

ORDINANCE NO. 276

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TIOGA, 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 SEVERABILITY; PROVIDING FOR PENALTY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the substances identified above are considered to be generally described as synthetic cannabinoids or salvia divinorum distributed, sold, and marketed under such names "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 DNINORUM"; 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 municipality to impose some type of reasonable restriction on these products until a state wide 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 of Tioga; and

WHEREAS, the City Council of the City of Tioga, Texas, 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 of Tioga by adopting a local ordinance prohibiting the substances identified above.

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

Section 1. Findings.

The City of Tioga prohibits the use, purchase, possession, sale and offering for sale the synthetic cannabinoid known or sold under such names as "Spice", "Spice Diamond", "Spice Gold", "Pep Spice", "Yucatan Fire", "Solar Flare", "Fire n' Ice", "Genie", "Dascents", "Zohai", "Sage", "Salvia Divinorum", "K-2", "K-2 Summet", and KO Knock Out -2" as follows:

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 limits of Tioga, Texas.

Section 3. Definitions.

"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-methyllocatan) phenol (also known as CP47,497) and homologues;

(c) (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2methyllocatan-2-yl)-6a, 7, 10, 10atetrahydrobenzo

[3] chorman-1-ol) (also known as HU-211 or Dexanbinol

(d) I-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,
permanent screen, hashish head, or punctured metal bowl;
- b) a water pipe;
- c) a carburetion tube or device;
- d) a smoking or carburetion 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 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 Defense.

It shall be an affirmative defense to prosecution of an offense under this article that any act described in this article is under and pursuant to the direction or prescription of a license physician or dentist authorized to direct or prescribe such act.

Section 7. Penalty.

Any person violating the provisions of this article shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00)."

Section 8. Repeal of Conflicting Ordinances.

All ordinances of the City of Tioga in conflict with this Ordinance and not specifically repealed herein are hereby repealed.

Section 9. Severability.

If any provision, section, sentence, clause, or phrase of the Ordinance or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portion of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intention of the City Council of the City of Tioga in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by an reason or any unconstitutionality or invalidity of any other portion, provision, or regulation.

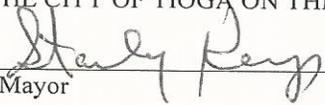
Section 10. Publication.

Publication of this Ordinance shall be made in the official publication of the City of Tioga, Texas, after final passage, which publication shall contain the caption stating in substance the purpose of the Ordinance and the penalty for violation thereof.

Section 11. Effective Date.

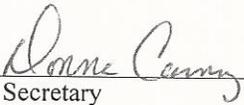
This Ordinance shall be in full force and effect after its passage and publication as required by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF TIOGA ON THE 8TH DAY OF NOVEMBER, 2010.



Mayor

ATTEST:



City Secretary