

ORDINANCE NO. 3357

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ADDING CHAPTER 7.22 (RESTRICTIONS ON THE SALE AND DISTRIBUTION OF KRATOM PRODUCTS) TO TITLE 7 (PUBLIC SAFETY AND MORALS) OF THE FULLERTON MUNICIPAL CODE

WHEREAS, Fullerton City Council intends to prohibit kratom and 7-hydroxymitragynine products sale and distribution that contain more than 2% of 7-hydroxymitragynine in the alkaloid fraction within the City of Fullerton, recognizing the significant health risks associated with elevated concentrations of this alkaloid.

WHEREAS, kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia, and its leaves are often consumed in powdered or extract form for their stimulant and sedative effects.

WHEREAS, the active compounds in kratom include mitragynine and 7-hydroxymitragynine. Mitragynine is present in higher concentrations while 7-hydroxymitragynine is more potent and largely responsible for stronger pain-relieving, sedative and euphoric effects.

WHEREAS, 7-hydroxymitragynine binds to opioid receptors in the brain and has been shown to have euphoric and mood-enhancing effects, particularly at higher doses, which can increase its appeal for recreational use.

WHEREAS, 7-hydroxymitragynine is believed to be more potent than morphine in terms of pain relief. Research shows that it binds to opioid receptors in the brain with greater affinity than morphine, making it significantly more powerful in relieving pain. This greater potency raises significant concerns about its safety profile, especially the potential for addiction, overdose and adverse physical and psychological effects, including nausea, vomiting and potential psychosis. These risks compound when products contain higher concentrations of 7-hydroxymitragynine.

WHEREAS, scientific research and health advisories have raised concerns over the safety of kratom products, particularly those with higher concentrations of 7-hydroxymitragynine, which may increase the potential for abuse and harm to public health.

WHEREAS, several cities in California have taken steps to regulate or ban kratom products, recognizing the need to protect public safety, especially among vulnerable populations. For example, Newport Beach, San Diego and Oceanside have all enacted a complete ban on the sale and distribution of all kratom products - irrespective of the concentration of 7-hydroxymitragynine content.

WHEREAS, the Fullerton City Council is committed to safeguarding the health and well-being of residents by ensuring that products available for sale do not pose

undue health risks.

WHEREAS, the Fullerton City Council wishes to restrict the sale and distribution of kratom and 7-hydroxymitragynine products containing more than 2% of 7-hydroxymitragynine in the alkaloid fraction, thereby reducing potential risks to public health and safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON ORDAINS AS FOLLOWS:

SECTION 1. Recitals. The City Council finds that all the recitals, facts and conclusions set forth above in the Recitals of this Ordinance are true and correct.

SECTION 2. Chapter 7.22 is added to Title 7 of the Fullerton Municipal Code as follows:

Chapter 7.22. RESTRICTIONS ON SALE OR DISTRIBUTION OF KRATOM

Sec. 7.22.10 Authority and Purpose.

This chapter is enacted to protect public safety, health and welfare. The express purpose of this chapter is to protect public health and safety by regulating access to kratom products containing more than 2% of 7-hydroxymitragynine in the alkaloid fraction.

Sec. 7.22.20 Definitions.

For purposes of this chapter, the following definitions apply.

(a) "7-OH product" means a product containing 7-hydroxymitragynine.

(b) "Attractive to children" means any of the following:

(1) Use of images that are attractive to children, including, but not limited to, images of any of the following, except as part of required health warnings:

(A) Cartoons, toys, or robots.

(B) Any real or fictional humans.

(C) Fictional animals or creatures.

(D) Fruits or vegetables, except when used to accurately describe ingredients or flavors contained in a product.

(2) Likeness to images, characters, or phrases that are popularly used to advertise to children.

(3) Imitation of candy packaging or labeling, or other packaging and labeling of cereals, sweets, chips, or other food products typically marketed to children.

(4) The terms "candy" or "candies" or variants in spelling such as "kandy" or "kandee"

(5) Brand names or close imitations of brand names of candies, cereals, sweets, chips, or other food products typically marketed to children.

(6) Any other image or packaging that is easily confused with commercially available foods that do not contain kratom and are typically marketed to children.

(7) Any other packaging used that is attractive to children considering all relevant facts and circumstances.

(c) "Kratom leaf" means the leaf of the kratom plant, also known as *mitragyna speciosa*, any form.

(d) "Kratom leaf extract" means the material obtained by extraction of kratom leaves by any means.

(e) "Kratom product" means a product consisting of kratom leaf, kratom leaf extract, or both.

(f) "Total kratom alkaloids" means the sum of mitragynine, speciociliatine, speciogynine, paynantheine, and 7-hydroxymitragynine in a kratom product.

Sec. 7.22.30 Prohibition on Sale or Distribution of Kratom and 7-OH Products.

(a) Except as otherwise authorized by law, an individual, business, or other entity shall not sell, attempt to sell, offer, provide, or distribute a kratom product or 7-OH product to a person under 21 years of age.

(b) Except as otherwise authorized by law, an individual, business, or other entity shall not sell, attempt to sell, offer, provide, or distribute a kratom product or 7-OH product with a level of 7-hydroxymitragynine that is greater than 2 percent of the total kratom alkaloids in the product.

(c) Except as otherwise authorized by law, an individual, business, or other entity shall not sell, attempt to sell, offer, provide, or distribute a kratom product or 7-OH product that is attractive to children.

- (d) Any individual, business, or other entity that sells, attempts to sell, offers, provides, or distributes a kratom product or 7-OH product shall conduct age-verification to ensure compliance with subsection (a).

Sec. 7.22.40 Packaging of Kratom and 7-OH Products.

- (a) Packaging of a kratom product or a 7-OH product offered for retail sale shall be child resistant for the life of the product. Both of the following packages are considered child resistant for the purposes of this section:

- (1) A package that has been certified as child resistant under the requirements of the Poison Prevention Packaging Act of 1970 (15 U.S.C. Sec. 1471 et seq.) and any regulations promulgated pursuant to that act.

Plastic packaging that is at least four mils thick and heat sealed without an easy-open tab, dimple, corner, or flap, provided that the package maintains its child resistance throughout the life of the product.

Sec. 7.22.50 Violations and Penalties.

Any person who violates section 7.22.30 is guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period of not more than six (6) months or by both such fine and imprisonment. This section shall not serve to limit any other legal remedies or actions that the City of Fullerton may have to address violations of section 7.22.30.

Sec. 7.22.60 Severability

If any section, paragraph, sentence, clause, phrase or portion of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof. The Fullerton City Council hereby declares that it would have adopted this chapter irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the chapter be enforced.

SECTION 3. Environmental Compliance. Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) the ordinance is not a "project" and further, that it can be seen with certainty that there is no possibility that the ordinance in question may have a significant effect on the environment, either directly or indirectly, and that therefore no environmental review under CEQA is required, pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 4. Inconsistencies. Any provision of the Fullerton Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

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

Section 7. Certification. The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

Fred Jung
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Date