

Appendix

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City Council
Agenda Memo



City Council
Meeting Date: 6/13/2013

TO: Larry D. Gilley, City Manager

FROM: Jon James, AICP
Director of Planning and Development Services

SUBJECT: First & final reading and public hearing on an ordinance amending the Land Development Code to create and adopt standards for head shops and Declaring the Passage an Emergency Necessary to Immediately Preserve the Public Welfare, Health and Safety due to the Potential Negative Consequences on the Community.

GENERAL INFORMATION

The City of Abilene has seen a significant increase in the use of synthetic cannabinoids, also called "fake pot," that produces a marijuana-like high. The product is currently sold as herbal potpourri at locations called head shops. Head shops are retail stores that generally sell paraphernalia that are commonly known to be used in taking illegal drugs. Through combined efforts with the Abilene Police Department, staff is proposing to regulate head shops by requiring them to locate in specific zoning districts (HC, LI & HI), to not be within specified distances from zoning districts, churches, schools, hospitals, parks & other head shops, and providing an amortization period of 4 months that results in requiring existing businesses to comply with the regulations at the end of the period.

Staff is proposing to amend the LDC to allow for the regulation of head shops within the City of Abilene. The sections proposed for amendment are Section 2.4.2.1 (Land Use Matrix), Section 2.4.3.3 (All Other Uses with Specific Requirements), and 5.1.1.3 (Land Use Definitions).

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval with 2 modifications by a vote of 6 in favor (Glenn, McClarty, Rosenbaum, Todd, Yungblut, and Famble), and none opposed.

ATTACHMENTS

Ordinance

Prepared by:

Name: Ben Bryner

Title: Planning Services Manager

June 4, 2013

Item No. 7.6

Disposition by City Council

- Approved Ord/Res#
 Denied _____
 Other

City Secretary

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; CALLING A PUBLIC HEARING; AND DECLARING THE PASSAGE AN EMERGENCY NECESSARY TO IMMEDIATELY PRESERVE THE PUBLIC WELFARE.

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

PART 1: That Chapter 23, part known as the "Land Development Code," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: That the Council finds that the adoption of this ordinance relates to the immediate preservation of public welfare due to the potential negative consequences on public health and safety of delaying this decision, thus requiring only one reading of this ordinance upon affirmative vote of at least five council members.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 25th day of May, 2013, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 13th day of June, 2013, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance passed as an emergency measure, becomes effective immediately after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST AND FINAL READING THIS 13th day of June, A.D. 2013.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT "A"

AMEND: Section 2.4.2.1 The Land Use Matrix

ADD: Add the 'head shop' use to the Land Use Matrix

LEGEND: P-Permitted, Blank-Not Permitted, C-Conditional Use Permit, TP-Requires a Temporary Permit, IZ-Conditions Apply See Ch.2 Art.5 Div.3

Permitted Uses	Agricultural Open Space	Rural Residential RR-5 & RR1	Residential Single-Family	Residential Single-Family Patio Home	Residential Townhouse	Residential Medium Density	Residential Multi-Family	Manufactured/Mobile Home	College & University	Neighborhood Office	Office	Neighborhood Retail	General Retail	Medical Use	Central Business	Mixed Use	General Commercial	Heavy Commercial	Light Industrial	Heavy Industrial	Parking Requirements (also refer to Chapter 4, Article 2, Division 1)		
	AO	RR	RS	PH	TH	MD	MF	MH	CU	NO	O	NR	GR	MU	CB	MX	GC	HC	LI	HI			
Trade - Retail Uses																							
Head Shop	<input checked="" type="checkbox"/>																			P	P	P	1/500_SF

AMEND: Section 2.4.3.3 All Other Uses with Specific Requirements

ADD: Add regulations for head shops to subsection (a) Specific Requirements

(a) Specific Requirements.

(27) HEAD SHOP:

- (a) All structures housing a head shop (as defined in Chapter 5 of this LDC) shall be located as follows:
 - (1) At least six hundred feet (600') from the property boundary line of any lot in a College University zoning district;
 - (2) At least six hundred feet (600') from the property boundary line of any residentially zoned lot or any lot used for church, park, or hospital purposes;
 - (3) At least one thousand feet (1,000') of another structure housing a head shop; and
 - (4) At least two thousand five hundred feet (~~2,000~~2,500') from any lot used for school purposes.

Measurements are to be in a straight line in all directions from the structure housing the head shop to the nearest property line on any lot in the College-University zoning district, any residentially zoned district, any lot used for church, school, or hospital purposes, any park, or any structure housing a head shop.

- (b) The measurements for a structure shall be taken from the furthest point that a structure extends in any direction, including overhanging roofs and all other projections or portions of said structure.
- (c) Should a head shop be located in conjunction with other buildings in a manner where the head shop is clearly separated from other portions of the structure, (for example, a head shop store in a shopping center) the head shop's measurements shall be taken from the

boundaries of the space in which the store is housed or confined (not the entire shopping center, motel, or structure).

- (d) Should a head shop be located in conjunction with other buildings in a manner where the store is situated above the ground level of a multi-story structure and is clearly separate from other activities within the structure (for example, an head shop store on an upper level of an office tower or hotel), the head shop's measurements shall be taken from the entry to that portion of the structure housing the store, thence to the nearest point of egress (elevator or stairs), thence to the nearest ground floor exit, thence in a straight line to the nearest point on any lot in a residential district or a College University district, or any lot or tract used for church, school, hospital or park purposes, and any structure housing a head shop.
- (e) Each applicant for a head shop must submit a Site Plan setting out the dimension and locations for such store. The applicant shall sign a certified and notarized statement attached to the Site Plan that the proposed head shop store complies with the requirements set forth herein above. It shall be the duty of the applicant to prepare the Site Plan and to assure compliance with the distance requirements.
- (f) **Amortization:** A head shop in operation prior to the effective date of this ordinance which does not conform to the regulations pertaining to head shops shall be considered to be a non-conforming use that may continue for four ~~6~~(4) months from the effective date of this ordinance.

AMEND: Section 5.1.1.3 Land Use Definitions

ADD: Add a definition for head shops to subsection (a) Land Use Definitions & Matrix Correlation

(a) Land Use Definitions & Matrix Correlation.

- (86) **HEAD SHOP:** Any retail establishment open to the public 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, to include any device which has been fabricated, constructed, altered, adjusted, or marked especially for use in the smoking or ingestion of 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, or any other substance that violates local, State, or Federal law, and is adapted to that purpose by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding that it might also be possible to use the device for some other purpose.

