

# COMMISSION AGENDA REPORT

COMMISSION MEETING DATE:

07-10-2012

AGENDA ITEM:

O-05

COMMISSION REPORT NO:

12-1160

PREPARED BY:

Harry Stewart 06-28-2012 14:32:51

DEPT: City Attorney Office

DEPARTMENT DIRECTOR'S SIGNATURE

Harry A. Stewart, City Attorney, (954) 828-5037

AUTHOR'S NAME, TITLE, AND TELEPHONE NUMBER

Lee R. Feldman 07-02-2012 18:30:38

CITY MANAGER'S SIGNATURE

TITLE 1: CODE AMENDMENT - CHAPTER 16 - PROHIBITING SALE, DISPLAY, DELIVERY AND POSSESSION

TITLE 2: OF HERBAL INCENSE, SYNTHETIC MARIJUANA AND BATH SALTS

SUBJECT:

Creating Section 16-55 of the Code of Ordinances, Prohibiting Sale, Display, Delivery and Possession of Herbal Incense, Synthetic Marijuana and Bath Salts and providing for label requirements on packaging.

REQUESTED ACTION (STAFF RECOMMENDATION - CONTENT OF MOTION):

Introduce ordinance on first reading.

## REGULAR AGENDA

- ☐ Motion
- ☐ Public Hearing
- ☐ Resolution
- ☐ Purchase
- ☐ Consent Resolution
- ☐ Motion for Discussion
- ☒ Ordinance
- ☐ Presentation
- ☐ Citizen Presentation

## CONFERENCE

- ☐ Old/New Business
- ☐ Exec Closed Door
- ☐ Conference Reports
- ☐ Advisory Boards
- ☐ City Commission Reports
- ☐ City Manager Reports

Public Notice Advertised:

FUNDS APPROPRIATION/TRANSFER (provide index code, subobject, and title of subobject):

No budgetary impact

## FOR PROCUREMENT ITEMS ONLY

PROCUREMENT REFERENCE NO:

TRANSACTION TYPE:

BIDS SOLICITED/RECEIVED:

WBE:

LATE BID:

Vendor:

MBE:

NO BID:

Amount: Details:

Procurement Recommendation:

**Description of Exhibits:**

1. CAR 12-1047	2. Ordinance	3.
4.	5.	6.
7.	8.	9.

**EXHIBITS: AVAILABLE VIA HARDCOPY:****Exhibit #s:****PRIOR COMMISSION/BOARD ACTION: (attach additional file if necessary)**

On June 5, 2012, the City Commission discussed the growing problem of herbal incense products sold in the State and the danger of these products to consumers. City Commission directed staff to draft an ordinance.

**BACKGROUND/DETAIL:**

There is evidence of a growing public safety and health concern regarding the proliferation and sale of incense and bath salts products which contain chemical compounds designed as synthetic alternatives to illegal controlled substances in the City. These incense and bath salts products evade classification as controlled substances by being displayed and sold as loose-leaf or granular herbal incense in packages which do not contain any warnings of the contents therein. These products are not regulated by the Food and Drug Administration because they are not for human consumption. A large number of individuals, including minor children, are obtaining these herbal and bath salts products and ingesting them. The ingestion of these herbal and bath salts products have been documented to cause severe health problems.

The City wishes to prohibit the sale, delivery, display and possession of these herbal and bath salts products that cause or could cause health, welfare and safety issues. The City wishes to identify these herbal and bath salts products as dangerous products and require all ingredients labeled on the packaging and a warning as to the consumption of these products.

**Attorney's Initials:** GW

# COMMISSION AGENDA REPORT

COMMISSION MEETING DATE:

06-05-2012

AGENDA ITEM:

I-G

COMMISSION REPORT NO:

12-1047

PREPARED BY:

Chief Adderley 05-31-2012 15:27:31

DEPT: Police

DEPARTMENT DIRECTOR'S SIGNATURE

Franklin C. Adderley, Chief of Police, 954-828-5590

AUTHOR'S NAME, TITLE, AND TELEPHONE NUMBER

Lee R. Feldman 05-31-2012 15:55:54

CITY MANAGER'S SIGNATURE

TITLE 1:

TITLE 2:

SUBJECT:

SALE AND DISTRIBUTION OF HERBAL INCENSE PRODUCTS

REQUESTED ACTION (STAFF RECOMMENDATION - CONTENT OF MOTION):

