ORDINANCE
NUMBER 2013-083

AN ORDINANCE OF THE BOARD OF COUNTY
COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA;
CREATING ARTICLE VII OF CHAPTER 2-5 OF THE CODE
OF LAWS AND ORDINANCES, CHARLOTTE COUNTY,
FLORIDA, ENTITLED “THE CHARLOTTE COUNTY ILLICIT
SYNTHETIC DRUG AND DRUG PARAPHERNALIA
ORDINANCE”; PROVIDING FOR TITLE AND CITATION;
PROVIDING FOR AUTHORITY; PROVIDING FOR
LEGISLATIVE FINDINGS OF FACT; PROVIDING FOR
DEFINITIONS; PROVIDING FOR POSSESSION,
PROVISION, SALE OR DISTRIBUTION OF ILLICIT
SYNTHETIC DRUGS PROHIBITED; PROVIDING FOR
DETERMINATION OF A PRODUCT AS AN ILLICIT
SYNTHETIC DRUG; PROVIDING FOR EXEMPTIONS;
PROVIDING FOR THE SALE OF CERTAIN PRODUCTS FOR
HUMAN CONSUMPTION PROHIBITED; PROVIDING FOR
RESTRICTIONS ON BUSINESSES THAT SELL OR DISPLAY
DRUG PARAPHERNALIA; PROVIDING FOR SALE OR
PROVISION OF DRUG PARAPHERNALIA TO MINORS AND
POSSESSION OF DRUG PARAPHERNALIA BY MINORS
PROHIBITED; PROVIDING FOR ENFORCEMENT;
PROVIDING FOR VIOLATIONS AND PENALTIES;
PROVIDING FOR CONFLICT WITH STATE LAW;
PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND
ORDINANCES, CHARLOTTE COUNTY, FLORIDA;
PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING
WITH THE FLORIDA DEPARTMENT OF STATE; AND
PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, new herbal and/or chemical mixtures are being marketed and sold in
Charlotte County which are not necessarily controlled by federal or state law but which are
designed and marketed to mimic the effects of illegal narcotics; and

WHEREAS, according to the Drug Enforcement Administration (DEA), synthetic
cannabinoids, also known as “Spice” or “K2” are mixtures of herbs and spices that are
typically sprayed with a synthetic compound chemically similar to THC, the psychoactive
ingredients in marijuana. These products are available for purchase in various retail
outlets, tobacco shops, head shops, and over the internet. The products are often
marketed as “incense” that can be smoked. The product sometimes resembles potpourri,
but can also be found in liquid form to be smoked in electronic cigarettes, or as a food
“additive.” These products produce psychological effects similar to those of marijuana, and
include paranoia, panic attacks, and giddiness. The physiological effects of these products
include increased heart rate and increased blood pressure; and

WHEREAS, “Bath Salts” are products which contain psychoactive chemicals that,
when ingested, offer alternatives to illegal drugs. Bath Salts are chemicals that are
synthetic derivatives of cathinones, a central nervous system stimulant. These products
are sold in powder, tablet, and capsule form, and are usually ingested by sniffing or
snorting but can also be taken orally, smoked, or put into a solution and injected. These
products can produce agitation, insomnia, irritability, dizziness, depression, paranoia,
delusions, suicidal thoughts, seizures, and panic attacks, and users have also reported
effects such as impaired perception of reality, reduced motor control, and decreased ability
to think clearly. Cathinone derivatives act as central nervous system stimulants causing
rapid heart rate (which may lead to heart attacks and strokes, chest pains, nosebleeds,
swelling, nausea and vomiting); and

WHEREAS, although often marked “not for human consumption,” or being labeled
as otherwise innocuous products (i.e. plant food, incense, potpourri, etc.), these products
are in fact designed and marketed to the buyer as products that act upon and affect the
human body and its systems as a legal method to get high or achieve the effects of illicit
drugs. As products intended to act upon the human body, these products are required by
Florida state regulations (Chapter 499, Florida Statutes) to carry adequate directions for
use and adequate warnings on their labels; instead, these products most often carry no
warnings or directions at all, or are labeled with sham or misleading directions (i.e., “place
caplet over doorway to enhance mood”) in an attempt to avoid application of the
regulations applicable to drug branding and labeling; and

WHEREAS, in 2012, the American Association of Poison Control Centers
(“AAPCC”) reported receiving 5,228 calls relating to exposures to synthetic marijuana and
2,676 calls relating to exposures to bath salts. In 2013, the AAPCC reported receiving
1,821 calls (as of August 31, 2013) relating to exposures to synthetic marijuana and 690
calls (as of August 31, 2013) relating to exposures to bath salts; and

