

MINUTES OF THE HEALTH & HUMAN SERVICES COMMITTEE
February 4, 2019
East Conference Room

Present: Councilmembers Litten, George, Anderson

Also Present: Councilmembers Bullock & Rader, Clerk Bach, Director Gelsomino, Clerk Bach, Law Director Butler, Terry Allan & Rick Novickis (representatives from the Cuyahoga County Board of Health, a dozen members of the public, and Deputy Clerk Lascu taking minutes

Call to Order: 6:02 p.m.

ORDINANCE 76-18 - AN ORDINANCE to take effect at the earliest period allowed by law, enacting Chapter 1727, Cigarette and Tobacco Vendors; Sales to Persons Under 21, of the Codified Ordinances of the City of Lakewood in order to amend and create regulations involving licensing for and sales of tobacco products. (Placed on 1st reading & referred to HHS 12/17/18; 2nd reading 1/7/19)

Mr. Allan opened the meeting thanking Lakewood for taking the lead on Tobacco 21 legislation. It involves a whole range of tobacco products. Vaping has been exploding in youth smoking. Euclid and Cleveland Heights have both passed Tobacco 21 ordinances. Rick Novickis has been a point person for the county on this initiative. The county has model legislation and they believe Lakewood's legislation is very strong. H referred to an infographic he provided that focuses on marketing of vaping products to youth. Incidences of youth smoking drop from 21% to 8% when you check stores to see if their selling to kids.

Rick Novickis spoke about the importance of speaking with owners of stores. He referred to examples in Euclid where stores had changed their signs to 21 and up before the county came and spoke with them. It's important to invite businesses to city hall so they don't hear about initiative second hand.

Councilman Anderson stated it's good to know that the county is studying efficacy and impact of this kind of legislation.

Councilman Rader asked when Euclid and Cleveland Heights passed their ordinances and if there have been any problems with them. Mr. Novickis stated there have been no problems yet and the approach to the permitting process has become more uniform. Corporate partners such as Speedway and Rite Aid have been partners in process. In some cases, you need to swipe an ID at register to authorize a transaction for tobacco products. Cleveland Heights implemented theirs a couple months ago.

Councilwoman George asked what other cities have passed this kind of legislation. Mr. Allan stated Cleveland passed one in 2015. It was brought up in a meeting for a city managers and mayors association here locally and there was broad interest there.

Director Gelsomino stated Lakewood has a history of being proactive to the well- being of its youth. Compliance will be a challenge. She is very pleased we're having this discussion.

Director Butler stated Council may want to amend the ordinance to permit the Board of Health as a permitting agent, to follow suit of other communities. The criminal penalty of a 4th degree misdemeanor is in ordinance to give an additional tool. Council may want to strike that penalty from the chapter. He doesn't believe the city has prosecuted a tobacco sales related offense in a long time. The signage requirement would not be in effect until June if this version of ordinance is adopted.

Mr. Allan and Mr. Novickis stated the county would like to work with the Lakewood school system if the ordinance is adopted.

Councilman Anderson asked if there is a criminal penalty for adults transferring cigarettes to minors in our community. Director Butler stated he was unsure, but if so, he believes it should stay. That would be a good question for police. If there is, Council may want to raise that age limit.

Wendy Hyde, a representative from Tobacco 21, stated she is in support of the ordinance and her organization is looking to restrict social access to tobacco. This type of ordinance has been passed by 20 cities in Ohio.

Cretia of the American Heart Association stated that tobacco use is a major risk factor for heart disease and if we reduce its use, we reduce heart disease.

Noreen Kyle of Westshore Young Leaders partners with Lakewood public schools and has a grant to do compliance checks on tobacco retailers. She would like a 100% tobacco free policy across schools.

