

MEMORANDUM

Agenda Item No. 7(C)

TO:	Honorable Chairwoman Rebeca Sosa and Members, Board of County Commissioners	DATE:	(Second Reading 6-3-14) March 4, 2014
FROM:	R. A. Cuevas, Jr. County Attorney	SUBJECT:	Ordinance relating to minors and electronic cigarettes and other nicotine dispensing devices amending Sections 8A-8 through 8A-8.4 and 8CC-10 and creating Sections 21-13.1 and 21-13.2 of the Code Ordinance No. 14-55

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan, and Co-Sponsors Commissioner Esteban L. Bovo, Jr., Commissioner Audrey M. Edmonson and Commissioner Juan C. Zapata.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: June 3, 2014

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the printed name.

Subject: Ordinance relating to minors and electronic cigarettes and other nicotine dispensing devices; amending Sections 8A-8 through 8A 8.4 and 8CC-10 and creating Sections 21-13.1 and 21-13.2 of the code of Miami-Dade County; prohibiting the placement of electronic cigarettes and other nicotine dispensing devices in self-service open displays accessible to minors; prohibiting minors from possessing or purchasing electronic cigarettes and other nicotine dispensing devices; prohibiting the sale of electronic cigarettes and other nicotine dispensing devices to minors; providing for intent, definitions, and enforcement; amending chapter 8CC of the code to provide penalties

The proposed ordinance relates to minors and electronic cigarettes and other nicotine dispensing devices, amending sections 8A-8 through 8A 8.4 and 8CC-10 and creating sections 21-13.1 and 21-13.2 of the Code of Miami-Dade County. This ordinance prohibits the placement of electronic cigarettes and other nicotine dispensing devices in self-service open displays accessible to minors and also prohibits sale of electronic cigarettes and other nicotine dispensing devices to minors. Any additional enforcement required under the proposed ordinance will be absorbed using existing staff. Implementation of this ordinance will not have a fiscal impact to the County.

A handwritten signature in black ink, appearing to read "Jack Osterhoff", written over a horizontal line.

Jack Osterhoff
Deputy Mayor

Fis5814



MEMORANDUM

(Revised)

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

DATE: June 3, 2014

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)
6-3-14

ORDINANCE NO. 14-55

ORDINANCE RELATING TO MINORS AND ELECTRONIC CIGARETTES AND OTHER NICOTINE DISPENSING DEVICES; AMENDING SECTIONS 8A-8 THROUGH 8A-8.4 AND 8CC-10 AND CREATING SECTIONS 21-13.1 AND 21-13.2 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROHIBITING THE PLACEMENT OF ELECTRONIC CIGARETTES AND OTHER NICOTINE DISPENSING DEVICES IN SELF-SERVICE OPEN DISPLAYS ACCESSIBLE TO MINORS; PROHIBITING MINORS FROM POSSESSING OR PURCHASING ELECTRONIC CIGARETTES AND OTHER NICOTINE DISPENSING DEVICES; PROHIBITING THE SALE OF ELECTRONIC CIGARETTES AND OTHER NICOTINE DISPENSING DEVICES 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, 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 rapidly in the United States, and after doubling every year since 2008, sales in 2013 are now accelerating even faster and projected to reach \$1.7 billion this year; and

WHEREAS, consumers are led to believe that electronic cigarettes are a safe alternative to traditional cigarettes, despite the fact that electronic cigarettes 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 cost of electronic cigarettes has fallen substantially, making them more affordable to and more accessible by minors; and

WHEREAS, data from the 2011 and 2012 National Youth Tobacco Surveys conducted by the Centers for Disease Control and Prevention show that electronic cigarette use among minors doubled in the last year; and

WHEREAS, specifically, one in 10 high school students reported that they had tried an electronic cigarette in the last year, which is up from one in 20 in 2011, and 1.8 million middle and high school students said they had tried electronic cigarettes in 2012; and

WHEREAS, unlike traditional tobacco products, there are no federal age restrictions that would prevent minors from obtaining electronic cigarettes, nor are there any advertising restrictions; and

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

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

WHEREAS, according to the National Conference of State Legislatures, there are currently 27 states that have banned the sale of electronic cigarettes to minors; and

WHEREAS, Florida law currently prohibits the sale or delivery of tobacco products to persons under the age of 18, as well as the possession of tobacco products by persons under the

age of 18, but Florida law is not clear whether these existing tobacco prohibitions for minors include electronic cigarettes; and

WHEREAS, in an attempt to restrict minors' access to electronic cigarettes, the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverage and Tobacco, advises tobacco retailers on its website that electronic cigarettes containing nicotine from tobacco leaves are considered tobacco products regulated in the state, and that it is unlawful to sell tobacco products to persons under 18 years of age; and

WHEREAS, electronic cigarettes that do not contain nicotine from tobacco leaves are not considered tobacco products and are therefore not regulated in Florida; and

WHEREAS, the Division of Alcoholic Beverage and Tobacco has indicated that Florida law should be amended to clarify the legal status of all electronic cigarettes, whether or not they contain nicotine from tobacco leaves; and

WHEREAS, Senator Lizbeth Benacquisto (R – Fort Myers) has filed SB 224, Representative Ronald “Doc” Renuart (R – Ponte Vedra Beach) has filed HB 153 and Representative Frank Artiles (R - Miami) has filed HB 169 for consideration during the Florida Legislature's 2014 session; and

