

ORDINANCE NO. 1326

AN ORDINANCE OF THE CITY OF PAYETTE, IDAHO, ADDING A NEW CHAPTER 67 TO TITLE 9 OF THE PAYETTE CITY CODE; PROHIBITING THE SALE, ADVERTISING, USE, MANUFACTURE AND POSSESSION OF SYNTHETIC CANNABINOIDS, COMMONLY KNOWN AS "SPICE"; AND PROVIDING PENALTIES; PROVIDING REMEDIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF PAYETTE, IDAHO AS FOLLOWS:

SECTION 1: That Title 9 of the Payette City code be amended with the addition of a new Chapter 67, which section shall read as follows:

TITLE 9

CHAPTER 9.67

PROHIBITION OF POSSESSION, SALE, ADVERTISING OR USE OF "SPICE" AND SIMILAR PRODUCTS

SECTIONS:

- 9.67.010: DECLARATION OF PURPOSE
- 9.67.020: DEFINITIONS
- 9-67.030: POSSESSION, USE OR SALE OF SYNTHETIC CANNABINOIDS
- 9.67.040: AFFIRMATIVE DEFENSE
- 9.67.050: SEIZURE OF COMPOUND
- 9.67.060: INJUNCTIVE RELIEF
- 9.67.070: SUBSEQUENT STATE ACTION

- 9.67.010: DECLARATION OF PURPOSE

The City of Payette, Idaho, hereby finds and declares that the products and synthetic substances described hereunder are commonly used as an alternative to marijuana, that the synthetic substances are potentially dangerous to users and that the long term effects are not yet known. The City Council declares that the products which contain these synthetic substances often use a disclaimer that the product is "not for human consumption" to avoid regulations requiring the manufacturer to list the product's active ingredients and that most of these products only list the ingredients of damiana

leaf and mullein leaf extract. The Council further declares that the synthetic substances described hereunder are not yet categorized as illegal controlled substances under State or Federal law, and that it is proper and necessary for the City of Payette to exercise its authority to safeguard and protect the public health and safety. Finally, the Council declares that it is within the policy power of City of Payette, granted by Article XII, Section 2 of the Idaho State Constitution, to legislate the use, possession and sale of synthetic cannabinoids and/or the substances known as "spice" in order to preserve the public's health, safety, and welfare.

9.67.020: DEFINITIONS

For the purpose of this Ordinance, unless it is plainly evident from the context that a different meaning is intended, certain terms used herein are defined as follows:

9.67.020: A. SYNTHETIC CANNABINOIDS: A synthetic substance with a chemical structure or pharmacological activity similar to tetrahydrocannabinol, also known as THC, which is the main psychoactive substance found in marijuana. For the purpose of this Ordinance, synthetic cannabinoids are more specifically identified as follows:

9.67.020: B. 1-Pentyl-3-(1-naphthoyl)indole, a substance also known as JWH-018;

9.67.020: C. 1-Butyl-3-(1-naphthoyl) indole, a substance also known as JWH-073;

9.67.020: D. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, a substance also known as CP 47,497 and its homologues;

9.67.020: E. (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol), a substance also known as HU-211;

9.67.020: F. Any salt, isomer, analog or homologue of the above mentioned chemicals;

9.67.020: G. Any other known synthetic cannabinoid; or

9.67.020: H. Any similar chemical substances which when inhaled, injected or otherwise ingested are capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.

9.67.020: I. SPICE: Any herbal or plant material, incense or other substance, regardless of the purpose it is marketed for, or whether it is labeled as unsuitable for human consumption, which contains one or more synthetic cannabinoids or their analogs or homologues.

9.67.020: J. Spice includes products by whatever trade name that are treated, sprayed, or saturated with one or more of the above chemicals identified in Section 2.1. Some currently marketed products containing synthetic cannabinoids identified in Section 2.1 include, but are not limited to: K2, K3, Spice, Black Mamba, Mr. Smiley, Vanilla Voodoo, Rage and Posh.

9.67.020: K. Spice includes any incense or alternative smoking blend product, which contains damiana leaf and/or mullein leaf extract.

