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To:	Grp. City Council and City Web Site; Dept. Mayors Office; Dept. City Clerk; Ellen Leahy; Ellen Leahy (eleahy@co.missoula.mt.us); Arwyn Welander; Shannon Therriault; Lisa Beczkiewicz
Cc:	Dept. Attorney; Jaeson White; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark
Subject:	Youth Access to Tobacco Products Control Act definition of "vapor product"
Date:	Thursday, October 22, 2020 12:52:52 PM

TO WHOM IT MAY CONCERN:

Currently, the proposed city ordinance entitled "RESTRICTIONS ON THE DISPLAY OF TOBACCO PRODUCTS AND THE SALE OF FLAVORED TOBACCO PRODUCTS" does not include a definition of the term "vapor product". The 2015 Montana State Legislature amended the "YOUTH ACCESS TO PRODUCTS CONTROL ACT" effective January 1, 2016 to insert statutory definitions of the terms "alternative nicotine product" and "vapor product".

The Montana "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" statutory definition of the terms "Alternative nicotine product" and "vapor product" are set forth in subsections 16-11-302(1) & (7) MCA as follows:

> "(1) 'Alternative nicotine product' means any manufactured noncombustible product containing nicotine derived from tobacco that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. (b) The term does not include a tobacco product, a vapor product, or 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."
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> "(7)(a) '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. (b) 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.

These two statutory definitions are important with respect to being informed/aware of Montana state law for the reason the 2015 Montana State Legislature inserted the terms "alternative nicotine product' "or vapor product" into Montana state criminal law section 45-5-637 MCA entitled "POSSESSION OR CONSUMPTION OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS BY PERSONS UNDER 18 YEARS OF AGE PROHIBITED-UNLAWFUL ATTEMPT TO PURCHASE-PENALTIES."

In part section 45-5-637 MCA states that: "(1) A person under 18 years of age who knowingly

possesses or consumes a tobacco product, alternative nicotine product, or vapor product as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product, alternative nicotine product, or vapor product.

Subsection 45-5-637(4) MCA provides in pertinent part that "(4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product, alternative nicotine product, or vapor product as defined in 16-11-302.

It should also be noted that pursuant to section 45-5-623 MCA entitled "UNLAWFUL TRANSACTIONS WITH CHILDREN", it is unlawful for a person to "knowingly":

(1) Give explosives to a child;
(2) Give intoxicating substances other than alcoholic beverages to a child;
(3) Give alcoholic beverages to a person under the age of 21;
(4) For junk dealers. Pawnbrokers and pawnbrokers to receive or purchase goods from a child under the age of majority without authorization from parent or guardian
(5) Tattoos or provides a body piercing on a child under the age of majority without the explicit in person consent of the child's parent or guardian.

It is noteworthy that currently section 45-5-623 MCA does not address tobacco products being purchased by or given to a person under the age of 18.

Generally, the Montana criminal code definition of "child" is defined as any individual under 18 years of age. See subsection 45-2-101(6) MCA.

JIM NUGENT