Tom Corrigan, an attorney representing Robusto & Briar, a premium tobacco shop on Detroit Ave., spoke against the criminalization elements in the ordinance. He also mentioned that his clients have invested a quarter million dollars into their small business. Patrick Seagal, the owner of the shop, suggested a possible premium tobacco exemption in Lakewood. Councilman Litten questioned if there are any exemptions in other communities and Mr. Allan and Ms. Hyde stated that there are none.

Kyle, a manager of a vape store in Lakewood, stated he believes this ordinance will prevent youth from getting access to tobacco products and that they will merely get them online, negatively affecting retailers like his business that abides by the law.

Jess, a Lakewood resident and employee of the Healthy Cleveland Initiative, spoke in support of the ordinance.

Kelly from Community Awareness and Prevention Association conducts point of sale audits with kids using a tobacco prevention grant from the Ohio Department of Health. Her group conducted 130 of these audits in Brecksville and Broadview Heights and they are scheduled to do 30 in Lakewood stores with Officer Rasch with the Lakewood Police Department. She believes tobacco companies are targeting marketing to kids.

Amy Barkley from Campaign for Tobacco Free Kids stated her group is not asking for prohibition/use of legal tobacco consumption by adults. She recommended the removal of criminal penalties on retailers and kids in possession of tobacco products. Her group prefers these types of laws and initiatives to be

locally driven. The evidence for the effectiveness of this policy is based on the 21 and up age limit to consume alcohol, which reduced binge drinking and abuse.

Mr. Allan stated the county runs a child fatality review committee and found that 68% of child fatalities had heavy smoking in the home upon post mortem review.

Councilman Litten shared a letter that he received from Altria, the parent company to Phillip Morris and Juul, explaining their stance on Tobacco 21. They said they would remove some products and certain flavors voluntarily and that they will support federal legislation to make the smoking age 21.

Councilman Litten made a motion to adjourn, which was seconded by Councilman Anderson.

Meeting adjourned: 7:02 p.m.



Altria

HHS
2/4/19

Howard A. Willard III
Chairman and Chief Executive Officer

October 25, 2018

Scott Gottlieb, M.D.
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, Maryland 20993

Dear Commissioner Gottlieb:

On behalf of Altria Group, Inc. and our subsidiary Nu Mark LLC (“Nu Mark”), I write in response to your September 12, 2018 letter raising serious concerns about underage access to and use of e-vapor products. We share your concerns and believe kids should not use any tobacco products.

Importantly, we are alarmed about the reported rise in youth e-vapor use to epidemic levels, and we are concerned that these youth issues may jeopardize harm reduction for adult smokers. In your July 2017 announcement, you highlighted the importance of the continuum of risk and embraced a policy of encouraging smokers to migrate to non-combustible forms of tobacco products. We believe e-vapor products present an important opportunity for adult smokers to switch from combustible cigarettes. Yet, the current situation with youth use of e-vapor products, left unchecked, has the potential to undermine that opportunity for adult smokers. Because we believe in the long-term promise of e-vapor products and harm reduction, we are taking immediate action to address this complex situation.

Specifically, as explained further below, we announced today the following actions:

- We will remove from the market our *MarkTen Elite* and *Apex by MarkTen* pod-based products until we receive a market order from FDA or the youth issue is otherwise addressed;
- For our remaining *MarkTen* and *Green Smoke* cig-a-like products, we will sell only tobacco, menthol and mint varieties. We will discontinue the sale of all other flavor variants of our cig-a-like products until we receive a market order from FDA or the youth issue is otherwise addressed; and
- We will support federal legislation to establish 21 as the minimum age to purchase any tobacco product.

Of course, we recognize the impacts these decisions will have on our consumers, trade partners, suppliers and others. Nonetheless, these actions are essential to addressing the youth epidemic and preserving the long-term harm reduction opportunity of e-vapor products.

