

**CITY OF AUBREY  
ORDINANCE NUMBER 452-10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBREY, TEXAS, PROHIBITING THE USE, PURCHASE, POSSESSION, AND SALE OF THE SYNTHETIC CANNABINOID KNOWN OR SOLD UNDER SUCH NAMES AS "SPICE," "GENIE," "DASCENTS," "ZOHAI," "SAGE," "K-2," AND "KO-KNOCK-OUT 2" FOR PUBLIC HEALTH PURPOSES; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALING CLAUSES; PROVIDING FOR PENALTY; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Aubrey, Texas ("City") City Council ("City Council") has become aware and has been informed 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 risk to the citizens of the City; 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 "Salvinorin A," "K2," "K-2 SUMMET," "K-2 SEX," "GENIE," "DASCENTS," "ZOHAI," "SAGE," "K-2," "KO-KNOCK-OUT 2," "SPICE GOLD," "SPICE DIAMOND," "YUCATAN FIRE," "SOLAR FLARE," "PEP SPICE," "FIRE N' ICE," 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 cannabinoid 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 type 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 statewide regulatory system may be properly implemented; and

**WHEREAS**, it has been determined that the effects of these substances are a health concern to the citizens of the City; and

**WHEREAS**, the City Council, has determined that it is in the best interest of the public health, safety, and welfare to immediately address the health concerns to the citizens of the City by adopting a local ordinance prohibiting the substances identified above;

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

**Section 1. Recitals Incorporated.**

The above-referenced recitals are incorporated herein as if set forth in full for all purposes.

**Section 2. Purpose.**

The purpose of this ordinance is to prohibit the use, possession, sale, ingestion, or smoking of Illegal Smoking Products and Ingestion Devices hereinafter defined within the City's limits .

**Section 3. Definitions.**

The following words and phrases, when used in this ordinance, shall have the meaning ascribed to them by this ordinance. All terminology used in this ordinance and not specifically defined herein, shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body or if not defined therein, the latest volume of Merriam-Webster's Collegiate Dictionary.

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

"Illegal Smoking 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 anyone or more of the following chemicals:

- (a) 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;
- (b) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methylocatan) phenol (also known as CP 47, 497) and homologues;
- (c) (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2methylocatan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [3] chorman-1-ol (also known as HU-211 or Dexanbinol; and
- (d) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or (e) Butyl-3-(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:

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

(k) a bong; or

(l) an ice pipe or chiller.

#### **Section 4. Sell, Offer, Gift, Display, or Possession.**

It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell, or offer for sale any Illegal Smoking Product.

#### **Section 5. Use or Possession of Ingestion Devices.**

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.

#### **Section 6. Affirmative Defenses.**

- (a) It shall be an affirmative defense to prosecution of an offense under this ordinance that any act described in this ordinance is under and 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 7. Penalty.**

Any person violating any of the provisions or terms of this ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, be punished by a fine not to exceed the sum of \$2,000 for each offense, or the greatest amount allowed under applicable law, whichever is lowest, and each and every separate violation of this ordinance shall constitute a separate offense, unless otherwise specifically set forth herein. Allegation and evidence of a culpable mental state is not required for proof of any offense defined by this ordinance.

#### **Section 8. Savings, Severability and Repealing Clauses.**

All ordinances of the City in conflict with the provisions of this ordinance are repealed to the extent of that conflict. If any provision of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof. The City declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

**Section 9. Publication of the Caption Hereof and Effective Date.**

This ordinance shall be in full force and effective from and after its passage and upon the posting and/or publication, if required by law, of its caption and the City Secretary is hereby directed to implement such posting and/or publication.

**PASSED** by the City Council of the City of Aubrey, Texas, this 16<sup>th</sup> day of November, 2010.

**APPROVED:**

*Gary Hammett*  
Gary Hammett, Mayor

**ATTEST:**

*Nancy Downes*  
Nancy Downes, City Secretary

