

PROPOSED AMENDMENT #2

ORDINANCES OF THE CITY OF HELENA, MONTANA

ORDINANCE NO. 3247

AN ORDINANCE PROHIBITING SELF-SERVICE DISPLAYS OF TOBACCO PRODUCTS

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

That Title 4, Business Regulations, of the Helena City Code is hereby amended by adding a new Chapter 14, Sale of Tobacco, as follows:

CHAPTER 14 SALE OF TOBACCO

SECTION:

- 4-14-1: INTENT
- 4-14-2: DEFINITIONS
- 4-14-3: SALE OF TOBACCO PRODUCTS BY SELF-SERVICE DISPLAY PROHIBITED
- 4-14-4: COMPLIANCE AND INSPECTIONS
- 4-14-5: VIOLATIONS AND PENALTIES
- 4-14-6: SEVERABILITY

4-14-1: INTENT: It is the intent of the City Commission in enacting this ordinance to protect public health and welfare by reducing access to flavored tobacco products and self-service

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access to tobacco products, making it easier to quit and more difficult to start.

4-14-2: DEFINITIONS: The following words and phrases, whenever used in this article, have the meanings defined in this section unless the context clearly requires otherwise:

Tobacco Product:	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 by any other means, including but not limited to cigarettes, cigars, hookahs, pipes, electronic cigarettes, e-cigars, electronic pipes, vape pens, or electronic hookahs. 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 sold separately. The term 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.
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Tobacco Retailer:	Any person who distributes tobacco, or tobacco products. "Tobacco Retailing" means the doing of any of these things. This definition is without regard to the quantity of tobacco products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.
Self-Service Display:	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 without a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer.
Distribute:	To give, deliver, sample, or sell; to offer to give, deliver, sample, or sell; or to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

4-14-3: SALE OF TOBACCO PRODUCTS BY SELF-SERVICE DISPLAY

PROHIBITED: A tobacco retailer may not distribute tobacco products by means of a self-service display. The purchaser may not take possession of the tobacco product until after payment has been received and processed. This section does not apply to

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facilities where the tobacco retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

4-14-4: COMPLIANCE AND INSPECTIONS:

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Inspections:
 - 1. Inspections will occur biannually during the first year of ordinance implementation.
 - 2. Inspections will occur annually after the first year of implementation.
- C. Inspections will be conducted following all confirmed violations.

4-14-5: VIOLATIONS AND PENALTIES: It is a violation for any person to fail to comply with the requirements of this chapter. If a person is found to have violated this chapter, the person may be is guilty of a misdemeanor:

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- A. Violations within sixty (60) days of effective date of this chapter will result in a warning letter and education.
- B. Upon conviction of a first violation of this chapter the Helena Municipal Court must impose a fine of at least five hundred dollars (\$500).
- C. Upon conviction of a second violation of this chapter the Helena Municipal Court must impose a fine of at least seven hundred fifty dollars (\$750).
- D. Upon conviction of a third violation of this chapter the Helena Municipal Court must impose a fine of at least one thousand dollars (\$1,000).
- E. Each day of violation constitutes a separate offense. Failure to comply with any provision of this ordinance constitutes grounds for the denial of, refusal to renew, suspension of, or revocation of any food, liquor, tobacco, or other business license issued by the city.

4-14-6: SEVERABILITY: If any portion of this chapter, or its application to any circumstances, is held invalid, the remaining

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portions are severable, and must be given effect to the maximum extent possible. (Ord. 3247, 10-29-2018)

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA,
THIS 15TH DAY OF OCTOBER, 2018.

MAYOR

ATTEST:

CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA,
MONTANA, THIS 29TH DAY OF OCTOBER, 2018.

MAYOR

ATTEST:

CLERK OF THE COMMISSION