

ORDINANCE NO. 4104

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 8 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, BY ADDING A NEW ARTICLE XII THEREBY PROHIBITING THE USE, PURCHASE, POSSESSION AND SALE OF ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES AS DEFINED HEREIN WITHIN THE CITY LIMITS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council of the City of Mesquite, Texas, has been provided with documentation from competent, well recognized medical professionals and law enforcement officials of the growing presence of a new and potentially dangerous substance affecting the public health, safety and welfare of the citizens particularly the youth of the City of Mesquite ("City"); and

WHEREAS, in response to these warnings, the City Council has secured information indicating that this threat is presented in the form of retail products sold or distributed as a mixture of dried vegetation that when covered or mixed with certain specific chemicals, produces the physiological and psychological effects of a controlled substance such as marijuana; and

WHEREAS, such substances are competently 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 and seizures as documented by the National Drug Intelligence Center of the United States Department of Justice in EWS Report 000006 issued May 18, 2010; and

WHEREAS, the medical evidence and treatment response and documentation of these symptoms and events have been confirmed by Doctor Anthony J. Scalzo, the Medical Director of the State of Missouri Poison Control Center, in Special Newsletter Alert, Volume 4, Issue 1, 2010, by the Missouri Poison Center to the medical community; and

WHEREAS, the substances identified above are considered to be generally described as synthetic cannabinoids or salvia divinorum that are distributed, sold and marketed under such names as:

1. K-2;
2. K-2 SUMMIT;
3. K-2 SEX;

4. GENIE;
5. DASCENTS;
6. ZOHAI;
7. SAGE;
8. SPICE;
9. KO KNOCK-OUT 2;
10. SPICE GOLD;
11. SPICE DIAMOND;
12. YUCATON FIRE;
13. SOLAR FLARE;
14. PEP SPICE;
15. FIRE N' SPICE; and
16. SALVIA DIVINORUM; and

WHEREAS, the substances identified above have not yet been designated as controlled substances under the laws of the State of Texas or under the laws of the United States; 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 100 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; and

WHEREAS, information is available to the City Council documenting that these substances are available for sale or distribution to individuals below the age of 21 who lack the life experience and maturity to make informed judgments about whether the use or possession of such substances will negatively impact their ability to function in a safe and appropriate manner; and

WHEREAS, Texas law has long recognized the need to limit the access to intoxicating substances such as alcoholic beverages and to prevent those individuals below a general age benchmark of maturity from acquiring or using those products in order to protect the minors from the risk of a harm that they cannot effectively evaluate; and

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

WHEREAS, the City Council has determined that it is in the best interest of the public health, safety and welfare to prohibit the use, purchase, possession and sale of these substances and the devices used to ingest these substances.

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

SECTION 1. That Chapter 8 of the Code of the City of Mesquite, Texas, is hereby amended by adding a new Article XII to read as follows, in all other respects said Code and Chapter shall remain in full force and effect:

ARTICLE XII. PROHIBITING SMOKING PRODUCTS AND INGESTION DEVICES

Sec. 8-850. Purpose.

The purpose of this article is to prohibit the use, purchase, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices hereinafter defined within the city limits of the City of Mesquite. Any form of delivery to include a simple gift constitutes a violation of this ordinance.

Sec. 8-851. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Illegal smoking product* means 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]chromen-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); or
- (6) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081).

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

- a. K-2;
- b. K-2 SUMMIT;
- c. K-2 SEX;
- d. GENIE;
- e. DASCENTS;
- f. ZOHAI;
- g. SAGE;
- h. SPICE;
- i. KO KNOCK-OUT 2;
- j. SPICE GOLD;
- k. SPICE DIAMOND;
- l. YUCATAN FIRE;
- m. SOLAR FLARE;
- n. PEP SPICE;

- o. FIRE N' ICE; and
- p. SALVIA DIVINORUM.

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.

- (b) *Ingestion device* means 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:
- (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.
- (c) *Person* means an individual, corporation, partnership, proprietorship, wholesaler, retailer or any licensed or unlicensed business.

Sec. 8-852. Sale, purchase, delivery, offer or gift.

It shall be unlawful for any person to sell, purchase, offer to sell, deliver to or to give any illegal smoking material to any person.

Sec. 8-853. Use or possession of illegal smoking product.

It shall be unlawful for any person to have in their possession or to use illegal smoking products within the corporate limits of Mesquite.

Sec. 8-854. Use or possession of ingestion device.

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. 8-855. Defenses to prosecution.

- (a) It shall be a defense to prosecution for a violation of this section if the use of the illegal smoking product is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.
- (b) It shall be a defense to prosecution under the terms of this section if any person charged with a violation can provide proper and complete historic documentation that the use of such products 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.
- (c) It shall be a defense to prosecution that the sale, purchase or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

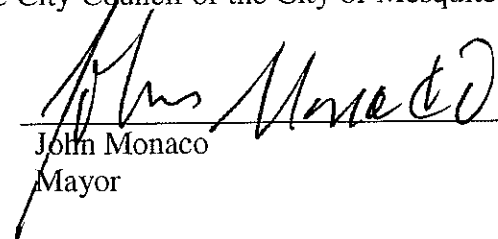
SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

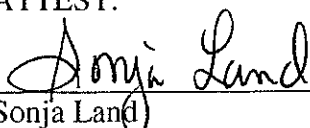
SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court, shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

SECTION 5. That this ordinance shall be effective immediately on and after its passage.

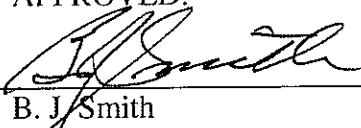
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of September, 2010.



John Monaco
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


B. J. Smith
City Attorney