AN ORDINACE OF THE CITY OF EUHARLEE, GEORGIA, FOR THE PURPOSE OF **REGULATING THE PURCHASE, POSSESSION, MANUFACTURE, DISTRIBUTION, SALE, DELIVERY OR USE OF CERTAIN DANGEROUS SUBSTANCES DEFINED AS UNREGULATED MARIJUANA SUBSTITUTES THAT MIMIC THE EFFECTS OF MARIJUANA OR "SYNTHETIC CANNABINOIDS" AND ARE NOT OTHERWISE REGULATED AS ILLEGAL SCHEDULE 1 CONTROLLED SUBSTANCES UNDER THE OFFICIAL CODE OF GEORGIA;** AND OTHER PURPOSES

WHEREAS, The City of Euharlee, Georgia has been informed through reports from local law enforcement of the continuing manufacture, sale, distribution, delivery and/or use throughout the State of Georgia of certain dangerous substances defined under this Ordinance as "Unregulated Marijuana Substitutes" that mimic the effects of marijuana or "synthetic cannabinoids" (or "synthetic marijuana", "K2" or "Spice") despite the efforts of the Georgia General Assembly to regulate "synthetic cannabinoids" (or "synthetic marijuana", "K2" or "Spice") as a Schedule 1 controlled substance under Code Section 16-13-25 of the Official Code of Georgia and the 2012 Act of the General Assembly known as "Chase's Law"; and

WHEREAS, in particular, The City of Euharlee, Georgia is aware of the growing movement among manufacturers of synthetic cannabinoids to circumvent the laws of the State of Georgia (and the laws of other states regulating "synthetic cannabinoids", "synthetic marijuana", "K2" or Spice) and frustrated enforcement efforts by manufacturing "Unregulated Marijuana Substitutes" by altering the chemical formula, molecular structure and/or composition of "synthetic cannabinoids" so as to make said substances undetectable or unidentifiable as banned Schedule 1 controlled substances under Georgia law; and

WHEREAS, like "synthetic cannabinoids", these Unregulated Marijuana Substitutes are commonly packaged and marketed as "potpourri", "bath salts", "plant food", "herbal smoking blends", "incense" and/or "herbal incense" to disguise their dangerous nature, but are commonly being used as an alternative to marijuana or "synthetic cannabinoids", have been typically sold online, in head shops, tobacco shops, various retail outlets and at some gas stations, and may be sold and marketed under a variety of names including but not limited to "K-2", "K-2 SUMMIT", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCKOUT 2", "SPICE GOLD", "SPICE DIAMOND", "SPICE SILVER", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", "BLACK MAGIC SMOKE", "SALVIA DIVINORUM", "EXTREME POTPOURRI", "HAYZE TRAINWRECK", "SKUNK", "FAKE WEED", "MOON ROCKS", "MR. SMILEY", "RED X DAWN", "BLAZE", "BLACK MAMBA", BOMBAY BLUE" and "BLISS"; and

WHEREAS, like "synthetic cannabinoids", these Unregulated Marijuana Substitutes are reported by the medical community to produce a very potent, intoxicating effect ranging from three to one hundred times greater and more potent than Tetrahydrocannabinol ("THC"), the active ingredient in marijuana; and

WHEREAS, these Unregulated Marijuana Substitutes manifest all of the demonstrated attributes of substances that deprive persons of judgment,

coordination and the ability to conduct themselves in a safe and appropriate manner in modern society, and are reported to cause hallucinations, vomiting, agitation, panic attacks, tachycardia, elevated blood pressure, pallor, numbness and tingling, disorientation, loss of time awareness, and in some cases, tremors, seizures, kidney failure and loss of consciousness; and

