

July 29, 2009

VIA E-MAIL & FACSIMILE

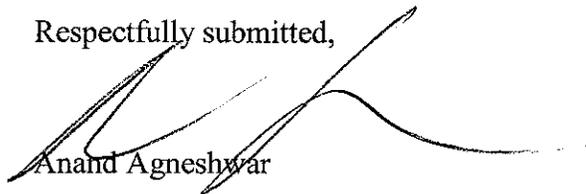
Ms. Rena Bryant
Secretary to the Board of Health
Board of Health
125 Worth Street CN-31
New York, New York 10013

Re: Written Statement on the Proposed Amendment to Article 181 of the New York City Health Code.

Dear Ms. Bryant:

On behalf of Altria Group's tobacco operating companies (Philip Morris USA Inc., U.S. Smokeless Tobacco Company LLC, and John Middleton Co.), please find enclosed a written statement regarding the Proposed Amendment to Article 181 of the New York City Health Code.

Respectfully submitted,



Anand Agneshwar

**WRITTEN STATEMENT OF ALTRIA GROUP'S TOBACCO OPERATING COMPANIES
(PHILIP MORRIS USA INC., U.S. SMOKELESS TOBACCO COMPANY LLC, AND
JOHN MIDDLETON CO.) REGARDING THE DEPARTMENT OF HEALTH'S PROPOSED
AMENDMENT TO ARTICLE 181 OF THE HEALTH CODE**

Altria Group's tobacco operating companies (Philip Morris USA Inc., U.S. Smokeless Tobacco Company LLC, and John Middleton Co.) respectfully submit this written statement regarding the Department of Health's proposed amendment to Article 181 of the Health Code. The proposed amendment would require all retail stores selling tobacco products in New York City to display Department of Health-issued signs communicating the adverse health consequences of tobacco use as well as cessation information. These signs – which could be as large as three feet by three feet – would include¹ graphic images depicting the health consequences of tobacco use. Retailers subject to this requirement would be required to post such signs at each cash register as well as at each location in the store in which tobacco products are displayed.

Altria's tobacco companies have long supported policies requiring health warnings to be communicated to tobacco product consumers. We strongly believe, however, that tobacco product warning policy should be uniform and consistent throughout the United States and that, therefore, such policies should be developed and promulgated exclusively at the national level. Indeed, federal law for many years has set forth detailed requirements for the content and form of health warnings that must be included as part of cigarette and smokeless tobacco packaging and advertising. A consent decree reached with the Federal Trade Commission in 2000 implemented similar requirements for cigars. Altria's tobacco companies are committed to complying fully with these requirements.

The national regulatory scheme relating to tobacco product health warnings recently was augmented as part of the enactment of the *Family Smoking Prevention and Tobacco Control Act* ("FSPTCA"). This landmark legislation provides the Food & Drug Administration ("FDA") comprehensive authority to regulate virtually all aspects of the sale, distribution and marketing of tobacco products. Among many other things, the legislation *specifically requires* the FDA to issue graphic health warnings for cigarette packaging within a prescribed period.

Against this backdrop, we urge the Department of Health to withdraw the proposed amendment to the Health Code. **First**, we believe that the Department of Health's proposal would frustrate the policy goal of achieving uniformity and consistency in tobacco product health warning requirements throughout the United States. The FDA should as a matter of sound policy take the lead in considering the content and form of tobacco product health warning requirements within the parameters of the FSPTCA. We thus believe that states and localities should defer to FDA and not proceed with their own regulatory initiatives that could result in a patchwork of varied and inconsistent rules. **Second**, the proposed amendment places undue burdens on retailers – essentially requiring retailers to forego advertising space that otherwise

¹ While Section 181.19(a)(1) of the proposed amendment provides that the Department of Health issued-signs "may include" pictorial images of the health effects of tobacco use, the Department's June 25, 2009 "Fact Sheet" requires them, stating that the signs "will include" a visual depiction of the health effects of tobacco use.

could be used to raise revenue. **Third**, the proposed amendment would be legally invalid. The amendment is preempted by two separate federal laws, including the specific federal law prescribing health warnings. In addition, the amendment is beyond the Department of Health's administrative authority to promulgate, absent legislative action by the City Council.

The Proposed Amendment to Article 181 Would Interfere With the Goal of National Uniformity on Health Warnings for Tobacco Products.

With the enactment of the FSPTCA on June 22, 2009, the FDA assumed responsibility for comprehensively regulating tobacco products in a manner specifically designed to achieve a coherent national tobacco policy. The FSPTCA requires the establishment of uniform standards for the design and manufacture of tobacco products in the United States and for the communication of health risks to consumers. The FSPTCA authorizes FDA regulation across a range of issues, including new products, modified risk communications, product standards, marketing and advertising, illegal trade, and, of course, warnings.

With respect to warnings in particular, the FSPTCA provides for a range of new requirements, including the following:

- Enlarges the size of health warnings on cigarette packaging to 50% of the tops of the front and back of cigarette packs, and on smokeless tobacco packaging to 30% of the two principle display panels.
- Prescribes a series of new text warnings for cigarettes and smokeless tobacco products, to be rotated regularly to ensure that consumers see all health warnings;
- Requires the FDA to mandate graphic health warnings on cigarette packs depicting the negative health consequences of smoking no later than two years after the effective date of the Act, which manufacturers must begin printing on packaging within 15 months after the graphic warnings are issued.

Given these new federal requirements relating specifically to health warnings, the Department of Health should allow FDA to proceed with implementing the FSPTCA free of potentially inconsistent requirements at the local level. FDA has not yet determined the content of graphic warnings, and presumably will consider scientific evidence as it decides upon the appropriate graphic depictions to accompany warning text. FDA may well reach conclusions as to the effectiveness of certain graphics that are different from or even inconsistent with the judgment of the Department of Health. Among other things, the FDA may determine that certain graphic warnings are either ineffective or counterproductive. FDA may also conclude that graphic warnings as to some tobacco products are not warranted, or, if warranted, should be different from the graphic warnings related to other tobacco products.

Recognizing all of this, the Department of Health should allow the FDA to move forward with its rulemaking on graphic health warnings in the first instance, and refrain in the interim from issuing graphic health warning requirements of its own.

The Proposed Amendment Would Place Significant Burdens on Retailers, and Could Lead to Some Retailers Gaining a Competitive Advantage over Others.

The proposed amendment would clearly place significant burdens on retailers. In today's retail environment, signage and advertising space within a store – especially at the cash register or on or near the tobacco fixture – represents highly valued, revenue-generating space for retailers. Retailers use this space either for a range of consumer goods advertising or as display space for products. In either case, the space raises revenue for retailers who, in today's economy, depend on a variety of sources of income to survive.

The proposed amendment would impinge on this space in significant ways. The amendment requires the placement of graphic warning signs in multiple locations within the retail store – in particular, at each cash register *and* in each location in which tobacco products are displayed. These signs, furthermore, will be large. The proposed amendment specifically states that the signs would be no smaller than 18 by 18 inches (324 square inches) and could be as large as three feet by three feet (1296 square inches). The amendment further specifies that the placement of the sign be no lower than a prescribed distance from the floor, and no higher than a prescribed distance to the ceiling.

Retailers throughout New York City would be forced to rearrange signage and product displays at the cash register and where tobacco products are displayed in order to accommodate these large signs. For some retailers, this requirement will result in a decision to cease tobacco sales altogether, which would in turn result in the loss of customers to other nearby competing retailers, including in neighboring states or municipalities. For others, the requirement will result in a loss of revenue that comes simply from foregone advertising or product display space.

There is, in short, little question that requiring multiple large signs in city retail establishments will result in disruption and loss of revenue.

The Proposed Amendment Is Legally Impermissible Because It is Preempted By Federal Law and Is Beyond the Authority of the Department of Health to Promulgate.

The proposed amendment is impermissible from a legal perspective because it is preempted by federal law, and because the Department of Health lacks the authority to promulgate a legislative initiative.

The Proposed Amendment is Preempted by FCLAA and the FSPTCA.

The Federal Cigarette Labeling and Advertising Act (“FCLAA”), as amended by the FSPTCA, precludes states and localities from imposing their own content-based laws “with respect to the advertising or promotion of any cigarettes” based on “smoking and health.” 15 U.S.C. § 1334(b), (c). A regulation is “based on smoking and health” when it is “motivated by concerns about smoking and health.” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 548-51 (2001). The courts have held that regulations “with respect to advertising or promotion” are those having “any connection” to acts drawing “public attention to,” or to messages on behalf of,

cigarette products. *See, e.g., Vango Media Inc. v. City of New York*, 34 F.3d 68, 73 (2d Cir. 1994). By its terms, this doctrine includes requirements on retailers.

