1st Reg 8/16

COUNCIL COPY

FINANCE COMMITTEE

10-041-O

ORDINANCE NO. 10045

AN ORDINANCE ADDING A NEW SECTION 34-42 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE PROHIBITION OF SYNTHETIC CANNABINOIDS.

BY COUNCILOR FEDORA:

The city of Duluth does ordain:

Section 1. That Chapter 34 of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 34-42 which reads as follows:

Sec. 34-42. Synthetic Cannabinoids Prohibited.

(a) Definition. For purposes of this section, "synthetic cannibinoid" shall mean:

(1) A synthetic equivalent of the substance contained in the Cannabis plant, or in the resinous extractives of the genus Cannibis, or a synthetic substance, derivative, or its isomers with similar chemical structure or pharmacological activity such as the following:

(A) 1-Pentyl-3-(1-naphthoyl)indole; some trade or other names; also known as JWH-018;

(B) 1-Butyl-3-(1-naphthoyl)indole; some trade or other names; also known as JWH-073;

(C) Phenol, CP 47, 497 and homologues, or 2-[(1R,3S)]-3-[hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain n=5, and homologues where side chain n=4, 6, or 7;

(D) Any similar structural analogs;

(2) Products, by whatever trade name, that are treated, sprayed, or saturated with one or more of the above chemicals. Some currently marketed products containing synthetic cannabinoids identified in subdivision (1) include K2, Spice, Mojo, Smoke, Genie, Yucatan Fire, Diamond Spice, Red Dragon Smoke, Skunk, K2 Summit, and Pandora Potpourri;

3M

(b) Prohibited Acts. No person shall use, possess, purchase, sell, give away, barter, exchange, dispense, deliver, distribute or manufacture any synthetic cannabinoid, as defined in Section 34-42, within the city;

(c) Exceptions. Acts otherwise prohibited under this Chapter shall not be unlawful if performed by or under the direction of a licensed physician, dentist, or other medical health professional authorized to direct or prescribe such acts.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 3, 2010)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and Stauber -- 8

Nays: None -- 0

Abstention: President Anderson -- 1

Passed August 30, 2010
Approved August 30, 2010

ATTEST:

JEFFREY J. COX, City Clerk

DON NESS, Mayor

Approved as to form:

Attorney

CCREQ/ATTY TF/GBJ:cjk 8/6/2010

STATEMENT OF PURPOSE: This ordinance adds a new Section 34-42 to the Duluth City Code, 1959, as amended, regarding the prohibition of synthetic cannabinoids.

Preliminary studies indicate that the three synthetic cannibinoid substances, commonly known as K2, spice or synthetic marijuana, which are unregulated in Minnesota, are between 3 and 100 times more potent than THC, the active ingredient in marijuana. As there is a growing use of unregulated synthetic cannabinoids within the State and City, and these substances are currently available for over the counter purchase within the City causing a health, safety and general welfare concern for the citizens of Duluth, this Ordinance seeks to prohibit the sale and use of synthetic cannibinoids within the City.

First reading 5-28-13

COUNCIL COPY

PERSONNEL COMMITTEE

13-039-O REPLACEMENT

ORDINANCE NO. 10231

AN ORDINANCE AMENDING THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING CHAPTER 5 ADDING A NEW ARTICLE VII REGARDING SYNTHETIC DRUG ESTABLISHMENTS.

BY COUNCILORS GARDNER AND KRUG:

The city of Duluth does ordain:

Section 1. That Chapter 5 of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Article VII as follows:

Article VII. Synthetic Drug Establishments.

Sec. 5-43. Findings of fact and statement of purpose.

(a) The Duluth city council finds the following facts to exist:

(1) Synthetic drugs are commonly marketed as a safe and legal alternative to marijuana or other controlled substances;

(2) Ingestion of synthetic drugs has been shown to produce dangerous side effects such as headaches, agitation, nausea, vomiting, hallucinations, loss of consciousness, elevated blood pressure, tremors, seizures, addiction, paranoid behavior, anxiety, increased heart rate, and even death;

(3) The Duluth police department has advised the city council of a significant increase in the use of synthetic drugs within the city and the manufacture and sale of synthetic drugs is negatively affecting the health, safety, and welfare of the citizens of Duluth;

(4) Due to the manner in which these substances are marketed, the manufacture and sale of synthetic drugs is, purportedly, not currently regulated by the federal drug administration;

(5) Due to the ease of making slight molecular alterations to chemical compounds, law enforcement agencies have

found it difficult to bring criminal charges against manufacturers and sellers of synthetic drug products;

(6) The purpose of this Article is not to condone illegal activity nor is it to legitimize activity that may now or in the future be considered illegal activity under state or federal laws;

(7) Synthetic drugs are currently being sold as legal products without even the basic regulation and licensing requirements that many other businesses have within the city.

Sec. 5-44. Definitions.

For the purposes of this Article, the following words and phrases shall have the meaning hereinafter ascribed to them:

(a) Synthetic drug. The term synthetic drug means one or more of the following:

(1) A substance that a reasonable person would believe is a synthetic drug;

(2) A substance that a reasonable person would believe is being purchased or sold as a synthetic drug; or

(3) A substance that a person knows or should have known was intended to be consumed by injection, inhalation, ingestion, or any other immediate means, and consumption was intended to cause or simulate a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance on Schedule 1. Synthetic drug does not mean food and drug ingredients, alcohol, legend drugs, tobacco, or dietary supplements;

(b) Synthetic drug establishment. Synthetic drug establishment means any business establishment where any person

engages in the sale of synthetic drugs.

Sec. 5-45. License required.

No person shall engage in the business of operating a synthetic drug establishment either exclusively or in connection with any other business enterprise without first obtaining a license for each synthetic drug establishment.

Sec. 5-46. Application for license.

Application for a synthetic drug establishment license shall be made to the city clerk on forms supplied by the city containing the following information:

(a) A description of the business;

(b) A description of the location of the premises to be licensed;

(e) The full names and addresses of the property owner, business owner, lessee and manager, operator and the date of birth of each;

(d) If applicant is a partnership, the names and residence addresses of each of the partners including limited partners, and the address of the partnership itself, if different from the address of the synthetic drug establishment; and

(f) Whether any of the aforementioned individuals have ever been convicted of any crime or offense other than a traffic offense, and if so, a description of the offense as to time, place, date and disposition;

The annual license fee shall be set in accordance with Section 31-6(a) of this Code. A separate license shall be obtained for each place of business. The licensee shall display the license in a prominent place on the licensed premises at all times. A license, unless revoked, shall be effective August 1 through July 31 annually.

Sec. 5-47. Issuance.

(a) No license under this Article shall be issued unless it is approved by the chief administrative officer upon advice from the police department and unless the establishment has passed fire and health inspections. The chief administrative officer shall not approve any license if he or she has reasonable grounds to believe:

(1) That the granting of said license would result in violations of the law;

(2) That the license application contains false and misleading statements; or

(3) That other good cause exists for denying the license;

(b) If the chief of police or the chief administrative officer finds that they do not have adequate information to evaluate the license application, they may direct the applicant, manager or agent to appear at any reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to appear and cooperate with the investigation.

Sec. 5-48. Prohibited acts.

(a) No synthetic drug establishment shall:

(1) Remain open between 8:00 p.m. and 8:00 a.m. on any day;

(2) Sell synthetic drug products that do not include the name, phone number and address of the manufacturer, packer and distributer of the product;

(3) Sell synthetic drug products that do not identify all commodities within the package, including organic and non-organic, chemically synthesized substances and compounds;

(4) Sell synthetic drug products to any individual

under the age of 21;

(5) Sell synthetic drug products that do not comply with all state and federal laws and regulations, including those related to packaging, labeling and weights and measures; and

(6) Be located within 500 feet of any park, school, day care facility or area zoned residential or mixed-use neighborhood. This restriction shall not apply to a synthetic drug establishment that was conducting business at the location indicated in the application and making sales of synthetic drugs at that location on or before May 24, 2013.

Sec. 5-49. Suspension and revocation of licenses.

The chief administrative officer may revoke or suspend any license issued pursuant to this Article, if, after giving the licensee an opportunity to be heard on the matter, such officer finds:

(a) The licensee has violated a provision of this Article or any other law relating to the conduct of its operation including, but not limited to state, federal or local laws; or

(b) The licensee secured the license through misrepresentation or fraud or misstated any material fact in the application; or

(c) Failure of the licensee to cooperate with the police, fire or health officers in any investigation relating to their operations or failure to admit police officers into the establishment at any time when people are present in the establishment; or

(d) The establishment is operated in such a way as to endanger public health or safety; or

(e) The establishment is operated in such a way as to constitute a public nuisance as defined in Minnesota Statutes

Section 609.74 or successor statute.

Sec. 5-50. Appeals.

Any person aggrieved by a licensing decision of the chief administrative officer under this Article may appeal such decision to the city council by filing a written notice of appeal with the city clerk within 15 days after such decision is rendered. The decision of the city council is the final administrative decision of the city.

Sec. 5-51. Other applicable laws.

This Article is intended to complement state and federal laws regulating synthetic drugs.

Sec. 5-52. Severability.

If any portion of this Article, or its application to any circumstances, is held invalid, the remaining provisions shall be considered severable, and shall be given effect to the maximum extent possible.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: July 11, 2013)

Councilor Gardner moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, and President Boyle -- 8

Nays: Councilor Stauber -- 1

Passed June 10, 2013
Approved June 10, 2013

ATTEST:

JEFFREY J. COX, City Clerk

DON NESS, Mayor

Approved as to form:

Attorney

CCREQ/ATTY GBJ:cjk 5/20/2013

STATEMENT OF PURPOSE: This ordinance amends Chapter 5 of the Duluth City Code, 1959, as amended, adding a new Article VII providing for the licensing of synthetic drug establishments.