

City of Missoula

Public Safety and Health Committee Agenda

Date: November 18, 2020, 9:00 AM - 12:00 PM
Location: ZOOM Webinar
Members: Stacie Anderson (chair), John P. Contos, Mirtha Becerra, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse Ramos, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, Heidi West

Attend by computer:

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Webinar ID: 880 6449 2180

Password: 027222, Press *9 to raise your hand to be recognized for public comment

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Issues? Call the City Clerk 406-552-6078

Pages

1. ADMINISTRATIVE BUSINESS

1.1. Roll Call

1.2. Approval of the Minutes for October 28th and November 4, 2020

1

2. PUBLIC COMMENT

3. COMMITTEE BUSINESS

3.1. Fire Department Update - Crisis Response Unit

Brad Davis

10

Recommended motion:

N/A

3.2. Proposal to regulate tobacco sales and prohibit the sale of flavored tobacco products

Mirtha Becerra, Gwen
Jones, Stacie
Anderson, Heidi West,
Julie Merritt

11

Recommended motion:

Second and final reading-Adopt/Deny an ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled "Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 18

4. ADJOURNMENT

Missoula City Council Public Safety and Health Committee Minutes

October 28, 2020

10:45 AM

ZOOM Webinar

Members present: Stacie Anderson (chair), John P. Contos, Mirtha Becerra, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse Ramos, Amber Sherrill, Sandra Vasecka

Members absent: Bryan von Lossberg, Heidi West

1. ADMINISTRATIVE BUSINESS

1.1 Roll Call

1.2 Approval of the Minutes for October 14 and October 21, 2020

Approved.

2. PUBLIC COMMENT

None

3. COMMITTEE BUSINESS

3.1 Purchase of one Type 1 Engine and 1 Type 6 Wildand Engine

Brad Davis, Assistant Chief with the Missoula Fire Department, is coming to the council to ask for approval for the purchase of one type 1 engine from money approved in the core replacement budget, and to move forward with the purchase and build of one type 6 wildland apparatus which was also approved in the core replacement budget. There is a price list attached from GPO. We are asking for 620,000.00 total. We are also requesting 85,000.00 for a build of wildland apparatus. The maintenance division is building the apparatus vs. purchasing a fully built apparatus. We will surplus some of the items off the old truck. This is one of the advantages of having an outstanding maintenance division.

Stacie asked what it would take to buy a new wildland engine. Eric Petroff, assistant mechanic, said about \$120,000.00 rough estimate.

Julie Merritt made the recommended motion and thanked Assistant Chief Davis for his ingenuity.

Stacie asked if this type one engine adds to the fleet, or will it be replacing an engine. Brad said it will be replacing an engine. He will be requesting surplus in the new future.

Stacie asked the life span in years of a type 1 engine. Brad says 10 years front line, and 5 years reserve. As call volume increases, we reevaluate that.

Moved by: Julie Merritt

Recommended Motion(s): I move the City Council Authorize the Mayor to sign a contract with Hughes Fire Equipment in the amount of \$571,994.00 total for the purchase of one Type 1 fire engine.

I move the City Council authorize the Missoula Fire Department to spend up to \$85,000.00 to build one Type 6 wildland engine.

Vote results: Approved

4. ADJOURNMENT

Adjourned.

Missoula City Council Public Safety and Health Committee Minutes

November 4, 2020

3:00 PM

ZOOM Webinar

Members present: Stacie Anderson (chair), John P. Contos, Mirtha Becerra, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse Ramos, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, Heidi West

3. COMMITTEE BUSINESS

3.1 Proposal to regulate tobacco sales and prohibit the sale of flavored tobacco products

The sponsors of the tobacco ordinance are bringing back some revisions to the ordinance. They are going to keep this in committee until November 18th.

Mirtha Becerra spoke. They presented an ordinance in October creating Chapter 8.38, Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products. Since then they have received extensive public comment from both proponents and opponents to this ordinance. There have been some revisions. The intent remains the same and that is for the Missoula City Council to protect the health and welfare by reducing access to flavored e-cigarette products and self-service access to tobacco products. Some of the changes include: We removed all flavored products and now applies to electronic tobacco products; it added supporting data under WHEREAS sections; clarified definitions; Added section: 8.38.060: Transaction with youth; clarified penalties for violation of ordinance and added a severability clause, and also narrowed the time of enactment to January 11 2021.

The ordinance: No tobacco retailer shall sell or offer to sell tobacco products by means of a self-service display. This section does not apply to facilities where the retailer ensures that no person younger than 21 years of age is present or allowed to enter the business of any time. It shall be unlawful for any Tobacco Retailer, licensed under MCA 5-16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute Flavored electronic Tobacco Products or Tobacco Product Flavor Enhancer. This is the same as the previous version.

Gwen Jones said that those two components will be addressed by the health department. Anyone who knowingly sells or gives tobacco to anyone under the age of 18-we put that in because Montana law does address alcohol or drugs, but it does not address tobacco. Local law enforcement is responsible for the enforcement of sections 38.80.60.

Violations and penalties: They wanted to rework this ordinance, but there were issues raised on enforceability in a court of law. The most recent ordinance is attached to the agenda. It is the last item.

Mirtha Becerra said that while some of these have changed, we stayed true to the issue. This ordinance speaks to that. Ideally we would have a ban on all flavored tobacco products, but we need to hear all sides and come to concessions and agreements, and still remain true to what it is we are trying to accomplish which is to protect our youth.

Stacie said the ordinance is focusing on the sale of vaping and electronic nicotine products as well as addressing the access point.

Arwyn Welander, Tobacco Program Coordinator at the Health Department spoke. They are still backing the policy with the amendments. Anything we can do to support parents in schools within the community with this ordinance is what we need. We are behind. We have a huge vaping epidemic in Missoula. The health department, the board of health and the county commissioners are all in favor of changes we have made to this ordinance moving forward.

Sandra Vesecka asked about slide 2-the flavor ban-said it applies to electronic products-is that only electronic products, or also electronic products? Mirtha said the revision is only for electronic products. Sandra also wants to know why the January 11 start date. If that passes, it only gives the store owners one month? Mirtha said there is nothing significant, but Mirtha said it is usually 30 days from when an ordinance is enacted. This will be extended to 62 days to make it a Monday starting date. Sandra also asked about the part with the flavored vape products being banned. She wasn't so concerned about the dates, but she was concerned about the language being flavored vape products, and she feels it is stricter than the Youth Tobacco Control Act, and she wants to hear from Mr. Nugent whether that is legal to enact. Stacie said that enacting this, MCA still references the age is 18 instead of 21. Jim Nugent said he sent an email. The state law under the youth access states that a person may not distribute or sell a tobacco, alternative product or vapor products under the age of 18. If this about people under the age of 18, and narrowing down, he is not sure he is following the concern, because vapor products are already prohibited. Sandra said she is concerned about banning it to legal consumers. The Youth Access Act is intended to address youth, so arguably the act does not apply to begin with, so unless there is another section of law is being violated, he does not feel the Youth Access Act is being more stringent. We are in a different venue when we talk about adults. Courts will ultimately make the decision. Sandra Vesecka foresees litigation coming before the city regarding this.

Gwen Jones wanted to clarify that this addresses e-cigarettes and flavored tobacco products used in electronic form. Regarding the preemptive opinions adamant that it was legal, and adamant that it was illegal. This is an issue that will be decided in the courts, and it needs to be handled, so we need the strongest ordinance as possible. If there is litigation, this litigation will be in-house and not something that city will pay for. If this something we prevail and wind up having less youth in Missoula having a nicotine habit that is something City Council should be discussing and evaluating.

Heather Harp said one of the concerns she had was the potential for litigation as people eluded to. Not being a lawyer, she does wonder if it goes to the courts, how much of the budget will be expended on a case that could go either direction. Jim Nugent said the cost would be primarily staff time, except if there would be expert witnesses.

Mirtha Becerra said that just because it could end up in court that it does not mean we shouldn't pursue it. There have been many pieces of legislation locally, state-wide and nationally that have been battled out. This is in the best interest to protect our youth and is worth it to take it to court if we need to.

Jesse Ramos asked Jim Nugent about the cost being just staff time. He wants to know if the city could be held liable for costs if a business goes out of business. Jim said typically a lawsuit wouldn't have that type of situation unless the ordinance had been enforced, but typically it goes to litigation before it gets enforced. Jesse asked that if we are confident that this new language is stronger, what the worry about is. Gwen said they sat through hours and hours of meetings, but the bottom line is they tried to connect the tools in this ordinance as closely as possible to the problem and create the nexus based on causation, and because of that it's stronger. She feels it is more closely tailored to the issue. Jim Nugent also stated that the legislative body of the city council members are ones to set policy and it is set by the city council. He keeps them within the parameters of legality, but as far as some of the reasoning or rationale, that's city council cohorts and the city council establishes the policy.

Julie Merritt wanted to clarify questions about hypothetical lawsuits. Litigation is something you cannot predict. If the outcome is predictable, it wouldn't happen. Let's not back people into a corner about potential lawsuits. If we are not taking actions to protect youth, then what are we doing here? Trying to back people into a corner about legality, we need to do what we can to protect youth.

Stacie is going to move to public comment on the revised ordinance.

Tom Byrant, Executive Director and Legal Council for the National Association for Tobacco Outlets says they all share the same concern. Retailers on front lines are ensuring that these items do not fall into the hands of minors. Please remember there is a question of federal preemption that also covers flavored vapor products. He urges them not to support the ordinance and to give careful consideration of the preemption ordinance.

Mitch Bradley owns Hebes Fresh Market in Bozeman, MT and he has banned tobacco altogether in his store in Bozeman. There is a lot of pressure by the large tobacco companies. This is just a larger avenue. They are still immature and they get addicted to this. He feels why give them any reason to do this. He supports them in going forward with this ordinance. He gets great support from the community for banning cigarettes and tobacco in his store. It is not affecting his business whatsoever, and in fact, possibly helps him.

Kimberly Dudik says they have seen over the last 24 hours how important it is to for leaders to protect the citizens. She was asked to look at the interplay between the proposed ordinance and the state preemption doctrines and how this plays into health inequities. After looking at this, she determined the flavored tobacco products require separate regulations from regular tobacco products. They have seen that with federal rules, and state regulations do not preempt local action on regulating all flavored tobacco products. In the Youth Access Act, the subjects that are regulated there cannot be stricter than a local level. Looking at whether or not the locality is preempted by the state law, the State Legislature and Supreme Court, they also side with localities. Missoula has been a leader in protecting citizens' health. A preemption is required for a local

government to not have authority to regulate. There is no preemption, so at best there is an implied preemption. That has been firmly shown in cases. The reason it only applies to the four areas, it would lead to absurd results. It would cause us to mean that the city couldn't regulate anything regarding persons and those results are not what the legislature intended in stopping youth from preventing access to tobacco.

Breanna Hanson called on behalf of Elementary Health Enhancement. They would like to see the ordinance pushed out without the amendments. Any sort of flavored tobacco product is putting youth at risk. She has done a lot of education in school about tobacco and vaping. Please rethink amending the ordinance.

Lauren Wilson, a pediatrician in Missoula and represents the Montana Chapter of Pediatrics spoke. She is reading a letter from Dr. Stenger as well. He encourages the city council to pass the ordinance without the amendments. The flavored vaping product or ban, they will use other flavored products instead. The tobacco industry has demonstrated their use in getting youth to use other products when one is not available. We know that universal flavored bans have been an effective tool. We encourage the city council to adopt the comprehensive ordinance that encompasses all flavored tobacco products. Lauren Wilson echoed his words and wishes they would enact the ordinance as was originally read. If we ban flavored vaping products, they will switch to other tobacco products. We should not send a signal that some sorts of tobacco are okay.

Evelyn Wall echoes what Kimberly Dudik said and is speaking for a minority group and specifically the LGBTQ youth and that is a population that is absolutely targeted. It is not only vape products also flavored cigarettes. This community is extremely vulnerable, and in the current political environment they are even more so. If you are marketing a products to them, you are going to put those health effects on them. Think about the communities that are going to be harmed in the future. It is very important to add police enforcement to any mandates. Are we adding to a stop and frisk environment for those individuals not having positive interactions. Please think carefully about the severity of punishments.

Isaac Enicosciuss, a citizen of Ward 3 is speaking out against the ordinance. Vaping employs over 250 people in Missoula and they are making a motion to ban their jobs and to eliminate an industry in the city. By bringing in police enforcement, he is totally against this and wants to see community working with businesses rather than working from the top down.

Meredith Berkman is a co-founder of Parents Against Vaping spoke. They are a national grassroots group that represents 3 million families across the country. She is appreciative of the participation in Missoula to protect our youth from flavored e-cigarettes. They came to the table because of the epidemic. They understand this is about all kids in all communities and all flavored tobacco products. This is about severe nicotine addiction and it is clear that a society must protect their children...Big tobacco is motivated by profit. Flavors hook kids. We also have to remember that all other flavored tobacco products have been targeted to African Americans resulting in the highest rate of death among African American men. LGBTQ community is also targeted. This is clearly a social justice issue and one that is made even timelier. Of those 3.6 million kids who are vaping, 37% are using menthol vape. If we ban vape products, we only solve part of

the problem. We must protect all kids in all communities. We need to ban all flavored tobacco products.

Earl Allen appreciates the effort that the council has put in. He is the Marketing Manager of the local Noon stores. Once again, the amendments have addressed a lot. It is not perfect for anybody. They are part of the community as well. They care about kids as well. They work hard to keep tobacco products out of the hands of kids. They have the gold standard of compliance. They have done that for years. He appreciates what they have done. He does have concerns and will work on an email. He appreciates them putting in effort to tighten things up.

Cathy Rodgers, pediatrician in Missoula and a COVID investigator for Missoula County spoke. She appreciates them spending the time on this. If we fail to get rid of flavored tobacco products, we will still have kids move to menthol. There is a 45% probability that a youth smoker will go to menthol products or cigars. In Montana they will move to chew that is flavored with mint or menthol. She encourages them to make this for all flavored tobacco products, not just e-cigarettes. There will be more kids affected and ultimately more adults.

Amanda Cahill knows they all received information from her, but just a note that over 400 kids in Missoula are using other types of products than vaping products. It feels unconscionable to leave out more than 400 kids with this type of protection. AHA cannot support a vape only policy. They say not to this lightly, because it makes no sense to leave products on the market that we know will addict kids. There are a lot of different positions about legality, but there is more than enough information to go forward with the original ordinance.

Erin Kepler, store manager of Zootown Superstop spoke. She has been a store manager of 13 years. She is opposed to the flavored tobacco. She fully recognizes the importance of keeping tobacco out of the hands of children. They work hard to be diligent with training and to make sure they are following all the rules. The state increased the age of sale to 21, and she feels they need to give it time to see if it helps in high school. If we ban flavored tobacco, we will affect local small businesses. We need to focus on teaching youth good choices. The efforts should be on continued education and enforcement.

John, sales manager with the Noon's store realizes this is a volatile subject. He feels they are all on the same team where they want to keep restricted products out of the hand of minors. He seconds Erin's comments about the law changing to 21 and see how they do with the accessibility. He appreciates them looking at both sides of the argument. There is still an exception for vending machines. Secondly, he would like to see if there are statics as far as student resource officers and what the number of citations issue are.

Carrie Nyssen thanked the council. She is the senior advocate. Research says nicotine is as addictive as heroin, or alcohol. Using nicotine in adolescents can increase the use of further addition to other drugs. The use of e-cigarettes are more likely to become cigarette smokers. Smokeless tobacco remains popular. 13.2% of Native American high school students smoke cigarettes. Let's not leave any of Missoula's youth behind. They all deserve protection. A comprehensive flavor restriction along with prevention

information is important. Let's reverse the epidemic. It's imperative to protect all youth, no matter what tobacco they are considering.

Annie Tegan with the Coalition of Montana strongly supports reverting back to the initial ordinance. It is for health equity. She adds if they choose to enact a strong policy they will not be alone. Other cities have enacted this. The only way to have significant health impact is to get rid of all flavored products. The flavors are the reason kids are using these products. She understands that retailers are not selling to youth. One in 4 youth is now using these products. Is there a better option?? She does not see one.

Tom Eschelmann works for a local Missoula wholesaler. Thank you for listening to everyone. There are some flaws with the legislation. It will impact local businesses. People will go outside of Missoula. They will go to the internet. The federal government has increased the age to 21. In the wholesale and retail community they have worked really hard to keep products out of the hands of youth. Their company was the first one to scan items and identify what store sent them. The flavor ban is not good for Missoula county businesses and it is a small band aid.

Doug Coffin is a professor at the University of Montana. He is familiar with the science and pharmacology. He is speaking as a citizen and not a representative of the university. These nicotine products are a danger to everyone, and not just young adults. He encourages them to track the science. There is a lot of information about the vendors protecting kids, but this is damaging to everyone. The tobacco industry has produced and marketed products to perpetuate the addiction trap. They use litigation and aggressive lobbying to fight every attempt to defend ourselves against the addiction trap. You have to assume you will get sued. In this case, it is an ongoing battle. He encourages them to follow their convictions and the demand of the public and to pass a policy that bans all flavored products,

Karly Schaffer appreciates what their goal is. She does not think it is effective as they think it will be. The biggest thing is that people will be traveling out of the area to get their stuff and they will be buying more in bulk and they may be bringing it back to sell to other people. If it was a statewide thing it would have more of an impact.

CB Pearson said he looked at a whole lot of systems that worked. Earlier he sent them a document. He understands the position of the sponsors, he asks them to go back and include all cigarette products and tobacco products that are flavored. Some of the kids will be left out. The hard to reach kids will be the ones most impacted by this. They are willing to work with them to create the right political environment to get this done. It is about as a community, do we have the political will to pass a strong policy. Recently the house passed a strong bill that prohibited all flavored tobacco products. The political risk is very small.

