

ORDINANCE NO. 01-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE ADDING CHAPTER 9.45 OF THE ORANGE MUNICIPAL CODE PROHIBITING THE SALE AND DISTRIBUTION OF KRATOM PRODUCTS

WHEREAS, California Constitution, Article XI, Section 7, authorizes the City of Orange (“City”) to adopt and enforce local police, sanitary, and other ordinances and regulations that are not in conflict with general laws; and

WHEREAS, California Health & Safety Code section 101450 empowers the City Council to take measures necessary to preserve and protect the public health, including adopting ordinances, regulations, and orders that are not in conflict with general laws; and

WHEREAS, California courts in *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, and *Prime Gas v. City of Sacramento* (2010) 184 Cal.App.4th 697, have affirmed the power of local jurisdictions to regulate business activity to protect public health and safety and in order to discourage violations of law; and

WHEREAS, the kratom plant (*Mitragyna speciosa*), a tropical evergreen native to Southeast Asia, contains psychoactive compounds including mitragynine and 7-hydroxymitragynine (“7-OH”), which can produce stimulant or sedative, opioid-like effects; and

WHEREAS, the United States Drug Enforcement Administration (“DEA”) has reported that kratom use may cause stimulant effects at low doses and opioid-like effects at high doses, and can lead to dependence, addiction, hallucinations, confusion, nausea, constipation, weight loss, insomnia, and other adverse symptoms, and has labeled kratom a “Drug of Concern”; and

WHEREAS, the United States Food and Drug Administration (“FDA”) has warned that the growing availability of kratom products, including enhanced and concentrated forms, poses an emerging public health threat; and

WHEREAS, the FDA has further indicated that 7-OH is a potent opioid agonist that can cause respiratory depression, physical dependence, and withdrawal symptoms similar to opioids such as fentanyl, oxycodone, and hydrocodone; and

WHEREAS, kratom leaves and their chemical components are unlawful when added to foods, dietary supplements, or FDA-approved drugs, yet are widely marketed and sold without FDA approval or regulatory oversight; and

WHEREAS, the FDA has not approved any prescription or over-the-counter drug products containing kratom or its primary compounds; and

WHEREAS, the Los Angeles County Public Health Department launched enforcement and education campaigns following six fatal overdoses linked to 7-OH, prompting the Orange County Health Care Agency to coordinate testing and treatment efforts with local clinical providers and hospitals, including those in the City; and

WHEREAS, the Orange County Coroner's Office has begun testing for the presence of 7-OH in overdose cases in response to these incidents; and

WHEREAS, regulatory gaps have enabled widespread availability of kratom products despite their opioid-like properties, necessitating immediate policy intervention to protect public health; and

WHEREAS, kratom products are not subject to federal safety checks, resulting in a lack of oversight regarding purity, dosage, contamination, labeling accuracy, and consumer warnings; and

WHEREAS, several states and local jurisdictions such as the Cities of Newport Beach, Tustin, Stanton, Oceanside, and San Diego have prohibited the sale and distribution of kratom products; and

WHEREAS, the City seeks to prohibit the sale and distribution of kratom products within its limits as a reasonable and necessary exercise of its police powers to safeguard the health, safety, and welfare of its residents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I:

The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines (Guidelines) Sections 15060(c)(2) and 15060(c)(3) because review and evaluation of potential impact of the Ordinance demonstrate that it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it constitutes a regulation of commercial activity and is not a "project" as defined in Guidelines section 15378.

SECTION II:

Chapter 9.45 of the Orange Municipal Code (Public Peace, Morals and Welfare – Kratom Products) is hereby added to read as follows:

**Chapter 9.45
KRATOM PRODUCTS**

Sections:

9.45.010 Purpose.

9.45.020 Definitions.

9.45.030 Prohibition on Sale or Distribution of Kratom and Kratom Products.

9.45.040 Enforcement.

9.45.050 Appeal.

9.45.010 Purpose.

This Chapter is enacted pursuant to the City’s police powers to protect the public safety, health, and welfare. The purpose of this Chapter is to protect public health and safety by prohibiting the commercial sale and distribution of kratom and kratom products within the City due to their opioid-like effects, lack of regulatory oversight, and demonstrated risk of abuse, dependence, and adverse health outcomes.

9.45.020 Definitions.

As used in this Chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

“7-OH product” means any product containing any detectable amount of 7-hydroxymitragynine.

“Distribute” means to furnish, give away, exchange, transfer, deliver or supply, whether or not for monetary gain.

“Kratom alkaloids” means any detectable amount of mitragynine, speciociliatine, speciogynine, paynantheine, 7-OH, or any natural, synthetic, or semi-synthetic alkaloid, derivative, isolate, metabolite, or structurally related constituent of *Mitragyna speciosa*.

“Kratom” or **“Kratom product”** means any product consisting of, or labeled or marketed as consisting of, any part of the leaf of *Mitragyna speciosa* in fresh, dehydrated, or dried form; including any extract, isolate, derivative, metabolite, or alkaloid, whether natural, synthetic, or semi-synthetic, regardless of concentration. The term includes any food, dietary ingredient, supplement, tea, gummies, beverage, vaping liquid, smoking wrap, smoking accessories or paraphernalia, and any other substances intended for human consumption or inhalation that contains any part of the leaf of *Mitragyna speciosa*, or any extract, synthetic alkaloid, or synthetically derived compound of the plant or its leaf. This definition includes, but is not limited to, powders, capsules, pills, teas, gummies, beverages, vape liquids, smoke wraps, smoking accessories or paraphernalia, and any other substances intended for consumption or inhalation.

