

ORDINANCE NO. 581

AN ORDINANCE OF THE CITY OF WEST COLUMBIA, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES OF THE CITY OF WEST COLUMBIA BY THE ADDITION OF ARTICLE III, "PROHIBITION OF SYNTHETIC CANNIBINOIDS"; TO PROHIBIT THE USE, PURCHASE, POSSESSION, AND SALE OF THE SYNTHETIC CANNABINOID KNOWN OR SOLD UNDER SUCH NAMES AS "K2", "SPICE", "GENIE", "DaSCENTS", "ZOHAI", "SAGE", AND "KO KNOCK-OUT 2" AND SALVIA DIVINORUM FOR PUBLIC HEALTH PURPOSES; PROVIDING CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES OR POLICIES WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; PROVIDING THAT THE VIOLATION OF THIS ORDINANCE SHALL CONSTITUTE AN OFFENSE PUNISHABLE BY A FINE OF NOT TO EXCEED TWO THOUSAND DOLLARS (\$2000.00); PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of West Columbia, 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 identified above are considered to be generally described as synthetic cannabinoids or salvia divinorum distributed, sold and marketed under such names as "K2", "K2 SUMMIT", "K2 SEX", "K2 ULTRA", "K2 BLONDE", "K2 CITRON", "K2 ORISHA", "K2 AMAZONIAN SHELTER", "K2 THAI DREAM", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "YUCATAN GOLD", "SOLAR FLARE", "PEP SPICE", "POT-POURRI", "BOMBAY BLUE", "HUSH", "SWERVE", "FIRE N' ICE", AND "SALVIA DIVINORUM"; and

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

WHEREAS, the substances described above may be marketed as incense but are commonly being used as an alternative to marijuana which is an identified and documented controlled substance, the sale and use of which is prohibited under the laws of the State of Texas and the United States; and

WHEREAS, the synthetic cannabinoids substances identified above may be presented under a variety of street names but share common ingredients including JWH-018 and JWH-073; and

WHEREAS, salvia divinorum contains the ingredient known as Salvinorin A; and

WHEREAS, these unregulated synthetic cannabinoids and salvia divinorum produce a very potent, intoxicating effect which is estimated by the medical community to produce effects ranging from three to one hundred times greater and more potent than THC, the active ingredient in marijuana; and

WHEREAS, the substances identified above manifest all of the demonstrated attributes of substances that deprive individuals of judgment, coordination and the ability to conduct themselves in a safe and appropriate manner in modern society; and

WHEREAS, the available medical and law enforcement information on these products indicates that individuals under the effects of these substances may be a clear and present danger to themselves and others; further the long term effects of these substances are not yet known; and

WHEREAS, it is anticipated that the Texas Legislature will consider appropriate regulation of these type of commodities in its upcoming legislative session but that it is essential for the municipality to impose some type of reasonable restriction on these products until a state wide regulatory system may be properly implemented; and

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

WHEREAS, the City Council of the City of West Columbia, Texas, has determined that it is in the best interest of the public health, safety and welfare to immediately address the health concerns to the citizens of the City of West Columbia by adopting a local ordinance prohibiting the substances identified above;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:

SECTION 1. Chapter 13 of the Code of Ordinances of the City of West Columbia, Texas entitle " Health Regulations and Nuisances" shall be and is hereby amended by adding Article VIII entitle "Prohibition of Synthetic Cannibinoids", which shall read as follows:

ARTICLE VIII. PROHIBITION OF SYNTHETIC CANNIBINOIDS

Sec. 13-56. Purpose

The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of synthetic cannibinoids and the use, possession and/or sale of ingestion devices used in connection with synthetic cannibinoids as hereinafter defined within the city limits of the City of West Columbia and extraterritorial jurisdiction of the City of West Columbia.

Sec. 13-57. Definitions.

A. "Person" shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

B. "Synthetic Cannabinoids" 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 of the following chemicals or a comparable chemical:

- (1) *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;
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;
- (3) (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);
- (4) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
- (5) 1-Butyl-3-(1-naphthoyl) indole (also known as JWH-073);
- (6) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081) or
- (7) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210).

Products containing some of the above substances are currently being marketed under the following commercial names:

"K2", "K2 SUMMIT", "K2 SEX", "K2 ULTRA", "K2 BLONDE", "K2 CITRON", "K2 ORISHA", "K2 AMAZONIAN SHELTER", "K2 THAI DREAM", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "YUCATAN GOLD", "SOLAR FLARE", "PEP SPICE", "POT-POURRI", "BOMBAY BLUE", "HUSH", "SWERVE", "FIRE N' ICE", AND "SALVIA DIVINORUM".

It is anticipated by the City Council that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth above.

C. "Ingestion Device" shall mean any equipment, product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing synthetic cannabinoids into the human body, including:

- (1) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) a water pipe;
- (3) a carburetion tube or device;
- (4) a smoking or carburetion mask;
- (5) a chamber pipe;
- (6) a carburetor pipe;
- (7) an electric pipe;
- (8) an air-driven pipe;
- (9) a chillum;
- (10) a bong; or
- (11) an ice pipe or chiller.

Sec. 13-58. 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 synthetic cannabinoid.

Sec. 13-59. Use or Possession of Ingestion Devices.

It shall be unlawful for any person to use or possess with intent to use an ingestion device to inject, ingest, inhale or otherwise introduce into the human body synthetic cannabinoid.

Sec. 13-60. Defense.

- A.** It shall be a defense to prosecution for a violation of this article that any act described in this article is under and pursuant to the direction or under a prescription of a licensed physician or dentist authorized to direct or prescribe controlled substances within the State of Texas.
- B.** It shall be a defense to prosecution under the terms of this article if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long

standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of Texas.

Section 2

Any and all Code provisions, rules, ordinances, police regulations, resolutions, and/or informal policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this article, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

Section 3

It is hereby declared to be the intention of the City Council that the several provisions of this article are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this article is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provisions of this article which are not specifically designated as being illegal, invalid, or unenforceable.

Section 4

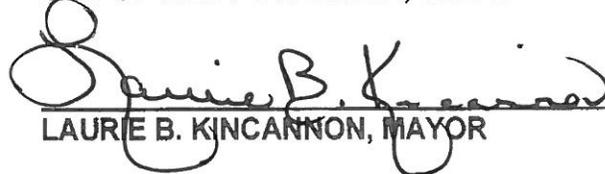
Violation of this ordinance shall be punishable by a fine not to exceed \$2000.00.

Section 5

This article shall be effective upon its passage and approval, and the publication of its caption as provided by law.

PASSED AND APPROVED this the 12th day of October, 2010.

CITY OF WEST COLUMBIA, TEXAS


LAURIE B. KINCANNON, MAYOR

ATTEST:

By: Kelli R. Kuban
KELLI R. KUBAN, CITY SECRETARY