

**REGULAR MEETING OF CITY COUNCIL
MARCH 5, 2013 – 1:30 P.M.**

PRESENT:	Jeff Brain	Mayor
	Robert Vinyard	Mayor Pro-Tem
	Brandy Callahan	Council Member
	Marvin Dickson	Council Member
	Charles Gillingham	Council Member

STAFF:	Eddie Edwards	City Manager
	Danny Richards	E.O.C. Director
	Rhonda Miller	I/T Specialist
	Stella E. Sauls	City Secretary
	Jimmy Adams	Chief, Police Department
	Bruce Roberts	Captain, Police Department
	Ted B. Dodd	Director, Public Works

VISITORS:	Jason Laird	Faith Covenant Church
	John Ray	Debbie Ray
	Meryl Barnett	Denise Rhea
	Pat Minton	Jennifer Holt
	Twyla Melson	Brad Carpenter
	Tara Moyer	Belinda Massengale
	Dee Dee Woodard	Nova Woodard
	Casey McIntyre	Larry Anderson
	Odis McClellan	Robert Bradley
	Rick Mendoza	Earl Owens
	Anna Beth Conner	Jake Conner
	J. T. Conner	Britany Rodriguez
	Trisha Fraley	

NEWS MEDIA: Michelle Berry

QUESTIONS AND COMMENTS FROM CITIZENS: Citizens who have indicated their desire to speak to the City Council will be heard at this time. In compliance with the Texas Open Meetings Act, unless the subject matter is on the agenda, City Council members are prevented from acting on the subject and may respond only with statements of factual information or existing city policy; however, City Council members may request city staff to place the subject matter on a future agenda. Citizens are limited to three (3) minutes for their presentation to the City Council.

There were several citizen comments on the success of the Town Hall meeting held at Borger High School on February 21, 2013, at 6:30 p.m. The citizens thanked the Council for participating.

MINUTES APPROVED: Following review of the minutes of the regular meeting of February 5, 2013 motion was made by Council Member Callahan, seconded by Council Member Vinyard, to approve the minutes as corrected. The motion carried by the following:

Ayes: All members present voted aye.

Nays: None.

PAYMENT OF EXPENDITURES APPROVED: The expenditures for February 2013 were submitted for the consideration of the Council. Following discussion, motion was made by Council Member Dickson, seconded by Council Member Gillingham, to approve payment of the expenditures for February 2013 as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

ANNUAL FINANCIAL STATEMENT RECEIVED AND APPROVED: Larry Anderson of J.W. Anderson and Associates submitted an independent auditors report on the governmental activities, business type activities, and remaining supplemental fund information for the year ending September 2012. The report indicates that the City of Borger's financial statements are free of deficiencies and fairly represent the City of Borger's financial position as of September 30, 2012. Mr. Anderson made no recommendations to change internal controls or procedures. Following discussion, motion was made by Council Member Callahan, seconded by Council Member Dickson, to receive and approve the Annual Financial Statement and Independent Auditor's Report for the year ending September 30, 2012 as submitted. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

ORDINANCE O-003-13 PERTAINING TO PEDDLERS AND SOLICITORS INTRODUCED ON FIRST READING: City Manager Eddie Edwards explained that this is a complex ordinance and credited Council Member Callahan on the hard work she put into this Ordinance. Further input was given by the Council Members as far as hours, door to door solicitation, and permit pricing. Following discussion motion was made by Council Member Callahan, seconded by Council Member Gillingham, to introduce on first reading Ordinance O-003-13, amending Chapter 4, Article 4.06, Peddlers and Solicitors. The motion carried by the following vote:

Ayes: All members present voted aye.

Nays: None.

The caption of Ordinance O-003-13 reads as follows:

ORDINANCE O-003-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, AMENDING THE CODE OF ORDINANCES, CHAPTER 4, ARTICLE 4.06, PEDDLERS AND SOLICITORS, REGULATING PEDDLERS, SOLICITORS, ITENERANT MERCHANTS, AND CANVASSERS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF

RESOLUTION R-005-13, PERTAINING TO SYNTHETIC DRUGS APPROVED: City Manager explained that K-2 has become a hot topic in the area. Mr. Edwards stated that what is needed at this time a resolution to the State and Federal Legislators asking them to provide the cities with more tools to combat the synthetic drug problem. Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Dickson, to approve Resolution R-005-13, pertaining to Illicit Synthetic Drugs. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

Resolution R-005-13 reads as follows:

RESOLUTION R-005-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, CALLING UPON THE UNITED STATES CONGRESS AND THE TEXAS LEGISLATURE TO ENACT: (1) CRIMINAL SANCTIONS FOR THE MANUFACTURE, SALE, DELIVERY AND POSSESSION OF SYNTHETIC MARIJUANA AND OTHER SUBSTANCES MARKETED TO MIMIC THE EFFECTS OF ILLEGAL SUBSTANCES AND PROHIBITING THE MISBRANDING OR FALSE LABELING OF SAID SUBSTANCES; AND, (2) CIVIL LIABILITY FOR SELLERS, RETAILERS, DISTRIBUTORS, AND MANUFACTURERS OF SUCH SUBSTANCES THAT CAUSE HARM OR DEATH TO A CONSUMER

