

Chapter 15

OFFENSES--MISCELLANEOUS

- Art. I. In General, §§ 15-1—15-25**
- Art. II. Prostitution and Related Offenses, §§ 15-26—15-45**
- Art. III. Personal Property Stored on Public Property, §§ 15-46—15-49**
- Art. IV. Synthetic Marijuana and Related Substances, §§ 15-50—15-52**

ARTICLE I. IN GENERAL

Sec. 15-1. Nuisances generally.

If the existence of a nuisance, as defined in state law, is alleged to have occurred in the city, the Municipal Court shall have jurisdiction to hear and determine the question of the existence of such nuisance and, if found to exist, to order its abatement. If any person continues to maintain a nuisance after such order, he or she shall be guilty of a misdemeanor.

Sec. 15-2. Garage and similar sales.

- (a) It shall be unlawful for any person to operate or conduct any sale, of the type commonly known as a yard sale, rummage sale, or garage sale, within the city, without first obtaining a permit to do so from the City Clerk. Such permit shall authorize the conduct of the sale for not more than two days.
- (b) Not more than one permit shall be issued under this section to the same household during any one year, it being the intent of the Council that any household desiring to have more than one sale during the year, be required to obtain an appropriate license under Chapter 12 of this Code.

Sec. 15-3. Molesting, interfering with, etc., city officers or employees.

It shall be unlawful for any person to assail, strike, molest, abuse, interfere with or interrupt any officer or employee of the city or any other person designated by the City Council to perform any duty, while such officer, employee or other person is engaged in the performance of his duties.

Sec. 15-4. Discharging air guns, or firearms.

No person shall shoot or otherwise discharge any air gun, cannon, pistol, rifle, or firearm of any kind within the city, except as provided for by special permission of the City Council, or in defense of himself, or his property, or in the discharge of his official duties.

Sec. 15-5. Defacing, damaging, etc., property generally.

No person shall write, paint, draw, cut, or carve any letter, word, device, or figure on, or in any manner mutilate, deface, injure, or destroy, any building, monument, fence, plant, or other public or private property in the city without permission of the owner.

Sec. 15-6. Unlawful trimming, cutting or removal of trees.

- (a) No person shall trim, cut, or remove any tree standing by the sidewalks, or in any part of the streets of the city, without first obtaining permission from the City Council.
- (b) It shall be unlawful for any person to trim, cut, or remove any limb from any shade tree on any street, sidewalk, or private or public ground in the city for the purpose of carrying any transmission line, telephone line, or any other line through or over such tree, except by special permit issued by the City Council.

Sec. 15-7. Obstructing drainage ditches; duties of property owners as to drainage ditches and pipes.

- (a) It shall be unlawful for any person to fill up or put any obstruction in any ditch or trench cut by order

of the City Council for the free passage of water through public property or right-of-way.

- (b) All owners and occupants of property in the city shall keep open all drainage ditches and pipes and, when necessary, put in new ones to ensure proper drainage of such property. If, after notice from the City Manager or his or her designee, any person shall neglect or refuse to comply with the terms of this subsection, the work shall be done by city personnel, upon direction of the City Manager, at the owner's expense.

Sec. 15-8. Disorderly conduct.

