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<http://www.planopolice.org>

MEMORANDUM

DATE: June 23, 2010
TO: Gregory W. Rushin, Chief of Police
FROM: Glenn Cavin, Administrative Lieutenant to the Chief
SUBJECT: Synthetic Marihuana Substitutes ("K2", Spice, etc.) and Salvia Divinorum

K2

AKA: "Legal Marijuana", "Spice", "Genie", "Dascents", "Zohai", "Sage", and "Jdub"



A significant amount of media attention has been focused lately on a widely available substance called "K2" (AKA "Legal Marijuana", "Spice", "Genie", "Dascents", "Zohai", "Sage", and "Jdub"), which has gained popularity among teenagers and young adults as a legal substitute for Marihuana. Although no such effects have been locally confirmed; it is believed that K2 could cause increased heart rate, loss of consciousness, paranoia, hallucinations and psychotic episodes. Users report that smoking small amounts can result in intense highs comparable to much larger amounts of marijuana.

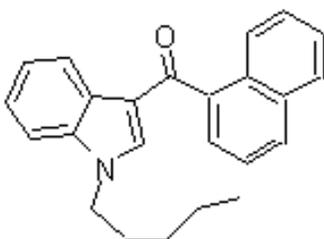
While all of the facts regarding K2 and its effects are not yet clear; we do know that it is being openly sold and consumed within our community, and that it is potentially dangerous. During a recent [interview](#) with WFAA News, Tommy Blakeman with the [Collin County Substance Abuse Program](#) referred to an incident in May that involved several Plano ISD students who had to be hospitalized after smoking K2 during lunch at school. After checking with the Officer who made contact with the juveniles, however, it seems that they were actually examined and released at the scene by the school nurse.

More recently, upon arrival at a welfare concern call, Plano FD Paramedics discovered a 20-year old male who was lying on the living room floor vomiting. The subject violently resisted attempts by both Fire and Police Department officials to assist and had to be physically restrained during transport to the hospital. While still on-scene, Officers observed baggies labeled as containing "K2", and the male admitted to smoking a small quantity of the powder. Unfortunately, however, our local labs are not yet equipped to test for the active ingredients in K2, so it could not be confirmed what caused the subject's adverse reaction.

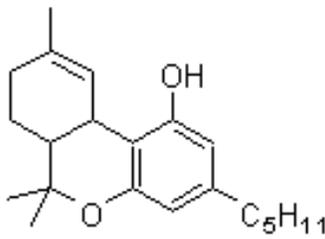
In March 2009, Customs and Border Protection officials conducted laboratory analysis of several seized "Spice" samples and found them to contain the chemicals [JWH-018](#) and [HU-210](#) (see related [DEA Microgram Bulletin](#)). While these substances differ in chemical structure, both reportedly produce effects that mimic those of THC; although much more potent. First synthesized in 1995 by Clemson University Professor John W. Huffman, JWH-018 is a chemical

compound believed to be contained within most, if not all, of the “K2” and “Spice” products being sold. Behavioral pharmacology studies revealed that JWH-018 caused effects in animals very similar to those of [Δ9-tetrahydrocannabinol \(Δ9-THC\)](#), the main active ingredient of Marijuana, but with a longer duration of action. In mice, it produced [catalepsy](#), analgesia, decreased body temperature, and diminished overall activity. Although JWH-018’s activity in lab tests suggests that it is likely to produce the same Marijuana-like effects in humans; its chemical structure is not similar enough to that of Δ9-THC for it to be prohibited under state law or the [U.S. Controlled Substances Act \(CSA\)](#).

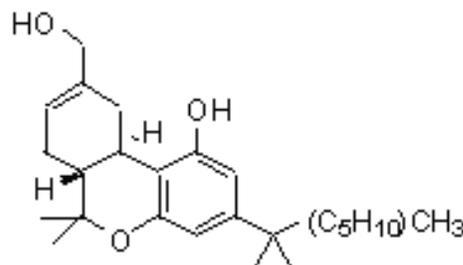
HU-210 was first synthesized around 1988 and recently found to be contained within several tested samples of “Spice” being sold in European countries. It is believed to also be present in some, if not all of the similar products now available in the United States. HU-210 abusers report that it is up to 800 times more potent than THC. Since HU-210 is structurally and pharmacologically similar to the Tetrahydrocannabinols, it **is** considered a Schedule 1 controlled substance under the CSA and already unlawful to possess in the U.S.



