

# MEMORANDUM

Agenda Item No. 11(A)(16)

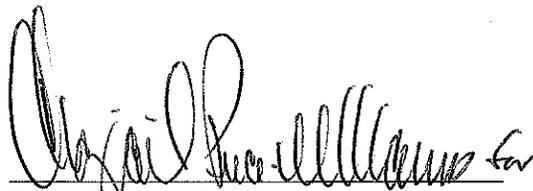
**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** February 4, 2014

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

**SUBJECT:** Resolution setting policy for Miami-Dade County; prohibiting the use of electronic cigarettes and other nicotine dispensing devices in County owned or operated enclosed indoor workplaces; providing exceptions; directing the Mayor or designee to prepare for Board approval revisions to applicable Implementing Orders and other rules to effectuate this policy at all County enclosed indoor workplaces

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Juan C. Zapata.



R. A. Cuevas, Jr.  
County Attorney

RAC/smm



# MEMORANDUM

(Revised)

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

**DATE:** February 4, 2014

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

**SUBJECT:** Agenda Item No. 11(A)(16)

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

Agenda Item No. 11(A)(16)

Veto \_\_\_\_\_

2-4-14

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION SETTING POLICY FOR MIAMI-DADE COUNTY; PROHIBITING THE USE OF ELECTRONIC CIGARETTES AND OTHER NICOTINE DISPENSING DEVICES IN COUNTY OWNED OR OPERATED ENCLOSED INDOOR WORKPLACES; PROVIDING EXCEPTIONS; DIRECTING THE MAYOR OR DESIGNEE TO PREPARE FOR BOARD APPROVAL REVISIONS TO APPLICABLE IMPLEMENTING ORDERS AND OTHER RULES TO EFFECTUATE THIS POLICY AT ALL COUNTY ENCLOSED INDOOR WORKPLACES

**WHEREAS**, electronic cigarettes, also known as e-cigarettes, are battery-powered products that permit users to inhale vaporized nicotine, flavor, and other chemicals, without fire, smoke, ash or carbon dioxide; and

**WHEREAS**, most electronic cigarettes and other nicotine dispensing devices (hereinafter referred to collectively as “electronic cigarettes”) are manufactured to resemble cigarettes, cigars or pipes, but some are manufactured to resemble pens and Universal Serial Bus (USB) memory sticks; and

**WHEREAS**, sales of electronic cigarettes have grown rapidly in the United States, and after doubling every year since 2008, sales in 2013 accelerated even faster and were projected to reach \$1.7 billion; and

**WHEREAS**, consumers are led to believe that electronic cigarettes are a safe alternative to traditional cigarettes, despite the fact that most electronic cigarettes contain nicotine and have the potential to be addictive; and

**WHEREAS**, there is no federal regulatory oversight ensuring the safety of the ingredients in electronic cigarettes; and

**WHEREAS**, the National Association of Attorneys General issued a letter to the Commissioner of the United States Food & Drug Administration (FDA) urging the FDA to immediately regulate the sale and advertising of electronic cigarettes; and

**WHEREAS**, the letter was signed by 42 attorneys general, including Florida Attorney General Pam Bondi; and

**WHEREAS**, in 2002, Florida voters approved an amendment to the Florida Constitution that:

1. Prohibited smoking of lighted tobacco products in enclosed workplaces with certain exceptions; and
2. Authorized the Legislature to enact implementing legislation, Article X, Section 20 of the Florida Constitution; and

**WHEREAS**, during Special Session A in 2003, the Florida Legislature enacted Chapter 2003-398, Laws of Florida (HB 63A), which substantially amended the Florida Clean Indoor Air Act to prohibit a person from smoking lighted tobacco products in an enclosed indoor workplace, while recognizing certain exceptions; and

**WHEREAS**, the exceptions where smoking lighted tobacco products is still permitted include, among others, the following:

1. Customs smoking rooms in airport in-transit lounges meeting certain criteria;
2. Private residences not being used commercially to provide child care, adult care or health care;
3. Designated smoking guest rooms at public lodging establishments; and
4. Stand-alone bars devoted predominantly or totally to serving alcohol, and in which the serving of food, if any, is merely incidental to the consumption of alcoholic beverages; and

**WHEREAS**, the term “smoking” was defined in both the constitutional amendment and Chapter 2003-398 to mean inhaling, exhaling, burning, carrying, or possessing any “lighted

tobacco product,” including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product; and

**WHEREAS**, Chapter 2003-398 expressly preempted regulation of smoking lighted tobacco products to the state and superseded any municipal or county ordinance on the subject; and

