



2015-02

# ORDINANCE

## CITY OF BERLIN

In the year of our Lord Two Thousand Fifteen

**AN ORDINANCE** amending the CODE OF ORDINANCES, Chapter 7, HEALTH, creating a new ARTICLE IV. PROHIBITION OF THE POSSESSION OR SALE OF SYNTHETIC CANNABINOIDS

**Be it ordained by the City Council of the City of Berlin, as follows:**

That Article IV. Prohibition of the Possession or Sale of Synthetic Cannabinoids is added to Chapter 7, Health of the Code of Ordinance as described below:

**I. PURPOSE AND INTENT: PROHIBITION OF THE POSSESSION OR SALE OF SYNTHETIC CANNABINOIDS**

It has been determined that certain businesses and/or individuals within the city of Berlin are possessing and selling certain substances which when ingested produce intoxicating effects similar to Tetrahydrocannabinol (THC) or Marijuana. These substances, which are described herein, are often used as an alternative synthetic to Marijuana and are potentially dangerous to users and society, and the long term effects are not yet known. The effects of these substances are a health concern to the citizens of Berlin. Not all of the substances are categorized as illegal controlled substances under State or Federal law. By selling these "legal" substances for smoking and ingestion of the guise of incense, the manufacturers avoid the United States Food and Drug Administration process for study and approval of such prior to distribution for consumption. In addition, by marketing such "incense" products directed at the controlled drug subculture, the manufacturers and sellers avoid the Schedule Implications of the Controlled Substances Act. The Berlin City Council recognizes there is no legitimate purpose of such synthetic chemicals contained therein.

**II. PROHIBITED ACTIVITIES**

It shall be unlawful for any person to sell, barter, give, publicly display for sale, or attempt to sell, possess, or transport, any material, compound, mixture or preparation which contains any quantity of synthetic cannabinoids or their optical, positional, and geometric isomers, salts and salts of isomers whenever the existence of such isomers, salts and salts of isomers is possible within the specific chemical designation as defined below within the corporate limits of the city of Berlin.

**III. DEFINITIONS:**

For the purpose of this section, the following shall be defined as follows:

*Person:* An individual, corporation, limited liability company, partnership, wholesaler, retailer, and any license or unlicensed business, including clerk, manager, or owner of business.

*Synthetic cannabinoid*: Any substance within the following structural classes that displays binding activity at the CB1 and/or CB2 cannabinoid receptor sites. Binding activity may be documented in the following ways, including but not limited to:

- i. A patent or patent application or copy thereof that attests to the binding activity of the substance in question; and/or
  - ii. An article or document or copy thereof from a peer-reviewed scientific journal or equivalent publication that attests to the binding activity of the substance in question.
1. Any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substituent at the 5-position of the phenolic ring: whether or not substituted on the cyclohexyl ring to any extent.
  2. Any compound containing a 1-(1-naphthylmethyl) indene ring system with a substituent at the 3-position or the indene ring system: whether or not further substituted on the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.
  3. Any compound containing an indole ring system with a substituent of the nitrogen atom and bearing an additional substituent at the 3-position of the indole ring system, with a linkage connecting the ring system to the substituent:
    - i. Where the linkage connecting the indole ring system to the substituent at its 3 position is any of the following:
      - Alkyl
      - Carbonyl
      - Ester
      - Thione
      - Thioester
      - Amino
      - Alkylamino
      - Amido
      - Alkylamido
    - ii. Where the substituent at the 3 position of the indole ring system is, disregarding the linkage, any of the following groups:
      - Naphthyl
      - Quinoliny
      - Adamantly
      - Phenyl
      - Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or cyclohexyl)
      - Alkylamido (limited to ethylamido, propylamido, Butanamido, or pentanamido)
    - iii. Whether or not the substituent at the 3-position of the indole ring system, disregarding the linkage, is further substituted to any extent
    - iv. Whether or not further substituted on the indole ring to any extent.

4. Any compound containing a indazole ring system with a substituent at the 1- position nitrogen atom and bearing an additional substituent at the 3-position of the indazole ring system, with a linkage connecting the ring system to the substituent:

i. Where the lineage connecting the indazole ring to the substituent at its 3 position is any of the following:

- Alkyl
- Carbonyl
- Ester
- Thione
- Thioester
- Amino
- Alkylamino
- Amido
- Alkylamido

ii. Where the substituent at the 3 position or the indazole ring is, disregarding the linkage, any of the following groups:

- Naphthyl
- Quinoliny
- Adamantly
- Phenyl
- Cycloalkyl (limited to cyclopropyl, cyclobutyl, Cyclopentyl or cyclohexyl)
- Biphenyl
- Alkylamido (limited to ethylamido, propylamido, Butanamido, or pentanamido)

iii. Whether or not the substituent at the 3 position of the indazole ring system, disregarding the linkage, is further substituted to any extent.

iv. Whether or not further substituted on the indazole ring to any extent.

