that such action would be in the interest of justice, he/she may specify in the accusatory pleading that the offense shall be an infraction.

(b) *Infraction violation.* Where the City Attorney determines that, in the interest of justice, a violation of this Chapter is an infraction, such infraction is punishable by a fine not exceeding $100.00 for a first violation, a fine not exceeding $200.00 for a second violation of the same provision within one year, and a fine not exceeding $500.00 for each additional infraction violation of the same provision within one year. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury and shall not be entitled

to have the public defender or other counsel appointed at public expense to represent him/her, unless he/she is arrested and not released on his/her written promise to appear, his/her own recognizance or a deposit of bail. However, any person who has previously been convicted two or more times during any 12-month period for any violation of this division for a crime made punishable as an infraction shall be charged with a misdemeanor upon the third violation.

(c) *Separate Offense; Cumulative Remedies.* Each person committing, causing, or maintaining a violation of this Chapter or failing to comply with the requirements set forth herein shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter is committed, continued, maintained, or permitted by such person and shall be punishable accordingly. The remedies set forth in this Chapter are cumulative and additional to any and all other legal remedies available whether set forth elsewhere in the Colton Municipal Code, or in state or federal laws, regulations, or case law.

(d) *Administrative Citations.* In lieu of issuing a criminal citation, the city may issue an administrative citation pursuant to Chapters 8.02 and 8.04 of the Colton Municipal Code to any person responsible for committing, causing or maintaining a violation of this Chapter.

(e) *Additional Penalties; Costs of Abatement.* In any administrative, civil, or criminal proceeding involving the abatement of a public nuisance, the City shall also be entitled to recover its full reasonable costs of abatement, including, but not limited to, investigation, analysis, and prosecuting the enforcement against the responsible party. The prevailing party in any proceeding associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding, where the City has elected at the initiation of that individual action or proceeding to seek recovery of its own attorneys' fees.

9.23.100 Seizure of evidence.

Any product(s) or substance(s) stored, possessed, provided, distributed or sold in violation of any provision of this Chapter shall be seized by the enforcing officers and removed, stored and disposed of in accordance with law.

9.23.110 Exclusions.

(a) This Chapter shall not apply to drugs or substances lawfully prescribed or to intoxicating chemical compounds that have been approved by the Federal Food and Drug Administration or which are specifically permitted by California law, including without limitation, intoxicating chemical compounds that are specifically excepted by the California Uniform Controlled Substances Act (Health and Safety Code § 11000 et seq.).

(b) This Chapter shall not apply to drugs or substances that are prohibited by state or federal law, including without limitation, California Health and Safety Code §§ 11357.5, 11375.5, 11401 and the Federal Controlled Substances Act.

(c) This Chapter shall not be deemed to prohibit any act that is positively permitted, prohibited or preempted by any state or federal law or regulation."

SECTION 4. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections

15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days after its adoption.

PASSED, APPROVED AND ADOPTED this 19th day of April, 2016

Richard A. DeLaRosa, Mayor

ATTEST:

Carolina R. Padilla, City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF COLTON)

CERTIFICATION

I, CAROLINA R. PADILLA, City Clerk of the City of Colton, California, do hereby certify under penalty of perjury that the foregoing is a full, true and correct copy of **ORDINANCE NO. O-07-16,** and was duly passed, approved, and adopted by the City Council of the City of Colton at its Regular Meeting held on the **19th day of April, 2016**, by the following vote to wit:

AYES:	COUNCILMEMBER	Toro, Navarro, González, Bennett, Suchil and Mayor DeLaRosa
NOES:	COUNCILMEMBER	None
ABSTAIN:	COUNCILMEMBER	None
ABSENT:	COUNCILMEMBER	Jorrin

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Colton, California, this _____ day of _____, _____.

_____
CAROLINA R. PADILLA
City Clerk
City of Colton, California

(SEAL)