

## **LESSONS OF “BATH SALTS”**

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**News Release**  
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Contact: DEA Public Affairs  
202-307-7977

**DEA Moves to Emergency Control Synthetic Stimulants**  
*Agency Will Study Whether To Permanently Control Three Substances*

**SEP 07 -- WASHINGTON, D.C.** – The United States Drug Enforcement Administration (DEA) is using its emergency scheduling authority to temporarily control three synthetic stimulants (Mephedrone , 3,4 methylenedioxypropylvalerone (MDPV) and Methylone). This action was necessary to protect the public from the imminent hazard posed by these dangerous chemicals. Except as authorized by law, this action will make possessing and selling these chemicals or the products that contain them illegal in the U.S. for at least one year while the DEA and the United States Department of Health and Human Services (DHHS) further study whether these chemicals should be permanently controlled.

A Notice of Intent to temporarily control was published in the Federal Register today to alert the public to this action. This alert is required by law as part of the Controlled Substances Act. In 30 days or more, DEA intends to publish in the Federal Register a Final Order to temporarily control these chemicals for at least 12 months, with the possibility of a six-month extension. The final order will be published in the *Federal Register* and will designate these chemicals as Schedule I substances, the most restrictive category, which is reserved for unsafe, highly abused substances with no currently accepted medical use in the United States.

"This imminent action by the DEA demonstrates that there is no tolerance for those who manufacture, distribute, or sell these drugs anywhere in the country, and that those who do will be shut down, arrested, and prosecuted to the fullest extent of the law," said DEA Administrator Michele M. Leonhart. "DEA has made it clear we will not hesitate to use our emergency scheduling authority to control these dangerous chemicals that pose a significant and growing threat to our nation."

Over the past few months, there has been a growing use of, and interest in, synthetic stimulants sold under the guise of "bath salts" or "plant food". Marketed under names such as "Ivory Wave", "Purple Wave", "Vanilla Sky" or "Bliss", these products are comprised of a class of chemicals perceived as mimics of cocaine, LSD, MDMA, and/or methamphetamine. Users have reported impaired perception, reduced motor control, disorientation, extreme paranoia, and violent episodes. The long-term physical and psychological effects of use are unknown but potentially severe. These products have become increasingly popular, particularly among teens and young adults, and are sold at a variety of retail outlets, in head shops and over the Internet. However, they have not been approved by the FDA for human consumption or for medical use, and there is no oversight of the manufacturing process.

In the last six months, DEA has received an increasing number of reports from poison centers, hospitals and law enforcement regarding products containing one or more of these chemicals. Thirty-three states have already taken action to control or ban these or other synthetic stimulants. The Comprehensive Crime Control Act of 1984 amends the Controlled Substances Act (CSA) to allow the DEA Administrator to temporarily schedule an abused, harmful, non-medical substance in order to avoid an imminent hazard to public safety while the formal rule-making procedures described in the CSA are being conducted.

**Editor's Note: DEA will issue an additional press release when the Final Order to Temporarily Control these chemicals is published in the Federal Register.**

S.C. Const. Ann. Art. VIII, § 14

§ 14. General law provisions not to be set aside.

In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside:

(1) The freedoms guaranteed every person; (2) election and suffrage qualifications; (3) bonded indebtedness of governmental units; (4) the structure for and the administration of the State's judicial system; (5) criminal laws and the penalties and sanctions for the transgression thereof; and (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

S.C. Code Ann. § 44-53-370

§ 44-53-370. Prohibited acts A; penalties.

(a) Except as authorized by this article it shall be unlawful for any person:

(1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;

S.C. Code Ann. § 44-53-110

"Controlled substance analogue" means a substance that is intended for human consumption and that either has a chemical structure substantially similar to that of a controlled substance in Schedules I, II, or III or has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to that of a controlled substance in Schedules I, II, or III. Controlled substance analogue does not include a controlled substance; any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.; any substance for which there is an approved new drug application; or, with respect to a particular person, any substance if an exemption is in effect for investigational use for that person under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 355.

S.C. Code Ann. § 44-53-160

§ 44-53-160. Manner in which changes in schedule of controlled substances shall be made.

