

New Bedford Board of Health (BOH)
Regulation for Synthetic Drugs
Effective August 11, 2016

Section:

- 1. Purpose and Scope**
- 2. Definitions**
- 3. Possession, Storage, Provision, Sale, and Distribution of Synthetic Recreational Drugs**
- 4. Enforcement**
- 5. Penalties**
- 6. Severability**

1. Purpose and Scope

Whereas it has been reported by various agencies that synthetic cannabinoids, synthetic stimulants, and synthetic psychedelic/hallucinogens have been linked to serious physical effects resulting in hospitalization and death when ingested, inhaled, or otherwise introduced into the human body. These synthetic cannabinoids, synthetic stimulants, and synthetic psychedelic/hallucinogens pose health, safety, and welfare issues for the residents of New Bedford.

2. Definitions

Person means an individual, corporation, partnership, wholesaler, retailer, or any licensed or unlicensed business.

Board means the New Bedford Board of Health

Consumed means introduced into the human body by any manner including but not limited to inhalation and ingestion.

Establishment means any business, establishment, or retail entity permitted by the Board of Health in the City of New Bedford.

Synthetic Recreational Drugs means any product or substance that contains a synthetic chemical compound that, when consumed, inhaled, injected, or otherwise administered, produces a psychoactive, psychotropic, or hallucinogenic effect. The term “*synthetic drugs*” shall include:

A. Synthetic Marijuana or Synthetic Cannabinoids means

- i. Any substance as defined by 21 U.S.C. §812, excluding “marijuana” as such term is defined in Massachusetts General Laws chapter 94C §1; or
- ii. Any substance that contains chemical structures that mimic functionally the effects of delta-9-tetrahydrocannabinol (THC); or
- iii. Any substance that contains cannabinoids, including but not limited to AKB48, XLR-11, UR-144, JWH-210, STS-135, AB-001, JWH-018, JWH-073, CP-47, CP-497, JWH-200, or cannabicyclohexanol; or
- iv. Any substance or vegetable material that has been chemically treated and is possessed, sold or purchased with the intent that it will, despite any labeling to the contrary or packaging indicating the content is not for human consumption, be consumed by humans, for the purpose of intoxication, which if consumed, may induce an effect or effects of any of the substances listed in this section or an imitation substance, and said effect or effects to include elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, dulling of the senses or nervous system, or distortion of audio, visual, or mental processes.

B. Marijuana Analogue means

- i. Any substance the chemical structure of which is substantially similar to the chemical structure or synthetic marijuana;
- ii. Any substance which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana; or
- iii. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana.

C. Synthetic Cathinones means

- i. Any substance defined by 21 U.S.C. §812; OR
- II. Any beta-keto phenethylamine derivative that produces pharmacological effects similar to cathinone, methcathinone, and 3,4-methylenedioxymethamphetamine (MDMA), Schedule II stimulants amphetamine, methamphetamine, and cocaine, or contains 4-MEC, 4-Mepp, alpha-PVP, Butylone, Pentadron, Pentylone, Flephedron, or Naphyrone; or
- iii. Any substance that has been chemically treated and is possessed, sold, or purchased with the intent that it will, despite any labeling to the contrary or packaging indicating the content is not for human consumption, be consumed by humans, for the purpose of intoxication, which if consumed, may induce an effect or effects of any of the substances listed in this section or an imitation substance.

3. Possession, Storage, Provision, Sale, and Distribution of Synthetic Drugs

- A. No person shall possess, store, manufacture, sell, offer to sell, gift, distribute, display for sale, or provide to another any synthetic drug within the City of New Bedford.
- B. Attempting to disclaim a synthetic drug as “not safe for human consumption” will not avoid application of the provisions of this section.
- C. NO person shall possess, store, manufacture, sell, offer to sell, gift, distribute, display for sale, or provide any synthetic drug from any real property owned, possessed, managed, or controlled by that person in the City of New Bedford.
- D. Nothing in this section shall preclude the City of New Bedford or any law enforcement officer of any jurisdiction from charging an offender for violation of any other applicable law or ordinance arising from the offender’s prohibited conduct.

4. Enforcement

- A. The New Bedford Board of Health, designated agents of the Board of Health, and Police Department shall be the enforcing authorities for this section.
- B. This Regulation shall apply regardless of whether the synthetic drug is described as tobacco, herbs, incense, spice, bath salts, potpourri, plant food or any blend thereof, and regardless of whether the substance is labeled, packaged or marketed as “not for human consumption” or “not for purchase by minors”
- C. The enforcing authority may consider any of the following evidentiary factors to determine if the product is synthetic recreational drug:
 - i. The product is not suitable for its marketed use;
 - ii. The business does not typically provide, distribute, or sell products that are used for that product’s marketed use;
 - iii. The product contains a warning label not typically present on like products, such as “not for human consumption” or “not for purchase by minors”;
 - iv. The product is significantly more expensive than products that are used for that product’s marketed use;
 - v. The product resembles an illicit drug; or
 - vi. The product’s name or packaging uses images or slang referencing and illicit drug’
 - vii. An agent of the Board of Health or Police Department has reported the product as a synthetic drug.

5. Penalties

- A. Any person, firm, store, corporation, or entity found in violation of this section shall be fined one hundred dollars (\$100) for the first violation.
- B. Any person, firm, store, corporation or entity with a second violation within 24 months of the date of the first violation, shall be fined two hundred dollars (\$200)
- C. Any permitted Establishment found with a third violation within 24 months of the date of the second violation, including the current violation, shall be fined three hundred dollars (\$300), and may, after a hearing, have a suspension of the establishment’s permit for seven (7) consecutive calendar days.
- D. Any permitted Establishment with a fourth violation within 24 months of the date of the second violation, including the current violation, shall be fined three hundred dollars (\$300), and may, after a hearing, have a suspension of the Establishment’s permit for thirty (30) consecutive calendar days.
- E. Any permitted Establishment and its Business Manager/Owner shall be provided written notice of the Board’s intent to suspend or revoke an Establishment’s permit prior to any suspension of a permit.
- F. If applicable, a permitted Establishment will be closed and prohibited from operating during such time that the Establishment’s permit has been suspended or revoked for a violation of this regulation.
- G. If an owner, manager or other person in control of any permitted Establishments governed by this regulation violates this section repeatedly, or demonstrates egregious noncompliance with this regulation, the Board shall send notice of said suspension or revocation to the City Licensing Board.
- H. Each day on which any violation of these Synthetic Drug Regulations exists shall be deemed to be a separate violation,
- I. A penalty provided for under this section may be imposed in conjunction with any other charges or penalties that can be imposed for violation of any other criminal or civil offenses committed.

6. Severability

- A. If any part of this regulation or the application thereof to any person or circumstances is held by a court of competent jurisdiction to be invalid, the remainder of the ordinance shall remain in effect.