JWH-018



THC



HU-210

Although it is currently unknown who is now manufacturing the JWH-018 and HU-210 being made available throughout the U.S.; it is believed to be originating in China.

“K2” and “Spice”, which are almost always falsely represented and sold as incense “not for human consumption”, can be purchased by anyone at smoke shops and convenience stores throughout the metroplex, including Plano. It is also readily available from a large number of internet retailers. Although it has been reported repeatedly by the media and generally assumed that K2 is completely legal for sale and possession, it is believed that one or more of the chemicals it contains might actually be controlled under federal or state law as analogues of Tetrahydrocannabinols (see Health & Safety Code Sections 481.103 and 481.106).



HEALTH AND SAFETY CODE CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT

Sec. 481.103. PENALTY GROUP 2.

(a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- **Tetrahydrocannabinols**, other than marijuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, **or synthetic substances**,

derivatives, and their isomers **with similar chemical structure and pharmacological activity** such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;
delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;
delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE.

For the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, and 2 include a controlled substance analogue that:

- (1) has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or
- (2) **is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.**

Unfortunately, though, the current unavailability of lab tests for the relevant substances makes it impossible for local law enforcement agencies to file criminal cases, as the evidence presented must be sufficient to prove guilt beyond a reasonable doubt. In researching this issue, we contacted a number of authorities for suggestions and ideas. While it is painfully clear that no one knows for sure what the most effective solution is to this problem; it is agreed that something must be done as quickly as possible to help keep these products away from our kids. As a result, some area cities are now proposing local ordinances; however, the previously mentioned lack of toxicology results will seriously hinder any enforcement efforts, either under state law or local ordinance, as the burden of proof remains the same. It seems that some other important questions must also be answered before municipalities take responsibility for outlawing specific chemicals, and that prudent thought must be given to the possible unintended consequences of such actions.

It should also be noted that, while the recent increase in the popularity of K2 certainly merits sincere consideration; it is undeniable that both kids and adults, throughout history, have always found ways to abuse a wide range of entirely legal substances. These include some of the most commonly available chemicals, such as glue, paint, gasoline, whipping crème propellants, aerosols, Freon, and many others. In addition, a number of common herbal plants such as Salvia Divinorum, Morning Glory, Jimson Weed, and even Dandelions have become legal implements for inexpensive intoxication by those willing to ingest them.

SALVIA DIVINORUM

AKA: "Maria Pastora", "Sage of the Seers", "Diviner's Sage", "Salvia", "Sally-D", and "Magic Mint"

The Salvia Divinorum plant belongs to the genus Salvia, better known as Sage. The primary difference between Salvia Divinorum and other types of sage is the presence of Salvinorin A, which has psychoactive properties that have been known to the Mexican Mazatec Indians for ages. It was only recently that the plant drew the attention of Western ethnobotanists, and its active component was not isolated / identified until the 1990's. Salvinorin A turned out to be the strongest natural hallucinogen known to man. Salvia extracts generally come in 5x, 10x and 20x concentrations; although they are now available at up to 140x. A warning on one website states "be very careful when using extracts: a single hit of extract may be enough at any of these concentrations."

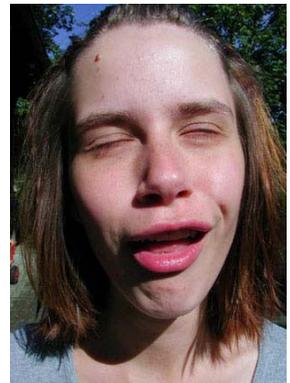
From the DEA Office of Diversion Control:

“Salvia Divinorum is a perennial herb in the mint family native to certain areas of the Sierra Mazateca region of Oaxaca, Mexico. The plant, which can grow to over three feet in height, has large green leaves, hollow square stems and white flowers with purple calyces, can also be grown successfully outside of this region. Salvia divinorum has been used by the Mazatec Indians for its ritual divination and healing. The active constituent of Salvia divinorum has been identified as salvinorin A. Salvia divinorum is grown domestically and imported from Mexico and Central and South America. The Internet is used for the promotion and distribution of Salvia divinorum. It is sold as seeds, plant cuttings, whole plants, fresh and dried leaves, extract-enhanced leaves of various strengths (e.g., 5x, 10x, 20x, 30x), and liquid extracts purported to contain salvinorin A. These products are also sold at local shops (e.g., head shops and tobacco shops).



