

ORDINANCE NO. O-2011-010

AN ORDINANCE AMENDING CHAPTER 58 OF THE CITY OF MAGNOLIA CODE OF ORDINANCES BY ADDING A NEW ARTICLE IV ENTITLED "ILLEGAL SMOKING PRODUCTS AND ILLEGAL SMOKING PARAPHERNALIA"; PROHIBITING THE PURCHASE, POSSESSION, USE OR OFFERING FOR SALE THE SYNTHETIC CANNABINOID KNOWN BY OTHER STREET NAMES; PROVIDING, AND POSSESSION OF CERTAIN DEVICES USED FOR THE INGESTION OF CERTAIN SUBSTANCES; A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF, WITH EACH DAY OF VIOLATION CONSTITUTING A SEPARATE OFFENSE; AND PROVIDING FOR SEVERABILITY, A PENALTY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, on May 18, 2010, the National Drug Intelligence Center of the United States Department of Justice issued EWS Report 000006 describing substance abuse and harmful side effects related to the use of synthetic cannabinoid products; and

WHEREAS, on November 24, 2010 the United States Drug Enforcement Administration (DEA) used its emergency scheduling authority to temporarily control five chemicals (JWH-018, JWH-073, JWH-200, CP-47,497, and cannabicyclohexanol) used to make "fake pot" products. A Notice of Intent to Temporarily Control was published in the *Federal Register* to alert the public to this action; and

WHEREAS, the federal government and the State of Texas have not designated synthetic cannabinoids, salvia divinorum, or related chemicals as controlled substances; and

WHEREAS, the City Council finds that the use of these products is a danger to the public health, safety and welfare because of the adverse side effects on a person from their use;

WHEREAS, notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance;

WHEREAS, it is the intention of the council, and it is hereby ordained, that the provisions of this new Article IV in Chapter 58 become and be made part of the Code of Ordinances, City of Magnolia, Texas and the new section numbers added to Article IV accomplish that intention.

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

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. That the Code of Ordinances, City of Magnolia, Texas, is hereby amended by adding a new Article IV, sections 58-171 thru 58-180, to Chapter 58, which Article and Sections read as follows:

Article IV: "ILLEGAL SMOKING PRODUCTS AND ILLEGAL SMOKING PARAPHERNALIA";

Sec. 58-171. Definitions.

Illegal Smoking Paraphernalia shall mean any equipment, material, object, or product that is used or intended for use in ingesting, inhaling, or otherwise introducing an Illegal Smoking Product into the human body, including, but not limited to: a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl; a water pipe; a carburetion tube or device; a smoking or carburetion mask; a chamber pipe; a carburetor pipe; an electric pipe; an air-driven pipe; a chillum; a bong; or an ice pipe or chiller.

Illegal Smoking Product shall mean any plant or other substance, whether described as tobacco, herbs, incense, spice, bath salts or any blend thereof, including but not limited to any of the Marketed Names of Illegal Smoking Products, regardless of whether the substance is marketed for the purpose of being smoked, that includes any one or more of the following substances or chemicals:

- (1) salvia divinorum or salvinin 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 or similar structural analogs;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)- 6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or dexamabinol) or similar structural analogs;
- (4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018) or similar structural analogs;
- (5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073) or similar structural analogs; or
- (6) 4-methoxynaphthalen-1-yl-(1-pentyindol-3-yl) (also known as JWH- 081) or similar structural analogs.

"Marketed Names of Illegal Smoking Products" Illegal Smoking Products include the products marketed under the following commercial names: Blaze, Dascents, Diablo, Fire N' Ice, Genie, K-2, K-2 Summit, K-2 Sex, KO Knock-Out 2, Mojo, Pandora Potpourri,

Pep Spice, Sage, Salvia Divinorum, Sense, Silver, Skunk, Solar Flare, Spice, Spice Cannabinoid, Spice Diamond, Spice Gold, Spicy Green, Yucatan Fire, and Zohai.

Person shall mean an individual, firm, corporation, partnership, organization, association, wholesaler, retailer, any licensed or unlicensed business, or other legal entity.

Sec. 58-172. Offenses.

A person commits an offense if the person:

- (1) uses, possesses, purchases, barter, gives, delivers, publicly displays, sells, delivers, or offers for sale any Illegal Smoking Product or transfer any Illegal Smoking Product.
- (2) uses or possess any Illegal Smoking Paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an Illegal Smoking Product.
- (3) Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this Ordinance, regardless of whether the product is marketed under names other than those listed above.
- (4) The culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and dispensed with and a violation is a strict liability offense.

Sec. 58-173. Penalties

Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500. Each violation shall constitute a separate offense.

Sec. 58-174. Affirmative Defenses.

It shall be an affirmative defense for a person charged with an offense under Section 4 that:

- (1) the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act;
- (2) the sale or possession of salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose; or
- (3) the use or possession was by an employee or agent of a governmental entity who is acting in the course and scope of the employee's or agent's duties and whose use or possession is in compliance with the applicable procedures established by the governmental entity for the use or possession of the product.

Secs. 58-175--- 58-180. Reserved.

Section 3. Severability

It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the City of Magnolia. In the event any clause, phrase, provision, sentence, or part of this

Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. All Rights and Remedies Saves

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any and all ordinances which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 5.

All ordinances or parts of Ordinances that are in conflict or inconsistent with the provisions of this Ordinance shall be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 6. Effective Date

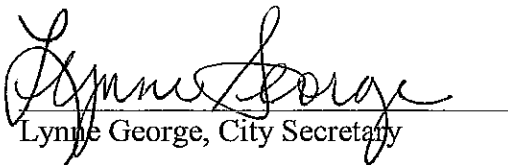
The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a)-(c) of the Local Government Code which publication shall be sufficient if it contains the caption of this Ordinance and at which time this Ordinance takes effect.

PASSED AND APPROVED on this 12th day of April, 2011.



Todd Kana, Mayor

ATTEST:



Lynne George, City Secretary