Kristin Page-Nei is representing the American Cancer Society. She has been working on tobacco prevention. They have been working so hard to make significant progress especially on the approach to cigarettes. They had no idea what they were up against. The council are the leaders, and she says we need to think comprehensively. What is going to be the next product? When the FDA eliminated the flavors of cigarettes except for menthol teens were driven to menthol and other products. Their organization cannot support this amendment. As we try to reduce cancer deaths, they have reduced them because of some of these past tobacco

policies. By ignoring and looking the other way and allowing menthol to continue to be on, we are doing the same things at the local level. It is important for us to address those items. This is a youth onset disease. Please consider going back to the original ordinance and looking closely at this health equity issue.

Brad Longcake thanked the council for listening to all feedback. He knows it is a challenging and emotional item. He knows it is not perfect and he knows everyone is not exactly happy, but it is a great start to see how this will continue to work.

Tom Piere says from a financial standpoint we will drive people out of town. The average chew customer spends about 12-15.00 every time they into the store. Chew is only 7.00. He thinks it is an overreach of the government. He thinks Helena shows the preemption argument, and he doesn't understand why Missoula wants to try it. He appreciates the time and effort. He thinks some of the changes are good.

Michelle Arthur with Town Pump thanked the council for the reconsideration and making the adjustments. She wants to point out that even if the menthol portion comes in, it will affect their business. If there is anything they can do on a local level, she would be willing to be a part of that.

Sandra Vesecka wants to make sure that we leave ample time for comments. Please allow for more time next meeting. The date that they have set was calculated using 60 days from day of enactment. If things move, that will have to be recalculated.

Missoula City Council member Stacie Anderson will request that this item be returned to the Public Safety and Health committee on November 4, 2020 during which time a revised draft of the ordinance will be considered.

4. ADJOURNMENT



City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Public Safety and Health

Item: Fire Department Update

Date: November 5, 2020

Sponsor(s): Brad Davis

Prepared by: Diana Dattilo

Ward(s) Affected:

- | | |
|------------------------------------|---|
| <input type="checkbox"/> Ward 1 | <input type="checkbox"/> Ward 4 |
| <input type="checkbox"/> Ward 2 | <input type="checkbox"/> Ward 5 |
| <input type="checkbox"/> Ward 3 | <input type="checkbox"/> Ward 6 |
| <input type="checkbox"/> All Wards | <input checked="" type="checkbox"/> N/A |

Action Required:

N/A Discussion Only

Recommended Motion(s):

I move the City Council: N/A

Timeline:

Referral to committee:	November 5, 2020
Committee discussion:	November 18, 2020
Council action (or sets hearing):	N/A
Public Hearing:	N/A
Deadline:	N/A

Background and Alternatives Explored: Provide an update to PS&H Committee on the new Crisis Response Unit.

Financial Implications: N/A

Links to external websites: N/A



City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Public Safety and Health

Item: Proposal to regulate tobacco sales and prohibit the sale of flavored tobacco products

Date: September 24, 2020

Sponsor(s): Mirtha Becerra;#484;#Gwen Jones;#489;#Stacie Anderson;#482;#Heidi West;#491;#Julie Merritt

Prepared by: Marty Rehbein, Legislative Services Director

Ward(s) Affected:

<input type="checkbox"/> Ward 1	<input type="checkbox"/> Ward 4
<input type="checkbox"/> Ward 2	<input type="checkbox"/> Ward 5
<input type="checkbox"/> Ward 3	<input type="checkbox"/> Ward 6
<input checked="" type="checkbox"/> All Wards	<input type="checkbox"/> N/A

Action Required:
Consider ordinance

Recommended Motion(s):

October 5, 2020:

I move the City Council: [First reading and preliminary adoption] Set a public hearing on October 5, 2020 and preliminarily adopt an ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled "Restrictions on the Display of Tobacco Products and the Sale of Flavored Tobacco Products."

October 26, 2020:

(Adopt/Deny) an ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled "Restrictions on the Display of Tobacco Products and the Sale of Flavored Tobacco Products."

Timeline:

Referral to committee:	June 22, 2020
Committee discussion:	June 24 or July 1, 2020, September 30, 2020
Council action (or sets hearing):	October 5, 2020
Public Hearing:	October 19, 2020
Final Consideration:	October 26, 2020
Deadline:	n/a

Background and Alternatives Explored:

On February 20, 2020, the City County Health Board adopted a resolution urging the City Council and County Commissioners to reduce youth access to and use of nicotine containing products to protect health. The board's resolution is attached to this agenda item.

The production and consumption of flavored tobacco products has increased exponentially in the past few years. E-cigarette use among U.S. high school students increased 135% from 2017 to 2019.2 Altogether, a staggering 5.3 million middle and high school students now use e-

cigarettes. In Montana, 58 percent of high school students have tried e-cigarettes and 30.2 percent use them regularly.

In Montana, 300 kids under age 18 become new daily smokers each year. And 19,000 Montana kids now under age 18 will die prematurely due to smoking. The State of Montana, under an emergency order last October, took action to prohibit the sale of all flavored e-cigarettes in the state.

The Missoula City Council has received a community letter signed by about 80 different community members, a resolution from the Missoula Health Board asking us to take action, and most recently, the board of Providence Medical Center and Community Medical Center Board of Trustees did the same.

In response to this request, a draft ordinance has been developed for City Council adoption. This ordinance aims to:

- Protect Missoula's public health and welfare by reducing access to flavored e-cigarette tobacco products and self-service access to tobacco products to minors
- Help reduce the number of minors addicted to nicotine in Missoula.

This draft ordinance was presented to the Missoula Health Board at its August 2020 meeting and the Board voted unanimously to support its adoption by the Missoula City Council.

Financial Implications:

n/a

Links to external websites:

[Proposed Montana Department of Health and Human Services Administrative Rule](#)

Draft dated 10/30/2020

Ordinance

An ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled “Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products, and prohibit unlawful transactions consisting of selling or giving tobacco products to youth under the age of 21.”

Be it ordained that Chapter 8.38 Missoula Municipal Code is established as follows:

Chapter 8.38

Restrictions on the Display of Tobacco Products, and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 21.

Sections

8.38.010	Findings
8.38.020	Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits
8.38.030	Definitions
8.38.040	Sale of Tobacco Products by Self-Service Display Prohibited.
8.38.050	Sale of Flavored Electronic Tobacco Products Prohibited
8.38.060	Unlawful transactions with youth
8.38.070	Compliance and Inspections.
8.38.080	Violations and Penalties.

8.38.010 Findings.

Montana state law grants a city council legislative power to address public health, safety and general welfare concerns pursuant to health and quarantine ordinances inside the city limits. In addition, pursuant to section 7-4-4306 MCA city health and quarantine ordinances may be enforced extraterritorially outside the city limits within five (5) miles of the city limits if both the board of county commissioners and local health board approve the city ordinance as well. The City Council hereby finds and declares as follows with respect to this ordinance:

WHEREAS, state law prohibits the sale or distribution of tobacco products and electronic smoking devices to minors (MCA § 16-11-305); and

WHEREAS, youth exposed to nicotine are at higher risk for addiction than adults because youth brains are still forming and making permanent connections until age 25.ⁱ Nicotine exposure in youth can disrupt the formation of brain circuits that control attention, learning, impulse control, and mood; and

WHEREAS, nicotine is a dangerous and highly addictive chemical. It can cause an increase in blood pressure, heart rate, flow of blood to the heart and a narrowing of the arteries (vessels that carry blood). Nicotine may also contribute to the hardening of the arterial walls, which in turn, may lead to a heart attack. This chemical can stay in your body for six to eight hours depending on how often you smoke. Also, as with most addictive substances, there are some side effects of withdrawal;ⁱⁱ and

WHEREAS, 99% of e-cigarettes sold in U.S. convenience stores contain nicotine.ⁱⁱⁱ Even e-cigarette products that claim to contain zero nicotine have been found to contain nicotine.^{iv} Many of the newer,

pod-based e-cigarette products contain high concentrations of nicotine in the form of nicotine salts, thus making these products as or more addictive than combustible cigarettes;^v and

WHEREAS, smoking causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis. Smoking also increases risk for tuberculosis, certain eye diseases, and problems of the immune system, including rheumatoid arthritis;^{vi} and

WHEREAS, As of February 18, 2020, **2,807** hospitalized lung injury cases associated with the use of e-cigarette, or vaping, products have been reported to CDC from **50** states, the District of Columbia, and 2 U.S. territories (Puerto Rico and U.S. Virgin Islands). As of February 18, 2020, the Montana Department of Public Health and Human Services (DPHHS) has confirmed **8** cases in Montana, which includes **1** death^{vii}; and

WHEREAS, \$440 million is spent on healthcare each year in Montana due to smoking;^{viii} and

WHEREAS, although smokers are most likely to use electronic smoking devices such as e-cigarettes, almost a third of current users are nonsmokers, suggesting that e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use;^{ix} and

WHEREAS, the FDA has stated that “all tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products;”^x and

WHEREAS, research conducted over the past few decades show that the tobacco products industry’s marketing activities, including flavors and placement within children’s reach in convenience stores, have been a key factor in leading young people to take up tobacco products, keeping some users from quitting, and achieving greater consumption among users;^{xi} and

WHEREAS, tobacco companies use predatory marketing tactics to target youth, particularly susceptible consumers, by placing a large number of tobacco products at retail stores popular with the young, often within reach and near gum and candy;^{xii} and

WHEREAS, more than half of teenagers visit a convenience store at least once a week, and tobacco product marketing is more prevalent in stores where youth shop frequently;^{xiii} and

WHEREAS, According to the 2019 Montana Youth Risk Survey, when asked how Montana youth in grades 9-12 obtain their electronic vapor products, they responded:

- I did not use any electronic vapor products during the past 30 days - 69.9%
- I bought them in a store such as a convenience store, supermarket, discount store, gas station or vape store - 5.7. %
- I got them on the internet - 0.7%
- a person who can legally buy these products gave them to me - 2.6%
- I took them from a store or another person - 2.6%
- I got them some other way - 3.4%^{xiv}; and

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days;^{xv} and

WHEREAS, e-cigarette use predicts the onset of combustible tobacco product use;^{xvi} and

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana's youth. 58.3% of Montana high school students have used an electronic smoking device in their lifetime;^{xvii} and

WHEREAS, On Dec. 20, 2019, the President of the United States signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product—including cigarettes, cigars and e-cigarettes—to anyone under 21^{xviii}; and

WHEREAS, the CDC and FDA analyzed nationally represented data from the 2020 Youth Tobacco Survey, a cross-sectional, school based, self-administered survey of U.S. middle school (grades 6-8) and high school (grades 9-12) students conducted during January 16-March 16, 2020. The data showed that in 2020, approximately one in five high school students and one in twenty middle school students currently used e-cigarettes; by comparison, in 2019, 27.5% of high school students (4.11 million) and 10.5 % of middle school students (1.24 million) reported current e-cigarette use^{xix}; and

WHEREAS, the Principal of Big Sky High School located in Missoula Montana, submitted public comment for the ordinance on October 20, 2020, stating that "As Principal of Big Sky High School, I write in support of the proposed ordinance to restrict the sale of flavored tobacco products in Missoula. As an MCPS high school administrator, I see first-hand the impact of this marketing tactic. In Missoula...we are experiencing an epidemic of e-cigarette use among youth. [T]he arrival of e-cigarettes and the continued marketing of flavored products, and their presence in local stores, presents an uphill challenge^{xx}; and

WHEREAS, a Missoula School Resource Officer testified in Case Number DV-19-388 in Montana Twenty-First Judicial District Court, Ravalli County, and Honorary Judge Jennifer B. Lint found under the Findings of Fact numbers 23-24 the Officer is a sworn peace officer who is frequently citing students for Minor in Possession of vaping devices, accessories and liquid; and that the vaping and tobacco use statistics in the YRBS are reflected in what he sees as a School Resource Officer^{xxi}.

WHEREAS, in the same litigation referenced in the prior Whereas statement, neither party disputed that youth vaping has exploded, that nicotine is harmful to youth's neural development, and that youths are attracted to the flavored liquids^{xxii}.

WHEREAS, 21% of adults in Montana smoke;^{xxiii} and

WHEREAS, 10% of youth reported trying their first cigarettes before age 13, and 33.5% of Montana high school youth reported currently using any tobacco product, including e-cigarettes in 2019;^{xxiv} and

WHEREAS, in Montana, 58 percent of high school students have tried e-cigarettes and more than 30 percent use them regularly. From 2017 to 2019, frequent vaping among Montana high school students increased by **243%** and daily use increased by **263%**^{xxv}

WHEREAS, the Montana State Legislature and State of Montana have for decades been concerned about youth possession and consumption of tobacco products and prohibited youth possession or consumption of tobacco products by youth as is evidenced by Montana state criminal law 45-5-637 Montana Code annotated (MCA) and Montana Youth Court Act law 41-5-203 MCA; and

WHEREAS current Montana state criminal law 45-5-637 makes possession or consumption of tobacco

products, alternative nicotine products, or vapor products by persons under 18 years of age unlawful as well as makes it unlawful for a person under 18 years of age to attempt to purchase a tobacco product, alternative nicotine product, or vapor product.

NOW THEREFORE, it is the intent of the Missoula City Council in enacting this ordinance to protect public health and welfare by reducing access to flavored electronic tobacco products and self-service access to tobacco products, prohibit unlawful transactions consisting of selling or giving tobacco products to a minor under the age of 21, making it easier to quit and more difficult to start.

8.38.020 Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits.

This chapter is adopted by the Missoula City Council for enforcement inside the city limits. If both the County commissioners and the local health board approve enforcement of this chapter extraterritorially within five (5) miles of the city limits this chapter is thereafter enforceable outside the city limits, within five (5) miles of the city limits.

8.38.030 Definitions.

The following words and phrases, whenever used in this chapter, have the meanings:

- A. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- B. "Flavored Tobacco Product" means a tobacco product that imparts a taste or smell other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but is not limited to, the taste or smell of menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the taste or smell of any candy, dessert, alcoholic beverage, herb, or spice. A tobacco product shall be presumed to be a flavored tobacco product if a retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or aroma other than the taste or aroma of tobacco or uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or aroma other than the taste or aroma of tobacco.
- C. "Self-Service Display" means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
- D. "Tobacco Product" means any product containing, made, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested, or by any other means, including but not limited to a cigarette, a cigar, hookah, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking device. Notwithstanding any provision to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product,

whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes, and whether or not any of these are sold separately. The term "Tobacco Product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- E. "Tobacco Product Flavor Enhancer" means any product designed, manufactured, produced, marketed or sold to impart a taste or smell other than the taste or smell of tobacco when added to any tobacco product.
- F. "Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any Tobacco Retail Establishment. Tobacco Retailer does not mean the non-management employees of any Tobacco Retail Establishment.
- G. "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco products shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.
- H. "Vapor product" means a noncombustible product that may contain nicotine and that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from a solution or other substance. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug and Cosmetic Act

8.38.040 Sale of Tobacco Products by Self-Service Display Prohibited.

No Tobacco Retailer shall sell or offer to sell Tobacco Products by means of a Self-Service Display. The purchaser shall not take possession of the Tobacco Product until after payment has been received and processed. This section does not prohibit retailing of cigarettes by means of a vending machine located in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment.

8.38.050 Sale of Flavored Electronic Tobacco Products Prohibited

It is unlawful for any Tobacco Retailer, licensed under MCA § 16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute Flavored Electronic Tobacco Products or Tobacco Product Flavor Enhancer.

8.38.060. Unlawful transactions of tobacco products, alternative nicotine products and vapor products with youth

A person commits the offense of unlawful transactions with under if the person knowingly sells or gives any tobacco product to a person under the age of 18.

8.38.070 Compliance and Inspections.

- A. The Missoula City-County Health Department is responsible for enforcing the provisions of sections 8.38.040 and 8.38.050.

B. The Missoula City-County Health Department or other authorized agents may enter and inspect premises of Tobacco Retail Establishments during reasonable hours, including whenever the retailer is open, to evaluate compliance with sections 8.38.040 and 8.38.050.

C. Local law enforcement is responsible for enforcing the provisions of section 8.38.060

8.38.080 Violations and Penalties.

A. It is a violation for a Tobacco Retailer to fail to comply with the requirements of sections 8.38.040 and 8.38.050.

1. A violation of these sections, whether the violation occurs inside the city limits or within 5 miles of the city limits, is subject to the jurisdiction of the City of Missoula Municipal Court.
2. A Tobacco Retailer convicted of violating a provision of these sections shall be subject to a fine not exceeding five hundred dollars for each offense.
3. Each day of violation constitutes a separate offense.
4. Assessment of penalties does not bar enforcement of these sections by injunction or other appropriate remedy.
5. Failure to comply with any provision of these sections shall constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco, or other business license issued by the City of Missoula. If the business is located outside the city limits within the five (5) mile extraterritorial geographic area the Missoula County Commissioners shall be responsible for addressing any business failure to comply with any provision of these sections that could constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco or other business license issued by the county.
6. Any fines collected under these sections shall be used for implementation and enforcement of sections 8.38.040 and 8.38.050.

B. A person convicted violating section 8.38.060 shall be fined an amount not to exceed \$250. A person convicted of a second violation of section 8.38.060 shall be fined an amount not to exceed \$500.

Any fines collected under this section shall be used for implementation and enforcement of the chapter.

Effective Date

The effective date of this chapter shall be ninety (90) days from the date of its enactment.

Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the 5th day of October, 2020, by a vote of: Second and final reading and adoption on the ____ day of ____, 2020 by a vote of:

ATTEST:

APPROVED:

Martha L. Rehbein, CMC City Clerk

John Engen Mayor

(S E A L)

ⁱ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

ⁱⁱ How smoking and nicotine damage your body, American Heart Association, 2015

ⁱⁱⁱ American Public Health Association (2017) Sales of Nicotine-Containing electronic Cigarette Products: United States 2015, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.303660>

^{iv} American Cancer Society (2019) What Do We Know About E-cigarettes? <https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/e-cigarettes.html>

^v Truth Initiative (2019) E-cigarettes: Facts, stats and Regulations. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>

^{vi} U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014 [accessed 2016 Dec 20].

