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CITY ATTORNEY

REPORT NO. R16-0311  
SEP 27 2016

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTION 46.20 OF THE LOS ANGELES  
MUNICIPAL CODE TO PROHIBIT THE SALE, DISTRIBUTION, MANUFACTURE  
AND POSSESSION OF FEDERAL SCHEDULE I CONTROLLED SUBSTANCES AND  
THEIR ANALOGS AND ANALOGS OF SYNTHETIC CANNABINOID COMPOUNDS**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 16-0965

Honorable Members:

Pursuant to the request of the City Council, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, prohibiting the sale, distribution, manufacture and possession of novel forms of synthetic drugs.

The draft ordinance is a response to the rise of a synthetic drug known as "Spice." Spice can be created using a variety of substances already regulated by federal and California law, as well as new, chemically-altered versions of those substances.

Summary of Ordinance Provisions

The draft ordinance would amend Section 46.20 of the Los Angeles Municipal Code (LAMC) prohibiting substances used in making the synthetic drug known as "bath salts." The amendment would broaden that section to include all controlled substances

identified in Schedule I of the federal Controlled Substances Act and any analogs of those substances. In addition, the amended ordinance would prohibit analogs of synthetic cannabinoids.

### Spice

“Spice” typically refers to a concoction of herbs and/or spices that is sprayed with a synthetic compound designed to mimic the effects of THC, the naturally-occurring psychoactive ingredient in marijuana. Spice has been described by some people as a synthetic form of marijuana. Many of the synthetic compounds that street chemists use to create Spice are based on substances listed in Schedule I of the federal Controlled Substances Act.

### Federal and State Law

Schedule I of the federal Controlled Substances Act lists substances that have high potential for abuse, no currently accepted medical use in the United States, and are unsafe even under medical supervision. (See 21 C.F.R. §§ 812(b) & 1308.11.) These substances can be re-constituted chemically into new forms that are not specifically regulated. Many of the substances listed in Schedule I, as well as chemically-altered versions of those substances, can be used to create Spice.

In recognition of the fact that controlled substances are subject to manipulation, the federal Controlled Substances Act also regulates analogs of those substances. (See 21 C.F.R. § 813.) An analog of a Schedule I substance has a substantially similar chemical structure or a substantially similar “stimulant, depressant, or hallucinogenic effect on the central nervous system” as the Schedule I substance. (See *Id.* § 802(32)(A).) The federal schedules are updated on a regular basis and allow for emergency scheduling.

The California Controlled Substances Act includes its own schedules of controlled substances. (See California Health and Safety Code §§ 11054-58.) However, California’s Schedule I is less comprehensive than its federal counterpart and includes only a few versions of the many substances that can be used to create Spice. The California Controlled Substances Act also regulates synthetic cannabinoid compounds, which are synthetic substances that mimic natural substances found in the cannabis plant. (*Id.* § 11357.5.)

Like its federal counterpart, the California Controlled Substances Act regulates analogs of controlled substances. (See California Health and Safety Code § 11401.) This section has recently been amended to also prohibit analogs of synthetic cannabinoid compounds. (S.B. 1036.) The amendment will take effect in January 2017.

In addition, the California Controlled Substances Act was recently amended to greatly expand the definitions of synthetic cannabinoid compounds and synthetic stimulants contained within the Act. (S.B. 139.) That amendment was passed as urgency legislation and thus took immediate effect as of September 26, 2016.

The Amendment to LAMC Section 46.20

The proposed revision to LAMC Section 46.20 would prohibit the sale, distribution, manufacture and possession of all substances listed in Schedule I of the federal Controlled Substances Act, as well as any analogs of those substances. The draft ordinance would define analogs as substances that have a substantially similar chemical structure or substantially similar effect on the central nervous system as the substances identified in Schedule I of the federal Controlled Substances Act.

The draft ordinance would also prohibit analogs of synthetic cannabinoids. This clause would close a gap in California law until the pending amendment to the State's section on analogs takes effect in the new year.

The draft ordinance would include an explicit carve-out for any substances that are also regulated by California law to avoid preemption by the California Controlled Substances Act or other California law.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Police Department and Board of Police Commissioners with the request that all comments, if any, be presented directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Gabrielle Vora at (213) 978-8751. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



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Transmittal

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