Indeed, the U.S. Court of Appeals for the Second Circuit has held -- in a case that is binding precedent in New York City -- that FCLAA preemption goes beyond restrictions on tobacco manufacturers and their advertising. In *Vango Media*, the Court invalidated as preempted by FCLAA an ordinance that required taxi cabs to display one public health message for every four tobacco ads. The Court held that the ordinance constituted: (1) a "requirement" that was (2) "based on smoking and health" and (3) was "with respect to the advertising and promotion of any cigarettes." The Court explained that "with respect to advertising" covered any laws imposing obligations -- on anyone -- based on the effect of smoking on health. *Id.* at 74. Thus, a law requiring taxi permit holders who display cigarette ads to also display public health messages "treads on the area of tobacco advertising, even if it does so only at the edges." *Id.* As such, it was preempted.

Like the regulation at issue in *Vango Media*, the proposed regulation here requires retailers who sell cigarettes and therefore display cigarette advertising and packaging to display additional warnings. Under the principles of *Vango Media*, this proposed requirement is thus preempted.

The amendment is also barred by a separate preemption provision in the FSPTCA. The FSPTCA expressly preempts state and local regulations that are different from or in addition to federal "labeling" requirements. The FDA defines labeling very broadly, to include "all labels and other written, printed or graphic matter accompanying" an FDA-regulated product, including materials at the point of sale, at retail. *See* Section 916 of the FSPTCA. Because the amendment requires written material accompanying what is now an FDA-regulated product, it is a retail labeling requirement falling directly within the express preemption clause of the FSPTCA.

Adopting this Amendment Would Result in the Department of Health Exceeding Its Lawfully Delegated Authority to Amend the New York City Health Code.

Finally, with this proposed regulation the Board of Health would be exceeding its administrative authority by regulating in areas reserved for legislative policy judgment. The New York City Charter delegates to the Department of Health broad authority to amend any part of the Health Code to promote and protect life and health in the City. The Department's authority to do so, however, is not limitless. The Department cannot engage in legislative policy-making judgments. In evaluating whether an administrative agency has acted within its authority, courts examine whether the agency balanced policy factors other than health issues in developing its regulation and whether the agency simply filled in existing legislation or started writing a policy from scratch.

Here, the proposed amendment is clearly legislative in nature. Warnings relating to the health impact of cigarettes or smokeless tobacco products are typically promulgated by policy-making bodies, such as Congress or the States. Indeed, for years cigarette and smokeless warnings have been the subject of federal law and a federal agency (the FTC) enforced warning requirements only after a federal legislative body required it to (pursuant to the FCLAA). This

reflects the fact that deciding upon the proper warnings requires a balance of a variety of factors, including the many practical and other issues presented by a warning regime.

Indeed, a New York State public health regulation involving cigarettes was struck down in a similar situation precisely because it was legislative in nature. *See Boreali v. Axelrod*, 517 N.E.2d 1350 (N.Y. 1987). *Boreali* involved a challenge to regulations issued by the New York Public Health Council ("PHC") that prohibited smoking in certain public areas. The New York Court of Appeals invalidated the regulations under the separation of powers doctrine, concluding that the PHC went beyond its lawfully delegated authority. *Id.* at 1355. Critical to the Court's ultimate conclusion was that, in the Court's view, the PHC engaged in a balancing of political, social and economic considerations, rather than technical expertise, to enact its own health "code embodying its own assessment of what public policy ought to be." *Id.* at 1356-57. The same considerations apply here. The Department of Health does not have the authority to promulgate essentially legislative enactments that involve balancing of multiple public policy concerns. Because the scope and context of this proposal is clearly legislative, this proposal may not be issued by an administrative agency absent legislative action.

* * *

For all of these reasons, we oppose the adoption of this retail signage requirement in New York City, and urge the Department to reject or delay its consideration until the FDA issues new graphic warning requirements under the FSPTCA.

SINCE 1930

Nat Sherman

FIFTH AVENUE • NEW YORK

I am writing in opposition to the proposed amendment to Article 181 of the NYC Health Code that would require tobacco retailers to prominently display anti-tobacco point of sale messages. Supporters of this measure claim such warnings will help discourage youth smoking and encourage active smokers to quit. I believe it is important to note that there is ample evidence to demonstrate that smoking incidence among both of the above groups has noticeably declined in recent years. This reduction is likely due to personal choice, as well as the multitude of existing laws and regulations that already govern our industry, ranging from exorbitant excise taxes, age verification, restricted access and public smoking bans. Tobacco retailers already demonstrate their responsibility and professionalism to reduce youth smoking and access to tobacco products by actively verifying the age of purchasers. The federal government has most recently imposed additional restrictions on our industry by granting broad oversight to the Food and Drug Administration over the tobacco industry. FDA regulations will soon require further limits on tobacco advertising and marketing. Any new action by the New York City Board of Health is unnecessary.

Sincerely,



Joel J. Sherman
Nat Sherman
President
30 July 2009

RETAIL

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In reply please
refer to:

Your reference:

Ms Beth Kilgore
Bureau of Tobacco Control
NYC Department of Health and Mental
Hygiene
NYC Board of Health
USA

30 July 2009

Dear Ms Kilgore,

Re: WHO Endorsement to Amend Article 181 of the New York City Health Code

Thank you for your request, dated 22 July 2009, requesting the World Health Organization (WHO) to provide comment on the proposed amendment of Article 181 of the New York City Health Code concerning the posting of tobacco health warnings and smoking cessation information in all places in New York City where tobacco is sold. Given WHO's collaborative effort with current New York City Mayor Michael Bloomberg and his Bloomberg Philanthropies in combating global tobacco use, WHO is pleased to provide the following comment:

WHO believes the proposal's adoption will improve consumers' attitudes with respect to smoking and smoking behaviours and ultimately reduce tobacco consumption.

We agree with the conclusions drawn in the *Notice of Intention to Amend Article 181 of the New York City Health Code* with respect to the urgent need for the presence of health warnings and cessation information at points of tobacco sales. Tobacco use, as the single most preventable cause of death in the world today, threatens the lives of one-billion men, women, and children during this century alone. Moreover, tobacco use is a risk factor for the leading causes of death in the world, including ischemic heart disease, tuberculosis, cerebrovascular disease, lower respiratory infections, and chronic obstructive pulmonary disease.

Given the unique economic, social and biological social factors driving global tobacco use, the tobacco epidemic persists as a priority global public health issue. This recognition of the multi-faceted nature of tobacco consumption led to the adoption, in 2003, of WHO's first multilateral, global-health Treaty, the WHO Framework Convention on Tobacco Control (WHO FCTC).

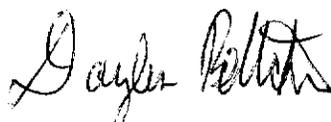
.../...

The WHO FCTC, whose Contracting Parties currently number 165 WHO Member States and the European Community, provides evidence-based credence to the measures proposed in the amendment to Article 181. Relatively few tobacco consumers understand the full extent of their health risk due to tobacco use, despite conclusive evidence outlining these risks. Effective health warnings meaningfully communicate information to smokers and motivate behavioural change. For example, studies concerning the effectiveness of pictorial health warnings on cigarette packaging in the Canadian context demonstrate that such warnings increase the motivation of nearly half of smokers to quit. Moreover, more than half of smokers thought more about the health effects of smoking as a result of the warnings. Such evidence illustrates the degree to which health warnings stimulate consumers' response to the health risks of tobacco use. The communication of the adverse effects of tobacco use is integral in not only elevating societal understanding of the devastating consequences of smoking, but also in attenuating any positive image associated with smoking behaviour, particularly among adolescents and young adults.

Similarly, the availability of, and access to, cessation information and services is imperative in reducing smoking prevalence. Most smokers wish to quit, though the severity of tobacco addictiveness impedes this process in the majority of cases. The presence of information related to cessation services at points-of-sale will undoubtedly translate into increased employment of proven, tobacco-dependence management and treatment interventions.

For the reasons outlined above, WHO finds the amendment to Article 181 to be consistent with tobacco control best practices. Based on scientific evidence reflected in the provisions of the WHO FCTC, the proposed amendment will increase awareness to the grave health risks associated with tobacco use, and offer increased knowledge and access to proven cessation services. Accordingly, if passed, amendment to Article 181 will influence cigarette consumers' attitudes and smoking behaviour, reduce tobacco use and, most importantly, improve public health.

Yours sincerely,



Dr Douglas Bettcher
Director
Tobacco Free Initiative

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: alberta

Last_Name: brescia

Email: alberta.brescia@cancer.org

Phone Number: 7187206594

Title: Nurse

Organization: American Cancer Society

Street Address: 212 Grasmere Drive

City: staten island

State: ny

Zip Code: 10305

Comments: As a concerned citizen and grandmother of four - I heartily recommend that Article 181 of the NYC Health Code require the posting of tobacco health warnuings and smoking cessation in all places in NYC where cigarettes are sold. In my community - Staten Island - we have the highest rates of smokers of all the boroughs. This is very important and life saving legislation.

