

**ORDINANCE NO. 2011-0102**

An Ordinance of the City of Bells, Texas Amending Chapter 601 of the Code of Ordinances of the City of Bells, Texas by the addition of a new section entitled "Illegal Smoking Products and Ingestion Devices", making it unlawful to use, purchase, possession and sale of illegal smoking products containing certain plant, plant produderivatives, chemical compounds applied to plants, and 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 sever ability clause, a savings clause, and an effective date.

WHEREAS, 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 known to pose a significant health concern to the citizens of the City of Bells; and our community; and

WHEREAS, based upon further information, 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 my cause harmful effects by their use and further, the long term effects 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 of federal law; and

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

WHEREAS, the City Council of the City of Bells, Texas, 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; and

WHEREAS, the City Council also finds that the Existing ordinance related to drug paraphernalia is no longer required as that conduct is now covered by the Texas Health and Safety Code Sec. 481.125.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLS, TEXAS, THAT:

**Section I.** This Ordinance shall not affect the prosecution of any violation which was committed prior to the effective date of repeal.

**Section II.** A new Ordinance 2011-0102, 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:

**1.1 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 Bells.

**1.2 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 marketed 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;
- (2) 2[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylcatan-2-yl) phenol (also known as CP 47, 497) and homologues;
- (3) 1-Penty-1-3-(1-naphthoyl) indole (also known as JWH-018); or
- (4) Butyl-3-(1-naphthoyl) indole (also known as JWH-073).

"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.

### 1.3 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.

(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 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 in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

### 1.4 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 an affirmative defense that the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.

**Section III.** All provisions of the Code of Ordinances of the City of Bells, codified or uncoded, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code

of Ordinances of the City of Bells, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

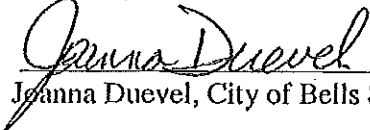
**Section IV.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

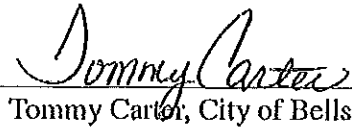
**Section V.** the repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

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


DULY PASSED AND APPROVED this the 15 day of FEBRUARY, 2011.

ATTEST:

  
Joanna Duevel, City of Bells Secretary

  
Tommy Carter, City of Bells Mayor

APROVED AS TO FORM:

  
Kenneth Roesler, City of Bells Attorney