In the U.S., plant material is typically either chewed or smoked. When chewed, the leaf mass and juice are maintained within the cheek area with absorption occurring across the lining of the oral mucosa (buccal). Effects first appear within 5 to 10 minutes. Dried leaves, as well as extract-enhanced leaves purported to be enriched with salvinorin A, are also smoked. Smoking pure salvinorin A, at a dose of 200-500 micrograms, results in effects within 30 seconds and lasts about 30 minutes. A limited number of studies have reported the effects of using either plant material or salvinorin A. Psychic effects include perceptions of bright lights, vivid colors and shapes, as well as body movements and body or object distortions. Other effects include dysphoria, uncontrolled laughter, a sense of loss of body, overlapping realities, and hallucinations (seeing objects that are not present). Adverse physical effects may include incoordination, dizziness, and slurred speech.

According to the National Survey on Drug Use and Health Report (NSDUH), Use of Specific Hallucinogens: 2006, published by SAMHSA in February 2008, it is estimated that 1.8 million persons aged 12 or older used Salvia divinorum in their lifetime, and approximately 750,000 did so in the past year. Use was more common among young adults (18 to 25 years old) as opposed to older adults (>26 years of age). Young adults were 3 times more likely than youths aged 12 to 17 to have used Salvia divinorum in the past year. Use is more common in males than females according to NSDUH. Seizures of Salvia divinorum and salvinorin A by federal, state and local law enforcement officials have increased from 1 in 2004 to 70 in 2008, according to the National Forensic Laboratory Information System (NFLIS). In the first half of 2009, 34 seizures have already been reported to forensic laboratories.



Salvia divinorum and salvinorin A are not currently controlled under the CSA. As of October 2009, fourteen states have enacted legislation placing regulatory controls on Salvia divinorum and/or salvinorin A. Delaware, Florida, Illinois, Kansas, North Dakota, Oklahoma, Virginia, Ohio, and Nebraska have placed Salvia divinorum and/or salvinorin A into schedule I of state law. California, Louisiana, Maine, North Carolina, and Tennessee enacted legislation restricting the distribution of the plant. Legislative bills proposing regulatory controls died in Alabama, Alaska, Indiana, South Carolina, Maryland, Texas, West Virginia and Georgia. Salvinorin A and/or Salvia divinorum have been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden.”

USAGE STATISTICS AND COMMUNITY IMPACT

- It is estimated that 1.8 million people aged 12 or older used Salvia Divinorum in their lifetime (approximately 750,000 did so in the past year).
- Use was more common among young adults (18 to 25 years old) as opposed to older adults (>26 years of age), and young adults were 3 times more likely than youths (ages 12 to 17) to have used Salvia Divinorum in the past year.
- Use is more common in males than females.
- Frequency of purchase or use in Plano is not clear; although it is known to be available from some local "head shops" and tobacco stores.
- There have been a handful of incidents reported since 2005 involving subjects found to be in possession of the substance; however, no Salvia Divinorum intoxication or overdose cases have been investigated.

LOCAL GOVERNMENT RESPONSE

Some other metroplex cities, including Allen and Mansfield, have recent taken steps to disrupt the sale of K2 and Salvia, and to make citizens aware of its existence in their communities.

NOTICE TO ALLEN CITIZENS



It has come to the attention of the Allen Police Department that there is a new drug by the name of K-2 that has made its way into Allen. K-2 is a chemical compound that can be sprayed onto papers, tobacco, or other organic materials and smoked. This gives the user the same type of high or euphoria that would be found in the active ingredient of marijuana, THC. These effects have been reported to be as much as 30% more potent than those of marijuana. K-2 is completely legal at this time.

In addition to K-2, Salvia Divinorum, or Salvia, is another legal substance that gives the user the same type of hallucinogenic effects as LSD. Salvia is a plant that is also smoked and can be found in Allen.

The Police Department has the full support of the Mayor, the City Council, the City Manager's Office, as well as other city departments, as we investigate the safety of the full name and effects of K-2 and Salvia. If these effects are proven to be true, the police department will bring this matter before the City Council. At that time, the necessary action will be presented to the City Council to prevent the production, manufacture, usage or distribution of K-2. The solution could come in the form of a city ordinance, working with the state legislature for state laws, or other options.

