MEMORANDUM

Agenda Item No. 5(B)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 3, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance creating Section 21-22 of the Code prohibiting the sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense; providing definitions; providing for seizure and injunctive relief; providing penalties; providing severability, inclusion in the Code, and an effective date

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Joe A. Martinez, and Co-Sponsors Esteban L. Bovo, Jr., Commissioner Jose "Pepe" Diaz, Commissioner Audrey M. Edmonson, Commissioner Barbara J. Jordan and Commissioner Dennis C. Moss.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: July 3, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance prohibiting the sale of synthetic cannabinoids

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The proposed ordinance creates Section 21-22 of the Code prohibiting the sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense. Enforcement of the ordinance within the unincorporated area would be the responsibility of Miami-Dade County and within the incorporated areas would be the responsibility of each municipality. The implementation of this ordinance may have a fiscal impact to the County. For each criminal arrest, the Miami-Dade Police Department (MDPD) will incur a ten dollar ($10) filing fee payable to the Office of the Clerk of Courts. Some of these additional expenditures may be offset through the imposition of civil penalties (up to $500). Although there may be an increase in enforcement calls, the MDPD anticipates to cover such activities with existing resources.

Genaro "Chip" Iglesias
Deputy Mayor

Fis7512

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 3, 2012

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 5(B)

Please note any items checked.

	"3-Day Rule" for committees applicable if raised
✓	**6 weeks required between first reading and public hearing**
✓	**4 weeks notification to municipal officials required prior to public hearing**
	Decreases revenues or increases expenditures without balancing budget
	Budget required
	Statement of fiscal impact required
✓	**Ordinance creating a new board requires detailed County Manager's report for public hearing**
✓	**No committee review**
	Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve
	Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 5(B)
7-3-12

ORDINANCE NO. _____

ORDINANCE CREATING SECTION 21-22 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, PROHIBITING THE SALE, OFFER FOR SALE, PURCHASE WITH INTENT TO SELL OR PUBLIC DISPLAY FOR SALE OF SYNTHETIC CANNABINOID HERBAL INCENSE; PROVIDING DEFINITIONS; PROVIDING FOR SEIZURE AND INJUNCTIVE RELIEF; PROVIDING PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, under the guise of herbal incense, products are being sold at commercial businesses in Miami-Dade County that contain chemical compounds designed as synthetic alternatives to controlled substances prohibited under Florida law; and

WHEREAS, synthetic cannabinoids, commonly known as synthetic marijuana, are chemically engineered substances, similar to tetrahydrocannabinol (THC), the active ingredient in marijuana, that can produce a high similar to marijuana when smoked or ingested; and

WHEREAS, synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate how cannabinoid interacts with the human body; and

WHEREAS, no legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption; and

WHEREAS, products containing synthetic cannabinoids are particularly attractive to children and young adults due to their packaging similar to candy, their availability in small

packages at convenience stores at minimal costs, as well as due to the names being given to these substances which are intended to appeal to children and young adults; and

WHEREAS, these products currently may be purchased legally for use as an alternative to substances otherwise regulated as controlled substances and illegal at the federal or state levels; and

WHEREAS, synthetic cannabinoids are typically marketed as herbal incense and also known as Spice, Fake Pot, Fake Weed or K2, among other names; and

WHEREAS, despite being labeled as "not for human consumption", synthetic cannabinoids are being used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting high; and

WHEREAS, despite these claims, these substances often are many times more potent and dangerous than the illegal drugs that they mimic; and

WHEREAS, these substances have been found readily available to adults and youth alike at convenience stores, discount tobacco outlets, gas stations, pawnshops and tattoo parlors, among other locations, and are reportedly being used predominately by the youth population; and

WHEREAS, synthetic cannabinoids are abused typically by smoking; and

WHEREAS, the Drug Enforcement Administration ("DEA") has determined that the consumption of synthetic cannabinoids can have adverse health effects such as agitation, anxiety, nausea, vomiting, rapid heartbeat, elevated blood pressure, tremors, seizures, hallucinations, paranoid behavior and non-responsiveness; and

WHEREAS, emergency room physicians also have reported that individuals that use synthetic cannabinoids experience serious side effects which include convulsions, seizures,

anxiety attacks, combativeness, delirium, panic, dangerously elevated heart rates, increased blood pressure, vomiting and disorientation; and

WHEREAS, there also have been fatal overdoses which are believed to have resulted from consumption of synthetic cannabinoids; and

