

URGENT!

March 25, 2015

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

Subject: Proposed Ordinance 15-12: Amending Section 324 of the Legislative Code Restricting Retail Tobacco License Issuance

Dear Council President Stark and Council Members:

The undersigned retail trade associations have serious concerns with the lack of timely notice, the underlying purpose, and practical effect of Ordinance 15-12 that is scheduled for a public hearing today before the City Council. Based on these concerns, we ask that the city council postpone any formal action on Ordinance 15-12 so that the respective retail trade associations listed below and their retail members can gain an understanding of the proposed licensing restrictions and provide the city council with appropriate feedback.

Timely Notice

We learned of Ordinance 15-12 yesterday afternoon and with a public hearing scheduled on the proposed ordinance today, there has not been sufficient time to fully understand the restrictions being proposed on the issuance of a retail tobacco license for a store location where a retail license had been previously revoked. To allow for appropriate review and dialogue on the proposed ordinance, we collectively ask for a postponement of any formal city council action on Ordinance 15-12.

Underlying Purpose and Practical Impact

The language of the proposed amendment to Section 324.01 is confusing and raises many serious questions about the purpose of the amendment and the impact that the amendment would have on a retailer's ability to obtain a retail tobacco license for a store location where a license had been previously revoked. A copy of the proposed amendment to Section 324.01 accompanies this letter as Exhibit A. The questions that we list below demonstrate why the amendment as drafted is confusing and unduly restrictive:

1. Does the prohibition on issuing a retail tobacco license for a store location which had a retail tobacco license revoked previously apply to the retail applicant which held the

license that was revoked or to a “new applicant” that did not previously obtain a retail tobacco license for that location?

This language is confusing because proposed Section 324.01(d) is a blanket prohibition on the issuance of a retail tobacco license for a store which had its license previously revoked, but Section 324(d) allows an exception for a “new applicant”. For example, if Retailer A was originally issued a license which was subsequently revoked, is Retailer A forever prohibited from obtaining a retail tobacco license for that location in the future? Or, is only a “new applicant” allowed to apply for a license for that store location?

2. What is the underlying basis for requiring a “new applicant” to currently have another existing tobacco license for a retail store in St. Paul in order to apply for a license to operate at a location where the license was previously revoked? This would essentially preclude any retailer that is not currently licensed in St. Paul from applying for a retail tobacco license and, thus, restrict retail economic development.
3. What is an “adverse action” as that term is used in Section 324.01(d)(1)(iii)? A “new applicant” is not allowed to have had an “adverse action” within the past two years, or been subject to no more than one adverse action in the past five years, or be subject to a pending “adverse action”. A review of the definitions of terms under Section 324 provides no explanation of what constitutes an “adverse action”. This lack of a definition of an “adverse action” will leave retailers guessing what constitutes an “adverse action” and whether an application for a retail tobacco license may be denied.
4. Under Section 324.01(d)(2), why would a retailer that does not currently hold a retail tobacco license in St. Paul and who wants to operate a retail store at a location in the city where another retailer’s license had been previously revoked, be required to demonstrate absolute compliance with every single business license the retailer has held for the previous five years and not have a single violation of any law related to operating a retail establishment within the past five years?

This requirement of an absolutely perfect record in complying with every requirement for each business license that a retailer has held for the previous five years will likely disqualify any retailer that does not currently hold a St. Paul retail tobacco license from being issued a license. In fact, based on a literal reading of this proposed section, if one of a retailer’s employees in a store located in any Minnesota city other than St. Paul inadvertently sold a tobacco product to a minor four years ago and the store received a citation for that sale, and assuming that this retailer has complied with every other aspect of each retail business license for the retailer’s stores since that time, the proposed ordinance amendment would disqualify that retailer from being issued a license to operate a retail store in a St. Paul location that had a previously revoked license. This result is overbroad, arbitrary and capricious. What is the rational legal basis to deny the issuance of a retail tobacco license based on such restrictive and overreaching requirements?

5. Given all of this confusion and the questions raised by that the proposed amendment to Section 324.01, is the underlying purpose of the amendment to Section 324.01 to reduce the number of retail stores in the City of St. Paul that sell tobacco products?

6. Why does the amendment to Section 324.01 require five affirmative votes of council members, which is a super majority, to approve the issuance of a retail tobacco license?

This requirement for a super majority of council members to approve a tobacco retail license will only make it that much more difficult for a retailer to obtain a license for a location where a license was previously revoked.

For all of the reasons and questions stated above, we respectfully request that the St. Paul City Council postpone any formal action on Ordinance 15-12 to allow for appropriate review and dialogue between the city council, city staff, and retailers that sell tobacco products in St. Paul.

Sincerely,

National Association of Tobacco Outlets

*By: Thomas Briant
Executive Director*

Minnesota Retailers Association

*By: Bruce Nustad
President*

Minnesota Grocers Association

*By: Jamie Pfuhl
President*

Minnesota Service Station and Convenience Store Association

*By: Lance Klatt
Executive Director*

Minnesota Petroleum Marketers Association

*By: Kevin Thoma
Executive Director*

Exhibit A

Ordinance 15-12

Section 324 of the Legislative Code is hereby amended to read as follows (new text in red):

Sec. 324.01. - License required.

(a) No person shall sell or offer for sale at retail within the City of Saint Paul any tobacco, or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any tobacco, or maintain a tobacco vending machine for the sale of tobacco without a license.

(d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years, subject to the following exceptions:

(1) Notwithstanding subdivision (d), a license may be issued if the new applicant:

- i. Currently holds another tobacco license in the City of Saint Paul;
- ii. Has held the license for at least five (5) years; and
- iii. The license:
 1. Has not been subject to adverse action within the past two (2) years;
 2. Has been subject to no more than one (1) adverse action within the past five (5) years; and
 3. Is not the subject of any pending adverse actions.

(2) Notwithstanding subdivision (d), a license may be issued if the new applicant is otherwise able to demonstrate at least five (5) years of previous experience operating a tobacco retail establishment in a law-abiding manner in the State of Minnesota. In considering an application made pursuant to this subsection, the factors to be considered by the council include, but are not limited to:

- i. Any adverse or disciplinary actions against any business licenses held by the applicant in the previous five (5) years; and
- ii. Any violations of the law related to operating a retail establishment, committed by the applicant in the previous five (5) years, regardless of whether any criminal charges have been brought in connection therewith.

(3) Any license granted pursuant to subpart (d)(1) or (d)(2) must be approved by the affirmative vote of no less than five (5) members of the council.

SECTION 2

This ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.