

**BILL NO.** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND,  
INDIANA AMENDING CHAPTER 13, ARTICLE 5, SECTION 13-75.5 OF THE SOUTH  
BEND MUNICIPAL CODE TO ADD DEALING IN A SYNTHETIC DRUG  
LOOKALIKE SUBSTANCE TO THE LIST OF PROHIBITED ACTIVITIES  
CONSTITUTING A DISORDERLY HOUSE**

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**STATEMENT OF PURPOSE AND INTENT**

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The recent proliferation within the South Bend community of products and synthetic look alike substances, specifically those used as alternatives to marijuana has resulted in death and severe injury to young persons, particularly males. The cannabis synthetic drug lookalike products, known generally as cannabinoids, or as “cannabimimetic agents” under the federal Synthetic Drug Abuse Prevention Act 21 U.S.C. 812(d) (1), “are deceptively dangerous, and their effects far more devastating than natural, plant forms of cannabis. Known short term effects include mental alteration including hallucinations, agitation, psychosis, aggression, suicidal, homicidal ideation, as well as physical effects such as acute kidney injury. The long term effects of these substances are yet unknown.

In 2014 the State of Indiana created a new category of “synthetic drug lookalike substances” to distinguish them from “synthetic drugs,” the possession, possession with intent to deliver or with intent to finance the delivery of, the manufacture, delivery, or finance with intent to deliver are all illegal under Ind. Code §35-48-4-11.5 and under IC 35-48-4-10.5. Cannabinoids would be included under this broader category of synthetic drug look alike substances. Definition at IC 35-31.5-2-321.5.

Protection of the community and youth of the City of South Bend from the harsh, devastating effects of these substances should be undertaken to the highest extent reasonably possible under law. This ordinance is intended to address the dangers to the community posed by cannabinoids and similar synthetic drug lookalike substances through civil penalty and enforcement under the City’s existing Disorderly House ordinance.

This ordinance effectuates the desired specific inclusion of a “synthetic drug lookalike substance” within the definition of violations constituting disorderly houses, and is in the best interests of the City of South Bend.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA as follows:

**SECTION I.** Chapter 13, Article 5, Section 13-75.5 (o) (6) of the South Bend Municipal Code shall be amended to read as follows:

South Bend Municipal Code

Sec. 13-75.5. - Disorderly houses; prohibited.

(a) *Definitions.*

- (1) For purposes of this section, *disorderly house* means a building, dwelling, establishment, premises or place where prohibited conduct occurs and it includes the outside area contiguous to and surrounding the structure such as a yard or lot under the same ownership. If the building, dwelling, establishment, premises or place is a multiple-unit dwelling or residence, hotel or motel, or commercial or office building, this definition applies only to that dwelling unit, room or suite of rooms in the hotel or motel, office rooms or suite, store, lot or yard in or on which prohibited conduct occurs.
- (2) For purposes of this section, *owner* means:
  - (a) The recorded owner of the property, as determined by the records of the St. Joseph County Assessor's Office;
  - (b) Any party with an equitable interest in the property, provided that such equitable interest is recorded; and
  - (c) The trustee of a land trust, if the land trust holds title to such property.
- (3) For purposes of this section, *occupant* means any person over sixteen (16) years of age whose domicile is the property upon which the prohibited conduct has been found to have occurred.
- (4) For purposes of this section, *vacant* means a building which is lacking the habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased.
- (5) For purposes of this section, *prohibited conduct* means activities occurring in violation of the statutes or ordinances relating to any of the following:
  - a. *Gambling*, as defined in IC 35-45-5-1;
  - b. *Battery*, as defined in IC 35-42-2-1;
  - c. *Contributing to the delinquency of a minor*, as defined in IC 35-46-1-8;
  - d. *Resisting law enforcement*, as defined in IC 35-44-3-3;
  - e. *Disorderly conduct*, as defined in IC 35-45-1-3;
  - f. *Criminal recklessness*, as defined in IC 35-42-2-2;
  - g. *Discharge of firearms*, as prohibited by Section 13-58 of the South Bend Municipal Code;

