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To:	Public Testimony
Cc:	MayorQ; Willett, Nathan; Berry, Rita; Williamson, Annie; Santner, John
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See attached (copied below as well for your reading convenience). I understand this is short notice, but please hear this testimony as I have been traveling and was just made aware of this ordinance. I will be in attendance at the meeting tomorrow. Thank you

Public Comment on Ordinance No. 251028
Submitted by Dr. Chase Cookson

Members of the Council,

I want to be clear from the outset: As a lifelong drug policy activist and a member of the faculty in Saint Louis University's Cannabis Science and Operations program, I share your concern about dangerous synthetic drugs entering our community. Tianeptine, 7-OH, synthetic cannabinoids like K2, and adulterated "gas station" products pose real risks, and I support the City's authority to act where federal enforcement has fallen short.

However, good intentions do not make good law. As drafted, Ordinance 251028 attempts to solve a scalpel problem with a sledgehammer. The language is so broad that it could criminalize chamomile tea while still failing to provide the clear standards that effective enforcement requires. I'm here today not to kill this ordinance, but to help you fix it before it costs Kansas City taxpayers hundreds of thousands of dollars (if not millions) in avoidable litigation.

My Thesis: While the intention to protect public safety from dangerous synthetic drugs is valid, the current drafting of Ordinance 251028 is dangerously broad. It relies on subjective "effect-based" definitions that unintentionally criminalize safe, traditional botanical supplements (such as, but not limited to, Chamomile, Passionflower, Kava and Valerian Root) and invites costly constitutional challenges under the "Void for Vagueness" doctrine and Equal Protection clauses. Below, I break down the primary issues I see with this ordinance, using public policy analysis frameworks I learned about as a political science undergrad.

Main Problem: The "Substantially Similar Effect" Clause

The Text in Question:

"...having a psychedelic, psychotropic, hallucinogenic or other effect on the central nervous system or brain similar to the effect of any Federal Schedule I Drug or Federal Schedule II Drug..."

My Argument:

This definition is functionally subjective and uses a looser standard than the DEA,

creating a local definition of “drugs” that conflicts with federal standards. It defines a banned substance not by what it is (its chemical formula), but by how it makes a person feel.

- **The "Chamomile" Test:** Cannabis (Schedule I) and Heroin (Schedule I) both produce effects of "relaxation," "sedation," and "anxiolysis" (anti-anxiety).
- **The Unintended Consequence:** Many legal, safe substances also produce relaxation and sedation. Under a strict reading of this text, incredibly safe substances with long histories of use could be banned. Passionflower, Kava, Valerian Root, Ashwagandha, and even high doses of Chamomile could be argued to have an effect "similar" to the sedation of a Schedule I depressant.
- **Legal Risk (Void for Vagueness):** A law is unconstitutionally vague if an ordinary citizen cannot determine what is prohibited. Because "similarity of effect" is subjective (is my relaxation similar to the relaxation of cannabis? Or heroin relaxation?), this ordinance is prime for a costly lawsuit that the City would likely lose.

Proposed Fix:

Adopt the standard that has been set forth under the Federal Analog Act standard (21 U.S.C. § 802(32)), which requires a substance to be **BOTH** chemically similar in structure **AND** similar in effect (the "Conjunctive Test"). Do not ban substances based on effect alone. As a taxpayer, I do not want my tax dollars going to a legal defense of this ordinance.

Problem 2: "Novel" is Undefined and Arbitrary

The Text in Question:

“Novel Psychoactive Drug”

My Argument:

The term "Novel" implies something new, yet the ordinance unintentionally captures ancient botanical substances.

- **One Unintended Consequence:** Kava has been used safely in the Pacific Islands for 3,000 years. It is not "novel." However, because the ordinance defines "Novel Psychoactive Drug" solely by its *effect* (see Point 1) and not by its history, Kava is swept into this category.
- **The Contradiction:** By failing to define "Novel" to exclude traditional botanicals (or to define Novel at all, really), the City is effectively labeling any substance it hasn't explicitly exempted as a "new drug," bypassing the FDA's role.

Proposed Fix:

Add an explicit exemption for **"**Any botanical substance or dietary supplement that has been marketed in the United States prior to October 15, 1994" (the DSHEA grandfather date) to ensure traditional remedies are not criminalized.

Problem 3: Lack of Exemption for Dietary Supplements

The Text in Question:

The ordinance lists specific exemptions (tobacco, alcohol, FDA-approved drugs) but omits Dietary Supplements compliant with federal law (DSHEA).

My Argument:

This omission creates a conflict with federal law.

- **The Unintended Consequence:** Many products sold in health food stores (not just vape shops) are federally regulated as dietary supplements. This ordinance creates a scenario where a product is legal under federal law (as a supplement) but illegal in Kansas City (as a "Novel Psychoactive Drug"). As the ordinance includes an exemption in Section 50-206(g) for substances "dispensed or possessed in accordance with state and federal law," but this language is ambiguous. Does "in accordance with" mean "specifically authorized by" or merely "not prohibited by"? Dietary supplements are legal under federal law but not specifically authorized in the way FDA-approved drugs are. This ambiguity will lead to inconsistent enforcement and litigation.
- **Business Impact:** This forces legitimate business owners to guess which of their supplements might be considered "psychoactive" by a local inspector. Does a pre-workout powder that gives you a "buzz" (stimulant effect similar to Schedule II Cocaine) count? Without a clear exemption, they cannot know.

