

**ORDINANCE 2015-03-02**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANAHUAC, TEXAS, ADMENDING TITLE XIII "GENERAL OFFENSES" OF THE CODE OF ORDINANCES, ANAHUAC, TEXAS, TO ADD SECTION 131 THE PROHIBITION OF ILLICIT SYNTHETIC SUBSTANCES, TO REGULATE THE DISPLAY AND PACKAGE LABELING OF HERBAL INCENSE; AND TO DECLARE CERTAIN CONDUCT TO BE UNLAWFUL; PRESCRIBING A MAXIMUM PENALTY OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000); PROVIDING A REPEALING CLAUSE; CONTAINING A SAVINGS CLAUSE; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE THEREOF.**

**WHEREAS**, the City Council finds that a wide variety of herbal and plant materials containing synthetic chemicals are being produced to mimic the intoxicating effects of marijuana, ecstasy, methamphetamines, and other controlled substances; and

**WHEREAS**, these designer illicit synthetic drugs ("synthetic cannabinoids", commonly referred to as "Kush") are often sold in legal retail outlets as household products such as "herbal incense" and labeled "not for human consumption" to mask their intended purpose and to avoid the U.S. Food and Drug Administration's regulatory oversight of the manufacturing process; and

**WHEREAS**, the Drug Enforcement Administration recognizes that synthetic cannabinoids constitute an immediate hazard to public safety; and

**WHEREAS**, the U.S. Customs and Border Protection found a number of illicit synthetic drugs appear to originate overseas and are manufactured in the absence of quality controls and devoid of governmental regulatory oversight; and

**WHEREAS**, such substances have been reported to cause serious side effects that endanger the health and safety of individuals, including severe agitation and anxiety, racing heartbeat and higher blood pressure, nausea and vomiting, muscle spasms, seizures, and tremors, intense hallucinations, psychotic episodes, and suicidal thoughts and actions; and

**WHEREAS**, the University of Michigan Institute for Social Research found that in 2013 these illicit synthetic drugs were the second most widely used illicit drug (after marijuana) among tenth graders, and the third most used (after marijuana and amphetamines) among twelfth graders; and

**WHEREAS**, the packaging and representations made at the point of sale of illicit synthetic drugs often indicate, suggest, imply, or represent that the product is a substitute for or mimics the pharmacological effects of marijuana, ecstasy, methamphetamines or other controlled substances, or controlled substance analogues as defined by section 481.002 of the Texas Health and Safety Code; and

**WHEREAS**, businesses that sell illicit synthetic drugs often conceal them from public display so as to escape the notice of law enforcement personnel; and

**WHEREAS**, the illicit synthetic drugs are sometimes marketed as a safe and legal substitute to marijuana; and

**WHEREAS**, the packaging of the illicit synthetic drugs does not provide accurate information about the synthetic chemicals in or on the product; and

**WHEREAS**, despite the best efforts of federal and state legislators to outlaw illicit synthetic drugs, manufacturers continually reconfigure the banned substances to produce new synthetic drugs not subject to existing regulations; and

**WHEREAS**, City Council finds regulation of illicit synthetic drugs is necessary to complement current state and federal laws and to protect the public health, safety and welfare; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANAHUAC, TEXAS:**

**Section 1:** That all matters and facts set forth in the recitals hereinabove are found to be true and such recitals are hereby approved and made a part of this ordinance for all purposes and are adopted as a part of the judgment and findings by the City Council of the City of Anahuac, Texas.

**Section 2:** That Title " General Offenses,- Article III "Controlled Substances" of the Code of Ordinances, Anahuac, Texas, is hereby renamed Article III "Controlled Substances and Illicit Synthetic Drugs" and amended to read as follows:

### **TITLE XIII. GENERAL OFFENSES**

#### **CHAPTER 131. CONTROLLED SUBSTANCES AND ILLICIT SYNTHETIC**

**DRUGS Sec. 131.00.** - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings set forth in this section, except where the context of their usage clearly indicates a different meaning:

*Controlled substance* means the same as defined in V.T.C.A.. Health and Safety Code § 481.002.

*Controlled substance analogue* means the same as defined in V.T.C.A., Health and Safety Code § 481.002.

*Dangerous drug* means the same as defined in V.T.C.A.. Health and Safety Code § 483.001.