^{vii} Montana DPHHS Tobacco Use Prevention Program: Youth and Tobacco Use

^{viii} Centers for Disease Control and Prevention. (2017). Extinguishing the tobacco epidemic in Montana. Retrieved January 19, 2018, from <https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>

^{ix} McMillen, R.C., Gottlieb, J.D., Whitmore Shaefer, R.M., Winickoff, J.P. & Klein, J.D. (2014). Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers. *Nicotine & Tobacco Research*, 1-8. doi:10.1093/ntr/ntu213

^x Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.

^{xi} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; National Cancer Institute. (2008). The Role of the Media in Promoting and Reducing Tobacco Use. Bethesda (MD): U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. Tobacco Control Monograph No 19. NIH Publication No. 07-6242.

^{xii} Henriksen et al. (2004). Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent at Stores Where Adolescents Shop Frequently, 12 TOBACCO CONTROL 315, 317

^{xiii} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; Sanders-Jackson, A, et al., "Convenience store visits by US adolescents: Rationale for healthier retail environments," *Health & Place* 34:63- 66, 2015

^{xiv} 2019 Montana Youth Risk Behavior Survey High School Results

^{xv} Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*, 314(17), 1871. doi:10.1001/jama.2015.13802

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- ^{xvi} Barrington-Trimis, J.L. (2016). The e-cigarette social environment, e-cigarette use, and susceptibility to cigarette smoking. *Journal of Adolescent Health*. 59(1), 75-80. <https://doi.org/10.1016/j.jadohealth.2016.03.019>; Leventhal, A.M., et al. (2015). Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA*. 314(7): 700-707. doi:10.1001/jama.2015.8950; Soneji, S., Barrington-Trimis, J.L., Wills, T.A., Leventhal, A., Unger, J.B., et al. (2017). E-Cigarette Use and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-Analysis. *JAMA Pediatrics*; Watkins, S.L., Glantz, S.A., & Chaffee, B.W. (2018). Association of non cigarette tobacco use with future cigarette smoking among youth in population assessment of tobacco and health (PATH) study, 2013-2015. *JAMA Pediatrics*. doi:10.1001/jamapediatrics.2017.4173; Miech, R., Patrick, M., O'Malley, P., Johnston, L. (2017). E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow up of a national sample of 12th grade students; King, A.C., Smith, L.J., McNamara, P.J. & Cao, D. (2017). Second Generation Electronic Nicotine Delivery System Vape Pen Exposure Generalizes as a Smoking Cue. *Nicotine Tob Res*; 327; Cobb, C.O., Hendricks, P.S., Eissenberg, T. (2015) Electronic cigarettes and nicotine dependence: evolving products, evolving problems. *BMC Med*. 13:119. <https://doi.org/10.1186/s12916-015-0355-y>.
- ^{xvii} Montana Youth Risk Behavior Survey, 2019
- ^{xviii} Food and Drug Administration, Center for Tobacco Products, January 15, 2020.
- ^{xix} Wang, Teresa W., Neff, Linda J., Park-Lee, Eunice, Ren, Chunfeng, Cullen, Karen A., King, Brian A., (September 18, 2020), Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report.
- ^{xx} Oct. 20, 2020 public comment submitted to Missoula City Council via Group City Council email, entitled "Support of Ordinance".
- ^{xxi} pages 16-17 of Opinion by Judge Lint in Case Number DV-19-388, Opinion and Order, signed on December 17, 2019, Montana Smokefree Association Inc, Freedom Vapes LLC, Liberty SMOke Inc, and Ublaze Vapor Inc., Petitioners, vs. Montana Department of Public Health and Human Services; Sheila Hogan in her capacity as the Director of the Montana Department of Health and Human Services and, Stephen C. Bullock, in his official capacity as Governor of the State of Montana.
- ^{xxii} pages 19, finding of fact #29 of Opinion by Judge Lint in Case Number DV-19-388, Opinion and Order, signed on December 17, 2019, Montana Smokefree Association Inc, Freedom Vapes LLC, Liberty SMOke Inc, and Ublaze Vapor Inc., Petitioners, vs. Montana Department of Public Health and Human Services; Sheila Hogan in her capacity as the Director of the Montana Department of Health and Human Services and, Stephen C. Bullock, in his official capacity as Governor of the State of Montana.
- ^{xxiii} Behavioral Risk Factor Surveillance System, 2019
- ^{xxiv} Montana Youth Risk Behavior Survey, 2019
- ^{xxv} Montana Risk Factor Surveillance System, 2019

Resolution

A resolution of the Missoula City-County Board of Health to the Missoula City Council, the Mayor of Missoula and the Missoula County Commissioners recommending reducing youth access to and use of flavored tobacco products to protect health.

WHEREAS, Flavored e-cigarettes or “vapes”, are a combination of the addictive substance nicotine, flavors that are attractive to youth, and other substances of which the effect on lung tissue is not wholly known; and,

WHEREAS, Frequent use of e-cigarette products by Montana High School students has increased 243% between the years 2017 and 2019¹.

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana’s youth and 58.3% of Montana high school students have used an electronic smoking device in their lifetime²; and

WHEREAS, the 2019 Youth Risk Behavior Survey shows 38.9% of Missoula high school youth reported currently using e-cigarette products; and,

WHEREAS, almost a third of current vape users are nonsmokers, suggesting e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use³; and,

WHEREAS, ninety-six percent of 12- to 17-year-olds who initiated e-cigarette use started with a flavored product, and 70% reported flavors as the reason they use e-cigarettes⁴; and

WHEREAS, federal law prohibits the sale or distribution of flavored cigarettes, excluding menthol; and

WHEREAS, the Federal Food and Drug Administration’s recently announced enforcement policy on unauthorized flavored cartridge-based e-cigarettes and open tank systems, does not address all flavored tobacco products, such as menthol e-cigarettes, flavored cigars and flavored smokeless tobacco, thus allowing youth to turn to other flavored products in absence of their “preferred” flavors; and

WHEREAS, the FDA has stated that “all tobacco products, including flavored tobacco products are as addictive and carry the same health risks as regular tobacco products”⁵; and,

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days⁶; and

WHEREAS, youth are more likely than adults to use menthol-, candy-, and fruit- flavored tobacco products and the minty flavor makes tobacco product use feel milder, and therefore easier to use, harder to quit and more appealing to youth and new users⁷. Like menthol, flavorings help mask the naturally harsh tastes of tobacco, making it easier for young people to start and continue using tobacco products⁸; and,

WHEREAS, data show trends change rapidly, mint and menthol went from the least popular to among the most popular e-cigarette flavors among high school students. Youth use of mint and menthol e-cigarettes increased sharply in 2019 after JUUL restricted the availability of other flavors;⁹ and

WHEREAS, mentholated and flavored products result in more youth initiation to smoking and are the source of addiction for more than half of all teen smokers;¹⁰ and,

WHEREAS, studies show e-cigarette use leads to combustible tobacco product use;¹¹ and

WHEREAS, \$440 million is spent on healthcare each year in Montana due to smoking;¹² and

WHEREAS, 59,000 Montana kids alive now will become smokers, and 19,000 Montana kids alive now will die prematurely from smoking;¹³

NOW THEREFORE BE IT RESOLVED, that the Missoula City-County Board of Health finds that further actions are needed to reduce youth access to and use of flavored tobacco products, including education for youth, parents, health care providers, and schools, consideration of local ordinances and other means to protect health.

PASSED AND ADOPTED this 20th day of February, 2020

Ross Miller, Chair

¹ Montana Youth Risk Behavior Survey, 2019

² Montana Youth Risk Behavior Survey, 2019

³ McMillen, R.C., Gottlieb, J.D., Whitmore Shaefer, R.M., Winickoff, J.P. & Klein, J.D. (2014). Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers. *Nicotine & Tobacco Research*, 1-8. doi:10.1093/ntr/ntu213

⁴ PATH Study, 2016-18 <https://www.fda.gov/tobacco-products/research/path-study-findings-give-insight-flavored-tobacco-health-effects-e-cigarettes-and-adult-use-cigars>

⁵ Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.

⁶ Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*, 314(17), 1871. doi:10.1001/jama.2015.13802

⁷ Carpenter, C.M., Wayne, G.F., Pauly, J.L., Koh, H.K., & Connolly, G.N. (2005). New cigarette brands with flavors that appeal to youth: Tobacco marketing strategies. Tobacco industry documents reveal a deliberate strategy to add flavors known to appeal to younger people. *Health Aff.* 2005;24(6):1601-1610. doi:10.1377/hlthaff.24.6.1601; Lewis, M.J. & Wackowski, O. (2006). Dealing with an innovative industry: A look at flavored cigarettes promoted by mainstream brands. *Am J Public Health*. 2006;96(2):244-251. doi:10.2105/AJPH.2004.06120; Connolly, G.N. (2004). Sweet and spicy flavours: new brands for minorities and youth. *Tob Control*. 2004;13(3):211-212. doi:10.1136/tc.2004.009191; U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. (2012) Preventing Tobacco Use Among Youth and Young Adults a Report of the Surgeon General. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/; Delnovo et al. (2011). Smoking-Cessation Prevalence Among U.S. Smokers of Menthol Versus Non Menthol Cigarettes, 41 AM. J. PREVENTIVE MED. 357-65

⁸ U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. (2012) Preventing Tobacco Use Among Youth and Young Adults a Report of the Surgeon General. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.

⁹ Cullen KA, Gentzke AS, Sawdey MD, et al. e-Cigarette Use Among Youth in the United States, 2019. *JAMA*. 2019;322(21):2095–2103. doi:10.1001/jama.2019.18387

¹⁰ Giovino et al. (2013). Differential Trends in Cigarette Smoking in the USA: Is Menthol Slowing Progress? *TOBACCO CONTROL* 052259, 1–10

¹¹ Barrington-Trimis, J.L. (2016). The e-cigarette social environment, e-cigarette use, and susceptibility to cigarette smoking. *Journal of Adolescent Health*. 59(1), 75-80. <https://doi.org/10.1016/j.jadohealth.2016.03.019>; Leventhal, A.M., et al. (2015). Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA*. 314(7): 700-707. doi:10.1001/jama.2015.8950; Soneji, S., Barrington-Trimis, J.L., Wills, T.A., Leventhal, A., Unger, J.B., et al. (2017). E-Cigarette Use and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-Analysis. *JAMA Pediatrics*; Watkins, S.L., Glantz, S.A., & Chaffee, B.W. (2018). Association of noncigarette tobacco use with future cigarette smoking among youth in population assessment of tobacco and health (PATH) study, 2013-2015. *JAMA Pediatrics*. doi:10.1001/jamapediatrics.2017.4173; Miech, R., Patrick, M., O'Malley, P., Johnston, L. (2017). E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow up of a national sample of 12th grade students; King, A.C., Smith, L.J., McNamara, P.J. & Cao, D. (2017). Second Generation Electronic Nicotine Delivery System Vape Pen Exposure Generalizes as a Smoking Cue. *Nicotine Tob Res*; 327; Cobb, C.O., Hendricks, P.S., Eissenberg, T. (2015) Electronic cigarettes and nicotine dependence: evolving products, evolving problems. *BMC Med*. 13:119. <https://doi.org/10.1186/s12916-015-0355-y>.

¹² Centers for Disease Control and Prevention. (2017). Extinguishing the tobacco epidemic in Montana. Retrieved January 19, 2018, from <https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>

¹³ Cancer Action Network. (2014). Preventing millions of lives lost to tobacco use. Retrieved January 19, 2019, from <https://www.acscan.org/sites/default/files/Potential-for-Millions-Lives-Lost-to-Tobacco-Use.pdf>



March 24, 2020

To Whom It May Concern:

The Providence Montana Community Mission Board voted unanimously to support the community health initiative to *Ban the Sale of ALL Flavored Tobacco Products* at its March 24, 2020 meeting.

A handwritten signature in black ink, appearing to read "W. Bekemeyer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William Bekemeyer, MD
Providence Montana
Community Mission Board Chair

Signed on behalf of the Providence Montana Community Mission Board:

D'Shane Barnett, Missoula, MT
Caryl Cox, Polson, MT
Joyce Dombrowski, RN, Missoula, MT
Kimberly Dudik, RN, Missoula, MT
Kevin Eichhorn, MD, Arlee, MT
Laurie Francis, RN, Missoula, MT
Reed Humphrey, PhD, Missoula, MT

Scott Long, Missoula, MT
Dale Mayer, RN, Missoula, MT
Kaia Peterson, Missoula, MT
Shauna Rubel, Polson, MT
Peggy Schlesinger, MD, Philipsburg, MT
Mark Williams, Missoula, MT

To: Mayor Engen and Missoula City Council Members

Date: Thursday, September 20, 2018

Re: City of Missoula, Point of Sale Community Letter of Support. Sweet-flavored tobacco products, including e-cigarettes, target Missoula children in convenience stores. Kids who try tobacco are likely to become lifelong smokers and die from tobacco use

Dear Mayor Engen and Missoula City Council members Anderson, Armstrong, Becerra, Cares, DiBari, Harp, Hess, Jones, Merritt, Ramos, Von Lossberg and West

It's been said that tobacco, when used as intended, is the only commercially available product that will kill its user. This is why the industry is so fixated on targeting potential new users – sometimes called "Replacement smokers." It's the only way the industry can survive. Disturbingly, such targeting begins in childhood. In convenience stores around Missoula and across Montana, tobacco products, including e-cigarettes, are marketed in sweet flavors and bright packaging. In many stores, these products are placed within reach of kids, often near gum and candy.

This is deliberate. The tobacco industry knows that kids frequent convenience stores. Many of these stores are located near schools, and kids go there to buy pop and candy. The bright colors, sweet flavors and candy flavors intrigue youth, who are more likely to try such products if they see them often. Other communities across the nation have addressed these youth-targeted tactics by prohibiting the sale of flavored products and by prohibiting self-serve access to tobacco products in stores that are open to minors. It's important that Missoula also take these steps. We as a community can protect our kids and prevent a future public health crisis.

Because of these marketing techniques, we are losing ground in our efforts to prevent our kids from smoking and other tobacco use. A 2016 study warns that some teens who never would have smoked are now using e-cigarettes, which could potentially derail progress in reducing the number of youth using tobacco. (1)

In Montana, the number of high school youth who have tried cigarettes dropped from 73.4 percent in 1997 to 33.9 percent in 2017. However, in 2017, 46.6 percent of Montana high school students said they have used electronic smoking devices and 22.5 percent said they are regular users. (2)

Numerous studies show that use of electronic smoking devices by non-smoking youth leads to later cigarette smoking. (3) Additionally, most e-cigarettes contain nicotine, which is extremely addictive and detrimental to youth brain development. (4) Many of the largest tobacco companies, such as R.J. Reynolds and Altria make e-cigarettes. (5)

E-cigarettes, cigarillos, smokeless tobacco and tobacco products other than cigarettes come in an abundance of sweet flavors such as bubblegum, cherry and banana split that are attractive to kids. In fact, youth say product flavoring is a top reason why they use tobacco products. Data from the 2014 National Youth Tobacco Survey (NYTS) show that among students who used each of the following tobacco products in the past 30 days (defined as current users), 63.3 percent (1.58 million) had used a flavored e-cigarette, 60.6 percent (1.02 million) had used flavored hookah tobacco, 63.5 percent (910,000) had used a flavored cigar, 58.8 percent (690,000) had used flavored smokeless tobacco, 53.6 percent (900,000) had used menthol cigarettes, and 42.3 percent (120,000) had used flavored tobacco in pipes. (6)

Research also shows that more than 50 percent of children visit convenience stores at least once weekly, (7) and that the tobacco industry spends \$28.9 million annual marketing its product in Montana. (8)

The industry knows that it must create new generations of users to replace those who die due to tobacco-related illness. In one industry document, Philip Morris International stated that “the ability to attract new smokers and develop them into a young adult franchise is key to brand development.” (9)

Other statements from the industry include:

- “It is during the teenage years that the initial brand choice is made.” (10)
- “Cherry Skoal is for someone who likes the taste of candy, if you know what I mean.” (11)
- The toll of tobacco use is still too high. Smoking remains the leading preventable cause of death, killing nearly 6 million people worldwide each year and 1,300 Americans every day. (12)
- In Montana, 1,600 adults die from their own smoking each year (13)
- The state spends \$440 million treating smoking related health problems. (14)

In Montana, 400 children now under age 18 become daily smokers each year, and 19,000 children now under age 18 will die prematurely due to smoking. (15)

We urge you to take action to protect Missoula kids and public health by addressing the tobacco industry’s in-store marketing tactics and the targeting of youth with flavored tobacco products.

Thank you for your consideration of this important matter.