We ask parents and teachers to warn their children of the unknown dangers of K-2 and Salvia. This substance has not been fully restricted, therefore side effects and long term effects are unknown. **LEGAL DOES NOT MEAN SAFE**

If you have any information on K-2 or Salvia, you are asked to call or email Sgt. Mike of 214-590-4100 or mike@cityofallen.org.

As more information becomes available, the police department will keep you updated.



DATE: June 10, 2010
For Immediate Release

Contact: Sergeant Nicole Shaw
Public Information Office
Allen Police Department
214.599.4206
nshaw@cityofallen.org

CLOSURE OF JABARY MEDITERRANEAN

Officers with the Allen Police Department have received numerous citizen complaints that Jabary Mediterranean was selling tobacco to underage minors. As a result of these complaints, officers conducted an inspection of this business as they do with all businesses that sell alcohol and tobacco products within the city limits of Allen. As officers were conducting an inspection of Jabary Mediterranean, they observed what they believed to be environmental health code violations and other code violations. They also issued two (2) citations for minor possession of tobacco to Jabary Mediterranean. As a result of the officers' inspection, the Police Department requested the assistance of the Building and Code Department as well as the Planning and Development Department to ensure Jabary was in compliance with their Certificate of Occupancy.

The Building and Code Department and the Planning and Development Department conducted an inspection of Jabary Mediterranean in which they requested the presence of the Police Department. It was determined that Jabary Mediterranean was not in compliance with their Certificate of Occupancy. The Certificate of Occupancy was for a restaurant.

305 WEST McDERMOTT DRIVE, ALLEN, TEXAS 75013
214-599-2100
EMAIL: oc@cityofallen.org



DATE: June 10, 2010
For Immediate Release

Contact: Sergeant Nicole Shaw
Public Information Office
Allen Police Department
214.599.4206
nshaw@cityofallen.org

City staff determined by the lack of food, the sanitary conditions of the food preparation area, and the use of stale food products that were not fit for human consumption, Jabary was not operating as a restaurant. For this reason, the Certificate of Occupancy was revoked.

City Staff will continue to monitor this and all other permitted locations in Allen. Should Jabary Mediterranean continue to operate they could face a fine up to \$1,000 the each day they are in operation.

Any citizens that may have additional information regarding this incident may contact the Public Information Office of the Allen Police Department at 214.599.4206, or you may remain anonymous and call the TIPS line at 972.727.TIPS, or send an anonymous text to 774411.

Upon obtaining any further pertinent information concerning this incident, an updated News Release will be disseminated. 302

305 WEST McDERMOTT DRIVE, ALLEN, TEXAS 75013
214-599-1200
EMAIL: oc@cityofallen.org

The Plano Police Department clearly recognizes the serious health and safety risks associated with recently popularized drugs such as "K2", as with many others (legal and illicit) that law enforcement agencies have been forced to deal with in the past (Ecstasy, Ketamine, Rohypnol, GHB, GBL, etc.); and that decisive action must be taken, without unnecessary delay, to control them. Unfortunately, however, several important factors must be properly considered before any final decision is made, such as those listed below:

- The many laws we depend upon to define and regulate these types of substances are quite complex in their language and structure. Care must be taken to ensure that the specific offending chemicals are clearly identified, and that any possible unintended consequences have been properly considered.

- State drug laws typically refer to a range of quantities, beginning with a usable amount, with graduating penalties based on such quantities. This would be impossible to emulate through the enactment of an ordinance, as the only punishment available is through imposition of a relatively small fine.
- Successful enforcement efforts hinge upon scientific analysis and the resultant identification of certain specific chemical compounds. Since the necessary standards for testing are not yet available at our local laboratories, it is currently impossible to pinpoint the ingredients of samples obtained and successfully enforce any adopted laws (federal, state, or local). Furthermore, state laws that prohibit possession or delivery of illicit substances, such as those with effects similar to K2 and Salvia Divinorum, carry much more serious penalties than would be available through a municipal ordinance. To enact such an ordinance would seemingly cause an imbalance in punishment for similar offenses.

STATE LEGAL INITIATIVES

Senator Shapiro is already drafting a bill, for introduction during the upcoming 82nd Legislative Session, which would decisively add K2 as a “synthetic cannabinoid” to the state drug schedules.



