

Submitted by: Chair of the Assembly at the Request of the Mayor

Prepared by: Dept. of Law

For reading: November 8, 2011

CLERK'S OFFICE

AMENDED AND APPROVED

Date:

11-8-11

ANCHORAGE, ALASKA

AO No. 2011-106(S)

1 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 8.35
2 TO PROHIBIT THE MANUFACTURE, ASSEMBLY, DISTRIBUTION, MARKETING,
3 SALE, USE OR POSSESSION OF SUBSTANCES CONTAINING CERTAIN
4 CHEMICAL COMPOUNDS, INCLUDING THOSE COMMONLY MARKETED AND
5 SOLD AS "BATH SALTS", PLANT FOOD, INCENSE OR DIETARY
6 SUPPLEMENTS AND WHICH INDUCE EFFECTS SIMILAR TO CERTAIN ILLEGAL
7 DRUGS, TO PROHIBIT THE SALE OR POSSESSION OF PARAPHERNALIA
8 RELATED TO THE USE OF THESE CHEMICAL COMPOUNDS, TO PROVIDE
9 PENALTIES, AND AMENDING SECTION 14.60.030 TO PROVIDE FOR CIVIL
10 PENALTIES.
11

12
13 **WHEREAS**, the chemical compounds 3,4-Methylenedioxy-N-methylcathinone
14 (methylone), 3,4-Methylenedioxypyrovalerone (MDPV), 4-Methyl-N-methylcathinone
15 (mephedrone), 3-Methoxymethcathinone, 3-Fluoromethcathinone, and 4-
16 Fluoromethcathinone are psychoactive substances that, when introduced into the
17 body, induce effects similar to illegal drugs;
18

19 **WHEREAS**, much like the marketing of Synthetic Cannabinoids (Spice/K2) as
20 incense, these substances are commercially available and in some cases are being
21 marketed as "bath salts" under names such as "Vanilla Sky", "Ivory Snow", "Bliss",
22 "White Lightning", "Hurricane Charlie", and "Red Dove", and in other cases packaged
23 or marketed as plant food, dietary supplements, insect repellent, potpourri or incense;
24

25 **WHEREAS**, some or all of the substances used to make "bath salts" are banned in
26 Alabama, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas,
27 Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, New Jersey,
28 New Mexico, New York, North Dakota, North Carolina, Ohio, Oklahoma, Oregon,
29 Pennsylvania, Texas, Tennessee, Utah, Virginia, Washington, West Virginia,
30 Wisconsin, and Wyoming and municipalities throughout the United States;
31

32 **WHEREAS**, on October 21 [~~September 8~~], 2011 the federal Drug Enforcement
33 Agency issued a one year ban on [~~notice of intent, 76 FR 55616-01, to~~
34 ~~temporarily schedule~~] the three synthetic cathinones mephedrone, methylone and
35 MDPV under Schedule I of the Controlled Substances Act based on findings it is
36 necessary to avoid imminent hazard to the public safety because they have a high
37 potential for abuse, no currently accepted medical use in treatment in the United
38 States, and lack accepted safety for use under medical supervision;
39

40 **WHEREAS**, Phenazepam is an unregulated benzodiazepine drug which, as with
41 other benzodiazepines, in case of abrupt discontinuation following prolonged use,

1 can induce severe withdrawal symptoms including restlessness, anxiety, insomnia,
2 seizures, convulsions and death;

3
4 **WHEREAS**, Benzylpiperazine (BZP) is a recreational drug with euphoric, stimulant
5 properties. The effects produced by BZP are comparable to those produced by
6 amphetamine. Adverse effects have been reported following its use including acute
7 psychosis, renal toxicity, and seizures. Its sale is banned in a few countries, including
8 Australia, New Zealand, the United States, the Republic of Ireland, the United
9 Kingdom, and other parts of Europe;

10
11 **WHEREAS**, the abuse of these substances has been increasing and law
12 enforcement and medical professionals have indicated bath salts, in particular, are
13 becoming increasingly popular due to the misperception that they pose a seemingly
14 safer alternative to illegal methods of getting "high" and can be obtained at
15 convenience stores, pawnshops, and gas stations;

