



STAFF REPORT

CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: Alyssa Muto, City Manager
MEETING DATE: November 13, 2024
ORIGINATING DEPT: Community Development Department/City Attorney's Office
SUBJECT: **Adopt (2nd Reading) Ordinance 537 Adding Chapter 6.40 to the Solana Beach Municipal Code to Prohibit the Sale and Distribution of Kratom Products to Persons Under the Age of 21**

BACKGROUND:

This item is before the City Council to consider adoption of Ordinance 537 which would prohibit the sale and distribution of kratom (krat-um) to persons under 21 years old in the City. If adopted, Ordinance 537 would add Chapter 6.40 to the Solana Beach Municipal Code and include enforcement mechanisms to prohibit the sale and distribution of kratom to persons under 21 years old throughout the City.

DISCUSSION:

Kratom products are derived from the *Mitragyna speciosa* tree in Southeast Asia, where the leaves of the plant are chewed and brewed in teas. The effects of ingesting kratom have been tied to chemical compounds found in the plant that contain mitragynine and 7-hydroxymitragynine. These chemicals can produce a broad range of effects on the user including psychotic symptoms, psychological and physiological dependence, addiction, hallucinations, delusion, confusion, nausea, itching, sweating, dry mouth, constipation, increased urination, loss of appetite, anorexia, weight loss, and insomnia. Its effects have been described as both a stimulant in low doses and a sedative in high doses.

Kratom products typically come in greenish powders, capsules and extracts, and are readily found in smoke shops and online. Synthetic versions of Kratom are also readily available. Because Kratom is not regulated at the federal level or by the State of

COUNCIL ACTION:

California, there is a wide variety of products with different levels of potency creating potentially hazardous situations for users of all ages.

The U. S. Drug Enforcement Administration ("DEA") has labeled kratom a "Drug and Chemical of Concern" which are substances not currently controlled by the Controlled Substances Act, but pose risks to individuals who abuse them.

Roughly 2 million Americans use kratom, often to self-treat conditions without medical supervision, despite FDA warnings that kratom is not appropriate for medical use or for use as a dietary supplement and has been found to be associated with serious health risks.

The FDA has not approved any prescription or over-the-counter drug products containing kratom or its two main chemical components, mitragynine and 7-hydroxymitragynine, which pose a high risk of abuse and can be found in higher doses in synthetic kratom products.

On April 12, 2019, the U.S. Center for Disease Control and Prevention ("CDC") published a report, "Notes from the Field: Unintentional Drug Overdose Deaths with Kratom Detected - 27 States, July 2016 - December 2017," which states that: (1) kratom use has recently increased in the United States where it is usually marketed as a dietary or herbal supplement; (2) studies suggest that kratom has the potential for creating user dependence and abuse; and (3) reports have documented several overdose deaths involving kratom.

Kratom products are not federally regulated in the United States and are not subject to government-mandated safety standards, resulting in a lack of oversight and accountability for safe use, regulation of ingredients, purity levels, and dosage.

States and local governments have prohibited the sale or possession of kratom within their respective jurisdictions including, but not limited to, the cities of San Diego and Newport Beach, and the states of Alabama, Arkansas, Indiana, Rhode Island, Vermont, and Wisconsin. Some states have prohibited the sale or possession of kratom by persons under the age of 21, including Colorado, Florida, Louisiana and Oregon. The City of Solana Beach does not currently regulate the sale or distribution of kratom in the City.

The full effects of kratom are not entirely clear, but research is continuing. In the meantime, this unregulated substance is available to individuals of all ages without restriction or safety standards. The proposed ordinance attached hereto aims to completely abolish the sale and distribution of kratom to persons under the age of 21 in the City.

OPTIONS:

- 1) Approve and Adopt Ordinance 537 as drafted.

- 2) Approve and Adopt Ordinance 537 with modifications.
- 3) Provide other direction to Staff related to kratom regulation.

