

From: Thomas Briant [<mailto:info@natocentral.org>]

Sent: Tuesday, June 19, 2018 9:27 PM

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Subject: NATO: Tobacco License Cap Ordinance

NATO

DATE: June 19, 2018

TO: City Council President Amy Brendmoen and City Council Members

FROM: Thomas Briant, Executive Director and Legal Counsel

On behalf of the retail stores located in St. Paul that are members of the National Association of Tobacco Outlets (NATO), I am submitting the attached letter which outlines the concerns with Ordinance 18-19 that would cap the number of retail tobacco licenses. As noted in the letter, the ordinance is unnecessary as the cumulative impact of the city's flavored tobacco restrictions coupled with the expected significant decrease in tobacco product sales once the menthol cigarette and mint and wintergreen tobacco product sales restrictions take effect on November 1st will result in store closures reducing the number of stores in the city.



June 19, 2018

Council President Amy Brendmoen
Council Member Dai Thao
Council Member Rebecca Noecker
Council Member Chris Tolbert
Council Member Samantha Henningson
Council Member Dan Bostrom
Council Member Jane Prince
St. Paul City Council
15 Kellogg Blvd. West
St. Paul, MN 55102

RE: Proposed Ordinance 18-19: Limiting the Number of Retail Tobacco Licenses

Dear Council President Brendmoen and Council Members:

As the Executive Director and Legal Counsel of the National Association of Tobacco Outlets (NATO), a national retail trade association, and on behalf of the St. Paul retail stores that are members of NATO, I am writing to submit our concerns regarding Ordinance 18-19 that would set a limit on the number of retail tobacco licenses that can be issued by the City of St. Paul.

St. Paul's Tobacco Ordinances Contradict the City's Economic Development Strategy

The City of St. Paul has established priorities to enhance economic growth. In the accompanying Planning and Economic Development Department's brochure titled "2016-2018 Economic Development Strategy," these priorities include "a fair and balanced regulatory environment," "retaining and helping existing [businesses] succeed and grow," and "market the City...as a place for growing businesses...[s]trengthening Saint Paul's competitive advantages." Retail stores are an important part of a city's economy and exist to serve the needs of residents. However, the enactment of ordinances to prohibit the sale of flavored tobacco products in the vast majority of St. Paul retail stores, compounded by the upcoming ban on the sale of menthol cigarettes and mint and wintergreen flavored tobacco products, are in direct contradiction to the goals of a fair regulatory environment, helping businesses succeed, and marketing St. Paul as a competitive city.

Fairness assumes that businesses are treated equally, and banning the sale of flavored tobacco products, menthol cigarettes, and mint and wintergreen tobacco products in most, but not all, licensed retail stores in the city is disparate, unfair treatment. These ordinances will not help businesses grow and succeed, but rather harm and eventually force business owners to make the

decision to close their stores. Why? Because for the average convenience store, tobacco sales account for up to 37% of in-store sales according to the National Association of Convenience Stores. By prohibiting the sale of so many tobacco products, the convenience store business model is no longer viable. Finally, these ordinances make St. Paul a less competitive city to locate a store. A retailer that sells tobacco products will likely not consider St. Paul as a viable location for a new store in such a negative business environment.

Ordinance 18-19 is Arbitrary, Capricious and Unnecessary

The cap on the number of retail tobacco licenses under Ordinance 18-19 is a means of artificially controlling a free market that is driven by supply and demand and will only serve to exacerbate the retail environment in St. Paul. Even with these burdensome tobacco product sales restrictions, the market forces in St. Paul are still better suited to sort out what number of retail tobacco licenses are supported by adult consumers. If by some analysis a retailer would determine that the City of St. Paul is a desirable location, the license cap could prevent this retailer from opening a new store or stop an existing retailer from opening another store.