“Kratom leaf” means the leaf of the kratom plant, also known as *mitragyna speciosa*, any form.

“Kratom leaf extract” means the material obtained by extraction of kratom leaves by any means.

“Possess for commercial purposes” means to possess with intent to sell, offer for sale, furnish, exchange, distribute, or otherwise provide in the course of business operations, including display, storage, warehousing, stocking, or holding for sale or distribution.

“Sell” or **“Sale”** means to furnish, exchange, transfer, deliver, or supply for monetary gain including but not limited to any transfer or title or possession for consideration, exchange, or barter, in any manner or by any means.

"Synthesized" means an alkaloid or alkaloid derivative or constituent that has been created by chemical synthesis or biosynthetic means (including but not limited to; fermentation, recombinant techniques, yeast derived, enzymatic techniques), rather than traditional food preparation techniques such as heating or extracting. It also includes alkaloids that have been further exposed to chemicals or processes that would confer a structural change in the alkaloids contained within the extract.

9.45.030 Prohibition on Sale or Distribution of Kratom and Kratom Products.

- A.** Except as otherwise preempted by law, it is unlawful for any person, business, tobacco retailer, or other entity to sell, offer for sale, distribute, display, furnish, administer, exchange, give away, or possess for commercial purposes:
 - 1. Any kratom or kratom product containing any detectable amount of kratom alkaloids.
 - 2. Any kratom product that contains or is adulterated with synthesized or semi-synthesized kratom alkaloids, ingredients, or constituents.
 - 3. Any kratom product whose packaging indicates, implies, advertises, or suggests the presence of kratom or kratom alkaloids.
 - 4. Any kratom product whose packaging has had the manufacturer's or distributor's label removed or altered to conceal, disguise, or modify the presence of kratom alkaloids or synthesized or semi-synthesized kratom constituents.

9.45.040 Enforcement.

- A.** The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- B.** In addition to any other remedy, violations of this Chapter may be enforced through administrative, civil, or criminal remedies as authorized by law. Each day a violation continues constitutes a separate violation.
- C.** Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.
- D.** Any violation of this Chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this Chapter to the extent permitted by law.
- E.** Violations of this Chapter are hereby declared to be public nuisances subject to abatement by the City.
- F.** Nothing in this Chapter shall limit the City from pursuing administrative, civil, or criminal citations or to abate public nuisances or violations of this Chapter in accordance with the City Code or applicable law. Administrative enforcement may include the issuance of

administrative citations pursuant to the City's administrative citation procedures, and nothing in this Chapter requires prior notice where immediate enforcement action is necessary to protect public health or safety.

- G.** Kratom or any kratom products, in violation of this Chapter may be seized by authorized City personnel and deemed contraband and shall not be returned unless compliance with this Chapter is demonstrated.
 - 1. Seizures may be appealed through the procedures set forth in this Chapter. If not appealed or if upheld after review, seized items shall be destroyed in accordance with Orange Police Department policy and applicable law.

9.45.050 Appeal.

- A.** Notice of Action. Following the seizure of items prohibited under this Chapter, the City Manager or designee shall issue written notice to the responsible person, business, retailer or other entity. The notice shall include:
 - 1. The proposed enforcement action.
 - 2. A brief summary of the reason(s) and applicable code section(s).
 - 3. Instructions for requesting an administrative review.
 - 4. The notice shall be served personally or by first-class mail to the last known address of the responsible person or business. If mailed, notice shall be deemed effective three (3) calendar days after deposit in the United States mail.
- B.** Right to Request Review. The appellant person, business, retailer, or other entity may request administrative review by submitting a written request to the City Clerk within 10 calendar days of the notice. The request must include any applicable appeal fee as established by resolution of the City Council. A request is timely only if received by the City Clerk within the ten (10) calendar-day period. Failure to submit a timely request constitutes a waiver of the right to administrative review and a failure to exhaust administrative remedies.
- C.** Scheduling the Review. Upon receiving a timely request, the City shall schedule an administrative review. The review shall be conducted within a reasonable time, and notice shall be provided to the appellant at least 10 calendar days in advance.
- D.** Hearing Process.
 - 1. The hearing shall be conducted by a neutral hearing officer as designated by the City Manager pursuant to the City's administrative hearing procedures.
 - 2. Both parties may present evidence, provide written statements or oral testimony, and be represented by legal counsel.

3. Formal rules of evidence do not apply, but relevant and reliable evidence will be considered.
 4. Hearings may be continued for good cause.
- E.** Burden of Proof. The City bears the burden of proving the violation by a preponderance of the evidence.
- F.** Failure to Participate. If the appellant fails to appear or otherwise participate in the hearing, the appeal will be deemed withdrawn and considered a waiver of the right to exhaust administrative remedies.
- G.** Final Decision. The hearing officer shall issue a written decision within a reasonable time following the hearing. The decision shall include findings and be final upon issuance. Judicial review is available under California Code of Civil Procedure Sections 1094.5 and 1094.6.

SECTION III:

If any section, subdivision, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION IV:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2026.

Daniel R. Slater, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

APPROVED AS TO FORM:

Nathalie Adourian, City Attorney, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the 13th day of January, 2026, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2026 was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange