

ORDINANCE NO. 2011-4050

AN ORDINANCE OF THE CITY OF PELL CITY, ALABAMA PROHIBITING THE USE, SALE OR DELIVERY OF CERTAIN DANGEROUS SUBSTANCES, SOLD AND MARKETING AS INCENSE, POTPOURRI OR NOVELTY AROMATICS AFFECTING THE PUBLIC HEALTH, SAFETY AND WELFARE OF CITIZENS AND PROVIDING FOR A PENALTY FOR VIOLATION

WHEREAS, The City of PELL CITY, Alabama has been informed about the growing presence of a potentially dangerous substance affecting the public health, safety and welfare of the citizens, particularly the youth of PELL CITY; and

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

WHEREAS, such substances are 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; 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 SUMMIT", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCKOUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIREN' ICE", "BLACK MAGIC SMOKE", "SALVIA DIVINORUM", "EXTREME POTPOURRI", "PHAT CAT" and

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

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

United States; and

WHEREAS, the synthetic cannabinoid substances identified above may be presented under a variety of street names but share common ingredients including JWH018 and JWH073; and

WHEREAS, salvia divinorum contains the ingredient known as salvinorum 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 marihuana; and

WHEREAS, the substances identified above manifest all of the demonstrated attributes of substances that deprive persons 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 indicate that person(s) under the effects of these substances may be a clear and present danger to themselves and others; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELL CITY, ALABAMA THAT

SECTION 1. Definitions

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

"Banned Smoking Product" shall mean any substance whether described as tobacco herbs, incense spice, aromatherapy incense, aromatic substance that may cause sense of euphoria, novelty aromatic, or any blend thereof regardless of whether the substance is marketed for the purpose of being smoked which includes, but not limited to, any one or more of the following chemicals:

1) Salvia divinorum 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.

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

(3)(6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol, some other trade or other names: HU-210.

(4) 1-Pentyl-3-(1-naphthoyl) indole, some trade or other names: JWH-018.

(5) 1-Butyl-3-(1-naphthoyl) indole, some trade or other names: JWH-073.

(6) (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl) methanone, some trade or other names: JWH-081.

Products containing some or all of the above substances are currently being marketed under the following commercial names: "K-2", "K-2 SUMMIT", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCKOUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", "BLACK MAGIC SMOKE" AND "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.

"Banned Smoking Product" shall also include all tobacco herbs, incense spice, aromatherapy incense, aromatic substance, or any blend thereof that may not contain any chemical listed above but may cause sense of euphoria or in any way mimics the side effects of marihuana usage and any side effect that may alter mental state of person(s).

Nothing in this ordinance bans prescription medicine or medicines dispensed by a hospital or health care facility.

"Ingestion Device" shall mean equipment, product or material that is used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing an illegal or banned smoking product into the human body such as, but not limited to:

- 1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipe with or without screens, permanent screens, hashish heads or punctured metal bowls;
- 2) Water pipes;
- 3) Carburetion tubes or devices;
- 4) Smoking and carburetion masks;
- 5) Roach clips: meaning objects used to hold burning material, such as marihuana cigarette, that has become too small or too short to be held in the hand;
- 6) Chamber pipes;
- 7) Carburetor pipes;
- 8) Electric pipes;
- 9) Air driven pipe;
- 10) Chillum;
- 11) Bongs;

12) Ice pipes or chillers;

13) Glass tubes which are hollow, cylindrical items made of glass which is smaller than three quarters of an inch in diameter, shorter than 12 inches in length, and which are not sealed with glass at both ends.

SECTION 2. Sell, Offer, Gift, Display or Possession

It shall be unlawful for any person(s) to use, possess, purchase, barter, give, publicly display, sell, or offer for sale within the city limits of PELL CITY, Alabama, any banned smoking product or ingestion device.

SECTION 3. Use or Possession of Ingestion Devices

It shall be unlawful for any person(s) 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.

SECTION 4. Penalty

Any person, firm, corporation or entity violating this Ordinance, as it exists or may be amended, upon conviction thereof, shall be fined a sum not exceeding \$500.00 (Five Hundred Dollars) and may be sentenced up to 60 (Sixty) days in jail. Conviction of this Ordinance may also result in the City of PELL CITY revoking any person, firm, corporation or entity's privilege of operating a business within the city limits of PELL CITY, Alabama. Each continuing day's violation under this Ordinance shall constitute a separate offense.

SECTION 5. Savings/Repealing Clause

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

SECTION 6. Severability

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

SECTION 7. Effective Date

That this Ordinance shall become effective immediately upon its adoption and publication one (1) time in The St. Clair News Aegis, a newspaper of general circulation published in the City of PELL CITY, Alabama, and the City Clerk is hereby ordered and directed to cause a copy of this Ordinance to be published one time in said newspaper.

PASSED and ADOPTED this 24th day of October, 2011.

William Hereford - Mayor

ATTEST:

Penny Isbell – Assistant City Clerk

I, Penny Isbell, Assistant Clerk of the City of Pell City, hereby certify that the above Ordinance was duly adopted by the City Council of the City of Pell City at a regular meeting held on the 24th day of October, 2011, and that same has been published in accordance with law in the *St. Clair News Aegis* on the _____ day of December, 2011.

Clerk