

**ORDINANCE NO. 2010-24**

**AN ORDINANCE AMENDING CHAPTER 42, "HEALTH AND SANITATION", OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW ARTICLE VI. "PROHIBITED SMOKING PARAPHERNALIA AND SMOKING PRODUCTS", PROVIDING FOR SEVERABILITY; ESTABLISHING A PENALTY UP TO \$200 PER OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

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**WHEREAS**, on May 18, 2010, the National Drug Intelligence Center of the United States Department of Justice issued EWS Report 000006 describing substance abuse and harmful side effects related to the use of synthetic cannabinoid products; and

**WHEREAS**, the federal government and the State of Texas have not designated synthetic cannabinoids, salvia divinorum, or related chemicals as controlled substances; and

**WHEREAS**, the City Council finds that the use of these products is a danger to the public health, safety and welfare because of the adverse side effects on a person from their use; now, therefore

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

**Section 2.** Chapter 42, "Health and Sanitation", of the Code of Ordinances of the City of Tomball, Texas, is amended by adding a new Article VI, "Prohibited smoking paraphernalia and smoking products" that shall read as follows:

**"Article VI. Prohibited smoking paraphernalia and smoking products.**

**Sec. 42-140. Definitions.**

*Illegal smoking paraphernalia* means any equipment, material, object, or product that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including: a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen,

permanent screen, hashish head, or punctured metal bowl; a water pipe; a carburetion tube or device; a smoking or carburetion mask; a chamber pipe; a carburetor pipe; an electric pipe; an air-driven pipe; a chillum; a bong; or an ice pipe or chiller.

*Illegal smoking product* means any plant or other 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, that includes any one or more of the following substances or chemicals:

- (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 or similar structural analogs;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;
- (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) or similar structural analogs;
- (4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018) or similar structural analogs;
- (5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073) or similar structural analogs; or
- (6) 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl) (also known as JWH-081) or similar structural analogs.

Illegal smoking products include the products marketed under the following commercial names: Blaze, Descents, Diablo, Fire N' Ice, Genie, K-2, K-2 Summit, K-2 Sex, KO Knock-Out 2, Mojo, Pandora Potpourri, Pep Spice, Sage, Salvia Divinorum, Sense, Silver, Skunk, Solar Flare, Spice, Spice Cannabinoid, Spice Diamond, Spice Gold, Spicy Green, Yucatan Fire, and Zohai.

**Sec. 42-141. Offenses.**

A person commits an offense if the person:

- (1) uses, possesses, purchases, barter, gives, delivers, publicly displays, sells, or offers for sale any illegal smoking product; or

(2) uses or possess any illegal smoking paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an illegal smoking product.

**Sec. 42-142. Affirmative Defenses.**

It shall be an affirmative defense for a person charged with an offense under Sec. 42-141 that:

(1) the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act;

(2) the sale or possession of salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose; or

(3) the use or possession was by an employee or agent of a governmental entity who is acting in the course and scope of the employee's or agent's duties and whose use or possession is in compliance with the applicable procedures established by the governmental entity for the use or possession of the product."

**Section 3.** All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 4.** Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

**Section 5.** It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than

the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 6.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 15<sup>TH</sup> DAY OF NOVEMBER 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 6<sup>TH</sup> DAY OF DECEMBER 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

Gretchen Fagan  
Gretchen Fagan, Mayor

ATTEST:

Doris Speer  
Doris Speer, City Secretary