



Hon. Tyisha Walker-Myers  
President, Board of Alders  
City of New Haven  
165 Church Street  
New Haven, CT 06510

Re: Constitutional Concerns with New Haven's Tobacco Advertising Restrictions

Dear President Walker-Myers and Members of the Board of Alders:

On behalf of the New England Convenience Store & Energy Marketers Association (NECSEMA) and the Connecticut Energy Marketers Association (CEMA), whose members include numerous New Haven retailers and distributors licensed to sell lawful tobacco and smoking products, we write to express serious constitutional and legal concerns with the City's recently adopted ordinance and related Health Department guidance restricting tobacco advertising.

As drafted and implemented, the City's ordinance imposes sweeping, content-based, and speaker-based restrictions on truthful, non-misleading commercial speech directed to adults about lawful products. In material respects, the provisions mirror and, in some ways, exceed advertising restraints that federal courts have invalidated under the First Amendment, including the Supreme Court's decision in *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), and the federal district court's decision in *National Association of Tobacco Outlets, Inc. v. City of Worcester*, 851 F. Supp. 2d 311 (D. Mass. 2012). We urge the City to suspend enforcement of the advertising provisions and engage in prompt revisions to bring the ordinance and guidance into compliance with controlling precedent.

The ordinance functions as a near-blanket ban on adults' ability to receive, and retailers' ability to convey, truthful information about lawful tobacco and smoking products within most ordinary channels of retail communication. As such it violates First Amendment principles and legal precedent, and its overly broad definition of "public places" and its prohibition on ads "visible outside" are not narrowly tailored to address the City's substantial interest in preventing underage use of tobacco and smoking products – an interest our organizations share with the City.

Courts have repeatedly held that sweeping bans on tobacco advertising visible from outside, inside broad geographic zones, or limited to "tombstone" formats fail these requirements. See, e.g., *Lorillard*, 533 U.S. at 561–66; *Nat'l Ass'n of Tobacco Outlets*, 851 F. Supp. 2d at 319–23. The First Amendment protects truthful, non-misleading commercial speech regarding lawful products. See *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S.

557, 563–66 (1980). The Supreme Court’s commercial speech test requires that restrictions directly advance a substantial government interest and are not more extensive than necessary. *Id.*

- In a leading decision, the Supreme Court struck down broad outdoor and point-of-sale advertising restrictions for tobacco within 1,000 feet of schools and playgrounds. *See Lorillard*, 533 U.S. at 561–66. The Court emphasized that while protecting minors is a substantial interest, the government cannot burden speech addressed to adults through an unnecessarily broad suppression of truthful information.
- A federal district court later applied the same analysis to invalidate a municipal ordinance prohibiting tobacco advertising visible from any street, park, or school property across an entire city, finding it overbroad, insufficiently tailored, and incompatible with adults’ right to receive lawful commercial information. *See Nat’l Ass’n of Tobacco Outlets*, 851 F. Supp. 2d at 321–23 (striking Worcester’s citywide outdoor/visible-from-outside ban).

New Haven’s restrictions are materially indistinguishable from, and in some respects broader than, the measures found unconstitutional in these cases. The City’s rules are content-based (singling out tobacco speech), speaker-based (singling out retailers/marketers), and operate as a near-total ban on ordinary, lawful advertising formats, including simple brand or logo displays, color price cards, and in-store, adult-facing signage visible from outside.

Even accepting the City’s substantial interest in preventing underage use, the ordinance and guidance are not narrowly tailored.

- They impose citywide visibility bans and design mandates without differentiation among channels, formats, or locations. The rules do not distinguish small, adult-oriented point-of-sale materials from large, youth-salient displays, nor do they calibrate restrictions to observed youth exposure patterns. *See Lorillard*, 533 U.S. at 563–66 (faulting lack of tailoring by format, size, and location).
- They categorically prohibit commonplace, non-misleading brand and price communications, even inside adult-serving retail environments, and even where the audience is predominantly adult. *See Sorrell*, 564 U.S. at 566–72; *Lorillard*, 533 U.S. at 564–66.
- They ignore less restrictive, effective alternatives such as enforcing existing age-verification laws; targeting specific youth-salient techniques; limiting sign size, placement, or density; restricting only in close proximity to schools during school hours; or adopting content-neutral time, place, and manner rules. *See Lorillard*, 533 U.S. at 563–66; *Central Hudson*, 447 U.S. at 571–72.
- The “tombstone-only” format is an extreme prior restraint that eliminates virtually all ordinary branding speech that courts have recognized as protected commercial expression to adults.

Under the governing commercial speech framework, courts repeatedly reject such across-the-board restraints for failing the “direct advancement” and “not more extensive than necessary” prongs.

Given the close alignment between New Haven’s approach and previously invalidated schemes, the advertising provisions create compliance uncertainty and substantial litigation exposure for the City. If enforced, the rules would suppress lawful in-store communications to adults,

potentially harming small businesses while providing, at best, speculative incremental youth-protection benefits relative to less restrictive measures.

We therefore respectfully request that the City:

- Suspend enforcement of the ordinance’s advertising and “tombstone-only” provisions and the October 1, 2025 guidance while undertaking a legal review.
- Amend the ordinance and guidance to align with controlling precedent by, at minimum:
  1. Eliminating the blanket prohibition on advertisements visible from outside and the categorical ban on colors, logos, and imagery in adult retail settings.
  2. Targeting only those formats and locations empirically associated with youth exposure (e.g., sign size, height, placement) and considering time, place, and manner rules that preserve adult-directed speech.
  3. Limiting geographic constraints to narrowly defined school-adjacent areas, with reasonable time-of-day and distance tailoring that avoids a de facto citywide ban.
  4. Providing clear safe harbors for interior, adult-facing brand and price communications and for small, factual price cards or menu boards.
  5. Emphasizing robust enforcement of age-verification and sales-to-minors laws and increased education and compliance checks, which directly advance the City’s interest without broadly suppressing protected speech.

NECSEMA and CEMA share the City’s goal of preventing underage tobacco use and stand ready to work toward an evidence-based framework that is effective in protecting youth and lawful for adult-directed commercial communications. A narrowly tailored approach will reduce youth exposure risk while respecting constitutional limits and preserving consumers’ and retailers’ First Amendment rights.

Thank you for your consideration. We welcome the opportunity to discuss practical revisions that align policy objectives with the law.

Respectfully submitted,

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