

MEMORANDUM

Substitute
Agenda Item No. 5(C)

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 21-22.1 of the Code, prohibiting the sale, offer for sale, purchase with intent to sell or public display for sale of synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs; providing definitions; providing for seizure and injunctive relief; providing penalties

This substitute differs from the original item in that it revises the penalty section to include the Miami-Dade Diversion Program and revises the list of chemicals that bath salts and other synthetic stimulants are prohibited from mimicking. So as to avoid confusion, these changes are shown as single strike through and single underline up through and including Section 1 of the substitute ordinance, rather than double underline and double strike through. In Section 2, language amending the Code section is shown as single underline and single strike through.

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



R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum



Date: July 3, 2012

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Ordinance prohibiting the sale of synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines, and other synthetic stimulants

The proposed ordinance creates Section 21-22.1 of the Code prohibiting the sale, offer for sale, purchase with intent to sell or public display for sale of synthetic stimulant bath salts, cathinones, amphetamines, and other synthetic stimulants that mimic illegal drugs. 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.

A handwritten signature in black ink, appearing to read "Genaro 'Chip' Iglesias", written over the printed name.

Genaro "Chip" Iglesias
Deputy Mayor

Fis7612



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: Substitute
Agenda Item No. 5(C)

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 _____

Substitute
Agenda Item No. 5(C)
7-3-12

ORDINANCE NO. _____

ORDINANCE CREATING SECTION 21-22.1 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 STIMULANT BATH SALTS, SYNTHETIC CATHINONES, SYNTHETIC AMPHETAMINES AND OTHER SYNTHETIC STIMULANTS THAT MIMIC ILLEGAL DRUGS; PROVIDING DEFINITIONS; PROVIDING FOR SEIZURE AND INJUNCTIVE RELIEF; PROVIDING PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, illicit products are being marketed as “bath salts” that are synthetic substitutes that mimic the pharmacological effects of amphetamines, cocaine, ecstasy and other illegal drugs; and

WHEREAS, despite being labeled as “not for human consumption”, these bath salts are being used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting high; and

WHEREAS, such bath salts, which are being sold at commercial businesses in Miami-Dade County, have as part of their composition synthetic central nervous system stimulants that are typically in a class of drugs known as synthetic cathinones; and

WHEREAS, these synthetic stimulants sell for many times more than legitimate bath salts, and are also marketed as plant food, insect repellent and iPod cleaner (hereinafter collectively “bath salts”); and

WHEREAS, cathinone is a Schedule I controlled substance under Florida Law and is an alkaloid found in the khat shrub that is chemically similar to amphetamines and other stimulants; and

WHEREAS, the molecular architecture of cathinone can be altered to produce a series of different compounds which are closely structurally related to cathinone, but which are not listed in Schedule I of Florida's controlled substance schedule; and

WHEREAS, synthetic stimulants are commonly distributed in powder, crystal and liquid forms, but they are also available and abused in tablet and capsule forms; and

WHEREAS, products containing synthetic stimulants are particularly attractive to children and young adults due to 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, such as Bliss, Blizzard, Blue Silk, Charge+, Hurricane Charlie, Ivory Snow, Ivory Wave, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Star Dust, Vanilla Sky, White Dove, White Knight, White Rush, and White Lightning; and

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

WHEREAS, the DEA has determined that consumption of synthetic stimulants have been linked to severe psychotic episodes, increased heartbeat, panic attacks and hallucinations; and

WHEREAS, emergency room physicians and law enforcement officers have reported that individuals that use synthetic stimulants experience serious side effects which include

convulsions, seizures, anxiety attacks, combativeness, delirium, panic, dangerously elevated heart rates, increased blood pressure, vomiting, sharp increase in body temperature and disorientation; and

WHEREAS, in the most extreme cases, bath salts have been linked to self-mutilation and drug-induced deaths, including an increased risk of suicide; 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 bath salts, with 304 calls in 2010; 6,138 calls in 2011; and already 1,007 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 cathinone and heroin; and

WHEREAS, during the 2011 session, the Florida Legislature passed HB 1039, Chapter 2011-90, Laws of Florida, which added six synthetic stimulants 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 six particular substances under Florida law:

