

ORDINANCE NO. 1977

AN ORDINANCE OF THE CITY OF YOAKUM, TEXAS PROHIBITING THE USE, POSSESSION AND SALE OF CERTAIN PRODUCTS AND INGESTION DEVICES CONTAINING SALVIA DIVINORUM OR SALVINORIN A AND PRODUCTS CONTAINING SYNTHETIC CANNABANOIDS (COMMONLY REFERRED TO AS K-2) WITHIN THE CITY OF YOAKUM; PROVIDING FOR CERTAIN AFFIRMATIVE DEFENSES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY AND EFFECTIVE DATE

WHEREAS, the City Council of the City of Yoakum finds that local businesses within the City are selling to the general public, products containing synthetic cannabinoids, salvia divinorum, or related chemicals and paraphernalia (collectively referred to as "Substances") that when ingested produce intoxicating effects similar to illegal drugs; and

WHEREAS, these products are being sold, distributed, and marketed in the form of incense or herbal smoking blends; and

WHEREAS, municipalities may enact reasonable regulations to promote the health, safety, and general welfare of citizens; and

WHEREAS, the City Council of Yoakum finds that the use, possession, purchase, and sale of these products is a danger to the public health, safety, and general welfare of its citizens because of the adverse side effects from the use of such Substances including panic attacks, vomiting, tachycardia, elevated blood pressure, pallor, numbness and tingling, and in some cases, tremors and seizures.

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

SECTION 1: DEFINITIONS

A. SYNTHETIC CANNABINOIDS – shall mean:

- (1) any synthetic equivalent of the substance contained in the Cannabis plant, or in the resinous extractives of the genus Cannabis, or a synthetic substance, derivative, or its isomers with similar chemical structure or pharmacological activity such as:
 - 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 plant, its seeds or extracts;
 - b. 2[1R,3S]-3-hydroxycyclohexyl]-6, 6 dimethyl-3(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrabenzoc[chromen]-1-ol (also known as HU-211 or Dexanabinol);
 - c. 1-pentyl-3(1-naphthoyl)indole; some trade or other names; (also known as JWH-018);
 - d. 1-butyl-3-(1-naphthoyl)indole; some trade or other names; (also known as JWH-030);
 - e. 1-pentyl-3-4(4-methoxynaphthoyl)indole (also known as JWH-081);
 - f. Phenol, CP 47, 497 and homologues, or 2- [(1R,3S)] [hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain n=5, and homologues where side chain n=4,6 or 7; or
 - g. Any similar structural analogs.

- (2) Products, by whatever trade name, that are treated, sprayed, or saturated with one or more of the above chemicals.

B. **ILLEGAL 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 chemicals or a comparable chemical as listed as Synthetic Cannabinoids:

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

“K-2”, “K-2 SUMMIT”, “K-2 SEX”, “GENIE”, “DACENTS”, “ZOHAI”, “SAGE”, “SPICE”, “KO KNOCK-OUT 2”, “MOJO,” “PANDORA POTPOURRI”, “SMOKE”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “RED DRAGON”, “SKUNK”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N’ ICE”, 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.

C. **ILLEGAL SMOKING MATERIAL PARAPHERNALIA** – shall mean any paraphernalia, equipment or utensil that is used or intended to be used in smoking, ingesting or inhaling illegal smoking materials and shall include, but is not limited to, the following:

- (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) A chillum;
- (9) A bong; or
- (10) An ice pipe or chiller

SECTION 2: SYNTHETIC CANNABINOIDS, ILLEGAL SMOKING PRODUCTS AND RELATED PARAPHERNALIA PROHIBITED

The purpose of this Section is to prohibit the use, possession, purchase, sale, exchanging, dispensing, distribution, manufacture, or delivery of synthetic cannabinoids, illegal smoking materials and illegal smoking material paraphernalia as defined, and to prohibit the possession of these materials within the city limits of the City of Yoakum, Texas. Any form of delivery to include a simple gift constitutes a violation of this Section.

- a. It shall be unlawful for any person to use, possess, purchase, sell, offer to sell, give away, barter, exchange, dispense, deliver, distribute, or manufacture any synthetic cannabinoid, or illegal smoking material to any person as defined in this Chapter, within the corporate limits of the City of Yoakum, Texas.
- b. It shall be unlawful for any owner or operator of any public building and/or business to sell, offer to sell, deliver to or to give any synthetic cannabinoid, illegal smoking material, or illegal smoking material paraphernalia to any person.
- c. It shall be unlawful for any person to have in his/her possession any illegal smoking paraphernalia with the intent to use it, to smoke, ingest, inhale or otherwise consume any

synthetic cannabinoid, or illegal smoking material. It is a violation of this Section, if a person is found in possession of illegal smoking paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of synthetic cannabinoid, or illegal smoking material are present on the illegal smoking paraphernalia.

SECTION 3: AFFIRMATIVE DEFENSES TO PROSECUTION

- a. It shall be an affirmative defense to prosecution under this section that a synthetic cannabinoid, an illegal smoking product, or illegal smoking paraphernalia was:
- (1) In the possession of a peace officer, or a person acting under the authority of a peace officer, acting in the performance of official duties;
 - (2) In the possession of or being used by a governmental entity for a health, research, education, or similar program;
 - (3) In the possession of or used by a person at the written direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.

SECTION 3: SEVERABILITY CLAUSE If any portion of this act is held invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions hereof shall nevertheless be valid, the same as if the portion or portions held invalid or unconstitutional had not been adopted.

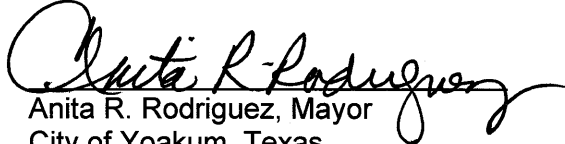
SECTION 4: REPEALING CLAUSE All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: PENALTY CLAUSE Any person or persons found in violation of any of the provisions of this ordinance shall be guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$2,000.

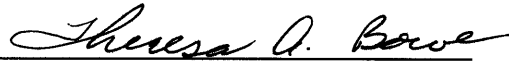
SECTION 6: EFFECTIVE DATE The provisions of this ordinance shall become effective, and be in full force after the date of final passage and publication thereof.

PASSED, APPROVED AND ADOPTED ON FIRST READING: October 12, 2010

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 9th day of November, 2010.


Anita R. Rodriguez, Mayor
City of Yoakum, Texas

ATTEST:


Theresa A. Bowe
City Clerk

PUBLISHED: 11/17/10

