Association for Nonsmokers-Minnesota

February 19, 2016

Council President Russ Stark
Councilmember Dai Thao
Councilmember Rebecca Noecker
Councilmember Chris Tolbert
Councilmember Amy Brendmoen
Councilmember Dan Bostrom
Councilmember Jane Prince

Re: Appeal of Mark Santi, Imperial Vapor, LLC to a correction notice-Complaint Inspection
841 Grand Avenue

Imperial Vapor, through their attorney, claims that there is no violation because this shop should not be treated as a tobacco shop. They are incorrect.

When e-cigarettes were first imported into the US, primarily from China, the federal government considered them to be drug delivery devices and should be regulated like other nicotine delivery devices such as nicotine inhalers and nicotine patches. Since e-cigarettes had not gone through any of the testing required for drug delivery devices, the government seized all known products as they entered the US.

Objecting to this, the e-cigarette industry sued. They claimed e-cigarettes are not drug/nicotine delivery devices but rather, they are tobacco products like chewing tobacco and cigarettes. In 2011 the industry prevailed in court over the government. The confiscation of products at the border ended. Further, the industry was banned from making medical/smoking cessation claims about their products as the ruling determined that e-cigarettes are tobacco products.

After this ruling state and local governments began to add e-cigarettes to their definition of tobacco products, placing them on the long list of such products and include cigarettes, cigars, chewing tobacco, snuff, and dissolvables. Minnesota was one of the first states to add e-cigarettes to its legal definitions. (Relevant citations are listed below.) This means that a license is required of anyone selling e-cigarettes; people under the age of 18 can neither legally purchase nor use them; local units of government must conduct regular compliance checks on age-of-sale laws; tobacco taxes are imposed; and except in shops whose sales are at least 90% tobacco; all products must be stored behind the counter and be customer-assisted. Minnesota law is clear and unambiguous. E-cigarettes are tobacco products and a license is required to sell them.

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COMMUNITY HEALTH CHARITIES MINNESOTA

Saint Paul's ordinance was amended to come into compliance with state law. Saint Paul imposes additional restriction on tobacco product shops to avoid clusters of these shops. Further, Saint Paul recently passed an ordinance which restricts the sale of most flavored tobacco products to adult only tobacco product shops.

While a store selling e-cigarettes is certainly legal in Saint Paul and there are several, state law and city ordinance requires a tobacco license.

Material provided to the council by the industry attempted to focus on the benefits of e-cigarettes over traditional tobacco products. Whether or not they are correct in those statements, they are irrelevant to the issues before the council. Much council time and effort have been expended in creating ordinances and enforcement mechanisms. The failure of Imperial Vapor to comply with those ordinances is blatant and we strongly support the city's enforcement efforts.

Jeanne Weigum, President

cc: Marcia Moermond, Legislative Hearing Officer
Therese A. Skarda, Assistant City Attorney
Peter W. Warner, Assistant City Attorney

Below are the relevant state laws:
E-Cigarettes Are Taxable - Minnesota Department of Revenue -
http://www.revenue.state.mn.us/businesses/tobacco/Pages/e-Cig.aspx

"E-cigarettes and e-juice are considered tobacco products and are subject to the Tobacco Tax, which is currently 95 percent of the wholesale cost of any product containing or derived from tobacco."

461.12 subd. 1 - https://www.revisor.mn.gov/statutes/?id=461&view=chapter#stat.461.12

"A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco, tobacco-related devices, and *electronic delivery devices* as defined in section **609.685, subdivision 1**, and nicotine and lobelia delivery products as described in section **609.6855**, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco, tobacco-related devices, *electronic delivery devices*, and nicotine and lobelia products"

609.685 subd. 1(c) - https://www.revisor.mn.gov/statutes/?id=609.685#stat.609.685.1

"Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. *Electronic delivery device includes any component part of a product, whether or not marketed or sold separately.*