☐ REGULAR AGENDA

☒ CONFERENCE

☐ Motion

☐ Motion for Discussion

☒ Old/New Business

☐ City Commission Reports

☐ Public Hearing

☐ Ordinance

☐ Exec Closed Door

☐ City Manager Reports

☐ Resolution

☐ Presentation

☐ Conference Reports

☐ Purchase

☐ Citizen Presentation

☐ Advisory Boards

☐ Consent Resolution

Public Notice Advertised:

FUNDS APPROPRIATION/TRANSFER (provide index code, subobject, and title of subobject):

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NO BID:

Amount:

Details:

Procurement Recommendation:

EXHIBIT 1  
CAR 12-1160

**Description of Exhibits:**

1.		2.		3.	
4.		5.		6.	
7.		8.		9.	

**EXHIBITS: AVAILABLE VIA HARDCOPY:****Exhibit #s:****PRIOR COMMISSION/BOARD ACTION: (attach additional file if necessary)****BACKGROUND/DETAIL:**

Herbal Incense products are presently being sold legally to minors and young adults, in convenience stores in gas stations in our city. These substances are unregulated and contain unknown chemical compounds, which pose a potential threat to the health and welfare of the individuals consuming these products. There are several documented incidents that have drawn a concern to members of the community. Presently these substances are incapable of being tested to determine if the compounds contained therein are of an illegal nature. The Police Department is proposing an ordinance banning the sale and distribution of Herbal Incense products containing synthetic cannabinoids.

**Attorney's Initials:**

BW

**ORDINANCE NO. C-12-**

**AN ORDINANCE AMENDING CHAPTER 16, ARTICLE III, OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA BY CREATING SECTION 16.55 PROHIBITING THE SALE, DISPLAY, DELIVERY AND POSSESSION OF HERBAL INCENSE, SYNTHETIC MARIJUANA AND BATH SALTS; PROVIDING FOR DEFINITIONS; PROVIDING FOR LABEL REQUIREMENTS ON PACKAGING; PROVIDING FOR PENALTIES; AND FURTHER PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, there is evidence of a growing public safety and health concern regarding the sale of incense products which contain chemical compounds designed as synthetic alternatives to certain illegal controlled substances; and

WHEREAS, synthetic cannabinoids, commonly known as synthetic marijuana, are chemically engineered substances that can produce an effect similar to marijuana when smoked and ingested; and

WHEREAS, substituted cathinones, commonly called "bath salts", and other synthetic drugs are being manufactured, sold and used for their psychoactive properties which may cause serious injury; and

WHEREAS, these incense products are being offered for sale in gas stations, convenience stores and "head shops" in the City of Fort Lauderdale and are designed to mimic the effects of illegal drugs such as cannabis, cocaine and amphetamines; and

WHEREAS, these incense products are usually labeled as "not for human consumption", and therefore are not regulated by the Food and Drug Administration (FDA), they are being crushed and/or ground up and ingested by individuals; and

WHEREAS, national studies have documented that a great number of the individuals ingesting these incense products are minors and young adults; and

WHEREAS, the ingestion of these incense products has been documented to cause symptoms such as paranoia, severe anxiety, hallucinations, suicidal thoughts, combative behavior, nausea, increased heart rate, seizures and, on occasions, death; and

Exhibit 2  
CAR 12-1160

WHEREAS, the Legislature in Florida Statutes, §893.0356 has identified these substances as "controlled substance analogs", which is defined as a substance which is "substantially similar to that of a controlled substance listed in Schedule I or Schedule II of §893.03; and has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in §893.03"; and

WHEREAS, some of these substances evade classification as a "controlled substance analog" by being packaged in a loose, leafy or granular form and marked as "not for human consumption"; and

WHEREAS, in an additional attempt to combat the sale, distribution, purchase and/or possession of these substances, the Florida Legislature amended Florida Statutes §893.03, which was signed into law by the Governor of the State of Florida on March 23, 2012, to include 142 new chemical compounds which trigger hallucinogenic symptoms as Schedule I drugs; and

WHEREAS, to evade identification as a Schedule I or Schedule II drug, the manufacturers of these incense products have been altering the chemical compounds to prevent the drug from being identified as a Schedule I and/or Schedule II drug; and