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~~NEW YORK CITY~~
C.L.A.S.H.

Citizens Lobbying Against Smoker Harassment

P.O. Box 1036
Brooklyn, New York 11234
917-888-9317

July 30, 2009

FULL Testimony (for print) of Audrey Silk, Founder
Delivered to New York City Department of Health and Mental Hygiene

Proposal to amend Article 181 of the Health Code

to add a new §181.19 that would require the posting of tobacco health warnings and smoking cessation information in all places where tobacco is sold in New York City.

My name is Audrey Silk and I am the founder of NYC Citizens Lobbying Against Smoker Harassment, a grassroots organization established 9 years ago to advance and protect the interests of adults who choose to smoke cigarettes. However, our interests are not so confined as to ignore the relevant association of private property rights and issues of speech in general and as it pertains to the misuse and abuse of each by the anti-smoker crusaders in order to socially engineer a segment of society. So while I'm here today to testify on behalf of consumers who will be subjected to -- and are the ultimate target of -- the proposed signs, I will also address the infringement on private property -- your collateral damage in your war on smokers -- that this amendment will inflict.

COST/EFFECTIVENESS

Costly proposals such as these, whose ostensible goal is to make smokers quit and to threaten nonsmokers, have no provable track record of success, meanwhile wasting millions of taxpayer dollars.

In 2005 the NYC DOH boasted a decline in the number of smokers for 2004 as per telephone survey results. This past April, the Department released a study, *using 2004 data*, on another smoking related issue that assessed the smoking rate by measuring the biomarker cotinine in participants' blood. (1) In that study, your office admitted that the results were 27% higher than originally claimed -- 23.3% as opposed to 18.4% -- and called it "a more accurate assessment." The Department credited the initially claimed drop to the implementation of the smoking ban (March 2003) and cigarette tax increase (July 2002). (2) Except the now "more accurate" figure can boast no such thing. The

Department's smoking prevalence figures reported for 2003 was 19.2%; and 21.6% in 2002. The cotinine measure reflects a higher rate of smoking *after* the ban and tax increase. Though I'll admit -- and insist! -- that those year's figures were obtained from the same wholly unreliable telephone survey method -- one that illustrates that the only thing your efforts have managed to change is the number of smokers who lie on the phone -- and you really have no idea what impact, if any, your haranguing has achieved.

Now you want to spend an untold number of taxpayer dollars to produce, distribute, and police these signs when it's apparent their effectiveness will be as unknowable as those of your other efforts. Or as wasteful as the up to \$4 million you spend each time to give away nicotine patches and gums that have a failure rate of 98.4%? (3) (You get almost zero bang for *our* buck on that one.)

The studies you cite regarding the effectiveness of graphic pictures to support this proposal do not measure any actual smoking cessation. They only measure how informed smokers are about tobacco risks. (4, 5, 6) You lean on Canada for your evidence since they have had a wide array of graphic pictures on their cigarette packs since January 2001 and cite from one of their studies that "46% [of youth] report that the pictorial warnings have been effective in getting them to try [not actually doing it] to quit smoking." (6) But the small print for that figure -- indeed all their results -- says "These numbers should be interpreted with caution, due to small sample sizes." Additionally, you cherry-picked the last year's available figure (2004) when it's been an ongoing study that's taken snapshots and so far covers a number of periods between December 2000 and December 2004. Since the important measure here is effect from these warnings, it's unfortunate you ignore that immediately prior to the institution of the graphics 56% said they would try to quit smoking! It declined to 41% immediately following the release and peaked at 63% in Dec. 2001. The last reported figure shows that if there's any validity to these results it's that effectiveness wanes. In fact, to quote from page 41: "[T]he current results also suggest a decrease in the number who say these messages have been very effective in increasing their desire to quit." To quote from page 35: "The current results also indicate an increase in the number of youth who say they can remember none of these messages."

So far, this past year, the city has spent \$4 million on patches and gum with its dismal success rate of 1.6%, \$4.5 million to run a mind-numbing number of anti-smoking ads on TV, radio, and in print and will spend how much more on this? Money thrown at this means less money in the budget for truly more vital needs that leads to increased taxes on everything else. Just last week the NY Daily News reported that "many city homeowners will see their property tax bills rise by 1.8% this year as they pay for the rising share of the city's budget." I'm sure they'd be happy to know that's because their money is appropriated for things like this instead. And my organization intends to tell them by offering a sign to store owners ourselves (a draft is attached to your copy).

You can argue that prevention saves health care dollars in the long term and I have plenty of counter evidence I could offer that all essentially conclude that smokers end up subsidizing nonsmokers but I'll forego that for now and just say that I don't think people

who are struggling to pay their rent and put food on the table right now care about theoretical savings 40 or 50 years from now.

PRIVATE PROPERTY/COMPELLED SPEECH

There is certainly an issue of compelled speech no matter if ultimately deemed razor-thin legal. This is nothing like ordering businesses to post signs on how to help choking victims or even "No smoking" signs. There are already federally mandated warnings on the cigarette packs -- soon to include, due to FDA oversight, larger and/or graphic warnings -- so no new warning is being proposed. In C.L.A.S.H.'s opinion these signs amount then to running an opinion piece or... a sermon. And if it can be forced on a private store then why not in our windows at home? At least when you ask -- not force -- the media to run these messages they have to agree to it and you have to pay them. But now, through the threatening force of the government, you'll be able to get yourself "free" ad space in every store. With the only costs born by the store's owner.

Though RICO statute related I see a great parallel -- on both constitutional principle and legal theory grounds -- to the recent ruling by the DC Circuit Court of Appeals in the case of U.S. v. Philip Morris USA, Inc., et.al. (aka RICO suit). While the court affirmed the judicial opinion that requires tobacco manufacturers to issue "corrective" public statements about their product and include such statements inside of cigarette packs, it specifically rejected the provision that these statements must also be placed on the counters of retailers. To read from their ruling:

"Section 1964(a) explicitly cautions that in crafting an injunctive remedy the court must 'mak[e] due provision for the rights of innocent persons.' We believe that the district court exceeded its authority by failing to consider the rights of retailers and crafting an injunction that works a potentially serious detriment to innocent persons not parties to or otherwise heard in the district court proceedings."

The underlying premise-- rejecting the proposition that retailers can be used as innocent pawns in the Department of Health's war on both smokers and tobacco companies-- could very well also be valid here. Especially when you consider these words from the ruling: that it's unacceptable to "...[cause] a *potentially serious detriment* to innocent persons..." Not only are the store owners "innocent" here (they're simply and literally "minding their own business") but they're further not compensated for the valuable sales space they're forced to give up, and risk losing sales of many other items, not just cigarettes.

COMPELLED BEHAVIOR

Your department's rationale for these signs is that there are still too many smokers, reasoning, "Continued tobacco use among these smokers may reflect a lack of awareness and comprehension of the negative outcomes associated with tobacco use..."

That's an incredible conclusion considering the public is subjected to nonstop print ads and TV and radio commercials drumming in "negative outcomes" every hour for years on end. And never mind the 25 year's worth of in our face anti-smoking messages that preceded this barrage.

Rather, I suggest that what we're witnessing is the cult mentality that's taken over those who have become singularly obsessed with this one of many legal lifestyle choices that might pose some risk to some individuals. And so you've determined that there's one, and only one, "right" way to think and that the only explanation for others not conforming is that they haven't yet received your message since there's no doubt they'd change their behavior if they had. You seem to think, because we continue to smoke, that we must be uninformed, rather than accepting that smokers have been informed up to the eyeballs and still choose to smoke!

This is not Public Health, it's Public Intimidation of those that don't agree.