WHEREAS, products containing synthetic cannabinoids are available and being
marketed to consumers in Charlotte County by their availability in small packages at local
retail stores. Further, the names and packaging of these substances appear to be
designed to appeal to children and young adults, and increased usage among middle
school and high school youths is a concern for both law enforcement and the medical
community; and

WHEREAS, the Charlotte County Board of County Commissioners (the "Board")
finds that illicit synthetic drugs are distributed, labeled, and marketed in a way that poses
dangerous consequences and health risks to the consumer; and

WHEREAS, the Board finds that drug paraphernalia such as bongs, water pipes,
etc. are being sold openly in Charlotte County at certain retail stores and that currently
there are no regulations prohibiting the sale or display of such items to persons under 18
years of age, or warning parents of such displays before entering these stores, nor are
there any regulations prohibiting the possession of such items by persons under 18 years
of age; and

WHEREAS, it is the intent of the Board to protect the health, safety, and welfare of
its citizens by prohibiting the possession, provision, sale or distribution of illicit synthetic
drugs and misbranded drugs, regulating the sale or display of drug paraphernalia,
prohibiting the sale or provision of drug paraphernalia to minors, and prohibiting the
possession of drug paraphernalia by minors, in Charlotte County, Florida.

NOW, THEREFORE, BE IT ORDAINED, by the Board of County Commissioners of
Charlotte County, Florida, that:

Section 1. Chapter 2-5 of the Code of Laws and Ordinances, Charlotte County,
Florida, is hereby amended by creating a new article, designated as Article VII, and by
adding the following new language, numbered and designated as follows:

"Sec. 2-5-148. Title and citation.
This Ordinance shall be known and may be cited as the "Charlotte County Illicit
Synthetic Drug and Drug Paraphernalia Ordinance."

Sec. 2-5-149. Authority.
This Ordinance is enacted pursuant to F.S. ch. 125 (2013), and under the home rule
powers of Charlotte County, and in accordance with the proscriptions on local
regulation imposed by the Fair Packaging and Labeling Act, 15 U.S.C § 1461. The
provisions of this Ordinance shall apply solely within the unincorporated area of
Charlotte County.
Sec. 2-5-150. Legislative findings of fact.
The foregoing "WHEREAS" clauses contained herein are hereby adopted as legislative findings of the Board of County Commissioners and are ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Sec. 2-5-151. Definitions.
For purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*Bath Salts/synthetic cathinones/synthetic stimulants* shall mean any crystalline or powder product in crystalline, loose-powder, block, tablet, or capsule form, or any stimulant-type product, when the label is in any way false or misleading, or which does not contain a label specifying: (1) the identity of the commodity; and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Blue Silk, Cloud Nine, Drone, Energy-I, Ivory Wave, Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightening, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone, and MCAT.

*Code Enforcement Official* means any designated employee or agent of Charlotte County whose duty it is to enforce codes and ordinances enacted by Charlotte County. Employees or agents who may be considered code enforcement officials for the purposes of this Ordinance may include, but are not limited to, code inspectors, code compliance officials, law enforcement officers, animal control officers, or fire safety inspectors.

*Drug* shall mean an article that is intended to affect the function of the body of humans.

*Drug paraphernalia* means, other than devices to ingest or inject prescription drugs, any object used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, or other illicit drugs or controlled substances into the human body, including but not limited to: metal, wooden, acrylic, glass, stone, plastic or ceramic pipes (with or without screens, permanent screens, hashish heads or punctured metal bowls); water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips, miniature cocaine spoons and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers. In determining whether an object is drug paraphernalia, a code enforcement board or court may consider any of the factors enumerated in F.S. § 893.164 ("Determination of paraphernalia").
Illicit synthetic drugs shall include spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, or misbranded drugs.

Minor means a person under 18 years of age.

Misbranded drug means a drug that violates F.S. § 499.007, including but not limited to drugs for which: (1) the label is in any way false or misleading; (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use.

Person means any individual, employee, business entity, lessee, property owner, firm, partnership, joint venture, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Premises means any part of the building(s) located on a lot or parcel of land utilized in whole or part for the commercial or retail sale of illicit synthetic drugs or commercial sale and display of drug paraphernalia.