*Illicit synthetic drug* means:

- (A) Any vegetative material, or herbal or plant material, or liquid or oil, however constituted, designed, intended, marketed, manufactured, or engineered, that contains any quantity of a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product.
- (B) Any vegetative material, or herbal or plant material, or liquid or oil, with packaging or labeling that indicates, suggests, or implies that the substance is a substitute for or otherwise mimics the pharmacological effects of marihuana (marijuana'), a controlled substance, or a controlled substance analogue as defined by section 481.002 of the Texas Health and Safety Code.
- (C) Any vegetative material, or herbal or plant material, or liquid or oil, sold with verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the substance that indicates, suggests, or implies that the substance mimics the pharmacological effects of marihuana (marijuana'), a controlled substance, or a controlled substance analogue as defined by section 481.002 of the Texas Health and Safety Code.
- (D) Any substance, material, compound, mixture, or preparation, whether described as tobacco, herbs, incense, potpourri, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked or ingested, which contains any quantity of a synthetic chemical substance, including its salts, isomers, and salts of isomers, listed by name in this section or contained within the following structural classes as defined in this section:

(1) WIN - 55, 212 - 2;

(2) Naphthoylindole: any compound structurally derived from 3-(1-naphthoyl)indole or 3-(2-naphthoyl)indole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N -methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

AM-1220;	JWH-015;	JWH-046;
AM-2201;	JW1-1-016;	JW1-1-047;
JWH-004;	JWH-018;	1WH-048;
JWH-007;	JWH-019;	JWH-049;
JWH-009;	JWH-020;	JW1-1-050;

JWH-073;	JWH-159;	JWH-242;
JWH-076;	JWH-164;	JWH-258;
JWH-079;	JWH-165;	JWH-259;
JWH-080;	JWH-166;	JWH-260;
JWH-081;	JWH-180;	JWH-262;
JWH-082;	JWH-181;	JWH-267;
JWH-083;	JWH-182;	JWH-386;
JWH-093;	JWH-189;	JWH-387;
JWH-094;	JWH-193;	JWH-394;
JWH-095;	JWH-198;	JWH-395;
JWH-096;	JWH-200;	JWH-397;
JWH-097;	JWH-210;	JWH-398;
JWH-098;	JWH-211;	JWH-399;
JWH-099;	JWH-212;	JWH-400;
JWH-100;	JWH-213;	JWH-412;
JWH-116;	JWH-234;	JWH-413;
JWH-122;	JWH-235;	and
JWH-148;	JW1-1-239;	JWH-414;
JWH-149;	JWH-240;	
JWH-153;	JWH-241;	

- (3) Naphthylmethylindole: any compound structurally derived from 1H-indol-3-yl-(1-naphthyl)methane or 1H-indol-3-yl-(2-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

DA/H-175;	JWH-192;	JWH-196;
JWH-184;	JWH-194;	JWH-197; and
JWH-185;	JWH-195;	JWH-199;

- (4) Naphthylindolecarboxamide: any compound structurally derived from N-(naphthalen-1-yl)-1H-indole-3-carboxamide or N-(naphthalen-2-yl)-1H-indole-3-carboxamide by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

MN-24 (Other name: NNEI);

Naphthoylpyrrole: any compound structurally derived from 3-(1-naphthoyl) pyrrole or 3-(2-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

JWH-030;	JWH-292;	JWH-365;
JWH-145;	JWH-293;	JWH-366;
JWH-146;	JWH-307;	JWH-367;
JWH-147;	JWH-308;	JWH-368;
JWH-150;	JWH-309;	JWH-369;
JWH-156;	JWH-346;	JWH-370;
JWH-243;	JWH-347;	JWH-371;
JWH-244;	JW1-1-348;	JWH-372;
JWH-245;	JWH-363;	JWH-373; and
JWH-246;	JWH-364;	JWH-392;

- (6) Naphthylmethylindene: any compound structurally derived from 1-(1-naphthylmethyl)indene or 1-(2-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent, including:

JWH-171;	JWH-173; and
JWH-172;	JWH-176;

- (7) Phenylacetylindole: any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent, including:

JWH-167;	JWH-208;	JWH-251;
JWH-203;	JWH-237;	JWH-252;
JWH-204;	JWH-248;	JWH-253;
JWH-205;	JWH-249;	JWH-302;
JWH-206;	JWH-250;	JWH-303;

JWH-305;  
JWH-306;  
JWH-311;

JWH-312;  
JWH-313;  
JWH-314; '

JWH-315; and  
RCS-8;

- (8) Benzoylindole: any compound structurally derived from 3-benzoylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent, including:

AM-630;  
AM-679;  
AM-694;  
AM-1241;

Pravadoline (Other  
name: WIN  
48,098); and  
RCS-4;

- (9) Adamantoylindole: any compound structurally derived from 3-(1-adamantoyl)indole or 3-(2-adamantoyl)indole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the adamantyl ring to any extent, including:

A13-001; and  
AM-1248;

- (10) Adamantylindolecarboxamide: any compound structurally derived from N-(adamantan-1-yl)-1H-indole-3-carboxamide or N-(adamantan-2-yl)-1H-indole-3-carboxamide by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the adamantyl ring to any extent, including:

APICA; and  
STS-135;

- (11) Adamantylindazolecarboxamide: any compound structurally derived from N-(adamantan-1-yl)-1H-indazole-3-carboxamide or N-(adamantan-2-yl)-1H-indazole-3-carboxamide by substitution at the 1-position nitrogen atom of the indazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl,

haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indazole ring to any extent, whether or not substituted in the adamantyl ring to any extent, including:

5-Fluoro AKB-48; and  
AKB-48;

- (12) Aminooxobutylindazolecarboxamide: any compound structurally derived from N-(1-amino-3-methyl-1-oxobutan-2-yl)-1H-indazole-3-carboxamide by substitution at the 1-position nitrogen atom of the indazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indazole ring to any extent, including:

AB-PINACA; and  
AB-FUBINACA;

- (13) Tetramethylcyclopropylindole: any compound structurally derived from 3-(2,2,3,3-tetramethylcyclopropyl)indole by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including:

A-834,735;	5-Bromo UR-144;	5-Fluoro UR-144
A-796,260;	5-Chloro UR-144;	(Other name: XLR-
AB-005;	and	I 1);
UR-144;		

- (14) Tetramethylcyclopropane-thiazole carboxamide: any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including:

A-836,339;





- (22) Quin<sup>o</sup>lin-8-yl -penty1-1H-indole-3-carboxylate, its optical positional, and geometric isomers salts and salts of isomers (also known as PB-22; QUPIC); and
- (23) N-(1-amino-3,3-dimethyl- -oxobutan-2-yl)-1-penty1-1H-indazole-3-carboxamide, its optical. positional, and geometric isomers, salts and salts of isomers (also known as ADB-PTNACA):
- (E) Any substance, whether described as tobacco, herbs, incense, potpourri, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked or ingested, which is sold in the same retail establishment or physical location as any ingestion device, sold under the following product or trade names:

*AK-47, Angry Birds, Bart Simpson, Bee, Bizarr() (Bizaro), Black Diamond, Black Lion, Bling Bling Monkey, Bob Marley, Bomb Marley, Buzz Juice, California Dreams, California Kronik, Caution, Cheshire Cat, Cloud 9 (Cloud Nine), Club Special, Code Black, Da Bomb, Dank, Darkness, Daze, Dead Man, Dead Man Walking, Diablo, Down to Earth Reggie, Down 2 Earth, Dreams, DZL (D-ZL), Fairly Legal, Fire, Flight Risk, Funky Green Stuff, Geeked Up, Get Real, Gorilla Dro, Green Giant, Herbal Gold, Herbal Mayhem, Hookah Blast, Hot Geisha Girl, I-Blown, Insane, Ironman, Jamaican Gold, Jazz, Joker, Jordan, K2 (K-2), Kick My Ass (KMA), King Gorilla, King Kong, Klimax, Kratom, Kush, LOL, Loopy, Mad Hatter, Mad Monkey, Mind Trip, Mojo Max, Mr. Big Shot, Mr. Happy, Mr. Nice Guy, Mr. Shamrocks, Mr. Sin, Mummy's Breath, Neutronium, New Joker, Ninja, Northern Lights, OMG, O.P.M.S. Kratom, Orgazmo, Phantont, Platinum XXX, Psycho, Pure Evil, Pure Fire, Purple Diesel, Red Dawn, Red Eye Jack Scooby Hydro, Scooby Snax, Sexy Monkey, Shaggy's Mix, Smacked, Smoking Santa, Smoking Santana, Space Cadet, Spike, Spong Bob, Stoopid, Super Man, Super Nova, Syn, Sync, The Darkness, The Hookah, The Incredible Hulk, The Ironman, Twilight, White Tiger, Wolf Pack, WTF, Zero Gravity, 24K California, 24K Monkey, 361 Degrees, 7H, or 7 Hells, regardless of any added flavorings.*

*Herbal incense* means aromatic plant material, whether referred to as potpourri or otherwise, that is distributed in a loose, leafy, powder or granular form or in a compressed block or blocks that can be crushed to result in a powder or granular form, and can be placed into a pipe, cigarette paper, or other drug paraphernalia for purposes of ingestion by smoking, inhaling or other method, regardless of how the substance is labeled or marketed, including, but not limited to, whether or not such product is labeled 'as not for human consumption.'

*Ingestion device* means equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing a prohibited substance 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.

*Prohibited substance* means a controlled substance, controlled substance analogue, dangerous drug, illicit synthetic drug, volatile chemical or any combination thereof.

*Volatile chemical* means any of the chemicals or an isomer of any of the chemicals listed in V.T.C.A., Health and Safety Code § 484.002.