- (a) The following described acts shall be deemed disorderly conduct, and it shall be unlawful for any person to do or engage in any of the said following acts within the incorporated limits of the City of Forsyth:
 - (1) Any violent acts whereby any person is placed in danger of or in fear of his or her safety, life, limb, or health.
 - (2) Any violent acts whereby public property or property of another person is placed in danger of being destroyed or damaged.
 - (3) Any acts which shall endanger or interfere with the lawful pursuits of another person by threats of bodily harm.
 - (4) Any acts which shall cause, provoke or engage in any fight, brawl, or riotous conduct, so as to endanger the life, limb, health, or property of another person or of public property.
 - (5) Any acts by which any person or persons shall assemble or congregate with another person or more and cause, provoke, or engage in any fight or brawl.
 - (6) Any acts by which any person or persons shall assemble or congregate with another person or more, and engage or attempt to engage in gambling.
 - (7) Any acts by which any person or persons shall obtain or attempt to obtain money or other valuable things from another person or more by a fraudulent scheme, trick, or device.
 - (8) Any acts by which any person or persons utter, in a public place or any place open to the public, any obscene words or epithets.
 - (9) Any acts by which any person or persons shall congregate with another or others in or on any public way or the path to and from any business or other facility within the city, so as to halt the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by a peace officer or other person having authority.
 - (10) Any acts by which any person or persons damage or disturb public or private property in such as manner as to create a hazardous, unhealthy, or dangerous condition.
 - (11) Any acts by which any person or persons appear in public in an intoxicated state or condition, whether said intoxication is by alcohol and/or drugs.
 - (12) Any acts by which any person or persons exposes any part of his or her body, which is typically covered by clothing, in an indecent or rude manner.
 - (13) Any acts by which any person or persons fails or refuses to remove himself or herself from the

private property of another when requested to do so by the owner or occupant(s) thereof.

- (14) Any acts by which any person or persons alter the price tag or other price marking of goods or merchandise of any store or retail establishment, wrongfully causing the amount paid to be less than the merchant's stated price for the merchandise or property if such merchandise or property is valued at \$100.00 or less.
- (b) Each day that the disorderly conduct continues shall constitute a new and separate offense and the judges of the Municipal Court of Forsyth may impose such sentence as the circumstances may require pursuant to the Charter of the City of Forsyth and Georgia law.
- (c) Any person who pleads guilty, nolo contendere, or is convicted of violating any of the provisions of this section, shall be punished as provided in the Charter of the City of Forsyth, or such other applicable law of the State of Georgia. In addition to any fine and/or jail sentence, a judge of the Municipal Court may impose community service.

Sec. 15-9. Interfering with, injuring or tampering with City of Forsyth equipment and public utility equipment.

- (a) It shall be unlawful for any person to:
 - (1) Damage or destroy any meter, pipe, conduit, wire, line, post, lamp, or other apparatus belonging to the City of Forsyth or any public utility and related to the manufacture, sale, or distribution of electricity, gas, water, telephone, cable television, fiber optic lines, or other public services intentionally and without authority.
 - (2) Prevent a meter belonging to the City of Forsyth or any public utility from properly registering the quantity of such service supplied intentionally and without authority.
 - (3) Interfere with the proper action of the city in any way.
 - (4) Divert any services of the city intentionally.
 - (5) Use or cause to be used without the consent of the city, any service manufactured, sold, or distributed by the City of Forsyth or any public utility, including but not limited to electricity, gas, water, telephone, cable television, fiber optic, or other public services intentionally and without authority.
- (b) Where there is no evidence to the contrary, any person performing any of the illegal acts set forth in subsection (a) of this Code section and any person with knowledge of such violation who receives the benefit of such service without proper charge, as a result of the improper action shall be presumed to be responsible for the act of injuring, tampering, interference.
- (c) A violation of this section shall be punished by a fine not to exceed \$1,000.00, or imprisonment at such place as the city may designate for not more than 60 days, or both. Each day any violation of this section shall continue shall constitute a separate offense.

Sec. 15-10. Hours of operation of public parks and recreational facilities.

The public parks, recreational centers and the building and grounds associated with them, shall be open daily to the public during the hours posted at each site. The City Council shall set operating hours for public

parks, recreational centers, and the buildings and grounds associated with them by resolution as needed. It shall be unlawful for any person or persons other than city personnel conducting city business therein to occupy or be present in such parks during any non-operating hours, except by the prior express approval of the City Council.

Sec. 15-11. Weeds and undergrowth.

