



FOR IMMEDIATE RELEASE
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Joint Statement From Law Department Corporation Counsel Michael A. Cardozo and Health Commissioner Dr. Thomas Farley on the District Court Ruling in Favor of Restrictions on the Sale of Flavored Tobacco Products

Nov. 17, 2011 – Today as the 36th Great American Smoke Out is celebrated across the nation, New York City applauds a Tuesday district court decision by U.S. Southern District Judge Colleen McMahon upholding the City’s ban on the sale of flavored tobacco products.

The City’s law prohibits the sale of flavored tobacco products throughout the five boroughs, except in tobacco bars. The plaintiffs, manufacturers and distributors of smokeless tobacco products, claimed that because federal law regulates various aspects of the sale and use of tobacco products, the City was “pre-empted” from adopting its restrictions on the sale of flavored tobacco. However, in a comprehensive decision Tuesday, the Court rejected that argument, finding that “[w]ith respect to regulations relating to, or even prohibiting sales of tobacco products, local governments are free to go above any federal floor set by either the [federal statute] or by the FDA acting pursuant to it.”

Statement from Law Department Corporation Counsel Michael A. Cardozo:

“The Court’s decision is an important affirmation of the ability of the City and other localities to adopt laws protecting citizens from marketing techniques that are targeted at youth and designed to attract users to tobacco products that have long been determined to pose significant health risks.”

Statement of Health Commissioner Dr. Thomas Farley:

“The decision upholding the ban on flavored tobacco in New York City is an important win for the health of New Yorkers, especially for our young people. Flavored tobacco products are marketed to youth, their packaging resembling that of candy and gum, and young people are twice as likely as adults to try flavored tobacco products. This law ensures that these products, and the tobacco industry’s youth-focused marketing of them, will no longer be in our community.”

The legal team included NYC Health Department General Counsel Thomas Merrill, former Senior Legal Counsel for Tobacco Control Policy at the Health Department Anne

Pearson, and Senior Counsels Michelle Goldberg-Cahn and Sherrill Kurland of the New York City Law Department's Administrative Law Division.

For a quote on this decision from the New York City Council contact Zoe Tobin at the Council's Press Office, 212-788-7116, Press@council.nyc.gov.

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