By way of background for our actions, Nu Mark's e-vapor portfolio consists of two primary product types – our *MarkTen* and *Green Smoke* cig-a-like products and *MarkTen Elite* and *Apex by MarkTen* pod-based products. Our e-vapor products are available to adult consumers in a variety of flavors at retail and through our e-commerce sites. Our marketing efforts for these products have been focused on communicating directly with adult tobacco consumers while minimizing the reach of our communications to unintended audiences. We have long supported efforts at retail to prevent youth access through identification checks, retailer training and other age verification practices. Similarly, we employ strong age-verification technologies and practices on our e-commerce sites to sell only to adult consumers age 21 and older.

Based on the publicly available information from FDA and others, we believe that pod-based products significantly contribute to the rise in youth use of e-vapor products. Although we do not believe we have a current issue with youth access to or use of our pod-based products, we do not want to risk contributing to the issue. To avoid such a risk, **we will remove from the market our *MarkTen Elite* and *Apex by MarkTen* pod-based products until we receive a market order from FDA or the youth issue is otherwise addressed.**

We believe underage use of e-vapor products is further compounded by flavors in these products that go beyond traditional tobacco flavors. This presents a challenge from a tobacco harm reduction perspective. We believe, informed by data collected in preparing our Pre-Market Tobacco Applications (“PMTAs”), that flavors play a critical role in migrating adult smokers to non-combustible forms of tobacco products. In fact, we have shared some of this evidence at recent scientific conferences, including: (1) that seven or more flavor varieties for *MarkTen* played an important role in reducing the number of cigarettes per day or switching completely among adult tobacco users; and (2) adult tobacco non-users did not find *MarkTen* flavors appealing.¹

Even though we believe flavors play an important role from a tobacco harm reduction perspective, we recognize the need to take action. **For our remaining *MarkTen* and *Green Smoke* cig-a-like products, we will sell only tobacco, menthol and mint varieties. We will discontinue the sale of all other flavor variants of our cig-a-like products until we receive a market order from FDA or the youth issue is otherwise addressed.** While we do not believe we currently have a youth issue associated with our

¹ Presentation by Altria Client Services at the 72nd Tobacco Science Research Conference, September 18, 2018:
<http://www.altria.com/ALCS-Science/ConferenceDocumentLibrary/2018%20TSRC%201%20Zdniak%20Presentation.pdf>

cig-a-like products or their flavors, we again do not want to risk contributing to the issue. This also still allows current adult tobacco consumers looking for smoking alternatives to continue to have access to traditional tobacco, menthol and mint flavors in cig-a-like e-vapor products.

Recognition of the importance of the PMTA product review pathway is inherent in our actions. The PMTA pathway creates the opportunity for a manufacturer to provide data and evidence to support its request for marketing authorization and to demonstrate that the products are “appropriate for the protection of public health.” FDA’s review of PMTA submissions, as well as requiring post-market surveillance, also allows the Agency to make informed science- and evidence-based decisions about products. To make this pathway as clear and viable as possible, we encourage the FDA to fully engage in notice-and-comment rulemaking to establish appropriate scientific and other standards for the efficient review of PMTA applications. This could include an expedited PMTA pathway for non-combustible products with enhanced post-market surveillance to ensure the products are not appealing to unintended audiences. Moreover, we recommend that FDA commission and publish data as to youth usage on a more frequent basis so that there is timely surveillance.

Altria and its tobacco operating companies have a long history of investing in and supporting underage tobacco prevention efforts. We believe that the current youth issue is driven, in part, by social access – that is, the purchase of such products by consumers of legal age for use by minors. **We believe, in the face of these current e-vapor and youth-related concerns, now is the time to support federal legislation to increase the minimum legal age to purchase tobacco products to age 21 and to set a national standard.** We recognize that FDA does not have the authority to increase the minimum legal age. We will share our views with members of Congress and encourage them to consider an increase in the minimum age to 21 to purchase tobacco products as part of their tobacco-related legislative priorities. Other enhancements we support include requiring user fees for e-vapor products, banning vaping in schools and prohibiting self-service displays at retail.

In your letter to us, you raised additional potential actions for us to consider related to marketing practices, online sales practices and retailer compliance practices. Let me address our current practices in each of these areas.