- 3,4-methylenedioxymethcathinone
- 3,4-methylenedioxypropylamphetamine (MDPV)
- Methylenedioxymethcathinone
- Methoxymethcathinone
- Methylethcathinone
- Fluoromethcathinone; and

WHEREAS, following passage of HB 1039, chemists reconfigured the particular synthetic stimulants made illegal by HB 1039, 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 particular synthetic stimulants made illegal by HB 1039 and indicating 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 stimulants 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 stimulants will likely 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 stimulants that drug designers and chemists create to mimic the effects of illegal drugs,

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

Section 1. Section 21-22.1 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

SECTION 21-22.1

Sec. 21-22.1. Sale, offer for sale, purchase with intent to sell and public display for sale prohibited of synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs

- 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 amphetamines, cocaine, ecstasy and other illegal drugs. 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 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 that require the manufacturer to list the product's active ingredients. The Board finds that 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

¹ The differences between substitute and the original item are indicated as follows: 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.

substances, even though such synthetic substances 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 cathinone, methcathinone, amphetamine, methamphetamine, cocaine, 3, 4-methylenedioxymethamphetamine (MDMA), 3,4-methylenedioxymethcathinone, 3,4-methylenedioxypropylamphetamine (MDPPV), methylmethcathinone, methoxymethcathinone, methylethcathinone, fluoromethcathinone, BZP (benzylpiperazine), fluorophenylpiperazine, methylphenylpiperazine, chlorophenylpiperazine, methoxyphenylpiperazine, DBZP (1,4-dibenzylpiperazine), TFMPP (3-Trifluoromethylphenylpiperazine), MBDB (Methylbenzodioxolylbutanamine), 5-Hydroxy-alpha-methyltryptamine, 5-Hydroxy-N-methyltryptamine, 5-Methoxy-N-methyl-N-isopropyltryptamine, 5-Methoxy-alpha-methyltryptamine, methyltryptamine, 5-Methoxy-N,N-dimethyltryptamine, 5-Methyl-N,N-dimethyltryptamine, [[Tyramine (4-Hydroxyphenethylamine);]] 5-Methoxy-N,N-Diisopropyltryptamine, DiPT (N,N-

Diisopropyltryptamine), DPT (N,N-4-Hydroxy-N,N-Dipropyltryptamine),
Dipropyltryptamine), 4-Hydroxy-N,N-Diallyl-5-diisopropyltryptamine,
N,N-Diallyl-5-Methoxytryptamine, DOI (4-Iodo-2,5-dimethoxyamphetamine),
DOC (4-Chloro-2,5-dimethoxyamphetamine), 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine),
2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine), 2C-C (4-Chloro-2, 5-dimethoxyphenethylamine), 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine), 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine), 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine), 2C-I (4-Iodo-2,5-dimethoxyphenethylamine),
Butylone (beta-keto-N-methylbenzodioxolylpropylamine), Ethcathinone, Ethylone (3,4-methylenedioxy-N-ethylcathinone), Naphyrone (naphthylpyrovalerone), N-N-Dimethyl-3,4-methylenedioxycathinone, N-N-Diethyl-3,4-methylenedioxycathinone, 3,4-methylenedioxypropiofenone, 2-Bromo-3,4-Methylenedioxypropiofenone, 3,4-methylenedioxy-propiofenone-2-oxime, N-Acetyl-3,4-methylenedioxycathinone, N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone, N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone,
Bromomethcathinone, Buphedrone (alpha-methylamino-butyrophenone), Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine),
Dimethylcathinone, Dimethylmethcathinone, Pentylone (beta-Keto-Methylbenzodioxolylpentanamine), (MDPPP) 3,4-Methylenedioxy-alpha pyrrolidinopropiofenone, (MDPBP) 3,4-Methylenedioxy-alpha pyrrolidinobutiophenone, Methoxy-alpha-pyrrolidinopropiofenone (MOPPP), Methyl-alpha-pyrrolidinohexiophenone (MPHP), Benocyclidine (BCP), benzothiophenylcyclohexylpiperidine (BTCP), Fluoromethylaminobutyrophenone (F-MABP), Methoxypyrrolidinobutyrophenone (MeO-PBP), Ethyl-pyrrolidinobutyrophenone (Et-PBP), 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT), Methyl-ethylaminobutyrophenone (Me-EABP), Methylamino-butyrophenone (MABP), Pyrrolidinopropiofenone (PPP),