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 (972) 463-3400 (fax)


FLORENCE SHAPIRO
 Texas State Senator
 District 8
 June 15, 2010

Chairwoman:
 Education, Chair
 Finance
 Administration
 Transportation and
 Homeland Security
 President Pro Tempore
 2009

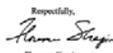
Greg Rubin
 Chief of Police
 Plano Police Department
 909 East 14th Street,
 Plano, Texas 75074

Dear Chief Rubin:

Thank you for your sincere interest in the safety of the citizens of Plano and its neighbors. I write to inform you of my intention to file legislation to implement a statewide ban on the synthetic cannabinoid commonly known as K2 during the upcoming 2011 Legislative Session.

The problems associated with the continued legal sale and use of this substance have been brought to my attention by local officials, police and constituents from across my district. In response, I believe the Legislature must take decisive action by banning the possession, sale and manufacture of these dangerous chemical compounds in Texas. I intend to work diligently to pass such legislation during the 82nd Legislative Session, beginning on January 11, 2011.

In the meantime, I recognize and support the need of local jurisdictions to pass ordinances in advance of the passage of state law to prevent the possession and sale of this harmful substance within their city limits. Thank you for standing with me in the fight against K2. Together we can protect our children from this dangerous drug.

Respectfully,

 Florence Shapiro

FS/m

Senator Craig Estes introduced SB 257, which seeks to prohibit the sale of Salvia Divinorum to minors, during the 81st Legislative Session (did not pass). He plans to try again in 2011 with the support of Senator Shapiro.



By: Estes S.B. No. 257

A BILL TO BE ENTITLED

AN ACT

relating to the sale or delivery of salvia divinorum or salvinorin A to a child; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS,

SECTION 1. Chapter 48, Penal Code, is amended by adding Section 48.03 to read as follows:

SEC. 48.03. PROHIBITION RELATING TO SALE OR DELIVERY OF SALVIA DIVINORUM TO CHILD. (a) In this section, "child" means a person younger than 18 years of age.

(b) A person commits an offense if the person, with criminal negligence, sells, delivers, or causes to be sold or delivered salvia divinorum, salvinorin A, or a product containing salvia divinorum or salvinorin A to a child or to another person who intends to deliver it to a child.

(c) An offense under this section is a Class C misdemeanor.

(d) It is not a defense to prosecution under this section that, at the time of the offense, the actor was an employer of a retail establishment that sold or offered for sale salvia divinorum, salvinorin A, or a product containing salvia divinorum or salvinorin A.

(e) It is a defense to prosecution under this section that the child presented to the actor an apparently valid proof of identification, including a driver's license issued by this state or another state, a passport, or an identification certificate or card issued by a state or the federal government. A proof of identification satisfies the requirements of this subsection if the identification:

(1) contains a physical description and photograph consistent with the person's appearance;

(2) purports to establish that the person is 18 years of age or older; and

(3) was issued by a governmental agency.

SECTION 2. This Act takes effect September 1, 2009.

CURRENT PLANO PD STRATEGY

- Utilize existing laws (DWI, PI, drug statutes, etc.) - The Collin County District Attorney's Office was notified of the recent publicity related to K2. Upon careful review of the Health and Safety Code, it was determined that one or more of the chemicals believed to be present in K2, such as HU-210, might already be prohibited under existing state law, and that such a case would be accepted for review if accompanied by a definitive laboratory analysis. Offenses involving impaired driving or public intoxication can already be enforced using existing DWI and PI statutes, as they are not specific to a particular substance.
- Work with state and local labs to develop testing procedures for the chemicals in K2 and Salvia Divinorum - Kenneth Evans at the DPS Laboratory in Garland was contacted and advised that they do not yet have the necessary standards to test for any of the suspected chemicals in K2 or Spice. He asked that we send a sample, so the lab could determine what type is needed and acquire it. Our Narcotics Unit Detectives promptly purchased two samples of K2 from a local merchant and they have been submitted to DPS for this purpose. In addition, Dr. Sarah Kerrigan, Director of the Sam Houston State University Regional Crime Laboratory, was contacted and advised that they are now in the process of acquiring the necessary methodology for testing chemicals in K2. We will continue working with this and other available labs to establish alternate channels for drug sample analysis, (in addition to DPS).
- Provide additional training for our Officers - A training bulletin is being prepared for our Officers, with information about "K2" and Salvia Divinorum, to help them recognize these substances and make them more aware of the possible effects they can produce.
- Implement educational programs for our citizens.
- Support state legislative efforts to ban these substances.
- Develop better procedures for tracking and monitoring incidents involving these substances.

