

RESOLUTION NO. 2018-30489

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING THE UNITED STATES FOOD & DRUG ADMINISTRATION (FDA) TO CONTINUE TO PURSUE ACTIONS TO HOLD E-CIGARETTE MANUFACTURERS ACCOUNTABLE FOR THE ACCESSIBILITY OF THEIR PRODUCTS TO MINORS AND TO EXPEDITIOUSLY PROCEED TO ENACT AND ENFORCE REGULATIONS PROHIBITING THE SALE AND MARKETING OF YOUTH-FRIENDLY AND YOUTH-ORIENTED E-CIGARETTES TO MINORS IN THE IMMEDIATE INTEREST OF THE HEALTH, SAFETY, AND WELFARE OF OUR NATION'S YOUTH.

WHEREAS, according to recent empirical studies and widespread news reports, including articles in The New York Times, The Wall Street Journal, and The Washington Post, the use of youth-oriented, flavored electronic cigarettes has skyrocketed to alarming popularity with teens in middle and high schools across the nation, putting the next generation of Americans at risk of nicotine addiction and making this an urgent public health issue; and

WHEREAS, since 2015, Juul Labs, Inc. (JUUL) has manufactured and sold a new version of nicotine dispensing e-cigarettes, which have further flamed the nationwide vaping craze that has ignited among America's youth. JUUL e-cigarettes come in youth-popular flavors, look like a flash drive, are easily concealed, and are rechargeable on USB ports. Indeed, the JUUL e-cigarette has become so ubiquitous that middle and high school students have created a new verb and describe its use as "juuling"; and

WHEREAS, although various e-cigarette and electronic nicotine dispensing systems (ENDS) products are on the market and contribute to the growing vaping epidemic among our youth, the JUUL e-cigarette captured 68% of the e-cigarette market share in just three years, according to recent Nielsen data compiled by market analysts at Wells Fargo; 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 their products and product-related merchandise, e-cigarettes are immensely popular with teenage children and threaten to undermine the decades of progress made in our country to reduce youth tobacco use; and

WHEREAS, the 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. As the Preface to the Executive Summary of 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.” In addition, “[c]ompared with older adults, the brain of youth and young adults is more vulnerable to the negative consequences of nicotine exposure. The effects include addiction, priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders; and

WHEREAS, data analyzed by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) and by the FDA from the 2016 National Youth Tobacco Surveys revealed that 20.2% of high school students reported the current use of tobacco products, with e-cigarettes being the most commonly used by 11.3% of those students; and, among middle school students, 7.2% reported the current use of tobacco products, with e-cigarettes being the most commonly used by 4.3% of those students; and

WHEREAS, a January 2018 Congressionally-mandated report by the National Academies of Sciences, Engineering, and Medicine concluded that among youth—who use e-cigarettes at higher rates than adults—there is substantial evidence that e-cigarette use increases the risk of transitioning to smoking conventional cigarettes; and

WHEREAS, as similarly reported in a 2018 article published in the Journal of the American Academy of Pediatrics, a study of e-cigarette use by adolescents showed that, among adolescent cigarette experimenters, using e-cigarettes was positively and independently associated with the progression to established cigarette smoking; and

WHEREAS, according to information contained on the JUUL website under the Frequently Asked Questions regarding JUULpod Basics, 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 currently reported on the website for the CDC, smoking causes cancer, heart disease, stroke, lung disease, and chronic obstructive pulmonary disease (COPD) and is the leading cause of preventable death, causing more than 480,000 deaths per year in the United States; and

WHEREAS, the alarming implications of e-cigarette use, and specifically JUUL use, by youth across our nation has garnered the attention of various members of Congress, including Senate Democratic Whip Dick Durbin (D-IL), along with 10 of his Senate colleagues, who have recently sent impassioned letters to both the Chief Executive Officer of Juul Labs, Inc. (Exhibit A) and the Commissioner of the FDA (Exhibit B) urging swift action to reduce youth use of these dangerous and addictive products, and to initiate immediate actions to remove these products from the market; and

WHEREAS, in addition, six leading public health and medical organizations (the American Academy of Pediatrics, the American Lung Association, the American Heart Association, the American Cancer Society Cancer Action Network, the Campaign for Tobacco-Free Kids, and the Truth Initiative) sent a letter to the FDA on April 18, 2018 urging “strong and immediate action” to address the dramatic rise in teen use of JUUL electronic cigarettes, which presents an “urgent threat to public health”; and

WHEREAS, in 2018, lawsuits have been filed against Juul Labs, Inc. and its predecessor company, PAX Labs, Inc. in the United States District Court of Northern California (Class Action Case No. 3:18-cv-02499) alleging claims of false advertising, improper representations, fraud, deceit, and unfair, unlawful and deceptive trade practices, among other claims; and, another case has been filed in the United States District Court for the Southern District of New York (Case No. 7:18-cv-05758) alleging products liability and negligent design and marketing claims; and

WHEREAS, the FDA announced on April 24, 2018 that it had implemented a newly formed Youth Tobacco Prevention Plan that includes taking new enforcement actions against retailers illegally selling e-cigarette products to minors; urging eBay to remove listings for JUUL products on its website; issuing official requests for documents to manufacturers, including Juul Labs, related to, among other things, product marketing, research on the toxicological, behavioral or physiologic effects of these products; enforcement actions focused on companies engaged in misleading advertising aimed at youth; and, engaging in science-based campaigns to educate youth about the dangers of e-cigarettes and all tobacco products; and


WHEREAS, while the FDA’s current plan of action to address the harms of e-cigarettes, and the new JUUL craze among minors, is a necessary step in the right direction, other additional and immediate actions are needed now to address the proliferation of these youth-friendly products to protect the health and welfare of our nation’s youth, including, but not limited to, the suspension of all internet sales of JUUL and similar e-cigarettes until new and adequate rules are established to require effective age verification of buyers at the time of sale and delivery; heightened enforcement actions against the sales of JUUL and similar e-cigarettes to minors by brick-and-mortar retailers; and, a reversal of the FDA’s 2017 decision that allows e-cigarettes already on the market as of August 8, 2016 to stay on the market for 4 more years until August 8, 2022, without the need to undergo a premarket tobacco product application (PMTA) process and public health review and oversight by the FDA; and

WHEREAS, on September 12, 2018, the FDA sent letters to JUUL and four other manufacturers of ENDS products stating that it was reconsidering its August 8, 2022 compliance date for the submission of PMTAs for their products and requested that these manufacturers provide a written response, within 60 days, setting forth a detailed plan, including specific timeframes, to address and mitigate the widespread use of their products by minors.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby urge the United States Food & Drug Administration to continue to pursue actions to hold e-cigarette manufacturers accountable for the accessibility of their products to minors and to expeditiously proceed to enact and enforce regulations prohibiting the sale and marketing of youth-friendly and youth-oriented e-cigarettes to minors in the immediate interest of the health, safety, and welfare of our nation's youth.

PASSED AND ADOPTED this 12th day of September 2018.

ATTEST:

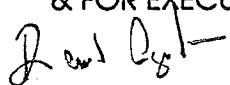

9/27/18

Rafael E. Granado, City Clerk



Dan Gelber, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney *DT*

9/13/18

Date

Sponsored by Mayor Dan Gelber
Co-sponsored by Commissioner John Elizabeth Alemán
Co-sponsored by Commissioner Michael Góngora
Co-sponsored by Commissioner Micky Steinberg