- Kristin Page-Nei, Montana Government Relations Manager, American Cancer Society-Cancer Action Network

- Amanda Cahill, Montana Government Relations Director, American Heart Association-American Stroke Association

- Carrie Nyssen, Vice President, Advocacy and Air Quality, American Lung Association, Mountain Pacific Region

- Linda Edquest, Montana Academy of Family Physicians

- Montana Public Health Association

- Senator Diane Sands, Missoula SD 49

- Susan Hay Patrick, United Way of Missoula County

- Heather Foster, Interim CEO, The Missoula Family YMCA

- Linda Green, wellness director, University of Montana Curry Health Center

- Mary Windecker, director of communications and strategy, Western Montana Health Center

- Paul Smith, D.O., pediatric pulmonologist, Community Medical Center
- Sarah Holexa, M.D., FAAP, Med, pediatric hospitalist, Community Medical Center
- Kathleen Rogers, M.D., pediatrician, Western Montana Clinic
- Dirk Gottman, M.D., pediatrician, Western Montana Clinic
- Jay Lowder, M.D., pediatric hospitalist, Community Medical Center and St. Patrick Hospital
- Lauren Wilson, M.D., pediatrician, Community Medical Center and St. Patrick Hospital
- Ted B. Laine, M.D., pediatrician
- Tara Patrick, PNP-BC, pediatrician, Western Montana Clinic
- Gregar Lind, MD
- Laurie Carter, MD, Missoula Pediatric Associates
- Colleen Holmquist, RRT, pulmonary rehabilitation therapist, Community Medical Center
- Tiffany Ford, FNP-C, family nurse practitioner, Western Montana Clinic Pediatrics
- Daniel Philpott, pulmonary rehab patient
- Richard Bardwell, pulmonary rehab patient
- Robert Spang, pulmonary rehab patient
- Robert Rasley, pulmonary rehab patient
- Kayli Julius, University of Montana Curry Health Center
- Marlia Morris, student tobacco outreach coordinator, University of Montana Curry Health Center
- Tony Ward, Ph.D., professor, University of Montana School of Public and Community Health Sciences
- Douglas Coffin, Ph.D., professor, University of Montana Department of Biomedical and Pharmaceutical Sciences
- Curtis Noonan, Ph.D., professor, University of Montana Department of Biomedical and Pharmaceutical Sciences
- Lilian Calderón-Garcidueñas, M.A., M.D., Ph.D., University of Montana Department of Biomedical and Pharmaceutical Sciences
- Suzin Kratina, WORD (Women's Opportunity and Resource Development, Inc.)
- Janis Fontaine, Boys & Girls Club of Missoula County
- David Kendall
- Heidi Kendall, Missoula Public Schools Board of Trustees

- Rep. Andrea Olsen
- Nancy de Pastino, organizing director, Moms Demand Action
- Rev. John Lund, Emmaus Campus Ministry
- Melanie Charlson, president, Missoula Education Association
- Susan Kohler, CEO, Missoula Aging Services
- Laura Jones, office manager, University of Montana
- Bernadette Bannister, program director, University of Montana School of Public and Community Health Sciences
- Caroline Simms, manager, Submittable
- Denver Henderson
- Nicole Mitchell, The Flagship Program, Western Montana Mental Health Center
- Michelle Proper, MD, Radiation Oncologist, Community Medical Center
- Susan Nelson, Director, Oncology Services/Community Medical Center
- Rob Stenger, MD, Associate Program Director, Family Medicine Residency of Western Montana
- Jacqueline Fee, Partnership Health Center
- Emma Wright, MD, Family Physician
- Thomas A. Randall, M.D., Pediatrician, Missoula Valley Pediatrics
- Charlie Hastings, DO, Pediatrician, Missoula Valley Pediatrics
- Amy Richmond, M.D., Family Medicine Residency of Western Montana
- Kate Krebsbach DO, Family Medicine Physician, Partnership Health Center
- Caitlin Blau, DO, Family Medicine Residency of Western Montana
- Sen. Tom Facey
- Sandra Simmons MD, Pediatrician, Missoula Valley Pediatrics
- Rohanna Erin, GUTS! Program Manager, YWCA Missoula
- Linda Simon, BSN, RN
- Harold and Jan Hoem, Montana Elders for a Livable Tomorrow
- Aaron Carroll
- Linda Burr, Educator MCPS
- Jennifer Ferenstein, Senior Representative, The Wilderness Society

- Amy W. Ragsdale, Professor Emeritus of Dance, UM
- Tara Lind, mom
- Leah Zins, ACS-CAN
- Taryn Pettit, ACS-CAN
- Ann Schellinger, parish nurse
- Jennifer Newbold, MCPS Board of Trustees
- Amy Coseo, founder, Studio Verde Creative
- Julie Bauer, Cardiac Rehab, Community Medical Center
- Missoula City - County Board of Health; Julie Armstrong, Pamela Boyd, Jean Curtiss, Debbie Johnston, Ross Miller, Robert Stenger, M.D., James Stephens

Sources:

1. Science Daily, <https://www.sciencedaily.com/releases/2016/07/160711092301.htm>
2. 2017 Montana Youth Risk Behavior Survey,
https://opi.mt.gov/Portals/182/Page%20Files/YRBS/17MT_YRBS_FullReport.pdf
3. JAMA Pediatrics, <https://jamanetwork.com/journals/jamapediatrics/articleabstract/2634377?redirect=true>
4. U.S. Surgeon General, https://ecigarettes.surgeongeneral.gov/documents/2016_SGR_Fact_Sheet_508.pdf
5. Wall Street Journal, <https://blogs.wsj.com/corporate-intelligence/2014/02/03/more-e-cigarettes-in-the-hands-of-big-tobacco/>
6. U.S. Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2015/p0930-flavored-tobacco.html>
7. Health and Place, <https://www.ncbi.nlm.nih.gov/pubmed/25955537>
8. Campaign for Tobacco Free Kids, <https://www.tobaccofreekids.org/problem/toll-us/montana>
9. Campaign for Tobacco Free Kids, <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>
10. Tobacco Control, http://tobaccocontrol.bmj.com/content/11/suppl_1/i5
11. Stanford University,
http://tobacco.stanford.edu/tobacco_main/images_mari.php?token2=fm_mari_st648.php&token1=fm_mari_img18923.php&theme_file=fm_mari_mt069.php&theme_name=Chewing%20Advertising%20The%20mes&subtheme_name=Skoal

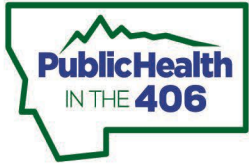
12. U.S. Centers for Disease Control and Prevention,

https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm

13. Campaign for Tobacco Free Kids, <https://www.tobaccofreekids.org/problem/toll-us/montana>

14. U.S. Centers for Disease Control and Prevention,

<https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>



Big Tobacco Targets Kids



[Tobacco Marketing](#) | [Tobacco Free Staten Island](#)

Big Tobacco in Montana

\$31.5 million is spent each year on tobacco marketing.²

30% of high school students currently use e-cigarettes and more than half have tried them (58%).¹³

According to the 2018 Montana Tobacco Retail Audits:

- **12%** of tobacco retailers displayed tobacco signs at or below 3 feet.

According to the 2019 Montana Tobacco Retailer Mapper:

- **442** tobacco retailers are located within a ten-minute walk of Montana grade schools.

CONTACT

Montana Tobacco Use Prevention Program

Phone: (866) 787-5247

E-mail: infotobaccofree@mt.gov

Website: tobaccofree.mt.gov

Big Tobacco spends billions advertising where they know kids will see it.

- The tobacco industry spends \$9.4 billion each year on marketing in the United States - 96% of which is spent at the point of sale in retail locations (convenience stores, gas stations, grocery stores, and pharmacies).¹
- Tobacco marketing at the point of sale (POS) includes advertising, price discounts, and product display at any location where tobacco products are sold.
- Over \$1 million per hour is spent on in-store marketing.²

POS advertising increases youth experimentation and initiation.

- Studies have consistently found significant associations between exposure to POS marketing with smoking initiation, susceptibility to smoking, or intentions to smoke among youth.⁶⁻¹⁰
- Youth who visit stores with prominent tobacco advertising more than twice a week are more likely to start smoking than those who visit such stores less frequently.^{11, 12}
- POS promotions increase the likelihood that youth will move from experimentation to regular tobacco use.⁹

“Younger adult smokers are the only source of replacement smokers.”

- R.J. Reynolds Report

Where is Big Tobacco in Your Community?



Visit the Montana Tobacco Retail Map to learn where your kids are being exposed to tobacco marketing.¹⁴

SOURCES

1. U.S. Federal Trade Commission, Cigarette Report for 2016, 2018; Smokeless Tobacco Report for 2016, 2018.
2. Campaign for Tobacco-free Kids: The Toll of Tobacco in Montana, (2019).
3. Roeseler A, Feighery EC, Cruz TB. (2010). Tobacco marketing in California and implications for the future. *Tobacco Control* 19:i21-i29.
4. Henriksen L, Feighery E, Schleicher N, Cowling D, Kline R, Fortmann S. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Preventive Medicine*. 2008;5.
5. Henriksen L, Feighery EC, Schleicher NC, Haladjian HH, Fortmann SP. Reaching youth at the point of sale: Cigarette marketing is more prevalent in stores where adolescents shop frequently. *Tobacco Control*. 2004 September;13(3):315-8.
6. Henriksen L, Flora J, Feighery E, Fortmann S. Effects on youth of exposure to retail tobacco advertising. *Journal of Applied Social Psychology*. 2002;32(9):19.
7. Mackintosh AM, Moodie C, Hastings G. The association between point-of-sale displays and youth smoking susceptibility. *Nicotine & tobacco research*. 2012;14(5):616-20.
8. Scheffels J, Lavik R. Out of sight, out of mind? Removal of point-of-sale tobacco displays in Norway. *Tob Control*. 2012.
9. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Archives of Pediatric and Adolescent Medicine*. 2007;161(5):440-5.
10. McNeill A, Lewis S, Quinn C, Mulcahy M, Clancy L, Hastings G, et al. Evaluation of the removal of point-of-sale tobacco displays in Ireland. *Tob Control*. 2011;20(2):137-43.
11. Paynter J, Edwards R, Schluter PJ, McDuff I. Point of sale tobacco displays and smoking among 14-15 year olds in New Zealand: A cross-sectional study. *Tobacco Control*. 2009 Aug;18(4):268-74.
12. Henriksen L, Shleicher N, Feighery E, Fortmann S. A longitudinal study of exposure to retail cigarette advertising and smoking initiation. *Pediatrics*. 2010 July 19;103:7.
13. Montana Youth Risk Behavior Survey, 2019
14. Montana Tobacco Retail Mapper. <https://dphhs.mt.gov/Portals/85/Documents/MTUPPapp/index.html>
15. Memorandum from A.P. Ritchy, Product Group, R.J. Reynolds Tobacco Co., to P.R. Ray, Jr., R.J. Reynolds Tobacco Co. (Dec. 18 1972).
16. Campaign for Tobacco Free Kids. The Flavor Trap (2017).

POS advertising normalizes tobacco products and creates positive attitudes towards tobacco products and brands.

- The placement of tobacco products near candy and the placement of advertisements at children's eye level is common in retail environments.³
- Higher rates of smoking among youth have been found in schools located in neighborhoods with a higher density of tobacco outlets and retail cigarette advertising.⁴
- A study conducted in the United States estimated that banning POS advertising and requiring cigarette packs to be kept out of sight could reduce adolescents' exposure to cigarette brand by as much as 83%.⁵



Flavored tobacco products are popular among youth and play a role in the initiation of tobacco use.

- Documents obtained during litigation against the tobacco industry reveal that tobacco companies have used fruit and candy flavors as a way to target youth.¹⁵
- Youth cite flavors as a major reason for their current use of non-cigarette tobacco products, with 82% of American youth e-cigarette users and 74% of American youth cigar users saying they used the product because they come in flavors they like.¹⁶

Big Tobacco targets kids.



The 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibits the sale of cigarettes other than menthol or tobacco. This law does not apply to other tobacco products on the market such as electronic cigarettes, smokeless tobacco and cigars. In recent years, the tobacco and e-cigarette industry has ramped up the introduction and marketing of flavored non-cigarette tobacco products. These products come in a variety of kid-friendly fruit and candy flavors. For example, you may find e-cigarettes that come in mango, cool mint, or pink lemonade or cigars that are grape or cherry flavored. Evidence has shown that these flavored products have become drastically popular among youth. 81% of youth who ever used tobacco products started with a flavored product.(1) Flavors improve the taste and reduce the harshness of tobacco products, which makes them more appealing and easier for beginners to try the product and ultimately become addicted. Since most tobacco users start before age 18, flavored tobacco products play a critical role in the industry's marketing tactics.(2) 81.5% of youth e-cigarette users and 73.8% of youth cigar users say they used the product "because they come in flavors I like."(3)

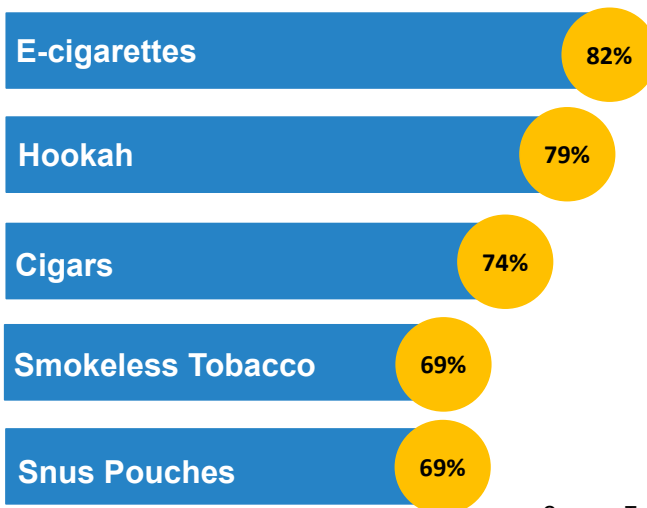
Advertising can bring the horse to water. The flavors will get them to drink. And the nicotine will keep them coming back for more.

Sources:

- (1) Campaign for Tobacco-free Kids. "The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars." p.3
- (2) Campaign for Tobacco-free Kids. "The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars." p.3
- (3) Campaign for Tobacco-free Kids. "The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars." p.3

**Kids
prefer
flavored
tobacco
products.**

**Youth Ages 12 to 17 Who Report Flavoring
is a Primary Reason for Using a Tobacco
Product in the U.S.**



Source: Truth Initiative

This data from the Truth Initiative shows youth who report flavors as the main reason for using tobacco products. (1) Because youth are more inclined to using flavored tobacco products, they are at risk to becoming addicted to nicotine, which harms the developing brain.(2) Flavors can also create the impression that a product is less harmful than it really is.(3) Nicotine exposure in youth causes both long-term structural and functional changes in the brain.(4) It impacts the development of brain circuits and neurons, changing the way the brain works.(5) Nicotine can lead to long lasting effects like lower impulse control and mood disorders.(6) In addition to a nicotine addiction, youths may be susceptible to other health risks depending on the type of tobacco product they prefer. For example, cigar smoking puts a user at risk for lung and esophagus cancer or increased risk of heart disease(7) and smokeless tobacco use may increase the risk of cancer of the mouth, esophagus, and pancreas.(8)

Sources:

- (1) Truth Initiative. "Flavors Fact Sheet"
<https://truthinitiative.org/sites/default/files/media/files/2019/03/Truth-Flavors-Fact-Sheet.pdf> p. 4, January 2018.
- (2) U.S. Department of Health and Human Services. E-cigarette Use Among Youth and Young Adults: A report of the Surgeon General.

- (3) Campaign for Tobacco-free Kids. “The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars.” p.4
- (4) England, L. et al., Nicotine and the developing human: A neglected element in the electronic cigarette debate. *Am J Prev Med* 2015;49(2):286–293
- (5) U.S. Department of Health and Human Services. *The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
- (6) U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General—Executive Summary*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- (7) Centers for Disease Control and Prevention. “Fast Facts and Fact Sheets: Cigars”, January 7, 2020.
- (8) Centers for Disease Control and Prevention. “Fast Facts and Fact Sheets: Smokeless Tobacco: Health Effects”, January 17, 2018.

Prohibiting
all flavors,
including
menthol,
protects
our youth.



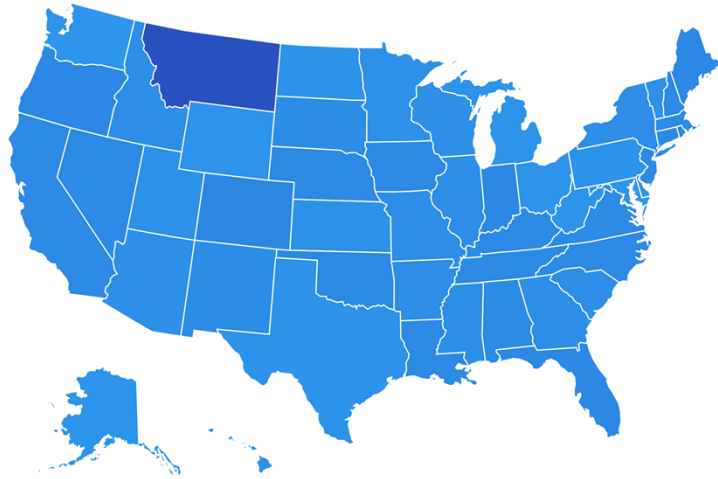
Menthol is a compound used in many consumer and medicinal products and is found in many tobacco products, even those not marketed as menthol.(1) It creates a cooling sensation that helps mask the harshness of tobacco smoke and taste.(2) Evidence has shown that menthol flavored tobacco products target youth, enhance the addictiveness of tobacco products, and make cessation more difficult.(3) Menthol products are linked to higher rates of tobacco use initiation.(4) Even though the U.S. Food and Drug Administration (FDA) does not prohibit the sale of menthol tobacco products, it's still important for localities to keep this minty flavor additive in their scope. When menthol products are still available on the market, youth turn to these products in absence of other flavors.(5) Prohibiting the sale of flavored tobacco products including menthol prevents vulnerable populations such as youth from being addicted to nicotine.

Sources:

- (1) Public Health Law Center. "Regulating Menthol Tobacco Products: Tips and Tools." September, 2018.
- (2) Counter Tobacco. "Evidence Summaries and Reports: Menthol". <https://countertobacco.org/resources-tools/evidence-summaries/menthol/>
- (3) Public Health Law Center. "Regulating Menthol Tobacco Products: Tips and Tools." September, 2018.

- (4) Pepper JK, Ribisl KM, Brewer NT. Adolescents' interest in trying flavoured e-cigarettes. *Tobacco Control* 2016;25:ii62-ii66.
- (5) Public Health Law Center. "Much Ado About Nothing: FDA's Lackluster Effort to Restrict Flavors". January 15, 2020.

Localities
can
further
protect
youth from
the flavor
trap.



The FDA began prohibiting the sales of cartridge-based or pod-based flavored e-cigarette products except for tobacco and menthol flavored on February 6th, 2020. These products (e.g. flavored JUUL and NJOY) must be off the market and may not enter back on the market until given permission by the FDA. FDA's policy on unauthorized flavored e-cigarettes does not apply to customizable flavored e-cigarette products, such as tank systems of mods, which are sold mostly in vape shops. It also exempts disposable flavored e-cigarette products such as Puff Bar and MOJO. The FDA's policy does not apply to all tobacco products, which leaves an open door for youth to switch from one product to another to continue fueling their nicotine addiction.

