

ORDINANCE NO. 2584

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WAXAHACHIE, TEXAS AMENDING CHAPTER 21, "OFFENSES AND MISCELLANEOUS PROVISIONS", OF THE CODE OF ORDINANCES, BY ADDING SECTION 21-126 – RESTRICTED SMOKING MATERIALS; PROHIBITING THE SALE AND POSSESSION OF K2; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY OF A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00); AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Waxahachie, 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 SUMMIT," "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," "DÉJÀ VU", "EUPHORIA 5X by DÉJÀ VU" 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 types 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, the risks posed by these substances creates a danger to the public health and safety that must be immediately addressed by the adoption of a local ordinance to protect the interest of the citizens of Waxahachie, Texas.

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

Section 1. That Chapter 21 of the Code of Ordinances of the City of Waxahachie is hereby amended by adding the following new Section:

SECTION 21-126 RESTRICTED SMOKING MATERIALS

(A) Definitions. For purposes of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RESTRICTED SMOKING MATERIAL – shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

- a. 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 plants, 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]chromen-1-ol (also known as HU-211 or Dexanabinol);
- d. 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- e. 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); OR
- f. 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081).

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

“K-2,” “K-2 SUMMIT,” “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,” “DEVA VU”, “EUPHORIA 5X by DÉJÀ VU”AND “SALVIA DIVINORUM” .

It is anticipated by the 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.

(B) RESTRICTED SMOKING MATERIALS: PURPOSE

The purpose of this section is to prohibit the sale or delivery of restricted smoking materials as defined herein to any individual within the city limits of the City of Waxahachie and to prohibit the possession of restricted smoking materials by any individual within the city limits of the City of Waxahachie. Any form of delivery to include a simple gift constitutes a violation of this ordinance.

(C) SALE, DELIVERY, OFFER, OR GIFT:

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

(D) USE OR POSSESSION OF RESTRICTED SMOKING MATERIAL:

It shall be unlawful for any person to have in their possession or to use restricted smoking materials within the corporate limits of the City of Waxahachie.

(E) DEFENSES TO PROSECUTION:

- A. It shall be a defense to prosecution for a violation of this section if the use of the restricted smoking material is at the direction of 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 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. This Ordinance shall be cumulative of all provisions of ordinances of the City of Waxahachie, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

Section 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 4. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Ordinance shall be fined no more than Five Hundred Dollars (\$500.00) for all violations.

Section 5. All rights and remedies of the City of Waxahachie, Texas, are expressly saved as to any and all violations of the provisions of any other ordinances affecting the use of sale or use of smoking materials 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 6. This Ordinance shall become effective immediately upon its passage based upon the immediate threat to the public.

PASSED AND APPROVED this the 20th day of September, 2010.



ATTEST:

Lori Saunders
City Secretary

CITY OF WAXAHACHIE

BY:

N. B. B. B. B.
Mayor