- h. *Loud and raucous noise*, as prohibited by Section 13-57 of the South Bend Municipal Code;
- i. *Failure to keep vacant property secured against entry*, in violation of Sections 6-37 or 9-2 of the South Bend Municipal Code, or IC 36-7-9 (Unsafe Building Law) or any other fire or property maintenance codes constitutes prohibited conduct regardless of whether the City has issued a citation for the violation, issued an order to secure, or taken action to abate the condition.
- j. *Failure to comply with Section 16-53, (Conditions Constituting Public Nuisances), Section 16-58, (Duties of Owners or Persons in Control of Vacant Lots), or Section 16-59, (Removal of Vegetation)* of the South Bend Municipal Code constitutes prohibited conduct whenever the City has verified with the Department of Code Enforcement that such violation has occurred at the property three (3) or more times within a calendar year. Such violation constitutes prohibited conduct regardless of whether the City has taken action to abate the condition or conduct and regardless of whether the City has issued a citation for the violation.
- k. *Violations of any of the following Indiana statutes governing the sale, possession, delivery or receipt of alcoholic beverages:*
  - 1. *Sales, delivery or possession* in violation of IC 7.1-5-1-1;
  - 2. *Illegal possession by a minor* in violation of IC 7.1-5-7-7;
  - 3. *Furnishing alcohol to a minor* in violation of IC 7.1-5-7-8;
  - 4. *Inducing a minor to possess alcohol* in violation of IC 7.1-5-7-15;
  - 5. *Sale or delivery of alcoholic beverages to intoxicated persons* in violation of IC 7.1-5-10-15;
  - 6. *Receipt of alcoholic beverages from a person who does not hold a permit* in violation of IC 7.1-5-10-5;
  - 7. *Purchase of alcoholic beverages from a person who does not hold a permit* in violation of IC 7.1-5-10-7; or
  - 8. *Visiting or maintaining a common nuisance* in violation of IC 7.1-5-10-21.
- l. *Violations of any of the following Indiana statutes governing:*
  - 1. *Prostitution* in violation of IC 35-45-4-2;
  - 2. *Patronizing a prostitute* in violation of IC 35-45-4-3; or
  - 3. *Promoting prostitution* in violation of IC 35-45-6-1.
- m. *Violations of any of the Racketeering activity* in violations of IC 35-45-6-1.
- n. *Violations of any of the following Indiana statutes governing:*
  - 1. *Criminal gang activity* in violation of IC 35-45-9-3;
  - 2. *Criminal gang intimidation* in violation of IC 35-45-9-4; or
  - 3. *Criminal gang recruitment* in violation of IC 35-45-9-5.

- o. *Violations* of any of the following Indiana statutes governing:
  - 1. Dealing in cocaine or a narcotic drug in violation of IC 35-48-4-1;
  - 2. Dealing in methamphetamine in violation of IC 35-48-4-1.1;
  - 3. Dealing in a schedule I, II or III controlled substance in violation of IC 35-48-4-2;
  - 4. Dealing in a schedule IV controlled substance in violation of IC 35-48-4-3;
  - 5. Dealing in a schedule V controlled substance in violation of IC 35-48-4-4; or
  - 6. Dealing in marijuana, hash oil, hashish, salvia, ~~or~~ a synthetic drug, or a synthetic drug lookalike substance such as cannabinoid in violation of IC 35-48-4-10 and IC 35-48-4-10.5, and as defined at IC 35-48-4-11.5 and IC 35-31.5-2-321.5. A cannabidiol or a substance containing cannabidiol used to treat epilepsy under IC 16-18-2-45.5 is excluded from this subpart.
  - 7. Use or possession of any of the substances described in subsections o.1. through and including 6., above, or the sale, use or possession of any other illicit narcotics or dangerous controlled substances.
- (b) *Public nuisance*. Whenever prohibited conduct as defined in subsection (a) of this section occurs in or upon a building, dwelling, establishment, premises or place, the City deems the building, dwelling, establishment, premises or place to be a disorderly house and a public nuisance.
- (c) *Notice to abate*. Whenever the South Bend Police Department or the Department of Code Enforcement has probable cause to believe that prohibited conduct has occurred in or upon a building, dwelling, establishment, premises or place, the City shall notify the owner of the property, and the occupants of the property that the building, dwelling, establishment, premises or place is a disorderly house and as such constitutes a public nuisance and that they must abate the public nuisance.
- (d) *Manner of serving notice*. The City shall provide notice to the owner of the property and the occupants of the property in the manner provided by IC 36-7-9-25. The City deems the owner of the property and the occupants of the property responsible for any and all prohibited conduct occurring upon the premises after receipt of the notice.
- (e) *Penalty and injunctive relief*. Whenever prohibited conduct occurs upon a property after the City has provided notice to abate the public nuisance, the City may file an action in any court of general jurisdiction against the owner and/or occupants to enjoin the nuisance and to recover a fine of not less than two hundred fifty dollars (\$250.00) and not more than two thousand five hundred dollars (\$2,500.00) with each day of violation constituting a separate offense. In determining the amount of the fine to be imposed, the court may consider the attempts of the property owners or occupants to address the public nuisance.
- (f) *Eviction proceedings as a defense*. No owner shall be liable for a violation of this section if such owner initiates an eviction proceeding within thirty (30) days of receipt of notice of the prohibited conduct set forth in this section, and diligently pursues eviction proceedings to completion.

**SECTION II.** This Ordinance shall take effect upon passage by this Common Council, approval by the Mayor, and any publication required by law.

PASSED AND ADOPTED by the Common Council of the City of South Bend, Indiana this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Member, Common Council of the  
City of South Bend

ATTEST:

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Kareemah Fowler, Clerk

Presented by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City for his approval on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

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Kareemah Fowler, Clerk

Having examined the foregoing Ordinance, I do now, as the Mayor of the City of South Bend, approve said Ordinance and return the same to the Clerk of the City of South Bend this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Pete Buttigieg, Mayor