ORDINANCE CONSIDERATIONS

- Unintended Consequences
- Lack of lab support / no means for chemical analysis
- Enforcement difficulties
- Inappropriate level of punishment for drug offense
- No graduation of penalties based on quantity
- Lack of consistency across the state / displacement



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MEMORANDUM

DATE: June 11, 2010
TO: Gregory W. Rushin, Chief of Police
FROM: Danny Alexander, Planning and Research Coordinator *DA*
SUBJECT: Briefing Paper on K2

Smoke-able herbal blends marketed as "legal marijuana" have become increasingly popular in the United States. One such blend, K2, is a varying blend of dried herbs, flowers, and tobacco leaves mixed with a synthesized chemical substance called JWH-018. K2 comes in four flavors, Standard, Citron, Blonde, and Summit. K2 may also be known as "Spice," "Genie," or "Zohai." K2 is marketed as incense, but it is being sold as a smoke able herb and users are smoking it to get high. The synthesized chemical substance called JWH-018 causes the high. The chemical is structurally similar to Tetrahydrocannabinol (Δ 9-THC), the active ingredient in marijuana, and apparently quite a bit more potent.

In the mid-'90s, John Huffman, a Clemson University chemist, synthesized the substance he called JWH-018. It is a synthetic cannabinoid agonist without the classical cannabinoid chemical structure. It was used in basic scientific research as a tool to identify cannabinoid receptors in the brain and study Δ 9-THC's mechanisms of action. Although JWH-018 is likely to have the same effects in humans as Δ 9-THC, the main active ingredient of marijuana, it is not controlled in the U.S.

Behavioral pharmacology studies show that JWH-018 has Δ 9-THC-like activity in animals. In mice, it decreases overall activity, produces analgesia, decreases body temperature, and produces catalepsy. Together, these four effects are used by scientists to predict Δ 9-THC-like psycho activity in humans. JWH-018's activity in all four tests suggests that it is likely to have THC-like psychoactive effects in humans. A search in the literature resulted in no published studies of the effects of JWH-018 in humans.

The Drug Enforcement Administration reports that information on the K2 user population in the U.S. is very limited, and that JWH-018 abuse is not monitored by any national drug abuse surveys.

Although, JWH-018 and smoke able herb blends are not a controlled substance in the U.S., the Drug Enforcement Administration reports that smoke-able herbal blends may contain the following substances, of which one is a controlled substance:

HU-210 - is structurally and pharmacologically similar Δ 9-THC, the active ingredient of marijuana. It is a Schedule I controlled substance in the United States. HU-210 abusers report the drug is 100 to 800 times more potent than THC.

HU-211 - Although it is categorized as a THC substance and structurally similar to Δ 9-THC, HU-211 is believed to have no Δ 9-THC like activity in humans. HU-211 is not controlled under the Controlled Substances Act (CSA)

CP 47,497 (and its homologues) and **JWH-073**, like **JWH-018**, are synthetic cannabinoid agonists without the classical cannabinoid chemical structure. They are used in scientific research as tools to study the cannabinoid system. Although these substances are likely to have similar effects in humans as Δ^9 -THC, **CP 47,497** (and its homologues), **JWH-018**, and **JWH-073** are not currently controlled under the CSA.

Since February 2010, Poison Centers nationwide have reported approximately 352 cases in 35 states of patients sickened from K2. Patients often have a rapid heart rate, dangerously high blood pressure, and sometimes hallucinations or paranoia. There have been no known reports to the police department of K2 overdoses in Plano.

The Drug Enforcement Administration considers K2 a "drug of concern," spokesperson David Ausiello says. "We're in the early stages of trying to figure out how potent it is." Kansas banned the drug March 10. Kentucky followed April 13. Alabama's ban takes effect July 1. Legislatures in Georgia, Missouri, and Tennessee have passed bans that will take effect unless vetoed by their governors. Illinois, Louisiana, Michigan, New Jersey, and New York are considering bills to outlaw the drug. A cluster of Arkansas towns also banned K2.