16
17 **WHEREAS**, users of these drugs report the effects are similar to cocaine, ecstasy or
18 methamphetamine usage, including blurred vision, extremely elevated blood
19 pressure, irregular heart rates, hallucinations, delusions, vomiting, suicidal thoughts,
20 "highs", and disturbing side effects including feelings of excruciating pain, agitation
21 and loss of control. Some abusers describe the effects as similar to
22 methamphetamine, ecstasy, and cocaine, and have referred to bath salts as
23 "complete crank" and "fake cocaine";

24
25 **WHEREAS**, some users experience severe reactions, resulting in unconsciousness,
26 seizures, and hospitalization, and in some reported cases even death;

27
28 **WHEREAS**, products containing the substances are not tested by the Food and Drug
29 Administration (U.S. Department of Agriculture) or other governmental regulatory
30 agency for human consumption and contain chemicals detrimental and dangerous to
31 the health and welfare of those ingesting them;

32
33 **WHEREAS**, representatives of businesses selling the substances indicate they are
34 available to minors as well as adults;

35
36 **WHEREAS**, despite packaging warning purchasers that the products are not for
37 human consumption, the warnings are not being heeded;

38
39 **WHEREAS**, Alaska Statutes do not currently regulate the sale, purchase,
40 possession, or manufacture of these substances, **but Senator Kevin Meyer intends**
41 **to introduce legislation criminalizing these substances [or, if currently**
42 **regulated, may not provide the resources to fully prosecute offenders]**;

43
44 **WHEREAS**, within the United States there is no currently sanctioned medicinal or
45 other legitimate purpose for taking these substances; and

46
47 **WHEREAS**, it is in the best interest of the Municipality to prohibit the manufacture,
48 assembly, possession, use, sale, marketing, or offering for sale of these substances

1 within the boundaries of the Municipality to protect the health, safety and welfare of
2 its citizens; now, therefore,

3
4 **THE ANCHORAGE ASSEMBLY ORDAINS:**

5
6 **Section 1.** Anchorage Municipal Code chapter 8.35 is amended by adding a new
7 section to read as follows:

8
9 **8.35.110 Illegal synthetic compounds.**

10
11 A. It shall be unlawful for any person or entity to knowingly manufacture,
12 assemble, distribute, dispense, sell, attempt to sell, give, trade, barter,
13 transfer, or to otherwise furnish in a single transaction any product or
14 combination of products containing ~~[an amount in excess of 25~~
15 ~~milligrams in the aggregate of any of the following substances]:~~

16
17 1. Cathinone or substituted cathinones, including any compound,
18 except bupropion or a compound listed in another schedule,
19 structurally derived from 2-amino-1-phenyl-1-propanone by
20 modification in any of the following ways:

21
22 (a) substitution in the ring system to any extent (including
23 alkyl, alkoxy, alkylendioxy, haloalkyl, or halide
24 substituents), whether or not further substituted in the
25 ring system by other substituents;

26
27 (b) substitution at the 3-position with an alkyl substituent; or

28
29 (c) substitution at the 2-amino nitrogen atom with alkyl or
30 dialkyl groups, or inclusion of the 2-amino nitrogen atom
31 in a cyclic structure.[:;]

32
33 2. ~~[By example,]~~ Compounds such as:

34
35 (a) 4-Methyl-N-methylcathinone (Also known as
36 Mephedrone), its salts, optical isomers, and salts of
37 optical isomers;

38 (b) 3,4-Dimethylmethcathinone (Also known as 3,4-DMMC),
39 its salts, optical isomers, and salts of optical
40 isomers;

41 (c) 3-Fluoromethcathinone (Also known as 3-FMC), its
42 salts, optical isomers, and salts of optical isomers;

43 (d) 4-Fluoromethcathinone (Also known as Flephedrone),
44 its salts, optical isomers, and salts of optical
45 isomers;

46 (e) 3,4-Methylenedioxy-N-methylcathinone (Also known as
47 Methylone);

48 (f) 3,4-Methylenedioxypyrovalerone (Also known as MDPV)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

, its salts, optical isomers, and salts of optical isomers;

- (g) alpha-Pyrrolidinopentiophenone (Also known as alpha-PVP);
- (h) Naphthylpyrovalerone (Also known as Naphyrone);
- (i) beta-Keto-N-methylbenzodioxolylpropylamine (Also known as Butylone);
- (j) beta-Keto-N-methylbenzodioxolylpentanamine (Also known as Pentylone);
- (k) beta-Keto-Ethylbenzodioxolylbutanamine (Also known as Eutylone); and
- (l) 3,4-methylenedioxy-N-ethylcathinone (Also known as Ethylone);
- (m) methcathinone, its salts, optical isomers, and salts of optical isomers;**

- 3. Benzodiazepines, including Phenazepam;
- 4. Benzylpiperazine (BZP); or
- 5. Any other derivatives, analogues, homologues, salts, isomers, or salts of isomers with substantially similar chemical structure and pharmacological activity as the substances described above.