Spice/synthetic cannabinoids/synthetic marijuana shall mean any aromatic plant material in granular, loose leaf or powder form, or in liquid or as a food additive, or any herbal-incense-type stimulant or hallucinogen product, when the label is in any way false or misleading, or which does not contain a label specifying: (1) the identity of the commodity; and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotip, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, 0MG, Demon, Barely In, Pineapple Express, and Hayze.

Sec. 2-5-152. Possession, provision, sale or distribution of illicit synthetic drugs prohibited.
It is unlawful for any person to possess, provide, sell or distribute any illicit synthetic drug as defined in this Ordinance.
Sec. 2-5-153. Determination of a product as an illicit synthetic drug.
(a) In determining whether a product is prohibited by this Ordinance, statements on
package labeling such as "not for human consumption" may be disregarded when
other relevant factors (viewed alone or in totality) indicate that the product is
intended to be consumed or ingested by humans, or is a product regulated by this
Ordinance.
(b) Other relevant factors that may be used to determine whether a product or sale
is prohibited by this Ordinance include, but are not limited to:
(1) verbal or written representations at the point of sale regarding the purpose,
methods, use, or effect of the product;
(2) aspects of the packaging or labeling that suggest the user will achieve a "high,"
euphoria, relaxation, mood enhancement, or that the product has other effects on
the body;
(3) the cost of the product is disproportionately higher than other products, such as
incense or potpourri, marketed for the same use;
(4) the product contains a warning label stating or suggesting that the product is in
compliance with state laws regulating controlled substances;
(5) the product's name or packaging uses images or slang referencing an illicit
street drug or portraying the use of an illicit street drug;
(6) illicit or underground methods of sale or delivery are employed by the seller or
provider; and
(7) the product resembles an illicit street drug such as cocaine, methamphetamine,
or marijuana.

Sec. 2-5-154. Exemptions.
The provisions of this Ordinance do not apply to any product that is specifically
excepted by, or regulated within, the Florida Comprehensive Drug Abuse Prevention
and Control Act (F.S. ch. 893) or the Federal Controlled Substances Act (21 USC -
81 et seq.); is a food product, drug, dietary supplement, cosmetic, or other
substance regulated by the Food and Drug Administration (FDA) and in compliance
with that agency's requirements; is regulated by and in compliance with the labeling
requirements of the Federal Trade Commission; is regulated by and in compliance
with the Federal Fair Packaging and Labeling Act; is regulated by and in compliance
with the Federal Food, Drug, and Cosmetic Act; is regulated by and in compliance
with the regulations of the Florida Department of Agriculture and Consumer
Services; or is a tobacco product regulated by and in compliance with the
regulations governing the tobacco industry enforced by the Florida Department of
Business and Professional Regulation, Division of Alcoholic Beverages and
Tobacco. For the purposes of this section, products that are not subject to
regulation by the act or agencies listed above are not exempt unless the product is
specifically exempt from regulation; mere "non-regulation" by these acts without a
specific regulatory exemption will not render a product exempt under this section.

Sec. 2-5-155. Sale of certain products for human consumption prohibited.
It is unlawful for any person to possess, provide, sell or distribute a product for
human consumption when the product is labeled "not for human consumption" or
contains similar warnings.

Sec. 2-5-156. Restrictions on businesses that sell or display drug paraphernalia; signage required; unaccompanied minors prohibited.
(a) No person in control of the premises of any place of business selling or displaying drug paraphernalia shall allow or permit any person under the age of 18 to enter or remain on the premises unless the minor person is accompanied by one of his or her parents or by his or her legal guardian.
(b) Such premises must prominently display a sign approved by the code enforcement official posted at the entrance to the premises, stating that drug paraphernalia is located within the premises, and prohibiting persons under 18 from entering the establishment without their parent or guardian.
(c) Exemption: These restrictions do not apply to premises (a) that prohibit the entry of persons under the age of 18; or (b) premises where the sale and display of drug paraphernalia is located in a separate room from which persons under 18 are excluded without a parent or guardian, and provided that a sign approved by the code enforcement official is posted at the entrance to the room, stating that drug paraphernalia is located within the room, and prohibiting persons under 18 from entering the room without their parent or guardian. The room must contain a door, which is to remain closed except when in active use to enter or exit the room. The door shall contain a window of a minimum size of 18 inches by 18 inches, located at a minimum height of five feet from the floor. This window shall remain unobstructed to allow code enforcement officials and persons in charge of the premises to view persons inside the room without the necessity of entry into the room. This provision is not intended to require permission, or special authority or a search warrant for code enforcement officials to enter the room.