We focus our marketing practices for our e-vapor products on communicating with adult tobacco consumers while limiting reach of our communications to unintended audiences.

Nu Mark’s branded direct mail and email communications are sent only to age-verified adult smokers and vapers age 21 or older, and in-person communications are limited to age-verified smokers and vapers as well. Digital advertisements are only placed on third-party websites with predominantly adult visitors, and we do not currently maintain a branded presence on social media sites. Print advertisements are placed in adult

publications with predominantly adult readership. We do not use advertising images of anyone who is, or appears to be, under 25 years of age.

We do not use television, radio, billboard or transit advertising. We do not use celebrities in connection with the marketing of our products, and we do not allow sponsorship of events with brand names such as *MarkTen*. We do not distribute branded merchandise, other than accessories like USB battery chargers that are branded to indicate the intended use of the accessory. Nu Mark declines all third-party requests for payment, product samples or permission to use or display our e-vapor brands in any movies, television shows, video games or other public entertainment media. Nu Mark also complies with all FDA requirements and restrictions for the marketing and sale of its products, including the prohibition on sampling, required warnings on labeling and advertising, and minimum age to purchase.

With respect to e-commerce transactions on our websites, we have controls in place to help ensure our products are sold only to adults who are 21 or older. We require consumers to affirm that they are age 21 or older and a current adult smoker or vaper prior to accessing our sites, and our content displayed to consumers entering the site contains product-focused imagery with limited use of lifestyle imagery. We require age verification to purchase e-vapor products and accessories and to receive promotional emails, direct mail or coupons from our brands. Our age verification practices rely on robust technology tools and public database information to verify age. In states that do not allow the use of third-party electronic age verification, consumers must submit government-issued identification to establish that they are 21 years of age or older.

We have long supported actions at retail to limit youth access to tobacco products, including e-vapor. Most of the retailers who sell Nu Mark's e-vapor products get those products from distributors. To limit youth access to its products at retail, Nu Mark's promotional contracts require retailers to sell its products in a non-self-service manner, commit not to selling to youth and comply with the law. We currently monitor the FDA's compliance checks and monitor any No Tobacco Sales Orders ("NTSO") to determine whether any of our contracted accounts are subject to an NTSO. We continue our financial support of the *We Card* program providing training and age-verification tools to retailers. And, our retail signage is product-focused and intended to convey product availability, price and product attributes at the place of purchase.

In addition to our existing practices outlined above, we will continue to evaluate other actions we can take to strengthen our overall approach to how we market and sell our e-vapor products with the goal of limiting the reach of our communications to unintended audiences.

Scott Gottlieb, M.D.
U.S. Food and Drug Administration
October 25, 2018

Page 5

We support adult tobacco consumer choice and the promise of tobacco harm reduction, and we fully intend to offer a compelling portfolio of e-vapor products for adult smokers and vapers through FDA's product review pathways or when underage use of e-vapor is otherwise addressed. Yet, it is clear that underage access to and use of certain e-vapor products is a serious threat to the long-term promise of harm reduction. We are committed to helping reverse the current use trend among youth in order to preserve that long-term opportunity.

Please let me know if you have any questions related to our actions.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard A. Willard III". The signature is fluid and cursive, with the name "Howard" and "Willard" clearly legible, and "III" written in a smaller, more formal script at the end.

Howard A. Willard III

cc: Ms. Imelda Paredes, J.D.
Senior Regulatory Counsel
Center for Tobacco Products

Mr. Mitchell Zeller, J.D.
Director
Center for Tobacco Products



HHS
2/4/19

NEWS

4 marketing tactics e-cigarette companies use to target youth

from introducing appealing flavors to offering college scholarships, manufacturers and sellers of e-cigarettes aggressively target young people.

There are few federal restrictions on e-cigarette marketing, allowing companies to promote their products through traditional outlets — such as TV and radio — despite a ban in 1971 on cigarette advertising on both outlets to reduce cigarette marketing to children. E-cigarette companies also take advantage of other marketing outlets, including the internet, retail environments and recreational venues and events.

