

**CITY OF COMMERCE, TEXAS  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS, PROHIBITING THE SALE OR DELIVERY OF RESTRICTED SMOKING MATERIALS TO INDIVIDUALS BELOW THE AGE OF TWENTY-ONE (21); PROHIBITING THE POSSESSION OF RESTRICTED SMOKING MATERIALS, WHETHER LABELED FOR SUCH PURPOSES OR NOT, BY INDIVIDUALS BELOW THE AGE OF TWENTY-ONE (21); PROHIBITING THE SALE, USE, DISTRIBUTION OR GIFTING REGARDLESS OF AGE OR USE IN THE PRESENCE OF THOSE UNDER THE AGE OF TWENTY-ONE (21) OF RESTRICTED SMOKING MATERIALS, WHETHER LABELED FOR SUCH PURPOSE OR NOT, WITHIN 2,500 FEET, SAID DISTANCE BEING MEASURED IN A STRAIGHT LINE, OF CERTAIN PROTECTED FACILITIES; RESTRICTED SMOKING MATERIALS, WHETHER LABELED FOR SUCH PURPOSE OR NOT, SUBJECT TO THIS REGULATION SHALL BE THOSE SUBSTANCES KNOWN AS SYNTHETIC CANNABINOIDS OR SALVIA DIVINORUM WHICH ARE FREQUENTLY KNOWN AS OR MARKETED AS PRODUCTS SUCH 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”; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Commerce, Texas 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 Commerce, Texas; 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 a special newsletter alert to the medical community generated as Volume 4, Issue 1, 2010; 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 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”; and

**WHEREAS**, the substances identified above 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 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 cannabinoids 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; and

**WHEREAS**, information is available to the City Council documenting that these substances are available for sale or distribution to individuals below the age of twenty-one (21) who lack the life experience and maturity to make informed judgments about whether the use or possession of such substances will negatively impact their ability to function in a safe and appropriate manner; and

**WHEREAS**, Texas law has long recognized the need to limit the access to intoxicating substances such as alcoholic beverages and to prevent those individuals below a general age

benchmark of maturity from acquiring or using those products in order to protect the minors from the risk of a harm that they cannot effectively evaluate; and

**WHEREAS**, the City Council finds that religious institutions, licensed day care centers, parks, recreation centers, water parks, schools, youth clubs or centers by any name, civic or convention centers and libraries are places where individuals below the age of twenty-one (21) tend to congregate and in many cases be found without parental or other lawful supervision; and

**WHEREAS**, the City Council finds that it is necessary to place reasonable time, place and manner restrictions on the sale of these intoxicating substances to further limit access to such substances by individuals below the age of twenty-one (21); 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 municipality 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 Commerce, Texas;

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

### **SECTION 1.**

The Code of Ordinances of the City of Commerce, Texas, be, and the same is hereby, amended by changing the title of Chapter 6 to read “Alcoholic Beverages and Restricted Smoking Materials”, and shall further be amended by adding the following definitions and sections to Chapter 6 of the Commerce Code of Ordinances. The changes shall read as follows:

Sections 6-15 through 6-21 shall be added as follows:

#### **Sec. 6-15. Definitions.**

*Restricted smoking material* means any substance, however marketed, and whether labeled for such purposes or not, 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-methoxynaphthoyl)indole (also known as JWH-081).

Products containing some 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”, AND “SALVIA DIVINORUM”.

It is anticipated by the Council that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth above.

*Restricted smoking material paraphernalia* means any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal or restricted smoking materials, whether labeled for such purpose or not, 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. 6-16. Restricted smoking materials; purpose.**

The purpose of this section is to prohibit the sale or delivery of restricted smoking materials as defined herein to any individual below twenty-one (21) years of age within the city limits of the City of Commerce and to prohibit the possession of restricted smoking materials by any individual below twenty-one (21) years of age within the city limits of the City of Commerce. Any form of delivery to include a simple gift constitutes a violation of this ordinance.

**Sec. 6-17. Sale, delivery, offer, gift or use.**

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material, whether labeled for such purposes or not, to anyone below twenty-one (21) years of age or to use same in the presence of anyone below twenty-one (21) years of age.

**Sec. 6-18. Use or possession of restricted smoking material.**

It shall be unlawful for any person below twenty-one (21) years of age to have in their possession or to use restricted smoking materials, whether labeled for such purposes or not, within the corporate limits of the City of Commerce.

**Sec. 6-19. 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, whether labeled for such purposes or not, if they are below twenty-one (21) years of age. If an individual below twenty-one (21) years of age is found in possession of this type of paraphernalia it will be a violation of this ordinance if appropriate forensic testing is done on the paraphernalia and traces of restricted smoking material are present on the device.

**Sec. 6-20. Location of sale of restricted smoking material and restricted smoking paraphernalia.**

It shall be unlawful for any person to sell, offer to sell, deliver or to give any restricted smoking material, whether labeled for such purposes or not, or restricted smoking paraphernalia to any person within 1,000 feet for the following:

- (1) A church;
- (2) A public or private elementary or secondary school;
- (3) A licensed day care center;
- (4) A public park, recreation center or water park;

- (5) A public library;
- (6) A youth club or center;
- (7) A civic or convention center.

For purposes of this section, 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 for purpose of selling or delivering the restricted smoking material or restricted smoking paraphernalia to the nearest property line of the premises of a church, public or private elementary or secondary school, licensed day care center, public library, public park, recreation center, water park, youth club or center, or civic or convention center.

**Sec. 6-21. Defenses to prosecution.**

(a) It shall be a defense to the prosecution for violation of this section if the use of the restricted smoking material, whether labeled for such purposes or not, 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 section 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.

**SECTION 2.**

That all Ordinances of the City of Commerce in conflict with the provisions of this Ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 3.**

Should any paragraph, sentence, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part of provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Commerce Code of Ordinances as a whole.

**SECTION 4.**

Any person, firm or corporation violating any of the provisions of this Ordinance or the Commerce Code of Ordinances, as amended hereby, shall be deemed guilty of a misdemeanor any, upon conviction in the Municipal Court of the City of Commerce, Texas, shall be punished

by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

**IT IS SO ORDAINED.**

Passed and approved on the first reading this 20<sup>th</sup> day of July, 2010.

Passed and adopted on the second reading this 3rd day of August, 2010.

Attest:

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Mayor

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City Secretary