-END-

Relevant Statutory Provisions

CONTROLLED SUBSTANCE SCHEDULES

Texas Health and Safety Code, Chapter 481 "Texas Controlled Substances Act"

<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.481.htm>

21 U.S. Code § 812 – "Schedules of controlled substances"

http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/100mcrm.htm

FEDERAL REGULATIONS UNDER THE FAIR PACKAGING AND LABELING ACT

16 CFR 500.2 – Terms defined.

<http://www.gpo.gov/fdsys/pkg/CFR-2011-title16-vol1/xml/CFR-2011-title16-vol1-sec500-2.xml>

16 CFR 500.3 – Prohibited acts, coverage, general labeling requirements, exemption procedures.

<http://www.ecfr.gov/cgi-bin/text-idx?SID=15228f0cd1f1dadcf86ad5faa9e533d3&node=16:1.0.1.5.62.0.32.3&rgn=div8>

TEXAS FOOD, DRUG, AND COSMETIC ACT

<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.431.htm>

Texas Health and Safety Code, Chapter 431 "Texas Controlled Substances Act".

Section 431.002 "Definitions"

Section 431.181 "Fair Packaging and Labeling"

TEXAS PENAL CODE

<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.32.htm>

Texas Penal Code §32.42 "Deceptive Business Practices"

§32.42(a)(3) Definition of Commodity

§32.42(a)(6) Definition of Mislabeled

§32.42(b)(4) selling an adulterated or mislabeled commodity

STATUTORY NUISANCE

Texas Civil Practices and Remedies Code, Chapter 125 "Common and Public Nuisances"

<http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.125.htm>



CONFIDENTIAL



POLICE DEPARTMENT

450 PECAN STREET • ABILENE, TEXAS 79602 • 325-676-6600 • FAX 325-676-6606

MEMORANDUM

TO: City Council
FROM: Stan Standridge, Chief of Police
DATE: May 8, 2013
SUBJECT: Head Shops

A head shop is a retail outlet specializing in drug paraphernalia used for consumption of cannabis, other recreational drugs, legal highs, legal party powders and New Age herbs, as well as counterculture art, magazines, music, clothing, and home décor. Products purchasable in these outlets typically include pipes; pipe screens; bongs; roach clips; vaporizers; rolling papers; rolling machines; scales or balances; black light-responsive posters; incense; and cigarette lighters.

In recent years, head shops have begun selling synthetic potpourri that is laced with chemicals that mimic the effect of THC, the chemical found in marijuana. Product names include K2, Spice, Blaze, Genie, Angry Birds, Dr. Gang, Black Mamba, and dozens of other names. Synthetic cannabinoids were first synthesized in the early 1980's for research purposes. The FDA has not approved them for human consumption. Emergency room physicians and law enforcement report that individuals that abuse these products experience serious side effects, including: convulsions, anxiety attacks, violence, vomiting, and disorientation. In 2011, the Texas Legislature recognized the dangers of these manufactured chemicals, and they banned more than 160 chemicals that are of a similar nature to THC. However, chemists have simply changed the molecular structure of these chemicals, thereby circumventing successful lab analysis. Consequently, most of the products sold today in head shops do not contain illegal chemicals as defined by the State, but they do contain synthetic chemicals. In Abilene, many of the persons abusing these products are teenagers or young adults, ages 11 to 25.

There are currently nine head shops in Abilene, with a tenth opening soon. They are:

Mr. Nice Guys @ 1601 Butternut; The Smoke Shop @ 2701 S. 14th; The Scent Station @ 633 Leggett; Puff and Stuff Smoke Shop @ 3382 N. 10th Suite B; The Cottonmouth Smoke Shop @ 1237 N. Mockingbird; Xotica @ 4801 Pine; Hippy Express @ 1518 S. 14th; Puff Puff Pass Smoke and Novelties @ 130 Grape; Up in Smoke @ 3511 S. 1st; and soon to be Mr. Nice Guy Stop and Go @ 2641 S. 14th.

Prosecution is very difficult for several reasons. First, the State DPS labs are 6 to 9 months behind; some lab submissions have taken a year. Secondly, because the chemicals have been altered since State legislation first addressed them in 2011, items being submitted are not testing positive, so they

We Serve Those We Protect

are not illegal per State statute. Lastly, persons abusing these substances are less than cooperative and usually refuse to disclose where they purchased their items. Therefore, holding the various stores responsible for individual incidents of abuse has proven difficult.

On April 12, 2013, the Drug Enforcement Administration published a rule that further prohibits synthetic cannabinoids, which are often seen in locally sold herbal products. This measure will effectively close a loophole regarding the changed chemical structures that chemists are able to produce. Additionally, Senate Bill 263 is currently proposed in the Texas Legislature and is expected to pass, going into effect September 1st. This bill should "catch" the chemicals now deemed illegal by the federal government, thereby ensuring State labs will receive positive confirmations that herbal products contain prohibited chemicals. Such a law would greatly increase prosecution efforts, which are only successful if lab results prove conclusively that the herbal products contain illegal chemicals. It should be noted that there is a defense to prosecution in Health and Safety Code 481.123 that addresses packages labeled "not for human consumption." Ideally, the Legislature needs to address this prosecution obstacle, since most products contain this warning.

Suggested action plans include but are not limited to:

1. If a person abuses a product that was purchased locally, and an investigation confirms the location of the head shop in which the product was purchased, issue the head shop owner / manager a citation for Municipal Code Sec. 19-15 (Prohibited acts or conditions which constitute a nuisance.)
2. Continue controlled buys at local head shops and submit to a private lab for quicker analysis. Currently the PD has less than \$4,700 budgeted for lab analysis. Each submitted item costs \$110 for testing. However, this private lab can provide a turnaround time of 48 hours in some cases, thereby giving police an effective time frame to request a search warrant if needed. If a positive analysis is received, as evidenced by an illegal chemical defined in State statute, then a second controlled buy with positive lab analysis must be done before applying for a search warrant. The District Attorney will require two positive lab submissions for prosecution. As of yet, no lab submissions have returned positive for illegal chemicals as defined by the State. Four submissions did, however, return positive for illegal chemicals as defined by the DEA under federal law.
3. Coordinate a federal prosecution case with the DEA and an Assistant US Attorney out of Lubbock. If additional items test positive for federally banned chemicals, try to obtain a federal search warrant for the involved head shop(s). This would likely include seizure of all similarly packaged items as well as any paraphernalia. This case would then be prosecuted federally, where many of these chemicals are already banned per DEA Final Rule.
4. Support SB 263, while also addressing the defense to prosecution language found in 481.123.
5. Collaborate with local emergency rooms and media partners to increase education. Several stories have already been aired, with more to come. Currently both hospitals are collaborating with PD and tracking all incidents involving synthetic substances, including bath salts. PD has been asked to brief ER personnel on these products.

