

ORDINANCE NO. 07-13-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANGER, DENTON COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 6 BY ADDING ARTICLE 6.600, "ILLEGAL SMOKING PRODUCTS", TO PROHIBIT 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 OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Sanger, 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 "K-2", "K-2 SUMMET", "K-2 SEX", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "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 Sanger; and

WHEREAS, the City Council of the City of Sanger, 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 Sanger by adopting a local ordinance prohibiting the substances identified above;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANGER, DENTON COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Sanger, Texas, be and the same is hereby amended by amending Chapter 6 in part by adding Article 6.600, "Illegal Smoking Products", to prohibit the use, purchase, possession, sale and offering for sale the synthetic cannabinoid 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", "Salvia Divinorum", "K-2", "K-2 Summet" and "KO Knock-Out 2" to read as follows:

"ARTICLE 6.600 ILLEGAL SMOKING PRODUCTS

Sec. 6.0601 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 Sanger.

Sec. 6.602 Definitions.

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

"Illegal Smoking Product" 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:

- (a) Salviadivinorum or salvinorum 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-methyloctan-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-(1-naphthoyl) indole (also known as JWH-073).

“*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 carburation tube or device;
- (d) a smoking or carburation 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.

Sec. 6.603 Sale, Offer, Gift, Display or Possession of Illegal Smoking Product.

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

Sec. 6.604 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 an illegal smoking product.

Sec. 6.605 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 2. All ordinances of the City of Sanger in conflict with the provisions of this ordinance shall be, and the same are hereby. Nothing contained herein shall be construed to conflict with the *Texas Controlled Substance Act*, or any other state and/or federal law governing the same.

SECTION 3. 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 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Sanger, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SANGER, DENTON COUNTY, TEXAS, ON THIS THE 19 DAY OF July 2010.



APPROVED:

Thomas E. Muir

Thomas, Muir, MAYOR

ATTEST:

Tami Taber

Tami Taber, CITY SECRETARY

APPROVED AS TO FORM:

Robert L. Hillman

CITY ATTORNEY
(44334)