Montana's Emergency Rules that temporarily restrict the sale of flavored e-cigarette products are more comprehensive than FDA's policy. Montana's Emergency Rules apply with equal force to closed (i.e. pre-filled cartridge or pod-based systems) and open systems and cover the flavor of menthol. Because Montana's emergency rules will expire on April 15th, 2020, localities should enact policies that prohibit the sale of flavored tobacco products to deter youth from a lifetime of nicotine addiction.

Local ordinances can include all flavored tobacco products and be comprehensive and permanent solutions, rather than a short fix to a youth epidemic. As of February 11th of this

year, over 260 localities have passed restrictions on the sale of flavored tobacco products.(1) The FDA's policy on unauthorized flavored e-cigarettes and Montana's Emergency Rules should not deter local governments from continuing efforts in enacting public health policies that are more effective in preventing Big Tobacco from addicting our youth.

The Montana Tobacco Use Prevention Program's model ordinance prohibits the sale of all flavored tobacco products, including menthol (e.g. menthol cigarettes, cigarettes, smokeless tobacco). Thus, preventing the tobacco and e-cigarette industry from targeting vulnerable populations such as youth.

Sources:

(1) Campaign for Tobacco-Free Kids. "States & Localities that Have Restricted the Sale of Flavored Tobacco Products." February 11, 2020.

MENTHOL

Menthol is a flavor additive with a minty taste and aroma that is widely used in tobacco products.

WHY SHOULD MENTHOL BE INCLUDED IN FLAVOR RESTRICTIONS?

- 1 It increases the likelihood of nicotine addiction in youth.
- 2 It creates a cooling and numbing sensation that helps mask the harshness of tobacco.
- 3 It enhances the addictiveness of tobacco products and makes quitting more difficult.



54% of U.S. youth ages 12-17 years who smoke use menthol cigarettes

51%

of U.S. high school students who currently use e-cigarettes use menthol- or mint-flavored products

Menthol is not federally restricted and this flavor can be found in many types of tobacco products.



Cigarettes



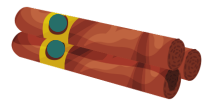
Hookah



Chew



E-cigarettes



Cigars

WHAT CAN COMMUNITIES DO?

Localities can protect Montana's youths from being addicted to nicotine by prohibiting the sale of all flavored tobacco products, including menthol.

Flavored Tobacco Products

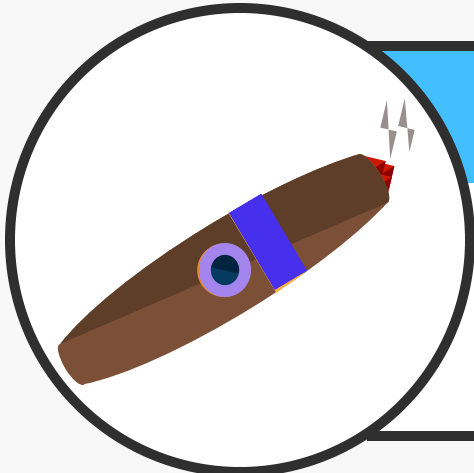
HOOK KIDS

The tobacco industry uses fruit and candy flavors as a way to target youth.



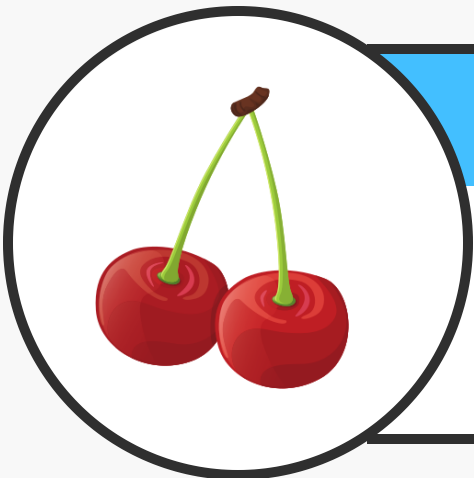
Flavors improve the taste and reduce the harshness of tobacco products.

- 81% of U.S. kids who have ever used tobacco products started with a flavored product.
- Studies show that youths are more likely to use flavored e-cigarette products (e.g. menthol) than tobacco flavored products.



Cigars are one of the most used combustible tobacco product among youth.

- 1 in 10 Montana male youths currently smoke cigars.
- Flavored cigars are still available in a wide variety of flavors. 74% of American youth cigar users say "they used the product because they come in flavors they like."



Smokeless tobacco products are sold in a variety of kid-friendly flavors.

- 10% of Montana male youths currently use smokeless tobacco.
- In 2015, flavored tobacco products (e.g. mint & menthol) made up more than half of all smokeless tobacco sales.

LOCALITIES CAN ENACT FLAVORED TOBACCO PRODUCT RESTRICTIONS TO PROTECT YOUTH FROM A LIFETIME OF NICOTINE ADDICTION.



From day one.

2827 Fort Missoula Road
Missoula, MT 59804
TEL (406) 728-4100
www.communitymed.org

June 25, 2020

To Whom It May Concern:

The Community Medical Center Board of Trustees voted to support the community health initiative to *Ban the Sale of ALL Flavored Tobacco Products* at its June 25, 2020 meeting.

Tim Richards, MD, FACS
Community Medical Center
Board of Trustees Chair

Signed on behalf of the Community Medical Center Board of Trustees:

Laura Churchman, Missoula MT
Dean French, MD; Missoula MT
Janice Gomersall, MD; Missoula MT
Darren Gray, MD; Missoula MT
Justin Jacobson, MD; Missoula MT
Jack Lawson, Missoula MT

Don Malerk, Missoula MT
Suzanne Peterson, Missoula MT
Amy Peterson, Missoula MT
Sandra Simmons, MD; Missoula MT
Michael Stewart, MD; Missoula MT
Jeanne Twohig, Missoula MT

Draft dated 9/28/2020

Ordinance

An ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled “Restrictions on the Display of Tobacco Products and the Sale of Flavored Tobacco Products.”

Be it ordained that Chapter 8.38 Missoula Municipal Code is established as follows:

Chapter 8.38

Restrictions on the Display of Tobacco Products and the Sale of Flavored Tobacco Products

Sections

8.38.010	Findings.
8.38.020	Extraterritorial Application outside City Limits.
8.38.040	Definitions.
8.38.050	Sale of Tobacco Products by Self-Service Display Prohibited.
8.38.060	Sale of Flavored Tobacco Products Prohibited.
8.38.080	Compliance and Inspections.
8.38.090	Violations and Penalties.

8.38.010 Findings.

The Missoula City Council, the Missoula Board of County Commissioners, and the Missoula City-County Health Board hereby find that and declare as follows:

WHEREAS, state law prohibits the sale or distribution of tobacco products and electronic smoking devices to minors (MCA § 16-11-305); and

WHEREAS, 21% of adults in Montana smoke;¹ and

WHEREAS, 10% of youth reported trying their first cigarettes before age 13, and 33.5% of Montana high school youth reported currently using any tobacco product, including e-cigarettes in 2019;² and

WHEREAS, youth exposed to nicotine are at higher risk for addiction than adults because youth brains are still forming and making permanent connections until age 25.³ Nicotine exposure in youth can disrupt the formation of brain circuits that control attention, learning, impulse control, and mood; and

WHEREAS, nicotine is a dangerous and highly addictive chemical. It can cause an increase in blood pressure, heart rate, flow of blood to the heart and a narrowing of the arteries (vessels that carry blood). Nicotine may also contribute to the hardening of the arterial walls, which in turn, may lead to a heart attack. This chemical can stay in your body for six to eight hours depending on how often you smoke. Also, as with most addictive substances, there are some side effects of withdrawal;⁴ and

WHEREAS, 99% of e-cigarettes sold in U.S. convenience stores contain nicotine.⁵ Even e-cigarette products that claim to contain zero nicotine have been found to contain nicotine.⁶ Many of the newer, pod-based e-cigarette products contain high concentrations of nicotine in the form of nicotine salts, thus making these products as or more addictive than combustible cigarettes;⁷ and

WHEREAS, smoking causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis. Smoking also increases risk for tuberculosis, certain eye diseases, and problems of the immune system, including rheumatoid arthritis;⁸ and

WHEREAS, although smokers are most likely to use electronic smoking devices such as e-cigarettes, almost a third of current users are nonsmokers, suggesting that e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use;⁹ and

WHEREAS, federal law prohibits the sale or distribution of flavored cigarettes, excluding menthol; and

WHEREAS, the Federal Food and Drug Administration's enforcement priorities focus on flavored e-cigarettes, excluding menthol, and do not address all flavored tobacco products, such as menthol e-cigarettes, flavored cigars and flavored smokeless tobacco, thus allowing for youth to turn to other flavored products in absence of their "preferred" flavors; and

WHEREAS, the FDA has stated that "all tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products;"¹⁰ and

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days;¹¹ and

WHEREAS, menthol in cigarettes results in more youth initiation to smoking ¹² and is the source of addiction for more than half of all teen smokers;¹³ and

WHEREAS, by adding menthol to cigarettes, tobacco companies mask the natural harshness and taste of tobacco. The minty flavor makes tobacco products milder, and therefore easier to use, harder to quit, and more appealing to youth and new users.¹⁴ Like menthol, flavorings help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products;¹⁵ and

WHEREAS, e-cigarette use predicts the onset of combustible tobacco product use;¹⁶ and

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana's youth. 58.3% of Montana high school students have used an electronic smoking device in their lifetime;¹⁷ and

WHEREAS, \$440 million is spent on healthcare each year in Montana due to smoking;¹⁸ and

WHEREAS, 59,000 Montana kids alive now will become smokers, and 19,000 Montana kids alive now will die prematurely from smoking;¹⁹ and

WHEREAS, tobacco companies use predatory marketing tactics to target youth, particularly susceptible consumers, by placing a large number of tobacco products at retail stores popular with the young, often within reach and near gum and candy;²⁰ and

WHEREAS, more than half of teenagers visit a convenience store at least once a week, and cigarette marketing is more prevalent in stores where youth shop frequently;²¹ and

WHEREAS, research conducted over the past few decades show that the tobacco industry's marketing activities, including flavors and placement within children's reach in convenience stores, have been a

key factor in leading young people to take up tobacco, keeping some users from quitting, and achieving greater consumption among users;²² and

WHEREAS, two-thirds of Montanans agree with a law that would prohibit the sale of flavored tobacco products in all stores where youth under the age of 18 are allowed;²³ and

NOW THEREFORE, it is the intent of the Missoula City Council in enacting this ordinance to protect public health and welfare by reducing access to flavored e-cigarette tobacco products and self-service access to tobacco products, making it easier to quit and more difficult to start.

8.38.020 Extraterritorial Application Outside City Limits.

This health ordinance is adopted by the City of Missoula, which operates pursuant to a city voter approved self-governing charter form of government established in accordance with the provisions of Montana state law pertaining to self-government local government. 7-4-4306 MCA allows this ordinance to also be in effect outside the city limits, but within 5 miles of the city limits when approved by the Missoula County Commissioners and the Missoula City-County Health Board.

8.38.040 Definitions.

The following words and phrases, whenever used in this chapter, have the meanings defined in this section:

- A. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- B. "Flavored Tobacco Product" means a tobacco product that imparts a taste or smell other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but is not limited to, the taste or smell of menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the taste or smell of any candy, dessert, alcoholic beverage, herb, or spice. A tobacco product shall be presumed to be a flavored tobacco product if a retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or aroma other than the taste or aroma of tobacco or uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or aroma other than the taste or aroma of tobacco.
- C. "Self-Service Display" means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
- D. "Tobacco Product" means any product containing, made, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested, or by any other means, including but

not limited to a cigarette, a cigar, hookah, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking device. Notwithstanding any provision to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes, and whether or not any of these are sold separately. The term "Tobacco Product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- E. "Tobacco Product Flavor Enhancer" means any product designed, manufactured, produced, marketed or sold to impart a taste or smell other than the taste or smell of tobacco when added to any tobacco product.
- F. "Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any Tobacco Retail Establishment. Tobacco Retailer does not mean the non-management employees of any Tobacco Retail Establishment.
- G. "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco products shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

8.38.050 Sale of Tobacco Products by Self-Service Display Prohibited.

No Tobacco Retailer shall sell or offer to sell Tobacco Products by means of a Self-Service Display. The purchaser shall not take possession of the Tobacco Product until after payment has been received and processed. This section does not prohibit retailing of cigarettes by means of a vending machine located in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment.

8.38.060 Sale of Flavored Tobacco Products Prohibited.

It shall be unlawful for any Tobacco Retailer, licensed under MCA § 16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute Flavored Tobacco Products or Tobacco Product Flavor Enhancer.

8.38.080 Compliance and Inspections.

- A. The Missoula City-County Health Department is responsible for enforcing the provisions of this chapter.
- B. The Missoula City-County Health Department or other authorized agents may enter and inspect premises of Tobacco Retail Establishments during reasonable hours, including whenever the retailer is open, to evaluate compliance with this chapter.

8.38.090 Violations and Penalties.

- A. It is a violation for a Tobacco Retailer to fail to comply with the requirements of this chapter.
- B. A violation of this chapter, whether the violation occurs inside the city limits or within 5 miles of the city limits, is subject to the jurisdiction of the City of Missoula Municipal Court.

- C. A Tobacco Retailer convicted of violating a provision of this chapter shall be subject to a fine not exceeding five hundred dollars for each offense.
- D. Each day of violation constitutes a separate offense.
- E. Assessment of penalties does not bar enforcement of this chapter by injunction or other appropriate remedy.
- F. Failure to comply with any provision of this chapter shall constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco, or other business license issued by the city.
- G. Any fines collected under this chapter shall be used for implementation and enforcement of the chapter.

Effective Date

The effective date of this chapter shall be ninety (90) days from the date of its enactment.

Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the 5th day of October, 2020, by a vote of: Second and final reading and adoption on the ____ day of ____, 2020 by a vote of:

ATTEST:

APPROVED:

Martha L. Rehbein, CMC City Clerk

John Engen Mayor

(S E A L)

¹ Behavioral Risk Factor Surveillance System, 2018

² Montana Youth Risk Behavior Survey, 2019

³ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

⁴ How smoking and nicotine damage your body, American Heart Association, 2015

⁵ American Public Health Association (2017) Sales of Nicotine-Containing electronic Cigarette Products: United States 2015, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.303660>

⁶ American Cancer Society (2019) What Do We Know About E-cigarettes? <https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/e-cigarettes.html>

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- ⁷ Truth Initiative (2019) E-cigarettes: Facts, stats and Regulations. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>
- ⁸ U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014 [accessed 2016 Dec 20].
- ⁹ McMillen, R.C., Gottlieb, J.D., Whitmore Shaefer, R.M., Winickoff, J.P. & Klein, J.D. (2014). Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers. *Nicotine & Tobacco Research*, 1-8. doi:10.1093/ntr/ntu213
- ¹⁰ Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.
- ¹¹ Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*, 314(17), 1871. doi:10.1001/jama.2015.13802
- ¹² Hersey et al. (2010). Menthol Cigarettes Contribute to the Appeal and Addiction Potential of Smoking for Youth, 12 (suppl. 2) NICOTINE & TOBACCO RESEARCH S216-46
- ¹³ Giovino et al. (2013). Differential Trends in Cigarette Smoking in the USA: Is Menthol Slowing Progress? *TOBACCO CONTROL* 052259, 1–10
- ¹⁴ Carpenter, C.M., Wayne, G.F., Pauly, J.L., Koh, H.K., & Connolly, G.N. (2005). New cigarette brands with flavors that appeal to youth: Tobacco marketing strategies. Tobacco industry documents reveal a deliberate strategy to add flavors known to appeal to younger people. *Health Aff.* 2005;24(6):1601-1610. doi:10.1377/hlthaff.24.6.1601; Lewis, M.J. & Wackowski, O. (2006). Dealing with an innovative industry: A look at flavored cigarettes promoted by mainstream brands. *Am J Public Health*. 2006;96(2):244-251. doi:10.2105/AJPH.2004.06120; Connolly, G.N. (2004). Sweet and spicy flavours: new brands for minorities and youth. *Tob Control*. 2004;13(3):211-212. doi:10.1136/tc.2004.009191; U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. (2012) Preventing Tobacco Use Among Youth and Young Adults a Report of the Surgeon General. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/; Delnovo et al. (2011). Smoking-Cessation Prevalence Among U.S. Smokers of Menthol Versus Non Menthol Cigarettes, 41 AM. J. PREVENTIVE MED. 357-65
- ¹⁵ U.S. Department of Health and Human Services Office of Disease Prevention and Health Promotion. (2012) Preventing Tobacco Use Among Youth and Young Adults a Report of the Surgeon General. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/.
- ¹⁶ Barrington-Trimis, J.L. (2016). The e-cigarette social environment, e-cigarette use, and susceptibility to cigarette smoking. *Journal of Adolescent Health*. 59(1), 75-80. <https://doi.org/10.1016/j.jadohealth.2016.03.019>; Leventhal, A.M., et al. (2015). Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA*. 314(7): 700-707. doi:10.1001/jama.2015.8950; Soneji, S., Barrington-Trimis, J.L., Wills, T.A., Leventhal, A., Unger, J.B., et al. (2017). E-Cigarette Use and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-Analysis. *JAMA Pediatrics*; Watkins, S.L., Glantz, S.A., & Chaffee, B.W. (2018). Association of noncigarette tobacco use with future cigarette smoking among youth in population assessment of tobacco and health (PATH) study, 2013-2015. *JAMA Pediatrics*. doi:10.1001/jamapediatrics.2017.4173; Miech, R., Patrick, M., O'Malley, P., Johnston, L. (2017). E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow up of a national sample of 12th grade students; King, A.C., Smith, L.J., McNamara, P.J. & Cao, D. (2017). Second Generation Electronic Nicotine Delivery System Vape Pen Exposure Generalizes as a Smoking Cue. *Nicotine Tob Res*; 327; Cobb, C.O., Hendricks, P.S., Eissenberg, T. (2015) Electronic cigarettes and nicotine dependence: evolving products, evolving problems. *BMC Med*. 13:119. <https://doi.org/10.1186/s12916-015-0355-y>.
- ¹⁷ Montana Youth Risk Behavior Survey, 2019
- ¹⁸ Centers for Disease Control and Prevention. (2017). Extinguishing the tobacco epidemic in Montana. Retrieved January 19, 2018, from <https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>
- ¹⁹ Cancer Action Network. (2014). Preventing millions of lives lost to tobacco use. Retrieved January 19, 2019, from <https://www.acscan.org/sites/default/files/Potential-for-Millions-Lives-Lost-to-Tobacco-Use.pdf>
- ²⁰ Henriksen et al. (2004). Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent at Stores Where Adolescents Shop Frequently, 12 *TOBACCO CONTROL* 315, 317
- ²¹ American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; Sanders-Jackson, A, et al., "Convenience store visits by US adolescents: Rationale for healthier retail environments," *Health & Place* 34:63- 66, 2015
- ²² American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; National Cancer Institute. (2008). *The Role of the Media in Promoting and Reducing Tobacco Use*. Bethesda (MD): U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. Tobacco Control Monograph No 19. NIH Publication No. 07-6242.