(1) Annually, within thirty days after the convening of each regular session of the General Assembly, the Department shall recommend to the General Assembly any additions, deletions or revisions in the schedules of substances, enumerated in §§ 44-53-190, 44-53-210, 44-53-230, 44-53-250 and 44-53-270, which it deems necessary. The Department shall not make any additions, deletions or revisions in such schedules until after notice and an opportunity for a hearing is afforded all interested parties. In making a recommendation to the General Assembly regarding a substance, the Department shall consider the following:

- (a) The actual or relative potential for abuse;
- (b) The scientific evidence of its pharmacological effect, if known;
- (c) State of current scientific knowledge regarding the substance;
- (d) The history and current pattern of abuse;
- (e) The scope, duration, and significance of abuse;
- (f) The risk to the public health;
- (g) The potential of the substance to produce psychic or physiological dependence liability; and
- (h) Whether the substance is an immediate precursor of a substance already controlled under this Division.

(2) After considering the above factors, the Department shall make a recommendation to the General Assembly, specifying to what schedule the substance should be added, deleted or rescheduled, if it finds that the substance has a potential for abuse.

(3) During the time the General Assembly is not in session, the Department may by rule add, delete or reschedule a substance as a controlled substance after providing for notice and hearing to all interested parties. Upon the adoption of such rule, the Department shall forward copies to the chairmen of the Medical Affairs Committee of the Senate, and the Military, Public and Municipal Affairs Committee of the House of Representatives and to the Clerks of the Senate and House and to the Chairman of the Joint Legislative Committee on Drugs and Narcotics.

(4) If any substance is added, deleted, or rescheduled as a controlled substance under federal law or regulation, the department shall by rule, at its first regular or special meeting after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, reschedule the substance into the appropriate schedule, such rule having force of law unless overturned by the General Assembly. This rule issued by the department shall be in substance identical with the order published in the federal register effecting the change in federal status of the substance. The department shall notify the General Assembly in writing of the change in federal law or regulation and of the corresponding change in South Carolina law.

(5) The Department shall exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this State, be lawfully sold over the counter without a prescription.



The Foothills Brewing Concern, Inc., 4MB, Inc., Greenville Wings, Inc., Addy's, Inc., City Tavern, Inc., Greenville 0036, LLC, Euphoria, LLC, WTK, Inc., Drumcliff Abbey, Inc., and Club Management, LLC, Respondents v. The City of Greenville, Appellant.

Opinion No. 26467

SUPREME COURT OF SOUTH CAROLINA

377 S.C. 355; 660 S.E.2d 264; 2008 S.C. LEXIS 109

January 9, 2008, Heard  
March 31, 2008, Filed

**SUBSEQUENT HISTORY:** Rehearing denied by *Brewing v. City of Greenville*, 2008 S.C. LEXIS 155 (S.C., May 7, 2008)

**PRIOR HISTORY:** [\*\*\*1]  
Appeal From Greenville County. John C. Few, Circuit Court Judge.

**DISPOSITION:** REVERSED.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Respondent restaurants and bars filed a declaratory judgment action against appellant city in the Greenville County Circuit Court (South Carolina), contending that Greenville, S.C., Ordinance No. 2006-91 was invalid and requesting injunctive relief. The court issued an order declaring that the ordinance was both unconstitutional and preempted by South Carolina law, and permanently enjoined the city from enforcing the ordinance. The city appealed.

**OVERVIEW:** After the State of South Carolina enacted the South Carolina Clean Indoor Air Act of 1990, S.C. Code Ann. § 44-95-10 et seq. (2002), the city enacted Greenville, S.C., Ordinance No. 2006-91 to more comprehensively regulate smoking in public places. The city argued that the ordinance was not preempted by South Carolina law and was consistent with both the Constitution and the general law of the State of South Carolina. On appeal, the court found that Act 445 amended S.C. Code Ann. § 44-95-20, but did not preempt the city from enacting the ordinance, and the trial court erred when it

isolated a phrase from S.C. Code Ann. § 16-17-504 and interpreted it in such a way as to accomplish preemption under the Clean Indoor Air Act. Moreover, the Clean Indoor Air Act did not preempt the entire field of indoor smoking. In addition, the ordinance did not violate S.C. Const. art. VIII, § 14 because the city did not seek to criminalize any conduct. As such, the ordinance did not set aside the criminal laws of the State of South Carolina. Finally, the ordinance was consistent with the Constitution and the general law of the State of South Carolina.

**OUTCOME:** The trial court's order was reversed, and the ordinance passed by the city was held to be valid and enforceable.