- (a) It shall be unlawful for any owner or resident of any lot, area, or place located within this municipality to permit any weeds, grass, or other deleterious flora to obtain a height exceeding 10 inches on such property. For the purpose of this Code section, the terms “weeds” and “deleterious flora” shall be deemed to mean jimson, burdock, ragweed, thistle, cocklebur, dandelion, or other similar growth.
- (b) It shall be the duty of the City Manager, or his or her designee, to notify in writing the owner or occupant of any premises upon which weeds, grass, or other deleterious flora are permitted to grow in violation of the provisions of this section, that such growth must be removed and cut within seven days from the date of the notice. The notice shall be by registered mail, addressed to the owner or occupant, at the last known address, by statutory overnight delivery, or by hand-delivery by an officer of the Forsyth Police Department.
- (c) Upon the failure, neglect, or refusal of any owner or occupant so notified to remove and cut such weeds, grass, or deleterious flora within the designated time period, the City Manager or his or her designee is authorized and empowered to provide for the removal and cutting of such growth by or for the city. The actual cost of such removal shall be assessed against the property owner upon whose premises the work is done, and in the event the assessment for such charges remains unpaid for 30 days after it has been rendered, shall become a lien upon the premises enforceable in the same manner as provided for the collection of unpaid taxes.

Secs. 15-12. Trespassing.

- (a) A person commits a trespass when he unlawfully enters or remains in or upon premises of another person. It is unlawful for any person:
 - (1) To trespass intentionally on the premises of another person, and intentionally and without regard for the rights of the owner or lawful occupant to use, be in or upon, or occupy such premises without authority to do so from the owner or lawful occupant thereof.
 - (2) To trespass intentionally on the premises of another person, when a sign or other device forbidding entry has been posted upon such premises, and intentionally and without regard for the rights of the owner or lawful occupant to use, be in or upon, occupy or cross such premises without authority to do so from the owner or lawful occupant thereof.
 - (3) To trespass and commit depredations upon the premises or property of another person.
 - (4) Being lawfully upon the premises of another person, intentionally or willfully and without regard for the rights of the owner or lawful occupant to remain upon or refuse to leave such premises within a reasonable time after notice to quit the same.
- (b) A person commits a trespass when he unlawfully enters or remains in or upon a motor vehicle, trailer or mobile home of another person. It is unlawful for any person;
 - (1) To intentionally enter, use or occupy a motor vehicle, trailer or mobile home without authority to

do so from the owner or lawful occupant thereof.

- (2) To trespass and cut, break, destroy, mar or deface, or remove any door, window, or other part or accessory of any motor vehicle, trailer or mobile home without authority to do so from the owner or lawful occupant thereof.
- (c) The provisions of this section shall not apply to police officers, firemen, building inspectors, City employees or other federal, state or local governmental employees in the lawful performance of their duties. The provisions of Section 15-12(a)(2) shall not apply to persons making deliveries of newspapers, periodicals, publications, mail or merchandise, to persons employed to read water, gas or electricity meters, to persons collecting trash or garbage.
- (d) A sign forbidding entry, for the purposes of this section, shall be sufficient when the same is legible, contains the words "no trespassing" or other express statement forbidding entry, and is posted in a place where it is plainly visible; provided that any such sign posted on the property of a municipal or quasi-municipal corporation shall contain the name or official symbol of such municipal or quasi-municipal corporation.

15-13—15-25. Reserved.

ARTICLE II. PROSTITUTION AND RELATED OFFENSES

Sec. 15-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

House of prostitution. Any place where prostitution or promotion is carried on by a person under the control, management, or supervision of another.

Known prostitute. A person who, within one year prior to the date of the suspected violation of this section has, within the knowledge of the arresting officer, been convicted of violating any statute or ordinance of any jurisdiction which makes soliciting for the purpose of prostitution unlawful.

Prostitute. A person who engages in sexual conduct with another person for money or some other thing of value.

Prostitution. The activity of a person engaging or agreeing or offering to engage in sexual conduct with another person for money or some other thing of value.

Public place. Any place where the public or any substantial group thereof has access.

Sexual conduct. Includes but is not limited to the following activities: sexual intercourse; sodomy; cunnilingus; fellatio; masturbation; and sadistic, masochistic, or coprophilic sexual activity.

Sec. 15-27. Soliciting by prostitutes.

