

Synthetic Drug Enforcement: Multi-Department Strategies

T. Daniel Santee
City Attorney
City of Abilene

Jon James
Director of Planning
City of Abilene

Theresa James
Asst. City Attorney
City of Abilene

Abilene Model

- Traditional Law Enforcement Strategies were not working
 - The Abilene Model was the result of the input of multiple departments and agencies
 - Departments and Agencies involved included:

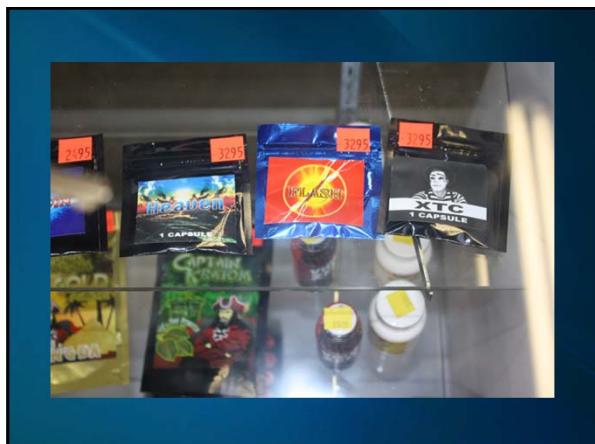


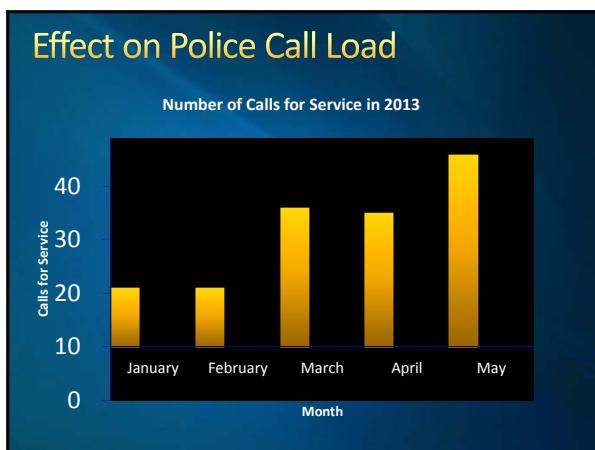
What are Synthetic Drugs?

- “Fake Pot” that produces a marijuana like high
 - Includes names like Spice, K2, Black Mamba, Bliss, Red X Dawn, Angry Birds, and others
 - Plant material is coated with chemicals of unknown dosage then sprayed with incense and sold as potpourri
 - Usually smoked or ingested









What kinds of behavior resulted in calls to Police?

- 5 – 6 teenagers tearing up locker room at the Country club
- Psychotic behavior by callers (hearing voices, seeing ghosts)
- Aggravated robberies (husband and wife hog tied in their home while armed persons searched for K2 and money)
- People passed out or vomiting excessively in public or on privately owned property.
- Domestic abuse (parents afraid of children, spousal abuse)
- Mother passed out in vehicle while car running with toddler in the back seat.
- Multiple calls of seizures or passing out while driving.
- Seizures and convulsions after smoking

Secondary Effects on Community

- Excessive littering
- Vandalism
- Excessive traffic in neighborhoods
- Loitering
- Aggressive panhandling behaviors

Traditional Law Enforcement

- Police conduct buys including undercover buys of products and test the products for chemicals banned under Chapter 481 of the Texas Health and Safety Code.

Traditional Law Enforcement Had Some Success













Traditional Law Enforcement

Problems:

- When a chemical is added to the list of banned substances, the chemical composition of the synthetic drug is tweaked and the product no longer tests as an illegal substance
- Testing is expensive and slow. (6-9 months)
- There are not sufficient tests for some chemicals.

Traditional Law Enforcement

- Sec. 481.106 of the Texas Health and Safety Code does not include Penalty Group 2A analogues which would allow prosecution if the substance has a chemical structure substantially similar to a listed substance and it was designed to produce and effect substantially similar to that of a banned substance.
- Sec. 481.123. Provides an affirmative defense to prosecution if the product was not intended for human consumption.

Nuisance Enforcement

- City Marshal's Office and Abilene PD began issuing citations under the City of Abilene nuisance ordinance.
- Majority of the citations issued were for littering.
- This enforcement had some success on addressing the secondary effects on the property, but did not address the greater health and community issues.

