



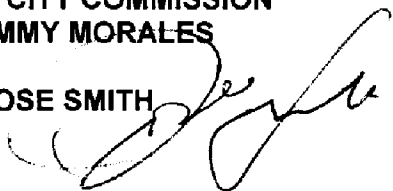
MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

**TO: MAYOR PHILIP LEVINE
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES**

FROM: CITY ATTORNEY JOSE SMITH 

DATE: March 5, 2014

SUBJECT: PROHIBITION ON THE SALE OF E-CIGARETTES TO MINORS WITHIN THE CITY OF MIAMI BEACH.

Pursuant to the request of Commissioner Micky Steinberg, the attached City of Miami Ordinance and Resolution are referred to the Neighborhood/Community Affairs Committee for consideration and recommendation with regard to the subject of the sale of nicotine vaporizers to minors. Under the Florida Statutes, nicotine vaporizers are not encompassed within the definition of "tobacco products" which is regulated by State law and the Federal Food and Drug Administration. The City of Miami has passed the attached Ordinance on first reading which makes the possession and sale of nicotine vaporizers and liquid nicotine dispensing devices illegal for persons under the age of eighteen. In addition, the Florida Legislature is considering Senate Bill 224 and House Bill 153 which would amend Chapter 569 of the Florida Statutes that regulates tobacco products to expand the regulations to include nicotine dispensing devices. If passed, the Bills would become effective July 1, 2014. The attached City of Miami Resolution urges the Florida Legislature to support the two Bills.

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Agenda Item C4H
Date 3-5-14



City of Miami

Legislation

Resolution

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.miamigov.com

File Number: 14-00075

Final Action Date:

A RESOLUTION OF THE MIAMI CITY COMMISSION URGING GOVERNOR RICK SCOTT AND THE MEMBERS OF THE FLORIDA LEGISLATURE TO SUPPORT HOUSE BILL 153 AND SENATE BILL 224 EXTENDING THE CURRENT PROHIBITIONS RELATING TO TOBACCO PRODUCTS FOR PERSONS UNDER THE AGE OF EIGHTEEN, BY PROHIBITING THE SALE, GIFTING, POSSESSION OR USE OF NICOTINE VAPORIZERS AND LIQUID NICOTINE DISPENSING DEVICES, INCLUDING ELECTRONIC CIGARETTES, TO AND BY PERSONS UNDER THE AGE OF EIGHTEEN; DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO THE OFFICIALS DESIGNATED HEREIN.

WHEREAS, new, unregulated high-tech nicotine vaporizers, sometimes referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers, including minors, allow users to inhale vaporized liquid nicotine created by heat through an electronic ignition system, and the vapors are expelled via a cartridge that usually contains a concentration of pure nicotine; and

WHEREAS, after inhaling, the user then blows out the heated vapors producing a "cloud" of undetermined substances; and

WHEREAS, a majority of State Attorney Generals recently sent a letter to the Food and Drug Administration ("FDA") urging the agency to regulate electronic cigarettes in the same way it regulates tobacco products stating that e-cigarettes are being marketed to children through cartoon-like advertising characters and by offering fruit and candy flavors, much like cigarettes were once marketed to attain new smokers; and

WHEREAS, the FDA and public health advocates have warned these flavorings are purposefully meant to appeal to and attract young people and are commonly referred to as "training wheels" for traditional cigarettes; and

WHEREAS, studies show that adolescents can become addicted to nicotine after ingesting the equivalent of 20 traditional cigarettes, the amount traditionally available in a single pack which can lead young people into a lifetime of nicotine addiction; and

WHEREAS, in the United States, more than 90% of current adult smokers began smoking before the age of 18 and the younger an individual is when he or she experiments with smoking, the more likely he or she is to become a regular or daily smoker; and

WHEREAS, two-thirds of children who begin smoking in the sixth grade become regular adult smokers, and almost half (46%) of those who initiate smoking in the eleventh grade become regular adult smokers; and

WHEREAS, the percentage of United States middle and high school students who use electronic cigarettes, or e-cigarettes, more than doubled from 2011 to 2012, according to data published by the

Centers for Disease Control and Prevention; and

WHEREAS, the City Commission supports House Bill 153 and Senate Bill 224, which provides for an amendment to the Florida Statutes to extend the current prohibitions relating to tobacco products for persons under the age of eighteen (18), to prohibit the sale, gifting, possession or use of nicotine dispensing devices, that includes electronic cigarettes, to and by persons under the age of 18;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The Miami City Commission urges Governor Rick Scott and the members of the Florida Legislature to support House Bill 153 and Senate Bill 224 extending the current prohibitions relating to tobacco products for persons under the age of eighteen, by prohibiting the sale, gifting, possession or use of nicotine vaporizers and liquid nicotine dispensing devices, including electronic cigarettes, to and by persons under the age of eighteen.

Section 3. The City Clerk is directed to transmit a copy of this Resolution to Governor Rick Scott, Senate President Don Gaetz, the Speaker of the House Will Weatherford, the members of the Florida Legislature, Mayor Carlos Gimenez and the Members of the Miami-Dade County Commission.

Section 4. This Resolution shall become effective immediately upon its adoption and signature of the Mayor. {1}

APPROVED AS TO FORM AND CORRECTNESS:


VICTORIA MÉNDEZ
CITY ATTORNEY

Footnotes:

{1} Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

{2} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the city Commission.



