

**MEMORANDUM**

PSHAC  
Agenda Item No. 1(F)3

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**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

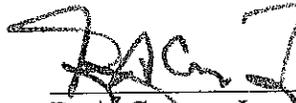
**DATE:** September 11, 2012

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Ordinance creating Sec. 21-50  
of the Code, prohibiting the  
sale of flavored tobacco  
products; amending Chapter  
8CC of the Code providing  
civil penalties

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The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan and Co-Sponsor Commissioner Jean Monestime.

  
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R. A. Cuevas, Jr.  
County Attorney

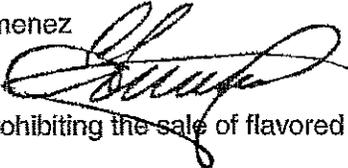
RAC/jls

# Memorandum



**Date:** October 2, 2012

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Ordinance prohibiting the sale of flavored tobacco products

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The proposed ordinance would prohibit the sale of flavored tobacco products throughout incorporated and unincorporated Miami-Dade County. Enforcement of the ordinance within the unincorporated area would be the responsibility of Miami-Dade County and within the incorporated areas would be the responsibility of each municipality. There are approximately 5,300 retail locations that sell tobacco products within Miami-Dade County. Costs associated with implementing this ordinance are estimated to be \$5,000 for a one-time cost to notify the entities that sell the tobacco products. Enforcement is anticipated to be done on a complaint driven basis, and would therefore be nominal.



Jack Osterholt  
Deputy Mayor

Fis6612

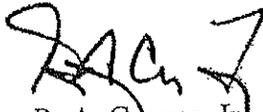


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** May 15, 2012

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 4 (B)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 4(B)  
5-15-12

ORDINANCE NO. \_\_\_\_\_

ORDINANCE CREATING SECTION 21-50 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS; AMENDING CHAPTER 8CC OF THE CODE PROVIDING CIVIL PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, flavored tobacco products have become increasingly common in the U.S.;  
and

**WHEREAS**, these products, containing flavors like vanilla, orange, chocolate, cherry and coffee, are especially attractive to youth; and

**WHEREAS**, they are widely considered to be “starter” products, establishing smoking habits that can lead to a lifetime of addiction; and

**WHEREAS**, almost 90 percent of adult smokers began smoking as teenagers, according to the Florida Department of Health fact sheet on candy-flavored tobacco, a copy of which is attached and incorporated by reference; and

**WHEREAS**, like all tobacco products, flavored tobacco products have serious health risks and are not considered safe by the U.S. Food & Drug Administration (FDA); and

**WHEREAS**, in 2004, 22.8 percent of 17-year-old smokers reported using flavored cigarettes over the past month, as compared to 6.7 percent of smokers over the age of 25, according to the FDA; and

**WHEREAS**, a poll conducted in March 2008 found that one in five youngsters between the ages of 12 and 17 had seen flavored tobacco products or ads, while only one in ten adults reported having seen them; and

**WHEREAS**, according to one study of youth smokers between the ages of 13 and 18, 52 percent of smokers who had heard of flavored cigarettes reported an interest in trying them, and nearly 60 percent thought that flavored cigarettes would taste better than regular cigarettes; and

**WHEREAS**, studies of youth expectations around other flavored tobacco products, such as bidis and hookahs, have found that young smokers report choosing flavored products over cigarettes because they “taste better” and are perceived to be “safer”; and

**WHEREAS**, tobacco industry documents reveal patterns of designing flavored cigarettes to target youth, according to the FDA; and

**WHEREAS**, all tobacco products, including flavored tobacco products, are equally addictive and carry the same health risks as regular tobacco products; and

**WHEREAS**, an estimated 443,000 Americans die prematurely each year due to smoking and exposure to second-hand smoke; and

**WHEREAS**, forty-one state attorneys general sued a tobacco company selling flavored cigarettes, arguing that it was violating the 1998 Master Settlement Agreement by targeting youth; and

**WHEREAS**, the settlement of that litigation included an agreement that the tobacco company stop marketing flavored cigarettes; and

