

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES ENTITLED "MISCELLANEOUS OFFENSES" BY ADDING SECTION 42-16, TO PROHIBIT THE SALE, OFFER FOR SALE, PURCHASE WITH INTENT TO SELL OR PUBLIC DISPLAY FOR SALE OF SYNTHETIC CANNABINOID HERBAL INCENSE; PROVIDING DEFINITIONS; PROVIDING FOR SEIZURE AND INJUNCTIVE RELIEF; PROVIDING PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, under the guise of herbal incense, products are being sold at commercial businesses in the City of Key West that contain chemical compounds designed as synthetic alternatives to controlled substances prohibited under Florida law; and

WHEREAS, in 2011, the United States Drug Enforcement Agency exercised emergency scheduling authority to control five (5) identified compounds utilized in synthetic cannabinoids products. The DEA exercised this authority to prevent imminent threat to public health and safety. In 2012, that control order was extended; and

WHEREAS, approximately nine (9) states have banned the sale of synthetic marijuana and other states are considering a ban; and

WHEREAS, on March 23, 2012, the Governor of the State of Florida signed Session Law 2012-23 (House Bill 1175) which amended Florida Statutes section 893.03 by adding 142 chemical designations containing hallucinogenic substances as Schedule I drugs for which

the purchase, possession, sale and/or distribution can result in a felony arrest; and

WHEREAS, while herbal incense products containing synthetic cannabinoids are marketed as safe and legal alternatives to marijuana, they may be more potent and dangerous than marijuana and are also known to produce the following side effects, which may be severe: headaches, agitation, nausea, vomiting, dangerous hallucinations, loss of consciousness, elevated blood pressure, seizures, paranoid behavior, anxiety, increased heart rate, and even death in some cases; and

WHEREAS, according to the American Association of Poison Control Centers, exposure to synthetic marijuana resulted in 2,906 calls in 2010; 6,959 calls in 2011; and 2,389 calls in the first four months of 2012 across the United States; and

WHEREAS, numerous municipalities and states have already taken action to prohibit these products and substances due to overdoses and illnesses; and

WHEREAS, the long-term health effects of these products are unknown, as they are not regulated by the FDA, have not undergone human clinical testing, and their manufacturing process has no oversight; and

WHEREAS, the Florida Legislature has defined controlled substance analogs to exclude compounds containing a controlled substance which are not intended for human consumption and which

are packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse; and

WHEREAS, herbal incense products containing synthetic cannabinoids are often sold to minors or to young adults who purchase such herbal incense products for human consumption as they are commonly known as "synthetic marijuana" notwithstanding packaging statements to the contrary; and

WHEREAS, such herbal incense products may be more dangerous than controlled substances due the unapproved and uncertain chemical compounds contained therein; and

WHEREAS, the chemical compounds in synthetic cannabinoids are easy to change, which allows new substances to be created to circumvent state and federal laws. These new chemical compounds are specifically packaged to avoid classification as a "controlled substance analog," even though they are designed to mimic the effects of illegal drugs; and

WHEREAS, the risks associated with the distribution and use of controlled substance analogs are increased because they can be created more rapidly than they can be identified and controlled by Congress or the Legislature; because their unregulated manufacture produces variations in concentration and purity; and because they are consumed disproportionately by minors and young adults, have dangerous side effects, and have unknown long term effects; and

WHEREAS, no legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption; and

WHEREAS, section 893.035, Florida Statutes grants Florida's Attorney General rulemaking authority to add new substances to Florida's schedules of controlled substances, but the rulemaking process can take time; and

WHEREAS, the Key West City Commission desires to act quickly to make illegal those new synthetic cannabinoids and synthetic cannabinoid-mimicking compounds that drug designers and chemists create to mimic the effects of illegal drugs; and

WHEREAS, the distribution and use of herbal incense products has a substantial and detrimental impact on the public health safety and welfare of the residents of the City of Key West; and

WHEREAS, herbal incense products pose public health, safety and welfare issues for the City, and it is therefore necessary to identify and control new substances that mimic illegal drugs; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 42-16 of the Code of Ordinances is hereby added as follows:

Sec. 42-16. - Sale, display, offer for sale, and purchase with intent to sell herbal incense prohibited.

a. **Definitions.** For purposes of this section, the following definitions shall apply:

"Herbal incense" shall mean aromatic plant material that is distributed in a loose, leafy, powder or granular form, or in compressed blocks that can be easily crushed to result in a powder or granular form, and can be placed into pipes, cigarette papers or other drug paraphernalia for purposes of ingestion by smoking, inhaling or other methods whether or not such product is labeled as not for human consumption.

b. **Sale, display, offer for sale and purchase with intent to sell herbal incense prohibited.**

It shall be unlawful for any person to sell, display, offer for sale, or purchase with intent to sell any herbal incense as defined herein within the city limits of the City of Key West.

c. **Seizure and destruction of herbal incense.**

Herbal incense prohibited herein may be seized by law enforcement officers and may be destroyed in the same manner used to destroy narcotics and contraband substances, after its use for evidentiary purposes in any judicial proceeding is no longer required.

d. **Injunctive relief.**

The City of Key West shall have the authority to seek an injunction against any person or business violating the provisions of this section. In any action seeking an injunction, the City shall be entitled to collect its enforcement expenses, including forensic costs, law enforcement costs and reasonable attorney fees and costs incurred at the trial level and on appeal.

e. **Penalties.**

Any violation of the provisions of this section shall be punishable pursuant to section 1-15 of the code of ordinances.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2012.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2012.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2012.

Filed with the Clerk _____, 2012.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK