

ARTICLE VI. ILLEGAL SMOKING MATERIALS

Sec. 34-110. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings.

Person shall mean an individual, a group of two or more individuals, proprietorship, corporation, partnership, association, wholesaler, retailer, or any licensed or unlicensed business.

Illegal smoking material shall mean any plant or other substance, natural or synthetic, whether described as tobacco, herbs, incense, spice or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

- (1) ~~Salvia divinorum or salvinorin A—all parts of the plant currently 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) ~~2[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;~~
- (3) ~~(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);~~
- (4) ~~1-pentyl-3-(1-naphthyl)indole (also known as JWH-018);~~
- (5) ~~1-butyl-3-(1-naphthyl)indole (also known as JWH-073); or~~
- (6) ~~1-pentyl-3-(4-methoxynaphthyl)indole (also known as JWH-081).~~

Products containing some or all of the above substances are potentially marketed under, but not limited to the following chemical names:

~~"K-2," "K-2 Summit," "K-2 Sex," "Genie," "Descents," "Zohai," "Sage," "Spice," "Sence," "Smoke," "Skunk," "KO nock-out 2," "Spice Gold," "Spice Diamond," "Yucatan Fire," "Solar Flare," "Pep Spice," "Fire N' Ice," "Blaze," "Red X Dawn," "Salvia Divinorum" and "Salvoria A".~~

Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this article, regardless of whether they are marketed under alternative names.

Illegal 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, but is not limited to the following:

- (1) ~~A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;~~
- (2) ~~A water pipe;~~
- (3) ~~A carburation tube or device;~~
- (4) ~~A smoking or carburation mask;~~
- (5) ~~A chamber pipe;~~

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- (6) ~~— A carburetor pipe;~~
 - (7) ~~— An electric pipe;~~
 - (8) ~~— An air-driven pipe;~~
 - (9) ~~— A chillum;~~
 - (10) ~~— A bong; or~~
 - (11) ~~— An ice pipe or chiller.~~

~~(Ord. No. 10-H-37, Art. I, 12-14-2010)~~

~~Sec. 34-111. Purpose.~~

~~The purpose of this article is to prohibit the manufacture, purchase, sale, offer for sale, delivery, or gift of illegal smoking materials as defined herein within the corporate limits of the City of Schertz, and to prohibit the possession or use of illegal smoking materials and illegal smoking material paraphernalia within the corporate limits of the City of Schertz. Any form of delivery, including without limitation a simple gift, constitutes a violation of this article by all parties involved.~~

~~(Ord. No. 10-H-37, Art. I, 12-14-2010)~~

~~Sec. 34-112. Manufacture, display, purchase, sell, deliver, offer, barter, or give.~~

~~It shall be unlawful for any person to manufacture, purchase, sell, offer for sale, barter, publicly display, deliver, or to give any illegal smoking material to any person within the corporate limits of the City of Schertz.~~

~~(Ord. No. 10-H-37, Art. I, 12-14-2010)~~

~~Sec. 34-113. Possession or use of illegal smoking materials.~~

~~It shall be unlawful for any person to have in his or her possession, or to use, inject, ingest, inhale, or otherwise introduce into the human body, illegal smoking materials within the corporate limits of the City of Schertz.~~

~~(Ord. No. 10-H-37, Art. I, 12-14-2010)~~

~~Sec. 34-114. Possession or use of illegal smoking material paraphernalia.~~

~~It shall be unlawful for any person to have in his or her possession any illegal smoking material paraphernalia with the intent to use it, to ingest, inhale or otherwise consume or introduce into the human body illegal smoking material. It is a violation of this section if a person is found in possession of illegal smoking material paraphernalia and appropriate forensic testing is done by the city or at its request on the paraphernalia showing traces of illegal smoking material present on the paraphernalia.~~

~~(Ord. No. 10-H-37, Art. I, 12-14-2010)~~

~~Sec. 34-115. Affirmative defenses to prosecution.~~

~~It shall be an affirmative defense to prosecution for a violation of this article:~~

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- (a) ~~If the use of the illegal 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) ~~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.~~
 - (c) ~~If the sale or possession of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.~~

~~(Ord. No. 10 H 37, Art. I, 12-14-2010)~~

Sec. 34-116. Penalties.

- (a) ~~Any person, firm or corporation violating a provision of this article shall be guilty of a Class C misdemeanor and shall, upon conviction, be subject to a fine of not less than \$100.00, nor more than \$2,000.00.~~
- (b) ~~In addition to the fine, the City of Schertz shall be entitled to restitution for expenses incurred by it in connection with the testing of substances related to the fine. The restitution under this subsection (b) and fine under (a) above together shall not exceed \$2,000.00.~~
- (c) ~~A violation constitutes a separate offense for each regulated item involved.~~
- (d) ~~A violation constitutes a separate offense for each day a violation continues.~~
- (e) ~~The penal provisions imposed under this article shall not preclude the City of Schertz from filing a civil suit to enjoin the violation of this article. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.~~

~~(Ord. No. 10 H 37, Art. I, 12-14-2010)~~

Secs. 34-117—34-120. Reserved.