WHEREAS, these bills would prohibit the sale of electronic cigarettes and other nicotine dispensing devices to persons under the age of 18 in Florida, as well as prohibit the possession or use of electronic cigarettes and other nicotine dispensing devices by minors in Florida; and

WHEREAS, it is not clear at this time whether the Florida Legislature will pass SB 224, HB 153, HB 169 or other similar legislation during the 2014 session; 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, on September 14, 2012, this Board adopted Ordinance No. 13-07, which prohibited retailers 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; and

WHEREAS, this Board now desires to:

1. Prohibit minors from possessing or purchasing electronic cigarettes and other nicotine dispensing devices;
2. Prohibit the sale of electronic cigarettes and other nicotine dispensing devices to minors; and
3. Prohibit the placement of electronic cigarettes and other nicotine dispensing devices in self-service open displays accessible to minors,

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

Section 1. Sections 8A-8—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>>₂<< Flavored Tobacco Products >>₂ and Electronic Cigarettes and other Nicotine Dispensing Devices << Ordinance."

Sec. 8A-8.1. Intent.

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.

Sections 8A-8—8A-8.4 ~~[[is]]~~ >>are<< 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, >>as well as electronic cigarettes and other nicotine dispensing devices<< by persons under the age of 18 by regulating the 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.

>>(f) "Nicotine dispensing devices" means any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine 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 and any replacement nicotine cartridge for the device or product.<<

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

[(g)]>>(h)<< 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)]>>(i)<< 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.

[(i)]>>(j)<< 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, 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.

[(+)]>>(k)<<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.

[(k)]>>(l)<<Vendor-assisted means the customer has no access to tobacco [[~~produces~~]] >>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 products>>₂<< [[~~or~~]] any flavored tobacco product >>or any electronic cigarette or other nicotine dispensing device<< 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.

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 and Economic Resources Department or their successor departments, in the unincorporated area and being the responsibility of the respective municipalities in the incorporated area. 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 21-13.1 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. 21-13.1. Possession or purchase by minors of electronic cigarettes and other nicotine dispensing devices prohibited.

- (a) For the purpose of this section, "Nicotine dispensing devices" shall mean any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine 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 and any replacement nicotine cartridge for the device or product.
- (b) It is unlawful for any person under 18 years of age to knowingly purchase or possess an electronic cigarette or other nicotine dispensing device.
- (c) Any person violating this section shall be punished by a fine of twenty five dollars (\$25.00) for the first offense; fifty dollars (\$50.00) for the second offense and one hundred dollars (\$100.00) for each subsequent offense. In addition to any other penalties provided by law, a violation of any provision of this section 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.
- (d) This section shall be applicable in the 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 respective municipalities.
- (e) If the Florida Legislature amends state law to prohibit minors from knowingly purchasing or possessing electronic cigarettes or other nicotine dispensing devices, then upon the effective date of such enactment, the provisions of this ordinance addressed shall no longer be deemed effective.

Section 3. Section 21-13.2 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. 21-13.2. Sale of electronic cigarettes and other nicotine dispensing devices to minors prohibited.

//

- (a) For the purpose of this section, "Nicotine dispensing devices" shall mean any product that can be used to deliver nicotine to an individual by inhaling vaporized nicotine 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 and any replacement nicotine cartridge for the device or product.
- (b) It is unlawful to sell, deliver, barter, furnish or give, directly or indirectly, to any person who is under 18 years of age any electronic cigarette or other nicotine dispensing device.
- (c) Any person violating this section shall be punished by a fine of five hundred dollars (\$500.00). In addition to any other penalties provided by law, a violation of any provision of this section 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.
- (d) This section shall be applicable in the 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 respective municipalities.
- (e) If the Florida Legislature amends state law to prohibit minors from knowingly purchasing or possessing electronic cigarettes or other nicotine dispensing devices, then upon the effective date of such enactment, the provisions of this ordinance addressed shall no longer be deemed effective.

Section 4. Sections 8A-8—8A-8.4 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.

	*	*	*
<u>Code Section</u>	<u>Description of Violation</u>		<u>Civil Penalty</u>
	*	*	*
8A-8.3	Self-service merchandising of tobacco products>><< including flavored tobacco products>>, or <u>electronic cigarettes or other nicotine dispensing devices</u> <<		\$500.00
	*	*	*
>>21-13.1	<u>Possession or purchase by minors of electronic cigarettes or other nicotine dispensing devices</u>		<u>\$25.00 for the first offense;</u> <u>\$50.00 for the second offense</u> <u>\$100.00 for each subsequent offense</u>
21-13.2	<u>Sale of electronic cigarettes and other nicotine dispensing devices to minors</u> <<		<u>\$500.00</u>

Section 5. 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 6. 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 7. 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: June 3, 2014

Approved by County Attorney as
to form and legal sufficiency:

[Handwritten Signature]

Prepared by:

MJM for

Jess M. McCarty

Prime Sponsor: Commissioner Barbara J. Jordan
Co-Sponsors: Commissioner Esteban L. Bovo, Jr.
Commissioner Audrey M. Edmonson
Commissioner Juan C. Zapata