9.67.030: POSSESSION, USE OR SALE OF SYNTHETIC CANNABINOIDS. Except as authorized by Title 37 Chapter 27 of the Idaho Code, as amended, it is unlawful for any person or entity, to manufacture, make, compound, mix, distribute, dispense, ingest, use, possess, purchase, attempt to purchase, sell, display for sale, advertise for sale, attempt to sell, give, trade or barter, any one or more of the following chemical compounds and/or substances, known as synthetic cannabinoids, either in their chemical form or as the product commonly known as spice, including their salts, isomers, homologues and salts of their isomers and homologues:

1. 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;

2. 1-Pentyl-3-(1-naphthoyl)indole (also known as JWH-018);

3. 2-(3-hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol (also known as CP-47/497), and the dimethylhexyl, dimethyloctyl and dimethylnonyl homologues of CP-47/497;
5. 1-Butyl-3-(1-naphthoyl)indole (also known as JWH-073);
6. 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl)indole (also known as JWH-200);
7. 1-Pentyl-3-(2-methoxyphenylacetyl)indole (also known as JWH-250);
8. 1-Hexyl-3-(1-naphthoyl)indole (also known as JWH-019);
9. 1-Pentyl-3-(4-chloro-1-naphthoyl)indole (also known as JWH-398);
10. 1-(3-trifluoromethylphenyl) piperazine (also known as TMPP);
11. Any similar structural analogs of the above chemical compounds;
12. Any other synthetic cannabinoids; and
13. Any commercial products sold as aromatics or incense under the brand names Spice, Black Mamba, K2, Puff, Smoke, Skunk, Pandora Potpourri and Sugar Sticks or other brand names, that have been determined by chemical testing laboratories, law enforcement or other governmental agencies to contain any of the foregoing compounds.

9.67.040: AFFIRMATIVE DEFENSE. It shall be an affirmative defense to prosecution for possession or use of synthetic cannabinoids under this Ordinance that said possession or use is under and pursuant to the direction or prescription of a licensed physician or dentist authorized in the State of Idaho to direct or prescribe such act.

9.67.050: SEIZURE OF COMPOUNDS. If any of the intoxicating chemical compounds prohibited herein are found in the

possession of any person, they may be confiscated and destroyed by law enforcement officials.

9.67.060: INJUNCTIVE RELIEF. The City of Payette shall have the authority to seek an injunction against any person or business violating subsection A. In any action seeking an injunction the City of Payette shall be entitled to collect its enforcement expenses, including reasonable attorney fees incurred at trial and on appeal.

9.67.070: SUBSEQUENT STATE ACTION. If the Idaho State Legislature adopts a statute enacting criminal penalties for prohibitions set forth in this ordinance, then upon the effective date of such state statute, provisions of this ordinance that are addressed by the state statute shall no longer be deemed effective. Any violations of this ordinance committed prior to the Idaho State Legislature enacting such a statute may be prosecuted. To the extent that the provisions within this ordinance are not preempted by state statute, the provisions of this ordinance shall remain valid and in effect.

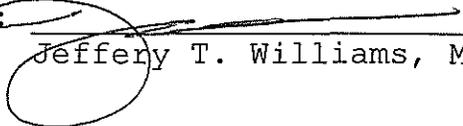
Section 2: VIOLATION. Any person who is found guilty, or who pleads guilty, of a violation of this Ordinance shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of time not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000.00), or by both.

Section 3: SEVERABILITY. If any provision of this Ordinance is held invalid, such invalidity shall not affect the remaining provisions of this Ordinance which shall remain effective absent the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

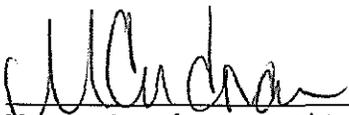
Section 4: EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and the publication as provided by law.

PASSED AND APPROVED by the Mayor and City Council this
1st day of ~~October~~ NOVEMBER, 2010.

CITY OF PAYETTE, IDAHO

By: 
Jeffery T. Williams, Mayor

Attest:


Mary Cordova, City Clerk

SUMMARY OF ORDINANCE 1326

Ordinance 1326 is an ordinance of the City Of Payette, Idaho, adopted November 1, 2010. The ordinance may be descriptively known as Payette ordinance which prohibits the sale,, use, possession of Spice. Ordinance 1326 sets out a purpose, provides definitions and prohibits the possession, use or sale of synthetic cannabinoids. The ordinance creates an affirmative defense to prosecution if the substance is prescribed by an Idaho medical doctor. Ordinance 1326 allows for seizure of the substance, allows for injunctive relief and will be withdrawn when the State of Idaho enacts a state code which prohibits spice. Ordinance 1326 provides a severability clause, provides for publication by summary, sets an effective date, and establishes a repealer.

I, Bert L. Osborn, City Attorney for the City of Payette Idaho, certify that I am familiar with Ordinance 1326 of the City of Payette, Idaho and with the foregoing summary. The summary is true and complete and provides adequate notice to the public. The full text is on file with the Payette City Clerk and shall promptly be made available to any citizen upon request.

Dated this 2nd day of November, 2010.



Bert L. Osborn