

ORDINANCE NO. 2010-11

**AN ORDINANCE OF THE CITY OF HAMILTON, ALABAMA
PROHIBITING THE USE, SALE OR DELIVERY OF
CERTAIN DANGEROUS SUBSTANCES, SOLD AND MARKETED AS
K-2," AFFECTING THE PUBLIC HEALTH, SAFETY AND WELFARE OF
CITIZENS AND PROVIDING FOR A PENALTY FOR VIOLATION.**

WHEREAS, The City of Hamilton, Alabama has been provided with documentation from 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 Hamilton; and

WHEREAS, in response to these warnings, the City Council has been provided information indicating that this threat is presented in the form of products sold or distributed as a mixture of dried vegetation when covered, sprayed 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; 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 KNOCKOUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", "BLACK MAGIC SMOKE" AND "SALVIA DIVINORUM"; and

WHEREAS, some of the substances identified above have not yet been designated as controlled substances under the laws of the State of Alabama or under the Law of the United States;

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 Alabama and the United States and;

WHEREAS, the synthetic cannabinoid substances identified above may be presented under a variety of street names but share common ingredients including JWH018 and JWH073; 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 persons 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 persons under the effects of these substances may be a clear and present danger to themselves and others; and

WHEREAS, City staff has investigated and determined that 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 Hamilton.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAMILTON, ALABAMA THAT

SECTION 1. Definitions

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

“Illegal Smoking Product” shall mean any 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 which includes any one or more of the following chemicals

- 1) Salviadivinorum or salvinatorum 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]3hydroxycyclohexyl]5(2methyloctan2yl)phenol (also known as CP47,497) and homologues;
 - (3)(6aS,10aS)9(hydroxymethyl)6,6dimethyl3(2methyloctan2yl)6a,7,10,10atetrahydrobenzo[c]chromen1ol (also known as HU211 or Dexanabinol);
 - (4) 1pentyl3(1naphthoyl)indole (also known as JWH018);
 - (5) 1butyl3(1naphthoyl)indole (also known as JWH073; or
 - (6) 1pentyl3(4methoxynaphthoyl)indole (also known as JWH081).
- 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 KNOCKOUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N’ ICE”, “BLACK MAGIC SMOKE” 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.

“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 dariviern pipe
- 9) a chillum
- 10) a bong or
- 11) an ice pipe or chiller

SECTION 2. Sell, Offer, Gift, Display or Possession

It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell, or offer for sale **any illegal smoking product or ingestion device.**

Section 3. Use or Possession of Ingestion Devices

It shall be unlawful for any person to use or possess with intent to use an ingestion device to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.

SECTION 3. Penalty

Any person, firm, corporation or entity violating this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding Five Hundred Dollars (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

SECTION 4. Savings/Repealing Clause

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

SECTION 5. Severability

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

SECTION 6. Effective Date

This Ordinance shall become effective immediately upon its adoption.

PASSED, APPROVED and ADOPTED by the City Council of the City of Hamilton, Alabama on this **1st day of November, 2010.**

Joseph Robert Holliday, Jr., Mayor

ATTEST:

Jan Williams, City Clerk