

PROPOSED ORDINANCE NO. 2026-12

AN ORDINANCE OF THE COUNTY OF BINGHAM, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, AMENDING TITLE 5, PUBLIC SAFETY, CHAPTER 1, GENERAL OFFENSES, BY ADDING SECTION 5, BANNING THE SALE AND DELIVERY OF KRATOM AND DERIVATIVES WITHIN BINGHAM COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR A PENALTY FOR VIOLATIONS THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Bingham County Commissioners and the Bingham County Sheriff are committed to promoting and protecting the public health, safety, and general welfare of the citizens of Bingham County; and

WHEREAS, kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia, the leaves of which contain psychoactive compounds, primarily mitragynine and 7-hydroxymitragynine, that produce stimulant effects at low doses and opioid- and sedative-like effects at higher doses; and

WHEREAS, kratom products are currently available for sale various retail establishments throughout southeast Idaho, including within Bingham County; and

WHEREAS, the U.S. Food and Drug Administration has warned consumers not to use kratom because of the risk of serious adverse events, including liver toxicity, seizures, and substance use disorder, and has determined that kratom is not lawfully marketed in the United States as a drug product, dietary supplement, or food additive; and

WHEREAS, the U.S. Drug Enforcement Administration has listed kratom as a drug and chemical of concern and has identified its active compounds, including mitragynine and 7-hydroxymitragynine, as posing a risk of abuse and addiction; and

WHEREAS, the Idaho State Epidemiological Outcomes Workgroup has documented that between 2021 and 2023, kratom was listed as a contributing factor in the deaths of 47 Idahoans, and that kratom-related poison control calls continue to increase in the state; and

WHEREAS, kratom is not a controlled substance under the Idaho Uniform Controlled Substances Act, Idaho Code § 37-2701 et seq., and its sale is not subject to age restriction under state law, leaving residents of Bingham County without the protections that state law currently affords with respect to other regulated substances; and

WHEREAS, the Idaho Legislature has not enacted a comprehensive statewide regulatory framework governing the sale or distribution of kratom, and counties therefore retain authority under Article XII, Section 2 of the Idaho Constitution and Idaho Code § 31-714 allowing the Board of County Commissioners to address kratom in the interest of public health and safety; and

WHEREAS, the Bingham County Commissioners and the Bingham County Sheriff find that the unregulated sale or delivery of kratom within the County presents an ongoing threat to the health and safety of the community, particularly to minors and other vulnerable populations, and that a local prohibition on the sale and delivery of kratom is a necessary and reasonable exercise of the City's police power to protect its residents; and

WHEREAS, the City of Kellogg Idaho, has recently led the efforts to initiate City's regulation of kratom by passing the first ordinance banning the sale of such substances and the Bingham County Commissioners and the Bingham County Sheriff commend Kellogg for doing so and in support of such efforts is adopting the following ordinance in substantially similar form as the City of Kellogg; and

NOW, THEREFORE, BE IT ORDAINED by the Bingham County Commissioners, Bingham County, Idaho, as follows:

Title 5, Public Safety, Chapter 1, General Offenses, is hereby amended by adding a Section 5 to read as follows:

5-1-5: BANNING THE SALE AND DELIVERY OF KRATOM AND DERIVATIVES

A. Purpose. This section is enacted to protect, preserve, and promote the health, safety, and welfare of the citizens of the County by prohibiting the sale and delivery of any substance containing kratom as hereinafter defined, it being the specific finding of the County that such substances present significant risks of addiction, serious adverse health effects, and death, and that the absence of state or federal regulation of kratom sales within the County leaves residents without adequate protection.

B. Definitions. For purposes of this section:

"Deliver" or "Delivery" means the actual, constructive, or attempted transfer of kratom or any derivative thereof from one person to another, whether or not there is an agency relationship, and includes a sale.

"Derivative" means any compound derived or synthesized from kratom, including but not limited to mitragynine, 7-hydroxymitragynine, and any synthetic or natural compound intended to mimic or replicate the pharmacological effects of kratom or its active alkaloids.

"Kratom" means any part of the plant *Mitragyna speciosa*, whether growing or not, including its leaves, extracts, resins, compounds, salts, derivatives, isomers, and any preparation, mixture, or product containing any amount of *Mitragyna speciosa*, EXCEPT for dried Kratom leaves containing less than .00500% 7-oh, which contents and amounts must be certified on the package by the manufacturer.

"Sale" or "Sell" means to exchange or deliver for compensation, or to offer to exchange or deliver for compensation.

C. Prohibition. It shall be unlawful for any person, firm, business, or other entity to sell, offer to sell, give, distribute, or deliver kratom or any derivative thereof within the County of Bingham.

D. Exceptions. This section shall not apply to any person or entity lawfully authorized by federal or state law to manufacture, prescribe, dispense, or conduct scientific research with kratom or its derivatives, provided that such activity is conducted in strict compliance with all applicable federal and state laws and regulations.

E. Penalties. Violations of this section shall be subject to civil and criminal penalties as follows:

1. A first violation of this section shall be a civil infraction, and the violator shall be assessed a civil penalty of two hundred fifty dollars (\$250.00).

2. A second violation within two (2) years of the first violation shall be a civil infraction, and the violator shall be assessed a civil penalty of five hundred dollars (\$500.00).

3. A third or subsequent violation within two (2) years of the first violation shall constitute a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1000.00), or imprisonment in the county jail for a period not to exceed ninety (90) days, or both such fine and imprisonment, in the discretion of the court.

4. Each day upon which a violation continues shall constitute a separate and distinct offense.

F. Severability. This section is hereby declared to be severable. Should any provision of this Section be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose of the ordinance before the declaration of partial invalidity.

G. Repeal of Conflicting Provisions. All provisions of Bingham County Code or ordinances of Bingham County that conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

H. Effective Date. This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law, with an effective date of September 1, 2026.