June 2017

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/tobacco-policy/tobacco-retail-environment/.

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 51,000 members are a mix of tobacco retailers, manufacturers, wholesalers, and farmer interests. 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. While NATO previously hosted trade shows and other tobacco-related events, in 2016 the organization announced that it would shift its focus to exclusively work on legislative and regulatory issues.

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 recently it's reach has expanded significantly to other states, including California. In February 2012, NATO launched its Local Projects initiative to increase its nationwide impact on local governmental policy affecting the tobacco retail environment. As part of this initiative, NATO asked its members to submit information on any local tobacco ordinances affecting their businesses. NATO also partnered with tobacco manufacturer Swedish Match to launch Tobacco Ordinances - Take Another Look (T.O.T.A.L.), a website that tracks local tobacco retail ordinances and provides resources to those in opposition of the ordinances.

In California, NATO has been most active in its opposition of local ordinances seeking to ban flavored tobacco products. NATO representatives have recently provided testimony in opposition to flavor and menthol bans at city council meetings in San Francisco, San Leandro, and Oakland.
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 and RJ Reynolds Tobacco are current members, as is NJOY, Inc., one of the leading electronic cigarette manufacturers. Furthermore, representatives of tobacco manufacturers such as RJ Reynolds Tobacco and Phillip Morris USA (i.e., Altria Client Services) occupy seven of the 24 seats on the NATO Board of Directors. NATO also operates T.O.T.A.L., a website offering resources in opposition to retail ordinances, with tobacco manufacturer Swedish Match.

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/tobacco-policy/tobacco-retail-environment/.

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.

6. **NATO Claim: Since youth primarily acquire tobacco products via social sources such as older friends and family members, tobacco retail restrictions burden retailers but will have little effect on youth smoking rates.**

While social sources are an important avenue through which youth acquire tobacco, a significant percentage of
youth purchase tobacco products directly from retailers. Recent legislation that raised the minimum age to purchase
tobacco should reduce youth access to social sources, as fewer teen social groups include those old enough to
legally purchase. However, strong, local retail laws are the best way to prevent youth from purchasing tobacco
themselves and prevent them from being exposed to tobacco marketing. Retail ordinances which prohibit the sale
of flavored tobacco ensure that neither youth nor their potential social sources have access to the fruit and candy
flavored products favored by so many young tobacco users. Additionally, tobacco manufacturers have a long history
of targeting youth with their products. Retail policies which restrict tobacco retailers near schools or reduce the
density of retailers reduce the amount of tobacco products and advertising children are exposed to.