



August 15, 2014

Council President Kathy Lantry  
Council Member Dai Thao  
Council Member David Thune  
Council Member Chris Tolbert  
Council Member Russ Stark  
Council Member Amy Brendmoen  
Council Member Dan Bostrom  
St. Paul City Council  
15 West Kellogg Blvd.  
St. Paul, MN 55102

**Subject: Proposed Tobacco Ordinance No. 14-34**

Dear Council President Lantry and Council Members:

As the legal counsel for the National Association of Tobacco Outlets, Inc. (NATO), a national retail tobacco trade association, I am submitting this letter regarding Ordinance No. 14-34 which would prohibit the sale of cigars in packages of less than five, except a single cigar could be sold for a mandated retail price of \$2.10 or more. NATO and its member stores located in St. Paul have serious concerns about the ban on the sale of certain cigar packages and the financial impact that such a ban will have on all retailers, including small, family-owned stores.

**“Purpose and Findings of Fact” Not Comprehensive**

The document titled “Purpose and Findings of Fact” that accompanies Ordinance No. 14-34 is incomplete and does not include important information for the city council to review as it considers this prohibition on the sale of certain cigar package sizes and the impact on local retailers. For this reason, I am enclosing with this letter the following documents that are summarized below:

1. 2012 Annual Synar Report: Tobacco Sales to Youth.
2. U.S. Food and Drug Administration “Tobacco Retail Inspection Contracts” Report.
3. U.S. Food and Drug Administration Retail Tobacco Inspections in St. Paul (2012-2014).

The “Purpose and Findings of Fact” document does not include the 2012 Annual Synar Report which is a report of an on-going federal government program to decrease youth access to tobacco

by requiring states to conduct annual, random, unannounced inspections of retail stores that sell tobacco products. As shown on Page 6 of the accompanying 2012 Annual Synar Report, Minnesota retailers inspected by the Minnesota Department of Human Services had a 97.6% compliance rate by not selling tobacco products to a minor (a 2.4% violation rate). This is the highest Synar program success rate ever reported by the State of Minnesota and ranks second highest in the country in preventing the sale of tobacco to minors.

In addition, the accompanying documents show that the U.S. Food and Drug Administration has contracted with the Minnesota Department of Human Services since 2012 to conduct retail compliance inspections on tobacco retailers, including St. Paul retailers. The attached spreadsheet printed from the U.S. Food and Drug Administration's website lists 457 St. Paul retail stores inspected by the Minnesota Department of Human Services from 2012-2014 and only one St. Paul store has ever sold a tobacco product to a minor. This almost perfect compliance further corroborates the very high Synar retail compliance check data.

Both the Synar and FDA retail compliance check programs are conducted under strict procedures and provide scientific and documented proof that St. Paul retailers are complying with the law and preventing underage minors from purchasing tobacco products, including cigars.

### **Social Sources and Enabling Access to Tobacco Products**

Although St. Paul retailers are clearly complying with the law and preventing youth from obtaining tobacco products, including cigars, the "Purpose and Findings of Act" document does not mention the role that "social sources" play as an avenue for underage individuals to obtain tobacco products. Generally, social sources include friends, adult age siblings, parents, and even strangers who obtain or purchase tobacco products and then provide them to youth who are not of legal age.

The U.S. Centers for Disease Control conducts an annual survey called the National Youth Tobacco Survey, which empirically establishes sources other than retail stores that minors rely on to obtain tobacco products. Specifically, the youth surveyed for the 2012 National Youth Tobacco Survey listed the following responses regarding how and where they obtain cigars:

- "I had someone buy cigars for me."
- "I asked someone to give me a cigar."
- "Someone offered me a cigar."
- "I bought a cigar from a person."
- "I took a cigar from a store or another person."
- "I got a cigar some other way."

These responses identify two separate, but equally important characteristics of the social sources problem. First, underage youth enlist the assistance of someone else to give them cigars or purchase cigars for them. Second, someone on their own volition offers cigarettes to underage youth. In these situations, individuals who may or may not be of adult age are enabling minors to have access to cigars and potentially other tobacco products as well. These "enabling" persons are perpetuating the ability of youth to have access to tobacco products and are hindering further success in reducing the rate of underage youth tobacco use.

With retailers proving that they are complying with the law, Ordinance 14-34 is devoid of any provisions to address the social sources problem and, until it is addressed, the proposed ban on selling cigars in packages of less than five with the exception of selling a single cigar at a retail price of at least \$2.10 will have little, if any, impact on the youth tobacco use problem in St. Paul.

### **Negative Impact on St. Paul's Retail Stores**

On average, a retail store relies on sales of tobacco products for as much as 40% of in-store sales. This proposed ban on cigars sold in packages of less than five will literally require retailers to remove fifty, sixty, seventy or even more cigar packaged products from their store shelves. This will result in a significant decline in sales even though the compliance inspection data from the Synar Report and the U.S. Food and Drug Administration proves that retailers are not a source of cigars for underage youth.

If this ordinance is enacted, then adults will simply drive to Minneapolis and surrounding suburbs to purchase not only cigar products, but their gasoline and other items that they would normally buy at their local St. Paul store. The sales decline for some small, family-owned retail stores could be so severe that employees could be laid off.

Moreover, a retailer that is contemplating opening a new store in St. Paul may decide not to do so because of the inability to offer customers packaged cigar products. This would impede economic development in St. Paul and create an anti-business environment.

For all of these reasons, please consider opposing Ordinance 14-34. Thank you for your consideration.

Sincerely,

Thomas A. Briant  
NATO Executive Director and Legal Counsel