Your consideration is appreciated.

SS

cc: LG; SB

T. Daniel Santee II
City Attorney

Stanley E. Smith
Theresa James
Kelley K. Messer
Charla Thomas
Attorneys



OFFICE OF THE CITY ATTORNEY

Rita Monterrosa
Litigation Paralegal
Sheletra Hayes
Municipal Court Paralegal

325-676-6251
325-676-6439 Fax

May 24, 2013

Kuba Ryokei Trust
2459 Coyne St.
Honolulu, HI 96826-1517

via cmrrr: 7008 2810 0001 4602 3738

Red Fish, LLC
4801 Pine Street
Abilene, TX 79601-1024

via cmrrr: 7008 2810 0001 4602 3745

**RE: NOTICE TO ABATE NUISANCE - Violation of Nuisance Ordinance: Section 19-15(i),
City of Abilene, Code of Ordinances**

Dear Sir/Madam:

The City of Abilene understands that you are the owner or occupant of the property located at 4801 Pine Street, Abilene, known as Xotica. If you are not the owner or occupant of the property, please contact the City Attorney's Office immediately.

Please be advised that a nuisance is being maintained at the property located at 4801 Pine Street, Abilene, Texas. The building or structure at the location is conducting, performing or maintaining an activity which is in violation of local, state or federal law. Specifically, the selling, maintaining, using, placing, permitting to be or remain on the property substances in violation of Chapter 481, Texas Health & Safety Code, and/or in violation of 21 United States Code §§ 812 & 841.

A description of the substances is synthetic potpourri that is laced with chemicals that mimic the effect of THC, such as synthetic cannabinoids or other controlled substances. The products are commonly branded as K2, Spice, Blaze, Genie, Angry Birds, Dr. Gang, Black Mamba, and other numerous brand names.

In addition, a nuisance is being maintained at the property in violation of Chapter 481, Texas Health & Safety Code, § 481.125, Possession or Delivery of Drug Paraphernalia.

In addition, bath salts, a controlled substance which also violates Chapter 481, Texas Health & Safety Code, have already been seized by law enforcement at your property.

You are directed and ordered to abate this nuisance immediately by removing all such substances and drug paraphernalia from the property.

You may request a hearing within ten (10) days after service of this notice to abate the nuisance. Request for a hearing must be in writing and must be addressed to the Municipal Court Judge, City of Abilene, 555 Walnut, Abilene, Texas 79601.

If the nuisance is not abated immediately, and no request for a hearing is made within the ten (10) days, the city may abate such nuisance and assess the cost of abatement against you.

I appreciate your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stanley E. Smith', is written over the typed name.

STANLEY E. SMITH
Assistant City Attorney

SES/

June 14, 2013

[OWNER NAME]
[ADDRESS]
Abilene, TX 79601

RE: Amortization of Head Shop Use

To Whom It May Concern:

The City Council approved an ordinance on June 13, 2013 creating and adopting standards for regulation of head shops, see attached copy of the adopted ordinance. Per the definition of "head shop" within the ordinance, it is our understanding that your business meets that definition and therefore is subject to the requirements of the ordinance. As part of the ordinance, an amortization time period of 4 months was approved. Therefore, by the end of the 4-month amortization period, your business must find an approved location to re-locate within the city limits, or re-locate outside the city limits, or must cease all sales of merchandise that qualifies the business as a head shop. The ordinance will become effective on June 16, 2013 therefore requiring compliance by October 16, 2013.

Failure to bring the property into compliance by this deadline will result in enforcement action, which may include the issuance of daily citations, each of which can carry a fine of up to \$500, and other enforcement action. Each day the violation continues may be considered a separate violation. **The City requires you to bring the property into compliance by October 16, 2013 to avoid any citations or other enforcement action.**

If you need further information, please contact me at (325) 676-6237.

Sincerely,

Jon James, AICP
Director of Planning & Development Services

June 17, 2013

[OWNER NAME]
[ADDRESS]
Abilene, TX 79601

RE: Certificate of Occupancy for Head Shop Use

To Whom It May Concern:

According to the 2009 International Building Code, a certificate of occupancy (C.O.) is required for all businesses:

111.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the *building official* has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

It has been determined that your business does not have a certificate of occupancy. Therefore, you are not allowed to use or occupy the building unless and until a building official issues you a certificate of occupancy.

It further has been determined that your use is classified as a head shop. The City Council approved an ordinance on June 13, 2013 creating and adopting standards for regulation of head shops, which included approved locations within the city limits where a head shop can be located. Your current location does not comply with zoning and/or separation requirements for a head shop, and therefore cannot receive approval of a C.O. at this location. Therefore, your business must immediately find an approved location to re-locate within the city limits, or immediately re-locate outside the city limits, or must immediately cease all sales of merchandise that qualifies the business as a head shop.

Failure to bring the property into compliance will result in further enforcement action, which may include the issuance of daily citations, each of which can carry a fine of up to \$500, and other enforcement action. Each day the violation continues may be considered a separate violation.

If you need further information, please contact me at (325) 676-6237.

Sincerely,

Jon James, AICP
Director of Planning & Development Services



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2013

Via Certified Mail # 7007 0710 0003 3375 0544
Return Receipt Requested

Richardo C. Estrada
d/b/a Mr. Nice Guys on Butternut
d/b/a Mr. Nice Guys on 14th St
1601 Butternut St.
Abilene, TX 79602

Re: Alleged Violations of the Texas Deceptive Trade Practices-Consumer Protection Act
by Richardo C. Estrada d/b/a Mr. Nice Guys on Butternut and Mr. Nice Guys on 14th
St.

