

ORDINANCE NO. 10-050

AMENDING LEON VALLEY CITY CODE, CHAPTER 8 "OFFENSES AND NUISANCES", BY CREATING A NEW SECTION, ARTICLE 8.11, TITLED "ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES" TO PROHIBIT THE USE, PURCHASE, POSSESSION AND SALE OF ILLEGAL SMOKING PRODUCTS CONTAINING CERTAIN PLANT, PLANT PRODUCTS AND THEIR DERIVATIVES OR OTHER SUBSTANCES, AND INGESTION DEVICES USED IN CONNECTION WITH THE ILLEGAL SMOKING PRODUCTS; DISPENSING WITH A CULPABLE MENTAL STATE; AND PROVIDING A PENALTY; PROVIDING AN AFFIRMATIVE DEFENSE FOR AUTHORIZED MEDICAL USE OR USE IN LANDSCAPING; AND PROVIDING A REPEALER CLAUSE, A SEVERABILITY CLAUSE, A SAVINGS CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, City Council of the City of Leon Valley, Texas (the "City Council") has been informed by the City of Leon Valley Police and Fire Department that the American Association of Poison Control Centers and the U.S. Department of Justice have published articles and opinions on the dangers and physiological effects of K2 and similar substances, which are believed to pose a significant health concern to the citizens of the City of Leon Valley; and

WHEREAS, based upon further information from the City of Leon Valley Police Department, certain substances are sold under various names including, but not limited to: "Salvia Divinorum", "Salvinorin A", "Spice", "Genie", "Dascents", "Zohai", "Sage", "K-2", and "KO Knock-Out 2", and are likely to contain chemical compounds or otherwise cause effects similar to marijuana or hallucinogens and may cause harmful effects by their use and further, the long term effects of which are not yet known; and

WHEREAS, to the best of the City Council's knowledge, the substances are not yet categorized as illegal controlled substances under state or federal law; and

WHEREAS, the City Council finds that the effect of these substances can be a health concern and risk to the citizens of the City of Leon Valley; and

WHEREAS, the City Council has determined that it is in the best interest of the public health, safety and welfare to prohibit the use, possession and sale of these substances and the devices used to ingest these substances.

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

That the statements above are found to be true and correct and are hereby incorporated.

A new Article 8.11, "Illegal Smoking Products and Ingestion Devices" is adopted to prohibit the use, purchase, possession, sale and offering for sale of illegal smoking products and ingestion devices to read in its entirety as follows:

“ARTICLE 8.11. ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES

Section 8.11.001 Purpose

The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices hereinafter defined within the city limits of the City of Leon Valley.

Section 8.11.002 Definitions

The following words and phrases as used in this section shall have the meanings as set forth in this subsection.

“Person” shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

“Illegal Smoking Product” shall mean any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, regardless of whether the substance is marked for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

- (1) Salvinorin A: Contained within the Salvia Divinorum plant, whether growing or not; or possessed as an extract, compound, manufacture, derivative, mixture, or preparation of such plant; or
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methylcatan-2-yl) phenol (also known as CP 47, 497) and homologues; or
- (3) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or
- (4) Butyl-3(1-naphthoyl) indole (also known as JWH-073); or
- (5) Any products sold, distributed or possessed in the form of incense or herbal smoking blends under the names such as “K-2,” “K-2 Summit,” “K-2 Sex,” “Genie,” “Spice,” “Dascents,” “Zohai,” “Sage,” “Pep Spice,” “Solar Flare,” “K-O Knockout 2,” “Spice Gold,” “Spice Diamond,” “Spice Cannabinoid,” “Yucatan Fire,” “Fire N Ice,” “Salvia Divinorum,” or related products or chemicals when ingested produce intoxicating effects similar to marijuana.

“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:

- (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.

Section 8.11.003 Violation

- (a) It shall be unlawful for any Person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any Illegal Smoking Product.
- (b) It shall be unlawful for any Person to use or possess an Ingestion Device with the intent to inject, ingest, inhale or otherwise introduce into the human body an Illegal Smoking Product.
- (c) The culpable mental state required by Chapter 6.02 of the Texas Penal Code, as amended, is specifically negated and dispensed with and a violation is a strict liability offense.
- (d) Any person, firm or corporation found to be violating any term or provision of this Ordinance, shall be subject to a fine of up to five hundred dollars (\$500.00), or the maximum amount allowed by law, for each offense. Every day a violation continues shall constitute a specific offense.

Section 8.11.004 Affirmative Defense

- (a) It shall be an affirmative defense for a Person charged with an offense for possession or use of an Illegal Smoking Product that the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.
- (b) It shall be a primary affirmative defense that the sale or possession by a person of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose”.

Section 8.11.005 Conflicting Ordinances

All provisions of the Code of Ordinances of the City of Leon Valley codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Leon Valley codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 8.11.006 Effective Date of Ordinance

This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED this 7th day of December, 2010.

ATTEST:

Jamie Dillman
City Secretary

APPROVED:

Chris Riley
Mayor

APPROVED AS TO FORM:

Frah Inion
City Attorney



MAYOR AND COUNCIL COMMUNICATION

**DATE: December 7, 2010
M&C: 12-02-10**

TO: MAYOR AND CITY COUNCIL

SUBJECT: AMENDING LEON VALLEY CITY CODE, CHAPTER 8 "OFFENSES AND NUISANCES", BY CREATING A NEW SECTION, ARTICLE 8.11, TITLED "ILLEGAL SMOKING PRODUCTS AND INGESTION DEVICES"

PURPOSE

The City of Leon Valley recognizes that there are significant dangers and physiological effects in ingesting K2 or similar substances. These substances, when smoked, mimic the hallucinogenic effects of marijuana. The sales of these items is believed to pose a significant health concern to the Citizens of Leon Valley. In 2010, the American Association of Poison Control Centers has received over 1,500 calls regarding symptoms from the use of these substances, and the symptoms can become "life-threatening".

S.E.E. IMPACT

Social – To enact legislation that will protect our citizens and visitors alike from the potentially harmful effects of synthetic cannabinoid products, of which the sale is not regulated by any state or federal law.

Economic – N/A

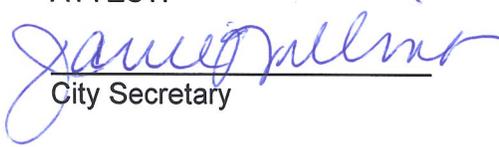
Environmental – N/A

FISCAL IMPACT

APPROVED: ✓ _____ DISAPPROVED: _____

APPROVED WITH THE FOLLOWING AMENDMENTS: _____

ATTEST:



City Secretary