

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2015**

No. 97

Introduced by Council Members Wills, Reynoso, Torres, Cabrera, Gibson, Cohen, the Speaker (Council Member Mark-Viverito), Arroyo, Gentile, Johnson, Koo, Koslowitz, Mendez, Richards, Rose, Crowley, Chin, Rosenthal, Greenfield, Kallos and Williams.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to imposing penalties for the manufacture, distribution or sale of synthetic cannabinoids and synthetic phenethylamines.

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 10 of the administrative code of the city of New York is amended by adding a new section 10-203 to read as follows:

§ 10-203 Unlawful manufacture, distribution or sale of a synthetic cannabinoid or synthetic phenethylamine. a. No person or entity shall knowingly manufacture, sell, offer for sale, display for sale, distribute for sale, or possess with intent to sell:

1. any synthetic cannabinoid or synthetic phenethylamine, as such terms are defined by part 9 of title 10 of the New York codes, rules and regulations as of the date of the violation, or as included in schedule I of the federal drug enforcement administration schedules of controlled substances, as listed in section 1308.11 of title 21 of the code of federal regulations, or successor regulation, as of the date of the violation, or any cannabimimetic agent, as defined in section 812 of title 21 of the United States code, as of the date of the violation; or

2. any analogue of a synthetic cannabinoid, synthetic phenethylamine or cannabimimetic agent. For the purposes of this paragraph, "analogue of a synthetic cannabinoid, synthetic

phenethylamines or cannabimimetic agent” means a substance that has a chemical structure that is substantially similar to the chemical structure of a substance described in paragraph 1 of this subdivision and has 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 such a substance described in paragraph 1 of this subdivision; or

3. any substance commonly known as synthetic marijuana, K-2 or bath salts, including but not limited to a substance so identified as an embargoed product by order of the commissioner of the department of health and mental hygiene, that is represented as being intended for human consumption. Evidence of representations that a substance commonly known as synthetic marijuana, K-2 or bath salts is intended for human consumption may include, but is not limited to, oral, visual or written representations by the manufacturer, distributor or seller about the substance with regard to its nature, use or effect; or

4. any purported synthetic drug. In any proceeding commenced in connection with an alleged violation of this paragraph, it shall be necessary to prove that the purported synthetic drug was represented to be a substance described in paragraph 1, 2 or 3 of this subdivision; provided, however, that it shall not be a defense to prosecution under this section that the accused believed the purported synthetic drug to be such a substance. For the purposes of this subdivision, the term “purported synthetic drug” means a substance that, by dosage unit appearance, including color, shape and size, and by a representation, is represented to be a substance described in paragraph 1, 2 or 3 of this subdivision. Evidence of such a representation may include, but is not limited to, oral, visual or written representations by the manufacturer, distributor or seller about the substance with regard to:

(a) its price, nature, use or effect as a substance described in paragraph 1, 2 or 3 of this subdivision; or

(b) its packaging in a manner normally used for substances described in paragraph 1, 2 or 3 of this subdivision.

b. Possession of ten or more packets, individual containers or other separate units of a substance described in subdivision a of this section is presumptive evidence that the possessing person or entity is distributing such substance for sale or possesses such substances with intent to sell.

c. Any person or entity that violates subdivision a of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 or imprisonment of up to one year, or both.

d. In addition to the penalties prescribed in subdivision c of this section, any person or entity that violates subdivision a of this section shall be liable for a civil penalty of not less than \$1,000 and not more than \$10,000 recoverable in a proceeding before any tribunal established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings, provided that upon the first such violation, and any other such violations by the same person or entity on the same day as such first violation, such person or entity shall be liable for a civil penalty of not less than \$500 and not more than \$5,000 if such violation is not in conjunction with the commission of any crime other than possession, manufacture, distribution or sale of any synthetic cannabinoid, synthetic phenethylamine, or other substance described in subdivision a of this section. The manufacture, distribution, sale, offer for sale, display for sale, or possession with intent to sell of each packet, individual container or other separate unit of substance described in subdivision a of this section shall constitute a separate

violation under this subdivision, with a maximum civil liability of \$50,000 for violations in a day for a single person or entity under this subdivision.

e. Any police officer, or sheriff, undersheriff, or deputy sheriff of the city of New York, or any peace officer acting pursuant to his or her special duties may enforce the provisions of this section. A proceeding to recover any civil penalty authorized pursuant to subdivision d of this section shall be commenced by the service of a notice of violation returnable to any tribunal established within the office of administrative trials and hearings or within any agency of the city of New York designated to conduct such proceedings. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged.

f. Whenever a police officer, or sheriff, undersheriff, or deputy sheriff of the city of New York, or any peace officer acting pursuant to his or her special duties, discovers any substance described in subdivision a being possessed in a manner that violates such subdivision, such officer is authorized and empowered to seize and take possession of such substance, which shall be destroyed or used either for law enforcement purposes or for evidentiary purposes in connection with any enforcement proceeding conducted pursuant to this section.

g. In any proceeding commenced pursuant to this section, it shall be no defense that the substance's packaging or other representation states or indicates that the substance is not intended for human consumption.

§ 2. Subdivision (b) of section 11-4023 of the administrative code of the city of New York, as added by local law number 97 for the year 2013, is amended to read as follows:

(b) The following acts shall serve as the basis for a sealing order pursuant to this section:

(1) the violation of subdivisions a or b of section 11-1303 of this title or section 17-703 or 20-202 of the code on at least two occasions within a three-year period; or

(2) the violation of any provision of chapter 13 of this title or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivisions a or b of section 17-706, 17-715 or 20-202 of the code on at least three occasions within a three-year period; *or*

(3) the violation of any provision of section 10-203 of the code on at least two occasions within a three-year period.

§ 3. The commissioners of health and mental hygiene, finance and consumer affairs may promulgate rules as may be necessary for the purposes of carrying out the provisions of this local law.

§ 4. Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 5. This local law takes effect 60 days after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 30, 2015 and approved by the Mayor on October 20, 2015.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 97 of 2015, Council Int. No. 917-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.