Dear Mr. Estrada,

I am writing to inform you that the Texas Attorney General has determined that you are offering for sale and selling products that do not comply with state and federal law at your businesses, Mr. Nice Guys on Butternut and Mr. Nice Guys on 14th Street (drive through only), in Abilene, Texas. This practice violates the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), Tex. Bus. & Comm. Code §§ 17.41 *et seq.*

The allegations that follow relate to various products which are being offered for sale or sold by you at your business in Texas that contain synthetic substances to mimic the effects of illegal drugs and/or controlled substances. These products ("Products") include but are not be limited to items labeled as potpourri, incense, or bath salts, bearing various brand or trade names, including but not limited to, Grim Reaper, Dr. Feelgood, Angry Bird Space, XXX Hysteria, Joker, Devil Inside, and Respect My Authoritah, Skull Kandie, Mary Jane, Black Sabbath, and Death Grip. Such Products are offered for sale or sold in a manner intended to avoid the provisions of existing drug and controlled substances laws and/or as alternatives to street drugs to stimulate, sedate, or cause hallucinations or euphoria when introduced into the body, such as through being inhaled or ingested. These Products are labeled as household products, including but not limited to potpourri, incense, and bath salts, to give a misleading impression that they are harmless. A review of emergency calls to 911 in 2013 in Abilene demonstrates that adverse events are reported after use of these Products, including but not limited to paranoia, hallucinations, pains like a heart attack or rapid heartbeat, seizures, panic, passing out, and suicidal thoughts.

The labels of these Products, which are consumer commodities under the Federal Fair Packaging and Labeling Act ("FPLA"), 15 U.S.C. §§ 1451-146, and regulations in 16 C.F.R. Parts 500-503, adopted pursuant to the FPLA, and §§ 431.002 and 431.181 of the Texas Health and Safety Code ("state FPL"), fail to conform to all of the requirements of these laws. For example, most of the labels on these Products fail to comply with all three requirements of the federal FPLA: the name and address of the manufacturer, packer or distributor; net quantity of contents in terms of weight or mass in both pound and metric units; and a statement of the identity of the commodity.

Additionally, most of the labels on these Products fail to comply with all of the requirements of the state FPL: net quantity, common or usual name of the consumer commodity, or common or usual name of each ingredient listed in order of decreasing predominance. Therefore, the labels of these Products are false, misleading or deceptive in violation of the DTPA.

In addition, these Products are usually labeled "not for human consumption," contrary to substantial evidence indicating that they are specifically intended for inhaling or ingesting and that they are, in fact, inhaled or ingested. Thus, labeling these products as "not for human consumption" is itself a false, misleading, or deceptive act in violation of the DTPA.

Moreover, based upon the reported usage of these Products, they are also drugs as defined in §431.002(14) of the Health and Safety Code. Since many of these Products are inhaled, they are also unapproved new drugs pursuant to § 431.114 of the Health and Safety Code as these Products not approved by the Federal Food and Drug Administration. It is false, misleading, or deceptive for drugs not approved by the Federal Food and Drug Administration to be offered for sale or sold in Texas.

Further, these Products for inhalation are not labeled in compliance with § 431.112 of the Texas Health and Safety Code, which requires the listing of ingredients, adequate directions for use, and warnings, in addition to other requirements on the labels of drugs.

The DTPA prohibits, among other things, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. Tex. Bus. & Comm. Code § 17.46(a). The DTPA also prohibits the causing of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods; representations that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not in fact possess; and/or representations that goods or services are of a particular standard, quality, or grade if the goods or services are of another standard, quality or grade. Tex. Bus. & Comm. Code § 17.46(b)(2), (5), (7). Additionally, the DTPA prohibits the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. Tex. Bus. & Comm. Code § 17.46(b)(24). For the reasons stated above, you have violated and are violating these provisions by selling and continuing to offer for sale the Products into trade or commerce in Texas. This letter will serve as notice to you of these alleged violations pursuant to Section 17.47(a) of the DTPA.

It is the State's position that each time you have offered for sale or sold the Products constitutes a separate violation of the DTPA. Thus, if this matter is taken to trial, the State may seek the following:

- a. A civil penalty of up to \$20,000 per violation;
- b. For violations of the DTPA calculated to acquire or deprive money from a consumer who was sixty-five years of age or older when the violations occurred, a civil penalty not to exceed \$250,000;

June 27, 2013
Page 3

- c. An injunction to restrain prohibited conduct; and
- d. All attorney fees and investigative costs incurred by this office in pursuing this matter.

If you want to discuss resolution of this issue, you can reach me by phone at (214) 969-7639, ext. 8811, or Patricia Stein, Assistant Attorney General, at ext. 8816; by fax at (214) 969-7615; or at the address on the bottom of the first page.

Sincerely,

A handwritten signature in cursive script that reads "Joyce Wein Iliya".

Joyce Wein Iliya
Assistant Attorney General

Cause No. 14- XXXXX

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
	§	
V.	§	IN AND FOR THE CITY OF ABILENE
	§	
JOHN DOE	§	TAYLOR/JONES COUNTY, TEXAS

In the name and by the authority of the State of Texas, I the undersigned Affiant do solemnly swear that I have good reason to believe and do believe that the defendant, one John Doe, on or about May 21, 2014 and before the making and filing of this complaint, in the territorial limits of the City of Abilene, in Taylor/Jones County, Texas did impermissibly use a building or structure located at 500 Main Street, and also known as John Doe's Smoke Shop, without first obtaining the Certificate of Occupancy required after the construction, alteration or placement of said structure and prior to habitation or any non-residential use of the structure, or prior to the change in the use of said structure, if the use is different based on the land uses listed in the City of Abilene's Land Use Matrix, found in the City of Abilene's Land Development Code Sec. 2.4.2.1, against the peace and dignity of the State ~~/(contrary to said ordinance)~~.¹

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2014.

(Deputy) Clerk of Municipal Court
City of Abilene, Taylor/Jones County, Texas

¹ Abilene Land Development Code Sec. 4.1.3.4

Cause No. 14- XXXXX

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
	§	
V.	§	IN AND FOR THE CITY OF ABILENE
	§	
JOHN DOE	§	TAYLOR/JONES COUNTY, TEXAS

In the name and by the authority of the State of Texas, I the undersigned Affiant do solemnly swear that I have good reason to believe and do believe that the defendant, one John Doe, on or about May 21, 2014 and before the making and filing of this complaint, in the territorial limits of the City of Abilene, in Taylor/Jones County, Texas did maintain, use, place, deposit, leave, or permit to be or remain on any public or private property, to wit: 500 Main Street, a building, structure, or other place or location where any activity which in is violation of local, state or federal law is conducted, performed or maintained, **against the peace and dignity of the State** /(contrary to said ordinance). ¹

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2014.