WHEREAS, the American Association of Poison Control Centers is reporting increasing calls in recent years to poison control centers across the United States related to exposure to synthetic cannabinoids, with 2,906 calls in 2010; 6,959 calls in 2011; and already 2,389 calls in the first four months of 2012; and

WHEREAS, chapter 893, Florida Statutes, sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five schedules, which are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein; and

WHEREAS, the distinguishing factors between the different drug schedules are the potential for abuse of the substance listed in each schedule and whether there is a currently accepted medical use for the substance; and

WHEREAS, Schedule I substances have a high potential for abuse and have no currently accepted medical use in the U.S., such as cannabis, tetrahydrocannabinol (also known as THC), and heroin; and

WHEREAS, during the 2011 session, the Florida Legislature passed HB 39, Chapter 2011-73, Laws of Florida, which added five synthetic cannabinoids or synthetic cannabinoid-mimicking compounds to Schedule I of Florida's controlled substance schedule, allowing law enforcement officials and prosecutors to arrest and prosecute the possession and sale of these five particular substances under Florida law:

- 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol, also known as CP 47,497 and its dimethyloctyl (C8) homologue6
- (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-210
- 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018
- 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073
- 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, also known as JWH-2007 ; and

WHEREAS, following passage of HB 39, chemists reconfigured the particular synthetic cannabinoids and synthetic cannabinoid-mimicking compounds made illegal by HB 39, and marketed new products that were not illegal under Florida law; and

WHEREAS, in some cases, these new products went so far as to list on the packaging the five particular synthetic cannabinoids or synthetic cannabinoid-mimicking compounds made illegal by HB 39 and indicate that the product was not one of those substances; and

WHEREAS, during the 2012 session, the Legislature passed HB 1175, Chapter 2012-23, Laws of Florida, which added dozens of additional synthetic cannabinoids and synthetic cannabinoid-mimicking compounds to Schedule I of Florida's controlled substance schedule; and

WHEREAS, it is anticipated that drug designers and chemists will again take the particular chemical compounds that the Legislature made illegal during the 2012 session and reconfigure the molecular structure of the compounds resulting in a similar structural make up and effect, but new and different chemical compounds not listed as a controlled substance in Chapter 893 and therefore not illegal; and

WHEREAS, these new synthetic cannabinoids and synthetic cannabinoid-mimicking compounds likely will nonetheless carry the same or perhaps even further heightened dangers associated with illegal drugs; and

WHEREAS, section 893.035, Florida Statutes grants Florida's Attorney General rulemaking authority to add new substances to Florida's schedules of controlled substances, but the rulemaking process can take time; and

WHEREAS, this Board desires to act quickly to make illegal those new synthetic cannabinoids and synthetic cannabinoid-mimicking compounds that drug designers and chemists create to mimic the effects of illegal drugs,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 21-22 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

SECTION 21-22

Sec. 21-22. Sale, offer for sale, purchase with intent to sell and public display for sale of synthetic cannabinoid herbal incense prohibited

a. **Purpose and intent.** The Miami-Dade County Board of County Commissioners finds and declares that the products and synthetic substances described hereunder are commonly used as alternatives to marijuana. The Board further finds that these synthetic substances are particularly appealing to youth, and that these synthetic substances are potentially dangerous to users in the short term and that the long term effects are not yet known. The Board finds that the products which contain these synthetic substances often use a disclaimer that the product is "not for human consumption" to avoid regulations requiring the manufacturer to list the product's active ingredients. The Board finds drug designers and chemists can quickly create new synthetic drugs once federal or state law makes a particular synthetic drug illegal. As such, the Board finds there is a need to declare illegal the sale, offer for sale, purchase with intent to sell and public display for sale of synthetic substances that mimic illegal controlled substances that have not yet themselves been categorized as

illegal controlled substances under federal or state law. The Board further finds that it is proper and necessary for the Board to exercise its authority to safeguard and protect the public health, safety and welfare by taking this action.

b. **Application.** This section shall be applicable in the incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the respective municipalities.

c. **Preemption.** This section shall not preempt any municipal ordinance governing this subject area that is more stringent than this ordinance or that declares illegal a substance that is not declared illegal by this ordinance.

d. **Definitions.** For purposes of this section, the following terms apply:

1. "Structurally similar" as used in this section shall mean chemical substitutions off a common chemical backbone associated with synthetic cannabinoids or synthetic cannabinoid-mimicking compounds listed in the controlled substance schedules in chapter 893, Florida Statutes, as amended, or otherwise prohibited by federal or state law.

