

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2020-007

**TO:** Mayor, City Council, Ellen Leahy, Mike Colyer, Scott Hoffman, Richard Stepper, Charmell Owens, Marty Rehbein, Kirsten Hands, Kelly Elam, Jeff Brandt, Gordy Hughes, Brad Davis

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** February 7, 2020

**RE:** Pursuant to Montana's YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT, Section 16-11-311 MCA, a local government may by ordinance adopt regulations that are no more stringent than Montana's YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT.

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### **FACTS:**

During recent discussions pertaining to the City of Missoula's local government power to potentially regulate vaping or flavored tobacco products, there has been inquiry as to what local government regulatory power might exist in conjunction with any Montana state laws addressing the identical topic

### **ISSUE(S):**

What does the Montana "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT" state with respect to local regulations?

### **CONCLUSION(S):**

Pursuant to section 16-11-311 MCA of Montana's YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT", a local government may by ordinance adopt regulations that are no more stringent than the provisions of the YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT.

### **LEGAL DISCUSSION:**

Montana state law in title 16, chapter 11, part 3 MCA sets forth Montana's "YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT". Section 16-11-311 MCA of this act is entitled "LOCAL REGULATIONS".

Section 16-11-311 MCA states:

**“16-11-311. LOCAL REGULATIONS.** A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308 MCA.”

Montana state law, section 7-1-113 MCA, also provides that a local government with self-government powers is prohibited the exercise of any power inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation. The statutory guidance provided by the Montana State Legislature in section 7-1-113 MCA as to what “inconsistent” means is to provide that the exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower than those imposed by state law or regulation.

Section 7-1-113 MCA states:

**“7-1-113. CONSISTENCY WITH STATE REGULATION REQUIRED.** (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.  
(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are less stringent than those imposed by state law or regulation.  
(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.”

“Youth” is defined in Montana’s Youth Court Act in sub-section 41-5-103(16) MCA as meaning “An individual who is less than 18 years of age without regard to sex or emancipation.”

**CONCLUSION(S):**

Pursuant to section 16-11-311 MCA of Montana's YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT", a local government may by ordinance adopt regulations that are no more stringent than the provisions of the YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT.

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/s/

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Jim Nugent, City Attorney

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