Footnotes

- (1) Jennifer A. Ellis et al. "Secondhand smoke exposure among nonsmokers nationally and in New York City." *Oxford Journals, Nicotine & Tobacco Research*, Volume 11, Number 4. doi:10.1093/ntr/ntp021, April 7, 2009.
<http://ntr.oxfordjournals.org/cgi/reprint/ntp021v1>
- (2) David B. Caruso, "Number of New York City Smokers Drops After Ban, Tax Increase," *Associated Press*, June 9, 2005.
<http://www.tobacco.org/news/199078.html>
- (3) David Moore, Paul Aveyard, et al. "Effectiveness and safety of nicotine replacement therapy assisted reduction to stop smoking: systematic review and meta-analysis." *BMJ* 2009;338:b1024. April 2, 2009.
http://www.bmj.com/cgi/content/full/338/apr02_3/b1024
- (4) O'Hegarty M et al. (2006). Reactions of young smokers to warning labels on cigarette packages. *Am J Prev Med* 30(6):467-73.
- (5) Hammond D et al. (2006). Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: findings from the International Tobacco Control (ITC) Four Country Survey. *Tob Ctrl* 15(Suppl 3): iii19-iii25.
<http://www.pubmedcentral.nih.gov/articlerender.fcgi?tool=pubmed&pubmedid=16754942>
- (6) Health Canada. The health effects of tobacco and health warning messages on cigarette packages – Survey of youth: Wave 9 surveys. Prepared by Environics Research Group, Jan 2005
<http://www.smokefree.ca/warnings/WarningsResearch/POR-04-19%20Final%20Report%20-%20205552%20Youth%20wave%209-final.pdf>.

ARE YOU A TAXPAYER?



If instead you would have liked to see
this money used for:

- Keeping Transit fares down
- Hiring more Police Officers
- Keeping Firehouses open
- Saving School programs
- Keeping Property Taxes down
- Keeping Sales Taxes down

PLEASE CALL 311

...and tell them you don't appreciate the city's
misuse of your money.

Sign supplied by NYC C.L.A.S.H. / www.nycclash.com

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Carol

Last_Name: Rheuban

Email: crheuban@earthlink.net

Comments: I have never smoked, but I have had trauma and medical tragedy in my life as most of us have. The shocking displays in the anti-smoking television commercials already make me physically ill, I am sure I am not alone in this. Now you propose to extend this abuse to my corner grocery and newsstand?

When the Mayor and his Health Department seek to act as surrogate parent to the city's smokers 'for their own good' they are not considering the feelings and psychological health of your other 'children.' As if to say: "if some of you misbehave, you will all be punished."

Studies have been done that show the effects in the brain of repeated exposure to violent images are similar to the effects of post-traumatic stress. I think that exposure to graphically explicit images of diseased tissue can have a similar stressful effect on sensitive people.

Why do you think television news gives a warning before displaying graphically violent images? Because it gives sensitive or traumatized people, families a chance to avoid the images. Your proposal takes away that choice.

In order to reduce the incidences of drunk driving: would you require bars in NYC to prominently display photos of car crashes with mutilated bodies in full color?
If not, why not?

In order to reduce teen pregnancy and abortions: would you have NYC high schools or doctor's offices to prominently display full color images of aborted fetus's?
If not why not?

In order to reduce obesity: would you require NYC restaurants to prominently display images of heart surgery or buckets of human fat?
If not why not?

Just because these campaigns have proven effective in reducing the number of smokers in the city does not mean they shouldn't have some limits or that you should not consider the rights of the rest of us.

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This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Carol

Last_Name: Rheuban

Email: crheuban@earthlink.net

Comments: I strongly object to this proposal to amend article 181 of the health code as proposed. Like most New Yorkers, I do not smoke. I have been made physically ill and made to feel psychologically abused by these extremely gross, graphic television ads already. I shudder to think that I will have to be exposed to them at my local grocery store, as well. Just because it is "effective" does not mean it is the right thing to do for the good of all New Yorkers.

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Smoke-Free Action Network

Action for Smoke-free Workplaces

July 30, 2009 - Statement to New York City Board of Health

Dan Carrigan, Executive Director, Smoke-Free Action Network

My name is Dan Carrigan. I am the Executive Director of Smoke-Free Action Network, based in Charleston, South Carolina. We work to pass local smokefree workplace and public place ordinances across the state, and fight against the preemption, or prohibition, of local ordinances at South Carolina's state legislature.

As an advocate for smokefree air in a tobacco-producing state, I can testify that we directly benefit from the actions of New York City's Board of Health and those taken by your City Council.

Our earliest efforts to protect workers from secondhand smoke were largely based on the comprehensive measures that your city passed. We have used that model, and your subsequent evaluations, to show the dramatic increase in worker health, the absence of economic harm to business, and how these measures reduce the number of smokers.

Four years ago, when I was looking for answers on how we could enact similar reforms in our state, I came here to the New York City Department of Health and met with Joanne Koldare and others who shared their story of success. We took their advice and moved forward with a philosophy that everyone should be protected equally, no matter where they work. Since that time, I am pleased to report that we have passed 27 local smokefree ordinances in our state. These ordinances cover over 25% of the state's population and protect over one million South Carolinians in all workplaces.

New York City's track record is not just used as the ideal in South Carolina, but across the nation. Rest assured that your accomplishments have provided inspiration in communities across the country that said, "Why can't we do that here?"

As you move forward in this process, I encourage you to enact bold measures that will provide a model for others, particularly for those of us who work in environments where the corrupting influence of the tobacco industry is most evident.

It's time that we strongly addressed the impact of \$14 billion per year in tobacco industry advertising and expose the social enhancement myth perpetuated by an industry responsible for targeting millions of our children with a lifetime of addiction and premature death.

Thank you for leading the way on this critical public health issue.

PO Box 12276 Charleston, SC 29422
(843) 509-5272 dancarrigan@msn.com

This form resides at

<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

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Last_Name: Hammond

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Phone Number: 5198884567x36462

Title: Assistant Professor

Organization: University of Waterloo

Street Address: Dept of Health Studies 200 University Ave West

City: Waterloo

State: Ontario

Zip Code: N2L3G1

Comments: To Whom It May Concern,

I am writing with regards to NYC Health Department's Proposal to Require Health Warnings and Smoking Cessation Information Where Tobacco Is Sold. The retail setting is a critical information for the promotion of tobacco products and serves as the most prominent source for tobacco marketing in the United States, as well as many other jurisdiction. In my opinion, the measures included under the Health Department's proposal represent an important and timely public health measure.

In my capacity as a scientist and an expert on health communication and health warnings, I also believe the measures will be effective. In addition to conducting original research in this area, I have advised several governments and recently served as an advisor to the World Health Organization for the packaging and labelling guidelines under the FCTC treaty. I can attest that the Health Department's proposal is supported by a very strong evidence base, particularly with respect to the effectiveness of using pictorial images in health warnings messages, as well as incorporating concrete cessation information, such as a toll-free telephone information to help consumer access cessation information. Research in at least 4 countries has shown that including this type of information increases the use of these services dramatically. I would also add that population-based surveys in the United States and elsewhere typically reveal very strong levels of public support for these type!

s of measures, including among smokers.

Also note that there are precedents for the Health Department's proposal. For example, British Columbia requires large pictorial health warnings in retail outlets that sell tobacco.

Sincerely,

David Hammond, PhD

University of Waterloo, Canada

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Francine

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Phone Number: 718-987-8872

Title: Office Mgr/Coordinator PAFS

Organization: American Cancer Society

Street Address: 173 Old Town Road

City: Staten Island

State: NY

Zip Code: 10305

Comments: Please Amend Article 181 of the NYC Health COde to require the posting of tobacco health warnings and smoking cessation info in all places in NYC where cigarettes are sold.

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HTTP_ADDR: 98.113.49.8

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This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: James

Last_Name: Calvin

Email: jim@nyacs.org

Phone Number: 518-432-1400

Title: President

Organization: New York Association of Convenience Stores

Street Address: 130 Washington Avenue

City: Albany

State: NY

Zip Code: 12210

Comments: Headquartered in Albany, the New York Association of Convenience Stores is a private, not-for-profit trade organization representing the interests of all 7,700 mini-marts, bodegas and convenience stores across New York State, most of which are licensed to sell tobacco.

As business owners, parents and citizens, we share your commitment to preventing youth access to tobacco. In fact, NYACS is a state-approved provider of certified tobacco sales training. I have personally taught over 5,000 store managers and cashiers the techniques for ensuring that cigarettes aren't sold to kids.

While we do not defend smokers or smoking, we make no apology for responsibly selling legal tobacco products, in accordance with all federal, state and city regulations, to adult customers who choose to use them despite the known health risks. We'd love to also sell smoking cessation products, if only the federal government would let us.

TIMING

Our first comment about this proposal is that we are puzzled by its timing.

After years of struggle, public health advocates finally won congressional approval for the Food Drug Administration to regulate tobacco nationwide. Signed by President Obama 38 days ago, the new law directs the FDA to require, in the future, cigarette packs to bear color graphics depicting negative health consequences of smoking, and authorizes the FDA to broaden health warning requirements if warranted. Moreover, it will restrict in-store tobacco advertising to black text on a white background as of next June.

At long last, the FDA is about to plant your flag at the summit of Mount Everest, but it seems like suddenly you're elbowing them out of the way to get there first. We don't understand the rush to unilaterally enact rules that are bound to be inconsistent in nature and timing with FDA guidelines.

