



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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*For Immediate Release*

**COURT REJECTS CHALLENGE  
TO CITY'S NEWLY ADOPTED RESTRICTIONS  
ON THE SALE OF FLAVORED TOBACCO PRODUCTS**

***FEDERAL REGULATION OF TOBACCO DOES NOT FORECLOSE CITY'S ABILITY  
TO RESTRICT THE SALE OF FLAVORED TOBACCO PRODUCTS***

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New York, March 24, 2010 – An attempt to challenge – or “preliminarily enjoin” -- the implementation and enforcement of the City’s newly adopted restrictions on the sale of flavored tobacco products was rejected late Monday by Southern District Judge Colleen McMahon.

The new City law prohibits the sale of flavored tobacco products throughout the City, except in tobacco bars. The plaintiffs, manufacturers and distributors of smokeless tobacco products claim 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 31-page decision, the Court rejected that argument, finding that “Congress expressed a clear and unmistakable preference for limiting the federal government’s role to setting a floor below which no local sales regulations could go, while remaining sensitive to differing sensibilities about the use of tobacco products in different parts of the country.”

"This decision by Judge Colleen McMahon is not only a win for the children of New York City," said City Council Speaker Christine C. Quinn. "Our law is a good progressive law that will protect our youngest New Yorkers. If tobacco companies think they can fight common-sense legislation, this court decision clearly shows otherwise. This ban is now one of the toughest laws against the sale of cigars and smokeless tobacco in the city. I want to thank the Law Department, our General Counsel, my Council colleagues and advocates in their fight against this lawsuit."

"I applaud today's decision upholding New York City's law against the challenge brought by tobacco manufacturers," said Dr. Thomas Farley, New York City Health Commissioner. "The court's ruling reinforces the authority of local jurisdictions to adopt policies that protect children from tobacco products that are marketed to them. With tobacco the number one killer in New York City, this authority is critical."

New York City's law, which was signed by Mayor Michael R. Bloomberg on Oct. 28, 2009, defines a "flavored tobacco product" as "any tobacco product or any component thereof that contains a constituent that imparts a characterizing flavor." While the definition covers any tobacco product, including cigars and chewing tobacco, it does not include cigarettes because federal law already bans the sale of flavored cigarettes. The City law goes on to state that a "characterizing flavor" is a "distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice."

“The Court correctly upheld this important new law. Mayor Bloomberg, the City Council and the Health Department have made huge strides in working to protect the health of New Yorkers, and we applaud Judge McMahon for her common-sense ruling,” noted Corporation Counsel Michael A. Cardozo of the New York City Law Department.

The City was represented by Sherrill Kurland and Michelle Goldberg-Cahn, both Senior Counsels in the Administrative Law Division of the Law Department as well as Ji Kim, a Special Assistant Corporation Counsel in Ad Law. In addition, Michael Pastor, a Senior Counsel in the Legal Counsel Division, worked on the legislation and supported the litigation.

Kurland noted, “This decision is an important affirmation of the ability of the City and other localities to adopt laws that protect citizens from marketing techniques that may attract users to tobacco products that have long been determined to pose health risks.”

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at [www.nyc.gov/law](http://www.nyc.gov/law).

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