



# CITY OF FRANKLIN, NEW HAMPSHIRE

*"The Three Rivers City"*

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## ORDINANCE #03-11

### AN AMENDMENT TO THE FRANKLIN MUNICIPAL CODE:

In the Year of our Lord, Two Thousand Ten:

Be it ordained by the City Council of the City of Franklin that the Franklin Municipal Code, Chapter \_\_\_\_\_, Unlawful Sale and Possession of Illegal Smoking Products be established as follows:

Chapter \_\_\_\_

### UNLAWFUL SALE AND POSSESSION OF ILLEGAL SMOKING PRODUCTS:

#### § \_\_\_\_ PROHIBITED ACTIVITIES

- A. It shall be unlawful for any person to use, possess, purchase, attempt to purchase, sell, offer to sell, give away, deliver or publicly display for sale any illegal smoking product (which includes but is not limited to the product known as K2 or Spice) within the city limits of the City of Franklin, New Hampshire.
- B. For the purpose of this section, the following terms shall be defined as follows:
  1. **Person:** An individual, corporation, partnership, wholesaler, retailer, and any licensed or unlicensed business, including clerk, manager, or owner of a business;
  2. **Illegal Smoking Product:** Any substance, whether described as tobacco, herbs, incense, spice or any blend thereof, which, when smoked or ingested, mimics the effects of a controlled substance, regardless of whether the substance is marketed for the purpose of being smoked or ingested, which includes any one or more of the following chemicals<sup>[1]</sup>:
    - a. 1 cis or trans tetrahydrocannabinol, and its optical isomers;
    - b. 6 cis or trans tetrahydrocannabinol, and its optical isomers;

<sup>[1]</sup> Note: chemicals in this list should be checked for accuracy and also checked against one another for duplicity.

- c. 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
  - d. CP 47,497 and homologues: 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol);
  - e. HU-210: [(6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,10Dimethylheptyl)-61, 7, 10, 10a-tetrahydro-1hydroxy-6, 6-dimethyl-6H-dibenzo [b,d] pyran-9-methanol;
  - f. JWH-018: 1-Pentyl-3-(1-naphthoyl)indole, also known as Naphthalen-1-yl-(1-pentylindol-3-yl)methanone, also known as “spice”;
  - g. JWH-073: 1-Butyl-3-(1 naphthoyl)indole, also known as Naphthalen-1-yl-(1-butylyndol-3-yl)methanone;
  - h. JWH-200: 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole;
  - i. JWH-081: 1-pentyl-3-(2-methoxyphenylacetyl)indole, also known as 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone;
  - j. JWH-250: 1-pentyl-3-(2-methoxyphenylacetyl)indole, also known as 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone;
  - k. *Salvia divinorum* 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;
  - l. Other synthetic cannibinoids or derivatives, salts, isomers, or salts of isomers with similar chemical structure and pharmacological activity as the substances defined above; or
  - m. Any compound of the structures listed in this Section, regardless of numerical designation of atomic positions.
3. Optical Isomers: Two compounds which contain the same number and kinds of atoms and bonds, and different spatial arrangements of the atoms, but which have non-superimposable mirror images.

**§ \_\_\_ EXCEPTIONS**

- A. It is not an offense under this Chapter if the person was acting at the direction of an authorized agent of the City of Franklin, including but not limited to officers of the Franklin Police Department, to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substances.**
- B. If the New Hampshire Legislature adopts a statute enacting criminal penalties for the possession, sale or delivery of any illegal smoking product as defined by this ordinance, then upon the effective date of such state statute, this ordinance shall no longer be deemed effective. However, a violation of this ordinance occurring prior to the effective date of such state statute may be prosecuted after the effective date of the state statute.**
- C. This Chapter does not apply to any person who commits any act described in this section pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act. This Chapter likewise does not apply to the inhalation of anesthesia for a medical purpose or dental purpose.**

**§ \_\_\_ VIOLATIONS AND PENALTIES**

**Any person found to be in violation of this Chapter is subject to \_\_\_\_\_.**

**§ \_\_\_ FORFEITURE**

**In addition to any penalty provided for in § \_\_\_, if any of the aforementioned substances listed in § \_\_\_ are found in the possession of any person, the substances will be forfeited to the city and may be destroyed by law enforcement officials.**

**§ \_\_\_ VALIDITY AND APPLICATION**

- A. If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.**
- B. All ordinances, resolutions, orders or parts thereof or in conflict with this ordinance are hereby voided.**
- C. This Ordinance shall be in full force and effect immediately upon its passage.**