SMALL BUSINESS IMPACT

More troubling is that this proposal is presented solely as a public health issue. It indeed impacts public health, but at the same time it impacts small business. Examining only one side of the equation would be a mistake.

It's not just that the proposed number, size and placement of the signs amount to a seizure of prime retail space used for promotional messages and product displays.

If ghoulish pictures of black lungs dominate the view of our counter, they will be seen not only by adult tobacco customers, but by non-smokers entering the store to buy milk, produce, candy, beverages, newspapers, lottery and everything else we sell.

And these images are going to turn them off to coming into our store. Consequently, some non-tobacco customers will stop coming in altogether, costing us business, which in turn will impact jobs as well as excise and sales tax revenue. Perhaps nobody has thought through this scenario.

Then again, maybe the amendment is strategically designed to create that scenario, coercing retailers to quit selling tobacco just to spare their customers the sight of gruesome images every time they buy a Win-4 ticket or a bottle of water. I hope that's not the intent, because it would border on regulatory extortion.

Just last month, the City Council voted to create a task force to examine agency regulations that affect the business community. Speaker Quinn stated, quote: "Small businesses are the backbone of our City's economy. As we look to help these businesses through the recession, our first priority must be to ease their financial and regulatory burdens, so they can thrive and prosper."

The task force will report to the Speaker and the Mayor December 31st. Given the legitimate concerns about the impact this regulation would have on small retailers, it might be helpful for the Board of Health, before acting on this amendment, to hear its recommendations.

DOUBLE STANDARD

Our third point is that the proposed amendment adds to the shameful regulatory double standard that has long existed between licensed, tax-collecting, law-abiding retail stores and our unlicensed, unregulated, untaxed competitors with regard to tobacco regulation.

Are you going to also require the posting of these signs at Native American smoke shops on Long Island, whose vast tax-free tobacco exports into the City are costing local taxpayers hundreds of millions of dollars annually in lost tax revenue?

Are you going to require the display of these signs on the Internet tobacco web sites that sell millions of cartons of cigarettes to New Yorkers without tax collection or age verification?

Are you going to require that the countless black-market entrepreneurs who make a fast buck illegally selling tax-free smokes to New Yorkers post these signs in the window of their van parked in the alley?

An economist has documented that fully half the cigarettes consumed by New Yorkers are purchased from these unlicensed, unregulated, untaxed channels. This tax evasion epidemic will only worsen as licensed, tax-collecting stores drop the tobacco category rather than displaying the mandatory graphic images. In other words, this regulation is certain to chase more tobacco sales into the arms of the unregulated.

The Mayor and the Department of Health deserve a lot of credit for reducing the smoking rate in the City of New York. But the virtue of this cause does not justify forcing retailers who bother to get a license, collect

taxes, and comply with regulations to forfeit grocery, lottery and other sales by having to expose their customers to nauseating pictures of internal organs while their unscrupulous competitors who control half the market continue to conduct illicit commerce unencumbered by such government standards with the tacit approval of the government. It isn't right, and it isn't fair. And the pat bureaucratic retort that "they're out of our jurisdiction" rings hollow.

If city agencies continue to impose unreasonable regulatory burdens without due consideration of their impact on small businesses, perhaps the task force created by the City Council will recommend that official notification of such regulations be accompanied by graphic images of the economic consequences – empty storefronts.

NYACS respectfully recommends that the Board of Health disapprove the proposed amendment. Thank you for the opportunity to comment.

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Amendment to Article of 181 of the NYC Health Code requiring the posting of tobacco health warnings and smoking cessation information in all places in New York City where tobacco is sold.

Testimony prepared for the New York City Board of Health Hearing
by Joanne Koldare, Director, NYC Coalition For A Smoke Free City

July 30, 2009

Good afternoon and thank you for the opportunity to comment on the amendment to article 181 of the NYC Health Code requiring the posting of tobacco health warnings and smoking cessation information in all places in New York City where tobacco is sold.

On behalf of the NYC Coalition for a Smoke Free City, I would like to express our support for the posting of these educational health signs at the point of tobacco product sales.

Our Coalition's mission is to work with youth, adults and community organizations in their neighborhoods to end death and disease caused by tobacco use.

In general, there is a 15 year delay between initiation of tobacco product use and onset of tobacco-caused diseases. This gap between habit uptake and illness onset is one of the greatest barriers faced in getting the public to take messages about the addictive and deadly consequences of tobacco use seriously. The time-delay allows smokers to develop significant denial and become more entrenched in their habit. It is imperative that public health advocates and officials interrupt the denial process with health warnings and solutions that speak efficiently to smokers in the present, at the time of purchase.

The educational signs proposed for placement at point of tobacco sales achieve this in several ways:

By placing the signs at the check-out, smokers are presented the 'real-time' dangers each time they make the decision to purchase an addictive, deadly tobacco product. There is no more efficient place to confront smokers with the hazards of the product and generate contemplation than at the time of purchase.

The signs are doubly appropriate as they are coupled with cessation resources, providing each smoker with a life-saving alternative, should they make the healthy decision to not purchase and choose to quit.

Research has continually shown that the most effective tobacco control efforts are comprehensive. The city has invested heavily in very effective media campaigns that have resulted in high quit rates and a historic drop in tobacco use prevalence. Educational signs posted at the point of sales are part of a comprehensive intervention.

They support the broader media campaigns with on-the-ground, in-neighborhood tobacco interventions. Placing the signs at all tobacco retailers across the City ensures that all neighborhoods are reached with vital health information, including many neighborhoods that traditionally have low access to health education and services.

This feature is especially important to our Coalition and its community members who care deeply about equity among services provided to all communities, including some of our most impoverished.

In addition to providing services to current smokers, the Coalition sees the signs as supporting the efforts of quitters and discouraging youth from initiation. Imagine the benefit of such signs to people trying to quit as they are tempted one more time to buy. The signs provide support to resist, which is hard for any addiction. Quitters deserve all the help they can get. The signs are a compassionate act by NYC Health Department in recognition of the difficulties of quitting.

Kids who spend an enormous time in stores, also benefit from the signs. It's important for youth to know from the first time they enter stores, at extremely young ages, to they day they are tempted to buy their first tobacco product, that the dangers are very real.

From the standpoint of the community, the Coalition views this intervention as one of the most efficient, compassionate, comprehensive and equitable actions being proposed to end death and disease by tobacco, in NYC.

New York State Tobacco Use Prevention and Control Program Advisory Board

July 21, 2009

Ms. Rena Bryant
New York City Board of Health
125 Worth Street CN-31
New York, NY 10013

RECEIVED
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2009 JUL 28 A 7:49

Re: Proposed amendment of Article 181, New York City Health Code

The New York State Tobacco Use Prevention and Control Advisory Board is appointed by the Governor and State Legislature to advise the state Department of Health on the development of policies to reduce the burden of tobacco use.

The Board wishes to endorse the proposed amendment to Article 181 of the New York City Health Code requiring tobacco retailers to post graphic warnings regarding the harmful effects of tobacco use and referring customers to the New York State Smokers' Quitline.

Smokers' behavior and, specifically, their intention to quit smoking are strongly influenced by their understanding of the health risks associated with tobacco use. Smokers who perceive greater risk from smoking are more likely to attempt to quit and to be successful. Yet many smokers underestimate their personal risk from smoking and underestimate the risk of smoking compared to other health hazards. This information deficit is greatest among the less educated and lower socioeconomic groups.

It's easy to understand why this situation exists. The preponderance of messages in the media environment, mostly tobacco product advertising, are pro-smoking. Industry advertising connects smoking with glamour, attractiveness, vigor, and even health. Media campaigns conducted by the New York State and New York City Health Departments have begun to reverse this imbalance, and have been associated with a significant decline in the prevalence of adult and teen tobacco use.

The proposed regulation will further level the playing field between cigarettes and public health by requiring retailers to provide truthful information about the deadly product they are selling. Under federal law, warnings appear on cigarette packs, and under the Family Smoking Prevention and Tobacco Control Act signed by the President last month, the warnings will become larger in June 2010, and the Food and Drug Administration may eventually require the addition of graphic warnings.

The advantage of the Department's proposal is that it provides information to the cigarette user prior to purchasing the cigarettes, and, it is hoped, deters him or her from making the purchase at all. This effect is likely to be greatest in young smokers. Most adult smokers were daily smokers by age 19 and, despite laws prohibiting tobacco sales to minors, many children under 18 purchase cigarettes from licensed retailers. According

to the New York State Department of Health, 1,423 retailers in New York City were penalized during the year ending September 30, 2007 for illegally selling tobacco products to minors.

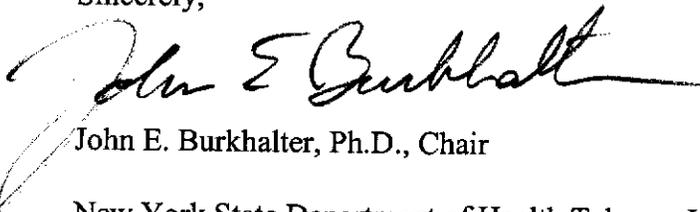
It is particularly important that the warning message include an element graphically depicting the adverse effects of tobacco use. The experience with package warning labels, which have appeared since 1966, is instructive. There is strong evidence that their small size, uninteresting appearance, and sheer familiarity render them ineffective in communicating health information. The same can be said of mandated warnings appearing in tobacco product advertisements.

In Canada, graphic warning labels have been mandated on cigarette packages since 2001. One-fifth of Canadian smokers said they smoked less because of the warnings and one-third said the graphic warnings made them more likely to quit. Former smokers identified the pictorial warnings as an important factor in their decision to quit and stay off cigarettes.

Clearly, while not a panacea, graphic warning messages will contribute to the impact of a comprehensive tobacco control campaign, particularly if the images in the retail warning sign are coordinated with those appearing in other media.

Therefore, the Board, at its July 9 meeting, voted to urge the adoption of the proposed Amendment to Article 181, and to request that the New York State Department of Health develop a legislative proposal embodying the same principle.

Sincerely,



John E. Burkhalter, Ph.D., Chair

New York State Department of Health Tobacco Use Prevention and Control Advisory Board Members:

Alfred R. Ashford, M.D., F.A.C.P.
Michael C. Caldwell, M.D., M.P.H.
Jeannette Dippo
Kathleen A. Ferrell
Gary A. Giovino, Ph.D., M.S.
Lynda Hohmann, Ph.D., M.D., M.B.A.
Joyce Moon Howard, Dr.P.H., M.P.H.
Lynn T. Kozlowski, Ph.D.
Scott McIntosh, Ph.D.
Sarah Perl, M.P.H.
Russell Sciandra
Susan C. Stewart, M.D.
Gail Volk, M.A.
Geoffrey Williams, M.D., Ph.D.



To: Rena Bryant, Secretary to the Board of Health
Department of Health and Mental Hygiene,
Via Email: RESOLUTIONCOMMENTS@HEALTH.NYC.GOV
From: Testimony of James Pistilli
On behalf of the American Cancer Society, Staten Island Region
Re: In Support of Proposed Amendment to Article 181, New York City Health Code
Requiring Tobacco Retailers to Post Health Warning Signs at Point of Sale
Date: July 30, 2009

Good afternoon, my name is James Pistilli and I am a Board Member and Legislative Ambassador for the American Cancer Society, Staten Island Region. The American Cancer Society (ACS) applauds the efforts of the New York City Board of Health and supports this proposal to help the public obtain accurate health information about the harmful effects of tobacco use at the point of sale. We are committed to working with you to reduce the devastating burden of cancer in our communities.

Tobacco kills 440,000 Americans each year, causing nearly one-third of all cancer deaths. It is the number one cause of preventable death in the country¹. In fact, smoking kills more people than alcohol, AIDS, car accidents, illegal drugs, murders, and suicides combined, with thousands more dying from spit tobacco use².

This is an issue that is very near to me. The Staten Island Regional ACS office is a lead organization behind Staten Island Quits, a community-led campaign to lower smoking rates and build a healthier community in Staten Island. Staten Island has the unhealthy distinction of being the NYC borough with the highest youth and adult smoking rates. Our campaign is a collaborative effort to educate about the dangers of tobacco use and second-hand smoke, and to provide resources for those who want to quit. We know that most smokers want to stop, and this

¹ Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Actual causes of death in the United States, 2000. JAMA 2004;291;1238-1245.

² Campaign for Tobacco-Free Kids. (2009) "Toll of Tobacco in the United States of America" Fact sheet available <http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf>

proposal will play a vital role in encouraging smokers to consider quitting before they buy that next pack.

Advertising and promotion of tobacco products are visible in nearly all locations that sell tobacco products on Staten Island. These images are just some of the many ways the tobacco industry is bombarding our youth daily, and the 80+ members of the Staten Island Quits Campaign, educators, health advocates, business owners, community members alike, agreed to do something about it.

There is plenty of research showing that youth are highly influenced by tobacco advertisements. A study published in May 2007 concluded that the more cigarette marketing teens are exposed to in retail stores, the more likely they are to smoke, and that restricting these retail marketing practices would reduce youth smoking³.

The numbers are frightening. Each day more than 3,500 kids under the age of 18 try their first cigarette, and more than 1,000 kids become regular daily smokers⁴. Locally, we sought to measure just how many harmful tobacco ads students in one neighborhood had to encounter on their way to school. Our campaign calculated that students from New Dorp High School were exposed to 49,000 tobacco ads in a year as they travel to and from school. This is no accident; the tobacco industry spends \$41 million a day to promote their deadly products.

That's why we started educating store owners about the toll tobacco is taking on the health of New Yorkers, and asked them to take a pledge that they would no longer allow this advertising in their stores. I am happy to report that so far, 34 store owners were convinced it was the right thing to do and agreed to reduce or take down their ads, and some even volunteered to stop selling tobacco products all together.

We know from our work in the community that people support measures like the one proposed, especially those that protect youth. The Board of Health's proposal will go a long way toward

³ Slater, SJ, et al., "The Impact of Retail Cigarette Marketing Practices on Youth Smoking Uptake," Archives of Pediatrics and Adolescent Medicine 161:440-445, May 2007.

⁴ Campaign for Tobacco-Free Kids. (2009) "The Daily Toll Of Tobacco Use In The USA" Available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0300.pdf>

balancing the information consumers see about this deadly product. Youth and adults alike are constantly inundated with hip and even healthy imagery about smoking, but there is not a comparable level of attention paid to health warnings on this killer product. We are missing a significant opportunity to educate the public BEFORE they purchase tobacco. An easy to read warning, information on smoking cessation, or easily understood images of the harmful effects of tobacco would help balance the messaging kids are exposed to, and could ultimately make the difference for smokers who have been struggling to kick the habit.

The American Cancer Society strongly supports this proposal, requiring tobacco retailers to post health warnings about tobacco use at the point of sale. We know from our local experiences in Staten Island that youth and adults are constantly bombarded with deceptive tobacco advertising. Advertising in stores is only ONE of the many ways the tobacco industry reaches people, and they are always coming up with new innovative ways to reach existing consumers, and lure new ones. That's why right now, we need to see public health warnings in more settings. Providing a balanced health warning about the single most preventable cause of death—right at the point of sale—is an incredible opportunity for a public health intervention. Furthermore, we believe there is support for initiatives like this among community members and retailers that we have worked with in Staten Island. We urge the Board to implement this proposal. Thank you.

A student on his way to school...



Janelly Ferreira

**Testimony for: Public Hearing- Department of Health and Mental Hygiene: Board of Health,
Amendment of article 181 of the New York City Health Code**

My name is Janelly Ferreira and I am seventeen years-old. I was previously an intern at the YM & YWHA Teen Anti-Tobacco Campaign in Washington Heights. I am here today because I feel that it is important to help raise as much awareness as possible towards the community on the dangers of smoking. If one were to actually see the damage that smoking does to his/her body from a warning sign before purchasing a pack, they just might think twice about buying it. People today, specifically teens, think that they are invincible towards any kind of damage. If seeing the damage smoking causes can help even one person from smoking, then it is a difference and shows that there is hope. I also have three younger brothers and sisters, and I want what is best for them and their health. In my neighborhood, kids are bombarded with tobacco advertisements and even though we are taught in school about the dangers of smoking, that can easily be forgotten when you walk into the local bodega and see the ads that are targeting youth. A small sign reminding kids of the reality of what smoking does to the body can keep that message to stay away from smoking clear. Any measures of prevention now can go a long way for the future generations. Thank you.

This form resides at

<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Jeffrey

Last_Name: Gottheil

Email: jgottheil@jgottheilmarketing.com

Phone Number: 905-762-1620

Title: President and Creative Director

Organization: J. Gottheil Marketing Communications Inc

Street Address: 15 Sims Crescent Suite 300

City: Richmond Hill

State: Ontario

Zip Code: L4B 1C9

Comments: Point of Purchase displays are one of the most
Powerful and Influential forms of advertising there
is today.

It is the only advertising medium that can influence
the customer when they have cash in hand and are
ready to make a purchase decision.

POP is designed to capture your attention and
Influence your purchase decision.

POP is designed to physically fit within the retail
environment and be perceived as an endorsement
by the store.

If I trust the store than I trust the products they

sell.

Think about it, anyone that walks into a convenience store today is exposed to tobacco products and displays.