Zoning Regulations

The plan was:

- Treat all head shops in a similar manner to a sexually oriented businesses.
- Establish minimum distances from schools, residences, universities, hospitals, and daycares.
- Limit to a few intensive, non-residential districts
- Provide an amortization period to close and move existing shops.

Zoning Ordinance Head Shop Definition

- Definition was developed through collaboration between Planning and Development, the City Attorney, and Abilene PD.
- Modeled after San Antonio's definition as well as one from California.

Zoning Ordinance Head shop Definition

- HEAD SHOP criteria includes businesses that:
 - Presents, displays, or offers for sale paraphernalia, items, equipment, or products commonly used, intended to be used, or commonly known to be used, for the ingestion, inhalation, preparation, or injection of illegal substances including marijuana, hashish, cocaine, methamphetamine, any other “controlled substance,” “controlled substance analogue,” “synthetic controlled substance,” or substance or chemical that mimics the effect of THC such as synthetic cannabinoids or other controlled substances.
 - It doesn't matter that it might also be possible to use the device for some other purpose.



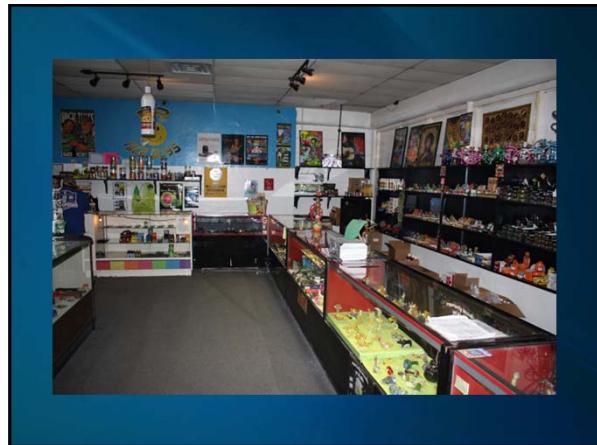










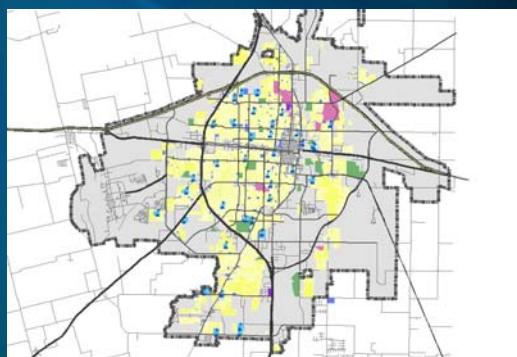




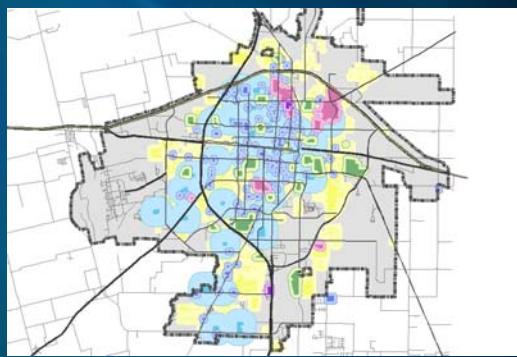
Head Shop Setbacks

- 600' from the property boundary line of any lot in a College/University zoning district
- 600' from the property boundary line of any residentially zoned lot or any lot used for church, park, or hospital purposes
- 1000' from another structure housing a head shop
- 2,500' from any lot used for school purposes (original proposal was 2,000')

Protected Areas

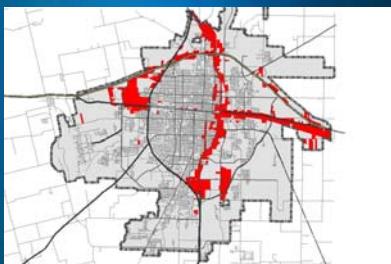


Protected Areas

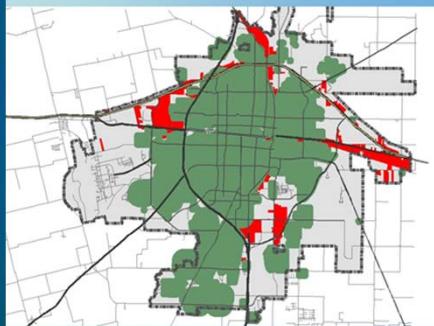


Head Shop Zoning Districts

- Head shops only allowed in these zoning districts: Heavy Commercial, Light Industrial, Heavy Industrial



Allowable Areas for Head Shops



Head Shop Zoning Amortization Period

- Staff proposed a six month period which is pretty aggressive under the law
- Planning and Zoning and City Council approved a four month amortization period, even after being advised of the legal risk in doing so.
- Ordinance was adopted as an “emergency” on a single reading.