- (a) It shall be unlawful for any person to be present in a public place in a manner and under circumstances

manifesting a purpose of being hired to commit an act of prostitution. Among the circumstances which may be considered in determining whether such a purpose is manifested are:

- (1) That such person is a known prostitute.
- (2) That such person repeatedly beckons to, stops or attempts to stop or engage passersby in conversation.

No arrest shall be made for a violation of this subsection, unless the arresting officer first affords the suspended person an opportunity to explain his or her conduct and no conviction shall result, if it appears at trial that such explanation was true and disclosed a lawful purpose.

- (b) It shall be unlawful for any person to make known or attempt to make known, by any means, his or her desire to be hired to commit an act of prostitution.

Sec. 15-28. Patronizing house of prostitution or soliciting a prostitute.

- (a) It shall be unlawful for any person to enter or remain in a house of prostitution for the purpose of hiring a prostitute to engage in an act of prostitution with himself or herself or with another person.
- (b) It shall be unlawful for any person to solicit, or attempt to solicit, another to engage in an act of prostitution with himself or herself or with another person.

Sec. 15-29. Promoting prostitution.

It shall be unlawful for any person to knowingly promote prostitution. The following activities shall constitute a violation of this section.

- (a) Voluntarily residing in a house of prostitution.
- (b) Owning, controlling, managing, supervising, or otherwise keeping, alone or in association with others, a house of prostitution.
- (c) Encouraging, inducting or otherwise purposely causing another to become or remain a prostitute or to reside in a house of prostitution.
- (d) Transporting a person into or within this city with the purpose of promoting that person's engaging in prostitution, or procuring or paying for transportation with that purpose.

Sec. 15-30. Injunction and abatement proceedings when article violated.

- (a) Any place or service existing or operating within the city which aids or facilitates the coming together of a prostitute and patron is declared to be a public nuisance and may be enjoined and abated as provided in this section.
- (b) The City Attorney may bring an action in the name of the city to perpetually enjoin such place or service and the person owning, controlling, leasing, managing, supervising, or otherwise keeping, along or in association with others, such place or service.
- (c) In action pursuant to this section, the court may issue a preliminary injunction, if the evidence shows

the existence of such nuisance. Three days' notice, in writing, of the hearing on the application shall be given to the defendant, or his or her representative.

- (d) Within 10 days after the granting of a preliminary injunction under this section, a trial shall be held to determine if a permanent injunction should be granted. If a permanent injunction is granted, the court may, at the same time, issue an order of abatement directing that all fixtures, furniture or movable property used in such place of service be removed and sold in the same manner as provided for the sale of chattels under execution. The order of abatement may also provide for the closing of such place of service for a period of one year, unless sooner released. The proceeds of the sale shall be applied towards payment of the costs of the action and abatement and the balance, if any, shall be paid to the defendant.
- (e) If the owner or his or her representative appears and pays the full costs of the proceedings pursuant to this section and files a bond in such amount as the court shall direct, the court may, if satisfied of his good faith, cause the injunction or order of abatement, or both, to be removed, under the condition that the owner immediately abates the nuisance.
- (f) In case of the violation of any injunction or order of abatement granted pursuant to this section, the court may summarily try and punish the violator for contempt.

Sec. 15-31. Prohibition of certain types of nude or adult entertainment, attire, and conduct in establishments where alcoholic beverages are consumed on the premises.

- (a) As used in this section, the following words shall have the meaning as set forth below unless otherwise required by context:
 - (1) *Alcoholic beverages.* All alcohol, distilled spirits, liquor, beer, malt beverages, and wine.
 - (2) *Business establishment.* A business within the city where alcoholic beverages are offered for sale for consumption on the premises or are consumed on the premises.
 - (3) *Live.* Any activity or entertainment which is carried on by actual living persons in the physical presence of patrons.
 - (4) *Live entertainment.* Entertainment for the benefit of patrons which is carried on in the actual physical presence of such patrons, including, but not limited to dancing.
 - (5) *Mainstream performance house.* A theater, concert hall, auditorium, or similar establishment which regularly features live performances, such as plays or concerts which are not distinguished or characterized by an emphasis on the depiction, description, display, or the featuring of sexual activities and where such depiction, if any, is only incidental to the primary purpose of any performance.
 - (6) *Person.* A human being.
 - (7) *Premises.* The establishment, whether room, shop, or building wherein alcoholic beverages are sold or consumed, including the sidewalk serving area or outside, open air, or patio-type serving area on the private property of an establishment.
 - (8) *Specified anatomical areas.* Any of the following:
 - a. Less than completely and opaquely covered human genitals or pubic region; cleft of the