Sec. 2-5-157. Sale or provision of drug paraphernalia to minors prohibited; possession by minors prohibited.
No person shall sell or provide drug paraphernalia to any person under the age of 18. No person under the age of 18 shall possess drug paraphernalia.
(a) Defenses. A person who violates the provisions of this section shall have a defense to any civil action for violation of these provisions if, at the time of the violation the violator checked one of the following forms of identification with respect to the minor: a driver's license or an identification card issued by the State of Florida or another state of the United States, a passport, or a United States Uniformed Services identification card and said identification showed that the person was over the age of 18 years.

Sec. 2-5-158. Enforcement.
This Ordinance may be enforced by any code enforcement official. For the purposes of enforcing the provisions of this Ordinance, all law enforcement officers having jurisdiction in the unincorporated areas of Charlotte County, Florida, are hereby designated as code enforcement officials. However, said designation as code enforcement officials shall not affect any law enforcement officer's ability to make a misdemeanor arrest for violations of this Ordinance. Any products found in
violation of this Ordinance may be seized and held by the enforcing agency for
testing and as evidence to be used in any further proceeding.

Sec. 2-5-159. Violations and penalties.
(a) It shall be unlawful for any person to violate any of the terms, provisions or
directions of this Ordinance. Each day of any such violation shall constitute a
separate and distinct offense.
(b) Violations of any provision of this Ordinance shall be subject to the following
penalties:
First violation - $250.00 fine per violation.
Second violation and subsequent violations - $500.00 fine per violation.
(c) Violations may be taken before the code enforcement board for enforcement
and if the violation is proven a fine shall be assessed against the violator in
accordance with the fines set forth in this Ordinance.
(d) Due to the dangerous medical and health effects illicit synthetic drugs prohibited
by this Ordinance can have on the user of the product, for the purposes of
enforcement of this Ordinance, each package containing an illicit synthetic drug
shall be considered a separate code violation. All violations of this Ordinance shall
be considered a serious threat to the public health, safety, and welfare of the
citizens of Charlotte County and any code enforcement official is hereby authorized
to issue a notice of violation upon discovering a violation of this Ordinance.
(e) In any order of the code enforcement board finding a violation of this Ordinance,
the code enforcement board shall also order the violator(s) to pay any laboratory
analysis and expert testimony costs incurred by the County or the Charlotte County
Sheriff’s Office in the enforcement of this Ordinance.
(f) Any fine assessed herein shall be payable within thirty (30) days. If the fine is
unpaid after thirty (30) days, the County may place a lien on the property for the
amount of the unpaid fine(s). The lien shall be filed in the office of the Clerk of the
Circuit Court and recorded in the Public Records of Charlotte County, Florida. The
owner of the assessed property shall be liable for the amount of the lien and the
cost of collection. Such lien shall be in favor of Charlotte County and may be
satisfied at any time by payment thereof, including the recitation fee. Upon such
payment, the county shall prepare a satisfaction and release of lien, which shall be
recorded in the Public Records of Charlotte County, Florida.
(g) Any person who knowingly violates any provision of this Ordinance may also be
punished in the same manner as a misdemeanor as provided by general law.
(h) Charlotte County may also enforce the provisions of this Ordinance by an action
in equity, including injunctive or declaratory relief, in the appropriate court of
competent jurisdiction.
(i) In the event this Ordinance conflicts with any Resolution of the Board of County
Commissioners or provision of the Code of Laws and Ordinances, Charlotte County,
Florida, the provisions of this Ordinance shall control.

Sec. 2-5-160. Conflict with State Law.
Nothing in this Ordinance is intended to conflict with the provisions of the Florida
Constitution or any Florida Statute. In the event of a direct and express conflict
between this Ordinance and either the Florida Constitution or the Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, shall control."

Section 2. Inclusion in the Code of Laws and Ordinances, Charlotte County, Florida, is the intention of the Board of County Commissioners and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances, Charlotte County, Florida, and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or applications. To this end, the provisions of this Ordinance are declared severable.

Section 4. Filing with the Florida Department of State. A certified copy of this Ordinance shall be filed with the Department of State of the State of Florida within 10 days of enactment.

Section 5. Effective Date. This Ordinance shall become effective on January 1, 2014.

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PASSED AND DULY ADOPTED this 26th day of November, 2013.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: [Signature]
Chair
Printed Name: [Signature]

ATTEST:
Barbara T. Scott, Clerk of Circuit
Court and Ex-officio Clerk to the
Board of County Commissioners

By: [Signature]
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: [Signature]
Janette S. Knowlton, County Attorney

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