

LEGISTAR #

130769

Ordinance No. 130769

An Ordinance amending the Code of Ordinances of the City of Gainesville, Florida; by creating Section 17-6 relating to synthetic drugs; by creating penalties in Section 2-339; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, synthetic drugs are commonly marketed for sale to young adults and teenagers as a safe legal alternative to marijuana or other controlled substances and there has been a significant increase in the availability and use of synthetic drugs and substances by adults and teenagers; and

WHEREAS, there are documented health risks, including death, associated with the use of synthetic drugs; and

WHEREAS, the City Commission desires to prohibit the possession with intent to sell, display for sale, or manufacture of synthetic drugs in the City of Gainesville;

WHEREAS, at least ten (10) days' notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a public hearing in the City Hall Auditorium located on the first floor of City Hall in the City of Gainesville; and

WHEREAS, the public hearing was held pursuant to the notice described above at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard.

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

Section 1. Section 17-6 of the City of Gainesville Code of Ordinances is created to read as follows:

Section 17-6. Synthetic Drugs

1 (a) Intent.

2 It is the intent of the City of Gainesville to protect the health, safety, and welfare of the
3 public by prohibiting the possession, sale, and manufacture of synthetic drugs as defined herein
4 which, when consumed, mimic the effects of narcotics or controlled substances. Due to the
5 dangerous medical and health effects the products prohibited by this article can have on the user
6 of the product, each violation shall be considered a serious threat to the public health, safety, and
7 welfare of the public.

8 (b) Definitions.

9 (1) Synthetic drug means synthetic chemical, synthetic chemical compound, synthetic
10 cannabinoids, synthetic cathinones, and those substances meeting two or more of the factors
11 described in subsection (c).

12 (2) Synthetic chemical or synthetic chemical compound refers to a chemical or
13 chemical compound whose molecular composition is substantially similar to, or mimics any of
14 those substances listed as controlled substances in Chapter 893, Florida Statutes, and whose
15 intended use when introduced into the human body is to mimic the effects of a controlled
16 substance. "Substantially similar" to a controlled substance is described as a "controlled
17 substance analog" in Section 893.0356, Florida Statutes.

18 (3) Synthetic cannabinoids means any herbal, vegetal or liquid material which has
19 been soaked, sprayed, blended, combined or otherwise enhanced with a synthetic chemical or
20 synthetic chemical compound that enables the herbal, vegetal or liquid material, or the smoke or
21 vapor emitted from its burning, or vaporization, to mimic or simulate the effects of a controlled
22 substance, tetrahydrocannabinol (THC), when inhaled, ingested, or otherwise introduced into the
23 human body or otherwise affects the function of the human body. Any herbal, vegetal or liquid

1 material described above shall be considered a synthetic cannabinoid regardless of the labeling
2 posted on the packaging for the material and regardless of whether the labeling states that its
3 contents are "not for human consumption," "not for smoking," or other similar statement. The
4 fact that a herbal, vegetal or liquid material, packaged and advertised as a food additive,
5 potpourri, herbal incense, etc., has been soaked, sprayed, blended, combined or otherwise
6 enhanced with a synthetic chemical or synthetic chemical compound which has no legitimate
7 relation to the advertised use of the product may be considered in determining whether the
8 product is considered a synthetic cannabinoid. This term specifically does not include any
9 herbal, vegetal or liquid material containing synthetic chemicals or chemical compounds which:
10 require a prescription; are approved by the United States Food and Drug Administration; and are
11 dispensed in accordance with Florida and Federal law.

12 (4) Synthetic Cathinones, also known as bath salts, means any granular, crystalline,
13 powdered, pill, encapsulated, stick, or block material form of synthetic chemical or synthetic
14 chemical compound that enables the material, or the smoke or vapor emitted from its burning or
15 vaporization, to mimic or simulate the effects of a narcotic or other controlled substance when
16 inhaled, ingested, injected or otherwise introduced into the human body or otherwise affects the
17 function of the human body. Any material described above shall be considered a synthetic drug
18 regardless of the labeling posted on the packaging for the material and regardless of whether the
19 labeling states that its contents are "not for human consumption," "not for smoking," or contains
20 some other similar statement. This term specifically does not include any legitimate, traditional
21 materials known as bath salts or Epsom salts containing synthetic chemicals or chemical
22 compounds which may:

23 (1) require a prescription;

1 (2) are approved by the United States Food and Drug Administration; or

2 (3) are dispensed in accordance with Florida and Federal law.

