

ORDINANCE NO. 274

AN ORDINANCE OF THE CITY OF ARCHER CITY, TEXAS PROHIBITING THE SALE, ATTEMPTED SALE, DELIVERY, USE, PURCHASE, POSSESSION, GIFT OR BARTER OF SYNTHETIC CANNABINOIDS, SYNTHETIC CANNABINOID MIMICKING COMPOUNDS, SALVIA DIVINORUM AND RELATED SUBSTANCES TO INDIVIDUALS BELOW THE AGE OF TWENTY-ONE (21) FOR PUBLIC HEALTH PURPOSES; THAT PROHIBITS THE POSSESSION OF PARAPHERNALIA USED IN THE INGESTION OF THESE RESTRICTED SMOKING MATERIALS AND PRODUCTS BY INDIVIDUALS BELOW THE AGE OF TWENTY-ONE (21); PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the Texas Health & Safety Code, section 122.005, provides that the City Council of a Type A, general-law municipality may take any action necessary or expedient to promote health, including imposing a fine for violation of any rules or orders as may be adopted; and

WHEREAS, the City of Archer City, Texas (the “City”) is responsible for supporting and promoting the health, safety and welfare of its citizens; and

WHEREAS, pursuant to Texas Local Government Code section 51.001, the City Council of the City of Archer City (“City Council”) may adopt an ordinance, rule or police regulation that is for the good government, peace or order of the City or for the trade and commerce of the City, and is necessary or proper for carrying out a power granted by law to the City or one of the City’s offices or departments; and

WHEREAS, pursuant to Texas Local Government Code section 51.012, the City Council may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that the City Council considers necessary for the government, interest, welfare, or good order of the City as a body politic; and

WHEREAS, the City Council has been provided with documentation from competent, well-recognized medical professionals and law enforcement officials of the growing presence of potentially dangerous substances affecting the public health, safety and welfare of the citizens, particularly the youth of the City of Archer 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, these 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 a special newsletter alert to the medical community generated as Volume 4, Issue 1, 2010; and

WHEREAS, these substances are 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", "SPICE SILVER", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", "DIABLO", "SPICY GREEN", "SKUNK", "SENSE" AND "SALVIA DIVINORUM", and may be presented under a variety of product names and street names; and

WHEREAS, the substances described above are not yet categorized as 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 possession, 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 TWII-018 and JVH-073; and

WHEREAS, salvia divinorum contains the ingredient known as Salvinorin A; and

WHEREAS, these unregulated synthetic cannabinoids, synthetic cannabinoid mimicking compounds and salvia divinorum have been reported to 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 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 the long-term effects of these substances are not yet known; and

WHEREAS, these substances are legally available for sale, use or distribution to individuals below the age of twenty-one (21) who lack the life experience and maturity to make informed judgments about whether the use or possession of these substances will negatively impact their health and/or ability to function in a safe and appropriate manner; and

WHEREAS, Texas law historically has 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 those individuals from the risk of harm that they cannot effectively evaluate; and

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

WHEREAS, the risk posed by these substances creates a hazard and danger to the public health and safety that must be immediately addressed by adoption of a local ordinance to protect the interests of the citizens of the City of Archer City, Texas; and

WHEREAS, the City Council of the City of Archer City, Texas, has determined that the most effective means to protect the health, safety and welfare of the public requires a ban of the use, possession, knowing ingestion, purchase, sale and promotion of products containing the above substances and paraphernalia used in their ingestion within the territorial limits of the City of Archer City, Texas.

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

SECTION 1. Purpose

The purpose of this ordinance is to prohibit the sale, attempted sale, delivery, gift or barter of restricted smoking materials and products as defined herein to any individual below the age of twenty-one (21) years of age within the city limits of the City of Archer City and to prohibit the purchase, possession or use of restricted smoking materials and products and ingestion paraphernalia devices as defined herein by any individual below the age of twenty-one (21) years of age within the city limits of the City of Archer City.

SECTION 2. Definitions

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

“*Restricted Smoking Material and Product*” shall mean 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:

- (a) Salvia divinorum or salvinatorum 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;
- (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] chormen-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);

- (f) 1-Pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081);
- (g) Synthetic cannabinoids, synthetic cannabinoid mimicking compounds, or substances containing the HU-210 compound; or.
- (h) Products containing any of the above substances currently that are 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", "SPICE SILVER", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", "DIABLO", "SPICY GREEN", "SKUNK", "SENSE" AND "SALVIA DIVINORUM"

This definition also includes any and all new products that may be marketed under different names if those new products contain any of the chemical components identified in the preceding definitions.

“Restricted Ingestion Paraphernalia Device” shall mean paraphernalia, equipment, or utensil that is used or intended to be used in ingesting, inhaling, or otherwise introducing an illegal smoking material and product into the human body, including:

- (a) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (b) a water pipe;
- (c) a carburation tube or device;
- (d) a smoking or carburation mask;
- (e) a chamber pipe;
- (f) a carburetor pipe;
- (g) an electric pipe;
- (h) an air-driven pipe;
- (i) a chillum;
- (j) a bong; or
- (k) an ice pipe or chiller.

SECTION 3. Sale, Delivery, Offer, Gift, Barter or Display of Restricted Smoking Materials and Products.

It shall be unlawful for any person to sell, offer for sale, deliver, barter, give or publicly display any illegal smoking material and product to anyone below twenty-one (21) years of age within the corporate limits of the City of Archer City.

SECTION 4. Use or Possession of Restricted Smoking Materials and Products.

It shall be unlawful for any person below twenty-one (21) years of age to use or possess any restricted smoking material and product within the corporate limits of the City of Archer City.

SECTION 5. Use or Possession of Restricted Ingestion Paraphernalia Device.

It shall be unlawful for any person below twenty-one (21) years of age to have in their possession any restricted ingestion paraphernalia device with the intent to use it to inject, ingest, inhale or otherwise introduce into the human body a restricted smoking material and product.

SECTION 6. Defenses to Prosecution.

- A. It shall be a defense to prosecution for a violation under this ordinance if the use of the restricted smoking material(s) and product(s) is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act in the state of Texas.
- B. It shall be a defense to prosecution under this ordinance if the person charged with a violation can provide proper and complete historic documentation that the use of the restricted smoking material(s) and product(s) was undertaken solely for religious purposes or as the activity of an organized religious denomination in which the person has been identified to have a long-standing historic membership as supported by documentation from clergy or a spiritual leader recognized by the state of Texas.

SECTION 7. Penalty

Any person violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed Five Hundred Dollars (\$500.00).

SECTION 8. Severability

If any section, subsection, sentence, phrase, or word of this Ordinance shall be held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

SECTION 9. Savings Clause

An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 10. Repealing Clause

All ordinances of the City of Archer City in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with the *Texas Controlled Substance Act*, or any other state and/or federal law governing the same.

SECTION 11. Effective Date

This ordinance shall become effective ten (ten) days from its publication in the *Archer County News*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ARCHER CITY,
ARCHER COUNTY, TEXAS, ON THIS THE 17th DAY OF FEBRUARY, 2011.**

Honorable David A. Levy
Mayor

ATTEST:

Kim Whitsitt
City Administrator