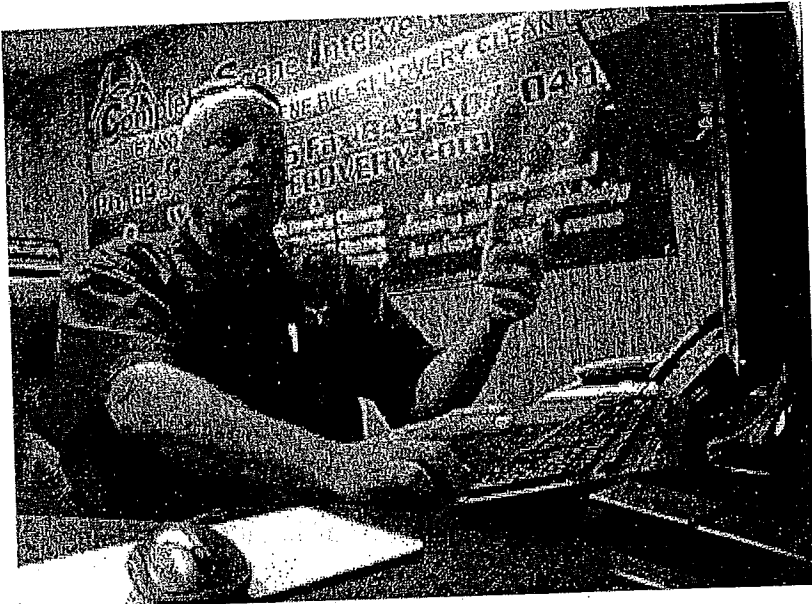
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## Florence business cleans up after bath salt abuse

By John Sweeney



At the beginning of the 2011, it didn't seem too many people were familiar with bath salts, nor their dangerous consequences

Now, it is hard to find a person who hasn't at least heard of the drugs that cause hallucinations and are suspected in at least one death and multiple hospitalizations throughout the Pee Dee.

But the effects of bath salts can be much more widespread.

"The people who take the bath salts do so much damage to people property, to their homes, their homes, their vehicles," Bill Flynn, president of Complete Scene Intervention, Inc. (CSI), said.

CSI specializes in crime and trauma scene clean up and Flynn has seen the destruction bath salts can leave behind.

The most traumatic scene Flynn and his crew have dealt linked to bath salts came when a Darlington

County man suspected of being on the drugs went into a violent rage near his home.

When CSI arrived found a disturbing sight.

Blood, everything from a few drops to large smears on windows, siding and vehicles of three homes over roughly an acre that took roughly 36 man hours to clean.

"A lot of aftermath," Flynn said.

That aftermath concerns Flynn, who said he worries about instances where those with health conditions who take the bath salts could expose the public to disease.

"There's always the possibility of a blood born pathogen that can be spread through contact," Flynn said when asked what dangers can be associated with cases when large amounts of blood are lost in an open area.

"It becomes about the community, the neighbors, the pets, your kids, your family."

Community concern is prompting municipalities and counties in the Pee Dee to take action.

Last week two municipalities – Florence and McColl – officially adopted ordinances making it illegal to sell, possess or take bath salts within city limits.

A third municipality, Bennettsville, held first reading on its own ordinance and will hold a second reading and adoption at next month's meeting.

Bennettsville is one of 13 cities poised to ban bath salts within the next month.

Chesterfield is the only county in the Pee Dee to have a ban on the books, while Marlboro will hold second reading on its ban in October.

Darlington, Dillon, Florence and Marion counties do not have ordinances in place but all have discussed taking action and some have engaged in talks with members of the state delegation on passing a state-wide ban.

After seeing what happens to those on bath salts, Flynn said the dangers are real and making the salts illegal should be a top priority.

"Even as a business owner -- and this is what we do -- I feel that bath salts are detrimental to our community and the United States," Flynn said.

Plenty of people share that sentiment.

In October, the Drug Enforcement Administration will begin enforcing a year-long ban outlawing the possession and sale of three synthetic stimulants marketed as bath salts.

According to CBS News and reports from the Associated Press, at least 27 states have already banned bath salts and Gov. Nikki Haley has said she anticipates the state legislature will consider its own ban in January.

In the mean time, some members of law enforcement say local bans carrying civil penalties will allow officers the opportunity to work on keeping the drugs out of the hands of offenders.

The city of Florence's ban passed last week carries what some would call minor penalties for a single infraction, but Police Chief Anson Shells said it opens up the door for cases to be prosecuted under the DEA ban when it comes into effect and said the city ordinance is harsher than some people realize.

"It's a \$25 for any violation and if an officer does stop a person with bath salts, that's what they would get. The same fine would be levied against any store that would be selling them. But the thing about the ordinance that gives the ordinance teeth, is that a store can lose its business license if they are caught selling it after a third offense," Shells said.

Still, city attorney Jim Peterson acknowledged that the ban is essentially a stop-gap measure until the state takes action.

