

**ORDINANCE NO. 429**

**AN ORDINANCE OF THE CITY OF BRONTE, TEXAS REGULATING AND PROHIBITING THE PURCHASE, SALE, DELIVERY, OFFER OR GIFT OF ILLEGAL SMOKING MATERIALS; THE USE OR POSSESSION OF ILLEGAL SMOKING MATERIAL; THE USE OR POSSESSION OF ILLEGAL SMOKING MATERIAL PARAPHERNALIA; PROVIDING AFFIRMATIVE DEFENSES TO PROSECUTION; ESTABLISHING A PENALTY; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Bronte, Texas ("City Council"), 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 Bronte ("City"); 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 Special Newsletter Alert, Volume 4, Issue 1, 2010, issued by the Missouri Poison Control Center to the medical community; and

**WHEREAS**, the substances identified above are considered to be generally described as synthetic cannabinoids or salvia divinorum which 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", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", "BLAZE", "RED X DAWN", and "SALVIA DIVINORUM," among others; and

**WHEREAS**, the substances 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 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 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 substances 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 tetrahydrocannabinol ("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 substances indicates that individuals under the effects of these substances may be a clear and present danger to themselves and others; and

**WHEREAS**, it is anticipated that the Texas Legislature will consider appropriate regulation of these type of substances in its upcoming legislative session, but that it is essential for the City of Bronte 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 the City of Bronte;

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

**SECTION 1:** Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2:** Prohibit the sale, use, purchase, possession, and offering for sale of certain illegal smoking materials and illegal smoking material paraphernalia to read in its entirety as follows:

Definitions.

*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, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

(a) 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;

(b) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;

(c) (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);

(d) 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);

(e) 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073); or

(f) 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", "BLAZE" "RED X DAWN" 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.

*Illegal Smoking Material Paraphernalia* shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include, but is not limited to:

(a) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(b) A water pipe;

(c) A carburetion tube or device;

(c) A smoking or carburetion mask;

(e) A chamber pipe;

(e) A carburetor pipe;

(f) An electric pipe;

(g) An air-driven pipe;

(h) A chillum;

(i) A bong; or

(j) An ice pipe or chiller.

*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.

*Illegal Smoking Materials and Illegal Smoking Material Paraphernalia: Purpose*

The purpose of this Ordinance is to prohibit the purchase, sale, offer for sale, delivery, or gift of illegal smoking materials as defined herein within the city limits of the City of Bronte, and to prohibit the possession or use of illegal smoking materials and illegal smoking material paraphernalia within the city limits of the City of Bronte. Any form of delivery, including, without limitation, a simple gift constitutes a violation of this Ordinance.

Purchase, Sale, Delivery, Offer, or Gift.

It shall be unlawful for any person to purchase, sell, offer for sale, deliver or to give any illegal smoking material to any person.

Possession or Use of Illegal Smoking Materials.

It shall be unlawful for any person to have in their possession or to use, inject, ingest, inhale, or otherwise introduce into the human body illegal smoking materials within the corporate limits of the City of Bronte.

Possession or Use of Illegal Smoking Material Paraphernalia.

It shall be unlawful for any person to have in their possession any illegal smoking material paraphernalia with the intent to use it, to ingest, inhale or otherwise consume or introduce into the human body illegal smoking material. It is a violation of this Section, if a person is found in possession of illegal smoking material paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of illegal smoking material present on the paraphernalia.

Affirmative Defenses to Prosecution.

(a) It shall be an affirmative defense to prosecution for a violation of this Ordinance if the use of the illegal smoking material 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 an affirmative defense to prosecution under the terms of this Ordinance 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.

Penalty.

(a) Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500.00.

(b) Every act in violation of this Ordinance shall constitute a separate offense.

(c) Unless otherwise specifically set forth herein, an allegation and/or evidence of culpable mental state is not required for the proof of an offense of this Ordinance.

(d) The penal provisions imposed under this Ordinance shall not preclude the City of Bronte from filing suit to enjoin the violation of this Ordinance. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.”

**SECTION 3: Savings/Repealing Clause.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent that 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 ordinances shall remain in full force and effect.

**SECTION 4: Severability.** If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 5: Seizure and Disposition of Substances**

- (a) Any peace officer with legal criminal jurisdiction within the City of Bronte shall be authorized to seize any substance identified as a prohibited substance in accordance with this code.
- (b) Officers shall hold and safe-keep such seized Substances as evidence until such a time as the Substance is no longer needed for prosecution of a violation of this code.
- (c) The seizing officer or designated authority shall be authorized to dispose/destroy Substances seized in accordance with this code after they are no longer needed as evidence of a violation of this code.

**SECTION 6: Effective Date.** This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

**PASSED AND APPROVED on this 9th day of December, 2010.**

  
GERALD SANDUSKY, Mayor

**ATTEST:**

  
PAT MARTINDALE, City Secretary