



The Neighborhood Market Association and Local Ordinances Related to Tobacco Retailers November 2011

In the past year, the Neighborhood Market Association (NMA) has become active throughout California in opposing local tobacco retailer licensing ordinances and ordinances that restrict tobacco retailers from being located within a certain distance of schools (conditional use permits, zoning ordinances, etc.). While organizations representing retailers have opposed similar efforts in the past, the NMA's actions show a more coordinated effort that includes organized opposition at the hearings and specific claims and arguments against strong local policies. This document contains background information on the NMA 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 the NMA?

The Neighborhood Market Association is a trade association that represents family and independently owned grocers and convenience stores and has more than 2,000 members, many of whom sell tobacco products. The organization is based in San Diego and was formerly called the California Independent Grocers & Convenience Stores. While the NMA represents retailers statewide, the organization has a strong San Diego focus. More than half of the members of the Board of Directors come from that region and the organization was first active in opposing local tobacco control policies in San Diego County.

Where has the NMA been active in opposing local policy efforts?

In just the past year, the NMA has opposed local tobacco retailer licensing ordinances or restrictions on sales near schools in Fresno, San Jose, Santa Clara County, Santa Cruz County and West Hollywood. In these municipalities, the NMA has sent letters to the elected officials, organized retailers, spoke at council and board hearings, asked for delays and submitted weak alternative ordinance language. The NMA has also attended tobacco control coalition meetings.

The NMA has opposed tobacco retailer licensing efforts in many jurisdictions in San Diego County since 2004. In 2004, the NMA sent letters to elected officials attempting to discredit the youth purchase survey results conducted by the tobacco control coalition and sent several letters threatening to file a lawsuit related to the use of these youth purchase survey results.

Is there a connection between the NMA and the tobacco industry?

Yes, the tobacco industry and Philip Morris USA in particular are connected to the NMA in several ways. A representative from Philip Morris USA previously served on the NMA's Board of Directors and Philip Morris USA provided \$10,000 in general support funds for the NMA in 2004. In addition, the political action committee for the NMA has taken money from the tobacco industry. So far in 2011, the NMA committee has received \$4,000 in contributions from Philip Morris USA. During the 2009-2010 election cycle, this committee received \$8,000 in contributions from Philip Morris USA. Only two other companies (Viejas Enterprises and Crest Beverage Company) contributed more money than Philip

Morris USA to the NMA committee during the 2009-2010 election. This committee also received contributions from Philip Morris USA during the 2007-2008 election cycle and from both Philip Morris USA and RJ Reynolds Tobacco Company during the 2005-2006 election cycle. Contribution information is publicly available data and can be found on the Secretary of State's website at <http://cal-access.ss.ca.gov/default.aspx>. Reports by the Center on the campaign contributions and lobbying expenditures of tobacco interests that show these contributions to the NMA are available at www.center4tobaccopolicy.org/tobaccomoney.

What arguments are they making in opposition to local policy efforts?

Through letters to elected officials and comments at public hearings, the NMA has made several arguments in an attempt to delay, weaken or block the passage of tobacco retailer licensing ordinances or restrictions on the location of tobacco retailers within a certain distance of schools. These arguments are listed below along with some information to counter that argument. 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. *NMA Claim: Retailers are not informed about upcoming hearings and are not invited to participate in the process of developing an ordinance*

This is a standard tactic of opponents of strong local policies. They claim that they have not been informed about meetings and hearings and just want to postpone the hearing so that they can participate in the process. The reality is they just want to delay the hearing to try and make the issue go away or to get more time to organize opposition. City councils and board of supervisors always provide public notice about upcoming meetings and topics they are considering and retailers have the same access to this information as the public health community. In many cases, elected officials make a concerted effort to reach out to tobacco retailers when considering an ordinance that would impact their business.

2. *NMA Claim: These ordinances will force retailers to go out of business*

The goal of tobacco retailer licensing ordinances is to provide adequate enforcement of state laws that make it illegal to sell tobacco products to minors and provide appropriate penalties that include the suspension of a tobacco retailer license for retailers who break those laws. If a retailer abides by the law and does not sell tobacco products to minors then they have nothing to worry about. A small annual fee of a couple of hundred dollars is not a burden on retailers who sell tobacco products. Cigarettes generate more than \$500,000 in revenue for the average convenience store each year. In terms of restrictions on sales of tobacco products near schools, this only limits the ability of a retailer to sell tobacco products. It does not prevent them from selling other products and does not force their business to close.

3. *NMA Claim: The provision that does not allow a license to be transferred to a new owner constitutes a taking and requires compensation*

California courts have consistently ruled that a license is not a protected property interest, so nontransferability restrictions on the license would not constitute a taking in any event. In addition, the nontransferability provision in a tobacco retailer licensing ordinance does not come close to removing all economic viability from a retailer's business. Retailers are still able to sell many other products and are not completely prohibited from running a business in that location. They can even sell tobacco, they just cannot transfer the license to another person or business.

4. *NMA Claim: State enforcement efforts and penalties are enough, no local license is needed*

Enforcement by local agencies of laws that make it illegal to sell tobacco products to minors through adoption of a local licensing ordinance allows for consistent compliance checks of all retailers and is the most effective strategy for reducing illegal sales. State enforcement efforts are inconsistent, lack real penalties and only check a small percentage of retailers.

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