According to a study by Brown Williamson (an affiliate of Imperial Tobacco): "the store environment, especially displays inside stores, is the biggest source of advertising awareness for all cigarette trademarks" and "Impulse Purchase" is a factor in the tobacco category, particularly among young and occasional smokers.

Is this having an influence on our children?

85% of kids from non-smoking households spontaneously name c-stores as a place that sells cigarettes

Over 40% of kids from non-smoking households can spontaneously name brands of cigarettes

The corner store is very much a part of our life and culture.

77% of kids go to c-stores at least once a week (and many 2 to 5 times a week)

During lunch hour

After school for a snack or

On the weekend for a treat

For a child, it's their first " Right-of-Passage" to spend their allowance and buy something for themselves like a chocolate bar.

Do they have to be exposed to this wall of cigarettes every time they walk into a convenience store?

We must realize how scary the idea of that much exposure over that much time can have on a child.

If the Product is restricted so should be the message

We must protect our children from the influence tobacco products have on them. I'm strongly recommending to implement a signage program for stores that sell tobacco products that can at least provide someone who is trying to quit smoking and children who haven't started, a fighting chance. A chance to think twice and be aware of the negative impact that tobacco products can have on them.

Jeffrey Gottheil
President and Creative Director
J. Gottheil Marketing Communications Inc.

Jeffrey Gottheil is President and Creative Director of J. Gottheil Marketing Communications, a firm specializing in Point of Purchase material and Retail Advertising. He has over 25 years experience designing communication programs for both retailers and manufacturers. He is known for his marketing and strategic planning as well as his creative concepts and unique insight in applied design.

Jeffrey obtained his B.Comm. degree at Concordia University in Montreal. Jeffrey is considered a leading expert on POP material, displays and in-store branding. Besides lecturing on these subjects for many local and national organizations, he is frequently invited to write articles for industry leading publications, including Marketing, Strategy, Homestyle and Canadian Grocer. Contact Jeffrey Gottheil at 905-762-1620 or visit www.jgottheilmarketing.com

Taken from a Canadian Study commissioned in 2007 by the Non Smokers' Rights Association



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Executive Deputy Commissioner

July 30, 2009

Rena Bryant
New York City Board of Health
125 Worth Street CN-31
New York, NY 10013

Support for the proposed amendment of Article 181, New York City Health Code

Preventing and reducing tobacco use are the most important public health actions that can be taken to improve the health of New Yorkers. Tobacco use and dependence is the leading preventable cause of morbidity and mortality in New York and in the United States. Cigarette use alone results in an estimated 438,000 deaths each year in the US, including 25,500 deaths in New York State. More than half a million New Yorkers currently suffer from serious smoking caused diseases, at a cost of \$8.17 billion in health care expenditures annually. The list of illnesses caused by tobacco use is long and contains many of the most common causes of death, including heart disease and stroke, many forms of cancer, and lung and vascular diseases.

The New York State Department of Health Tobacco Control Program's mission is to reduce tobacco-related morbidity and mortality and the social and economic burden caused by tobacco use, with a long-term vision of creating a tobacco-free New York. As such, we strongly endorse the proposed amendment to Article 181 of the New York City Health Code requiring tobacco retailers to post compelling health warnings regarding the harmful effects of tobacco use and to provide customers with information of tobacco use cessation. This important amendment will:

- Provide truthful product information to consumers prior to the purchase of tobacco products;
- Motivate smokers to quit their deadly addiction to tobacco products; and
- Provide smokers who want to quit with resources that can help them do so successfully.

Information that identifies why quitting is personally relevant to the tobacco user and that identifies the potential negative consequences of tobacco use is critical for motivating tobacco users to quitⁱ. The Federal government has recently taken important steps to ensure that consumers are increasingly aware of the negative consequences of cigarette smoking. With the passage of the Family Smoking Prevention and Tobacco Control Actⁱⁱ, cigarette packages will soon be required to cover at least 50 percent of the front and rear panels of cigarette packages and include one of the following health warnings:

- WARNING: Cigarettes are addictive.
- WARNING: Tobacco smoke can harm your children.
- WARNING: Cigarettes cause fatal lung disease.
- WARNING: Cigarettes cause cancer.
- WARNING: Cigarettes cause strokes and heart disease.
- WARNING: Smoking during pregnancy can harm your baby.
- WARNING: Smoking can kill you.
- WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.
- WARNING: Quitting smoking now greatly reduces serious risks to your health.

Unfortunately, under the new Federal requirements the impact of the health warnings will not be fully realized until a consumer has already purchased a pack of cigarettes. The proposal to post compelling health warnings at the point of sale is important because truthful information will be provided to the consumer prior to the purchase of cigarettes when the information can dissuade potential youth smokers from ever starting and encourage current smokers to make a quit attempt rather than purchasing another pack.

Despite laws that prohibit the sale of tobacco products to minors, youth are still able to purchase cigarettes from licensed tobacco retailers. The New York State Department of Health funds compliance check activities with licensed tobacco retailers across the state. During compliance checks conducted in New York City during fiscal year 2006-2007, 1,280 retailers sold tobacco products to minors. Statewide, nearly eight percent of the 28,075 compliance checks conducted resulted in an illegal sale of tobacco products to a minorⁱⁱⁱ. As a potential source of cigarettes to minors and the primary way that youth are exposed to tobacco product advertising, requiring the posting of truthful product information in the retail environment is clearly in the best interests of public health.

The impact of this amendment will likely depend on the nature of the health messages displayed on the point of sale warnings. Research on antismoking campaigns has shown a direct association between messages perceived as intense, evocative, and graphic and the recall of messages among youth^{iv}. Studies have further suggested that the use of high sensation messages, particularly those that use intense images to depict the negative health consequences of smoking are effective in promoting smoking cessation^v. Other studies have shown that messages containing high levels of emotional content and conveying loss of family and other smoking-related hardships^{vi} effectively promote smoking cessation and reinforce smokers' intentions to quit.

Research from other countries suggests that it is important for the proposed health messages to include elements that graphically illustrate the potential health effects of tobacco use^{vii}. Many countries currently require graphic images be included along with strong health warnings on cigarette packs. The research on the use of graphic images on cigarette packs suggests they are:

- 1) more likely to be noticed than text-only warning labels;
- 2) more effective for educating smokers about the health risks of smoking and for increasing smokers' thoughts about the health risks; and
- 3) associated with increased motivation to quit smoking

A study comparing the impact of graphic pictorial warnings to that of text-only warnings found that the graphic warnings more effectively increase quit intentions and quit attempts among smokers^{viii}. Pictorial warnings are also cited by former smokers as an important factor in their attempt to quit and have been associated with increases in the use of telephone Quitlines^{ix}. Finally, graphic pictorial warnings are important to communicate information to individuals with low literacy^x. Since smokers are disproportionately from lower education and income groups, literacy concerns are justified.

Our experience has shown that promoting the New York State Smokers' Quitline using graphic health images and compelling messages generates tremendous interest in smoking cessation. We believe the potential inclusion of the Quitline number, 1-866-NY-QUITS, on the health warnings presents an exciting opportunity for increasing awareness and utilization of the Quitline and reducing the enormous health impacts of tobacco use in New York City and our state.

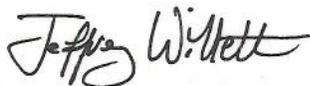
In addition to providing truthful information to consumers about tobacco use, the Department of Health believes it is important to increase smokers' access to nicotine replacement medications that can help them quit successfully. Last year, Richard F. Daines, MD, Commissioner of the New York State Department of Health, submitted a citizen petition requesting that the Food and Drug Administration (FDA):

1. Allow the sale of over-the-counter (OTC) nicotine replacement therapy (NRT) in all retail locations where cigarettes and other tobacco products are sold;
2. Allow OTC NRT to be packaged in units of a size that can be competitively priced with cigarettes and/or in units containing an amount of OTC NRT product that would typically be consumed during a 24-hour period; and
3. Allow OTC NRT to be advantageously positioned relative to cigarettes and tobacco products in order to promote the sale of OTC NRT.

We believe that having NRT available in affordable daily units at all cigarette point of sale will be a good compliment to the proposed amendment to Article 181. It is in the best interests of the public's health to provide truthful information regarding tobacco use along with effective resources for quitting at the point of sale.

In conclusion, the New York State Tobacco Control Program strongly endorses the proposed amendment to Article 181 of the New York City Health Code requiring tobacco retailers to post compelling health warnings regarding the harmful effects of tobacco use and providing customers with information about smoking cessation.

