

ORDINANCE NO. 1395

AN ORDINANCE OF THE CITY OF BAY CITY, TEXAS, ADOPTING A NEW ARTICLE ____, ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES TO CHAPTER 66, OFFENSES TO PROHIBIT THE USE, PURCHASE, POSSESSION AND SALE OF ILLEGAL SMOKING PRODUCTS CONTAINING CERTAIN PLANT, PLANT PRODUCTS OR DERIVATIVES, CHEMICAL COMPOUNDS APPLIED TO PLANTS, AND PLANT PRODUCTS AND THEIR DERIVATIVES OR OTHER SUBSTANCES, AND INGESTION DEVICES USED IN CONNECTION WITH THE ILLEGAL SMOKING PRODUCTS, AND TO PROHIBIT THE USE, PURCHASE, POSSESSION, AND SALE OF THE SYNTHETIC CANNABINOID KNOWN OR SOLD UNDER SUCH NAMES AS "K2", "K2 SUMMIT", "K2 SEX", "K2 ULTRA", "K2 BLONDE", "K2 CITRON", "K2 ORISHA", "K2 AMAZONIAN SHELTER", "K2 THAI DREAM", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "YUCATAN GOLD", "SOLAR FLARE", "PEP SPICE", "POT-POURRI", "BOMBAY BLUE", "HUSH", "SWERVE", "FIRE N' ICE", "SALVIA DIVINORUM", "SALVINORIN A", AND "K-3"; DISPENSING WITH A CULPABLE MENTAL STATE AND PROVIDING A PENALTY; PROVIDING AN AFFIRMATIVE DEFENSE FOR AUTHORIZED MEDICAL USE OR USE IN LANDSCAPING; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Bay City, Texas, being a home rule city having authority to utilize police power regulation for the health, safety and general welfare of the citizens of the city; and

WHEREAS, the City Council of the City of Bay City, Texas, has been informed by the Police Department that the American Association of Poison Control Centers and the U.S. Department of Justice have published articles and opinions on the dangers and physiological effects of K2 and similar substances, which are believed to pose a significant health concern to the citizens of the City of Bay City; and

WHEREAS, the City of Bay City, Texas, Police Department and Fire Department officials have already responded to at least two recent calls involving the ingestion of products marketed as "K2" by young members of our community, whereby each had to be transported to the hospital for medical treatment; and

WHEREAS, based upon further information from the Bay City Police Department, certain substances are sold under various names including but not limited to: "K2", "K2 Summit", "K2 Sex", "K2 Ultra", "K2 Blonde", "K2 Citron", "K2 Orisha", "K2 Amazonian Shelter", "K2 Thai Dream", "Genie", "Dascents", "Zohai", "Sage", "Spice", "KO Knock-Out2", "Spice Gold", "Spice Diamond", "Yucatan Fire", "Yucatan Gold", "Solar Flare", "Pep Spice", "Pot-Pourri", "Bombay Blue", "Hush", "Swerve", "Fire n' Ice", "Salvia Divinorum", "Salvinorin A", and "K-3" and are likely to contain chemical compounds or otherwise cause effects similar to marijuana or hallucinogens and may cause harmful effects by their use and further, the long term effects are not yet know; and

WHEREAS, to the best of Council's knowledge, the substances are not yet categorized as illegal controlled substances under state or federal law; and

WHEREAS, the Council finds that the effect of these substances can be a health concern to the citizens of the City of Bay City; and

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

WHEREAS, the City Council also finds that the exiting ordinance related to drug paraphernalia is n longer required as that conduct is now covered by the Texas Health and Safety Code Sec. 481.125.

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

SECTION I. Section ____, Drug Paraphernalia of Article __, In Chapter 66, Offenses of the Code of Ordinances of the City of Bay City, is hereby repealed upon the date of passage of this Ordinance. The repeal of this Ordinance shall not effect the prosecution of any violation which was committed prior to the effective date of repeal.

SECTION II. A new Article __, Illegal Smoking Products and Ingestion Devices of Chapter 66, Offenses is adopted to prohibit the use, purchase, possession, sale and offering for sale of illegal smoking products and ingestion devices to read in its entirety as follows:

"ARTICLE __. ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES

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 Bay City, Texas.

Sec. _____. Definitions. The following words and phrases as used in this section shall have the meanings as set forth in this subsection.

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

"Illegal Smoking Product" shall mean any plant or other 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 substances or chemicals:

- (1) Salvinorin A: Contained within the Salvia Divinorum plant, whether growing or not; or possessed as an extract, compound, manufacture, derivative, mixture, or preparation of such plant;
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methylcycatan-2-yl) phenol (also known as CP 47, 497) and homologues;
- (3) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or
- (4) 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:

- (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.

Sec. _____. Violation.

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

(b) It shall be unlawful for any person to use or possess an ingestion device with the intent to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.

(c) 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.

(d) Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine in accordance with Section _____ of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Sec. _____. Affirmative Defense.

(a) It shall be an affirmative defense for a person charged with an offense for possession or use of an illegal smoking product that the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

(b) It shall be an affirmative defense that the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

SECTION III. All provisions of the Code of Ordinances of the City of Bay City, codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Bay City, codified or uncoded, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION IV. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

SECTION V. The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

SECTION VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED on the first reading this 14th day of October, 2010.

PASSED AND ADOPTED on this second and final reading the 4th day of November, 2010.


MARK BRICKER, MAYOR
CITY OF BAY CITY

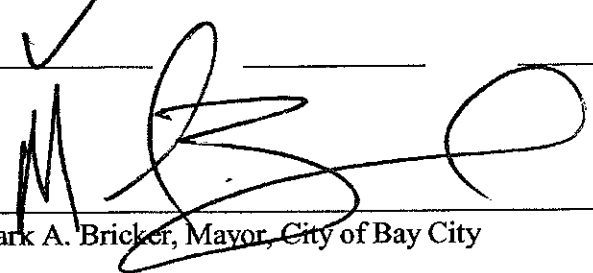
ATTEST:


RHONDA JONES,
City Secretary



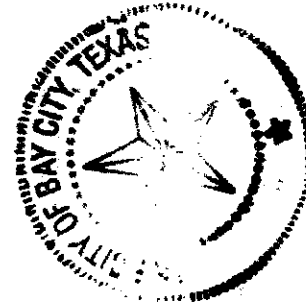
WILLIAM R. PENDERGRAFT,
City Attorney

<u>Council Member:</u>	<u>Voted Aye</u>	<u>Voted No</u>	<u>Absent</u>
Clarence Fenner, Mayor Pro Tem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joseph D. Enoch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brent Marceaux	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carolyn Thames	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Hawkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

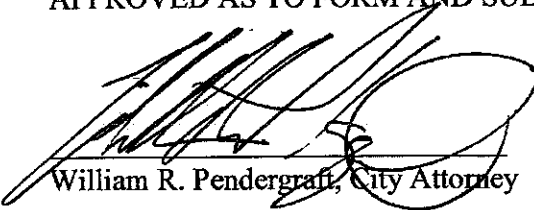

 Mark A. Bricker, Mayor, City of Bay City

ATTEST:


 Rhonda Jones, City Secretary



APPROVED AS TO FORM AND SUBSTANCE:


 William R. Pendergraft, City Attorney