

ORDINANCE NO. 112

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COAHOMA, TEXAS; ADDING SECTION 8-1-26 OF CHAPTER 8, ENTITLED "ILLEGAL SMOKING MATERIALS", OF THE CITY OF ODESSA CODE OF ORDINANCES; ADDING ARTICLE 4-17 OF CHAPTER 4, ENTITLED "RETAILERS OF ILLEGAL SMOKING MATERIALS", OF THE CITY OF COAHOMA CODE OF ORDINANCES; AMENDING SECTION 1-1-9, ENTITLED "GENERAL PENALTY", OF THE CITY OF COAHOMA CODE OF ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND DELCLARING AN EFFECTIVE DATE.

WHEREAS, the City of Coahoma has been informed of the growing presence of new and potentially dangerous substances affecting the public health, safety and welfare of the citizens, particularly the youth of the City of Coahoma; and

WHEREAS, in response to such information, the City Council has determined that this threat is present in the city in the form of various materials sold or distributed by individuals and businesses within the city; and

WHEREAS, such substances are reliably reported to be capable of causing hallucinations, vomiting, agitation, panic attacks, tachycardia, elevated blood pressure, pallor, numbness and tingling, disorientation, loss of time awareness, tremors and seizures and to produce the physiological and psychological effects of a controlled substance such as THC or marijuana; and

WHEREAS, the substances are considered to be generally described as synthetic cannabinoids, salvia divinorum and datura stramonium and 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," "K2 4:20," "K2 8 Bali," "Spice Diamond," "Yucatan Fire," "Solar Flare," "Pep Spice," "Fire n' Ice," "Salvia," "Salvia Divinorum," "Datura Stramonium," "Jimson Weed," "Gypsum Weed," "Scooby's Snax," "Shaggy's Mix," and "Angry Birds;" and

WHEREAS, the substances described above may be marketed as incense, tea, bath salts, potpourri, and/or other substances, 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, these synthetic cannabinoids and plant materials 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, these unregulated 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 society; and

WHEREAS, Congress has passed the Synthetic Drug Abuse and Prevention Act of 2012, making it illegal under federal law to possess most forms of synthetic marijuana, bath salts, and many substances known as "party pills"; and

WHEREAS, The Texas Legislature has passed House Bill 124, effective September, 2014, adding *Salvia divinorum*, a common ingredient in such substances, and every compound, manufacture, salt, derivative, or preparation of *Salvia divinorum*, its seeds, or extracts to penalty group 3 of Texas Health and Safety Code Section 481.014 (a), making it a violation of law to possess this substance; and

WHEREAS, The Texas Health and Safety Code Section 431.112 prohibits the sale of a drug that is mislabeled; and

WHEREAS, The Texas Penal Code Section 32.42 prohibits the sale of an adulterated or mislabeled commodity; and

WHEREAS, chemists have reconfigured the specific substances that have been prohibited by state and federal law to produce "new" versions of these synthetic cannabinoids and the manufacturers and distributors of these new products claim on their packaging that the products contain no prohibited chemicals and are in accordance with state and federal laws; and

WHEREAS, manufacturers of these products are unknown to the consumer because the packaging does not reveal the name and location of the manufacturer or distributor, which is required by federal and state laws regulating the labeling of consumer commodities. Manufacturers and distributors have not obtained FDA approval of these products as a food product, drug, dietary supplement, or other approved substance. Consumers suffering a reaction to or injury from these products have little chance of obtaining information concerning the contents of the product because the identity and locations of the manufacturers are unknown; and

WHEREAS, although often marked "not for human consumption" or being labeled as otherwise harmless products such as plant food, incense, potpourri or iPod cleaner, these products are in fact designed and marketed to the buyer as products that act upon and effect the human body and its systems as a legal method to achieve the effects of illicit drugs; and
WHEREAS, products containing synthetic stimulants are available and by the design and appearance of the names and packaging of these substances, appear to be marketed to young adults and children. Increased usage among youths is a concern for both law enforcement and the medical community. See The University of Michigan Institute for Social Research in "Monitoring the Future, National Results on Adolescent Drug use, Overview of Key Findings 2011" sound that 11.4% of high school seniors indicated the use of synthetic marijuana; and

WHEREAS, The City Council finds that illicit synthetic drugs are distributed, labeled, and marketed in a way that poses dangerous consequences to the consumer; and

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

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

Section 1. That Section 8-1-26 of the City Code is hereby added as follows:

Sec. 8-1-26 ILLEGAL SMOKING MATERIAL

(a) Definitions.