CEQA COMPLIANCE STATEMENT:

The proposed City Council action is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections 15060(c)(2) and 15060(c)(3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as defined in Section 15378 of the CEQA Guidelines.

FISCAL IMPACT:

There are no direct fiscal impacts related to this item. There will be some additional costs associated with implementation related to enforcement; however, due to the limited number of establishments selling these products, the enforcement time would be relatively minimal in the scope of overall Code Enforcement Staff and Sheriff's staff resources.

WORK PLAN: N/A

STAFF RECOMMENDATION:

Staff recommends the City Council adopt Ordinance 537 adding Chapter 6.40 to the Solana Beach Municipal Code to prohibit the sale and distribution of kratom products to persons under the age of 21.



Alyssa M. Muto, City Manager

Attachment:

1. Ordinance 537

ORDINANCE 537

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, ADDING CHAPTER 6.40 TO THE SOLANA BEACH MUNICIPAL CODE TO PROHIBIT THE SALE AND DISTRIBUTION OF KRATOM TO PERSONS UNDER THE AGE OF 21

WHEREAS, the U. S. Drug Enforcement Administration ("DEA") has stated that consumption of kratom produces both stimulant effects (in low doses) and sedative effects (in high doses), and can lead to psychotic symptoms, psychological and physiological dependence, addiction, hallucinations, delusion, confusion, nausea, itching, sweating, dry mouth, constipation, increased urination, loss of appetite, anorexia, weight loss, and insomnia, and has labeled kratom a "Drug of Concern;" and

WHEREAS, the U. S. Food and Drug Administration ("FDA") has stated that an estimated 1.7 million Americans used kratom in 2021, often to self-treat conditions without medical supervision, despite FDA warnings that kratom is not appropriate for use as a dietary supplement, and has been found to be associated with serious health risks including, but not limited to, seizures, vomiting, liver problems, physical dependence, substance abuse disorder, and neonatal abstinence syndrome in which newborns exposed to kratom prior to birth experienced withdrawal signs such as jitteriness, irritability, and muscle stiffness, and even death; and

WHEREAS, the FDA has not approved any prescription or over-the-counter drug products containing kratom or its two main chemical components, mitragynine and 7-hydroxymitragynine, which pose a high risk of abuse and can be found in higher doses in synthetic kratom products; and

WHEREAS, on April 12, 2019, the U. S. Center for Disease Control and Prevention ("CDC") published a report, "Notes from the Field: Unintentional Drug Overdose Deaths with Kratom Detected - 27 States, July 2016 - December 2017," which states that: (1) kratom use has recently increased in the United States where it is usually marketed as a dietary or herbal supplement; (2) studies suggest that kratom has the potential for creating user dependence and abuse; and (3) reports have documented several overdose deaths involving kratom; and

WHEREAS, kratom products are not federally regulated in the United States and are not subject to government-mandated safety checks, resulting in a lack of oversight and accepted safety standards for use, regulation of ingredients, purity levels, and dosage; and

WHEREAS, states, local governments, and municipalities have prohibited the sale or possession of kratom within their respective jurisdictions, including but not limited to, the cities of San Diego and Newport Beach, and the states of Alabama, Arkansas, Indiana, Rhode Island, Vermont, and Wisconsin; and

WHEREAS, in the interest of the health, safety, and welfare of the people of the City of Solana Beach, the City Council desires to prohibit the sale and distribution of any product containing kratom to any person under the age of 21 within the jurisdiction of the City; and

WHEREAS, Title 6 of the Solana Beach Municipal Code contains health and safety procedures for the City of Solana Beach.

The City Council of the City of Solana Beach, California, ordains as follows:

SECTION 1. All of the above recitals are true and correct and are incorporated herein as findings.

SECTION 2. The adoption of the ordinance is not subject to CEQA pursuant to Section 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a “project,” as defined in Section 15378 of the CEQA Guidelines.