**See. 131.01. Offenses.**

- (a) A person commits an offense if, with intent to acquire a prohibited substance, the person requests, commands or attempts to induce another to sell, donate or otherwise transfer or deliver a prohibited substance.
- (b) A person commits an offense if the person uses, possesses, provides, produces, manufactures, distributes, purchases markets or advertises for sale, barter, gives, publicly displays, sells or offers for sale, or purchases with the intent to provide, produce, manufacture, distribute, market or advertise for sale, barter, give, publicly display, sell or offer for sale any prohibited substance.

- (c) A person commits an offense if the person uses or possesses an ingestion device with the intent to inject, ingest, inhale or otherwise introduce into the human body a prohibited substance.
- (d) A person commits an offense if the person fails to publicly display or label herbal incense as required in section 66-58.

**Sec. 131.02. Public display and labeling of herbal incense.**

- (a) Herbal incense offered for sale to the public must be publicly displayed at all times through actual or representative packaging. If representative packages are displayed, one package of every available product by name and flavor shall be displayed. Both the front and back of packaging must be viewable by the public.
- (b) All herbal incense offered for sale to the public must include a label listing each active ingredient.

**Sec. 131.03. Penalty.**

- (a) Any violation of this article shall constitute a misdemeanor punishable, upon conviction, by a fine as provided in section 1-14. However, any conduct proscribed under this article which also constitutes an offense under state law shall not be prosecuted under this article, but shall be prosecuted pursuant to and punishable as provided by the applicable state law. An offense under this article is not a lesser included offense under V.T.C.A., Health and Safety Code §§ 481.001 et seq., 483.001 et seq. or 484.001 et seq.
- (b) In setting the amount of the penalty for violation of this article, the city council affirmatively finds that this article governs conduct involving trafficking in illegal and dangerous chemical substances that poses a serious threat to the public health and that it is therefore appropriate to proscribe the maximum fine as provided in section 1-14 for a violation of this article pursuant to the authority granted by V.T.C.A., Local Government Code § 54.001.
- (c) Each separate package, container, or other separate unit containing a prohibited substance shall constitute a separate and distinct offense. Each separate package, container, or other separate unit of an improperly displayed or labeled herbal incense shall constitute a separate and distinct offense.
- (d) Prosecution or conviction under this article is cumulative of and shall never be a bar to any other civil or administrative remedy provided or allowed by law.

**Sec. 131.04. Seizure.**

Any product or substance possessed, provided, sold, bartered, produced, manufactured, distributed, or offered, displayed, marketed or advertised for sale or purchased with the intent to provide, sell, barter, produce, manufacture, or distribute, or to offer, display, market or advertise for sale, in violation of any provision of section 66-57, may be seized by any peace officer. Such product or substance may be destroyed as authorized by state law after its use for evidentiary purposes is no longer required.

**Sec. 131.05. - Prosecution procedures and defenses.**

- (a) *Required.* A person may not be convicted under subsection 66-57(a) on the uncorroborated testimony of the person allegedly solicited, unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.
- (b) *No defense.* It is no defense to prosecution under this article that:
  - (1) No monetary or other consideration was tendered to the person solicited; or
  - (2) The person solicited was unable or unwilling to transfer or deliver a prohibited substance.
- (c) *Defenses and Exceptions*
  - (1) It is an affirmative defense to any prosecution under subsection 66-57(a) that:
    - a. The solicitation is made in furtherance of a transaction that would not constitute a violation of any applicable law: or
    - b. The solicitation is made by a peace officer or federal law enforcement officer in the lawful discharge of his duties or by a law enforcement agent acting in the lawful discharge of an official duty.
  - (2) It is an affirmative defense for a person charged with an offense for possession or use of a prohibited substance 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.
  - (3) It is an affirmative defense that the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.
  - (4) It is an affirmative defense for a person charged with an offense for possession or use of an a prohibited substance or ingestion device if the prohibited substance or ingestion device was in the possession of or being used by a

governmental entity for a health purpose, research and education, or a similar program.

- (<sup>5</sup>) It is an exception to prosecution that a violation of this article is expressly permitted by state or federal law.

**Section 3:** Any person who fails to comply with any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4:** All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance. 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 5:** If any provision, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or the set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.

**Section 6:** This ordinance shall take effect from and after ten (10) days from its passage by the City Council. The City Secretary is hereby directed to give notice hereof by causing the caption of this ordinance to be published in the official newspaper of the City of Anahuac at least twice within ten (10) days after passage of this ordinance.

INTRODUCED, READ and PASSED, by the affirmative vote of the City Council of the City of Anahuac this the 9<sup>th</sup> day of March, 2015.

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Cheryl Sanders, Mayor

ATTEST:

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Julie Harvill, City Secretary

