

Ordinance No. 2015-3E

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, JACINTO CITY, TEXAS, RELATING TO THE PROHIBITION OF ILLICIT SYNTHETIC DRUGS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING A PENALTY THEREFOR; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City Council finds that a wide variety of herbal and plant materials containing synthetic chemicals are being produced to mimic the intoxicating effects of marijuana, ecstasy, methamphetamines, and other controlled substances; and

WHEREAS, these designer illicit synthetic drugs (“synthetic cannabinoids”, commonly referred to as “Kush”) are often sold in legal retail outlets as household products such as “herbal incense” and labeled “not for human consumption” to mask their intended purpose and to avoid the U.S. Food and Drug Administration’s regulatory oversight of the manufacturing process; and

WHEREAS, the Drug Enforcement Administration recognizes that synthetic cannabinoids constitute an immediate hazard to public safety; and

WHEREAS, the U.S. Customs and Border Protection found a number of illicit synthetic drugs appear to originate overseas and are manufactured in the absence of quality controls and devoid of governmental regulatory oversight; and

WHEREAS, such substances have been reported to cause serious side effects that endanger the health and safety of individuals, including severe agitation and anxiety, racing heartbeat and higher blood pressure, nausea and vomiting, muscle spasms, seizures, and tremors, intense hallucinations, psychotic episodes, and suicidal thoughts and actions; and

WHEREAS, the University of Michigan Institute for Social Research found that in 2013 these illicit synthetic drugs were the second most widely used illicit drug (after marijuana) among tenth graders, and the third most used (after marijuana and amphetamines) among twelfth graders; and

WHEREAS, the packaging and representations made at the point of sale of illicit synthetic drugs often indicate, suggest, imply, or represent that the product is a substitute for or mimics the pharmacological effects of marijuana, ecstasy, methamphetamines or other controlled substances, or controlled substance analogues as defined by section 481.002 of the Texas Health and Safety Code; and

WHEREAS, businesses that sell illicit synthetic drugs often conceal them from public display so as to escape the notice of law enforcement personnel; and

WHEREAS, the illicit synthetic drugs are sometimes marketed as a safe and legal substitute to marijuana; and

WHEREAS, the packaging of the illicit synthetic drugs does not provide accurate information about the synthetic chemicals in or on the product; and

WHEREAS, despite the best efforts of federal and state legislators to outlaw illicit synthetic drugs, manufacturers continually reconfigure the banned substances to produce new synthetic drugs not subject to existing regulations; and

WHEREAS, City Council finds regulation of illicit synthetic drugs is necessary to complement current state and federal laws and to protect the public health, safety and welfare; **NOW, THEREFORE**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACINTO CITY, TEXAS:

ARTICLE 1. ILLICIT SYNTHETIC DRUGS

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. Definitions.

The following words, terms and phrases, whenever used in this article, shall have the meanings set forth in this section, unless the context of their usage clearly indicates a different meaning:

Herbal incense means aromatic plant material, whether referred to as potpourri or otherwise, that is distributed in a loose, leafy, powder or granular form or in a compressed block or blocks that can be crushed to result in a powder or granular form, and can be placed into a pipe, cigarette paper, or other drug paraphernalia for purposes of ingestion by smoking, inhaling or other method, regardless of how the substance is labeled or marketed, including, but not limited to, whether or not such product is labeled 'as not for human consumption.'

Illicit synthetic drug means:

- (1) Any vegetative material, or herbal or plant material, however constituted, designed, intended, marketed, manufactured, or engineered, that contains any quantity of a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product.
- (2) Any vegetative material, or herbal or plant material, with packaging or labeling that indicates, suggests, or implies that the substance is a substitute for or otherwise mimics the pharmacological effects of marihuana ('marijuana'), a controlled substance, or a controlled substance analogue as defined by section 481.002 of the Texas Health and Safety Code.
- (3) Any vegetative material, or herbal or plant material, offered for sale or sold with verbal or written representations regarding the purpose, methods, use, or effect of the substance that indicates, suggests, or implies that the substance mimics the pharmacological effects of marihuana ('marijuana'), a controlled substance, or a controlled substance analogue as defined by section 481.002 of the Texas Health and Safety Code.

Section 3. Prohibition of illicit synthetic drug.

It shall be unlawful for any person to possess, provide, sell, barter, produce, manufacture, distribute, or to offer, display, market or advertise for sale, or purchase with the intent to provide, sell, barter, produce, manufacture, or distribute, or to offer, display, market or advertise for sale any illicit synthetic drug.

Section 4. Failure to publicly display or label herbal incense.

- (a) Herbal incense offered for sale to the public must be publicly displayed at all times through actual or representative packaging.
- (b) All herbal incense offered for sale to the public must include a label listing each active ingredient.

Section 5. Penalty.

(a) Any violation of this Ordinance is a misdemeanor punishable upon conviction by a fine not to exceed \$2000.00. Each separate package, container, or other separate unit containing an illicit synthetic drug shall constitute a separate and distinct offense.

(b) Any violation of this Ordinance is a misdemeanor punishable upon conviction by a fine not to exceed \$2,000.00. Each separate package, container, or other separate unit containing any herbal incense shall constitute a separate and distinct offense.

(c) Prosecution or conviction under this article is cumulative of and shall never be a bar to any other civil or administrative remedy provided or allowed in this article or by law.

Section 6. Affirmative defenses.

(a) It is a defense to prosecution under the provisions of this article that the person possessed the illicit synthetic drug under the lawful supervision of an authorized law enforcement officer to enforce or ensure compliance with this article.

(b) It is a defense to prosecution that a violation of this article is expressly permitted by state or federal law.

Section 7. Seizure.

Any product or substance possessed, provided, sold, bartered, produced, manufactured, distributed, or offered, displayed, marketed or advertised for sale or purchased with the intent to provide, sell, barter, produce, manufacture, or distribute, or to offer, display, market or advertise for sale, in violation of any provision of this article, may be seized by any peace officer. Such product or substance may be destroyed as authorized by state law after its use for evidentiary purposes is no longer required."

Section 8. Codification. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, JACINTO CITY, Texas, (the "Code") to make such non-substantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 9. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances

shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

PASSED AND APPROVED this ____ day of _____, 2015.

Ana Diaz, Mayor

ATTEST:

Joyce Raines, City Secretary

PASSED AND ADOPTED ON THE SECOND AND FINAL READING HEREOF ON THIS THE ____ DAY OF _____, 2015.

Ana Diaz, Mayor

ATTEST:

Joyce Raines, City Secretary

APPROVED:

Jim L. DeFoyd, City Attorney