(Deputy) Clerk of Municipal Court
City of Abilene, Taylor/Jones County, Texas

¹ Abilene Code of Ordinances Sec. 19-15(i)

Cause No. 14- XXXXX

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
	§	
V.	§	IN AND FOR THE CITY OF ABILENE
	§	
JOHN DOE	§	TAYLOR/JONES COUNTY, TEXAS

In the name and by the authority of the State of Texas, I the undersigned Affiant do solemnly swear that I have good reason to believe and do believe that the defendant, one John Doe, on or about May 21, 2014 and before the making and filing of this complaint, in the territorial limits of the City of Abilene, in Taylor/Jones County, Texas did in the course of business at John Doe's Smoke Shop, located at 500 Main Street, intentionally, knowingly, recklessly, or with criminal negligence sell an adulterated or mislabeled commodity, to wit: 4 packages labeled potpourri, the labeling of which varied from the standard truth or disclosure in labeling prescribed by law or set by established commercial usage, against the peace and dignity of the State. ¹

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2014.

(Deputy) Clerk of Municipal Court
City of Abilene, Taylor/Jones County, Texas

¹ Penal Code Sec. 32.42(b)(4)



PARTNERSHIP for PUBLIC HEALTH LAW

Advancing Public Health Through Law

Regulation of Synthetic Drugs

Synthetic Drugs and Impact on Public Health

Synthetic drugs are chemically produced and mimic or enhance the effects of illicit drugs. These drugs fall into two categories:

- *Synthetic cannabinoids*, also known as synthetic marijuana, are designed to elicit the same “high” that users get from the THC (tetrahydrocannabinol) contained in marijuana. The synthetic cannabinoid is sprayed onto plant material, which is dried for smoking or oral ingestion. These products are typically sold in retail stores as herbal incense, potpourri or herbal smoking blends.
- *Synthetic cathinones* function as synthetic stimulants, designed to affect the central nervous system similar to the impact of drugs such as cocaine and amphetamines. These drugs are laboratory produced. They are sold in powder form for snorting and may be injected intravenously or taken by mouth. These products are typically sold in retail stores as bath salts or jewelry cleaner.

Companies selling synthetic drugs as legal products, like incense or bath salts, attempt to avoid liability for harm from use of the products as drugs by labeling the products as not intended for human consumption. These labels have no impact on the applicability of local, state or federal laws that limit or prohibit the sale of synthetic drugs. Just like cocaine may not be sold as a kitchen cleaner, banned synthetic drugs may not be sold as incense. These labels do, however, hinder enforcement efforts as law enforcement and health officials may not be able to identify the products being used as drugs and creating public health problems.

Because they are relatively new and vary in chemical composition, there is limited research on the short-term and long-term health effects of these drugs and even less research on the impact on public health. The research and data available, however, give good reason for concern. Synthetic cannabinoids were originally produced to assist in research on the impact of cannabinoids on brain function and pain management. The effects of the synthetic drugs, however, may be ten times higher than of THC. For example, from 2010 to 2012, Poison Control Centers across the country received approximately 9,000 calls related to bath salt use and bath salts were responsible for over 20,000 drug-related emergency department visits in 2011. In 2010, synthetic cannabinoids led to over 11,000 emergency department visits, 75% of which involved patients between the ages of 12-29. Synthetic cannabinoids are popular among high school students. Evidence suggests that youth are the primary consumers of synthetic cathinones.

Popular synthetic cannabinoid product names include K2, Spice, Blaze and Black Mamba.

Popular synthetic cathinone product names include Ivory Wave, Bloom, Vanilla Sky and White Lightning.

Reported harmful effects of synthetic cannabinoids include nausea, increased agitation, elevated blood pressure and acute kidney injury.

Synthetic cathinones may cause chest pain, increased heart rate, hallucinations, paranoia and delusions; and they may create deep cravings like their natural counterparts.

Detailed charts on relevant state legislation are available from the National Conference of State Legislatures. <http://www.ncsl.org/issues-research/justice/synthetic-drug-threats.aspx>

Federal Laws Applicable to Synthetic Drugs

Federal law—the Controlled Dangerous Substances Act—regulates the sale of a variety of drugs, including imposing prescription requirements for certain substances and banning the sale and use of others. The level of regulation is determined by the schedule on which the drug is listed. At the

For example, Ocean City, Maryland, a popular tourist destination that attracts teens and young adults, bans “cannabimimetic agents” as well as “noncontrolled substance[s] that the person reasonably believes is a hallucinogenic chemical substance.” *Ocean City, Maryland, Code, Title IV, §§58-181 to 58-183.*

high end of the scale, Schedule I drugs present significant risk of addiction and serve no medical purpose; these drugs may not be sold or used. At the low end, Schedule V drugs present little risk of abuse and may be used effectively as medicine. Recognizing that chemical substances similar to controlled substances present health risks, Congress passed the Controlled Substances

Analogous Enforcement Act of 1986, Subtitle E of the Anti-Drug Abuse Act of 1986 (P.L. 99-570). The Act includes in Schedule I drugs that are substantially similar to listed drugs; however, the definition of analogue drug is somewhat restrictive. In 2012, Congress passed the Synthetic Drug Abuse Prevention Act, Subtitle D of Title XI of the Food and Drug Administration Safety and Innovation Act (P.L. 112-144), directly adding several synthetic substances to Schedule I. The Drug Enforcement Agency has added more synthetic substances to Schedule I; these are temporary listings that must be approved by Congress within three years. As a result of these laws, those who produce, sell, use or possess many synthetic drugs may be subject to federal criminal prosecution.

State and Local Laws Applicable to Synthetic Drugs

States have also responded with legislation: 43 states have passed laws prohibiting certain synthetic cannabinoids and 44 states have passed laws prohibiting certain synthetic cathinones. Some state laws identify particular chemical compounds that are unlawful. For example, Arizona law contains an extensive list of prohibited chemical compounds. *Arizona Revised Statutes, §13-1401.* Other state laws use generic language so as to include any number of synthetic drugs. For example, Colorado law lists specific prohibited compounds but also prohibits cathinones generally, defined as “any synthetic or natural material containing any quantity of a cathinone chemical structure, including any analogs, salts, isomers, or salts of isomers of any synthetic or natural material containing a cathinone chemical structure.” *Colorado Revised Statutes, §18-18-102.* There is a trend toward these more generic definitions. As with federal law, these provisions typically add the

new substances to existing prohibitions on production, sale, use or possession and require criminal prosecution for enforcement. The advantage of the generic definition is that the law is able to keep pace with the creativity of those manufacturing the products. With narrow definitions of prohibited drugs, manufacturers need only make a modest change to the chemical composition of the product to avoid regulation.