buttocks; or any portion of the female breast encompassed within an area falling below the horizontal line one would have to draw to intercept a point above the top of the areola, or any portion of the areola, or any simulation thereof. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed.

- b. Human male genitalia in a discernible turgid state, even if completely and opaquely covered.

(9) *Specified sexual activities.* Any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.
- b. Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy.
- c. Masturbation, actual or simulated;
- d. The displaying of the male or female pubic hair, anus, vulva, or genitals.
- e. Excretory functions as part of, or in connection with, any of the activities set forth in subsections a-d above.

(b) The following types of entertainment, attire, and conduct are prohibited upon any premises where alcoholic beverages are offered for sale for consumption on the premises, or are consumed on the premises within the city limits.

(1) The employment or use of any person live, in any capacity, in the sale or service of alcoholic beverages or food while such person is unclothed or in such attire, costume or clothing, as to expose any portion of his or her specified anatomical areas.

(2) Live entertainment where any person appears unclothed, or in such attire, costume, or clothing as to expose any portion of his or her specified anatomical areas, or where such person performs acts of specified sexual activities or acts which simulate specified sexual activities.

(3) The holding, promotion, sponsoring, or allowance of any contest, promotion, special night, event or any other activity where live patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct proscribed in subsections (1) and (2) above.

(4) Nothing contained in this section shall apply to the normal operations of any mainstream performance house or museum which derives less than 20 percent of its gross annual income from the sale of alcoholic beverages.

(c) Penalties.

(1) Violations of this code section shall be punishable in the Municipal Court of the city as provided under the general penalty provisions of the City Charter and Code.

(2) It shall be unlawful for any business or property owner to permit any conduct prohibited in subsection (b) above which he knows or has reasonable cause to know is taking place on the premises of his or her business or property. Any such conduct by any person shall be a violation of this Code and shall be punishable in the Municipal Court of the city as provided under the general penalty provisions of the City Charter and Code.

Sec. 15-32. Prohibition of certain types of movie theaters, movie houses, and movie rental businesses.

- (a) As used in this section, the following words shall have the meaning as set forth below unless otherwise required by context:
- (1) *Adult movie house or adult movie theater or adult movie rental business.* Any movie house or movie theater, or movie rental business, which on a regular, continuing basis shows, sells, rents, loans, or otherwise furnishes or disseminates films and movies rated “X” by the Motion Picture Association of America, or which presents, sells, rents, loans, or otherwise furnishes on a regular, continuing basis so-called “adult films” depicting sexual conduct.
 - (2) *Premises.* The entire business establishment, whether wholly or partially used for an adult movie house, adult movie theater, or adult movie rental business.
 - (3) *Sexual conduct.* Acts of masturbation, sodomy, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or breasts, if female, which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominately appeals to the basic interest in nudity or sex.
- (b) The following types of conduct are prohibited upon any premises within the City of Forsyth:
- (1) The employment or use of any person under 18 years of age in any capacity in any adult movie house, adult movie theater, or adult movie rental business, whether for the sale, loan, rental, distribution, exhibition, or otherwise furnishing or disseminating adult films.
 - (2) The allowing by any proprietor of an adult movie house, adult movie theater, or adult movie rental business of any person under 18 years of age within such premises.
- (c) Any violation of this code section shall be punishable in the Municipal Court as provided under the general penalty provisions of the City Charter and City Code.

Secs. 15-33—15-45. Reserved.

ARTICLE III. PERSONAL PROPERTY STORED ON PUBLIC PROPERTY

Sec. 15-46. Prohibited.