3 (5) *Controlled substance* means any substance defined or listed in Schedule I, II, III,
4 IV or V of Section 893.03, Florida Statutes, including any analogues, isomers, esters, ethers,
5 salts, and salts of isomers, esters and ethers of such substances.

6 (6) *Drug* means an article or substance that is intended to affect the structure or any
7 function of the body of humans as defined in Section 499.003, Florida Statutes.

8 (7) *Misbranded drug* means a drug that violates Section 499.007, Florida Statutes,
9 including, but not limited, to drugs for which (a) the label is in any way false or misleading; (b)
10 the label does not bear the name and place of business of the manufacturer, repackager, or
11 distributor of the finished form of the drug; (c) the label does not bear adequate directions for
12 use; or (d) the label does not bear adequate warnings against use.

13 (8) *Drug paraphernalia* means other than devices to ingest or inject prescription
14 drugs, any object used, intended for use of designed for use in ingesting, inhaling or otherwise
15 introducing illicit drugs or controlled substances into the human body. In determining whether
16 an object is drug paraphernalia, a court may consider any of the factors enumerated in Section
17 893.146, Florida Statutes.

18 (c) *Determination of a substance as a synthetic drug.*

19 The following factors, taken in the totality of the circumstances, may be considered in
20 determining whether a product, substance, or other material, should be classified as a synthetic
21 drug. For the purposes of enforcement of this article, the establishment of two or more of these
22 factors shall constitute prima facie evidence that the product is a synthetic drug.

1 (1) Marketing: The substance is advertised to be a product for which it is rarely, if
2 ever, suitable to be used for (such as, but not limited to, incense, potpourri, food additive,
3 therapeutic bath crystals, plant food, insect repellent, communication device screen cleaner,
4 jewelry cleaner, glass cleaner).

5 (2) Sales location: Products, whether displayed or not, but offered or sold in, or
6 through, businesses such as liquor stores, smoke shops, and gas/convenience stores where such
7 products are not typically sold.

8 (3) Labels and packaging:

9 (a) Products marketed as common non-consumable products which contain
10 warnings not normally found on such products. The warnings may be
11 similar, but not limited to, "not for human consumption", "not for purchase
12 by minors"; or

13 (b) Products containing notices on the package not normally found on similar
14 products such as, but not limited to, "does not contain any chemical
15 compounds prohibited by State law," "contains no prohibited chemicals,"
16 "product is in accordance with State and Federal laws," "product is in
17 compliance with new Florida Law HB 1175," "does not contain AM2201
18 or any DEA banned substance", "legal herbal substance," "aromatherapy
19 only," "legal in 50 States," "100% compliant guaranteed".

20 (c) Products whose package labeling or design suggests the user will achieve
21 a "high", euphoria, relaxation, mood enhancement, or that the product has
22 other drug-like effects on the body or otherwise affects the function of the
23 human body.

1 (d) Products using brand names and packaging designed to make the product
2 appear similar to illicit street drugs or commonly used street slang for
3 illicit drugs or their effects or employs symbols, terms or effects of illegal
4 drugs, such as marijuana leaf, blunts, red eyes or crossed-out eyes.

5 (e) Packages are misleading, deceptive or misbranded, including but not
6 limited to:

7 i. the label is in any way false or misleading;

8 ii. the label does not bear the name and place of business of the
9 manufacturer, repackager, or distributor of the finished form of the
10 drug;

11 iii. the label does not bear adequate directions for use; or

12 iv. the label does not bear adequate warnings against use and/or the
13 product contains contradictory warnings/directions for the
14 product's use, which is not consistent for the type of product
15 advertised. (Example: "For fragrance or aromatherapy only" which
16 requires human inhalation and/or "blueberry flavor" upon
17 packages that also read "not for human consumption" or similar
18 statements.)

19 (4) Price: The price of the product is incongruent with other similar products
20 marketed for legitimate use, such as incense, potpourri, food additive, therapeutic
21 bath crystals, plant food, insect repellent, communication device screen cleaner,
22 jewelry cleaner, glass cleaner.

1 (5) Similarity to illicit street drugs: Products designed to make the substance appear
2 similar to illicit street drugs (such as, but not limited to, a white powder made to
3 resemble, in color and texture, cocaine, or dried vegetal material resembling
4 marijuana).

5 (6) Ingredients: A product which is, or has been enhanced with, a synthetic chemical
6 or synthetic chemical compound that has no legitimate relation to the advertised
7 use of the product but mimics the effects of a controlled substance when the
8 product, or the smoke or vapor from the burned or vaporized product, is
9 introduced into the human body.

10 (7) Verbal or written representations: Verbal or written representations made at the
11 place of sale or display regarding the purpose, methods, use, or effect of the
12 product on the human body.

13 (8) Co-sale: Offers or suggestions to purchase products such as cigars, pipes,
14 cigarette papers or e-cigarettes that are used with synthetic drugs and demonstrate
15 intent for human consumption.

16 (9) Subterfuge: Use of passwords, signs, vouching or other means to vet purchasers
17 and hiding product from general view or offsite to evade law enforcement as to
18 the product's presence.

19 (d) Prohibited acts. The following are prohibited within the City:

20 (1) The possession with intent to sell, sale, distribution, production, or manufacture of
21 synthetic drugs.

22 (2) The display for sale, marketing, advertisement, or other offer for sale or trade of
23 synthetic drugs in retail stores.

1 (3) Allowing or permitting any person under the age of 18 to enter or remain on the
2 premises of any place of business selling or displaying drug paraphernalia, unless the minor
3 person is accompanied by his or her parent or guardian. Such premises must prominently display
4 a sign posted at the entrance, stating that drug paraphernalia is located within the premises, and
5 prohibiting persons under 18 from entering the establishment without their parent or guardian.

6 (e) Laboratory analysis.

7 The City may utilize laboratory analysis or expert testimony (chemistry and/or
8 pharmacology) to test suspected synthetic drugs. Any laboratory analysis of suspected synthetic
9 drug shall be conducted by an ISO State certified laboratory, competent to provide expert
10 testimony in a court of law as to the chemical contents of the product.

11 (f) Enforcement and penalties.

12 (1) Primary responsibility for the enforcement of this article shall be with any law
13 enforcement officer. Any products found to be synthetic drugs possessed in violation of this
14 section may be seized and held by the city as evidence to be used in any further proceeding.

15 (2) This article may be enforced administratively as a code violation pursuant to
16 Chapter 2-339 of the City Code. This article is administratively enforceable against any person
17 or legal entity. For the purposes of administrative enforcement, law enforcement officers are
18 specifically authorized and designated to enforce this article within the city limits to the extent
19 such authorization/designation is required by law.

20 (3) Each violation shall be considered a separate offense, which can be prosecuted
21 separately. For the purposes of administrative enforcement of this article, each package
22 containing a synthetic drug or misbranded drug shall be considered a separate code violation. In
23 any order finding a violation of this article, the violator shall be ordered to pay, in addition to the

1 penalty, for any laboratory analysis and expert testimony costs incurred by the City in the
 2 enforcement of this article.

3 (4) Nothing contained herein shall prevent the City from taking such other action in
 4 law or equity as may be necessary to remedy any violation of, or refusal to comply with, any part
 5 of this article including but not limited to:

6 (i) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;

7 (ii) Initiating an action to recover any and all damages that may result from a
 8 violation of, or a refusal to comply with, any part of this section; or

9 (iii) Utilizing any other action or enforcement method allowable by law.

10 **Section 2.** Section 2-339 of the Code of Ordinances is amended to add the following
 11 penalty. Except as amended herein, the remainder of Section 2-339 remains in full force and
 12 effect:

Section	Description	Class	Penalty
17.6	<u>Synthetic Drug violations:</u>	<u>IV</u>	<u>\$250.00</u>

13
 14 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1
 15 and 2 of this ordinance shall become and be made a part of the Code of Ordinances of the City of
 16 Gainesville, Florida, and that the sections and paragraphs of this ordinance may be renumbered
 17 and relettered in order to accomplish such intent.

18 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance
 19 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
 20 finding shall not affect the other provisions or applications of this ordinance that can be given

1 effect without the invalid or unconstitutional provision or application, and to this end the
2 provisions of this ordinance are declared severable.

3 **Section 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of
4 such conflict hereby repealed.

5 **Section 6.** This ordinance shall become effective immediately upon adoption.

6 **PASSED AND ADOPTED** this ____ day of _____, 2015.

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EDWARD B. BRADDY
MAYOR

11

Attest:

Approved as to form and legality:

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By: _____

By: _____

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KURT LANNON
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

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17 This ordinance passed on first reading this _____ day of _____, 2015.

18 This ordinance passed on second reading this _____ day of _____, 2015.

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