Local legislatures have also taken action, typically with respect to a particular product of concern. Some jurisdictions have taken action broadly or with respect to a particular retailer under the local jurisdiction’s nuisance abatement power. Because many states preempt local legislation of controlled dangerous substances to some extent, interested local policymakers should consult with counsel before pursuing legislation to better understand in what ways the local legislature may regulate synthetic drugs.

Public Health Response to Synthetic Drug Use

Federal and state laws prohibiting the production, sale, use or possession of synthetic drugs are an important element in the public health response to this burgeoning problem. But law enforcement officials face significant hurdles in pursuing criminal charges against those who sell synthetic drugs. Even with the generic or catch-all language, expert testimony about the chemical composition of the product and its effect on the human body are likely required. Additionally, labeled as legal products like incense or bath salts, enforcement officials struggle to identify and punish retailers. These difficulties coupled with the dynamic nature of these drugs require a public health response. Because synthetic cannabinoids and cathinones are relatively new products, informing the public about the risks of use is imperative. This includes incorporating information about synthetic drugs into youth drug education programs as well as broader public education so that retailers, parents and other adults are aware of these products. This is particularly true as many of the popular products are marketed in a deceptive manner, with labeling as herbal incense or bath salts not intended for human consumption. Assuring that the medical community and health departments are aware of the availability of these drugs and know how to treat a user is particularly important in communities in which the drugs are just starting to emerge. Supporting research into the effects of the drugs will contribute to the ability of the public health community to respond to this emerging and dangerous problem.

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The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

This document was developed by Kathleen Hoke, JD, Director of the Network for Public Health Law - Eastern Region and Mathew R. Swinburne, Staff Attorney, Network for Public Health Law - Eastern Region, University of Maryland Francis King Carey School of Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

breaking news

APD, Taylor Country Sheriff's Office Confiscate Possible Illegal 'Bath Salts'



By: APD News Release

Updated: May 17, 2013



On 5/17/13, agents of the Special Operations Division of the Abilene Police Department assisted by the Taylor County Sheriff's Office executed a search warrant at a north side business located at 4801 Pine Street, known as "XOTICA."

The search warrant stemmed from information gained by agents investigating the possible sale of illegal substance (s), particularly alpha-Pyrrolidinopentiophenone, also known as "A-PVP", or more commonly by the generic term "bath salts."

Substances identified in the search warrant were seized and will later be submitted for lab analysis.

No person was arrested pursuant to the execution of this search warrant.

Criminal charges may be filed at a later date, pending laboratory analysis.



Heat Advisory - Knox
severe weather alert

Federal Agents Raid Smoke Shops, Police Say More to Come

By: Brendaliss Gonzalez



Updated: June 26, 2013

Abilene Police assisted agents from the Drug Enforcement Agency (DEA) as they raided two Abilene smoke Shops.

Abilene Police Chief Stan Standridge said in a press conference that they've been investigating several smoke shops around Taylor Co. since March in an effort to crack down on selling illegal chemicals like synthetic cannabinoids, often referred to as K2.

As of Wednesday afternoon, police say they are positive that there are no longer any smoke shops in the county that are selling the product.

They also say that although so far only two arrests have been made in connection with the investigation, more may come.



Heat Advisory - Knox
severe weather alert

Update: Search Executed at Mr. Nice Guys Part of Nation-Wide Operation

By: BCH News Staff

Updated: June 26, 2013



A local search has turned out to be a part of a nation-wide operation.

The search going on at Mr. Nice Guys is a part of a nation-wide operation named Operation Synergy. Thousands of head shops are being searched across the nation today.

A search warrant was executed at both locations of Mr. Nice Guys on South 14 and the 1600 block of Butternut.

The City Attorney and Chief of Police were both at the Butternut location.

An undercover agent purchased product from the store which was then tested and proved to contain illegal substances.

The raid is a joint effort of the DEA, APD and the Taylor County Sheriff's office.

Chief of Police Stan Standridge will release a statement on the search later this evening.

APD issues statement on head shops

Staff report

Wednesday, June 26, 2013

ABILENE, TX – In January 2013, first responders began responding to an increasing number of calls involving bath salts and synthetic cannabinoids, otherwise known as “fake pot.” Since then, more than thirty citizens have been treated at local emergency rooms, and in May alone, the Police Department responded to an estimated 46 incidents. The Police Department was aware of the limitations of enforcement afforded by Texas statute, since synthetic cannabinoids were not included in the definition of a controlled substance analogue. Bath salts were already addressed and therefore prosecutable, but the fake pot that is marketed as herbal potpourri was not addressed in the law unless it had one of 148 banned chemicals. The Police Department began weekly undercover buys of these products and submitted them for lab analysis. Most products returned negative for one of the banned chemicals.

The Police Department collaborated with the Drug Enforcement Administration, the City Attorney's Office, Planning and Development and the Texas Attorney General's Office to address these matters. Additionally, the City of Abilene tried to address the statute limitations through state legislation, albeit unsuccessfully. Through collaboration, enforcement efforts began in March and included: issuing citations for violations of municipal ordinances (including nuisance business practices and littering); a zoning ordinance change to require head shops move away from residences and schools; undercover buys resulting in minors purchasing tobacco that resulted in citations; drug investigations that resulted in two felony search warrants by the Abilene Police Department's Special Operations Division (Xotica and Cotton Mouth, with two felony arrests made from Cotton Mouth); citations and enforcement against four businesses for not having certificates of occupancy; and culminating today with federal search warrants at both Mr. Nice Guys' locations (Butternut Street and S. 14th). The Abilene Police Department and the Taylor County Sheriff's Office assisted the Drug Enforcement Administration (DEA) with these warrants, after undercover buys by Abilene Agents revealed purchased products had federally banned chemicals.

Additionally, two Assistant Attorney Generals from the Dallas field office came to Abilene and visited with the Police Department, City Marshal's Office and City Attorney, to identify enforcement measures including criminal and civil options. The AG's Office greatly assisted local efforts by alerting us to federal and state requirements on commodity packaging. This in turn identified appropriate penal violations such as Texas Penal Code 32.42, Deceptive Business Practices. This statute states that a person commits an offense if, in the course of business, he sells a

commodity that is mislabeled. Mislabeled is then defined as varying from the standard of truth or disclosure in labeling prescribed by law. Consequently, any persons selling bath salts or synthetic cannabinoids in Taylor County will be subject to criminal prosecution, up to and including arrest.

The Abilene Police Department is committed to the safety of this community, and all surrounding communities. The Department has notified surrounding agencies of these enforcement efforts to ensure head shops do not relocate and begin selling synthetic cannabinoids again. As of today, no head shops are selling bath salts or synthetic cannabinoids in the City of Abilene, and all Taylor County law enforcement partners will monitor them to ensure strict compliance with local, state and federal law.

