



ORDINANCE 2010-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOM BEAN, TEXAS, RELATIVE TO RESTRICTED SUBSTANCES; PROVIDING DEFINITIONS; PROVIDING A PURPOSE; RESTRICTING THE SALE, DELIVERY, OFFER, OR GIFT OF RESTRICTED SUBSTANCES; RESTRICTING THE USE OR POSSESSION OF RESTRICTED SMOKING MATERIAL; RESTRICTING THE USE OR POSSESSION OF RESTRICTED SMOKING PARAPHERNALIA; PROVIDING DEFENSES TO PROSECUTION; ESTABLISHING A PENALTY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Tom Bean, Texas (“City Council”), has been provided with documentation from competent, well recognized medical professionals and law enforcement officials of the growing presence of a new and potentially dangerous substance affecting the public health, safety and welfare of the citizens, particularly the youth of the City of Tom Bean (“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, such 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 Special Newsletter Alert, Volume 4, Issue 1, 2010, issued by the Missouri Poison Control Center to the medical community; and

WHEREAS, the substances identified above are considered to be generally described as synthetic cannabinoids or salvia divinorum (collectively referred to as “Substances”) which may be 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", "YUCATAN FIRE", "SOLAR FLARE". "PEP SPICE", "FIRE N' ICE", and "SALVIA DIVINORUM," among others; and

WHEREAS, the Substances have not yet been designated as controlled substances under the laws of the State of Texas or under the laws of the United States; and

WHEREAS, the Substances 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 cannabinoids may be presented under a variety of street names but share common ingredients, including JWH-01 8 and JWH-073; and

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

WHEREAS, these unregulated Substances 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 tetrahydrocannabinol (“THC”), the active ingredient in marijuana; and

WHEREAS, the Substances 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 Substances indicates that individuals under the effects of these Substances may be a clear and present danger to themselves and others; 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 state-wide regulatory system may be properly implemented; and

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

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

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety. A person commits an offense if he or she or she possess, sells, smokes, transfers or uses *Restricted Smoking Material and/or Restricted Smoking Material Paraphernalia* in the City of Tom Bean, Texas.

Sec. 1. - Definitions

Restricted 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 following chemicals or a comparable chemical:

- (1) *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;
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;
- (3) (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl) - 6a, 7, 10,10a tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or Dexanabinol);
- (4) 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
- (5) 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073); or
- (6) 1-pentyl-3-(4-methoxy naphthoyl) indole (also known as JWH-081). 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”, “DASCENTS”, “ZOHAI”, “SAGE”, “SPICE”, “KO KNOCK-OUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N’ ICE”, “BLAZE” “RED X DAWN” 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.

Restricted Smoking Material Paraphernalia shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include:

- (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. 2. - Restricted Smoking Materials: Purpose.

The purpose of this Ordinance is to prohibit the sale or delivery of restricted smoking materials as defined within the city limits of the City of Tom Bean, Texas, and to prohibit the possession of restricted smoking materials within the city limits of the City of Tom Bean. Any form of delivery to include a simple gift constitutes a violation of this Ordinance.

Sec. 3. - Sale, Delivery, Offer, or Gift.

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material to any person.

Sec. 4. - Use or Possession of Restricted Smoking Material.

It shall be unlawful for any person to have in their possession or to use restricted smoking materials within the corporate limits of the City of Tom Bean.

Sec. 5. - Use or Possession of Restricted Smoking Paraphernalia:

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material. It is a violation of this Section, if a person is found in possession of restricted smoking paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of restricted smoking material are present on the restricted smoking paraphernalia.

Sec. 6. - Defenses to Prosecution.

(a) It shall be a defense to prosecution for a violation of this Ordinance if the use of the restricted smoking material is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.

(b) It shall be a defense to prosecution under the terms of this Ordinance if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of Texas.

Sec. 7. - Offenses and Penalties.

(a) Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed \$500.00.

(b) Every act in violation of this Ordinance shall constitute a separate offense.

(c) Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this Ordinance.

Section 8. Any firm or corporation who violates any section of this Ordinance of the City of Tom Bean, Texas shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not in excess of \$2,000.00, and assessed court costs as provided by law. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

The caption of this ordinance shall be published one (1) time in a newspaper having general circulation in the City of Tom Bean, Texas, and shall become effective November 8, 2010.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
TOM BEAN, TEXAS ON THE 8th DAY OF NOVEMBER, 2010.**

Sherry E. Howard
Mayor

Cathy Pugh
City Secretary