

ORDINANCE NO. 25-2023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA; AMENDING APPENDIX A, *ZONING*, ARTICLE XIII, *SUPPLEMENTARY DISTRICT REGULATIONS*, OF THE ZONING ORDINANCE OF THE CITY OF COCOA TO ADD A NEW SECTION 33, *KAVA AND KRATOM*; ESTABLISHING DISTANCING REQUIREMENTS BETWEEN ESTABLISHMENTS SELLING KAVA BEVERAGES AND/OR KRATOM PRODUCTS AND CERTAIN OTHER ENUMERATED LAND USES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the Constitution of the State of Florida to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, in recent years there has been a general increase in the use of products which are derived from Kava and Kratom, as well as a general increase in establishments engaging in the sale of and/or onsite consumption of Kava and Kratom; and

WHEREAS, the City of Cocoa has experienced a rapid proliferation of establishments engaging in the sale and/or onsite consumption of Kava and Kratom; and

WHEREAS, the City Council of the City of Cocoa makes the following findings of fact as related to Kava;

- Kava (*Piper methysticum*) (also known as intoxicating pepper) is a shrub native to the South Pacific Islands. Kava is harvested for its rootstock, which contains the pharmacologically active compounds kavalactones.¹
- Kava is consumed in several ways. Kava dietary supplements are commonly sold as pills or capsules. Kava is also available as whole root, powdered root, or extracts. Kava supplements are often sold at herbal wellness shops but can also be found at commonplace grocers such as Walgreens or Publix.²
- Kava is commonly also sold as a beverage by the same name made from dried Kava root powder and brewed into a tea-like drink. Kava beverages are increasingly

¹ United States Drug Enforcement Administration, *Kava*, September 2019 (last visited Nov. 13, 2023), chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.deadiversion.usdoj.gov/drug_chem_info/kava.pdf.

² Id.; Publix Delivery and Curbside Pickup (last visited Nov. 13, 2023), https://delivery.publix.com/landing?product_id=370509&retailer_id=57&postal_code=29582®ion_id=1882507793.

being sold recreationally for on-site consumption at Kava-beverage-based establishments due to the beverage's euphoric effects.³

- According to the United States Drug Enforcement Administration ("DEA"), Kava is increasingly being used for recreational and homeopathic purposes because of the effects produced from consuming the rootstock, such as euphoria, muscle relaxation, sedation, and analgesia.⁴
- The United States Food and Drug Administration ("FDA") has not made an official determination about the efficacy of Kava as an analgesic or as a treatment for anxiety.⁵
- In 2002, the FDA issued an advisory alerting consumers and healthcare providers to the potential risk of liver-related injuries associated with the use of Kava. Several cases of liver damage (hepatitis and cirrhosis) and liver failure have been associated with commercial extract preparations of Kava.⁶
- Consumption of Kava may produce side effects such as decreased coordination and fatigue. Kava potentiates the effects of alcohol, including the impairments caused by alcohol.⁷
- Kava is not a controlled substance in the United States. Due to concerns of liver toxicity, Kava is subject to regulatory controls in many countries including Australia, Canada, France, Germany, Japan, Malaysia, Norway, Poland, Singapore, South Africa, Sweden, Switzerland, and the United Kingdom.⁸

and;

WHEREAS, the City Council finds that, due to the potentially harmful health effects of Kava and the lack of significant medical studies on the long-term effects of Kava use, it is in the best interest of the youth of the City of Cocoa have limited exposure to Kava products, specifically Kava beverages; and

WHEREAS, the City Council of the City of Cocoa makes the following findings of fact as related to Kratom;

- Kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia.⁹
- According to the DEA, consumption of Kratom leaves produces stimulant effects in low doses, analgesic and euphoric effects at mid-level doses, and depressant effects at high doses.¹⁰

³ United States Drug Enforcement Administration, Kava, September 2019 (last visited Nov. 13, 2023), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.deadiversion.usdoj.gov/drug_chem_info/kava.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ United States Drug Enforcement Administration, *Kratom* (last visited Nov. 13, 2023), <https://www.dea.gov/factsheets/kratom>.

¹⁰ *Id.*

- According to the Mayo Clinic, Kratom is a highly addictive substance. Studies have shown that people who consume Kratom for over six months experience withdrawal symptoms similar to those experienced during opioid withdrawal.¹¹
- According to the Mayo Clinic, as with other recreational drugs, it is possible to overdose on Kratom. Symptoms of and treatment for Kratom overdoses mirror those for opioid overdoses. Kratom is the known cause of at least 36 overdose deaths.¹²
- The FDA has not approved Kratom for any medical use.¹³
- The DEA has listed Kratom as a Drug of Chemical Concern.
- Medical literature has shown that not only is Kratom addictive, Kratom use is associated with a clear set of effects and side effects ranging from dry mouth and insomnia to hallucinations, delusion, confusion, and withdrawal symptoms (including symptoms of limb spasticity, hostility, aggression, and emotional instability).¹⁴
- Kratom is regulated as a controlled substance in Thailand, Malaysia, and Myanmar, where the plant is a native species.¹⁵
- Despite the dangers of Kratom use, Kratom products are promoted as legal psychoactives.
- There is an increasing prevalence in establishments which sell Kratom, including establishments which sell Kratom for on-site consumption.