As police chief, I am very proud of the collaborative efforts of the many persons and systems that contributed to this effort. Taylor County residents are well served by these professionals, and I am very thankful for the Attorney General's Office and the Drug Enforcement Administration. I also appreciate our media partners' efforts to keep our community informed. We are better together, and now our citizens are safer without these dangerous products being sold in Abilene or Taylor County.



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From the Desk of Greg Abbott

Criminals are often creative in their illegal pursuits, always trying to stay just beyond the long arm of the law. The development of synthetic cannabinoids is one recent example. Known commonly as “fake pot” or “K2” and marketed as “herbal potpourri,” these synthetic drugs are designed to exploit loopholes in the law, but their harmful effects are very real.

Early last month, Abilene Police Chief Stan Standridge contacted our office looking for help in his city’s fight against the fake pot that was running rampant there. As he detailed in his letter, 10 “head shops” were selling fake pot in Abilene, and more than two dozen people had already been hospitalized since the beginning of the year in connection with the drugs. Chief Standridge was pursuing a multi-pronged, collaborative approach to combat the drugs in his community, and he asked our office for help.

The OAG jumped into action. Our Law Enforcement Division quickly huddled with the Consumer Protection Division, which then dispatched Joyce Iliya and Pat Stein from the Consumer Protection Division’s Health Team to Abilene. Joyce and Pat advised Abilene city officials on possible civil

and criminal legal options that would allow the city to go after the head shops for deceptive business practices. Abilene adopted the legal strategy as part of its collaborative approach, which also included help from the U.S. Drug Enforcement Administration.

The results were swift and impressive. Chief Standridge announced in a news release at the end of June, “As of today, no head shops are selling bath salts or synthetic cannabinoids in the City of Abilene, and all Taylor County law enforcement partners will monitor them to ensure strict compliance with local, state and federal law.” He added, “As police chief, I am very proud of the collaborative efforts of the many persons and systems that contributed to this effort. Taylor County residents are well served by these professionals, and I am very thankful for the Attorney General’s Office and the Drug Enforcement Administration.”

Thanks to Joyce and Pat, as well as all of our Consumer Protection Division and Law Enforcement Division employees, for helping to protect people in Abilene and every Texas community. Our continued commitment to working with other agencies benefits all Texans.

Sincerely,

Greg Abbott

Texas Attorney
General Greg Abbott



Getting the FACTS RIGHT

Police Chief: Effort to remove synthetic drugs from Abilene a 'tremendous success'



By **Jenna Rogers, Reporter, jrogers@ktxs.com**

POSTED: 11:02 AM Sep 26 2013 UPDATED: 7:17 PM Sep 26 2013



Abilene Police Chief Stan Standridge called the effort to remove synthetic drugs from the Abilene community a "tremendous success."

In June, the city of Abilene's Planning and Zoning Department introduced an ordinance that would force head shops to relocate to industrial or commercial areas of town. It was passed unanimously by City Council, giving head shops four months to make the decision to stop selling items that would qualify them as a head shop or they would have to move, away from schools, churches, parks, hospitals or other head shops.

Since the crackdown nearly four months ago, nine of the 10 shops in violation have complied. None have applied to relocate, according to Planning and Zoning. One shop remains. Mr. Nice Guys on Butternut Street has just a few weeks to make the decision.

Standridge said the shops have been very cooperative, and they have had an open dialogue with that particular shop.

"They're not selling anything that we believe is prohibited," Standridge said.

The patrol division has seen a significant decrease in the number of calls related to the products since the ordinance was passed.

"The decrease is dramatic," Standridge said. "We were for a long time dealing with these issues daily and now it is incredible infrequent to the point that the patrol division has been able to focus on other things."

He said the effect has spread throughout our area.

"I'm happy to say that Region 6 is no longer suffering from these substances," he said.

Dr. Joe Jenkins, an emergency physician with Hendrick Medical Center, said he's also seen a huge decrease in the number of patients being admitted after using fake marijuana. He started at the hospital in April.

"My first few months here I was probably seeing several cases a week. Three to four cases at least," Jenkins said. "Probably in the past month and a half I've seen maybe one case."

He said that helps everyone.

"I'd rather not have to spend my resources trying to sedate somebody who voluntarily took some K-2 when I have somebody who's having a heart attack next door that I can't get to because I'm wrapped up in this room," said Jenkins.

Standridge said the department will not stop keeping an eye out for possible possession, though.

"We will continue to evaluate anything that's brought into this community and sold under the pretense that it's legal," he said.

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Abilene Has Not Received Emergency Medical Calls Involving K-2 Since October



Jacob Bradford (/krbc-bios#jacob-bradford)

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The war on drugs is a long fought battle, and had been waged locally for some time between the Abilene Police Department and head shops in town selling synthetic cannabis.

That war came head to head in June of 2013.

With an ordinance that moved head shops away from industrial areas, the department has not received an emergency medical call involving synthetic pot since October.

The only incident since October that involved K-2 didn't involve the drug being made here in the Key City or even in Taylor County.

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East Texas police seek solution to synthetic marijuana problem

By Sarah Thomas sthomas@news-journal.com | Posted: Sunday, March 9, 2014 5:00 am



Synthetic marijuana almost killed James Young.

"I almost shot myself because I had lost my mind from it," the 31-year-old Kilgore resident said Friday afternoon at the home he shares with his wife, Shawn Young. "When you damn near commit suicide and you don't even know why, that pretty much will put you in your place."

After three years of daily use, James Young stopped using the substance in October because he found himself bedridden and rapidly succumbing to physical ailments — inability to sleep, constant vomiting, loss of appetite, violent mood swings, irritability, rapid heartbeat, chills, constant fever, paranoia and memory loss — that he said were caused by smoking the substance commonly packaged and sold as potpourri.

His story is among the many that have led city and county officials to discuss how to eradicate synthetic marijuana while fighting the uphill battle of increasing usage.

"Use is up. We see people smoking it, and we see the results of it," Longview police spokeswoman Kristie Brian said. "Some of them just lose their minds, and not all of them fully recover. We are getting more and more calls about people doing strange things."

Five people ages 19 to 49 were admitted to Good Shepherd Medical Center on Thursday night after using synthetic marijuana, Brian said.

That same night, officers with the Longview and Gregg County narcotics unit issued two citations to clerks who work at businesses that sell synthetic marijuana under a section of the Texas Penal Code dealing with "deceptive business practices." They issued three more citations Friday under the same code.