WHEREAS, these incense products are usually not labeled with the contained packaged ingredients and it is difficult for law enforcement to determine whether the ingredients contained in the packaging are illegal substances under Florida Statutes, Chapter 893; and

WHEREAS, the risks associated with the sale, delivery and possession of these incense products are increased because they can be created more rapidly than they can be identified and controlled by state and federal law; and

WHEREAS, Florida Statutes, §893.03 and §893.13 provide for criminal violations for the possession, delivery, sale and possession with intent to deliver any these aforementioned illegal substances; and

WHEREAS, the labeling of the ingredients on the packaging of these herbal incense products should assist in the effective enforcement of the aforementioned Florida Statutes; and

WHEREAS, the City Commission finds that the sale, delivery and use of these incense products has a substantial and detrimental impact on the public health, safety and welfare of the citizens of the City of Fort Lauderdale;

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

SECTION 1. That Chapter 16, Article III, OFFENSES INVOLVING PUBLIC SAFETY, is hereby amended by creating Section 16.55 to read as follows:

Sec. 16-55. Sale, Offering for Sale, Delivery or Possession of Herbal Incense, Synthetic Marijuana and Bath Salts.

(a) Definitions.

Herbal incense shall mean any aromatic or non-aromatic plant material that is distributed in a loose, leafy, powder or granular form, or in compressed block(s) that can easily be crushed or ground into a powder or granular form, and can be placed into a pipe, cigarette papers or any other paraphernalia used for the purpose of ingesting by smoking, inhaling or other method of ingestion.

Synthetic Marijuana shall mean any aromatic or non-aromatic plant material containing any compound defined in Florida Statute 893.03, whether said compound has been sprayed, applied or otherwise added, and/or any other derivative of said compound that mimics the physiological effects of said compound, that is distributed in a loose, leafy, powder, crystal or granular form or in a compressed block(s) that can be crushed to result in a powder or granular form, that can be ingested by placing in a pipe, cigarette paper or any other paraphernalia used for the purpose of ingesting by smoking, inhaling or other method of ingestion.

Bath Salts shall mean any product distributed in a loose, leafy, powder, crystal or granular form or in a compressed block(s) that can be crushed to result in a powder or granular form, that can be ingested by placing in a pipe, cigarette paper, syringe or any other paraphernalia used for the purpose of ingesting by smoking, inhaling or other method of ingestion, that contains any synthetic derivative of cathinone, including but not limited to

Methlenedioxypyrovalerone (MDPV), and/or or any derivative of MDPV and/or any other compound defined in Florida Statute 893.03, and/or any derivative of said compound, which mimics the physiological effects of said compounds.

(b) Label requirements.

(1) Any herbal incense or bath salt product must contain on its packaging a label containing the following information: A complete list of all ingredients and chemical compounds contained therein, regardless of whether said ingredients and/or compounds are natural, manmade or are contained therein as a result of the combining of one or more natural ingredients or compounds. Additionally, the packaging shall contain the following warning: "This product is not for human consumption. The ingestion of this product may cause paranoia, severe anxiety, hallucinations, suicidal thoughts, combative behavior, nausea, increased heart rate, seizures and possibly death".

(2) The labeled ingredients and warning requirements in subsection (1) must be in all capital letters and the size of all other letters on the packaging shall be the same as the size of such letters. Additionally, the labeled ingredients and warning in subsection (1) shall be in a conspicuous and legible type in contrast by the typography, layout, or color with all other printed material on the package.

(c) It shall be unlawful to sell, offer to sell, display, deliver or possess any herbal incense, synthetic marijuana and bath salt product, which contain any substances and/or compounds defined in Florida Statutes 893.03 and/or 893.0356.

(d) Each violation of any of the provision of this Section shall constitute a separate violation and subject to a separate penalty herein.

(e) Any person found guilty of violating this Section shall, upon conviction, be penalized as provided in Section 1-6 of this Code.

(f) Enforcement under this section does not prohibit the City from seeking any other remedies provided by this Code or state law.



**SECTION 2.** That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

**SECTION 3.** That this Ordinance shall be in full force and effect upon adoption.

PASSED FIRST READING this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

PASSED SECOND READING this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Mayor  
JOHN P. "JACK" SEILER

ATTEST:

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City Clerk  
JONDA K. JOSEPH

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