5. Any compound containing a pyrrole ring with a substituent on the nitrogen atom and bearing an additional substituent at the 3-position of the pyrrole ring, with a linkage connecting the ring to the substituent:

i. Where the linkage connecting the pyrrole ring to the substituent at its 3 position is any of the following:

- Alkyl
- Carbonyl
- Ester
- Thione
- Thioester
- Amino
- Alkylamido

- ii. Where the substituent at the 3 position of the pyrrole ring is, disregarding the linkage, any of the following groups:
    - Naphthyl
    - Quinoliny
    - Adamantly
    - Phenyl
    - Cycloalkyl (limited to cyclopropyl, cyclobutyl, cyclopentyl, or Cyclohexyl)
    - Biphenyl
    - Alkylamido (limited to ethylamido, propylamido, butanamido, or pentanamido)
  - iii. Whether or not the substituent at the 3 position of the pyrrole ring, disregarding the linkage, is further substituted to any extent.
  - iv. Whether or not further substituted on the pyrrole ring to any extent.
6. Any compound containing a pyrazole ring with a substitute at the 1-position nitrogen atom and bearing an additional substituent at the 3-position of the pyrazole ring with a linkage connecting the ring to the substituent:
- i. Where the linkage connecting the pyrazole ring to the substituent at its 3 position is any of the following:
    - Alkyl
    - Carbonyl
    - Ester
    - Thione
    - Thioester
    - Amino
    - Alkylamino
    - Amido
    - Alkylamido
  - ii. Where the substituent at the 3 position of the pyrazole ring is, disregarding the linkage, any of the following groups:
    - Naphthyl
    - Quinoliny
    - Adamantly
    - Phenyl
    - Cycloalkyl (limited to cyclopropyl, cyclobutyl, Cyclopentyl, or cyclohexyl)
    - Biphenyl
    - Alkylamido (limited to ethlamido, propylamido, Butanamido, or pentanamido)
  - iii. Whether or not the substituent at the 3 position of the pyrazole ring, disregarding the

linkage, is further substituted to any extent.

iv. Whether or not further substituted on the pyrazole ring to any extent.

7. Includes, but is not limited to the following:

- QUCHIC/BB-22
- QUPIC/PB-22
- 4 fluoro PB-22
- STS-135
- APICA/SDB-001
- ADBICA
- APINACA/AKB48
- AB-FUBINACA
- AB-PINACA
- ADB-FUBINACA
- AM-1248
- AM-2233
- SDB-006
- 5-chloro UR-144

8. This definition shall not include:

- i. Endocannabinoids that are naturally found in the human body; or
- ii. Delta-9 Tetrahydrocannabinol (THC) or other Marijuana- derived cannabinoids, in the form of Marinol, Dronabinol, or another generic pharmaceutical equivalent; so long as the medication has been issued as the result of a valid prescription; or
- iii. Any other drugs that have cannabinoid receptor activity that are currently FDA-approved for medical use; or
- iv. Marijuana and extracts of Marijuana, as these are already controlled per NH RSA 318:B

#### IV. EXCEPTIONS

- A. It is not an offense under this Chapter if the person was acting at the direction of the Berlin Police Department and its officers, or federal or state law enforcement, to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substances.
- B. If the State of New Hampshire enacts criminal penalties for the possession, sale, transportation, or delivery of any chemical substance listed in this ordinance, then upon the effective date of this control, this ordinance shall no longer be deemed effective for that substance. However, a violation of this ordinance occurring prior to the effective date of such State statute may be prosecuted after the effective date of State control.

#### V. VIOLATIONS AND PENALTIES

- A. Any person found to be in violation of this ordinance will be assessed a fine of

\$500.00. Each day a violation occurs will constitute a separate offense.

- B. In addition to any penalty provided in the above Section A, if any of the aforementioned substances listed above are found in the possession of any person, the substance will be forfeited by seizure by the Berlin Police Department, or its officers, and may be destroyed by such law enforcement officials in a method consistent with law.

**VI. VALIDITY AND APPLICATION**

- A. If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.
- B. All ordinances, resolutions, orders and parts thereof or in conflict with this ordinance are hereby voided.

This Ordinance shall be in full force and effect from and after passage.

PASSED: \_\_\_\_\_  
Date

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk