



New York Association of Convenience Stores
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July 16, 2009

Hon. Joel Rivera
New York City Council
250 Broadway, 18th Floor
New York NY 10007

REF: Int. No. 433-A, Flavored Tobacco Products

Dear Councilmember Rivera:

The New York Association of Convenience Stores is a private, not-for-profit trade organization representing nearly 7,000 neighborhood bodegas and convenience stores licensed by the State of New York to responsibly sell legal tobacco products to adult customers in accordance with state and local regulations.

We wish to offer facts and opinions concerning your proposed local law to prohibit the sale of certain flavored tobacco products other than cigarettes. While as parents, citizens and business owners, we share your commitment to keeping tobacco out of the hands of kids, we respectfully oppose passage of this law for the following reasons.

It's an outright ban, as opposed to a regulation. The City Council has been at the forefront of regulating the sale of tobacco products, in order to discourage smoking and prevent youth access to tobacco. This measure, however, would go far beyond regulation, to an outright ban of the sale of certain legal products to adult customers, which we view as an inappropriate restraint of trade.

It's a solution disproportionate to the problem. The state Health Department's fourth annual Independent Evaluation of New York's Tobacco Control Program, published in August 2007 by RTI International, said that from 2000 to 2006, only 1.6% of New York City high school students surveyed had used smokeless tobacco products in the past 30 days, while 4.5% had smoked cigars. While any level of teen tobacco use is cause for concern, a rate of 1 in 22 or 1 in 62 does not justify a wholesale ban on the licensed sale of these products to adult customers.

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It leapfrogs FDA regulation. The landmark legislation recently signed by President Obama authorizing the Food & Drug Administration to regulate tobacco included a ban on cigarettes with strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, and coffee flavoring. Moreover, it gave the FDA power to expand this prohibition to other tobacco products if warranted. That, rather than City Hall or the State Capitol, is now the appropriate forum for those who believe flavored chewing tobacco, cigars, cigar wraps, and other non-cigarette tobacco products should be outlawed entirely. Should the FDA impose a ban, it will be a nation-wide prohibition, severely restricting bootleggers' access to these products.

It would drive the sale of these products underground. New York City already has a thriving black market for cigarettes due to exorbitantly high state and city taxes and the ease of obtaining them "tax free" via the Internet and/or Native American outlets. If flavored cigars, smokeless tobacco, and other non-cigarette products were no longer found in licensed stores in the city, they would remain readily available in other jurisdictions and on the black market, and bootleggers would have a field day selling them on the streets to people of all ages. This activity would promote crime, tax avoidance, underage tobacco use, and defeat the public health objective of the local law. Given that the products will continue to be sold in other states and counties, and that there will continue to be demand for them here, it comes down to this question: Do you want these products to be sold by licensed vendors, where they can be taxed and regulated, or sold by unscrupulous dealers on the *unlicensed, untaxed, unregulated* side of the street?

I hope our comments will not be dismissed because certain health advocates unfairly attempt to paint us as surrogates for the tobacco industry. Yes, the tobacco companies are our trade partners, as are the soft drink bottlers, dairies, bakeries, and even the state Lottery Division. But our mini-marts, bodegas, and convenience stores are independently owned and operated by independent thinkers who work hard seven days a week to serve our customers, provide employment, collect and remit taxes for the State and City, pay our own taxes, comply with myriad regulations, support our neighborhoods, and make a living in the midst of a deep recession and State tax policy that has already chased away much of our business.

In light of the foregoing, NYACS respectfully urges you to reconsider the wisdom of banning flavored tobacco products in New York City by local law.

Sincerely,

James S. Calvin
President