**WHEREAS**, in 2009, Congress passed H.R. 1256, the Family Smoking Prevention and Tobacco Control Act of 2009 (Public Law 111-31), which, among other provisions, prohibited the manufacture and sale of flavored cigarettes; and

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**WHEREAS**, while the Family Smoking Prevention and Tobacco Control Act prohibits flavored cigarettes, no comparable federal prohibition exists for flavored non-cigarette tobacco products; and

**WHEREAS**, a number of local governments in Florida have passed resolutions urging tobacco retailers to stop the sale and marketing of flavored tobacco products; and

**WHEREAS**, in December, 2011, the City Commission of the City of Miami Gardens passed Resolution No. 2011-199-1592 and in February, 2012, the City Commission of the City of Opa-locka passed Resolution No. 12-8344, copies of which are attached and incorporated by reference; and

**WHEREAS**, local jurisdictions such as New York City, Providence, Rhode Island, and Santa Clara County, California have passed legislation imposing restrictions on the sale of flavored non-cigarette tobacco products; and

**WHEREAS**, the authority of state and local governments to restrict the sale of these products has been upheld in federal court,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 21-50 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

**Sec. 21-50. Sale of flavored tobacco products prohibited.**

- (a) Purpose and intent. The purpose and intent of this ordinance is to protect public health and welfare by reducing the appeal of tobacco to minors and reducing the likelihood that minors will become tobacco users later in life.
- (b) Application. This section shall be applicable in incorporated and unincorporated areas of Miami-Dade

County, with the enforcement of the provision of this section in the unincorporated area being the responsibility of Miami-Dade County and in the incorporated area being the responsibility of the municipalities.

- (c) Definitions. For purposes of this section, the following terms apply:
- (1) "Cigarette" means (1) any roll made or used for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (2) any roll made or used for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.
  - (2) "Characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.
  - (3) "Component part" means any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
  - (4) "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.
  - (5) "Flavored tobacco product" means any tobacco product or any component part thereof that contains

a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

(6) "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

(7) "Tobacco product" means any substance which contains tobacco, including, but not limited to, cigars and chewing tobacco; provided, however, that such term shall not include cigarettes.

(d) Sale of flavored tobacco products prohibited. It shall be unlawful for any person to sell or offer for sale any flavored tobacco product.

(e) Penalty. Any person violating any of the provisions of this section shall be punished by a fine not to exceed five hundred dollars (\$500.00).

**Section 2.** Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby

amended to read as follows:<sup>1</sup>

**Sec. 8CC-10. Schedule of civil penalties.**

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

<u>Code Section</u>	<u>Description of Violation</u>	<u>Civil Penalty</u>
>>21-50	<u>Sale of flavored tobacco product</u> <<	<u>\$500.00</u>

**Section 3.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 4.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 5.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency:

RAC

Prepared by:

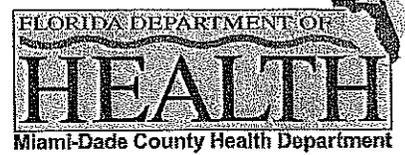
JMM

Jess M. McCarty

Prime Sponsor:  
Co-Sponsor:

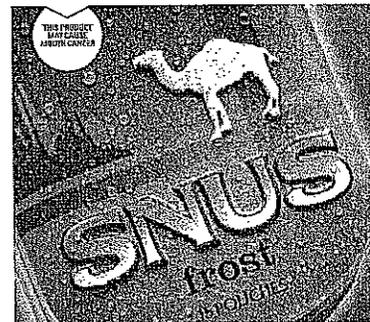
Commissioner Barbara J. Jordan  
Commissioner Jean Monestime

# CANDY-FLAVORED TOBACCO POLICIES



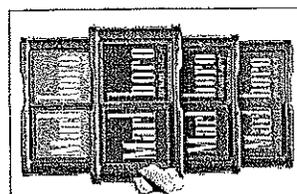
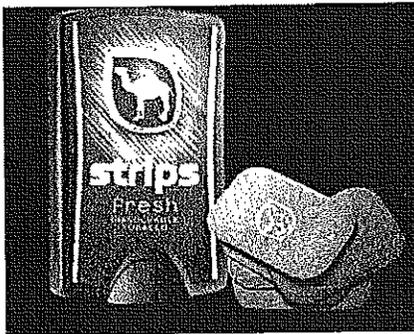
## What is the problem with candy-flavored tobacco?