WHEREAS, due to the proliferation of Unregulated Marijuana Substitutes in the retail marketplace and the continued sale and use of Unregulated Marijuana Substitutes following the passage of amendments to Code Section 16-13-25 of the Official Code of Georgia including the 2012 enactment of "Chase's Law", the Georgia State Board of Pharmacy recently enacted an emergency rule on June 12, 2012 to specifically classify five additional compounds as "synthetic cannabinoids" that are banned from over-the-counter sales; however the recently enacted emergency rule of the Georgia State Board of Pharmacy does not allow for arrests or criminal prosecution until further action by the Georgia Legislature, and the current Georgia law regulating "synthetic cannabinoids" still allows for the very real threat of manufacturers continuing to alter the chemical formula, molecular structure and/or composition of "synthetic cannabinoids" so as to make said substances undetectable or unidentifiable as banned Schedule 1 controlled substances under Georgia law; and

WHEREAS, the continuing efforts of manufacturers of "synthetic cannabinoids" to circumvent the laws of the State of Georgia and prevent enforcement efforts by constantly altering the chemical formula, molecular structure and/or composition of these dangerous substances poses a serious and imminent threat to the public health, safety and welfare of the citizens of the City of Euharlee, particularly the youth of the City of Euharlee; and

WHEREAS, the City of Euharlee, Georgia desires to broaden or strengthen current Georgia law prohibiting the purchase, possession, manufacture, distribution, sale, delivery or use of "synthetic cannabinoids" by regulating the purchase, possession, manufacture, distribution, sale, delivery or use of Unregulated Marijuana Substitutes; and

WHEREAS, the Georgia Constitution provides that "[l]aws of a general nature shall have uniform law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws." Ga. Const. 1983, Art. III, Sec. VI, Par. IV(a).

WHEREAS, Courts have repeatedly held that the above constitutional provision prevents local governments from duplicating state regulatory requirements or criminalizing an activity that is already criminalized under state law. Jenkins v. Jones, 209 Ga. 758, 762 (1953) (city cannot make it a crime to drive while intoxicated because the exact same activity is already a crime under state law); City of Atlanta v. S.W.A.N. Consulting & Sec. Services, Inc., 274 Ga. 277, 280 (2001) (city cannot regulate private detective agency serving as bouncers at strip clubs when the agency is already regulated by the state); City of Buford v. Georgia Power Co., 276 Ga. 590, 590 (2003) (city cannot regulate electrical power substations

because the Public Services Commission has the authority to regulate those substations); and

WHEREAS, while The City of Euharlee, Georgia may not duplicate regulatory requirements set forth in the general law of the state or criminalize an activity that is already criminalized under general law (See Jenkins v. Jones, 209 Ga. 758, 762, 75 S.E.2d 815 (1953)), it may enact a special law regulating an activity so long as that special law does not conflict with a general law, that is, so long as the special law does not detract from or hinder the operation of the existing general law, but rather augments and strengthens it. Grovenstein v. Effingham County, 262 Ga. 45, 47, 414 S.E.2d 207, 210 (1992) (citing City of Atlanta v. Associated Builders & Contractors of Ga., 240 Ga. 655, 657, 242 S.E.2d 139 (1978)); see also Bd. of Com'rs of Miller County v. Callan, 290 Ga. 327, 333, 720 S.E.2d 608, 613 (2012); Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 21, 608 S.E.2d 639, 641 (2005); and

WHEREAS, The City of Euharlee, Georgia may also enact regulations to protect the health, safety, and general welfare of the public under its police powers. Ga. Const. of 1983, Art. IX, § 2, ¶ III; Ga. Const. of 1983, Art. III, § 6, ¶ IV(a); O.C.G.A. § 36-1-20; Bd. of Com'rs of Atkinson County v. Guthrie, 273 Ga. 1, 3, 537 S.E.2d 329, 331-32 (2000); Pawnmart, Inc. v. Gwinnett County, 279 Ga. 19, 20, 608 S.E.2d 639, 641 (2005), generally referred to as police power regulations; and

WHEREAS, the regulation of the purchase, possession, manufacture, distribution, sale, delivery or use of Unregulated Marijuana Substitutes does not detract or hinder the operation of the existing Georgia law, but rather, is filling a gap in the existing general law to account for a chemical compound or substance that is ever changing, and this regulation is designed with the specific intent to augment and strengthen the existing general law as opposed to regulating an activity that is already regulated by state law;

NOW THEREFORE, be it resolved and ordained by the Mayor of the City of Euharlee, Georgia, and it is hereby resolved and ordained pursuant to the police power and his authority under law, that the following ordinance and amendment is adopted:

IT IS HEREBY ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF EUHARLEE, and it is hereby resolved and ordained by the authority of same as follows:

ARTICLE 1 PROHIBITION ON THE SALE, MANUFACTURE, USE, DELIVERY, PURCHASE, POSSESSION OR DISTRIBUTION OF UNREGULATED MARIJUANA SUBSTITUTES.

