

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING SECTION 70-2, ENTITLED "SALE OF NICOTINE VAPORIZERS (E-CIGARETTES) AND LIQUID NICOTINE TO MINORS AND POSSESSION BY MINORS PROHIBITED; PENALTIES" BY AMENDING THE DEFINITIONS THEREIN; THE PROHIBITIONS REGARDING THE PHYSICAL ACCESSIBILITY OF NICOTINE VAPORIZERS AND LIQUID NICOTINE; PROVIDING SIGNAGE REQUIREMENTS FOR RETAILERS; INCLUDING PROHIBITIONS AND REQUIREMENTS REGARDING MAIL ORDERS, INTERNET, AND REMOTE SALES OF NICOTINE VAPORIZERS OR LIQUID NICOTINE; AMENDING THE PENALTIES FOR VIOLATIONS OF SECTION 70-2; AND PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, according to recent empirical studies and widespread news reports, the use of youth-oriented, flavored electronic cigarettes (e-cigarettes) has skyrocketed to alarming popularity with teens in middle and high schools across the nation; and

**WHEREAS**, new versions of nicotine dispensing e-cigarettes, such as those manufactured by Juul Labs, Inc. (JUUL), have further flamed the nationwide vaping craze among America's youth. Specifically, JUUL e-cigarettes come in youth-popular flavors, look like a flash drive, are easily concealed, and are rechargeable on USB ports; and

**WHEREAS**, these and similar devices allow users to inhale vaporized liquid nicotine created by a heating mechanism or electronic ignition system; and the vapors are expelled by a cartridge or pod that usually contains a concentration of pure nicotine; and

**WHEREAS**, due to their ease of use, the variety of sweet and fruit-flavored vapors offered, their sleek and discrete appearance, and the mass marketing of its products, JUUL e-cigarettes and other similar devices have become immensely popular with teenage children, thereby putting the next generation of Americans at risk of nicotine addiction and threatening to undermine the decades of progress made in our country to reduce youth tobacco use; and

**WHEREAS**, a 2016 Report of the U.S. Surgeon General, entitled "E-cigarette Use Among Youth and Young Adults," concluded that the use of nicotine in any form by youth is unsafe, and that nicotine exposure during adolescence can cause addiction and can harm the developing adolescent brain. The Report noted, "[e]-cigarette use among U.S. youth and young adults is now a major public health concern. E-cigarette use has increased considerably in recent years, growing an astounding 900% among high school students from 2011 to 2015."; and

**WHEREAS**, according to information contained on the JUUL website, the nicotine content in each 5% JUULpod, which contains approximately 0.7 mL with 5% nicotine by weight and which is intended to provide approximately 200 puffs, has the approximate nicotine yield as a pack of cigarettes; and

**WHEREAS**, as reported on the website for the CDC, in the United States, nearly 90% of 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**, the City Commission finds that it is in the best interest of the City of Miami Beach and necessary to protect the health, safety, and welfare of the residents and visitors of the City to prohibit the sale of Nicotine Vaporizers and Liquid Nicotine to minors, to prohibit the possession of these items by minors, to regulate the retailers who are in possession of Nicotine Vaporizers or Liquid Nicotine for the purposes of selling the products to consumers, individuals, or the general public, and to amend and strengthen the penalties for violations of these regulations.

**NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Chapter 70, Section 70-2, entitled, "Sale of Nicotine Vaporizers (E-Cigarettes) and Liquid Nicotine to Minors and Possession [sic] by Minors Prohibited; Penalties, of the Code of the City of Miami Beach is hereby amended as follows:

#### **Chapter 70**

#### **MISCELLANEOUS OFFENSES**

#### **Article I. In General**

\* \* \*

**Sec. 70-2. Sale of Nicotine Vaporizers (E-Cigarettes) and Liquid Nicotine to Minors and Prohibited; Signage Requirements for Retailers; Possession by Minors Prohibited; Penalties.**

*(a) Definitions.*

*Delivery sale* means any sale of Nicotine Vaporizers or Liquid Nicotine to a consumer within the City for which the consumer submits the order for the sale by telephonic or other voice transmission, by mail, by delivery service, or by the Internet or other online service; or the Nicotine Vaporizers or Liquid Nicotine are delivered by use of mail or a delivery service.

*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 nicotine dispensing device that can be used to deliver an inhaled dose of nicotine or other substance, and any device that can be used to deliver nicotine by inhaling vaporized nicotine from the device, including, but not limited to, those devices composed of a mouthpiece, heating element, or mechanism and battery or electronic circuits that provide a vapor of Liquid Nicotine or other substances to the user. This term shall include, but is not limited to, such devices 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, and an e-hookah, and any device that is rechargeable by a USB port or other method, whether they are manufactured, distributed, marketed, or sold under any other product name, and includes any replacement nicotine cartridge, replaceable nicotine pod, liquid nicotine vial, or other container used to refill or replace nicotine for the device or product.

Retailer means any person, business, or establishment who is in possession of Nicotine Vaporizers or Liquid Nicotine for the purposes of selling the Nicotine Vaporizers or Liquid Nicotine to consumers, individuals, or the general public.

*(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 minor. 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 sell or offer for sale Nicotine Vaporizers or Liquid Nicotine 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.
- (3) A retailer or any other establishment that sells Nicotine Vaporizers or Liquid Nicotine may not place such products or devices in an open display unit unless the unit is located in an area to which access is prohibited by persons under the age of eighteen (18).
- (4) It shall be unlawful for a person under the age of 18 to possess Nicotine Vaporizers or Liquid Nicotine.