Youth and young adults are widely exposed to e-cigarette marketing and have high awareness of e-cigarettes, which are the most popular tobacco product among youth. By 2016, nearly 4 out of 5 middle and high school students, or more than 20 million youth, saw at least one e-cigarette advertisement.

Here are four ways e-cigarette companies market their products to target young people.

1. Offering scholarships

Several e-cigarette companies are offering scholarships, ranging from \$250 to \$5,000, that involve asking students to write essays on topics like whether vaping could have potential benefits, according to the Associated Press. For example, one company asks applicants to write about whether e-cigarettes minimize smoking's negative effects.

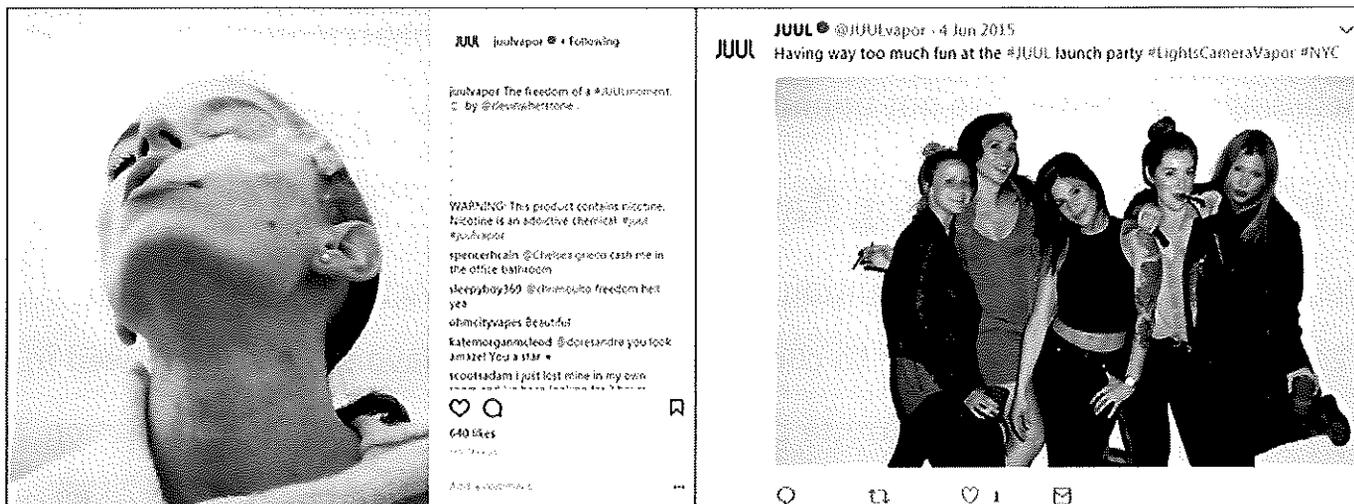
E-cigarette manufacturers often say that their products are intended for adults who want to quit smoking; however, the AP reports that, "although some of the scholarships are limited to students 18 and older — the nation's legal age to buy vaping products — many are open to younger teens or have no age limit."

"Most of these kids are not smokers," said Robin Koval, CEO and president of Truth Initiative®, in the AP story. "What [e-cigarette manufacturers are] saying and what they're doing don't seem to agree here. But that's not surprising."

2. Creating a buzz on social media

E-cigarettes make frequent appearances on social media newsfeeds and timelines. Most recently, emerging e-cigarette brands, like JUUL, have relied heavily on social media to market and promote their products.

For its launch in 2015, JUUL spent more than \$1 million to market the product on the internet, according to one research study. The brand has paid for campaigns on Twitter, Instagram and YouTube to promote images and company-sponsored ads that associate JUUL with being cool, having fun, relaxation, freedom and sex appeal.