Moreover, any cap on the number of licenses is virtually the definition of being arbitrary and capricious. Setting the number of retail tobacco licenses is an arbitrary exercise because it assumes that the current number of licenses is optimal without any statistical study or factual support. Has the City of St. Paul undertaken any definitive study or analysis why 242 retail tobacco licenses is the correct number of licenses to issue on an annual basis? In addition, other property owners who may have appropriate zoning for a retail store activity would have their rights arbitrarily taken from them without compensation, a matter which may expose the city to litigation. Such policy decisions need careful thought and analysis so as not to stifle economic development in a free market system.

Finally, with a business environment that discourages retail development and the likelihood of retail stores closing once the menthol cigarette and mint and wintergreen tobacco product sales restrictions take effect, an ordinance that sets a maximum number of retail licenses becomes unnecessary since the actual number of stores will most likely be less than 242 as stores close due to the expected significant decline in tobacco sales.

For these reasons, we urge you to not support the adoption of Ordinance 18-19. Thank you for your consideration.

Sincerely,

Thomas A. Briant

Executive Director and Legal Counsel

2016 - 2018 ECONOMIC DEVELOPMENT STRATEGY - SUMMARY

City of Saint Paul • Department of Planning and Economic Development

GOALS

The City of Saint Paul's Department of Planning & Economic Development (PED) has broad responsibility for creating a climate attractive to businesses and people.

PED's Economic Development Strategy for 2016 – 2018 has three goals:

- Increase the number of jobs in Saint Paul, and increase access to jobs and opportunity for residents.
- Grow Saint Paul's tax base to maintain and expand City services, amenities and infrastructure.
- Lower unemployment among the City's diverse populations with disproportionately high unemployment rates.

PRIORITIES

Many elements combine to create economic growth: a dynamic community with housing, infrastructure and amenities attractive to people and businesses; a fair and balanced regulatory environment; and availability of a skilled workforce.

This Strategy is designed to address the elements that are primarily within the purview of PED's Economic Development team, recognizing that other City departments and factors also contribute to economic development.

PED's priorities are:

1. Expand business attraction, retention, and expansion programs to strengthen Saint Paul's employer base.

Retaining and helping existing firms succeed and grow in Saint Paul is a top priority. PED will commit additional staff time to one-on-one outreach to existing businesses in Saint Paul, including major employers, fast-growing firms, small and minority-owned businesses, and start-ups. PED will maintain an active partnership with Chambers of Commerce, Saint Paul Port Authority and GreaterMSP, and coordinate efforts with GreaterMSP's Center Cities Competitiveness Initiative.

2. Support innovative entrepreneurship and small business development to compel new job growth.

Entrepreneurs, including recent immigrants and minority business owners, are critical to job creation in Saint Paul. PED will support entrepreneurs by providing connections to resources and networks.

3. Build and market a compelling Saint Paul brand that conveys the distinct advantages of doing business here.

PED will assertively market the City to business leaders, developers and site selectors, as a place for growing businesses, with talented workers and solid investment opportunities. Stressing Saint Paul's competitive advantages, PED will market development sites and promote the success of businesses and investors that have elected to locate in Saint Paul.

4. Proactively direct new development to certain high-priority geographies and sites in the city.

Attracting employers and investment to key sites that are accessible to residents experiencing high unemployment is a top priority of PED.

5. Invest in downtown Saint Paul to catalyze further economic activity.

The continued vitality of downtown is essential for the overall health of the city. PED will support additional investments that make downtown walkable and vibrant, with a strong sense of place, as well as a center for commerce and high-quality living.

6. Align resources around neighborhoods where attention and investment can create momentum for resurgence, while continuing to build on strengths and opportunities throughout the city.

PED will target efforts to Dayton's Bluff, North End/ Rice Street, Frogtown and Summit-University. These neighborhoods are among the most diverse in the region, and have high levels of unemployment and disinvestment. PED's work in these areas will emphasize improving access to employment and supporting neighborhood business growth.

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