

See AO 2011-106(5)

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Dept. of Law
For reading: October 11, 2011

**ANCHORAGE, ALASKA
AO No. 2011-106**

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.
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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 September 8, 2011 the federal Drug Enforcement Agency issued a
33 notice of intent, 76 FR 55616-01, to temporarily schedule the three synthetic
34 cathinones mephedrone, methylone and MDPV under Schedule I of the Controlled
35 Substances Act based on findings it is necessary to avoid imminent hazard to the
36 public safety because they have a high potential for abuse, no currently accepted
37 medical use in treatment in the United States, and lack accepted safety for use under
38 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,
42 can induce severe withdrawal symptoms including restlessness, anxiety, insomnia,

1 seizures, convulsions and death;

2
3 **WHEREAS**, Benzylpiperazine (BZP) is a recreational drug with euphoric, stimulant
4 properties. The effects produced by BZP are comparable to those produced by
5 amphetamine. Adverse effects have been reported following its use including acute
6 psychosis, renal toxicity, and seizures. Its sale is banned in a few countries, including
7 Australia, New Zealand, the United States, the Republic of Ireland, the United
8 Kingdom, and other parts of Europe;

9
10 **WHEREAS**, the abuse of these substances has been increasing and law
11 enforcement and medical professionals have indicated bath salts, in particular, are
12 becoming increasingly popular due to the misperception that they pose a seemingly
13 safer alternative to illegal methods of getting "high" and can be obtained at
14 convenience stores, pawnshops, and gas stations;

15
16 **WHEREAS**, users of these drugs report the effects are similar to cocaine, ecstasy or
17 methamphetamine usage, including blurred vision, extremely elevated blood
18 pressure, irregular heart rates, hallucinations, delusions, vomiting, suicidal thoughts,
19 "highs", and disturbing side effects including feelings of excruciating pain, agitation
20 and loss of control. Some abusers describe the effects as similar to
21 methamphetamine, ecstasy, and cocaine, and have referred to bath salts as
22 "complete crank" and "fake cocaine";

23
24 **WHEREAS**, some users experience severe reactions, resulting in unconsciousness,
25 seizures, and hospitalization, and in some reported cases even death;

26
27 **WHEREAS**, products containing the substances are not tested by the Food and Drug
28 Administration (U.S. Department of Agriculture) or other governmental regulatory
29 agency for human consumption and contain chemicals detrimental and dangerous to
30 the health and welfare of those ingesting them;

31
32 **WHEREAS**, representatives of businesses selling the substances indicate they are
33 available to minors as well as adults;

34
35 **WHEREAS**, despite packaging warning purchasers that the products are not for
36 human consumption, the warnings are not being heeded;

37
38 **WHEREAS**, Alaska Statutes do not currently regulate the sale, purchase,
39 possession, or manufacture of these substances or, if currently regulated, may not
40 provide the resources to fully prosecute offenders;

41
42 **WHEREAS**, within the United States there is no currently sanctioned medicinal or
43 other legitimate purpose for taking these substances; and

44
45 **WHEREAS**, it is in the best interest of the Municipality to prohibit the manufacture,
46 assembly, possession, use, sale, marketing, or offering for sale of these substances
47 within the boundaries of the Municipality to protect the health, safety and welfare of
48 its citizens; now, therefore,

49

1 **THE ANCHORAGE ASSEMBLY ORDAINS:**
2

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

6 **8.35.110 Illegal synthetic compounds.**
7

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

14 1. any compound structurally derived from 2-aminopropanal by
15 substitution at the 1-position with any monocyclic or fused-
16 polycyclic ring system, including compounds further modified by:
17

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

23 (b) substitution at the 3-position with an alkyl substituent; or
24

25 (c) substitution at the 2-amino nitrogen atom with alkyl or
26 dialkyl groups, or inclusion of the 2-amino nitrogen atom
27 in a cyclic structure;
28

29 2. By example, compounds such as:
30

31 (a) 4-Methyl-N-methylcathinone (Also known as
32 Mephedrone);

