

ORDINANCE NO. 12-21

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES ENTITLED "MISCELLANEOUS OFFENSES" BY ADDING SECTION 42-17, TO PROHIBIT 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 FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR 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 the City of Key West, 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-methylenedioxypyrovalerone (MDPV)
- Methymethcathinone
- 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 Commission 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 CITY OF KEY WEST,
FLORIDA:

Section 1: That Section 42-17 of the Code of Ordinances is hereby added as follows:

Section 42-17. - Sale, display, offer for sale, and purchase with intent to sell prohibited of synthetic stimulant bath salts, synthetic cathinones, synthetic amphetamines and other synthetic stimulants that mimic illegal drugs

a. Definitions. For purposes of this section, the following definitions shall 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-methylenedioxypropylvalerone (MDPV), 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-Dipropyltryptamine), 4-Hydroxy-N,N-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-methylenedioxy-propiofenone, 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 pyrrolidinopropiophenone,
(MDPBP) 3,4-Methylenedioxy-alpha pyrrolidinobutiophenone,
Methoxy-alpha-pyrrolidinopropiophenone (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),
Methylethylaminobutyrophenone (Me-EABP),
Methylamino-butyrophenone (MABP),
Pyrrolidinopropiophenone (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 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.

- b. Sale, display, offer for sale and purchase with intent to sell synthetic stimulant bath salts and synthetic stimulants prohibited.

It shall be unlawful for any person to sell, display, offer for sale or purchase with intent to sell any synthetic stimulant bath salts as defined herein or any synthetic stimulants as defined herein within the City limits of Key West.

- c. 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.

d. Injunctive relief. The City of Key West 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, the City 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.

e. Penalties.

Any violation of the provisions of this section shall be punishable pursuant to section 1-15 of the code of ordinances.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 17th day of July, 2012.

Read and passed on final reading at a regular meeting held this 7th day of August, 2012.

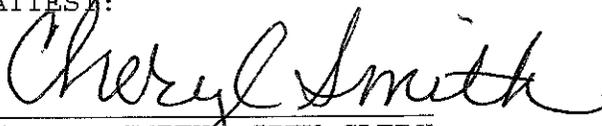
Authenticated by the presiding officer and Clerk of the Commission on 8th day of August, 2012.

Filed with the Clerk August 8, 2012.



CRAIG CATES, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

POST OFFICE BOX 1409
KEY WEST, FL 33041-1409
WWW.KEYWESTCITY.COM

To: The City Commission for the City of Key West
From: Ron Ramsingh, Assistant City Attorney 
Date: July 10, 2012
RE: New ordinance prohibiting the sale of synthetic bath salts and synthetic marijuana.

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EXECUTIVE SUMMARY

Action statement:

A proposed ordinance that will ban the sale of what are commonly referred to as “bath salts” and “synthetic marijuana” given its extreme effects on people and convenient availability on many gas stations and convenience stores.

Background: Recently, the synthetic drugs referred to as bath salts and synthetic marijuana have received a lot of attention in both the media and in the Florida State Legislature. The industry that manufactures these chemicals and their chemists are constantly evolving the chemical composition of the products to evade criminal prosecution given the large amount of time that it takes the legislature to act. These ordinances are modeled after ordinances that have been recently passed in Miami-Dade County and Deerfield Beach. The scientific data as well as the statistics have been well explained in the “Whereas” clauses of both proposed ordinances.

Options:

- To pass the proposed bans on the sale of bath salts and synthetic marijuana thereby protecting the visitors and citizenry from these dangerous, dynamic and unregulated substances.

- To defeat the proposed bans and wait for the state legislature to catch up to this dynamic illicit industry.

Reccomendation: To join the legions of cities who are passing like ordinances to stay ahead of the curve and protect its citizenry from these illicit and unregulated substances.