K2 is sold online, in convenience stores, and in herbal or spiritual shops, and is usually marketed as incense. Locally, Sergeant Tim Hughes reports that K2 is sold at two "smoke shops" on US Hwy 75. Sergeant Hughes advises that Patrol Officers have seen the substance in Plano but there have been no seizures since it is currently legal.

Regionally, the City of Allen has conducted a workshop to consider whether to enact a city ordinance banning K2. The Allen City Council reportedly is in favor of an ordinance banning K2 but has yet to enact it. Richardson and Carrollton Police Departments report that they are monitoring the issue of K2 but have not sought to have ordinances enacted outlawing the substance. Other cities, Arlington, Mesquite, Garland, and McKinney have yet to respond to our request concerning how they are addressing the K2 issue.

ORDINANCE NO. DRAFT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 10 BY ADDING ARTICLE IV, ILLEGAL SMOKING PRODUCTS, TO PROHIBIT THE USE, PURCHASE, POSSESSION, AND SALE OF THE SYNTHETIC CANNABINOID KNOWN OR SOLD UNDER SUCH NAMES AS “SPICE”, “GENIE”, “DaSCENTS”, “ZOHAI”, “SAGE”, “K-2” AND “KO KNOCK-OUT 2” FOR PUBLIC HEALTH PURPOSES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas has determined that certain businesses within the City may be selling certain substances that when ingested produce intoxicating effects similar to THC or marijuana; and,

WHEREAS, the substances are not yet categorized as illegal controlled substances under state or federal law; and

WHEREAS, the substances, which are described herein below, are often used as an alternative to marijuana and are potentially dangerous to users and further, the long term effects are not yet known; and

WHEREAS, it has been determined that the effects of these substances are a health concern to the citizens of the City of Allen; and

WHEREAS, the City Council of the City of Allen, Texas, has determined that it is in the best interest of the public health, safety and welfare to prohibit the substances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Allen, Texas, be and the same is hereby amended by amending Chapter 10 in part by adding Article IV, Illegal Smoking Products, to prohibit the use, purchase, possession, sale and offering for sale the synthetic cannabinoid known or sold under such names as “Spice”, “Genie”, “Dascents”, “Zohai”, “Sage”, “K-2” and “KO Knock-Out 2” to read as follows:

“ARTICLE IV. ILLEGAL SMOKING PRODUCTS

Sec. 10-40. 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 Allen.

Sec. 10-41. 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:

- (a) Salviadivinorum or salvinorum 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-methylcatan-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] chormen-1-ol) (also known as HU-211 or Dexanabinol);
- (d) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or
- (e) 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:

- (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;
- (d) a smoking or carburetion mask;
- (e) a chamber pipe;
- (f) a carburetor pipe;
- (g) an electric pipe;
- (h) an air-driven pipe;
- (i) a chillum;
- (j) a bong; or
- (k) an ice pipe or chiller.

Sec. 10-42. 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.

Sec. 10-43. 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.

Sec. 10-44. Defense.

It shall be a defense to a violation of this article that any act described in this article is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.”

SECTION 2. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect. Nothing contained herein shall be construed to conflict with the *Texas Controlled Substance Act*, or any other state and/or federal law governing the same.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE ____ DAY OF JUNE, 2010.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(43721)

Shelley B. George, CITY SECRETARY

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MANSFIELD BY SPECIFICALLY AMENDING CHAPTER 92 BY REVISING SECTION 92.20 RELATING TO CERTAIN DEFINITIONS AND ADDING SECTION 92.28 THROUGH 92.31 WHICH PROHIBIT THE SALE OR DELIVERY OF RESTRICTED SMOKING MATERIALS TO INDIVIDUALS BELOW THE AGE OF TWENTY-ONE (21) AND SHALL PROHIBIT THE POSSESSION OF RESTRICTED SMOKING MATERIALS BY INDIVIDUALS BELOW THE AGE OF TWENTY-ONE (21); RESTRICTED SMOKING MATERIALS SUBJECT TO THIS REGULATION SHALL BE THOSE SUBSTANCES KNOWN AS SYNTHETIC CANNABINOIDS OR SALVIA DIVINORUM WHICH ARE FREQUENTLY KNOWN AS OR MARKETED AS PRODUCTS SUCH 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", AND "SALVIA DIVINORUM"; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Mansfield, Texas 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 Mansfield; 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 a special newsletter alert to the medical community generated as Volume 4, Issue 1, 2010; 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 KNOCK-OUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N’ ICE”, AND “SALVIA DIVINORUM”; and

