From:	Jim Nugent
To:	Sandra Vasecka
Cc:	Grp. City Council and City Web Site; Dept. Mayors Office; Shannon Therriault; Arwyn Welander; Lisa Beczkiewicz; Ellen Leahy; Ellen Leahy (eleahy@co.missoula.mt.us); Jaeson White; Scott Hoffman; Laurie Clark; Dept. City Clerk; Dept. Attorney
Subject:	FW: Definition solution
Date:	Wednesday, November 4, 2020 2:28:40 PM
Attachments:	Ordinance--Flavored Tobacco 11-3-2020EH.docx

SANDRA:

In response to public comment and additional health department staff and city council member consideration, the proposed city regulation of flavored tobacco products ordinance is still a work in progress and is evolving pursuant to health department and some city council member proposed revisions. This email and attachment is I believe the most recent draft proposed flavored tobacco ordinance that was emailed to me. Since it was issued the day after your email inquiry, I wanted to be sure that you possessed the most recent draft that the health department sent to me.

The attached revision to the health department's proposed ordinance adds "used in electronic smoking devices" to the title and text of section 8.38.050 MMC. The Montana state "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" does not specifically define either "flavored tobacco product" or "electronic smoking device".

Currently the section 8.38.050 MMC text language applies to everyone, not just youth under age 18. Section 16-11-305 MCA of the "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" prohibits a person from selling or distributing a tobacco product, alternative nicotine product, or vapor product to a person under 18 years of age. Federal law now currently sets the age limitation or restriction at age 21. Since section 16-11-305 MCA prohibits the sale or distribution of tobacco products, alternative nicotine products, or vapor products to any individuals under the age of 18 years the proposed ordinance language would not be more stringent. Arguably; because of the age 21 restriction in federal law, some might argue that the proposed section 8.38.050 MMC is also not more stringent for adults under age 21 because the age 21 in federal law arguably pre-empts the Montana state law. However, it is not likely that the Act applies to adults; so regulations pertaining to adults would not be more stringent than the "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT".

I do not know if I am correct in assuming what your concern is; but I am assuming that your concern must be about the effect of proposed section 8.38.050 Missoula Municipal Code on adults; because there currently is no age restriction set forth in section 8.38.050 MMC. The "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" appears to be legislatively intended to apply only to the sale or distribution of tobacco products, alternative nicotine products or vapor products to youth. Montana state law defines youth as a person under the age of 18.

Arguably, the "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" IS INTENDED TO APPLY TO SALES AND DISTRIBUTIONS TO YOUTH. Montana's courts would likely ultimately determine if the "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" or some other provision of Montana state law would prohibit the apparent current language breadth of proposed section 8.38.050 MMC.

JIM NUGENT

From: Shannon Therriault <stherriault@missoulacounty.us>
Sent: Tuesday, November 3, 2020 2:32 PM
To: Arwyn Welander <awelander@missoulacounty.us>; Mirtha Becerra <MBecerra@ci.missoula.mt.us>; Gwen Jones <GJones@ci.missoula.mt.us>; Stacie Anderson <SAnderson@ci.missoula.mt.us>; Lisa Beczkiewicz <lbeczkiewicz@missoulacounty.us>; Jim Nugent <NugentJ@ci.missoula.mt.us>; Marty Rehbein <RehbeinM@ci.missoula.mt.us>
Cc: Ellen Leahy <eLeahy@missoulacounty.us>
Subject: RE: Definition solution

Here's a new and improved track changes document that includes an exception to the self-service display requirement for stores that don't allow anyone under 21 to come inside, as suggested and requested by Brad Longcake. I also removed the county-only verbiage in 8.38.080(A)(4) because the county does not issue business licenses, and this could add confusion to any enforcement decisions/actions. Removing this language does not affect the health department's ability to pursue compliance through cooperative efforts or enforcement through the courts.

We strongly recommend not changing the definition of Electronic Smoking Device. Arwyn looked at definitions from other states, and "substance" is widely used. It is a better term than "liquid" so we don't have to argue if something in an e-cigarette qualifies as a liquid or not.

We talked yesterday about why we should not change the age in 8.38.060 from 18 to 21. Though it is confusing, it is consistent with the state law.

I recommend not including the proposed language in 8.38.080 (5), because it will make using that provision more complicated, if that's a route that's needed to get the store to comply.

From: Shannon Therriault
Sent: Monday, November 2, 2020 4:47 PM
To: Arwyn Welander <awelander@missoulacounty.us>; Mirtha Becerra <MBecerra@ci.missoula.mt.us>; 'Jones Gwen' <gjones@ci.missoula.mt.us>; sanderson@ci.missoula.mt.us; Lisa Beczkiewicz <lbeczkiewicz@missoulacounty.us>; Jim Nugent <NugentJ@ci.missoula.mt.us>; Marty Rehbein <RehbeinM@ci.missoula.mt.us>
Subject: Definition solution

Here's the track changes draft keeping the definitions the same, and changing 8.38.050 to use the current definitions. Arwyn and I meet tomorrow to discuss Gwen's question/concern. Shannon

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