²³ Montana Department of Public Health and Human Services. Montana Adult Tobacco Survey, 2019. Helena (MT): Chronic Disease Bureau. Montana Tobacco Use Prevention Program.

Draft dated ~~11/2/2020~~11/3/2020

Ordinance

An ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled "Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products, and prohibit unlawful transactions consisting of selling or giving tobacco products to youth under the age of 21."

Be it ordained that Chapter 8.38 Missoula Municipal Code is established as follows:

Chapter 8.38

Restrictions on the Display of Tobacco Products, and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 21.

Sections

8.38.010	Findings
8.38.020	Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits
8.38.030	Definitions
8.38.040	Sale of Tobacco Products by Self-Service Display Prohibited.
8.38.050	Sale of Flavored Electronic Tobacco Products Prohibited
8.38.060	Unlawful transactions with youth
8.38.070	Compliance and Inspections.
8.38.080	Violations and Penalties.

8.38.010 Findings.

Montana state law grants a city council legislative power to address public health, safety and general welfare concerns pursuant to health and quarantine ordinances inside the city limits. In addition, pursuant to section 7-4-4306 MCA city health and quarantine ordinances may be enforced extraterritorially outside the city limits within five (5) miles of the city limits if both the board of county commissioners and local health board approve the city ordinance as well. The City Council hereby finds and declares as follows with respect to this ordinance:

WHEREAS, state law prohibits the sale or distribution of tobacco products and electronic smoking devices to minors (MCA § 16-11-305); and

WHEREAS, youth exposed to nicotine are at higher risk for addiction than adults because youth brains are still forming and making permanent connections until age 25.ⁱ Nicotine exposure in youth can disrupt the formation of brain circuits that control attention, learning, impulse control, and mood; and

WHEREAS, nicotine is a dangerous and highly addictive chemical. It can cause an increase in blood pressure, heart rate, flow of blood to the heart and a narrowing of the arteries (vessels that carry blood). Nicotine may also contribute to the hardening of the arterial walls, which in turn, may lead to a heart attack. This chemical can stay in your body for six to eight hours depending on how often you smoke. Also, as with most addictive substances, there are some side effects of withdrawal;ⁱⁱ and

WHEREAS, 99% of e-cigarettes sold in U.S. convenience stores contain nicotine.ⁱⁱⁱ Even e-cigarette products that claim to contain zero nicotine have been found to contain nicotine.^{iv} Many of the newer,

pod-based e-cigarette products contain high concentrations of nicotine in the form of nicotine salts, thus making these products as or more addictive than combustible cigarettes;^v and

WHEREAS, smoking causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis. Smoking also increases risk for tuberculosis, certain eye diseases, and problems of the immune system, including rheumatoid arthritis;^{vi} and

WHEREAS, As of February 18, 2020, **2,807** hospitalized lung injury cases associated with the use of e-cigarette, or vaping, products have been reported to CDC from **50** states, the District of Columbia, and 2 U.S. territories (Puerto Rico and U.S. Virgin Islands). As of February 18, 2020, the Montana Department of Public Health and Human Services (DPHHS) has confirmed **8** cases in Montana, which includes **1** death^{vii}; and

WHEREAS, \$440 million is spent on healthcare each year in Montana due to smoking;^{viii} and

WHEREAS, although smokers are most likely to use electronic smoking devices such as e-cigarettes, almost a third of current users are nonsmokers, suggesting that e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use;^{ix} and

WHEREAS, the FDA has stated that “all tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products;”^x and

WHEREAS, research conducted over the past few decades show that the tobacco products industry's marketing activities, including flavors and placement within children's reach in convenience stores, have been a key factor in leading young people to take up tobacco products, keeping some users from quitting, and achieving greater consumption among users;^{xi} and

WHEREAS, tobacco companies use predatory marketing tactics to target youth, particularly susceptible consumers, by placing a large number of tobacco products at retail stores popular with the young, often within reach and near gum and candy;^{xii} and

WHEREAS, more than half of teenagers visit a convenience store at least once a week, and tobacco product marketing is more prevalent in stores where youth shop frequently;^{xiii} and

WHEREAS, According to the 2019 Montana Youth Risk Survey, when asked how Montana youth in grades 9-12 obtain their electronic vapor products, they responded:

- I did not use any electronic vapor products during the past 30 days - 69.9%
- I bought them in a store such as a convenience store, supermarket, discount store, gas station or vape store - 5.7.%
- I got them on the internet - 0.7%
- a person who can legally buy these products gave them to me - 2.6%
- I took them from a store or another person - 2.6%
- I got them some other way - 3.4%^{xiv}; and

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days;^{xv} and

WHEREAS, e-cigarette use predicts the onset of combustible tobacco product use;^{xvi} and

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana's youth. 58.3% of Montana high school students have used an electronic smoking device in their lifetime;^{xvii} and

WHEREAS, On Dec. 20, 2019, the President of the United States signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product—including cigarettes, cigars and e-cigarettes—to anyone under 21^{xviii}; and

WHEREAS, the CDC and FDA analyzed nationally represented data from the 2020 Youth Tobacco Survey, a cross-sectional, school based, self-administered survey of U.S. middle school (grades 6-8) and high school (grades 9-12) students conducted during January 16-March 16, 2020. The data showed that in 2020, approximately one in five high school students and one in twenty middle school students currently used e-cigarettes; by comparison, in 2019, 27.5% of high school students (4.11 million) and 10.5 % of middle school students (1.24 million) reported current e-cigarette use^{xx}; and

WHEREAS, the Principal of Big Sky High School located in Missoula Montana, submitted public comment for the ordinance on October 20, 2020, stating that "As Principal of Big Sky High School, I write in support of the proposed ordinance to restrict the sale of flavored tobacco products in Missoula. As an MCPS high school administrator, I see first-hand the impact of this marketing tactic. In Missoula...we are experiencing an epidemic of e-cigarette use among youth. [T]he arrival of e-cigarettes and the continued marketing of flavored products, and their presence in local stores, presents an uphill challenge^{xx}; and

WHEREAS, a Missoula School Resource Officer testified in Case Number DV-19-388 in Montana Twenty-First Judicial District Court, Ravalli County, and Honorary Judge Jennifer B. Lint found under the Findings of Fact numbers 23-24 the Officer is a sworn peace officer who is frequently citing students for Minor in Possession of vaping devices, accessories and liquid; and that the vaping and tobacco use statistics in the YRBS are reflected in what he sees as a School Resource Officer^{xxi}.

WHEREAS, in the same litigation referenced in the prior Whereas statement, neither party disputed that youth vaping has exploded, that nicotine is harmful to youth's neural development, and that youths are attracted to the flavored liquids^{xxii}.

WHEREAS, 21% of adults in Montana smoke;^{xxiii} and

WHEREAS, 10% of youth reported trying their first cigarettes before age 13, and 33.5% of Montana high school youth reported currently using any tobacco product, including e-cigarettes in 2019;^{xxiv} and

WHEREAS, in Montana, 58 percent of high school students have tried e-cigarettes and more than 30 percent use them regularly. From 2017 to 2019, frequent vaping among Montana high school students increased by **243%** and daily use increased by **263%**^{xxv}

WHEREAS, the Montana State Legislature and State of Montana have for decades been concerned about youth possession and consumption of tobacco products and prohibited youth possession or consumption of tobacco products by youth as is evidenced by Montana state criminal law 45-5-637 Montana Code annotated (MCA) and Montana Youth Court Act law 41-5-203 MCA; and

WHEREAS current Montana state criminal law 45-5-637 makes possession or consumption of tobacco

products, alternative nicotine products, or vapor products by persons under 18 years of age unlawful as well as makes it unlawful for a person under 18 years of age to attempt to purchase a tobacco product, alternative nicotine product, or vapor product.

NOW THEREFORE, it is the intent of the Missoula City Council in enacting this ordinance to protect public health and welfare by reducing access to flavored electronic tobacco products and self-service access to tobacco products, prohibit unlawful transactions consisting of selling or giving tobacco products to a minor under the age of 21, making it easier to quit and more difficult to start.

8.38.020 Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits.

This chapter is adopted by the Missoula City Council for enforcement inside the city limits. If both the County commissioners and the local health board approve enforcement of this chapter extraterritorially within five (5) miles of the city limits this chapter is thereafter enforceable outside the city limits, within five (5) miles of the city limits.

8.38.030 Definitions.

The following words and phrases, whenever used in this chapter, have the meanings:

- A. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- B. "Flavored Tobacco Product" means a tobacco product that imparts a taste or smell other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but is not limited to, the taste or smell of menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the taste or smell of any candy, dessert, alcoholic beverage, herb, or spice. A tobacco product shall be presumed to be a flavored tobacco product if a retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or aroma other than the taste or aroma of tobacco or uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or aroma other than the taste or aroma of tobacco.
- C. "Self-Service Display" means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
- D. "Tobacco Product" means any product containing, made, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested, or by any other means, including but not limited to a cigarette, a cigar, hookah, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking device. Notwithstanding any provision to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product,

whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes, and whether or not any of these are sold separately. The term "Tobacco Product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

E. "Tobacco Product Flavor Enhancer" means any product designed, manufactured, produced, marketed or sold to impart a taste or smell other than the taste or smell of tobacco when added to any tobacco product.

F. "Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any Tobacco Retail Establishment. Tobacco Retailer does not mean the non-management employees of any Tobacco Retail Establishment.

G. "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco products shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

~~H. "Vapor product" means a noncombustible product that may contain nicotine and that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from a solution or other substance. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug and Cosmetic Act~~

8.38.040 Sale of Tobacco Products by Self-Service Display Prohibited.

No Tobacco Retailer shall sell or offer to sell Tobacco Products by means of a Self-Service Display. The purchaser shall not take possession of the Tobacco Product until after payment has been received and processed.

A. This section does not prohibit retailing of cigarettes by means of a vending machine located in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment.

B. This section does not apply to facilities where the Tobacco Retailer ensures that no person younger than 21 years of age is present or allowed to enter the business at any time.

8.38.050 Sale of Flavored ~~Electronic~~ Tobacco Products used in Electronic Smoking Devices Prohibited

It is unlawful for any Tobacco Retailer, licensed under MCA § 16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute a Flavored ~~Electronic~~ Tobacco Products or a Tobacco Product Flavor Enhancer ~~that is or can be used in an Electronic Smoking Device.~~

A person commits the offense of unlawful transactions with youth if the person knowingly sells or gives any tobacco product to a person under the age of 18.~~se~~

8.38.070 Compliance and Inspections.

- A. The Missoula City-County Health Department is responsible for enforcing the provisions of sections 8.38.040 and 8.38.050.
- B. The Missoula City-County Health Department or other authorized agents may enter and inspect premises of Tobacco Retail Establishments during reasonable hours, including whenever the retailer is open, to evaluate compliance with sections 8.38.040 and 8.38.050.
- C. Local law enforcement is responsible for enforcing the provisions of section 8.38.060

8.38.080 Violations and Penalties.

~~A. It is a violation for a Tobacco Retailer to fail to comply with the requirements of sections 8.38.040 and 8.38.050.~~

~~A. It is a violation for a Tobacco Retailer to fail to comply with the requirements of sections 8.38.040 and 8.38.050.~~

~~2.1.~~ A Tobacco Retailer convicted of violating a provision of these sections shall be subject to a fine not exceeding five hundred dollars for each offense.

~~3.2.~~ Each day of violation constitutes a separate offense.

~~4.3.~~ Assessment of penalties does not bar enforcement of these sections by injunction or other appropriate remedy.

~~5. 4.~~ Failure to comply with any provision of these sections shall constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco, or other business license issued by the City of Missoula. ~~If the business is located outside the city limits within the five (5) mile extraterritorial geographic area the Missoula County Commissioners shall be responsible for addressing any business failure to comply with any provision of these sections that could constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco or other business license issued by the county.~~

- B. A person convicted violating section 8.38.060 shall be fined an amount not to exceed \$250. A person convicted of a second or subsequent violation of section 8.38.060 shall be fined an amount not to exceed \$500.

Effective Date

The effective date of this chapter shall be effective January 11, 2021. ninety (90) days from the date of its enactment.

Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

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First reading and preliminary adoption on the 5th day of October, 2020, by a vote of: Second and final reading and adoption on the ____ day of ____, 2020 by a vote of:

ATTEST:

APPROVED:

Martha L. Rehbein, CMC City Clerk

John Engen Mayor

(S E A L)

ⁱ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

ⁱⁱ How smoking and nicotine damage your body, American Heart Association, 2015

ⁱⁱⁱ American Public Health Association (2017) Sales of Nicotine-Containing electronic Cigarette Products: United States 2015, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.303660>

^{iv} American Cancer Society (2019) What Do We Know About E-cigarettes? <https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/e-cigarettes.html>

^v Truth Initiative (2019) E-cigarettes: Facts, stats and Regulations. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>

^{vi} U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014 [accessed 2016 Dec 20].

^{vii} Montana DPHHS Tobacco Use Prevention Program: Youth and Tobacco Use

^{viii} Centers for Disease Control and Prevention. (2017). Extinguishing the tobacco epidemic in Montana. Retrieved January 19, 2018, from <https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>

^{ix} McMillen, R.C., Gottlieb, J.D., Whitmore Shaefer, R.M., Winickoff, J.P. & Klein, J.D. (2014). Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers. *Nicotine & Tobacco Research*, 1-8. doi:10.1093/ntr/ntu213

^x Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.

^{xi} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; National Cancer Institute. (2008). The Role of the Media in Promoting and Reducing Tobacco Use. Bethesda (MD): U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. Tobacco Control Monograph No 19. NIH Publication No. 07-6242.

^{xii} Henriksen et al. (2004). Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent at Stores Where Adolescents Shop Frequently, 12 TOBACCO CONTROL 315, 317

^{xiii} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; Sanders-Jackson, A, et al., "Convenience store visits by US adolescents: Rationale for healthier retail environments," *Health & Place* 34:63- 66, 2015

^{xiv} 2019 Montana Youth Risk Behavior Survey High School Results

^{xv} Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*, 314(17), 1871. doi:10.1001/jama.2015.13802

^{xvi} Barrington-Trimis, J.L. (2016). The e-cigarette social environment, e-cigarette use, and susceptibility to cigarette smoking. *Journal of Adolescent Health*. 59(1), 75-80. <https://doi.org/10.1016/j.jadohealth.2016.03.019>; Leventhal, A.M., et al. (2015). Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA*. 314(7): 700-707. doi:10.1001/jama.2015.8950; Soneji, S., Barrington-Trimis, J.L., Wills, T.A., Leventhal, A., Unger, J.B., et al. (2017). E-Cigarette Use and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-Analysis. *JAMA Pediatrics*; Watkins, S.L., Glantz, S.A., & Chaffee, B.W. (2018). Association of non cigarette tobacco use with future cigarette smoking among youth in population assessment of tobacco and health (PATH) study, 2013-2015. *JAMA Pediatrics*. doi:10.1001/jamapediatrics.2017.4173; Miech, R., Patrick, M., O'Malley, P., Johnston, L. (2017). E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow up of a national sample of 12th grade students; King, A.C., Smith, L.J., McNamara, P.J. & Cao, D. (2017). Second Generation Electronic Nicotine Delivery System Vape Pen Exposure Generalizes as a Smoking Cue. *Nicotine Tob Res*; 327; Cobb, C.O., Hendricks, P.S., Eissenberg, T. (2015) Electronic cigarettes and nicotine dependence: evolving products, evolving problems. *BMC Med*. 13:119. <https://doi.org/10.1186/s12916-015-0355-y>.

^{xvii} Montana Youth Risk Behavior Survey, 2019

^{xviii} Food and Drug Administration, Center for Tobacco Products, January 15, 2020.

^{xix} Wang, Teresa W., Neff, Linda J., Park-Lee, Eunice, Ren, Chunfeng, Cullen, Karen A., King, Brian A., (September 18, 2020), Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report.

^{xx} Oct. 20, 2020 public comment submitted to Missoula City Council via Group City Council email, entitled "Support of Ordinance".

^{xxi} pages 16-17 of Opinion by Judge Lint in Case Number DV-19-388, Opinion and Order, signed on December 17, 2019, Montana Smokefree Association Inc, Freedom Vapes LLC, Liberty SMOke Inc, and Ublaze Vapor Inc., Petitioners, vs. Montana Department of Public Health and Human Services; Sheila Hogan in her capacity as the Director of the Montana Department of Health and Human Services and, Stephen C. Bullock, in his official capacity as Governor of the State of Montana.

^{xxii} pages 19, finding of fact #29 of Opinion by Judge Lint in Case Number DV-19-388, Opinion and Order, signed on December 17, 2019, Montana Smokefree Association Inc, Freedom Vapes LLC, Liberty SMOke Inc, and Ublaze Vapor Inc., Petitioners, vs. Montana Department of Public Health and Human Services; Sheila Hogan in her capacity as the Director of the Montana Department of Health and Human Services and, Stephen C. Bullock, in his official capacity as Governor of the State of Montana.