B. It shall be unlawful to knowingly manufacture, assemble, distribute, dispense, sell, attempt to sell, give, trade, barter, transfer, or to otherwise furnish in a single transaction any other equivalent compound, substance, or derivative, whether described as tobacco, herbs, incense, plant food, food, nutrient, dietary supplement, spice, bath salts or any blend thereof which is not regulated or approved for human consumption by the U.S. Food and Drug Administration [~~in an amount in excess of 25 milligrams in the aggregate~~], and when introduced into the body, induces the effects substantially similar to that of a controlled substance, regardless of whether the substance is marketed for the purpose of human consumption.

C. It shall be unlawful for any person or entity to manufacture, assemble, distribute, sell, market, display for sale, or offer for sale within the municipality products containing the substances prohibited by subsections A and B [~~in any amount~~]. It shall be unlawful to attempt the conduct prohibited by this subsection.

D. It shall be unlawful to knowingly possess, attempt to possess, inject, ingest, insert rectally, burn, incinerate or ignite products containing substances prohibited by this section in the municipality. For purposes of this section, a person knowingly possesses such substances when the person knows the substance induces the effects described in this ordinance, regardless of whether the person knows whether the

1 chemical compounds described in subsection A are present in the
2 product possessed.

3
4 **E.** **It shall be unlawful to possess, attempt to possess, inject, ingest,**
5 **insert rectally, burn, incinerate or ignite products containing**
6 **substances prohibited by this section in the municipality.**

7
8 **F.** A person or entity violating the provisions of subsections A, ~~or~~ B, or D
9 shall be guilty of a misdemeanor and shall be punishable by a fine of
10 not more than \$5,000 or imprisonment of not more than one year, or
11 both.

12
13 **G** ~~**F.**~~ A person or entity violating the provisions of subsection C shall be
14 subject to a penalty not to exceed \$5,000 for each violation. For
15 purposes of this subsection, each batch of a substance described in
16 subsection A or B, or each day the person or entity engaged in the
17 prohibited conduct, shall constitute a separate violation.

18
19 **H** ~~**G.**~~ A person or entity violating the provisions of subsection **E** ~~**D**~~ shall be
20 subject to a penalty not to exceed **\$500** ~~**\$1,000**~~ for each violation. For
21 purposes of this subsection, each separately packaged amount of a
22 substance described in subsections A or B shall constitute a separate
23 violation.

24
25 **I** ~~**H.**~~ As an alternative to the remedies, procedures and penalties provided in
26 this title and section 1.45.010, a violation of subsection C. or **E** ~~**D**~~
27 may be charged as a civil violation subject to and prosecuted in
28 accordance with title 14, and in such case shall be punishable by a civil
29 penalty in accordance with chapter 14.60.

30
31 **J** ~~**I.**~~ The criminal penalties and civil fines authorized by this section are not
32 exclusive, and the municipality may seek any other remedies provided
33 by law or equity, including injunctive relief, for repeated violations of this
34 section.

35
36 **K** ~~**J.**~~ It is not an offense under this section if the person or entity was acting
37 at the direction of an authorized agent of the municipality or other
38 authorized law enforcement agency to enforce or ensure compliance
39 with this section.

40
41 **L** ~~**K.**~~ Any product described in subsection A or B. found by or that comes in
42 the possession of a police officer or a municipal official may be
43 confiscated as contraband and destroyed in accordance with chapter
44 7.25 as such.

45
46 **M** ~~**L.**~~ This section does not apply to drugs or substances lawfully prescribed
47 or drugs or substances approved by the federal Food and Drug

Administration or drugs or substances otherwise specifically permitted by federal or state law.

N[M]. The use of the substances described in this section for bona fide research or educational purposes under lawful federal, state or local authority is exempt from the prohibitions of this section.

Section 2. Anchorage Municipal Code section 8.35.010 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

8.35.010 Definitions.

A. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Analogue means a chemical compound that is structurally similar to another but differs slightly in composition (as in the replacement of one atom by an atom of a different element or in the presence of a particular functional group).

*** **

Drug paraphernalia means any items whose objective characteristics or objective manufacturer's design indicate that it is intended for use in the consumption, ingestion, inhalation, injection or other method of introduction of:

1. A controlled substance into the human body or to facilitate a violation of AS 11.71; or
2. A product containing illegal synthetic cannabinoids under section 8.35.100 or an illegal synthetic compound under section 8.35.110.

*** **

Homologue means one of a series of compounds distinguished by addition of a CH₂ group in successive members.

*** **

(AO No. 81-219; AO No. 98-59(S), § 1, 5-19-98; AO No. 2000-95, § 11, 10-16-00; AO No. 2010-87(S), § 2, 12-7-10)

Section 3. Anchorage Municipal Code section 14.60.030 is hereby amended to add to the fine schedule (*the remainder of the schedule is not affected and therefore not set out*):

14.60.030 Fine schedule.

Code Section	Offense	Penalty/Fine
***	***	***

<u>8.35.110 C.</u>	<u>Manufacture, assemble, distribute, sell, market, display for sale, or offer for sale any amount of an illegal synthetic compound</u>	<u>\$5,000 for each separate violation</u>
<u>8.35.110 E[D].</u>	<u>Possession or use of illegal synthetic compound</u>	<u>\$500 [\$1,000] for each separate violation</u>
***	***	***

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

(AO No. 93-167(S-1), § 1, 4-13-94; AO No. 94-108, § 1, 10-5-94; AO No. 94-134, § 2, 9-8-94; AO No. 95-42, § 2, 3-23-95; AO No. 95-67(S), § 9, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-118, § 3, 9-1-95; AO No. 95-163(S), § 21, 8-8-95; AO No. 95-195(S-1), 1-1-96; AO No. 96-51(S-1), § 2, 8-1-96; AO No. 96-96(S-1), § 2, 2-1-97; AO No. 96-126(S), § 3, 10-1-96; AO No. 96-137(S), § 9, 1-2-97; AO No. 97-88, § 3, 6-3-97; AO No. 97-107, § 3, 11-17-97; AO No. 97-133(S), § 1, 11-11-97; AO No. 98-27(S-1), § 2, 11-11-97; AO No. 98-160, § 2, 12-8-98; AO No. 99-13(S), 2-9-99; AO No. 99-91(S), § 4, 7-13-99; AO No. 2000-64, § 1, 4-18-00; AO No. 2000-116(S), § 4, 7-18-00; AO No. 2000-127(S), § 2, 10-14-00; AO No. 2000-129(S), § 26, 11-21-00; AO No. 2001-48, § 1, 3-13-01; AO No. 2001-74(S), § 2, 4-17-01; AO No. 2001-4, § 2, 2-6-01; AO No. 2001-145(S-1), § 11, 12-11-01; AO No. 2003-68, § 1, 9-30-03; AO No. 2003-97, § 4, 9-30-03; AO No. 2003-117, § 2, 1-28-03; AO No. 2003-130, § 8, 10-7-03; AO No. 2003-152S, § 10, 1-1-04; AO No. 2004-1, § 2, 1-1-03; AO No. 2004-99, § 2, 6-22-04; AO No. 2004-100(S-1), § 6, 1-1-05; AO No. 2004-171, § 1, 1-11-05; AO No. 2005-160, § 9, 11-1-05; AO No. 2005-84(S), § 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-06; AO No. 2005-124(S-1A), § 33, 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No. 2006-54, § 1, 5-2-06; AO No. 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO No. 2007-60, § 4, 11-1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-15-08; AO No. 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-40(S), § 3, 7-21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-09; AO No. 2010-87(S), § 3, 12-7-2010; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-59, § 10, 5-24-11)

Section 4. This ordinance shall be effective immediately upon passage and approval ~~30 days from passage and approval.~~

PASSED AND APPROVED by the Anchorage Assembly this 8th day of November, 2011.

Dublini Oswarder
Chair of the Assembly

ATTEST:

Salma S. Oswarder
Municipal Clerk