*(c) Penalties. Signage requirements for Retailers.*

Any retailer or any other establishment that sells Nicotine Vaporizers or Liquid Nicotine shall post a clear and conspicuous sign where such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES  
TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF  
AGE IS REQUIRED FOR PURCHASE.

Failure to post this sign shall be deemed a violation of this section.

*(d) Prohibitions and requirements regarding mail order, internet, and remote sales of Nicotine Vaporizer and Liquid Nicotine.*

A person, business, tobacco retailer, or other establishment may not make a delivery sale of Nicotine Vaporizer and Liquid Nicotine to a minor. Each person accepting an order for a delivery sale must comply with the age-verification requirements set forth as follows: A person may not mail, ship, or otherwise deliver Nicotine Vaporizer and Liquid Nicotine in connection with an order for a delivery sale unless, before the delivery to the consumer, the person accepting the order for the delivery sale, obtains from the individual submitting the order a certification that includes:

- i. reliable confirmation that the individual is over the age of eighteen (18); and
- ii. makes a good faith effort to verify the information contained in the certification provided by the individual against a commercially available database that may be reasonably relied upon for accurate age information; and
- iii. obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.

~~(e)(e)~~ *Penalties.*

- ~~(1) A violation of subsections 70-2(b)(1), (2), (3), 70-2(c), and (d) shall be punished as provided in Section 1-14 of the Code of the City of Miami Beach.~~
- (1) A violation of subsections (b)(1), (b)(2) or (d) by an individual eighteen (18) years of age or older, or a violation of subsections (b)(3) and (c) shall be punished as provided in Section 1-14 of the Code of the City of Miami Beach.
- (2) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory penalty set forth in subsection (e)(1) above, for violations of subsections (b)(1)-(3), (c), and (d):
- a. For a first violation, the city manager or his or her designee may temporarily suspend the business tax receipt of the violator, for a period not to exceed six months.
  - b. For a second or subsequent violation within a 12-month period, the city manager or his or her designee may revoke the business tax receipt of the violator.
- (2)(3) A violation of subsections (b)(1), (b)(2), (b)(4) or (d) by a minor 70-2(b)(3)(4) shall be punished as a non-criminal violation as follows:
- a. For a first violation, ~~46~~ 20 ~~16~~ hours of community service or, instead of community service, a ~~\$25~~ ~~\$400~~ \$25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available;
  - b. For a second violation within 12 weeks of the first violation, a ~~\$25~~ ~~\$200~~ \$25 fine; or
  - c. For a third or subsequent violation within 12 weeks of the first violation, ~~for those who possess a driver's license or drivers permit~~, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver's license or driving privilege, as provided in Section 322.056, Fla. Stat.
  - d. Any second or subsequent violation not within the 12-week time period after the first violation, ~~or for any third or subsequent violation committed by a person who does not possess a driver's license or drivers permit~~, is punishable as provided for a first violation.
  - e. Any person under 18 years of age cited for committing a noncriminal violation under this ~~subsection (3)(e)~~ must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.
  - f. A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in this subsection (1) or subsection (2)(3).

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 3. SEVERABILITY.**

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**SECTION 4. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect the 27 day of October, 2018.

**PASSED and ADOPTED** this 17 day of October, 2018.

**ATTEST:**

781 10/30/18  
Rafael E. Granado, City Clerk

[Signature]  
Dan Gelber, Mayor

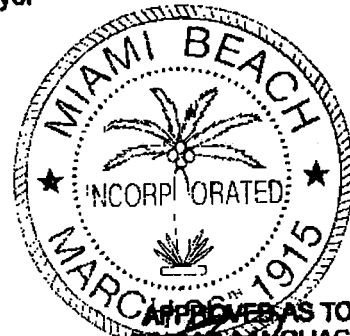
(Sponsored by Mayor Dan Gelber)  
(Co-sponsored by Commissioner John Elizabeth Alemán)

Underline denotes additions

Strike through denotes deletions

Double underline denotes additions made after First Reading

Double strike through denotes deletions made after First Reading



**APPROVES AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

[Signature] 10/9/18  
City Attorney (Date)

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Raul J. Aguila, City Attorney  
DATE: October 17, 2018

10:20 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING SECTION 70-2, ENTITLED "SALE OF NICOTINE VAPORIZERS (E-CIGARETTES) AND LIQUID NICOTINE TO MINORS AND POSSESSION BY MINORS PROHIBITED; PENALTIES" BY AMENDING THE DEFINITIONS THEREIN; THE PROHIBITIONS REGARDING THE PHYSICAL ACCESSIBILITY OF NICOTINE VAPORIZERS AND LIQUID NICOTINE; PROVIDING SIGNAGE REQUIREMENTS FOR RETAILERS; INCLUDING PROHIBITIONS AND REQUIREMENTS REGARDING MAIL ORDERS, INTERNET, AND REMOTE SALES OF NICOTINE VAPORIZERS OR LIQUID NICOTINE; AMENDING THE PENALTIES FOR VIOLATIONS OF SECTION 70-2; AND PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

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### **RECOMMENDATION**

Pursuant to the request of Mayor Dan Gelber, the above-referenced Ordinance is submitted on Second Reading for consideration by the City Commission at the October 17, 2018 Commission meeting.

Ordinance will be provided via the Supplemental Agenda.

### **Legislative Tracking**

Office of the City Attorney

### **Sponsor**

Mayor Dan Gelber & Co-sponsored by Commissioners Aleman & Steinberg

### **ATTACHMENTS:**

#### **Description**

- Ordinance