WHEREAS, the substances identified above 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 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 Texas and the United States; and

WHEREAS, the synthetic cannabinoids substances identified above 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 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 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 products indicates that individuals under the effects of these substances may be a clear and present danger to themselves and others; and

WHEREAS, information is available to the City Council documenting that these substances are available for sale or distribution to individuals below the age of twenty-one (21) who lack the life experience and maturity to make informed judgments about whether the use or possession of such substances will negatively impact their ability to function in a safe and appropriate manner; and

WHEREAS, Texas law has long recognized the need to limit the access to intoxicating substances such as alcoholic beverages and to prevent those individuals below a general age benchmark of maturity from acquiring or using those products in order to protect the minors from the risk of a harm that they cannot effectively evaluate; and

WHEREAS, it is anticipated that the Texas Legislature will consider appropriate regulation of these type of commodities in its upcoming legislative session but that it is essential for the municipality 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 Mansfield, Texas;

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

SECTION 1.

The Code of Ordinances of the City of Mansfield, Texas, be, and the same is hereby, amended by adding the following definitions and sections to Chapter 92 of the Mansfield Municipal Code. The changes shall read as follows:

Section 92.20 Definitions

The following definitions shall be added:

RESTRICTED 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 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”, AND “SALVIA DIVINORUM”.

It is anticipated by the council that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth above.

RESTRICTED 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:

- 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;
- D. A smoking or carburetion mask;
- E. A chamber pipe;
- F. A carburetor pipe;
- G. An electric pipe;
- H. An air-driven pipe;
- I. A chillum;
- J. A bong; or
- K. An ice pipe or chiller.

THE FOLLOWING SECTIONS ARE TO BE ADDED TO CHAPTER 92 AS SET FORTH BELOW:

Section 92.28

RESTRICTED SMOKING MATERIALS: PURPOSE

The purpose of this section is to prohibit the sale or delivery of restricted smoking materials as defined herein to any individual below twenty-one (21) years of age within the City limits of the City of Mansfield and to prohibit the possession of restricted smoking materials by any individual below twenty-one (21) years of age within the city limits of the City of Mansfield. Any form of delivery to include a simple gift constitutes a violation of this ordinance.

Section 92.29

SALE, DELIVERY, OFFER, OR GIFT:

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material to anyone below twenty-one (21) years of age.

Section 92.30

USE OR POSSESSION OF RESTRICTED SMOKING MATERIAL:

It shall be unlawful for any person below twenty-one (21) years of age to have in their possession or to use restricted smoking materials within the corporate limits of the City of Mansfield.

Section 92.31

USE OR POSSESSION OF RESTRICTED SMOKING PARAPHERNALIA:

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material if they are below twenty-one (21) years of age. If an individual below twenty-one (21) years of age is found in possession of this type of paraphernalia it will be a violation of this ordinance if appropriate forensic testing is done on the paraphernalia and traces of restricted smoking material are present on the device.

Section 92.32

DEFENSES TO PROSECUTION:

- A. It shall be a defense to prosecution for a violation of this section if the use of the restricted 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 a defense to prosecution under the terms of this section 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.

SECTION 2.

That all Ordinances of the City in conflict with the provisions of this Ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provision of this Ordinance shall remain in full force and effect.

SECTION 3.

Should any paragraph, sentence, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not effect the validity of this Ordinance as a whole or any part of provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not effect the validity of the Mansfield Code of Ordinances as a whole.

SECTION 4.

Any person, firm or corporation violating any of the provisions of this Ordinance or the Mansfield Code of Ordinances, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of Mansfield, Texas, shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense.

SECTION 5.

This Ordinance shall take effect immediately from and after its passage on third and final reading and the publication of the caption, as the law and charter in such cases provide.

The first reading approved on the _____ day of _____, 2010.

Second reading approved on the _____ day of _____, 2010.

DULY PASSED on the third and final reading by the City Council of the City of Mansfield, Texas, this ____ day of _____, 2010.

David L. Cook, Mayor

ATTEST:

Vicki Collins, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Allen Taylor, City Attorney