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May 4, 2010

Department of Health & Mental Hygiene
City of New York
125 Worth Street CN-31
New York, New York 10013

Re: Proposed New Rule, "Restriction on the Sale of Certain Flavored Tobacco Products"

To the Department of Health & Mental Hygiene:

The Campaign for Tobacco-Free Kids supports the new regulations the Department proposes to issue to guide compliance with the City's exemplary new law restricting the sale of flavored tobacco products (other than those with tobacco, menthol, wintergreen or mint flavors) only to tobacco bars and to facilitate its enforcement. Sharply restricting the sale of flavored tobacco products is an appropriate, critically important component of any comprehensive effort to prevent youth initiation into tobacco addiction and reduce overall tobacco use and harms.

Pursuant to the proposed regulations, any retailer or other seller of tobacco products will be able to identify quickly and accurately which tobacco products are or are not subject to the new law's restrictions by looking to see if the product's own packaging and labeling says it has a restricted flavor; and, for those with no such markings, checking to see if the tobacco product is on the Department's public list of tobacco products it determines are subject to the law's restrictions despite having no mention of any restricted flavorings on their packaging and labeling.

Under this system, no retailer or other seller is put in the subjective position of having to try to determine whether any tobacco product that is not clearly labeled or packaged as having a restricted flavor actually is still restricted because it has or produces a restricted characterizing flavor. Instead, the new regulations give the Department the full responsibility for determining which tobacco products not clearly labeled and packaged as having restricted flavors are still restricted by the law, and for conveying that information to retailers and other sellers of tobacco products so that they can readily comply with the new law and regulations.

This system not only makes compliance easy for retailers, but makes oversight and enforcement easy, as well. Enforcement officials or other interested parties viewing tobacco products offered for sale at facilities other than tobacco bars need only check to see if the labeling and packaging of any of the tobacco products say that they have restricted flavors or if any of the tobacco products are on the health department's list of other tobacco products with restricted flavors.

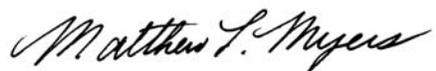
The regulation's requirement that retailers and other sellers of tobacco products keep examples of the original packaging and labeling of any tobacco products they sell outside of their original

packaging and labeling should work to ensure that the law is not evaded by selling tobacco products with restricted flavors either without any packaging or labeling or after placing them in new packaging or labeling that does not mention their restrictive flavorings. At the same time, this aspect of the new regulations provides yet another reason why the City or New York State should pass a new law, based on the state's similar existing law for cigarettes, that does not allow the sale of any tobacco products outside of its original manufacturer packaging (perhaps with an exception for premium cigars that are sold only in large boxes or as single cigars).

In defining which tobacco products are subject to the restrictions in the law, the regulations focus primarily on "public statements" that the tobacco product has or produces a restricted characterizing flavor that appear on tobacco product labeling or packaging. More broadly, the original law says that any such public statements – not just through labeling and packaging but also through tobacco product advertising and other public statements – shall be taken as presumptive evidence that the tobacco product is subject to the law's restrictions. It is clear, however, that the regulations do not preclude the Department from taking in consideration any such public statements in tobacco product advertising when making its determinations about which tobacco products with no evidence of having or producing restrictive flavors on their labeling and packaging are still restricted by the law. The regulation's focus on labeling and packaging is clearly meant only to set up a system that enables retailers and other sellers of tobacco products to comply with the law and sell only unrestricted tobacco products simply by looking only at the products' own labeling and packaging and at the Department's separate list of additional tobacco products subject to the law.

The Campaign for Tobacco-Free Kids looks forward to the quick implementation of these regulations and the underlying law to establish yet another strong example of effective tobacco prevention laws and policies that other jurisdictions, both smaller and larger, should quickly put into place, as well.

Sincerely,

A handwritten signature in cursive script that reads "Matthew L. Myers".

Matthew L. Myers
President