

ORDINANCE NO. 10-09-27-2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MINEOLA, WOOD COUNTY, TEXAS, PROHIBITING THE USE, PURCHASE, POSSESSION, AND SALE OF THE SYNTHETIC CANNABINOID KNOWN OR SOLD UNDER SUCH NAMES AS “SPICE”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “K-2”, AND “KO KNOCK-OUT 2” FOR PUBLIC HEALTH PURPOSES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY FOR THE VIOLATION OF THIS ORDINANCE OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); DIRECTING FOR THE PUBLICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Mineola, Texas has been provided with documentation regarding the growing presence of a potentially dangerous substance that has the potential to affect the public health, safety and welfare of the citizens of the City of Mineola; and,

WHEREAS, the City Council of the City of Mineola, Texas, has determined that certain businesses within the City may be selling certain substances that, when ingested, produce intoxicating effects similar to THC or marijuana; and,

WHEREAS, the substances are not yet categorized as illegal controlled substances under state or federal law; and,

WHEREAS, the substances, which are described herein below, are often used as an alternative to marijuana and are potentially dangerous to users and further, the long term effects are not yet known; and,

WHEREAS, it has been determined that the effects of these substances are a health concern to the citizens of the City of Mineola; and,

WHEREAS, the City Council of the City of Mineola, Texas, has determined that it is in the best interest of the public health, safety and welfare to prohibit the substances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINEOLA, WOOD COUNTY, TEXAS, THAT:

SECTION 1. The City Council for the City of Mineola, by the passage of this Ordinance hereby prohibits the use, purchase, possession, sale and offering for sale substances generally described as synthetic cannabinoid or salvia divinorum, which generally share common ingredients such as JWH-018 and JWH-073, which are known or sold under such names as “SPICE”, “SPICE DIAMOND”, “SPICE GOLD”, “PEP SPICE”, YUCATAN FIRE”, “SOLAR FLARE”, “FIRE N’ ICE”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “K-2”, “K-2 SUMMIT”, “K-2 SEX”, AND “KO KNOCK-OUT 2”, which shall be generally defined and considered as an illegal smoking product herein.

SECTION II. ILLEGAL SMOKING PRODUCTS.

A. Purpose. The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices hereinafter defined within the city limits of the City of Mineola.

B. Definitions.

(i) “*Person*” shall mean an individual, group of individuals, proprietorship, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

(ii) “*Illegal Smoking Products*” shall mean any substance, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more the following chemicals:

(a) *Salvia divinorum* or salvinorin A; all parts of the plant presently classified botanically as *salvia divinorum*, whether, *growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts;*

(b) *2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(-2-methylcatan-2-yl) phenol (also known as CP47, 497) and homologues;*

(c) *(6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [c] chormen-1-ol (also known as HU-211 or Dexanabinol);*

(d) *1-Pentyl-3-(1-naphthoyl) indole (also known as JWH -018; or*

(e) *Butyl -3 (naphthoyl) indole (also known as JWH-073.*

(f) *1-Pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081).*

(iii) “*Ingestion Device*” shall mean equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

(a) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(b) a water pipe;

(c) a carburetion tube or device

(d) a smoking or carburetion mask;

(e) a chamber pipe;

(f) a carburetor pipe;

(g) an electric pipe;

(h) an air-driven pipe;

(i) a chillum;

- (j) a bong; or
- (k) an ice pipe or chiller

C. Products containing some or all of the substances referred to in Section II.C.(a)-(f) are currently being marketed under the following commercial names:

“SPICE”, “SPICE DIAMOND”, “SPICE GOLD”, “PEP SPICE”, YUCATAN FIRE”, “SOLAR FLARE”, “FIRE N’ ICE”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “K-2”, “K-2 SUMMIT”, “K-2 SEX”, AND “KO KNOCK-OUT 2”

D. Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this ordinance, regardless of whether they are marketed under alternative names.

E. Sell, Offer, Gift, Display or Possession. It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any illegal smoking product.

F. Use or possession of Ingestion Devices. It shall be unlawful for any person to use or possess an ingestion device to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.

SECTION III. DEFENSE. It shall be a defense to a violation of this article that any act described in this article is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.”

SECTION IV. REPEALER. All ordinances of the City of Mineola in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to be in conflict with the Texas Controlled Substance Act, or any other state and/or federal law governing the same.

SECTION V. SEVERABILITY. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION VI. NO RETROACTIVE EFFECT. An offense committed before the effective date of this ordinance is governed by prior federal, state and local law(s) and/or ordinance(s).

SECTION VII. PENALTY. Any person, firm or corporation violating any of the provisions or terms of this ordinance, shall be subject to a Class C misdemeanor criminal charge, and upon conviction shall be punished by fine not to exceed the sum of Two thousand Dollars (\$2,000.00) for each offense.

SECTION VIII. PUBLICATION. The City Secretary is directed to publish this ordinance, or its caption, in the official newspaper of the City of Mineola as required by law.

SECTION IX. EFFECTIVE DATE. This ordinance shall take effect immediately from and after its passage and publication of caption as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MINEOLA, WOOD COUNTY, TEXAS ON THIS THE 27 DAY OF September, 2010.