Permitting and Certificates of Occupancy

- It was apparent that some of the head shops that were in operation had unpermitted structures.
- When looking into the permitting issue, we discovered that all but two of the shops that were still open did not get a certificate of occupancy to open.
- Once the zoning ordinance was effective, enforcement on the CO issue began.
- Letters were hand delivered to owners by City Marshals.
- Citations were issued for disregarding the letter.

Permitting and Certificates of Occupancy

- When the owners came in to apply for a CO, they were told they had to move to an approved location.
- Within three days of the zoning ordinance going into effect all but two of the shops closed or ceased to sell products that would classify them as a head shop. None of those shops have reopened.



Stopping the Sale of Synthetics

- Though most of the shops had closed, we still had the problem that at two locations these substances were still being sold.
- Brain storming about other consumer issues led to the thought that maybe the Attorney General's Consumer Protection Office could be of assistance.
- Chief of Police got in contact with the AG and called another meeting.

Deceptive Trade Practices

- Meeting took place between two attorneys from the Attorney General's Consumer Protection Division, City Legal, Abilene PD including administration and narcotics, Planning and Zoning, and City Marshal's office.
- After a discussion about this issue, reviewing steps already taken and reviewing evidence in the case the Assistant Attorney Generals thought they could pursue civil enforcement through the Texas Deceptive Trade Practices Act.

Deceptive Trade Practices

- Basis for the civil action was failure to comply with state and federal labeling laws.
- Under the Federal Fair Packaging and Labeling Act a commodity is defined as "any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individual or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is usually consumed or expended in the course of such consumption or use. 16 CFR 500.2

Deceptive Trade Practices

- Labeling requirements under federal law (16 CFR 500.3)
 - Shall affix a label that conforms to the requirements
 - Each label shall include the identity of the product, the name and place of business of the manufacturer, packer, or distributor, the net quantity of contents, net quantity per serving, use or application.

Deceptive Trade Practices

- Labeling under State Law (Tex. Health and Safety Code Chapter 431)
 - Consumer Commodity defined as any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use.

Deceptive Trade Practices

- State Labeling Requirements for commodities (Tex. Health and Safety Code 431, Subchapter H)
 - The label on each package of a consumer commodity shall bear:
 - (A) the common or usual name of the consumer commodity, if any; and
 - (B) in case the consumer commodity consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance





Deceptive Trade Practices

Penalties for DTPA violations:

- Civil Penalty up to \$20,000 per violation
- If the consumer was sixty five or older, a civil penalty not to exceed \$250,000
- An injunction to restrain prohibited conduct
- All attorney fees and investigative costs for the matter

Issues with DTPA enforcement

- Slow process – anticipated would be 5 to 6 months for any court order to be issued.
- Attorneys and Planners were happy. Police wanted to arrest someone.

Texas Penal Code

- Chief wanted to prevent the spread of the problem into the surrounding areas.
- Also wanted stiffer penalties than a Class “C” misdemeanor could provide.
- Solution was Texas Penal Code 32.42 Deceptive Trade Practices
- Under Texas Penal Code Commodity means any tangible or intangible personal property. (Tex. Penal Code 32.43(a)(3)).

Texas Penal Code

- A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices.
 - Selling an adulterated or mislabeled commodity. (Tex. Penal Code 32.42(b)(4))
 - Mislabeled means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage (Tex. Penal Code 32.42(a)(6)

Texas Penal Code

- An offense under (b)(4) is a class C if not previously convicted or Class A misdemeanor if he intentionally, knowingly, recklessly committed the offense or if previously convicted of a Class C misdemeanor.
- The DA approved of this option and the Chief had letters delivered to the shops informing them of this penal provision and the impending enforcement.

Operation Synergy

- The DEA planned a nationwide synthetic enforcement operation that was to be executed on June 26.
- We knew a week before we had positive tests for banned substances for the remaining two shops. The decision was made to execute warrants on those two remaining locations as part of "Operation Synergy"
- The warrants were executed soon after 9 AM on June 26. Since that time no businesses sell synthetic drugs in the Abilene area.

Success?

- Only two operating head shops remain in Abilene. Both are in approved locations and do not sell any synthetic drugs.
- **Abilene Has Not Received Emergency Medical Calls Involving K-2 Since October (KTXS Abilene)**