and;

WHEREAS, the City Council finds that, due to the harmful effects of Kratom use, including its addictive nature and hallucinogenic side effects, it is in the best interest of the youth of the City of Cocoa to have limited exposure to Kratom products; and

WHEREAS, recognizing the dangers Kratom consumption poses to youth, the Florida Legislature has codified Florida Statutes § 500.92 (2023), the Florida Kratom Consumer Protection Act, which makes it unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, any Kratom product to a person under 21 years of age; and

WHEREAS, the City Council desires to ensure that the youth of the City of Cocoa are limited in their exposure to Kava and Kratom products and do not have easy access to such products; and

¹¹ Mayo Clinic, *Kratom for Opioid Withdrawal: Does It Work?* (last visited Nov. 13, 2023), <https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/kratom-opioid-withdrawal/art-20402170>.

¹² *Id.*

¹³ United States Food and Drug Administration, *FDA and Kratom* (last visited Nov. 13, 2023), <https://www.fda.gov/news-events/public-health-focus/fda-and-kratom>.

¹⁴ United States Drug Enforcement Administration, *Kratom* (last visited Nov. 13, 2023), <https://www.dea.gov/factsheets/kratom>.

¹⁵ *Id.*

WHEREAS, the City Council therefore desires to amend the City of Cocoa Zoning Code to provide that establishments selling Kava beverages and/or establishments selling Kratom in any form must be located at least 500 feet away from any school, church, or public park or playground, which are places where youth typically gather; and

WHEREAS, on the ____ day of _____, 2023, the City's Planning and Zoning Board/Local Planning Agency reviewed this Ordinance, held a public hearing, and recommended approval of this Ordinance; and

WHEREAS, the City Council of the City of Cocoa, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of the City of Cocoa.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COCOA HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and reflect the intent and purpose of the City Council of the City of Cocoa.

Section 2. Code Amendment. Appendix A, *Zoning*, Article XIII, *Supplementary District Regulations*, of the Code of Ordinances of the City of Cocoa, Florida, is hereby amended as follows: (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from this Ordinance of text existing in Appendix A, Article XIII. It is intended that the text in Appendix A, Article XIII, shall remain unchanged from the language existing prior to the adoption of this Ordinance.):

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APPENDIX A – ZONING

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ARTICLE XIII. – SUPPLEMENTARY DISTRICT REGULATIONS

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Sec. 33. – Kava and Kratom.

(A) PURPOSE AND INTENT. The purpose and intent of this section is to establish distancing requirements between schools, religious institutions, and public parks or playgrounds and establishments which engage in the sale of and/or allow the on-site consumption of Kava beverages and/or Kratom.

(B) DEFINITIONS. As used in this section, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Kava shall mean any product derived from the rootstock of the Kava plant (*Piper methysticum*) (also known as intoxicating pepper).

Kava beverages shall mean beverages meant for human consumption containing any form of Kava. Kava beverages shall include beverages made purely from Kava as well as beverages made from a combination of Kava and other ingredients, including but not limited to infusions, teas, fermented drinks, or lattes.

Kratom shall mean any product, including but not limited to food products, food ingredients, dietary ingredients, dietary supplements, or beverages, intended for human consumption which contains any part of the leaf of the Kratom plant, *Mitragyna speciosa*, or an extract, synthetic alkaloid, or synthetically derived compound of the Kratom plant which is manufactured as a powder, capsule, pill, beverage, or other consumable form.

(C) DISTANCING REQUIREMENTS. Notwithstanding any other provision of this chapter or any provision of the City of Cocoa zoning regulations, no person shall cause or permit the operation of any establishment selling any form of Kava beverage or any form of Kratom within five hundred (500) feet of a preexisting religious institution; public or private elementary, middle, or secondary school; or public park or playground. A “preexisting” religious institution, public or private elementary, middle, or secondary school, or public park or playground shall mean one existing prior to the existence of the establishment selling or proposing to sell Kava beverages or any form of Kratom. The distance between the establishment proposing to sell or selling any form of Kava beverage or any form of Kratom and a religious institution; public or private elementary, middle, or secondary school; or public park or playground shall be measured by drawing a straight line between the closest property lines of the respective properties used for such purposes.

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Section 3. **Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 4. **Incorporation Into Code.** This Ordinance shall be incorporated into the City Code of the City of Cocoa and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

Section 5. **Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida, in a regular meeting assembled on the _____ day of _____, 2023.

MICHAEL C. BLAKE
Mayor

ATTEST:

CARIE SHEALY, MMC
City Clerk

Legal Ad Published: _____
First Reading: _____
Legal Ad Published: _____
Effective Date: _____