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Buffalo Tobacco Ordinance Would Overlap Existing Regulation, Feed Black Market Cigarette Trade, Jeopardize Local Jobs

Representatives of Buffalo's convenience store community today questioned the need to saddle struggling neighborhood retailers with a new layer of city tobacco restrictions that would overlap those already being implemented at the state and federal levels and feed the city's thriving black-market cigarette trade.

They said the proposed tobacco control ordinance now being considered by the Buffalo Common Council would jeopardize jobs by making it even harder for their stores to compete with nearby "tax free" tribal outlets, which comply with no state or local tobacco regulations whatsoever, yet indirectly supply at least half the cigarettes consumed in the city.

"As parents, citizens, and community business owners, we share Buffalo's commitment to preventing underage sales of tobacco products," said James Calvin, President of the New York Association of Convenience Stores. "But we cannot support this legislation, because it needlessly piles additional burdens on local retailers at a time when rampant cigarette tax evasion is forcing them to lay off workers, scrap capital improvement projects, and in some cases close their doors for good."

NYACS represents convenience store operators in Buffalo and across the state who are licensed by the State of New York to responsibly sell legal tobacco products to adult customers who choose to use them despite the known health risks. Calvin said NYACS opposes the ordinance because:

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It is duplicative. Tobacco sales are already regulated – extensively – by the federal and state governments. In fact, the U.S. Food and Drug Administration is in the process of implementing comprehensive new tobacco restrictions nationwide, including new graphic images on packages. There’s no need for Buffalo or any other community to leap-frog the FDA by imposing new local laws that rehash the same issues and create redundant bureaucracies.

It would widen the regulatory double standard between licensed, tax-collecting stores and tribal outlets. Native American stores don’t obtain a tobacco license, don’t follow existing tobacco regulations, don’t collect cigarette taxes, and aren’t monitored by the health department to prevent sales to minors. The reward for law-abiding retailers who do comply with all of these is *more* job-killing restrictions on their businesses that their “tax free” competitors will ignore.

It would hurt Buffalo’s economy. With Western New York’s unemployment at 8 percent or higher, and convenience store sales down sharply due to state tax policy, this is hardly the time to be placing additional burdens on law-abiding retailers. Last month, the *Buffalo News* chronicled how one Buffalo-based convenience store chain, Wilson Farms Inc., had to lay off 20 percent of its administrative staff, cut the hours of store employees, and slash capital spending by \$4.5 million – all because of a plunge in sales due to cigarette tax evasion triggered by the 58 percent increase in the state cigarette tax July 1st.

It would promote black-market tobacco sales. Thousands of cartons of untaxed cigarettes purchased at surrounding Native American reservations already find their way onto the streets of Buffalo every week. By arbitrarily capping the number of licensed, tax-collecting, ID-checking retail tobacco outlets in the city, the proposed ordinance would promote the spread of this unregulated black market, increasing the availability of cheap cigarettes to teenagers.

It would infringe on First Amendment rights. The Supreme Court has made it abundantly clear that retailers have a fundamental right to display zoning-compliant signage on their own premises to communicate with their customers about the legal products they sell – including tobacco – without interference from local government.