For the purpose of this Article the following words shall have the meaning herein described to them:

"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, potpourri, spices, teas, bath salts or any other substance or blend of substances thereof including, but not limited to, any of the following chemicals or comparable chemicals:

- 1) Salvia divinorum or salvinorium 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) Datura stramonium; all parts of the plant presently classified botanically as datura stramonium, 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;
- 3) 2-[(1R, 3S)-3- hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
- 4) (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- 21 1 or Dexanabinol);
- 5) 1 -pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- 6) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); or
- 7) 1-pentyl-3-(4-methoxynaphthoyl)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", "SALVIA DIVINORUM", "JIMSON WEED", "GYPSUM WEED", "DEVIL'S TRUMPET", "DEVIL'S WEED", "THORN APPLE", "TOLGUACHA", "JAMESTOWN WEED", "STINKWEED", "LOCOWEED", "DATURA", "PRICKLYBURR", "DEVIL'S CUCUMBER", "HELL'S BELLS", "MOONFLOWER", "SCOOBY'S SNAX", "SHAGGY'S MIX", AND "ANGRY BIRDS".

Any material containing any of the botanical or chemical compounds set forth above shall be subject to the provisions of this Ordinance, regardless of whether they are marketed under these or other names.

"Person" shall mean an individual, a group of two or more individuals, proprietorship, corporation, partnership, wholesaler, association or other legal entity, or any licensed or unlicensed business.

"Misbranded Drug" shall mean any drug identified as such by the Food and Drug Administration or the Controlled Substances Act for which (1) the label is in any way false or misleading, (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug, (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use.

"Consumption" or "consume" shall mean the ingesting, inhalation, injection, dermal absorption, nasal insufflation, or other means of introducing into the body a substance, whether in its original form or the smoke, vapor, or other form derived from that original product.

(b) Sale, Delivery, Offer or Gift

It shall be unlawful for any person to sell, offer to sell, publicly display, barter, deliver or give any illegal smoking material to any person, or to own a property where such activity occurs.

It shall be unlawful for any person to sell, offer to sell, publicly display, barter, deliver, or give any misbranded drug to any person, or to own a property where such activity occurs.

In determining whether a product is prohibited by this section, statements on package labeling such as "not for human consumption" may be disregarded when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this chapter. Other relevant factors that may be used to determine whether a product or sale is prohibited by this chapter include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggesting that through consumption of the product the user will achieve a "high", euphoria, intoxication, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately higher than other products marketed for the same use; the product is treated differently than other products marketed for the same use (e.g., it is segregated from other products or kept behind the counter); the product contains a warning label stating or suggesting that the product is in compliance with laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are

employed by the seller or provider; whether the product can be smoked; and whether the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.

Nothing in this section is intended to apply to legitimate air fresheners, potpourri, bath or beauty products, or other aroma therapy products that do not contain the botanical, chemical, or related compounds described in this Ordinance or ingredients that are illegal under State and Federal Law.

(c) Use or Possession of Illegal Smoking Material.

It shall be unlawful for any person to have in their possession or to purchase, use, or consume illegal smoking material within the corporate limits of the City of Coahoma

(d) Defenses to Prosecution.

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

(2) It shall be a defense to prosecution of a violation of this Article if the person charged with such violation presents legitimate and complete documentation from clergy or a spiritual leader recognized by the State of Texas that the use of such material is part of a religious ceremony or activity of a religious denomination in which the person charged has a documented long standing membership.

(e) Penalty.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand dollars (\$2000.00).

Each occurrence of such violation shall constitute a separate offense.

Each package sold, delivered, offered for gift or sale, or given in violation of this chapter shall be a separate offense.

(f) Other Remedies.

The penal provisions imposed herein shall not preclude the filing of a lawsuit to enjoin violation of this ordinance. The City of Coahoma shall retain all legal rights and remedies available to it pursuant to local, state and federal law.

(g) Update.

The substances defined as "Illegal Smoking Material" in 8-1-26(a) may be amended by resolution.