The study found that social media growth — especially the number of JUUL-related tweets — “highly correlated” with JUUL retail sales. The number of JUUL-related tweets skyrocketed from a monthly average of 765 in 2015 to a monthly average of 30,565 in 2017. By the end of 2017, JUUL captured more than half of the entire e-cigarette market share.

3. Sponsoring music festivals and events

In 2013, blu eCigs® sponsored the Sasquatch! Music Festival in Washington, which featured a vapor lounge with surprise guest appearances from top performers, device charging stations, an interactive social media photo booth and samples of blu eCigs. More recently, JUUL sponsored a “Music in Film Summit” at the 2018 Sundance Film Festival in Utah.

Both of these examples are marketing tactics that are banned for cigarette and smokeless tobacco companies (however, these companies skirt these restrictions with other types of experiential marketing). The 1998 Master Settlement Agreement and the 2009 Family Smoking Prevention and Tobacco Control Act prohibited cigarette and smokeless tobacco companies from sponsoring music, sports and other cultural events because of evidence that linked these types of

marketing tactics with youth tobacco use. Other types of tobacco products, including e-cigarettes, are not bound by these restrictions.

4. Introducing appealing flavors

The 2009 Family Smoking Prevention and Tobacco Control Act banned flavors in cigarettes — except menthol — to curb youth appeal, but flavors are still allowed in other tobacco products. E-cigarette companies capitalize on this gap in regulation by offering kid-friendly flavors, such as cotton candy and gummi bear, and packaging e-liquids to look like common food items.



Youth e-cigarette users cite flavors as a main reason they begin using e-cigarettes. A study that included middle and high school students found that 43 percent of young people who ever used e-cigarettes tried them because of appealing flavors.

In May 2018, the FDA and the Federal Trade Commission took joint action against several e-liquid companies that marketed their products to look like candy or other kid-friendly food items, such as Reddi-wip, Nilla Wafers and Warheads candy. Truth Initiative has repeatedly called on the FDA to fully regulate e-cigarettes to

reduce youth appeal, access and use.

Learn more about e-cigarettes with the Truth Initiative resource: E-cigarettes: facts, stats and regulations.



WHO IS USING E-CIGARETTES?

E-CIGARETTES ARE THE MOST COMMONLY USED TOBACCO PRODUCT AMONG YOUTH.

HHS
2/19/19

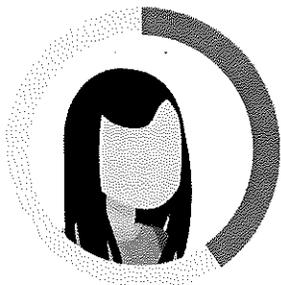
IN THE U.S., YOUTH ARE MORE LIKELY THAN ADULTS TO USE E-CIGARETTE



In 2018, more than **3.6 MILLION** U.S. middle and high school students used e-cigarettes in the past 30 days, including:

4.9%
MIDDLE SCHOOL STUDENTS

20.8%
HIGH SCHOOL STUDENTS



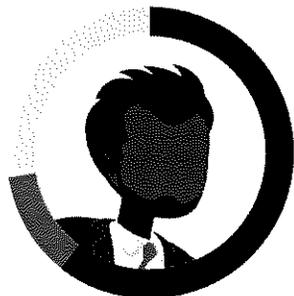
AMONG CURRENT E-CIGARETTE USERS AGED 45 YEARS AND OLDER in 2015, most were either current or former regular cigarette smokers, and 1.3% had never been cigarette smokers.

IN CONTRAST, AMONG CURRENT E-CIGARETTE USERS AGED 18-24 YEARS, **40.0%** had NEVER BEEN regular cigarette smokers

IN 2015, AMONG ADULT E-CIGARETTE USERS OVERALL:

29.8%
were former regular cigarette smokers

11.4%
had never been regular cigarette smokers



58.8%
were current regular cigarette smokers

In 2017, **2.8%** of U.S. adults were current e-cigarette users