No person shall store, place, or allow to remain, on the public streets, alleys, or other public places in the city, any personal property, other than motor vehicles in designated parking areas, subject to appropriate parking regulations, which may be established by the city. A violation of this section is hereby declared to be a nuisance.

Sec. 15-47. Removal and impoundment.

The Chief of Police is authorized to remove or cause to be removed any personal property found on the public streets, alleys, or other public places within the city in violation of Section 15-46, and to store and impound the same until the expenses or removal and storage are paid by the owner of such property. Such expenses shall be paid by the owner of the property and may be assessed against the owner and collected as city taxes are assessed and collected.

Sec. 15-48. Sale or other disposition generally.

If the owner of any personal property under this article does not appear to redeem such property or cannot be located, by the exercise of reasonable diligence, within thirty (30) days after such property was impounded, the chief of police may sell or otherwise dispose of the same after first giving the opportunity for competitive bidding. Notice by certified mail shall be sent, at least ten (10) days prior to such disposition, to the owner of such property. If such address cannot be ascertained using reasonable diligence, notice shall not be required.

Sec. 15-49. Disposition of proceeds of sale.

The proceeds of any sale pursuant to Section 15-48 shall be applied first to pay the expenses incurred in connection therewith, and the balance, if any, shall be paid into the general fund of the city.

ARTICLE IV. SYNTHETIC MARIJUANA AND RELATED SUBSTANCES.

Sec. 15-50. Definitions.

The following words and phrases as used in this section shall have the meanings as set forth in this subsection.

Person. An individual, corporation, partnership, wholesaler, retailer, or any licensed or unlicensed business.

Illegal Smoking Product. Any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, regardless of whether the substance is marked for the purpose of being smoked, which includes any one or more of the following substances or chemicals:

- (a) *Salvinorin A:* Contained within the *Salvia Divinorum* plant, whether growing or not; or possessed as an extract, compound, manufacture, derivative, mixture, or preparation of such plant; or
- (b) *2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methylcycatan-2-yl) phenol* (also known as CP 47, 497) and homologues; or
- (c) *1-Pentyl-3-(1-naphthoyl) indole* (also known as JWH-018); or *Butyl-3-(1-naphthoyl) indole* (also known as JWH-073); or
- (d) Any product sold, distributed or possessed in the form of incense or herbal smoking blends under the names such as “K-2,” “K-2 Summit,” “K-2 Sex,” “Genie,” “Spice,” “Dascents,” “Zohai,” “Sage,” “Pep Spice,” “Solar Flare,” “K-O Knockout 2,” “Spice Gold,” “Spice Diamond,” “Spice Cannabinoid,” “Yucantan Fire,” “Fire N Ice,” “Salvia Divinorum,” “Bath Salts,” “Blizzard,” “Blue Silk,” “Charge+,” “Ivory Snow,” “Ivory Wave,” “Ocean Burst,” “Pure Ivory,” “Purple Wave,” “Snow Leopard,” “Stardust,” “Vanilla Sky,” “White Dove,” “White Knight,” and “White Lightning,” or related products or chemicals which when ingested produce intoxication effects similar to marijuana and/or methamphetamine.

Ingestion Device. Equipment, 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 metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or puncture metal bowl; a water pipe; a carburetion tube or device; a smoking or carburetion mask; a chamber pipe; a carburetor pipe; an electric pipe; an air-driven pipe; a chillum; a bong; or an ice pipe or chiller.

Sec. 50-51. Violations and penalty.

- (a) It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any illegal smoking product.
- (b) It shall be unlawful for any person to use or possess an ingesting device with the intent to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.
- (c) Any person, firm or corporation found to be violating any term or provision of this ordinance shall be subject, upon conviction thereof, to punishment not exceeding a fine of \$1000.00 or imprisonment for not more than six months, or both such fine and imprisonment. Each day a violation continues shall constitute a specific separate offense.

Sec. 50-52. Affirmative defenses.

- (a) It shall be an affirmative defense for a person charged with an offense for possession or use of an illegal smoking product 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.
- (b) It shall be a primary affirmative defense that the sale or possession by a person of Salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose.