

MEMORANDUM

Agenda Item No. 7(C)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE:


(Second Reading 1-23-13)
October 23, 2012

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

SUBJECT:

Ordinance relating to
merchandising of flavored
tobacco products; amending
Sections 8A-8 through 8A-8.4
and 8CC-10 of the Code

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



R. A. Cuevas, Jr.
County Attorney

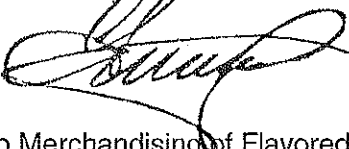
RAC/smm

Memorandum



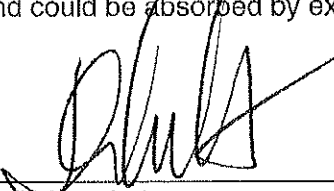
Date: January 23, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Ordinance Relating to Merchandising of Flavored Tobacco Products; Amending
Sections 8A-8 through 8A-8.4 and 8CC-10 of the Code

The proposed ordinance would add flavored, candy-like tobacco products to existing code provisions that prohibit the placement of tobacco products in self-service open displays in retail establishments throughout incorporated and unincorporated Miami-Dade County. Enforcement of the ordinance within unincorporated areas would be the responsibility of Miami-Dade Police Department and the Department of Regulatory and Economic Resources, and the responsibility of the respective municipalities in the incorporated area. The implementation of this ordinance would have no fiscal impact to the County as it is anticipated that enforcement would be done on a complaint driven basis and could be absorbed by existing staff.



Jack Osterholt
Deputy Mayor

Fis2413



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 23, 2013

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

SUBJECT: Agenda Item No. 7(C)

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 Mayor'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. 7(C)
1-23-13

ORDINANCE NO. _____

ORDINANCE RELATING TO MERCHANDISING OF FLAVORED TOBACCO PRODUCTS; AMENDING SECTIONS 8A-8 THROUGH 8A-8.4 AND 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING PLACEMENT OF FLAVORED TOBACCO PRODUCTS, INCLUDING BUT NOT LIMITED TO FLAVORED TOBACCO PRODUCTS THAT RESEMBLE CANDY, IN SELF-SERVICE OPEN DISPLAYS ACCESSIBLE TO MINORS; PROVIDING FOR INTENT, DEFINITIONS, AND ENFORCEMENT; AMENDING CHAPTER 8CC OF THE CODE TO PROVIDE 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

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; and

WHEREAS, on January 29, 2002, this Board adopted Ordinance No. 02-20, which prohibited the placement of tobacco products in open self-service displays accessible to minors; and

WHEREAS, section 569.101, Florida Statutes, also prohibits the sale or giving of tobacco products to persons under 18 years of age; and

WHEREAS, many retailers do not appear to be complying with either section 569.101, Florida Statutes, or Ordinance No. 02-20 particularly as these laws apply to flavored tobacco products that resemble candy, such as candy-flavored tobacco pellets, film strips and twisted sticks; and

WHEREAS, these candy-like flavored tobacco products are frequently offered for sale in open self-service displays readily accessible to minors; and

WHEREAS, this Board desires to amend Ordinance No. 02-20 to further clarify that retailers are prohibited from placing flavored tobacco products, including but not limited to flavored tobacco products that resemble candy, such as pellets, film strips and twisted sticks, in open self-service displays that are accessible to minors,

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

Section 1. Sections 8A-8 through 8A-8.4 of the Code of Miami-Dade County, Florida, are hereby amended to read as follows:¹

Sec. 8A-8. Title.

Sections 8A-8—8A-8.4 shall be known and may be cited as the "Merchandising of Tobacco Products >>Including Flavored Tobacco Products<< Ordinance."

Sec. 8A-8.1. Intent.

Sections 8A-8—8A-8.4 is intended to prevent the sale to and possession of tobacco products >>including flavored tobacco products of all types, including but not limited to flavored tobacco products that resemble candy, such as pellets, film strips and twisted sticks,<< by persons under the age of 18 by regulating the

¹ 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.

placement of such products. Sections 8A-8—8A-8.4 shall not be interpreted or construed to prohibit the sale or delivery of tobacco products >>including flavored tobacco products<<, which are otherwise lawful or regulated pursuant to Chapter 569, Florida Statutes.

Sec. 8A-8.2. Definitions.

For the purpose of Sections 8A-8—8A-8.4, the following definitions shall apply:

- (a) *Business* means any sole proprietorship, joint venture, corporation or other business formed for profit making or non-profit purposes in both the incorporated and unincorporated areas of Miami-Dade County, including retail establishments where goods or services are sold.
- >>(b) “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.
- (c) “Component part” means any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- (d) “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.
- (e) “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.<<

[[~~(b)~~]]>>(f)<< *Person* means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.

[[~~(e)~~]]>>(g)<< *Self-service merchandising* means the open display of tobacco products to which the public has access without the intervention of the vendors, store owner, or other store employee.

>>(h) "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.<<

[[~~(d)~~]]>>(i)<< *Tobacco products* >>means any substance which contains tobacco, including, but not limited to, cigars, chewing tobacco, pellets, film strips, twisted sticks, other forms designed to look like candy,<< [[~~include~~]] loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

[[~~(e)~~]]>>(j)<< *Tobacco retailer* means any person or business that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

[[~~(f)~~]]>>(k)<< *Vendor-assisted* means the customer has no access to tobacco products without the assistance of the vendor, store owner, or other store employee.

Sec. 8A-8.3. Self-service merchandising prohibited.

No person, business, tobacco retailer, or other establishment subject to Sections 8A-8—8A-8.4 shall sell, permit to be sold, offer for sale, or display for sale any tobacco product[[s]] >>or any flavored tobacco product<< by means of self-service merchandising or any other means other than vendor-assisted sales

unless access to the premises by persons under the age of eighteen (18) is prohibited by the person, business, tobacco retailer, or other establishment or prohibited by law.

Sec. 8A-8.4. >>Application and<< Enforcement.

~~[[The]]>>This section shall be applicable in incorporated and unincorporated areas of Miami-Dade County, with the enforcement of the<<provisions of Sections 8A-8—8A-8.4 >>being the responsibility of Miami-Dade County, including the Miami-Dade Police Department and the Regulatory & Economic Resources Department or their successor departments, in the unincorporated area and being the responsibility of the respective municipalities in the incorporated area<<[[shall be enforced by the Consumer Services Department]]. In addition to any other penalties provided by law, a violation of any provision of Sections 8A-8—8A-8.4 shall constitute a civil offense punishable by the applicable civil penalty provided in the schedule of civil penalties pursuant to Chapter 8CC of the Code and the remedies contained in Article III of Chapter 8A of the Code.~~

Section 2. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

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.

* * *

Section	Description of Violation	Civil Penalty
8A-8.3	Self-service merchandising of tobacco products >>including <u>flavored tobacco products</u> <<	\$500.00

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:



Prepared by:



Jess M. McCarty

Prime Sponsor: Commissioner Barbara J. Jordan