Section 1: Definitions

The following words as used in this Ordinance shall have the following prescribed meaning:

1. Unregulated Marijuana Substitutes shall mean and refer to any compounds or substances, whether described as tobacco herbs, incense spice, aromatherapy incense, bath salts, potpourri, herbal smoking blends, plant food, aromatic substance that may cause a sense of euphoria, novelty aromatic, or any blend thereof, regardless of whether the compound or substance is marketed for the purpose of being smoked, injected, inhaled or ingested by humans or for human consumption, that:

    A. is not currently or hereinafter regulated as a Schedule 1 controlled substance under Georgia law (including the following Georgia law: Code Section 16-13-25 of the Official Code of Georgia, any amendments to Code Section 16-13-25 of the Official Code of Georgia including the 2012 Act of the Georgia General Assembly known as "Chase's Law", and the emergency rule of the Georgia State Board of Pharmacy enacted on June 12, 2012 declaring five specific additional compounds as "synthetic cannabinoids" that are Schedule 1 controlled substances under Georgia law),

    B. is privately compounded, with the specific intent to circumvent the criminal penalties for synthetic cannabinoids under Georgia law, and

    C. Emulate, simulate or mimic the effects of marijuana or synthetic cannabinoids through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent

2. Synthetic cannabinoids shall mean and refer to those certain compounds or substances (also commonly known or referred to in general as "Spice" or "K2") that mimic, emulate or simulate the effects of marijuana or the active ingredient in marijuana (Tetrahydrocannabinol) that are specifically listed and identified as Schedule 1 controlled substances under Code Sections 16-13-25(3) and 16-13-25(12) of the Official Code of Georgia, any amendments thereto, or any other Code Section of the Official Code of Georgia.

3. Substituent shall mean an atom or group that replaces another atom or group in a molecule.

4. Radical shall mean and refer to a group of atoms that enters into and goes out of chemical combination without change and that forms one of the fundamental constituents of a molecule.

5. Person shall mean and refer to any individual, natural person, partnership, firm, corporation, joint venture, proprietorship, business entity, association, agency, group, organization or group of persons or any other entity.

Section 2: Offenses

1. It shall be unlawful for any person to use, sell, give, manufacture with intent to sell, possess, purchase, deliver, transport or distribute any Unregulated Marijuana Substitutes within the city limits of the City of Euharlee.

2. Any person violating this section as it exists or may be amended, upon conviction, shall be punished by the imposition of a fine not to exceed $1,000.00, by imprisonment in jail for a period of time not to exceed sixty (60) days, or by both such fine and imprisonment. Each day any violation of this section shall continue shall constitute a separate offense.

3. Conviction for a violation of this section may also result in the City of Euharlee revoking any person's privilege of operating a business within the city limits of the City of Euharlee.

Section 3: Repealer

All ordinances or resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

Section 4: Severability

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable. Should any section, paragraph, sentence, clause or phrase of this ordinance be rendered invalid by any court of law, the remaining sections, paragraphs, sentences, clauses or phrases shall not be affected but shall continue in effect until amended or repealed by action of the governing authority of the City of Euharlee.

Section 5: Effective Date.

This ordinance shall go into effect on the date of adoption.

SO ORDAINED this 4th day of FEBRUARY, 2014.

Dennis Thayer, Mayor

Attest: Carolyn Banks

I do hereby certify that I am the City Clerk of the City of Euharlee and that the above Ordinance was duly adopted by the Mayor and City Council on the 4th day of FEBRUARY, 2014.

Carolyn Banks, City Clerk

First Reading 01.21.2014

Second Reading 02.04.2014