

ORDINANCE NO. C-12-27

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE III, OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA BY CREATING SECTION 16-55 PROHIBITING THE SALE, DISPLAY, DELIVERY AND POSSESSION OF HERBAL INCENSE, SYNTHETIC MARIJUANA AND BATH SALTS; PROVIDING FOR DEFINITIONS; PROVIDING FOR LABEL REQUIREMENTS ON PACKAGING; PROVIDING FOR PENALTIES; AND FURTHER PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, there is evidence of a growing public safety and health concern regarding the sale of incense products which contain chemical compounds designed as synthetic alternatives to certain illegal controlled substances; and

WHEREAS, synthetic cannabinoids, commonly known as synthetic marijuana, are chemically engineered substances that can produce an effect similar to marijuana when smoked and ingested; and

WHEREAS, substituted cathinones, commonly called "bath salts", and other synthetic drugs are being manufactured, sold and used for their psychoactive properties which may cause serious injury; and

WHEREAS, these ~~incense~~ products are being offered for sale in gas stations, convenience stores and "head shops" in the City of Fort Lauderdale and are designed to mimic the effects of illegal drugs such as cannabis, cocaine and amphetamines; and

WHEREAS, these ~~incense~~ products are usually labeled as "not for human consumption", and therefore are not regulated by the Food and Drug Administration (FDA), they are being crushed and/or ground up and ingested by individuals; and

WHEREAS, national studies have documented that a great number of the individuals ingesting these incense products are minors and young adults; and

WHEREAS, the ingestion of these ~~incense~~ products has been documented to cause symptoms such as paranoia, severe anxiety, hallucinations, suicidal thoughts, combative behavior, nausea, increased heart rate, seizures and, on occasions, death; and

WHEREAS, the Legislature in Florida Statutes, §893.0356 has identified these substances as “controlled substance analogs”, which is defined as a substance which is “substantially similar to that of a controlled substance listed in Schedule I or Schedule II of §893.03; and has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in §893.03”; and

WHEREAS, some of these substances evade classification as a “controlled substance analog” by being packaged in a loose, leafy or granular form and marked as “not for human consumption”; and

WHEREAS, in an additional attempt to combat the sale, distribution, purchase and/or possession of these substances, the Florida Legislature amended Florida Statutes §893.03, which was signed into law by the Governor of the State of Florida on March 23, 2012, to include 142 new chemical compounds which trigger hallucinogenic symptoms as Schedule I drugs; and

WHEREAS, to evade identification as a Schedule I or Schedule II drug, the manufacturers of these incense products have been altering the chemical compounds to prevent the drug from being identified as a Schedule I and/or Schedule II drug; and

WHEREAS, these ~~incense~~ products are usually not labeled with the contained packaged ingredients and it is difficult for law enforcement to determine whether the ingredients contained in the packaging are illegal substances under Florida Statutes, Chapter 893; and

WHEREAS, the risks associated with the sale, delivery and possession of these incense products are increased because they can be created more rapidly than they can be identified and controlled by state and federal law; and

WHEREAS, Florida Statutes, §893.03 and §893.13 provide for criminal violations for the possession, delivery, sale and possession with intent to deliver any these aforementioned illegal substances; and

WHEREAS, the labeling of the ingredients on the packaging of these ~~herbal incense~~ products should assist in the effective enforcement of the aforementioned Florida Statutes; and

WHEREAS, the City Commission finds that the sale, delivery and use of these incense products has a substantial and detrimental impact on the public health, safety and welfare of the citizens of the City of Fort Lauderdale;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Chapter 16, Article III, OFFENSES INVOLVING PUBLIC SAFETY, is hereby amended by creating Section 16-55 to read as follows:

Sec. 16-55. Sale, Offering for Sale, Delivery or Possession of Herbal Incense, Synthetic Marijuana and Bath Salts.

(a) Definitions.

Herbal incense shall mean any aromatic or non-aromatic plant material that is distributed in a loose, leafy, powder or granular form, or in compressed block(s) that can easily be crushed or ground into a powder or granular form, and can be placed into a pipe, cigarette papers or any other paraphernalia used for the purpose of ingesting by smoking, inhaling or other method of ingestion.

Synthetic Marijuana shall mean any aromatic or non-aromatic plant material containing any compound defined in Florida Statute §893.03, whether said compound has been sprayed, applied or otherwise added, and/or any other derivative of said compound that mimics the physiological effects of said compound, that is distributed in a loose, leafy, powder, crystal or granular form or in a compressed block(s) that can be crushed to result in a powder or granular form, that can be ingested by placing in a pipe, cigarette paper or any other paraphernalia used for the purpose of ingesting by smoking, inhaling or other method of ingestion.

Bath Salts shall mean any product distributed in a loose, leafy, powder, crystal or granular form or in a compressed block(s) that can be crushed to result in a powder or granular form, that can be ingested by placing in a pipe, cigarette paper, syringe or any other paraphernalia used for the purpose of ingesting by smoking, inhaling or other method of ingestion, that contains any synthetic derivative of cathinone, including but not limited to Methlenedioxypyrovalerone (MDPV), and/or or any derivative of MDPV and/or any other compound defined in Florida Statute §893.03, and/or any derivative of said compound, which mimics the physiological effects of said compounds.

(b) Label requirements.

(1) Any herbal incense or bath salt product must contain on its packaging a label containing the following information: A complete list of all ingredients and chemical compounds contained therein, regardless of whether said ingredients and/or compounds are natural, manmade or are contained therein as a result of the combining of one or more natural ingredients or compounds. Additionally, the packaging shall contain the following warning: "This product is not for human consumption. The ingestion of this product may cause paranoia, severe anxiety, hallucinations, suicidal thoughts, combative behavior, nausea, increased heart rate, seizures and possibly death".

(2) The labeled ingredients and warning requirements in subsection (1) must be in all capital letters and the size of all other letters on the packaging shall be the same as the size of such letters. Additionally, the labeled ingredients and warning in subsection (1) shall be in a conspicuous and legible type in contrast by the typography, layout, or color with all other printed material on the package.

(3) It shall be unlawful to sell, offer to sell, display or deliver any herbal incense or bath salts product without compliance with the label requirements herein.

(c) It shall be unlawful to sell, offer to sell, display, deliver or possess any herbal incense, synthetic marijuana and bath salt product, which contain any substances and/or compounds defined in Florida Statutes §893.03 and/or §893.0356.

(d) Each violation of any of the provisions of this Section shall constitute a separate violation and subject to a separate penalty herein.

(e) Any person found guilty of violating any of the provisions of this Section shall, upon conviction, be penalized as provided in Section 1-6 of this Code.

(f) Any person found guilty, regardless of whether adjudication is withheld, of any violation under this section shall be liable for payment of the costs of prosecution and all investigative costs incurred, including but not limited to any cost for laboratory testing.

(g) Enforcement under this section does not prohibit the City from seeking any other remedies provided by this Code or state law.

SECTION 2. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That this Ordinance shall be in full force and effect upon adoption.

PASSED FIRST READING this the 10th day of July, 2012.

PASSED SECOND READING this the 21st day of August, 2012.

Mayor
JOHN P. "JACK" SEILER

ATTEST:

City Clerk
JONDA K. JOSEPH

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