

**ORDINANCE NO. 2024-19**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS, AMENDING THE ODESSA CITY CODE CHAPTER 8 "OFFENSES AND NUISANCES" ARTICLE 8-1 "GENERAL PROVISIONS" SECTION 8-1-27 "SOCIAL HOST ACCOUNTABILITY" AND ADDING SECTION 8-1-28 ENTITLED "SALE, GIFT, DELIVERY, POSSESSION, OR USE OF ILLICIT SYNTHETIC DRUGS AND MISBRANDED DRUGS"; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS NOTICED AND WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE AND DECLARING AN EFFECTIVE DATE

**WHEREAS**, fentanyl and other synthetic opioids are the most common drugs involved in overdose deaths; and

**WHEREAS**, even in small doses, fentanyl can be deadly; and

**WHEREAS**, the overdose crisis has evolved over time and is now largely characterized by deaths involving illicitly manufactured synthetic opioids; and

**WHEREAS**, in 2021 the Texas Legislature added fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl as a Penalty Group 1-B for the purpose of criminal classification; and

**WHEREAS**, in 2023 the Texas Legislature expanded its definition of Penalty Group 1-B by including a multitude of other opiates to Penalty Group 1-B; and

**WHEREAS**, the City Council of the City of Odessa recognizes the dangers of illicit synthetic drugs to the citizens of the City of Odessa; and

**WHEREAS**, the City Council deems it to be in the best interests of the citizens and residents of the City of Odessa to make the following amendment to Chapter 8 of the City Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ODESSA, TEXAS:**

**Section 1.** That the Odessa City Code Chapter 8 “Offenses and Nuisances” Article 8-1 “General Provisions” Section 8-1-27 “Social host accountability” is hereby amended as follows:

**§ 8-1-27 Social host accountability.**

(a) Legislative purpose. The purposes of this section are to:

(3) Facilitate the enforcement of laws prohibiting the service to, consumption of, or possession of alcoholic beverages or illicit synthetic drugs and misbranded drugs by underage persons.

(b) Definitions. For the purpose of this article, the following definitions shall apply:

*Illicit synthetic drugs and misbranded drugs.* Any substance listed as a controlled substance, or a controlled substance analogue as defined in chapter 481 of the Texas Health and Safety Code, as amended, or any substance listed in Sec. 8-1-28(a)(2).

**Section 2.** That the Odessa City Code Chapter 8 “Offenses and Nuisances” Article 8-1 “General provisions” is hereby amended by adding Section 8-1-28 as follows:

**§ 8-1-28 Sale, gift, delivery, possession, or use of illicit synthetic drugs and misbranded drugs.**

(a) It shall be unlawful for any person to knowingly sell, offer to sell, publicly display, barter, deliver, give, possess, or use the following substances within the city limits:

(1) Any substance listed as a controlled substance, or a controlled substance analogue as defined in chapter 481 of the Texas Health and Safety Code, as amended;

(2) The following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2- phenethyl)-4-piperidiny]-N-phenylacetamide);

(B) Alfentanil;

(C) Alpha-methylthiofentanyl (N-[1-methyl-2-(2- thienyl)ethyl-4-piperidiny]-N-phenylpropanamide);

- (D) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny] -N-phenylpropanamide);
  - (E) Beta-hydroxy-3-methylfentanyl;
  - (F) Carfentanil;
  - (G) Fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl;
  - (H) 3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)- 4-piperidyl]-N-phenylpropanamide);
  - (I) 3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl) ethyl-4-piperidiny]-N-phenylpropanamide);
  - (J) Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinypropanamide);
  - (K) Remifentanil;
  - (L) Sufentanil; and
  - (M) Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]-propanamide).
- (b) It shall be unlawful for any person, knowingly, to breathe, inhale, drink, or otherwise ingest, any compound, liquid, or chemical listed within this section, for the purpose of inducing a condition of intoxication, stupefaction, giddiness, paralysis, irrational behavior, or which, in any manner, changes, distorts, or disturbs the auditory, visual, or mental process of the user.
  - (c) It is not a violation of this section if the person breathed, inhaled, drank, or otherwise ingested the substance under the lawful supervision of an authorized law enforcement officer to enforce or ensure compliance with this section.
  - (d) It is not a violation of this section if the person who commits any act described in this section commits the act pursuant to the lawful direction or prescription of a licensed physician or dentist licensed by the state to direct or prescribe such act.
  - (e) This section does not apply to the inhalation of a lawfully prescribed anesthesia for a medical or dental purpose.
  - (f) Violation(s); penalties.
    - (1) A person who violates any provision of this section shall be referred to the appropriate court for prosecution in accordance with Section 481 of the Texas Health and Safety Code, as amended.
    - (2) Nothing in this section shall be deemed to preclude the imposition of any criminal penalty under state law. Nor shall anything in this section be deemed to conflict with any penalty or provision under state or federal law, or prohibit any conduct authorized by the State or Federal Constitution.

**Section 3.** That should any section, clause or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity

of this ordinance or any other ordinance of the city as a whole or any part thereof, other than the part so declared to be invalid.

**Section 4.** That any person violating the provisions of this ordinance shall be referred to the appropriate court for prosecution in accordance with Section 481 of the Texas Health and Safety Code, as amended.

**Section 5.** That the caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Odessa as provided by City Charter Section 65.

**Section 6.** That this ordinance shall go into effect five (5) days after its publication following adoption on second approval as provided by City Charter Sections 61 and 65.

The foregoing ordinance was first approved on the 9<sup>th</sup> day of April, A.D., 2024, by the following vote:

Mark Matta	ABSENT
Steven P. Thompson	AYE
Gilbert Vasquez	AYE
Greg Connell	AYE
Chris Hanie	AYE
Denise Swanner	AYE
Javier Joven	AYE

The foregoing ordinance was adopted on second and final approval on the 23<sup>rd</sup> day of April, A.D., 2024, by the following vote:

Mark Matta	AYE
Steven P. Thompson	AYE
Gilbert Vasquez	AYE
Greg Connell	AYE
Chris Hanie	AYE
Denise Swanner	AYE
Javier Joven	AYE

Approved this the 23<sup>rd</sup> of April, A.D., 2024.

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Javier Joven, Mayor

ATTEST:

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Norma Aguilar, City Secretary

APPROVED AS TO FORM:

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Daniel C. Jones, City Attorney