Section 2. That Article 4-17 of the City Code is hereby added to read as follows:

4-17 Retailers of Illegal Smoking Materials Sec. 4-17-1 Purpose and intent

(a) It is the purpose of this chapter to regulate businesses that sell or trade in illegal smoking materials and misbranded drugs as defined by Section 8-1-26 of the City of Coahoma Code of Ordinances, to promote the health, safety, and general welfare of the citizens of the city and to protect the citizens from the known health risks and other dangers of these drugs. This chapter is necessary to protect the safety and welfare of children, because it is known that these products are marketed to children in bright and colorful packaging often including cartoon characters, are sold and in stores that are easily accessed by children, and are promoted as safe and legal even though these products are known to be addictive and pose serious health risks.

(b) It is the intent of the city council that the locational regulations of section 4-16-3 of this chapter are promulgated pursuant to state and federal law.

(c) The provisions of this chapter are considered cumulative of any other laws or ordinances, and if other laws or ordinances prohibit any conduct regulated by this article, such prohibition shall be effective.

Sec. 4-17-2 Definitions

(a) For the purposes of this chapter, the word "he" shall be defined to include the word "she."

(b) All definitions found in Section 8-1-26 of the City of Coahoma Code of Ordinances are hereby adopted and used in this chapter.

Sec. 4-17-3 Location

(a) A person commits an offense if he owns, operates, or causes to be operated an establishment that sells or offers for sale any illegal smoking material or misbranded drug within eight hundred (800) feet of:

(1) A church, defined as a building in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief either inside or outside the city limits;

(2) A public or private elementary or secondary school, a day care center licensed by the state, a college or a university, together with the playgrounds, stadia and other structures or grounds used in conjunction therewith either inside or outside the city limits;

(3) A boundary of a residential zoning district;

(4) A public park, defined as land and its buildings and improvements provided for recreation, sports, picnics, or amusement by the city, Howard County, CISD, the state, or any other government entity or nonprofit agency used for specific groups such as Little League baseball or the public generally either inside or outside the city limits;

(5) A convention center or coliseum, defined as land and its buildings and improvements, owned by a governmental entity and designed primarily for the use of holding conventions, entertainment, trade shows, civic activities, and other similar activities; or

(6) A mall, defined as land and its buildings and improvements operated and maintained as a single entity containing one (1) or more structures to accommodate commercial, retail or office use, providing an enclosed/covered common area which is made available for demonstrations, contests, display booths, recreational walking, and other activities that would attract young people and the general public.

(b) For the purposes of subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where business described in subsection (a) is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, state-licensed day care center, coliseum, convention center, or mall or to the nearest boundary of an affected public park or residential district.

Sec. 4-17-4 Enforcement; Defenses

(a) Any violation of this article, upon conviction, is punishable as a class C misdemeanor.

(b) Any person violating a provision of this article, upon conviction, shall be fined an amount not to exceed two thousand dollars (\$2,000.00). Each day any violation of this article shall continue shall constitute a separate offense.

(c) The following are a defense to prosecution under this article:

(1) A licensed pharmacy, or business operated by or employing a licensed pharmacist engaged in practicing the healing arts; or

(2) A business operated by or employing a licensed physician engaged in practicing the healing arts.

Section 3. That Section 1-1-9, subsection (b) (1), of the City of Coahoma Code of Ordinances is amended by adding the following:

Section 8-1-26. Illegal Smoking Materials.

Article 4-17. Retailers of Illegal Smoking Materials.

Section 4. That should any section, clause or provision of this ordinance be declared by court of competent jurisdiction to be invalid, the same shall not effect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

Section 5. That any person violating the provisions of this ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine as provided in Section 1-19, "General Penalty", Coahoma City Code.

Section 6. That the City Secretary is hereby directed to effect such publication as may be required by law in connection with the passage of this ordinance.

Section 7. That this ordinance shall be effective December 16, 2013.

A handwritten signature in cursive script, appearing to read "Wanda D. Allen".



1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem and then determine the scope of the study. The next step is to design the study. This involves determining the methods to be used and the data to be collected. The third step is to collect the data. This is done by the investigator who is responsible for the study. The fourth step is to analyze the data. This is done by the investigator who is responsible for the study. The fifth step is to interpret the results. This is done by the investigator who is responsible for the study. The sixth step is to write the report. This is done by the investigator who is responsible for the study. The seventh step is to present the results. This is done by the investigator who is responsible for the study. The eighth step is to discuss the results. This is done by the investigator who is responsible for the study. The ninth step is to conclude the study. This is done by the investigator who is responsible for the study. The tenth step is to publish the results. This is done by the investigator who is responsible for the study.