From:	Jim Nugent
To:	Gwen Jones
Cc:	Grp. City Council and City Web Site; Shannon Therriault; Arwyn Welander; Lisa Beczkiewicz; Ellen Leahy; Ellen Leahy; Dept. Mayors Office; Jaeson White; Scott Hoffman; Laurie Clark; Dept. Attorney; Dept. City Clerk
Subject:	FW: Zoom Link for Meeting with Brad Longcake 10 am Friday
Date:	Wednesday, November 4, 2020 1:02:42 PM
Attachments:	Missoula ordinace wording changes 11-2-2020.docx

GWEN:

In response to Brad Longcake's suggested revisions referencing age 21, age 21 is the federal law. Local law enforcement does not have jurisdiction or authority to enforced federal laws. In addition, the City of Missoula Municipal Court does not have jurisdiction over violations of federal law. Section 45-5-637 MCA of Montana state criminal law provides that possession or consumption of tobacco products, alternative nicotine products or vapor products prohibits possession or consumption by persons under 18 years of age. In addition, section 7-1-113 MCA of Montana's local government self-governing powers requires consistency with state regulations by the Montana local government whenever any area is affirmatively subjected by law to state regulation or control.

(1) With respect to Brad Longcake's suggested revision to section 8.38.040 MCA stating "no person younger than 21 years of age" is inconsistent with Montana state law, which makes possession or consumption by anyone under the age of 18 years old to be prohibited. The city could not make it a violation/offense for adults 18 to 21 to age in the area; since Montana state law unlawful possession and consumption age is under 18 years of age. Possibly, if the city council/citizens would like to attempt to ensure that the retailer be aware of and abide by the federal law age of 21; the city could specifically note/state what the federal age law is as part of the proposed additional sentence. Does/would federal law specifically already address this factual circumstance of not allowing anyone younger than age 21 into such an area? Possibly the city could address the issue by requiring signage that sets forth the 21 age limitation that indicates that the federal age is 21 . Possible ordinance language to consider could be as follows:

> "This section does not apply to facilities where the Tobacco Retailer has prominently posted signage setting forth federal law age 21 restriction and ensures that pursuant to the federal law age 21 restriction no youth under 18 years of age, nor any adult aged 18 to 21 years of age may be present within or permitted to enter the area at any time."

There is no guarantee that Montana courts would uphold a provision such as set forth above.

(2) With respect to Brad Longcake's proposed revision to proposed section 8.38.060 from 18 to 21; the age 21 is inconsistent with Montana state law sections 45-5-637 and 7-1-113 MCA.

(3) The proposed penalty revision to 8.38.080(A)(6) MMC is a city council policy decision that does not appear to be a legal issue at this point in time.

JIM NUGENT

From: Gwen Jones <GJones@ci.missoula.mt.us>
Sent: Tuesday, November 3, 2020 11:12 AM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: Mirtha Becerra <MBecerra@ci.missoula.mt.us>
Subject: Fw: Zoom Link for Meeting with Brad Longcake 10 am Friday

Hi Jim - we had comments come in from Brad Longcake. Could you please review? As you had stated, we cannot use the age of 21, it needs to be 18. And the definitions section, per the Health Dept., specifies using "substance" instead of "liquid", which Brad Longcake prefers.

However....his other comments need your legal analysis, as I believe they get to the pre-emption argument, and relate to federal law under the FDA. Please let us know if you advise any changes. Thanks, -Gwen

Gwen Jones
Ward 3 City Councilwoman
606 Woodford St., Missoula, MT 59801
406 549-3295

Note: All emails to and from this address are in the public domain.

From: longcakeconsulting@gmail.com <longcakeconsulting@gmail.com>
Sent: Monday, November 2, 2020 11:12 AM
To: Mirtha Becerra; Stacie Anderson; Gwen Jones; Julie Merritt
Subject: RE: Zoom Link for Meeting with Brad Longcake 10 am Friday

Mirtha,

Thanks for sending, I have had a chance to look it over and have provided some suggested comments/changes to help better clarify the wording. Please take a look at it and let me know your thoughts.

Thanks again for working on this with me.

Brad Longcake
Executive Director
MT Petroleum Marketers & Convenience Store Association
406-438-1276

Montana Petroleum Marketers & Convenience Store Association

From: Mirtha Becerra <MBecerra@ci.missoula.mt.us>
Sent: Friday, October 30, 2020 4:45 PM
To: Brad Longcake <longcakeconsulting@gmail.com>; Stacie Anderson <SAnderson@ci.missoula.mt.us>; Gwen Jones <GJones@ci.missoula.mt.us>; Julie Merritt <JMerritt@ci.missoula.mt.us>
Subject: RE: Zoom Link for Meeting with Brad Longcake 10 am Friday

Brad,
Attached is the DRAFT ordinance. Some language clarification still needs to happen and we'll work on that early next week. Other than that, the draft reflects the substance of the ordinance.
Please reach out if you have any questions or want to provide feedback.
Thanks,
Mirtha

From: Brad Longcake <longcakeconsulting@gmail.com>
Sent: Friday, October 30, 2020 3:51 PM
To: Stacie Anderson <SAnderson@ci.missoula.mt.us>; Mirtha Becerra <MBecerra@ci.missoula.mt.us>; Gwen Jones <GJones@ci.missoula.mt.us>; Julie Merritt <JMerritt@ci.missoula.mt.us>
Subject: Re: Zoom Link for Meeting with Brad Longcake 10 am Friday

Mirtha

Just checking back in before the weekend to see if you have anything that you can share with me yet.

Thanks
Brad Longcake

> On Oct 28, 2020, at 8:32 AM, longcakeconsulting@gmail.com wrote:
>
> Hi Ladies,

I wanted to thank you for your call last week and wanted to check in to see if there is anything that you need from me before next weeks meeting.

Thanks again

Brad Longcake
Executive Director
MT Petroleum Marketers & Convenience Store Association
406-438-1276
<image001.jpg>

From: Stacie Anderson <SAnderson@ci.missoula.mt.us>
Sent: Thursday, October 22, 2020 11:07 AM
To: Mirtha Becerra <MBecerra@ci.missoula.mt.us>; Gwen Jones <GJones@ci.missoula.mt.us>; Julie Merritt <JMerritt@ci.missoula.mt.us>; longcakeconsulting@gmail.com
Subject: Zoom Link for Meeting with Brad Longcake 10 am Friday

Greetings Everyone,

Here is the link for our zoom meeting with Brad Longcake tomorrow at 10 am.

Topic: Ordinance Meeting with Sponsors and Brad Longcake
Time: Oct 23, 2020 10:00 AM Mountain Time (US and Canada)

Join Zoom Meeting
https://us02web.zoom.us/j/82209926140?pwd=NDlnTWs5K2xlL0RDR1JrUjNOTyswdz09

Meeting ID: 822 0992 6140
Passcode: 486173
One tap mobile
+16699009128,,82209926140#,,,,,,0#,,486173# US (San Jose)
+12532158782,,82209926140#,,,,,,0#,,486173# US (Tacoma)

Dial by your location
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)
+1 301 715 8592 US (Germantown)
+1 312 626 6799 US (Chicago)
Meeting ID: 822 0992 6140
Passcode: 486173
Find your local number: https://us02web.zoom.us/u/kdAwZpmWab

****
Stacie M. Anderson
Missoula City Council Ward 5
435 Ryman Street, Missoula MT 59803
406-282-4662
Pronouns: She/Her/Hers
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