



The National Association of Tobacco Outlets (NATO) and Local Ordinances Related to Tobacco Retailers

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In recent years, an organization known as the National Association of Tobacco Outlets (NATO) has become active in opposing local tobacco retailer licensing ordinances in California. While organizations representing retailers have opposed similar efforts in the past, NATO's recent actions are indicative of their newfound desire to be a strong presence on local policy issues in California. This document contains background information on NATO and the arguments they have made around the state. Additional resources on local ordinances related to tobacco retailers are available at www.center4tobaccopolicy.org/localpolicies-licensing.

What is NATO?

The National Association of Tobacco Outlets is a national trade association representing tobacco retailers around the country. NATO is headquartered in Minneapolis, Minnesota and has been active at the federal, state, and local levels. NATO's 131 members are a mix of tobacco retailers, manufacturers, wholesalers and farmer interests. Members are located in 30 states and Ontario, Canada with a heavy concentration in North Carolina, Virginia, and Florida. There are also concentrations of marketing firms holding memberships in New York and California. NATO seeks to influence governmental policy affecting tobacco retailers by educating legislators and advocating for the passage or defeat of legislation affecting the business interests of its members. NATO also hosts forums for retailers, manufacturers and farmers to discuss new methods of advertising and other issues of importance to the tobacco industry.

Where has NATO been active in opposing local policy efforts?

Historically, NATO has been active on the East Coast in states like Massachusetts, Virginia, Rhode Island, Illinois, Maryland and Vermont, but its reach has expanded to other states, including California. In February 2012, NATO launched an initiative to increase its impact across the country on local governmental policy affecting advertising in the tobacco retail environment. As part of this initiative, NATO asked its members for any and all information on local tobacco ordinances which impact their business. Since the launch, it has responded on behalf of hundreds of retail stores to local proposed regulations and is currently tracking and monitoring local and state issues such as tobacco retailer licensing.

In 2012, NATO filed a lawsuit in Federal Court to overturn a local ban on the sale of flavored non-cigarette tobacco products and pricing/discount strategies in Providence, Rhode Island; the judge dismissed NATO's complaint and upheld the constitutionality of the flavored tobacco and

pricing/discount ordinances. NATO appealed this decision to the U.S. Court of Appeals for the First Circuit, which unanimously affirmed the district court's ruling in September 2013.

In California, NATO has been tracking local ordinances in Sonoma County, Dublin, Gilroy, Morro Bay, and Lynwood. In 2012, NATO actively opposed licensing policies in several cities including Parlier (in Fresno County) and Lynwood (in Los Angeles County), where NATO collaborated with the Cigar Retailers Association to submit letters to the city council. More recently, NATO has been active in Berkeley, El Cerrito, the city of Sonoma, Sonoma County, and the city of San Diego.

Is there a connection between NATO and the tobacco industry?

The tobacco industry helped launch NATO when RJ Reynolds Tobacco and US Smokeless Tobacco Company each provided \$7,500 in startup dues in 2001. Records show that throughout the initial months of operation, RJ Reynolds received regular updates from NATO Executive Director Thomas Briant regarding strategies for recruiting local tobacco retailers as members and the organization's budget and expenditures. Many of the tobacco industry companies, such as Phillip Morris USA, RJ Reynolds Tobacco, and Lorillard are current members, as is NJOY, Inc., one of the leading electronic cigarette manufacturers. Furthermore, RJ Reynolds Tobacco, Lorillard and Phillip Morris USA (i.e., Altria Client Services) occupy three of the 24 seats on the NATO Board of Directors.

What arguments is NATO making in opposition to local policy efforts?

In letters to elected officials and comments at public hearings, NATO has made several arguments to delay, weaken or block the passage of tobacco retailer licensing ordinances or other restrictions like the ban on tobacco retailers within one thousand feet of schools. These arguments are listed below along with some information to counter those arguments. A more in-depth question and answer document, *Becoming a Policy Wonk on Local Tobacco Retailer Licensing*, is available from the Center at www.center4tobaccopolicy.org/localpolicies-licensing.

- 1. NATO Claim: Retailer licensing ordinances are discriminatory and will be devastating to business.* A strong tobacco retailer licensing ordinance gives local communities new tools to enforce state laws prohibiting the sale of tobacco products to minors. It penalizes retailers caught selling to minors with appropriate penalties including suspending that retailer's license to sell tobacco. Law abiding retailers benefit when their competitors no longer rake in profits from illegal sales. A small annual fee of a couple of hundred dollars will not burden retailers who sell tobacco products. Cigarette sales generate more than \$500,000 in revenue for the average convenience store each year. And restricting the sale of tobacco products near schools makes sense because studies show that those retailers sell more tobacco illegally to kids than retailers located further from schools. However, these restrictions do not prevent retailers from selling other products and do not force them to close their business.
- 2. NATO Claim: Local policies that prohibit self-service displays of tobacco products do not make sense for adult only shops and inhibit the experience of premium cigar customers who prefer to personally select the product.* Self-service displays are an easy way for youth to access tobacco products. Certainly it is illegal for youth to be present in adult-only stores, but compliance is not ensured. For this reason it is important to ensure that a responsible person, such as a clerk, act as a barrier between tobacco products and our children. Furthermore, premium cigar customers will not miss out on the experience of holding and selecting the cigar of their choice, the only difference is that they do so with the assistance of a clerk.

3. *NATO Claim: It is against the law to impose a ban on the use of coupons and non-sale distribution of tobacco products.*

Distributing free and low cost tobacco products is a standard tactic of tobacco companies to recruit new young smokers and build and retain customer support and loyalty. It is called sampling or non-sale distribution. In California, tobacco companies regularly distribute their products or coupons at young adult, family and youth oriented events including bar nights, rodeos, festivals, and county fairs. California state law explicitly allows local jurisdictions to enact stricter restrictions than the state law on the sampling of tobacco products in order to limit the number of new youth smokers. Several cities, including Chico and San Francisco, have already adopted strong local policies.

4. *NATO Claim: Banning the sale of individual cigars is unfair and unjustified.*

The purpose of requiring several little cigars and cigarillos to be packaged together is to limit the number of inexpensive, individually sold little cigars and cigarillos which are preferred by youth. The tobacco companies market these products to youth and youth are the predominant users. A local ordinance that prohibits the sale of individual little cigars and cigarillos, requiring them to be sold in quantities of at least two or more will increase the purchase price and help protect youth from the health dangers of using tobacco. This provision will not require retailers to repackage these products because they arrive from the manufacturer packaged in quantities of two or more and it is the retailer who breaks open these packages to sell the little cigars and cigarillos individually.

5. *NATO Claim: Tobacco product and electronic cigarette advertising restrictions violate constitutional protections*

Local laws that prohibit advertising or promotion of tobacco products on any advertising display in a publicly visible location have been challenged by NATO. The purpose of these regulations is to discourage illegal sales and furnishing of tobacco products to minors by restricting advertising that induces minors to buy or steal and use tobacco products. NATO claims that product advertising, including the advertising of tobacco products, constitutes “commercial speech” and is thus afforded First Amendment constitutional protections. Certainly, any city or county proposing advertising ordinances must be in compliance with federal law and First Amendment commercial speech principles. However, there are multiple options available in preventing and discouraging use of tobacco products by minors. Advertising and promotion of tobacco products may be regulated with time, place and manner restrictions, so long as the content of the ad itself is not regulated. Further, cities and counties may regulate the use and sale of tobacco products and may utilize zoning measures to do so.