

MEMORANDUM

Agenda Item No. 11(A) (11)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: February 18, 2015

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

SUBJECT: Resolution urging the United
States Food and Drug
Administration to finalize and
adopt a proposed rule extending
the agency's tobacco regulatory
authority to include electronic
cigarettes

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Cava.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



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(Revised)

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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. 11(A) (11)

2-18-15

RESOLUTION NO. _____

RESOLUTION URGING THE UNITED STATES FOOD AND DRUG ADMINISTRATION TO FINALIZE AND ADOPT A PROPOSED RULE EXTENDING THE AGENCY'S TOBACCO REGULATORY AUTHORITY TO INCLUDE ELECTRONIC CIGARETTES, AND TO ENACT OTHER RULES THAT RESTRICT THE MARKETING OF ELECTRONIC CIGARETTES TO ADULTS ONLY, REQUIRE CHILDPROOF SAFETY CAPS ON ELECTRONIC CIGARETTE LIQUID PACKAGING, AND REGULATE THE CONTENT OF THE INHALANT IN ELECTRONIC CIGARETTES

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

WHEREAS, most 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 exponentially in the United States in recent years, doubling nearly every year since 2008; and

WHEREAS, electronic cigarettes have been the subject of state and local regulation, including regulation by this Board; and

WHEREAS, for example, on February 4, 2014, this Board adopted Resolution No. R-145-14 prohibiting 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; and

WHEREAS, in addition to state and local regulation, there is a need for regulation of electronic cigarettes on the national level; and

WHEREAS, currently the United States Food and Drug Administration (FDA) Center for Tobacco Products regulates cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, but does not generally regulate electronic cigarettes; and

WHEREAS, consumers are led to believe that electronic cigarettes are a safe alternative to traditional cigarettes, despite the fact that electronic cigarettes have a high nicotine content with the potential to be addictive and the content of the inhalant is currently unregulated nationally; and

WHEREAS, in 2014, the FDA conducted a preliminary analysis on samples of electronic cigarettes to test some of the ingredients contained in them that are inhaled by users; and

WHEREAS, according to the FDA's preliminary analysis, the products tested contained detectable levels of known carcinogens and toxic chemicals to which users could potentially be exposed, including small amounts of diethylene glycol, an ingredient used in antifreeze, and tobacco-specific impurities suspected of being harmful to humans; and

WHEREAS, according to recent findings published in the New England Journal of Medicine, vapor from electronic cigarettes can have very high concentrations of formaldehyde – a known carcinogen – when the devices are used at their highest voltage levels; and

WHEREAS, marketing and advertising of electronic cigarettes is becoming increasingly prevalent, with little or no regulations or restrictions at the national level to protect the Nation's youth; and

WHEREAS, even though electronic cigarette refill liquids are highly toxic and pose a poisoning risk, there are no national regulations requiring such liquids to be sold in childproof packaging; and

WHEREAS, in April 2014, the FDA issued a proposed rule to extend the agency's tobacco authority to cover additional products that would be "deemed" to meet the statutory definition of a tobacco product, including electronic cigarettes; and

WHEREAS, according to the FDA, the proposed rule would require makers of electronic cigarettes to register with the agency and report product and ingredient listings, only market new tobacco products after FDA review, only make direct and implied claims of reduced risk if the FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as a whole, and refrain from distributing free samples; and

WHEREAS, according to the FDA, the proposed rule also would mandate health warnings, prohibit vending machine sales unless in a facility that never admits youth, and put in place minimum age and identification restrictions to prevent sales of electronic cigarettes to underage youth; and

WHEREAS, in addition to the items above, the FDA should also take steps to restrict the marketing of electronic cigarettes to adults only, require childproof safety caps on electronic cigarette liquid packaging, and regulate the content of the inhalant in electronic cigarettes; and

WHEREAS, this Board wishes to urge the FDA to finalize and adopt the proposed rule, as well as additional rules pertaining to the safety and marketing of electronic cigarettes,

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

Section 1. Urges the United States Food and Drug Administration to finalize and adopt a proposed rule extending the agency's tobacco regulatory authority to include electronic cigarettes, and to enact other rules that restrict the marketing of electronic cigarettes to adults only, require childproof safety caps on electronic cigarette liquid packaging, and regulate the content of the inhalant in electronic cigarettes.

Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the members of the Florida Congressional Delegation and the Commissioner of the United States Food and Drug Administration.

Section 3. Directs the County's federal lobbyists to advocate for the administrative action set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2015 Federal Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Daniella Levine Cava. 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:

Jean Monestime, Chairman	
Esteban L. Bovo, Jr., Vice Chairman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Audrey M. Edmonson
Sally A. Heyman	Barbara J. Jordan
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
Juan C. Zapata	

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of February, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.

James E. "Eddie" Kirtley