**WHEREAS**, electronic cigarettes are not “lighted” the way a cigarette is ignited with a match; and

**WHEREAS**, instead, electronic cigarettes function by heating into a vapor a liquid consisting of tobacco, nicotine, flavored water or other chemicals; and

**WHEREAS**, while electronic cigarettes typically (though not always) contain nicotine, electronic cigarettes usually do not contain tobacco; and

**WHEREAS**, for these reasons, electronic cigarettes do not fall within the state law prohibition on a person smoking a “lighted tobacco product” in an enclosed indoor workplace; and

**WHEREAS**, in addition, electronic cigarettes do not fall within the state preemption of local regulation of smoking a “lighted tobacco product” in an enclosed indoor workplace; and

**WHEREAS**, both members of the public and employees are increasingly using electronic cigarettes within County enclosed indoor workplaces, including but not limited to courthouses and county administration buildings; and

**WHEREAS**, such use of electronic cigarettes within County enclosed indoor workplaces has proven disruptive to administrative and court functions; and

**WHEREAS**, the County has received multiple complaints regarding the use of electronic cigarettes within County enclosed indoor workplaces; and

**WHEREAS**, concerns have been raised as to the safety, health and environmental effects of the vapor emitted from electronic cigarettes, both to the persons using electronic cigarettes and to people in the surrounding area who may have to breathe the vapor emitted from electronic cigarettes secondhand; and

**WHEREAS**, some individuals using electronic cigarettes have indicated that they are not violating the law because it is flavored water vapor that was neither lighted nor a tobacco product, and therefore not prohibited by the Florida Clean Indoor Air Act; and

**WHEREAS**, it is difficult to tell which electronic cigarettes are emitting nicotine and carcinogens and which are simply emitting a flavored vapor, but in either case, electronic cigarettes are proving disruptive to County administrative and court functions; and

**WHEREAS**, for the reasons set forth above, this Board would like to prohibit the use of electronic cigarettes and other nicotine dispensing devices in County enclosed indoor workplaces that do not fall within the Florida Clean Indoor Air Act, unless an exception applies; and

**WHEREAS**, it is the intent of this Board to prohibit the use of electronic cigarettes and other nicotine dispensing devices in County owned or operated enclosed indoor workplaces consistent with the state law prohibition on the use of lighted tobacco products under the Florida Clean Indoor Air Act,

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

**Section 1.** The foregoing recitals are hereby incorporated into this resolution and approved.

**Section 2.** It is the policy of Miami-Dade County that the use of electronic cigarettes and other nicotine dispensing devices is prohibited in all enclosed indoor workplaces owned or operated by the County consistent with state law for lighted tobacco products, the Florida Clean Indoor Air Act, Part II of Chapter 386, Florida Statutes, as such may be amended from time to time, unless an exception applies. This policy also shall apply to enclosed indoor workplaces operated within the designated facilities of the Public Health Trust.

**Section 3.** For purposes of this policy:

- (a) "Nicotine dispensing devices" mean any product that can be used to deliver nicotine to an individual by inhaling a vapor from the product, whether or not such vapor actually includes nicotine, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.
- (b) "Enclosed indoor workplace" shall have the same meaning as set forth in section 386.203, Florida Statutes, as such may be amended from time to time.

**Section 4.** The specific exceptions set forth in the Florida Clean Indoor Air Act, Part II of Chapter 386, Florida Statutes, as such may be amended from time to time, shall also apply to this policy. The use of electronic cigarettes and other nicotine dispensing devices shall be permitted in places owned or operated by the County recognized as exceptions under state law, including, but not limited to, each of the following places owned or operated by the County:

1. Customs smoking rooms in airport in-transit lounges meeting certain criteria;
2. Private residences not being used commercially to provide child care, adult care or health care;
3. Designated smoking guest rooms at public lodging establishments; and
4. Stand-alone bars devoted predominantly or totally to serving alcohol, and in which the serving of food, if any, is merely incidental to the consumption of alcoholic beverages.

**Section 5.** This resolution and any implementing order or other policy statement prohibiting the use of electronic cigarettes and other nicotine dispensing devices shall only apply to electronic cigarettes and other nicotine dispensing devices that are not otherwise prohibited by the Florida Clean Indoor Air Act, Part II of Chapter 386, Florida Statutes, as such may be amended from time to time.

**Section 6.** Within 60 days of the effective date of this resolution, the Mayor or designee is directed to prepare for Board approval revisions to applicable Implementing Orders and other departmental rules and regulations to effectuate the policy directive set forth in this resolution.

The Prime Sponsor of the foregoing resolution is Commissioner Juan C. Zapata. It was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 4<sup>th</sup> day of February, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Jess M. McCarty