"Without a state law in place, and of course with the state legislature out of session and not back in session until January, our choices were to just do nothing and sit and wait and see or try to do something that at least gave us some mechanism to use to try to regulate its use," Peterson said.

*Patricia Burkett contributed to this report.*

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ORDINANCE NO. 2011-\_\_\_\_\_

AN ORDINANCE TO ESTABLISH REGULATIONS AND REQUIREMENTS RELATED TO THE SALE, DISTRIBUTION, POSSESSION, OR USE OF SYNTHETIC MARIJUANA AND BATH SALTS WITHIN THE CITY OF FLORENCE

WHEREAS, the City Council of the City of Florence, upon assessing current conditions and more recent medical findings made by authoritative sources, has determined that neither the City's existing code nor the statutes of South Carolina sufficiently address the pressing public health issues arising from the life threatening harmful effects of the consumption or other use of newly developed drugs known as synthetic marijuana and as bath salts, and additional action by the City Council is necessary and proper; and

WHEREAS, The City Council (the "council") of the City of Florence, South Carolina, hereby finds and determines:

(a) The City of Florence, South Carolina (the "City"), is an incorporated municipality located in Florence County, South Carolina, and as such possesses all powers granted to municipalities by the Constitution and the laws of the State of South Carolina, including the powers enumerated in S.C. Code § 5-7-30 (2005 Supp.) relating to regulating streets, markets, and public health.

(b) A product known as Synthetic Marijuana has been developed in an apparent effort to create and distribute a product which has similar hallucinogenic qualities to natural marijuana but cannot currently be prosecuted in South Carolina as a controlled substance. It is now being possessed, distributed, and sold in the Florence area under several names including, but not limited to, Incense, Potpourri, Spice, K-2, and Blaze. Studies around the nation have indicated that Synthetic Marijuana usage carries with it all the dangers associated with usage of natural marijuana and carries with it additional dangers because of the unknown nature of any long term effects of this synthetically created substance.

(c) Another manufactured product known as "Bath Salts", "Plant Food", "Fake Bath Salts", "Fake Fertilizer", and/or "Fake Insect Repellent" has been developed recently and is now being possessed, distributed, and sold in the Florence area under several names including, but not limited to, Cloud 9, Ivory Wave, Ocean, Charge Plus, White Lightening, Scarface, Hurricane Charlie, Vanilla Sky, Bonzai Grow, Blue Silk, Serenity Now, Lovey Dovey, Euphoria, Aura, Red Dove, Red X Dawn, and White Dove. The usage of these compounds has affects very similar to the effects of Methamphetamine. Additionally, the usage of these compounds is causing serious and

life threatening health problems, including but not limited to, kidney failure, liver failure, and respiratory problems. Additional, studies have found the use of these compounds to be extremely addicting. Despite these dangers, these compounds have been manufactured in a way to avoid the existing state and federal laws regarding controlled substances. As a result, absent action by City Council, the sale, distribution, possession, and usage of these compounds would be lawful in the City of Florence.

(d) Numerous studies have found that usage of synthetic marijuana and bath salts cause serious health problems including heart disease, liver failure, kidney disease, and respiratory disease. The 2011 edition of the U. S. Drug Enforcement Administration's "Drugs of Abuse: A DEA Resource Guide," designates bath salts as a drug of concern which poses risks to users despite not yet being listed as a controlled substance.

(e) Many retail outlets in the City of Florence have voluntarily agreed to refuse to sell "bath salts" and "synthetic marijuana" under their many marketing names, but it is important and in the best interest of the citizens of Florence that the City be able to prohibit such sales until such time as the State of South Carolina or the federal government has the chance to regulate the use, sale, possession and distribution of said compounds.

(f) The city recognizes that use of both synthetic marijuana and bath salts create a danger to the health and safety of the public at large, and, in order to protect the health and welfare of the public, it is necessary to prohibit the use, sale, possession and distribution of said compounds in the manner provided for in this article (the "article") as a stop gap measure.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED, AND BY THE AUTHORITY THEREOF AS FOLLOWS:**

**Section 1. Enactment.** The provisions contained in the attached Exhibit A shall be, and are hereby enacted by the City of Florence, and they shall be titled "Regulation of Synthetic Marijuana and Bath Salts" and contained in Chapter 10 of the City Code. The attached exhibit is fully incorporated herein by reference.