WHEREAS, the City Council of the City of Borger finds there are herbal and/or chemical mixtures that are being marketed and sold in the City of Borger which are designed and marketed to mimic the effects of illegal drugs; and,

WHEREAS, municipal ordinances are ineffective to control this problem because the retailers

merely relocate just beyond the city limits, while still being readily available to customers in the municipality, but thereby becoming a problem for county and State governments; thus statewide or even nationwide legislation is the only effective remedy for this problem; and,

WHEREAS, although often marked “not for human consumption,” or being labeled as otherwise innocuous products (i.e., plant food, incense, potpourri, bath salts, iPod cleaner, etc.) these products are in fact designed, marketed to the buyer, and intended to be used by the consumer as a product that will act upon and affect the human body to get the user “high” or achieve the same or similar effect as that caused by narcotics, marijuana, synthetic marijuana, or other illegal substances; and,

WHEREAS, both State and Federal legislative bodies and regulatory agencies have acted to outlaw synthetic chemical compounds that are a cannabinoid receptor agonist, mimicking the effects of or having the pharmacological effect of cannabinoids, yet chemists have reconfigured the particular synthetic stimulants made illegal, and now market new products that are not currently within any definition of illegal substance; and,

WHEREAS, manufacturers of these products are unknown to the consumer because the packaging does not reveal the name and location of the manufacturer or distributor as required by federal laws pertaining to the labeling of consumer commodities. Moreover, manufacturers and distributors have not obtained FDA approval of these products as a food product, drug, dietary supplement, enhancement products, or other approved substance for human consumption; and,

WHEREAS, consumers suffering a reaction to, injury, or death by these products have little chance of obtaining information concerning the either the contents of the product to aid physicians, or to know the identity and locations of manufacturers; such anonymity frustrates civil law recourse by injured consumers;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS:

Section 1.

THAT: the Borger City Council respectfully calls upon the Congress of the United States and the Texas Legislature to enact statutes that protect the public health, safety, and welfare from the threat posed by synthetic marijuana and other drug-like substances, and the misbranding of products that are intended by manufacturers, distributors, and sellers that such products may mimic the effects of marijuana or other narcotics when consumed, by both criminal and civil means:

A. CRIMINAL OFFENSE— Make it an offense to:

1. Knowingly sale, deliver, exchange, give, or possess synthetic drugs of all types or other substance that are manufactured, distributed, marketed, or packaged with the intent or purpose that the consumer of such may experience an effect that is same or similar to that produced by the use of narcotics or marijuana; or,
2. Misbrand or use false or misleading labeling or packaging on an otherwise lawful substance or product so as to represent, imply, or promise that consuming such product may produce an effect that is same or similar to that produced by the use of narcotics or marijuana, or synthetic marijuana or other unlawful substance. Consuming shall mean to

eat, drink, smoke, inhale, inject, and any other means by which a substance may be placed into or on the human body.

B. CIVIL LIABILITY: Create a civil cause of action against manufacturers, distributors, and retailers who by act or omission manufacture, mix, compound, label, package, distribute, warehouse, sale, gift, or convey any of the substances described in Section 1A above, where such substance is a cause of injury or death to a consumer, whereupon such consumer or survivors shall be authorized to bring a civil suit for and recover damages of every kind including punitive damages, attorney fees, costs of suit, and injunctive relief against said manufacturer, distributor, or seller, jointly and severally.

C. PRESUMPTION: In either a criminal prosecution or civil suit, provide that, in the absence of legible, truthful, and accurate labeling or packaging text, in English, stating: (1) the contents and ingredients of the product; or (2) name and address of the manufacturer and distributor, then there arises a rebuttable presumption that the manufacturer, distributor, retail dealer or other seller knew that the substance was to be consumed by a human and that physical illness, injury, or death was reasonably foreseeable.

Section 2.

THAT, the meeting at which this Resolution was adopted was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 3.

THAT, this Resolution shall become effective from and after its passage.

PASSED, APPROVED, AND ADOPTED, on this the 5th day of March, 2013, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

NO ACTION TAKEN ON THIS ITEM: The city will be able to cancel their General Election scheduled May 11, 2013; there is no need for Election Judges.

PUBLIC HEARING CONDUCTED – REZONING REQUEST APPROVED: Director of Planning and Zoning Kenneth Petr explained to the Council that Mr. Earl Owens and Mr. Bob Crump has requested to rezone Lots 23-30, Block 58, Original Townsite Addition from a Retail (R) Zoning District to a Commercial (C) Zoning District. Mayor Brain opened the public hearing and asked if there were comments. Twyla Melson spoke on behalf of Mr. Bob Crump stating that her father (Mr. Crump) has been doing business on the corner of Third and Harvey for many years. There being no further comments, Mayor Brain closed the public hearing. Following discussion, motion was made by Council Member Vinyard, seconded by Council Member Callahan, to approve the rezoning of Lots 23-30, Block 58, Original Townsite Addition to a Commercial (C) Zoning District. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

MEETING ADJOURNED: There being no further business, motion was made by Council Member Vinyard, seconded by Council Member Callahan, to adjourn the meeting. The motion carried by the following vote:

Ayes: All members present voted aye.
Nays: None.

Mayor

ATTEST:

City Secretary