

PERSONNEL COMMITTEE

12-054-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROHIBITING SMOKING OF ANY KIND ON LAKEWALK AND REVISING OTHER SMOKING RESTRICTIONS, ADDING NEW SECTION 28-63 AND 28-64 TO CHAPTER 28 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING SECTION 28-70 AND REPEALING SECTION 34-40 THEREOF.

BY COUNCILORS BOYLE AND STAUBER:

The city of Duluth does ordain:

Section 1. That Chapter 28 of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 28-63 which reads as follows:

Sec. 28-63 Definitions.

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

(a) Kitchi Gammi Park: for the purposes of this Article only shall mean that park located on land located between Congdon Boulevard and Lake Superior and between the Lester River and 69<sup>th</sup> Avenue East.

(b) Lake Place: shall mean that structure elevated over the right-of-way of Interstate Highway 35 between Lake Avenue and 4<sup>th</sup> Avenue East containing park-like amenities.

(c) Lakewalk: shall mean the constructed trail surface of that recreational trail running in close proximity to Lake Superior from the Duluth Aerial Lift Bridge to 26<sup>th</sup> Avenue East and from there following the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad to east side of the Lester River and thereafter connecting to and located in Kitchi Gammi Park.

(d) Leif Ericson Park: shall mean that property used for park purposes located between the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad and the shoreline of Lake Superior and between 8<sup>th</sup> Avenue East and 13<sup>th</sup> Avenue East.

(e) Medical facility: shall mean any medical hospital,

medical or dental clinic.

(f) Prohibited substances: shall mean any tobacco related product and any other substance labeled as not safe for or intended for human consumption.

(g) Public place: shall mean any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility.

(h) Smoke: shall mean the gases, particles, or vapors released into the atmosphere as a result of combustion, electrical ignition or vaporization of or by any Prohibited Substance.

(i) Smoking: shall mean inhaling or exhaling Smoke from any instrumentality, including but not limited to any cigar, cigarette, pipe, hookah pipe or an operating electronic cigarette, or having in possession any such instrumentality producing Smoke or engaging in any act that generates Smoke.

(j) Tobacco related products: shall mean any product containing, made or derived from tobacco that is intended for human consumption, or any component, part, or accessory of a tobacco product, including but not limited to tobacco found in cigars and cigarettes, tobacco intended to be used in pipes or cigarettes, chewing tobacco, moist or dry snuff, dissolvable tobacco products and electronic cigarettes and any other product containing, made or derived from tobacco that is intended or expected to be consumed with or without being combusted but does not include any tobacco product that has been approved by the United States food and drug administration for sale as a tobacco cessation product, tobacco dependent product or for other medical purposes and is marketed and sold only for those purposes.

Section 2. That Chapter 28 of the Duluth City Code, 1959, as amended is hereby amended by adding a new Section 28-64 which reads as follows:

Sec. 28-64 Ingesting a prohibited substance--prohibited in certain places.

(a) No person shall ingest by smoking or chewing any prohibited substance at or in any of the following locations:

(1) Anywhere smoking is prohibited by the Minnesota Clean Indoor Air Act;

(2) Inside any Duluth Transit Authority transit shelter;

(3) Within 15 feet from the nearest point of any Duluth Transit Authority transit shelter which displays at least two signs visible from the exterior of the shelter providing notice of this prohibition, said 15 feet measured in a straight line of constant elevation;

(4) Anywhere in Wade Stadium that is open to the public except in areas designated for such consumption;

(5) Within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation; provided that this prohibition does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley;

(6) On the Lakewalk, on Lake Place or in Leif Ericson Park;

(c) Any person violating this Section is guilty of a petty misdemeanor or may be penalized under Chapter 12 of the Duluth City Code, 1959, as amended;

(d) Signage to enforce the provisions of this ordinance shall be approved by the city of Duluth.

Section 3. That Section 28-70 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 28-70. ~~Violation and penalties~~Private right of action.

~~(a) Smoking where prohibited. It is a violation of this Article for any person to smoke in an area where smoking is prohibited by this Article;~~

~~(b) Proprietors. It is a violation of this Article for the proprietor or other person in charge of any premises subject to this Article to fail to comply with the requirements of Chapter 28, Article VII, or to retaliate against an employee, applicant for employment or customer, as prohibited by Section 28-68;~~

~~(c) Private right of action. In addition to the penalties provided in Section 28-70(c)28-64(c), any person injured by a repeated or continuing violation of the Article may bring a civil action against the proprietor or other person in charge of a public place to enjoin further violations.~~

Section 4. That Section 34-40 of the Duluth City Code, 1959, as amended, is hereby repealed.

Section 5. This ordinance shall take effect 30 days from and after its passage and publication.

Approved as to form:

  
Attorney

CCREQ/ATTY REA:dma 08/17/2012

STATEMENT OF PURPOSE: The purpose of this ordinance is to amend Chapter 28 of the City Code pertaining to health and sanitation to prohibit smoking, chewing or otherwise ingesting tobacco-related products and smoking of other deleterious products while on Lakewalk, Lake Place or in Leif Ericson Park. It also

eliminates some provisions rendered obsolete by prior Code amendments and moves some smoking-related prohibitions from Chapter 34, "Offenses-Miscellaneous" to Chapter 28 where the rest of the smoking-related ordinances have been codified.

The primary function of this ordinance is to prohibit smoking and chewing of tobacco-related products and of products generically referred to as "fake marijuana" on the Lakewalk, on Lake Place and in Leif Ericson Park. The ordinance defines tobacco-related products very broadly to include all forms of tobacco and products extracted from tobacco; it exempts any products intended to assist in smoking cessation. It defines "fake marijuana" as a product smoked or chewed which is not intended for or labeled for human consumption in order to address the fact that the marketers of these products notoriously make minor changes in their chemical formulas to keep one step ahead of the regulatory authorities.

Lakewalk, Lake Place and Leif Ericson Park are all defined in terms of the areas generally associated with those facilities. It should be noted that the definition of Lakewalk is confined to the constructed trail.

The provisions of Section 34-40 of the Code are moved to Chapter 28 to consolidate the non-smoking provisions of the Code into one location to make them easier to find and assist the public in knowing what limitations the City places on smoking-related activities. In addition, some code provisions are repealed because they referenced code provisions which no longer exist and others needed to be renumbered because the consolidation resulted in renumbering some code provisions.

This ordinance does not result in nullifying any prohibition contained in existing ordinance.