^{xxiii} Behavioral Risk Factor Surveillance System, 2019

^{xxiv} Montana Youth Risk Behavior Survey, 2019

^{xxv} Montana Risk Factor Surveillance System, 2019



Missoula City-County Health Department

301 West Alder Street | Missoula MT 59802-4123
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Phone | 406.258.4770
Fax | 406.258.4857

MEMORANDUM

TO: Missoula City Council
FROM: Shannon Therriault, R.S., Environmental Health Director
DATE: November 13, 2020
RE: Revised Draft of the proposed tobacco ordinance

Attached you will find proposed changes to the draft ordinance entitled "Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 18."

The entire Chapter, 8.38, if adopted by the City Council, would be new. The underline/strikeouts in this version represent what has been changed from the version that was attached to the November 4, 2020 Public Safety and Health Committee meeting agenda.

Thank you for taking the time and initiative to consider the proposed ordinance. Your work in and for this community is appreciated.

Draft dated ~~11/2/2020~~11/13/2020

Ordinance

An ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled “Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products, and ~~prohibit on the~~ unlawful transactions consisting of selling or giving tobacco products to youth under the age of 1824.”

Be it ordained that Chapter 8.38 Missoula Municipal Code is established as follows:

Chapter 8.38

Restrictions on the Display of Tobacco Products, and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 1824.

Sections

8.38.010	Findings
8.38.020	Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits
8.38.030	Definitions
8.38.040	Sale of Tobacco Products by Self-Service Display Prohibited.
8.38.050	Sale of Flavored Electronic Tobacco Products Prohibited
8.38.060	Unlawful transactions with youth
8.38.070	Compliance and Inspections.
8.38.080	Violations and Penalties.

8.38.010 Findings.

Montana state law grants a city council legislative power to address public health, safety and general welfare concerns pursuant to health and quarantine ordinances inside the city limits. In addition, pursuant to section 7-4-4306 MCA city health and quarantine ordinances may be enforced extraterritorially outside the city limits within five (5) miles of the city limits if both the board of county commissioners and local health board approve the city ordinance as well. The City Council hereby finds and declares as follows with respect to this ordinance:

WHEREAS, state law prohibits the sale or distribution of tobacco products and electronic smoking devices to minors (MCA § 16-11-305); and

WHEREAS, youth exposed to nicotine are at higher risk for addiction than adults because youth brains are still forming and making permanent connections until age 25.ⁱ Nicotine exposure in youth can disrupt the formation of brain circuits that control attention, learning, impulse control, and mood; and

WHEREAS, nicotine is a dangerous and highly addictive chemical. It can cause an increase in blood pressure, heart rate, flow of blood to the heart and a narrowing of the arteries (vessels that carry blood). Nicotine may also contribute to the hardening of the arterial walls, which in turn, may lead to a heart attack. This chemical can stay in your body for six to eight hours depending on how often you smoke. Also, as with most addictive substances, there are some side effects of withdrawal;ⁱⁱ and

WHEREAS, 99% of e-cigarettes sold in U.S. convenience stores contain nicotine.ⁱⁱⁱ Even e-cigarette products that claim to contain zero nicotine have been found to contain nicotine.^{iv} Many of the newer,

pod-based e-cigarette products contain high concentrations of nicotine in the form of nicotine salts, thus making these products as or more addictive than combustible cigarettes;^v and

WHEREAS, smoking causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis. Smoking also increases risk for tuberculosis, certain eye diseases, and problems of the immune system, including rheumatoid arthritis;^{vi} and

WHEREAS, aAs of February 18, 2020, **2,807** hospitalized lung injury cases associated with the use of e-cigarette, or vaping, products have been reported to CDC from **50** states, the District of Columbia, and 2 U.S. territories (Puerto Rico and U.S. Virgin Islands).As of February 18, 2020, the Montana Department of Public Health and Human Services (DPHHS) has confirmed **8** cases in Montana, which includes **1** death^{vii}; and

WHEREAS, \$440 million is spent on healthcare each year in Montana due to smoking;^{viii} and

WHEREAS, although smokers are most likely to use electronic smoking devices such as e-cigarettes, almost a third of current users are nonsmokers, suggesting that e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use;^{ix} and

WHEREAS, the FDA has stated that “all tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products;”^x and

WHEREAS, research conducted over the past few decades show that the tobacco products industry’s marketing activities, including flavors and placement within children’s reach in convenience stores, have been a key factor in leading young people to take up tobacco products, keeping some users from quitting, and achieving greater consumption among users;^{xi} and

WHEREAS, tobacco companies use predatory marketing tactics to target youth, particularly susceptible consumers, by placing a large number of tobacco products at retail stores popular with the young, often within reach and near gum and candy;^{xii} and

WHEREAS, more than half of teenagers visit a convenience store at least once a week, and tobacco product marketing is more prevalent in stores where youth shop frequently;^{xiii} and

WHEREAS, aAccording to the 2019 Montana Youth Risk Survey, when asked how Montana youth in grades 9-12 obtain their electronic vapor products, they responded:

- I did not use any electronic vapor products during the past 30 days - 69.9%
- I bought them in a store such as a convenience store, supermarket, discount store, gas station or vape store - 5.7. %
- I got them on the internet - 0.7%
- a person who can legally buy these products gave them to me - 2.6%
- I took them from a store or another person - 2.6%
- I got them some other way - 3.4%^{xiv}; and

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days;^{xv} and

WHEREAS, e-cigarette use predicts the onset of combustible tobacco product use;^{xvi} and

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana's youth. 58.3% of Montana high school students have used an electronic smoking device in their lifetime;^{xvii} and

WHEREAS, ~~o~~On Dec. 20, 2019, the President of the United States signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product—including cigarettes, cigars and e-cigarettes—to anyone under 21^{xviii}; and

WHEREAS, the CDC and FDA analyzed nationally represented data from the 2020 Youth Tobacco Survey, a cross-sectional, school based, self-administered survey of U.S. middle school (grades 6-8) and high school (grades 9-12) students conducted during January 16-March 16, 2020. The data showed that in 2020, approximately one in five high school students and one in twenty middle school students currently used e-cigarettes; by comparison, in 2019, 27.5% of high school students (4.11 million) and 10.5 % of middle school students (1.24 million) reported current e-cigarette use^{xix}; and

WHEREAS, the Principal of Big Sky High School located in Missoula Montana, submitted public comment for the ordinance on October 20, 2020, stating that "As Principal of Big Sky High School, I write in support of the proposed ordinance to restrict the sale of flavored tobacco products in Missoula. As an MCPS high school administrator, I see first-hand the impact of this marketing tactic. In Missoula...we are experiencing an epidemic of e-cigarette use among youth. [T]he arrival of e-cigarettes and the continued marketing of flavored products, and their presence in local stores, presents an uphill challenge^{xx}; and

WHEREAS, a Missoula School Resource Officer testified in Case Number DV-19-388 in Montana Twenty-First Judicial District Court, Ravalli County, and Honorary Judge Jennifer B. Lint found under the Findings of Fact numbers 23-24 the Officer is a sworn peace officer who is frequently citing students for Minor in Possession of vaping devices, accessories and liquid; and that the vaping and tobacco use statistics in the YRBS are reflected in what he sees as a School Resource Officer^{xxi}.

WHEREAS, in the same litigation referenced in the prior Whereas statement, neither party disputed that youth vaping has exploded, that nicotine is harmful to youth's neural development, and that youths are attracted to the flavored liquids^{xxii}.

WHEREAS, 21% of adults in Montana smoke;^{xxiii} and

WHEREAS, 10% of youth reported trying their first cigarettes before age 13, and 33.5% of Montana high school youth reported currently using any tobacco product, including e-cigarettes in 2019;^{xxiv} and

WHEREAS, in Montana, 58 percent of high school students have tried e-cigarettes and more than 30 percent use them regularly. From 2017 to 2019, frequent vaping among Montana high school students increased by **243%** and daily use increased by **263%**^{xxv}

WHEREAS, the Montana State Legislature and State of Montana have for decades been concerned about youth possession and consumption of tobacco products and prohibited youth possession or consumption of tobacco products by youth as is evidenced by Montana state criminal law 45-5-637 Montana Code annotated (MCA) and Montana Youth Court Act law 41-5-203 MCA; and

WHEREAS current Montana state criminal law 45-5-637 makes possession or consumption of tobacco

products, alternative nicotine products, or vapor products by persons under 18 years of age unlawful as well as makes it unlawful for a person under 18 years of age to attempt to purchase a tobacco product, alternative nicotine product, or vapor product.

NOW THEREFORE, it is the intent of the Missoula City Council in enacting this ordinance to protect public health and welfare by reducing access to flavored electronic tobacco products and self-service access to tobacco products, prohibit unlawful transactions consisting of selling or giving tobacco products to a minor under the age of ~~21~~18, making it easier to quit and more difficult to start.

8.38.020 Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits.

This chapter is adopted by the Missoula City Council for enforcement inside the city limits. If both the County commissioners and the local health board approve enforcement of this chapter extraterritorially within five (5) miles of the city limits this chapter is thereafter enforceable outside the city limits, within five (5) miles of the city limits.

8.38.030 Definitions.

The following words and phrases, whenever used in this chapter, have the meanings:

- A. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- B. "Flavored Tobacco Product" means a tobacco product that imparts a taste or smell other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but is not limited to, the taste or smell of menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the taste or smell of any candy, dessert, alcoholic beverage, herb, or spice. A tobacco product shall be presumed to be a flavored tobacco product if a retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or aroma other than the taste or aroma of tobacco or uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or aroma other than the taste or aroma of tobacco.
- C. "Self-Service Display" means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
- D. "Tobacco Product" means any product containing, made, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested, or by any other means, including but not limited to a cigarette, a cigar, hookah, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking device. Notwithstanding any provision to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product,

whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes, and whether or not any of these are sold separately. The term "Tobacco Product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- E. "Tobacco Product Flavor Enhancer" means any product designed, manufactured, produced, marketed or sold to impart a taste or smell other than the taste or smell of tobacco when added to any tobacco product.
- F. "Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any Tobacco Retail Establishment. Tobacco Retailer does not mean the non-management employees of any Tobacco Retail Establishment.
- G. "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco products shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.
- H. ~~"Vapor product" means a noncombustible product that may contain nicotine and that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from a solution or other substance. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug and Cosmetic Act~~

8.38.040 Sale of Tobacco Products by Self-Service Display Prohibited.

No Tobacco Retailer shall sell or offer to sell Tobacco Products by means of a Self-Service Display. The purchaser shall not take possession of the Tobacco Product until after payment has been received and processed.

- A. This section does not prohibit retailing of cigarettes by means of a vending machine located in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment.
- B. This section does not apply to facilities where the Tobacco Retailer:
 - 1. has prominently posted signage setting forth the federal age restriction of 21, and
 - 2. ensures that no youth under the age of 18, and pursuant to the federal age restriction, no adult aged 18 to 20 years of age are present within or allowed to enter the area at any time.

8.38.050 Sale of Flavored ~~Electronic~~ Tobacco Products used in or with Electronic Smoking Devices Prohibited

It is unlawful for any Tobacco Retailer, licensed under MCA § 16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute a Flavored ~~Electronic~~ Tobacco

Products or a Tobacco Product Flavor Enhancer that is or can be used in or with an Electronic Smoking Device.

~~8.38.060 Unlawful tobacco products, alternative nicotine products and vapor products transactions with youth. Unlawful transactions with youth~~

A person commits the offense of unlawful transactions with ~~youth~~ if the person knowingly sells or gives any tobacco product to a person under the age of 18.~~se~~

8.38.070 Compliance and Inspections.

- A. The Missoula City-County Health Department is responsible for enforcing the provisions of sections 8.38.040 and 8.38.050.
- B. The Missoula City-County Health Department or other authorized agents may enter and inspect premises of Tobacco Retail Establishments during reasonable hours, including whenever the retailer is open, to evaluate compliance with sections 8.38.040 and 8.38.050.
- C. Local law enforcement is responsible for enforcing the provisions of section 8.38.060

8.38.080 Violations and Penalties.

~~A. It is a violation for a Tobacco Retailer to fail to comply with the requirements of sections 8.38.040 and 8.38.050.~~

~~4.~~ A violation of this chapter~~these sections~~, whether the violation occurs inside the city limits or within 5 miles of the city limits, is subject to the jurisdiction of the City of Missoula Municipal Court. Any fines collected under this chapter shall be used for youth tobacco prevention and education.

~~A. It is a violation for a Tobacco Retailer to fail to comply with the requirements of sections 8.38.040 and 8.38.050.~~

~~2.1.~~ A Tobacco Retailer convicted of violating a provision of these sections shall be subject to a fine not exceeding five hundred dollars for each offense.

~~3.2.~~ Each day of violation constitutes a separate offense.

~~4.3.~~ Assessment of penalties does not bar enforcement of these sections by injunction or other appropriate remedy.

~~5.~~ ~~4.~~ Failure to comply with any provision of these sections shall constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco, or other business license issued by the City of Missoula. ~~If the business is located outside the city limits within the five (5) mile extraterritorial geographic area the Missoula County Commissioners shall be responsible for addressing any business failure to comply with any provision of these sections that could constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco or other business license issued by the county.~~

~~6.~~ ~~Any fines collected under these sections shall be used for implementation and enforcement of the chapter.~~

- B. A person convicted violating section 8.38.060 shall be fined an amount not to exceed \$250. A person convicted of a second or subsequent violation of section 8.38.060 shall be fined an amount not to exceed \$500.

~~Any fines collected under this section shall be used for implementation and enforcement of the chapter.~~

Effective Date

The effective date of this chapter shall be effective January 25, 2021. ~~ninety (90) days from the date of its enactment.~~

Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the 5th day of October, 2020, by a vote of: Second and final reading and adoption on the ____ day of ____, 2020 by a vote of:

ATTEST:

APPROVED:

Martha L. Rehbein, CMC City Clerk

John Engen Mayor

(S E A L)

ⁱ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

ⁱⁱ How smoking and nicotine damage your body, American Heart Association, 2015

ⁱⁱⁱ American Public Health Association (2017) Sales of Nicotine-Containing electronic Cigarette Products: United States 2015, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.303660>

^{iv} American Cancer Society (2019) What Do We Know About E-cigarettes? <https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/e-cigarettes.html>

^v Truth Initiative (2019) E-cigarettes: Facts, stats and Regulations. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>

^{vi} U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014 [accessed 2016 Dec 20].

^{vii} Montana DPHHS Tobacco Use Prevention Program: Youth and Tobacco Use

^{viii} Centers for Disease Control and Prevention. (2017). Extinguishing the tobacco epidemic in Montana. Retrieved January 19, 2018, from <https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>

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- ^{ix} McMillen, R.C., Gottlieb, J.D., Whitmore Shaefer, R.M., Winickoff, J.P. & Klein, J.D. (2014). Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers. *Nicotine & Tobacco Research*, 1-8. doi:10.1093/ntr/ntu213
- ^x Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.
- ^{xi} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; National Cancer Institute. (2008). The Role of the Media in Promoting and Reducing Tobacco Use. Bethesda (MD): U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. Tobacco Control Monograph No 19. NIH Publication No. 07-6242.
- ^{xii} Henriksen et al. (2004). Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent at Stores Where Adolescents Shop Frequently, 12 TOBACCO CONTROL 315, 317
- ^{xiii} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; Sanders-Jackson, A, et al., "Convenience store visits by US adolescents: Rationale for healthier retail environments," *Health & Place* 34:63- 66, 2015
- ^{xiv} 2019 Montana Youth Risk Behavior Survey High School Results
- ^{xv} Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*, 314(17), 1871. doi:10.1001/jama.2015.13802
- ^{xvi} Barrington-Trimis, J.L. (2016). The e-cigarette social environment, e-cigarette use, and susceptibility to cigarette smoking. *Journal of Adolescent Health*. 59(1), 75-80. <https://doi.org/10.1016/j.jadohealth.2016.03.019>; Leventhal, A.M., et al. (2015). Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA*. 314(7): 700-707. doi:10.1001/jama.2015.8950; Soneji, S., Barrington-Trimis, J.L., Wills, T.A., Leventhal, A., Unger, J.B., et al. (2017). E-Cigarette Use and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-Analysis. *JAMA Pediatrics*; Watkins, S.L., Glantz, S.A., & Chaffee, B.W. (2018). Association of non cigarette tobacco use with future cigarette smoking among youth in population assessment of tobacco and health (PATH) study, 2013-2015. *JAMA Pediatrics*. doi:10.1001/jamapediatrics.2017.4173; Miech, R., Patrick, M., O'Malley, P., Johnston, L. (2017). E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow up of a national sample of 12th grade students; King, A.C., Smith, L.J., McNamara, P.J. & Cao, D. (2017). Second Generation Electronic Nicotine Delivery System Vape Pen Exposure Generalizes as a Smoking Cue. *Nicotine Tob Res*; 327; Cobb, C.O., Hendricks, P.S., Eissenberg, T. (2015) Electronic cigarettes and nicotine dependence: evolving products, evolving problems. *BMC Med*. 13:119. <https://doi.org/10.1186/s12916-015-0355-y>.
- ^{xvii} Montana Youth Risk Behavior Survey, 2019
- ^{xviii} Food and Drug Administration, Center for Tobacco Products, January 15, 2020.
- ^{xix} Wang, Teresa W., Neff, Linda J., Park-Lee, Eunice, Ren, Chunfeng, Cullen, Karen A., King, Brian A., (September 18, 2020), Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report.
- ^{xx} Oct. 20, 2020 public comment submitted to Missoula City Council via Group City Council email, entitled "Support of Ordinance".
- ^{xxi} pages 16-17 of Opinion by Judge Lint in Case Number DV-19-388, Opinion and Order, signed on December 17, 2019, Montana Smokefree Association Inc, Freedom Vapes LLC, Liberty SMOke Inc, and Ublaze Vapor Inc., Petitioners, vs. Montana Department of Public Health and Human Services; Sheila Hogan in her capacity as the Director of the Montana Department of Health and Human Services and, Stephen C. Bullock, in his official capacity as Governor of the State of Montana.
- ^{xxii} pages 19, finding of fact #29 of Opinion by Judge Lint in Case Number DV-19-388, Opinion and Order, signed on December 17, 2019, Montana Smokefree Association Inc, Freedom Vapes LLC, Liberty SMOke Inc, and Ublaze Vapor Inc., Petitioners, vs. Montana Department of Public Health and Human Services; Sheila Hogan in her capacity as the Director of the Montana Department of Health and Human Services and, Stephen C. Bullock, in his official capacity as Governor of the State of Montana.
- ^{xxiii} Behavioral Risk Factor Surveillance System, 2019
- ^{xxiv} Montana Youth Risk Behavior Survey, 2019
- ^{xxv} Montana Risk Factor Surveillance System, 2019

Draft dated 11/13/2020

Ordinance

An ordinance of the Missoula City Council creating Title 8, Chapter 8.38 Missoula Municipal Code entitled “Restrictions on the Display of Tobacco Products and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 18.”