SECTION 3. Chapter 6.40 is added to the Solana Beach Municipal Code to read as follows:

6.40 REGULATION OF THE SALE AND DISTRIBUTION OF KRATOM

6.40.010 Purpose.

The city council recognizes the inherent danger of kratom products and that the use of kratom products can have devastating health and economic consequences. The city

council further recognizes that kratom may be habit forming and is currently available to people of all ages, including children.

Allowing kratom products to be sold in the city increases access to these harmful and dangerous products. To that end, no kratom products shall be sold or distributed to any person under the age of 21 in the city as is specifically enumerated below.

6.40.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

“Distribute” or “distribution” means the transfer, by any person other than a common carrier, of a kratom product at any point from the place of manufacture or thereafter to the person who sells the kratom product to an individual for personal consumption.

“Kratom” or “Kratom Product” means the leaf of the plant *Mitragyna speciosa* or any food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended for human consumption that contains any part of the leaf of the plant *Mitragyna speciosa* or any extract, synthetic alkaloid, or synthetically derived compound of such plant or its leaf including, but not limited to, any powder, capsule, pill, beverage, or other edible product intended for human consumption.

“Leaf” means any or all parts of the leaf of the plant *Mitragyna speciosa* that contains mitragynine or 7- hydroxymitragynine.

“Sell,” “sale” and “to sell” mean any transaction where, for any consideration, ownership of a kratom product is transferred from one person to another, including but not limited to any transfer or title or possession for consideration, exchange, or barter, in any manner or by any means.

6.40.030 Prohibition on Sale or Distribution of Kratom to Persons Under the Age of 21.

It is unlawful to sell, advertise for sale, offer for sale, or distribute, directly or indirectly, any Kratom Product to any person under the age of 21 in the City.

6.40.040 Posting requirement.

A. A sign with letters of not less than one inch in height shall be clearly, sufficiently and conspicuously posted at the sales counter stating that “Kratom sales are prohibited to

individuals under the age of 21” as controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place.

6.40.050 Enforcement.

A. The city manager, or designee, is authorized to establish regulations and to take any and all actions reasonable and necessary to obtain compliance with this chapter, including, but not limited to, inspecting the premises of any business to verify compliance.

B. Any person, business or retailer violating this chapter shall be guilty of an infraction, which shall be punishable by a fine in accordance with Chapter 1.16 or 1.18 SBMC, or a misdemeanor, which shall be punishable by a fine not exceeding \$1,000, or by imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment. In addition to criminal fines, any person, business or retailer violating this chapter shall also be subject to civil penalties or administrative fines or both under Chapters 1.16 and 1.18 SBMC.

C. The city attorney may seek legal, injunctive, or other equitable relief to enforce this chapter.

D. Administrative enforcement of this chapter shall proceed pursuant to Chapter 1.18 SBMC.

E. Each violation of this chapter shall be considered a separate offense.

F. The remedies and penalties provided in this section are cumulative and not exclusive, and nothing in this chapter shall preclude any person from pursuing any other remedies provided by law.

G. Notwithstanding any other provision of this chapter, this chapter may be enforced through any remedy as provided for in this section upon its effective date

6.40.060 No Conflict with Federal or State Law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

6.40.070 Severability.

If any section, subsection, sentence, clause, phrase, or word of this chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this chapter. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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 portions of this Ordinance. The City Council of the City of Solana Beach hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase, or portion may be declared invalid or unconstitutional.

SECTION 5. This ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk shall cause this ordinance to be published pursuant to state law.

INTRODUCED at a regular meeting of the City Council of the City of Solana Beach, California held on the 23rd day of October 2024, and thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Solana Beach, California, on the 13th day of November, 2024, by the following vote:

AYES: Councilmembers –
NOES: Councilmembers –
ABSTAIN: Councilmembers –
ABSENT: Councilmembers –

LESA HEEBNER, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

MEGAN BAVIN, Deputy City Clerk