**Section 2. Codification.** The Municipal Code Corporation as codifier of the City of Florence Code shall, in consultation with the City Attorney of Florence, have discretion to make such adjustments in the numbering and sequencing of the article numbers and sections numbers as will reasonably assure compliance with standard practices in codification and to codify the new provisions as soon as feasible after their effective dates.

**Section 3. Severability.** If any part of this Ordinance is held to be invalid or unconstitutional, it shall be construed to have been the legislative intent to pass said Ordinance without such invalid or unconstitutional provision, and the remainder of said Ordinance shall be deemed to be valid as if such portion had not been included. If said Ordinance, or any provisions thereof, is held to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such as holding shall not affect the applicability thereof to any persons, property or circumstances.

**Section 4. Effective Date.** This Ordinance shall become effective immediately upon its approval and adoption on Second Reading.

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

Approved as to form:

\_\_\_\_\_  
James W. Peterson, Jr.  
City Attorney

\_\_\_\_\_  
Stephen J. Wukela  
Mayor

Attest:

\_\_\_\_\_  
Dianne M. Rowan  
Municipal Clerk

## EXHIBIT A

### Regulation of Synthetic Marijuana and Bath Salts

#### 10-60. Prohibition of Possession, Usage, Sale, and Distribution of Synthetic Marijuana and Bath Salts.

- (a) The advertisement, sale, distribution, possession, and/or usage of *synthetic marijuana* are hereby prohibited within the City of Florence.
- (b) The advertisement, sale, distribution, possession, and/or usage of Methylenedioxypropylvalerone (MDPV), which is commonly known as *bath salts*, are hereby prohibited within the City of Florence.

#### 10-61. Enforcement.

- (a) This Ordinance shall be enforced by the Police Department of Florence and by the office of the City Manager or an authorized designee.
- (b) Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City.
- (c) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Police Department of Florence or the office of the City Manager.

#### 10-62. Violations and Penalties.

- (a) A person or entity that violates the prohibitions contained in Section 10-60 of this Ordinance shall be guilty of an infraction, punishable by a civil fine in the amount of twenty-five dollars (\$25.00).
- (b) A person who owns, manages, operates, or otherwise controls a business location who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by a civil fine in the amount twenty-five dollars (\$25).
- (c) The possession, sale, distribution or use of each separate *package* of synthetic marijuana or bath salts shall constitute and be punished as a separate occurrence and infraction of this ordinance.
- (d) In order to enforce infractions of this ordinance, the city shall serve a uniform ordinance summons upon the infractor.

- (e) In addition to the civil fines established in this Section, three (3) or more violations of this ordinance by a person or entity that owns, manages, operates, or otherwise controls a place of business in the City of Florence shall be a reason for and may result in the suspension or revocation of any business license issued for the premises on which the infractions occurred.
- (f) In the event the infractor fails to pay the civil fine or fails to appear pursuant to uniform ordinance summons, the city may utilize the Set-Off Debt Process provided for under Section 12-56-50, *et. seq.* of the South Carolina Code of Laws, as Amended.
- (g) A violation of provisions of this ordinance by selling, marketing or distributing *synthetic marijuana* or *bath salts* shall constitute a nuisance in the City of Florence.

#### 10-63. Definitions.

Unless the context shall clearly indicate some other meaning, the terms defined in this section shall, for all purposes of this article and other documents herein referenced, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

(a) *Synthetic marijuana* means THC, HU-210 Cannabicyclohexanol, JWH-073 and refers to all chemical compounds intended to replicate, mimic or cause a similar reaction to the effects of marijuana or cannabis. Such compounds are known as or marketed under many names, including but not limited to, such names as THC, HU-210 Cannabicyclohexanol, JWH-073, Potpourri, Spice, K-2, Blaze, herbal incense, herbal smoking blends, and other names.

(b) *Bath salts* mean Methylendioxypropylvalerone (MDPV), which is a psychoactive drug with stimulant properties which acts as a norepinephrine-dopamine reuptake inhibitor (NDRI). It is also known as MDPK, Magic, Super Coke and PV. It was reportedly sold as a legal drug alternative and marketed in the United States as "bath salts", "Plant Food", "Fake Bath Salts", "Fake Fertilizer", and/or "Fake Insect Repellent" under many marketing names, including but not limited to such names as Cloud 9, Ivory Wave, Ocean, Charge Plus, White Lightning, Scarface, Hurricane Charlie, Vanella Sky, Bonzai Grow, Blue Silk, Serenity Now, Lovey Dovey, Euphoria, Aura, Red Dove, Red X Dawn and White Dove.

(c) *Package* means each single unit marketing package or packaging for *synthetic marijuana* and/or *bath salts*.