Pyrrolidinobutiophenone (PBP),
Pyrrolidinovalerophenone (PVP), Methyl-alpha-
pyrrolidinopropiophenone (MPPP), or related salts,
isomers, and salts of isomers, listed in the controlled
substance schedules in chapter 893, Florida
Statutes, as amended, or otherwise prohibited by
federal or state law.

2. "Synthetic stimulant bath salts" as used in this section shall mean any substance, whether in powder, crystal, liquid, tablet or capsule form, containing a synthetic stimulant as defined herein or to which a synthetic stimulant has been added or applied, that can be ingested by smoking, inhaling or other method, regardless of whether the substance is marketed as not for the purpose of human consumption, and regardless of how the substance is labeled, including but not limited to bath salts, insect repellent, plant food, herbs, incense, iPod cleaner, nutrient, dietary supplement or spice.
3. "Synthetic stimulant" as used in this section shall mean any chemical or mixture of chemicals, however packaged, that has a stimulant effect on the central nervous system and is structurally similar to cathinone, methcathinone, amphetamine, methamphetamine, cocaine, MDMA or any other substance listed in paragraph (1.) above, or related salts, isomers, and salts of isomers, as listed in the controlled substance schedules in chapter 893, Florida Statutes, or otherwise prohibited by federal or state law. "Synthetic stimulant" shall also include any chemical or mixture of chemicals, however packaged, that mimics the pharmacological effects of cathinone, methcathinone, amphetamine, methamphetamine, cocaine, MDMA or any other substance listed in paragraph (1.) above, or related salts, isomers, and salts of isomers. Packaging that indicates, suggests or implies that a product mimics the pharmacological effects of cathinone, methcathinone, amphetamine, methamphetamine, cocaine, ecstasy or any other substance listed in

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paragraph (1.) above, shall create a presumption that the product mimics the effects of the substance. "Synthetic stimulant" 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, as such may be amended from time to time.

- e. **Sale, offer for sale and purchase with intent to sell synthetic stimulant bath salts and synthetic stimulants 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 stimulant bath salts as defined herein or any synthetic stimulants as defined herein.
- f. **Public display for sale of synthetic stimulant bath salts and synthetic stimulants prohibited.** It shall be unlawful for any store owner, store manager, store purchasing agent or other person to publicly display for sale any synthetic stimulant bath salts as defined herein or any synthetic stimulants 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, purchase with intent to sell or public display for sale of synthetic stimulant bath salts as defined herein or synthetic stimulants as defined herein 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 stimulant bath salts and synthetic stimulants.** Synthetic stimulant bath salts and synthetic stimulants 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 the trial level 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 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 ~~[[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]]~~

>>1. A fine not to exceed five hundred dollars (\$500.00);

2. Imprisonment in the county jail for a period not to exceed sixty (60) days;
3. Both such fine and imprisonment in the discretion of the court having jurisdiction over the cause;
4. Fines in accordance with Chapter 8CC of the Code of Miami-Dade County; or
5. Completion of the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners<<.

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

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

<u>Code Section</u>	<u>Description of Violation</u>	<u>Civil Penalty</u>
* * *	* * *	* * *
>> <u>21-22.1</u> <<	>> <u>Sale, offer for sale, purchase with intent to sell or public display for sale of synthetic stimulant bath salts or synthetic stimulants</u> <<	>> <u>\$500.00</u> <<

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.

² Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< shall be added. Remaining provisions are now in effect and remain unchanged.

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.
Commissioner Jose "Pepe" Diaz
Vice Chairwoman Audrey M. Edmonson
Commissioner Sally A. Heyman
Commissioner Barbara J. Jordan
Commissioner Dennis C. Moss
Commissioner Rebeca Sosa
Senator Javier D. Souto