- Candy-flavored tobacco targets new users, the majority of which are kids.
- Studies show that 17-year-old smokers are three times as likely to use flavored cigarettes as smokers over the age of 25.
- Almost 90 percent of adult smokers began smoking as teenagers.



**How to Use:** Place one in your mouth. Don't chew or swallow. Move it around if you want. Let it fully dissolve in your mouth. Enjoy Anywhere, Anytime, Anytime.

Sticks will last 20-30 minutes.\*



## What is not banned by the FDA?

- Candy-flavored spit tobacco.
- Candy-flavored cigars and cigarillos.
- Snus (rhymes with "noose"): small packets of tobacco resembling tea bags that are kept in the mouth. The excess juice can be swallowed instead of spat.
- New dissolvable products: pellets (Camel Orbs), a twisted stick the size of a toothpick (Camel Sticks), and a film strip for the tongue (Camel Strips), all of which are made from finely ground flavored tobacco.

RESOLUTION NO. 2011-199-1592

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, URGING TOBACCO RETAILERS TO STOP THE SALE AND MARKETING OF FLAVORED TOBACCO PRODUCTS IN MIAMI-DADE COUNTY; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS; tobacco use is the number one cause of preventable death in the United States, and almost 90 percent of tobacco users smokers started before they were 18 years old, and

WHEREAS, each day, more than 4,000 young people try smoking for the first time, and 19% of High School students report current cigarette use, and

WHEREAS, the Surgeon General has concluded that tobacco advertising greatly contributes to youth smoking rates, and

WHEREAS, the Master Settlement Agreement (MSA) reached in 1998 between state Attorneys General and major tobacco companies forbids cigarette manufacturers from directly or indirectly targeting youth in advertising, marketing and promotion of tobacco products aimed at initiating, maintaining or increasing youth smoking, and

WHEREAS, internal tobacco industry documents strongly suggest that manufacturers intentionally target youth through use of candy-like flavors in tobacco products, and

WHEREAS, research from the Harvard School of Public Health (published November 2005) found that cigarette makers are targeting young smoker with new candy – and liqueur-flavored brands that mask the harsh and toxic properties found in tobacco smoke, and

Resolution No. 2011-199-1592

WHEREAS, Tobacco companies use youth-oriented colorful and stylish packaging, and exploit adolescents' attraction to candy flavors with names such as "Mandarin Mint", "Winter Warm Toffee" and "Twista Chili", and

WHEREAS, national studies have found that the vast majority of people who are using these flavored tobacco products are youth and young adults, and

WHEREAS, the Florida Youth Tobacco Survey shows that at least 81% of tobacco obtained by through social sources, not direct underage purchases by the minors themselves and therefore existing age restrictions are inadequate protection to keep these flavored products out of the hands of their primary users, youth, and

WHEREAS, some of these tobacco products, specifically flavored cigars and blunts wraps are also used as drug paraphernalia for the smoking of marijuana, and

WHEREAS, flavored tobacco products are defined as loose tobacco including snuff flour, plug and twist tobacco, fine cuts, chewing tobacco, snus, shisha tobacco, smoking or snuffing tobacco products, and all other kinds and forms of tobacco, including but not limited to cigarettes, cigars, smokeless tobacco products and blunt wraps prepared in such a manner with the purpose for chewing, inhaling, smoking or ingesting in any manner in which the product or any of its component parts (including the tobacco, filter, or paper) contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including but not limited to, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, or alcohol flavors, that is a characterizing flavor of the tobacco product or tobacco smoke, and

WHEREAS, the City of Miami Gardens wants to discourage the sale and marketing of flavored tobacco products,

Resolution No. 2011-199-1592

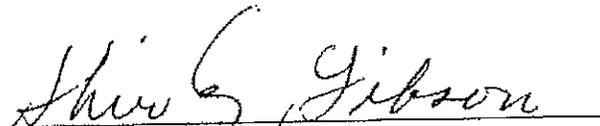
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby urges tobacco retailers to stop the sale and marketing of flavored tobacco products in Miami-Dade County and in the City of Miami Gardens.

Section 3: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON DECEMBER 14, 2011.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: COUNCILMAN DAVID WILLIAMS JR.

Moved by: Councilwoman Robinson  
Second by: Councilman David Williams Jr.

Resolution No. 2011-199-1592

**VOTE: 6-0**

Mayor Shirley Gibson	<u>      </u> (Yes)	<u>      </u> (No) (not present)
Vice Mayor Aaron Campbell, Jr.	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman David Williams Jr.	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilwoman Lisa Davis	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman Oliver Gilbert, III	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilwoman Felicia Robinson	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman André Williams	<u>  X  </u> (Yes)	<u>      </u> (No)

Sponsored by: Mayor Taylor  
City Commission

**RESOLUTION NO. 12-8344**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF OPA-LOCKA, TO URGE RETAILERS TO STOP THE SALE AND MARKETING OF FLAVORED TOBACCO PRODUCTS IN MIAMI-DADE COUNTY; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, tobacco use is the number one cause of preventable death in the United States; and

**WHEREAS**, the Surgeon General has concluded that tobacco advertising greatly contributes to youth smoking rates, and an estimated one-third of adolescent experimentation with smoking can be directly attributed to tobacco advertising and promotional activities; and

**WHEREAS**, internal tobacco industry documents strongly suggest that manufacturers intentionally target youth through use of candy-like flavors in tobacco products; and

**WHEREAS**, flavored tobacco products are defined as loose tobacco including snuff flour, plug and twist tobacco, fine cuts, chewing tobacco, snus, shisha tobacco, smoking or snuffing tobacco products, and all other kinds and forms of tobacco, including but not limited to cigarettes, cigars, smokeless tobacco products and blunt wraps prepared in such a manner with the purpose for chewing, inhaling, smoking or ingesting in any manner in which the product or any of its component parts (including the tobacco, filter, or paper) contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including but not limited to, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, or alcohol flavors, that is a characterizing flavor of the tobacco product or tobacco smoke; and

**WHEREAS**, national studies have found that the vast majority of people who are using the flavored tobacco products are youth and young adults; and:

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Resolution No. 12-8344

WHEREAS, the City Commission of the City of Opa-locka urges retailers to stop the sale and marketing of these products in Miami-Dade County.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE CITY COMMISSION OF THE CITY OF OPA-LOCKA, FLORIDA:

Session 1. The recitals to the preamble herein are incorporated by reference.

Session 2. The City Commission of the City of Opa-Locka, urges retailers to stop the sale and marketing of flavored tobacco products in Miami-Dade County.

Session 3. This Resolution shall upon adoption, become effective immediately.

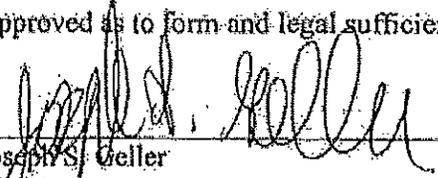
PASSED AND ADOPTED this 22<sup>nd</sup> day of February, 2012.

  
\_\_\_\_\_  
MYRA TAYLOR  
MAYOR

Attest to:

  
\_\_\_\_\_  
Joanna Flores  
Interim City Clerk

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Joseph S. Keller  
City Attorney

Moved by: COMMISSIONER MILLER  
Seconded by: VICE MAYOR JOHNSON  
Commission Vote: 4-1  
Commissioner Holmes: NO  
Commissioner Miller: YES  
Commissioner Tydus: YES  
Vice-Mayor Johnson: YES  
Mayor Taylor: YES