33 (b) 3,4-Dimethylmethcathinone (Also known as 3,4-DMMC);

34 (c) 3-Fluoromethcathinone (Also known as 3-FMC);

35 (d) 4-Fluoromethcathinone (Also known as Flephedrone);

36 (e) 3,4-Methylenedioxy-N-methylcathinone (Also known as
37 Methylone);

38 (f) 3,4-Methylenedioxypropylvalerone (Also known as MDPV);

39 (g) alpha-Pyrrolidinopentiophenone (Also known as alpha-
40 PVP);

41 (h) Naphthylpyrovalerone (Also known as Naphyrone);

42 (i) beta-Keto-N-methylbenzodioxolylpropylamine (Also
43 known as Butylone);

44 (j) beta-Keto-N-methylbenzodioxolylpentanamine (Also
45 known as Pentylone);

46 (k) beta-Keto-Ethylbenzodioxolylbutanamine (Also known as
47 Eutylone); and

48 (l) 3,4-methylenedioxy-N-ethylcathinone (Also known as
49 Ethylone);

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

E. A person or entity violating the provisions of subsections A or B shall be guilty of a misdemeanor and shall be punishable by a fine of not more than \$5,000 or imprisonment of not more than one year, or both.

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

G. A person or entity violating the provisions of subsection D shall be subject to a penalty not to exceed \$1,000 for each violation. For

1 purposes of this subsection, each separately packaged amount of a
2 substance described in subsections A or B shall constitute a separate
3 violation.

4
5 H. As an alternative to the remedies, procedures and penalties provided in
6 this title and section 1.45.010, a violation of subsection C. or D. may be
7 charged as a civil violation subject to and prosecuted in accordance
8 with title 14, and in such case shall be punishable by a civil penalty in
9 accordance with chapter 14.60.

10
11 I. The criminal penalties and civil fines authorized by this section are not
12 exclusive, and the municipality may seek any other remedies provided
13 by law or equity, including injunctive relief, for repeated violations of this
14 section.

15
16 J. It is not an offense under this section if the person or entity was acting
17 at the direction of an authorized agent of the municipality or other
18 authorized law enforcement agency to enforce or ensure compliance
19 with this section.

20
21 K. Any product described in subsection A or B. found by or that comes in
22 the possession of a police officer or a municipal official may be
23 confiscated as contraband and destroyed in accordance with chapter
24 7.25 as such.

25
26 L. This section does not apply to drugs or substances lawfully prescribed
27 or drugs or substances approved by the federal Food and Drug
28 Administration or drugs or substances otherwise specifically permitted
29 by federal or state law.

30
31 M. The use of the substances described in this section for bona fide
32 research or educational purposes under lawful federal, state or local
33 authority is exempt from the prohibitions of this section.

34
35 **Section 2.** Anchorage Municipal Code section 8.35.010 is hereby amended to read
36 as follows (*the remainder of the section is not affected and therefore not set out*):

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38 **8.35.010 Definitions.**

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

43
44 Analogue means a chemical compound that is structurally similar to
45 another but differs slightly in composition (as in the replacement of one
46 atom by an atom of a different element or in the presence of a
47 particular functional group).

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49 * * * * *

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 D.</u>	<u>Possession or use of illegal synthetic compound</u>	<u>\$1,000 for each separate violation</u>
***	***	***

(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-

1 160, § 9, 11-1-05; AO No. 2005-84(S), § 3, 1-1-06; AO No. 2005-185(S), § 35, 2-28-
2 06; AO No. 2005-124(S-1A), § 33, 4-18-06; AO No. 2006-39, § 6, 4-11-06; AO No.
3 2006-54, § 1, 5-2-06; AO No. 2006-80, § 1, 6-6-06; AO No. 2007-50, § 4, 4-10-07; AO
4 No. 2007-60, § 4, 11-1-07; AO No. 2007-70, § 3, 5-15-07; AO No. 2008-84(S), § 5, 7-
5 15-08; AO No. 2009-61, § 3, 7-7-09; AO No. 2009-82, § 5, 7-7-09; AO No. 2009-
6 40(S), § 3, 7-21-09; AO No. 2009-112, § 4, 10-13-09; AO No. 2009-122, § 2, 12-17-
7 09; AO No. 2010-87(S), §3, 12-7-2010; AO No. 2011-46, § 4, 4-12-11; AO No. 2011-
8 59, § 10, 5-24-11)
9