Be it ordained that Chapter 8.38 Missoula Municipal Code is established as follows:

Chapter 8.38

Restrictions on the Display of Tobacco Products, and the Sale of Flavored Electronic Tobacco Products, and on the unlawful transactions consisting of selling or giving tobacco products to youth under the age of 18.

Sections

8.38.010	Findings
8.38.020	Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits
8.38.030	Definitions
8.38.040	Sale of Tobacco Products by Self-Service Display Prohibited.
8.38.050	Sale of Flavored Electronic Tobacco Products Prohibited
8.38.060	Unlawful transactions with youth
8.38.070	Compliance and Inspections.
8.38.080	Violations and Penalties.

8.38.010 Findings.

Montana state law grants a city council legislative power to address public health, safety and general welfare concerns pursuant to health and quarantine ordinances inside the city limits. In addition, pursuant to section 7-4-4306 MCA city health and quarantine ordinances may be enforced extraterritorially outside the city limits within five (5) miles of the city limits if both the board of county commissioners and local health board approve the city ordinance as well. The City Council hereby finds and declares as follows with respect to this ordinance:

WHEREAS, state law prohibits the sale or distribution of tobacco products and electronic smoking devices to minors (MCA § 16-11-305); and

WHEREAS, youth exposed to nicotine are at higher risk for addiction than adults because youth brains are still forming and making permanent connections until age 25.ⁱ Nicotine exposure in youth can disrupt the formation of brain circuits that control attention, learning, impulse control, and mood; and

WHEREAS, nicotine is a dangerous and highly addictive chemical. It can cause an increase in blood pressure, heart rate, flow of blood to the heart and a narrowing of the arteries (vessels that carry blood). Nicotine may also contribute to the hardening of the arterial walls, which in turn, may lead to a heart attack. This chemical can stay in your body for six to eight hours depending on how often you smoke. Also, as with most addictive substances, there are some side effects of withdrawal;ⁱⁱ and

WHEREAS, 99% of e-cigarettes sold in U.S. convenience stores contain nicotine.ⁱⁱⁱ Even e-cigarette products that claim to contain zero nicotine have been found to contain nicotine.^{iv} Many of the newer,

pod-based e-cigarette products contain high concentrations of nicotine in the form of nicotine salts, thus making these products as or more addictive than combustible cigarettes;^v and

WHEREAS, smoking causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis. Smoking also increases risk for tuberculosis, certain eye diseases, and problems of the immune system, including rheumatoid arthritis;^{vi} and

WHEREAS, as of February 18, 2020, **2,807** hospitalized lung injury cases associated with the use of e-cigarette, or vaping, products have been reported to CDC from **50** states, the District of Columbia, and 2 U.S. territories (Puerto Rico and U.S. Virgin Islands). As of February 18, 2020, the Montana Department of Public Health and Human Services (DPHHS) has confirmed **8** cases in Montana, which includes **1** death^{vii}; and

WHEREAS, \$440 million is spent on healthcare each year in Montana due to smoking;^{viii} and

WHEREAS, although smokers are most likely to use electronic smoking devices such as e-cigarettes, almost a third of current users are nonsmokers, suggesting that e-cigarettes contribute to primary nicotine addiction and to renormalization of tobacco use;^{ix} and

WHEREAS, the FDA has stated that “all tobacco products, including flavored tobacco products, are as addictive and carry the same health risks as regular tobacco products;”^x and

WHEREAS, research conducted over the past few decades show that the tobacco products industry’s marketing activities, including flavors and placement within children’s reach in convenience stores, have been a key factor in leading young people to take up tobacco products, keeping some users from quitting, and achieving greater consumption among users;^{xi} and

WHEREAS, tobacco companies use predatory marketing tactics to target youth, particularly susceptible consumers, by placing a large number of tobacco products at retail stores popular with the young, often within reach and near gum and candy;^{xii} and

WHEREAS, more than half of teenagers visit a convenience store at least once a week, and tobacco product marketing is more prevalent in stores where youth shop frequently;^{xiii} and

WHEREAS, according to the 2019 Montana Youth Risk Survey, when asked how Montana youth in grades 9-12 obtain their electronic vapor products, they responded:

- I did not use any electronic vapor products during the past 30 days - 69.9%
- I bought them in a store such as a convenience store, supermarket, discount store, gas station or vape store - 5.7.%
- I got them on the internet - 0.7%
- a person who can legally buy these products gave them to me - 2.6%
- I took them from a store or another person - 2.6%
- I got them some other way - 3.4%^{xiv}; and

WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days;^{xv} and

WHEREAS, e-cigarette use predicts the onset of combustible tobacco product use;^{xvi} and

WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana's youth. 58.3% of Montana high school students have used an electronic smoking device in their lifetime;^{xvii} and

WHEREAS, on Dec. 20, 2019, the President of the United States signed legislation amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product—including cigarettes, cigars and e-cigarettes—to anyone under 21^{xviii}; and

WHEREAS, the CDC and FDA analyzed nationally represented data from the 2020 Youth Tobacco Survey, a cross-sectional, school based, self-administered survey of U.S. middle school (grades 6-8) and high school (grades 9-12) students conducted during January 16-March 16, 2020. The data showed that in 2020, approximately one in five high school students and one in twenty middle school students currently used e-cigarettes; by comparison, in 2019, 27.5% of high school students (4.11 million) and 10.5 % of middle school students (1.24 million) reported current e-cigarette use^{xix}; and

WHEREAS, the Principal of Big Sky High School located in Missoula Montana, submitted public comment for the ordinance on October 20, 2020, stating that "As Principal of Big Sky High School, I write in support of the proposed ordinance to restrict the sale of flavored tobacco products in Missoula. As an MCPS high school administrator, I see first-hand the impact of this marketing tactic. In Missoula...we are experiencing an epidemic of e-cigarette use among youth. [T]he arrival of e-cigarettes and the continued marketing of flavored products, and their presence in local stores, presents an uphill challenge^{xx}; and

WHEREAS, a Missoula School Resource Officer testified in Case Number DV-19-388 in Montana Twenty-First Judicial District Court, Ravalli County, and Honorary Judge Jennifer B. Lint found under the Findings of Fact numbers 23-24 the Officer is a sworn peace officer who is frequently citing students for Minor in Possession of vaping devices, accessories and liquid; and that the vaping and tobacco use statistics in the YRBS are reflected in what he sees as a School Resource Officer^{xxi}.

WHEREAS, in the same litigation referenced in the prior Whereas statement, neither party disputed that youth vaping has exploded, that nicotine is harmful to youth's neural development, and that youths are attracted to the flavored liquids^{xxii}.

WHEREAS, 21% of adults in Montana smoke;^{xxiii} and

WHEREAS, 10% of youth reported trying their first cigarettes before age 13, and 33.5% of Montana high school youth reported currently using any tobacco product, including e-cigarettes in 2019;^{xxiv} and

WHEREAS, in Montana, 58 percent of high school students have tried e-cigarettes and more than 30 percent use them regularly. From 2017 to 2019, frequent vaping among Montana high school students increased by **243%** and daily use increased by **263%**^{xxv}

WHEREAS, the Montana State Legislature and State of Montana have for decades been concerned about youth possession and consumption of tobacco products and prohibited youth possession or consumption of tobacco products by youth as is evidenced by Montana state criminal law 45-5-637 Montana Code annotated (MCA) and Montana Youth Court Act law 41-5-203 MCA; and

WHEREAS current Montana state criminal law 45-5-637 makes possession or consumption of tobacco

products, alternative nicotine products, or vapor products by persons under 18 years of age unlawful as well as makes it unlawful for a person under 18 years of age to attempt to purchase a tobacco product, alternative nicotine product, or vapor product.

NOW THEREFORE, it is the intent of the Missoula City Council in enacting this ordinance to protect public health and welfare by reducing access to flavored electronic tobacco products and self-service access to tobacco products, prohibit unlawful transactions consisting of selling or giving tobacco products to a minor under the age of 18, making it easier to quit and more difficult to start.

8.38.020 Enforcement of Health and Quarantine Ordinances Extraterritorially Outside City Limits.

This chapter is adopted by the Missoula City Council for enforcement inside the city limits. If both the County commissioners and the local health board approve enforcement of this chapter extraterritorially within five (5) miles of the city limits this chapter is thereafter enforceable outside the city limits, within five (5) miles of the city limits.

8.38.030 Definitions.

The following words and phrases, whenever used in this chapter, have the meanings:

- A. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic Smoking Device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- B. "Flavored Tobacco Product" means a tobacco product that imparts a taste or smell other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but is not limited to, the taste or smell of menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the taste or smell of any candy, dessert, alcoholic beverage, herb, or spice. A tobacco product shall be presumed to be a flavored tobacco product if a retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device imparts a distinguishable taste or aroma other than the taste or aroma of tobacco or uses text, images, or coloring on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or aroma other than the taste or aroma of tobacco.
- C. "Self-Service Display" means the open display or storage of Tobacco Products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
- D. "Tobacco Product" means any product containing, made, or derived from tobacco or that contains nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested, or by any other means, including but not limited to a cigarette, a cigar, hookah, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking device. Notwithstanding any provision to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product,

whether or not any of these contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes, and whether or not any of these are sold separately. The term "Tobacco Product" does not include drugs, devices or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

- E. "Tobacco Product Flavor Enhancer" means any product designed, manufactured, produced, marketed or sold to impart a taste or smell other than the taste or smell of tobacco when added to any tobacco product.
- F. "Tobacco Retailer" means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any Tobacco Retail Establishment. Tobacco Retailer does not mean the non-management employees of any Tobacco Retail Establishment.
- G. "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco products shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

8.38.040 Sale of Tobacco Products by Self-Service Display Prohibited.

No Tobacco Retailer shall sell or offer to sell Tobacco Products by means of a Self-Service Display. The purchaser shall not take possession of the Tobacco Product until after payment has been received and processed.

- A. This section does not prohibit retailing of cigarettes by means of a vending machine located in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment.
- B. This section does not apply to facilities where the Tobacco Retailer:
 - 1. has prominently posted signage setting forth the federal age restriction of 21, and
 - 2. ensures that no youth under the age of 18, and pursuant to the federal age restriction, no adult aged 18 to 20 years of age are present within or allowed to enter the area at any time.

8.38.050 Sale of Flavored Tobacco Products used in or with Electronic Smoking Devices Prohibited

It is unlawful for any Tobacco Retailer, licensed under MCA § 16-11-303, to sell, offer for sale, give, possess with the intent to sell or offer for sale, or otherwise distribute a Flavored Tobacco Product or a Tobacco Product Flavor Enhancer that is or can be used in or with an Electronic Smoking Device.

8.38.060. Unlawful transactions with youth

A person commits the offense of unlawful transactions with youth if the person knowingly sells or gives any tobacco product to a person under the age of 18.

8.38.070 Compliance and Inspections.

- A. The Missoula City-County Health Department is responsible for enforcing the provisions of sections 8.38.040 and 8.38.050.

- B. The Missoula City-County Health Department or other authorized agents may enter and inspect premises of Tobacco Retail Establishments during reasonable hours, including whenever the retailer is open, to evaluate compliance with sections 8.38.040 and 8.38.050.
- C. Local law enforcement is responsible for enforcing the provisions of section 8.38.060

8.38.080 Violations and Penalties.

It is a violation for a Tobacco Retailer to fail to comply with the requirements of sections 8.38.040 and 8.38.050. A violation of this chapter, whether the violation occurs inside the city limits or within 5 miles of the city limits, is subject to the jurisdiction of the City of Missoula Municipal Court. Any fines collected under this chapter shall be used for youth tobacco prevention and education.

- A.
1. A Tobacco Retailer convicted of violating a provision of these sections shall be subject to a fine not exceeding five hundred dollars for each offense.
 2. Each day of violation constitutes a separate offense.
 3. Assessment of penalties does not bar enforcement of these sections by injunction or other appropriate remedy.
 4. Failure to comply with any provision of these sections shall constitute grounds for the denial of, refusal to renew, suspension of any food, liquor, tobacco, or other business license issued by the City of Missoula.
- B. A person convicted violating section 8.38.060 shall be fined an amount not to exceed \$250. A person convicted of a second or subsequent violation of section 8.38.060 shall be fined an amount not to exceed \$500.

Effective Date

The effective date of this chapter shall be effective January 25, 2021.

Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the 5th day of October, 2020, by a vote of: Second and final reading and adoption on the ____ day of ____, 2020 by a vote of:

ATTEST:

APPROVED:

Martha L. Rehbein, CMC City Clerk

John Engen Mayor

(S E A L)

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- ⁱ U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- ⁱⁱ How smoking and nicotine damage your body, American Heart Association, 2015
- ⁱⁱⁱ American Public Health Association (2017) Sales of Nicotine-Containing electronic Cigarette Products: United States 2015, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.303660>
- ^{iv} American Cancer Society (2019) What Do We Know About E-cigarettes? <https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/e-cigarettes.html>
- ^v Truth Initiative (2019) E-cigarettes: Facts, stats and Regulations. <https://truthinitiative.org/research-resources/emerging-tobacco-products/e-cigarettes-facts-stats-and-regulations>
- ^{vi} U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014 [accessed 2016 Dec 20].
- ^{vii} Montana DPHHS Tobacco Use Prevention Program: Youth and Tobacco Use
- ^{viii} Centers for Disease Control and Prevention. (2017). Extinguishing the tobacco epidemic in Montana. Retrieved January 19, 2018, from <https://www.cdc.gov/tobacco/about/osh/program-funding/pdfs/montana-508.pdf>
- ^{ix} McMillen, R.C., Gottlieb, J.D., Whitmore Shaefer, R.M., Winickoff, J.P. & Klein, J.D. (2014). Trends in Electronic Cigarette Use Among U.S. Adults: Use is Increasing in Both Smokers and Nonsmokers. *Nicotine & Tobacco Research*, 1-8. doi:10.1093/ntr/ntu213
- ^x Levy DT, Pearson JL, Villanti AC, et al. Modeling the future effects of a menthol ban on smoking prevalence and smoking-attributable deaths in the United States. *Am J Public Health*. 2011;101(7):1236-1240. doi:10.2105/AJPH.2011.300179.
- ^{xi} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; National Cancer Institute. (2008). The Role of the Media in Promoting and Reducing Tobacco Use. Bethesda (MD): U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. Tobacco Control Monograph No 19. NIH Publication No. 07-6242.
- ^{xii} Henriksen et al. (2004). Reaching Youth at the Point of Sale: Cigarette Marketing is More Prevalent at Stores Where Adolescents Shop Frequently, *12 TOBACCO CONTROL* 315, 317
- ^{xiii} American Heart Association/Campaign for Tobacco Free Kids/Counter Tools. (2012). Deadly Alliance: How Big Tobacco and Convenience Stores Partner to Market Tobacco Products and Fight Life-Saving Policies; Sanders-Jackson, A, et al., "Convenience store visits by US adolescents: Rationale for healthier retail environments," *Health & Place* 34:63- 66, 2015
- ^{xiv} 2019 Montana Youth Risk Behavior Survey High School Results
- ^{xv} Ambrose, B. K., Day, H. R., Rostron, B., Conway, K. P., Borek, N., Hyland, A., & Villanti, A. C. (2015). Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*, 314(17), 1871. doi:10.1001/jama.2015.13802
- ^{xvi} Barrington-Trimis, J.L. (2016). The e-cigarette social environment, e-cigarette use, and susceptibility to cigarette smoking. *Journal of Adolescent Health*. 59(1), 75-80. <https://doi.org/10.1016/j.jadohealth.2016.03.019>; Leventhal, A.M., et al. (2015). Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA*. 314(7): 700-707. doi:10.1001/jama.2015.8950; Soneji, S., Barrington-Trimis, J.L., Wills, T.A., Leventhal, A., Unger, J.B., et al. (2017). E-Cigarette Use and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-Analysis. *JAMA Pediatrics*; Watkins, S.L., Glantz, S.A., & Chaffee, B.W. (2018). Association of non cigarette tobacco use with future cigarette smoking among youth in population assessment of tobacco and health (PATH) study, 2013-2015. *JAMA Pediatrics*. doi:10.1001/jamapediatrics.2017.4173; Miech, R., Patrick, M., O'Malley, P., Johnston, L. (2017). E-cigarette use as a predictor of cigarette smoking: results from a 1-year follow up of a national sample of 12th grade students; King, A.C., Smith, L.J., McNamara, P.J. & Cao, D. (2017). Second Generation Electronic Nicotine Delivery System Vape Pen Exposure Generalizes as a Smoking Cue. *Nicotine Tob Res*; 327; Cobb, C.O., Hendricks, P.S., Eissenberg, T. (2015) Electronic cigarettes and nicotine dependence: evolving products, evolving problems. *BMC Med*. 13:119. <https://doi.org/10.1186/s12916-015-0355-y>.
- ^{xvii} Montana Youth Risk Behavior Survey, 2019

^{xviii} Food and Drug Administration, Center for Tobacco Products, January 15, 2020.

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^{xx} Oct. 20, 2020 public comment submitted to Missoula City Council via Group City Council email, entitled "Support of Ordinance".

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^{xxv} Montana Risk Factor Surveillance System, 2019