2. "Synthetic cannabinoid herbal incense" as used in this section shall mean aromatic or nonaromatic plant material containing a synthetic drug, or to which a synthetic drug has been sprayed, applied or otherwise added, that is distributed in a loose, leafy, powder or granular form or in a compressed block or blocks that can be crushed to result in a powder or granular form, and can be placed into a pipe, cigarette paper or drug paraphernalia for purposes of ingestion by smoking, inhaling or other method.

3. "Synthetic drug" as used in this section shall mean any chemical or mixture of chemicals, however packaged, that is structurally similar to synthetic cannabinoids or synthetic cannabinoid-mimicking compounds listed in the controlled substance schedules in chapter 893, Florida Statutes, or otherwise prohibited by federal or state law. "Synthetic drug" also shall include any chemical or mixture of chemicals, however packaged, that mimics the effects of tetrahydrocannabinol (also known as THC), the main active ingredient found in marijuana. Packaging that indicates or implies that a product mimics the effects of marijuana, such as "fake

weed" or "fake pot", shall create a presumption that the product mimics the effects of tetrahydrocannabinol. "Synthetic drug" shall not include any substance currently listed in the controlled substance schedules in chapter 893, Florida Statutes, or otherwise prohibited by federal or state law.

e. **Sale, offer for sale and purchase with intent to sell synthetic cannabinoid herbal incense prohibited.** It shall be unlawful for any store owner, store manager, store purchasing agent or other person to sell, offer for sale or purchase with intent to sell any synthetic cannabinoid herbal incense as defined herein.

f. **Public display for sale of synthetic cannabinoid herbal incense prohibited.** It shall be unlawful for any store owner, store manager, store purchasing agent or other person to publicly display for sale any synthetic cannabinoid herbal incense as defined herein.

g. **Affirmative defense.** It shall be an affirmative defense to prosecution of a violation of this section if the sale, offer for sale or public display for sale of synthetic cannabinoid herbal incense is pursuant to the direction or prescription of a licensed physician or dentist authorized in the State of Florida to direct or prescribe such act.

h. **Seizure and destruction of synthetic cannabinoid herbal incense.** Synthetic cannabinoid herbal incense prohibited herein may be seized by law enforcement officers and may be destroyed in the same manner used to destroy narcotics and contraband substances, after its use for evidentiary purposes in any judicial proceeding is no longer required.

i. **Injunctive relief.** Miami-Dade County shall have the authority to seek an injunction against any person or business violating the provisions of this section. In any action seeking an injunction, Miami-Dade County shall be entitled to collect its enforcement expenses, including forensic costs, law enforcement costs and reasonable attorney fees and costs incurred at trial and on appeal.

j. **Subsequent federal or state action.** If Congress or a federal agency amends federal law to include a particular substance or otherwise enacts or amends a federal law providing for criminal penalties for the prohibitions of substances set forth in this ordinance, then upon the

effective date of such enactment or amendment, the provisions of this ordinance addressed by federal law shall no longer be deemed effective. Any violations of this ordinance committed prior to the Congress or a federal agency enacting a federal law may be prosecuted.

If the Florida Legislature amends the controlled substance schedules in section 893.01, Florida Statutes, to include a particular substance or otherwise enacts, or amends a state statute providing for criminal penalties for the prohibitions of substances set forth in this ordinance, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by the state statute shall no longer be deemed effective.

If the Florida Attorney General pursuant to the rulemaking authority provided in Chapter 893 adds a particular substance to the controlled substance schedules in section 893.01, Florida Statutes, then upon the effective date of such enactment or amendment, the provisions of this ordinance addressed by the state statute shall no longer be deemed effective. Any violations of this ordinance committed prior to the Florida Legislature enacting such a statute or the Florida Attorney General promulgating rules may be prosecuted.

k. **Penalty.** Any store owner, store manager, store purchasing agent or other person violating any provision of this section shall be punishable by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed sixty (60) days in the County jail, or by both such fine and imprisonment.

Section 2. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

* * *

Code Section	Description of Violation	Civil Penalty
*	*	*
>>21-22	Sale, offer for sale, purchase with intent to sell or public display for sale of synthetic cannabinoid herbal incense<<	$500.00

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency: _____

Prepared by: _____

Jess M. McCarty

Prime Sponsor: Chairman Joe A. Martinez
Co-Sponsors: Commissioner Esteban L. Bovo, Jr.
Commission Jose "Pepe" Diaz
Vice Chairwoman Audrey M. Edmonson
Commissioner Barbara J. Jordan
Commissioner Dennis C. Moss