City of Miami

Legislation

Ordinance

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.miamigov.com

File Number: 14-00074

Final Action Date:

AN ORDINANCE OF THE MIAMI CITY COMMISSION AMENDING CHAPTER 37 OF THE CODE OF THE CITY OF MIAMI, FLORIDA, AS AMENDED, ENTITLED "OFFENSES-MISCELLANEOUS", MORE PARTICULARLY BY ADDING A NEW SECTION TO PROHIBIT THE SALE, BARTER, PROVIDING DIRECTLY OR INDIRECTLY, GIFTING, MAKE AVAILABLE FOR USE OR POSSESSION, OR FURNISHING OF NICOTINE VAPORIZERS AND LIQUID NICOTINE TO PERSONS UNDER THE AGE OF EIGHTEEN (18); MOROEVER, MAKING THE POSSESSION OF THESE NICOTINE VAPORIZERS AND LIQUID NICOTINE ILLEGAL FOR PERSONS UNDER THE AGE OF EIGHTEEN (18); PROVIDING DEFINITIONS FOR "NICOTINE VAPORIZER," AND "LIQUID NICOTINE"; PROVIDING FOR PENALTIES; CONTAINING A SEVERABILITY CLAUSE AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, new, unregulated high-tech nicotine vaporizers, sometimes referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers, including minors, allow users to inhale vaporized liquid nicotine created by heat through an electronic ignition system, and the vapors are expelled via a cartridge that usually contains a concentration of pure nicotine; and

WHEREAS, after inhaling, the user then blows out the heated vapors producing a "cloud" of undetermined substances; and

WHEREAS, a majority of State Attorney Generals recently sent a letter to the Food and Drug Administration ("FDA") urging the agency to regulate electronic cigarettes in the same way it regulates tobacco products stating that e-cigarettes are being marketed to children through cartoon-like advertising characters and by offering fruit and candy flavors, much like cigarettes were once marketed to attain new smokers; and

WHEREAS, the FDA and public health advocates have warned these flavorings are purposefully meant to appeal to and attract young people and are commonly referred to as "training wheels" for traditional cigarettes; and

WHEREAS, studies show that adolescents can become addicted to nicotine after ingesting the equivalent of 20 traditional cigarettes, the amount traditionally available in a single pack which can lead young people into a lifetime of nicotine addiction; and

WHEREAS, in the United States, more than 90% of current adult smokers began smoking before the age of 18 and the younger an individual is when he or she experiments with smoking, the more likely he or she is to become a regular or daily smoker; and

WHEREAS, two-thirds of children who begin smoking in the sixth grade become regular adult smokers, and almost half (46%) of those who initiate smoking in the eleventh grade become regular adult smokers; and

WHEREAS, the percentage of United States middle and high school students who use electronic cigarettes, or e-cigarettes, more than doubled from 2011 to 2012, according to data published by the Centers for Disease Control and Prevention; and

WHEREAS, the federal law restricting the sale of tobacco products to minors currently applies only to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, and does not apply to nicotine vaporizers; and

WHEREAS, the City Commission finds that it is in the best interest of and is necessary to protect the health, safety, and welfare of the residents and visitors of the City of Miami by prohibiting the sale of nicotine vaporizers and liquid nicotine to minors;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings found in the preamble of this ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. Chapter 37 of the Code of the City of Miami, Florida as amended, entitled "Offenses-Miscellaneous", is amended in the following particulars: {1}

"CHAPTER 37

OFFENSES-MISCELLANEOUS

* * * * *

Sec. 37-10. Sale of Nicotine Vaporizers (E-Cigarettes) and Liquid Nicotine to Minors. Prohibited.

(a) Definitions:

Liquid Nicotine means any liquid product composed either in whole or in part of pure nicotine which can be used with Nicotine Vaporizers.

Minor means a person under the age of eighteen (18).

Nicotine Vaporizer means any electronic or battery-operated device that can be used to deliver an inhaled dose of nicotine or other substance and includes those composed of a mouthpiece, heating element, and battery or electronic circuits that provide a vapor of Liquid Nicotine or other substances to the user. This term shall include such devices whether they are manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, an e-cigarette, an e-cigar, e-cigarillo, an e-pipe, an e-hookah, or under any other product name.

(b) Prohibitions:

(1) It shall be unlawful to sell, give, furnish, barter or make available directly or indirectly a Nicotine Vaporizer or Liquid Nicotine to a person under the age of 18 years old. The buyer or recipient's identification shall be examined to confirm that the buyer or recipient is at least 18 years of age.

(2) In order to minimize the physical accessibility to minors, no person shall offer Nicotine Vaporizers or Liquid Nicotine in vending machines.

(3) It shall be unlawful for a person under the age of 18 to possess or use Nicotine Vaporizers or Liquid Nicotine.

(c) Penalties. Any person who violates any provision of this section commits a municipal ordinance violation and may be punished as provided in Section 1-13 of the Code of the City of Miami, Florida, as amended.

* * * * *

Section 3. If any section, part of a section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

Section 4. This Ordinance shall become effective 30 days after final reading and adoption thereof.
{2}

Footnotes:

{1} Words and/or figures stricken through shall be deleted. Underscored words and/or figures shall be added. The remaining provisions are now in effect and remain unchanged. Asterisks indicate omitted and unchanged material.

{2} This Ordinance shall become effective as specified herein unless vetoed by the Mayor within ten (10) days from the date it was passed and adopted. If the Mayor vetoes this Ordinance, it shall become effective immediately upon override of the veto by the City Commission.