Proposed Fix:

Insert a "Safe Harbor" clause: *"Nothing in this ordinance shall apply to any product that is a Dietary Supplement as defined by the Dietary Supplement Health and Education Act of 1994 (DSHEA) and is in compliance with federal labeling and safety requirements, provided it does not contain a controlled substance."*

Problem 4: The "Catch-All" Trap

My Argument:

The ordinance attempts to list specific bans (Delta-8, Kratom) while simultaneously keeping a "catch-all" definition for anything else.

- **The Strategic Flaw:** You cannot have it both ways. If the goal is to ban specific bad actors (like Gas Station Heroin/Tianeptine), list them. By using a "catch-all" based on *effects*, you transfer the power to criminalize substances from the City Council (who are elected to make laws) to individual police officers or inspectors (who have to interpret "similarity").
- **The Consequence:** This leads to arbitrary enforcement. One shop might be raided for selling passionflower, kava, or chamomile, while a Whole Foods down the street selling the same products is ignored. Making matters worse, Section 50-206(e) lists 12 "evidentiary factors" for enforcement that include business type, display methods, and pricing. This essentially allows inspectors to target vape shops while ignoring Whole Foods selling identical products. Enforcement based on who you are rather than what you sell is textbook Equal Protection violation territory. This opens the city up to costly lawsuits. Again, as a taxpayer, I'm telling you that this is something you can easily avoid.

Proposed Fix:

Remove the "catch-all" definition of Novel Psychoactive Drugs entirely. Instead,

maintain an explicit list of prohibited substances in the ordinance.

Problem 5: The "Analog" Definition Captures Legal Supplements

The Text in Question:

Section 50-206(a)(1) defines "Analog" as any substance with a chemical structure "substantially similar" to a Schedule I drug **OR** "intended to have a stimulant, depressant, or hallucinogenic effect."

My Argument:

Many legal dietary supplements have structures that are "substantially similar" to controlled substances - synephrine (bitter orange) resembles ephedrine; hordenine (found in barley) resembles phenethylamine; tyramine (in aged cheese) resembles amphetamine. The Federal Analog Act has been challenged repeatedly for vagueness. Kansas City shouldn't replicate federal problems at the municipal level. This is too costly to taxpayers for the supposed benefit we'd receive from a public health and safety perspective.

Proposed Fix:

Require that an "analog" be (1) synthetic in origin, (2) specifically created to mimic controlled substances, AND (3) not a naturally occurring substance or lawfully marketed dietary supplement.

Problem 6: The Drug Paraphernalia Definition Creates Absurd Results

The Text in Question:

Section 50-206(a)(3) defines drug paraphernalia as anything "commonly used for the ingestion…of any product the sale of which is prohibited by this section."

My Argument:

This is circular reasoning. I'll give you a clear example. If kratom is prohibited, then tea strainers become paraphernalia because people use them for kratom tea. By this logic, capsule machines, measuring spoons, and coffee grinders are now drug paraphernalia, exposing the city to a challenge related to vagueness. The Supreme Court has established that to survive a vagueness challenge, paraphernalia laws must rely on the seller's intent, not just the item's design, precisely because so many items have 'substantial legitimate uses' (Posters 'N' Things v. United States). This ordinance's circular definition lacks those clear intent protections.

Proposed Fix:

Exclude "ordinary household items with substantial lawful commercial purposes" unless they are "specifically marketed for use with prohibited substances."

Summary of Recommended Action

To avoid litigation and unintended bans on safe products, I request the Council amend the ordinance based on the above. For your convenience, I'm providing a table below that summarizes my recommendations:

Section	Problem	Recommended Fix
50-206(a)(8)	"Similar effect" is subjective; fails	Require chemical similarity

"Novel Psychoactive Drug"	the “Chamomile Test” I propose	(Federal Analog Act standard)
50-206(a)(8) "Novel"	Undefined; captures 3,000-year-old botanicals	Exempt substances marketed before DSHEA (Oct. 15, 1994)
50-206(a)(1) "Analog"	Captures legal supplements like synephrine	Require synthetic origin + intent to mimic
50-206(a)(3) Paraphernalia	Circular definition criminalizes ordinary household objects like tea strainers	Exclude items with substantial lawful uses
50-206(e) Evidentiary Factors	Authorizes targeting by business type	Remove or narrow to marketing conduct only
50-206(g) Federal Exemption	Ambiguous; doesn't clearly protect DSHEA supplements	Add explicit safe harbor for dietary supplements
Overall Structure	"Catch-all" transfers lawmaking to police	Replace with explicit prohibited substances list

Conclusion: Fix Before Passing

I am not asking you to abandon public safety. I am asking you to write an ordinance that accomplishes your stated goals without collateral damage to legitimate businesses and without handing plaintiffs' attorneys an easy payday at taxpayer expense.

The fixes I've proposed are not radical at all. They mirror standards already established in federal law and upheld by courts. Require chemical similarity, not just "similar vibes." Protect dietary supplements already legal under federal law. Define your terms. These changes cost the City nothing and remove the legal vulnerabilities that will otherwise tie this ordinance up in court for years.

If this passes as is, the city should expect local businesses to work with legal counsel to challenge this ordinance on void-for-vagueness grounds. You can avoid that fight entirely by making surgical revisions now.

I respectfully urge the Council to table this ordinance, incorporate the amendments I've outlined, and bring back a version that protects public safety *and* survives constitutional scrutiny. Kansas City deserves both. I stand ready to contribute my thoughts and feedback at no cost to the city; all you need to do is ask.

Thank you for your time and consideration.

Chase Cookson, DBA
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