10 **Section 4.** This ordinance shall be effective 30 days from passage and approval.
11
12

13 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
14 _____, 2011.
15
16
17
18

19 _____
20 Chair of the Assembly
21

22 ATTEST:
23
24
25

26 _____
27 Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2011-106

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

Sponsor: Mayor Sullivan
 Preparing Agency: Department of Law
 Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:					
	(In Thousands of Dollars)				
	FY10	FY11	FY12	FY13	FY14
Operating Expenditures					
1000 Personal Services					
2000 Non-Labor					
3900 Contributions					
4000 Debt Service					
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -
REVENUES:					
CAPITAL:					
POSITIONS: FT/PT and Temp					

PUBLIC SECTOR ECONOMIC EFFECTS:
 None.

PRIVATE SECTOR ECONOMIC EFFECTS:
 None.

Prepared by: Dept. of Law Telephone: 343-4545

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 589-2011

Meeting Date: October 11, 2011

1 **From:** MAYOR SULLIVAN
2

3 **Subject:** AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE
4 CHAPTER 8.35 TO PROHIBIT THE MANUFACTURE, ASSEMBLY,
5 DISTRIBUTION, MARKETING, SALE, USE OR POSSESSION OF
6 SUBSTANCES CONTAINING CERTAIN CHEMICAL COMPOUNDS,
7 INCLUDING THOSE COMMONLY MARKETED AND SOLD AS
8 "BATH SALTS", PLANT FOOD, INCENSE OR DIETARY
9 SUPPLEMENTS AND WHICH INDUCE EFFECTS SIMILAR TO
10 CERTAIN ILLEGAL DRUGS, TO PROHIBIT THE SALE OR
11 POSSESSION OF PARAPHERNALIA RELATED TO THE USE OF
12 THESE CHEMICAL COMPOUNDS, TO PROVIDE PENALTIES, AND
13 AMENDING SECTION 14.60.030 TO PROVIDE FOR CIVIL
14 PENALTIES.
15

16 The manufacture and use of chemical compounds commonly referred to as "bath
17 salts" is a new threat in the war on drugs. These chemical compounds are banned in
18 at least 33 states, as well as many municipalities throughout the United States, all
19 members of the European Union, and other foreign countries. The federal Drug
20 Enforcement Agency published a notice of intent on September 8, 2011, to
21 temporarily list mephedrone, methylone, and MDPV on Schedule I under the
22 Controlled Substances Act due to the imminent hazard to public safety presented by
23 these unregulated designer drugs. See 76 Federal Register 55616-01. The findings
24 in the ordinance are similar to the DEA's findings. Products containing these
25 substances are not currently regulated by the State of Alaska and may be readily
26 available in local stores. Even children may easily access these drugs.
27

28 Given the extreme effects of these products and the high degree of risk of death or
29 serious injury the products pose to users and people who encounter these users,
30 local criminalization is appropriate.
31

32 **THE ADMINISTRATION RECOMMENDS APPROVAL OF AN ORDINANCE**
33 **AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 8.35 TO PROHIBIT**
34 **SUBSTANCES CONTAINING CERTAIN CHEMICAL COMPOUNDS COMMONLY**
35 **MARKETED AND SOLD AS "BATH SALTS", PLANT FOOD, INCENSE OR**
36 **DIETARY SUPPLEMENTS AND WHICH INDUCE EFFECTS SIMILAR TO CERTAIN**
37 **ILLEGAL DRUGS.**
38

39 Prepared by: Department of Law
40 Approved: Dennis A. Wheeler, Municipal Attorney
41 Concur: George J. Vakalis, Municipal Manager
42 Respectfully submitted: Daniel A. Sullivan, Mayor