"The police department is developing a process for addressing the sale of such items utilizing Texas Penal Code Section 32.42," city spokesman Shawn Hara said.

Brian said Subsection B4 gives law enforcement agencies room to penalize the clerks who work at places such as the Glass Dragon, Wildflowers and Scooby Snacks, each of which have locations in Longview that sell the potpourri.

The statute reads, "A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence" sells "adulterated or mislabeled commodity."

The offense is a Class C misdemeanor, and violators face up to a \$500 fine for the first offense. A second violation results in a Class A misdemeanor punishable by up to one year in prison and a fine of up to \$4,000.

"Abilene PD and the AG's office have gotten together, and Abilene PD has used this, and it has worked for them," Brian said. "We will continuously look at other options, and this is a first step in combating this problem."

Call for action

Mayor Jay Dean said in February 2013 the city was "reviewing with our legal department what legal limitations we have with regard to banning all synthetic marijuana. If we can legally ban all of it, I intend to bring that before City Council."

A year later, the city has not implemented a full ban, but progress has been made with such methods as issuing citations under the penal code.

Months ago, city and county officials began discussing options that would pick up where the state Legislature left off in 2013 when it failed to ban the substances that manufacturers created as an end around to the 2011 ban on then popular brand names such as K-2, Genie and Fire & Ice.

"The city has been following the issue closely," Hara wrote in an email. "At the state level, even within the last year, there had been the potential that the Legislature might address the issue during one of the special sessions, but nothing ever materialized."

Area retailers such as the Glass Dragon, which has three stores in Longview; Wildflowers, which has two stores in the city; Scooby Snacks, with one location in the city; and Brianna's Stop and Shop in Clarksville City sell the potpourri, Brian said, because manufacturers tweak their formulas to keep their product just above the law.

"When the city of Longview passed our local K-2 ordinance, the state Legislature had yet to take action on the topic," Hara said. "Since that time, the state Legislature has addressed K-2, but they haven't specifically dealt with some of the similarly used substances now in circulation."

The Longview City Council, Dean, Sheriff Maxey Cerliano and others have been trying to find a way to rid the city and the county of all forms of the product.

"Law enforcement has the responsibility to enforce the law but not the authority to create the law," Cerliano wrote in an email. "The state Legislature has the authority to enact state law, the city council has the authority to create city ordinances and the county commissioners court has a limited ability to enact certain special orders."

Longview Police Chief Don Dingler, Kilgore Police Chief Todd Hunter, Gladewater Police Chief Robert Vine, White Oak Assistant Police Chief Terry Roach, Cerliano and Gregg County District Attorney Carl Dorrrough met Jan. 30 at the sheriff's office to talk about the problem, Cerliano said.

"We continue to search for a legal solution to this enforcement problem. At this time, it would appear that the best avenue is enactment of a state law to address this problem. The Gregg County Organized Drug Enforcement Unit (CODE) has conducted undercover investigations into these operations," Cerliano said.

The products purchased by undercover officers were submitted for lab analysis, he said.

"The results of these lab tests failed to establish a violation of state law," Cerliano said.

Rising problem

Brian said police get calls about people standing in the middle of the road with no recollection of how they got there and people imagining they are being chased.

"They feel like they are having a heart attack. Some of these kids really and truly think they are dying. (Synthetic marijuana) makes you totally freak out. That's the only way I can really even say it," she said. "It's like playing Russian roulette."

On Feb. 27, police arrested 32-year-old Tazille Madison after they found his 11-year-old daughter lying injured behind a building on High Street.

Madison, according to police reports, had taken "two hits" of synthetic marijuana that caused him to act so erratically behind the wheel his daughter jumped from the moving vehicle.

She was airlifted to a Dallas hospital with life-threatening injuries.

Madison said he had no recollection of the incident.

CODE Sgt. Chad LeMaire said the issue has developed a sense of urgency.

"In light of all the recent reports and calls where synthetic marijuana and other substances similar to this have been taken by people we have come in contact with, synthetic marijuana is a big concern for LPD," he said in an email. "Each and every day, officers come into contact with people who have used these substances, and we believe these substances have caused them to have unpredictable, harmful side effects. We believe that synthetic marijuana is a public safety concern, and we are doing what we can, within the law, to combat this growing problem."

Kicking the habit

James and Shawn Young agree public safety is in jeopardy as long as the potpourri remains on the shelves.

"It almost killed my husband. It almost destroyed my marriage," Shawn Young said.

The couple compares the chemicals in synthetic marijuana to methamphetamine.

"I would've been safer drinking a fifth of vodka and getting behind the wheel. No joke. That's how bad this stuff is," James Young said.

He recalled times when being under the influence of synthetic marijuana made him so mad that he wanted to fight himself.

"I've sat at the table and got mad because my glass of tea wasn't full when I was the one that had drank it," he said.

James Young started using synthetic marijuana at age 27 because the legal alternative to pot made sense for him.

"I was a weed smoker, but I ended up finding a job I liked more than I did the weed so I switched because this stuff can't be detected in a drug test," he said.

Addiction set in quickly, he said, and his habit soon grew to about \$150 per day.

"People think it's like weed and not addictive. It's going to reach in and it's going to grab you and you're not going to be able to get away from it. It's a drug point blank, period," his wife said.

She watched helplessly as her husband's health continued to decline.

"He had a persistent cough for more than two years. He lost 60, 70 pounds. He was just a shell of a person. He always had this really bad attitude," she said.

One day, Shawn Young gave her husband an ultimatum: stop using synthetic marijuana or she was leaving.

He decided he'd rather have his family.

A trip to the hospital helped cement the end of James Young's potpourri use.

"It super heats your body. My core temperature was never below 100 degrees," he said.

Withdrawals from the potpourri, he said, were 10 times worse than detoxing from opiates.

"I've done a lot of stuff in my time and this, man, is way worse than any of it," he said.

Although the substances are not illegal and the packages are labeled "not for human consumption," Shawn Young believes the owners of the Glass Dragon stores should feel a moral obligation to stop selling the potpourri.

"People selling drugs that are way less dangerous than this stuff are put in jail for 50, 60 years," she said. "The Glass Dragon is no better than the average Joe Blow drug dealer selling meth and crack."

Brian said the Glass Dragon stores are the largest sellers of the potpourri.

The owners of the Glass Dragon in Lakeport declined to comment.

It's been four months since James Young has used synthetic marijuana.

"Everything is so much better now," Shawn Young said. "His health has improved. His attitude is better, and we're happy."

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