Sincerely,



Jeffrey G. Willett, Ph.D.
Director
New York State Tobacco Control Program

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- ⁱ Fiore MC, Jaen CR, Baker TB, et al. 2008. Treating tobacco use and dependence: May 2008 update. Clinical Practice Guideline. Rockville, MD: U.S. Department of Health and Human Services. Public Health Service.
- ⁱⁱ Family Smoking Prevention and Tobacco Control Act. Signed by President Obama June 22, 2009.
- ⁱⁱⁱ Tobacco Enforcement Program 10th Annual Report. New York State Department of Health. October 1, 2006-September 30, 2007.
- ^{iv} Niederdeppe J, Davis KC, Farrelly MC, Yarsevich J. 2007. Stylistic features, need for sensation and confirmed recall of national smoking prevention advertisements. *Journal of Communication* 57:272-292.
- ^v Wakefield M, Flay B, Nichter M, Viovinio G. 2003. Effects of antismoking advertising on youth smoking: a review. *Journal of Health Communication* 8(3):229-247.
- ^{vi} Biener L, Ji M, Gilpin E, Alpers AB. The impact of emotional tone message, and broadcast parameters in youth antismoking advertisements. *Journal of Health Communication* 9:259-274.
- ^{vii} Fong GT, Hammond D, Hitchman SC. 2009. The impact of pictures on the effectiveness of tobacco warnings. *Bulletin of the World Health Organization* 87:000-000.
- ^{viii} Borland R, Yong HH, Wilson N, Fong GT, Hammond D, Cummings KM, et al. 2009. How reactions to cigarette packet health warnings influence quitting: findings from the ITC Four Country Survey. *Addiction* 104:669-675.
- ^{ix} Borland R, Wilson N, Fong GT, Hammond D, Cummings KM, Yong HH, et al. 2009. Impact of graphic and text warnings on cigarette packs: findings from four countries over five years. *Tobacco Control*.
- ^x Hammond D. 2009. Tobacco labeling and packaging toolkit: a guide to FCTC Article 11. Waterloo, ON: Tobacco Labeling Resource Centre.

Jessica Safier
Program Manager, Youth Initiatives
NYC Coalition for a Smoke Free City
120 Wall Street, Floor 25, Box # CN46W
New York, NY 10005

Testimony for: Public Hearing- Department of Health and Mental Hygiene: Board of Health,
Amendment of article 181 of the New York City Health Code

Hello, my name is Jessica Safier and I am the Program Manager of Youth Initiatives at the NYC Coalition for a Smoke Free City. The goal of our program is to prevent youth initiation of smoking. We work with teens from across the city to educate the community and the media about the tobacco industries' influence on local youth. I am strongly in support of an amendment to article 181 of the New York City health code which would require that health warnings and cessation information be displayed at cash registers of stores that sell tobacco.

Research has demonstrated that at least 90% of current smokers began smoking before age 18. Clearly, preventative measures are desperately needed in order to discourage youth from developing this deadly addiction.

Additionally, studies show that 75% of teenagers shop at convenience stores at least once per week. The youth that I work with mention that they stop at local neighborhood bodegas daily. Due to the opportunity for repeated and consistent exposure to health messaging, the counters of local retail stores are the perfect location for this information.

Many of the youth that I work with receive inconsistent messaging regarding the dangers of smoking. Some suggest that they don't recall receiving much information from school, that their own parents are smokers, and they are surrounded by advertisements and peer pressure.

I feel that amending the health code to require that retail stores post warnings will be a valuable service to the community by supporting efforts to discourage youth from smoking and provide assistance for their friends and family members who are trying to quit.



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Fax: (908) 273-9222
Email: info@njgasp.org
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July 20, 2009

Attn: Rena Bryant, Secretary
New York City Board of Health
125 Worth Street CN-31
New York, NY 10013

Comments re: proposed amendment section 181.19

Thank you to the New York City Board of Health (NYCBOH) for its concern and interest in preventing people from starting to smoke, and helping smokers quit smoking. I am Executive Director of Global Advisors on Smokefree Policy, and Director of our Tobacco Control Policy & Legal Resource Center.

Our comments are brief, touching upon section 181.19, as well as discussing other related tobacco control suggestions:

1. Utilize smoking cessation messaging and health warning signs that target both adult and youth smokers, and direct smokers to physicians, in addition to current quit services and free products.
2. Consider restricting tobacco advertising and promotions, not only in retail stores but in restaurants, bars, clubs, etc. A clear severance clause can be added to the section, to minimize litigation risk.
3. Create a city licensing fee system for Other Tobacco Products (OTPs), e.g. retail, wholesale, distributor, manufacturer, etc. Currently, we believe that the state only maintains a cigarette licensing fee system, and does not have one for OTPs. New York State's retail cigarette licensing fees will increase in September to a minimum of \$5,000 per license.
4. Restrict e-cigarette use in public places and workplaces, in light of the July 2009 FDA study that e-cigarettes contain carcinogenic substances that are not fit for human consumption. (many e-cigarette websites admit on their websites that the product is 'smoked').
See FDA report at <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm172906.htm>
5. Eliminate exemption for hookah smoking, especially in bars, restaurants, clubs.
6. Expand the new smokefree hospital entrance/exit perimeters to all businesses, for smokers who are standing nearby (vs. smokers walking by these entrances/exits).
7. Ban smoking in cars when children are present.
8. Require public parks be smokefree.
9. Ban smoking in homes, cars, etc. when resource family children (foster children) are present.
10. Ban all flavored tobacco.

Thank you for your consideration on this matter, and you can reach me directly at 908-377-3900 or karen.blumenfeld@verizon.net.

Karen Blumenfeld, Esq.
Executive Director



Testimony of Kevin O'Flaherty
Campaign for Tobacco-Free Kids
New York City Board of Health
July 30, 2009

Good afternoon.

My name is Kevin O'Flaherty and I'm the Regional Director of Advocacy for the Campaign for Tobacco-Free Kids. I'm here today to offer the Campaign's strong support for the proposed amendment to Article 181 of the New York City Health Code that would require health warnings and tobacco cessation information to be displayed in all tobacco retail outlets.

In summary, the research says this: that the public needs additional education and warnings about the dangers of tobacco use, the benefits of quitting and the availability of cessation assistance; that the most effective place to deliver these messages and have an impact on the consumer is at the point of purchase; and that the city's proposal incorporates the best strategies currently known to make these messages effective in both encouraging current tobacco users to quit and in discouraging youth from initiating tobacco use at all.

The first point, that the public needs additional education and warnings about tobacco use, is critically important for us to acknowledge. Every day, it seems, we hear from medical service providers, advocates, legislators, and the general public that "everyone knows smoking is bad for you". Yet, there are still tremendous areas of consumer ignorance or misunderstandings that the pending proposal could directly address. For example, many smokers continue to believe that cigarettes labeled or marketed as light, low or mild are safer or less risky, when they are actually at least as dangerous as other cigarettes. Studies have found that correcting this mistaken belief will prompt more smokers to try to quit. While the new FDA tobacco law will eventually prohibit the use of these misleading terms, other words, such as silver or smooth, can also mislead many smokers into thinking a particular brand is safer or less risky, as can brands sold with lighter colors or with pictures of filters. Warning messages required by this proposal could directly address these erroneous, potentially deadly beliefs.

There are many other examples of situations where a lack of consumer knowledge directly impacts tobacco use rates. Most youth do not understand how powerfully addictive cigarettes are. One survey found that less than five percent of daily smokers in high school think that they will still be smoking at all in five years when the reality is that more than sixty percent of high school smokers will still be regular daily smokers seven to nine years

later. Many smokers also grossly underestimate their own risks of harm and death from smoking, with one study even finding that substantial numbers inaccurately think that they can offset most of the risks and harms from smoking by exercising, taking vitamins, or simply having good genes. The informational signs required by the pending proposal could help to correct all of these kinds of misperceptions and inaccuracies that increase initiation into tobacco use and keep current users from doing more to try to quit or cutback.

Secondly, research shows that informational and promotional signage are effective at impacting consumer perception and choice. Recent studies have found that this type of information has led consumers to choose lower-fat snack options and healthier beverages from vending machines. Five out of six studies found that simply providing calorie-content information at restaurants and cafeterias produced healthier food choices and another study found that posters and messaging at elevators and in stairwells prompted employees in a five-story building to use the stairs more, with overweight workers the most likely to make the switch.

Further tobacco-specific support for the proposal comes from additional research that has found that providing smokers with information about how to quit or how they can get cessation assistance helps to increase both the number of quit attempts and the related success rates. Several studies have confirmed the expected finding that publicizing quitline phone numbers increases the number of tobacco users who call to get cessation assistance. Adding the national quitline phone number onto new graphic image cigarette warning labels in Australia doubled the number of calls by smokers to obtain quitting help.

Finally, a growing body of research and real-world experience with cigarette pack warning labels has established that warning signs work best if the warnings are large, prominent and colorful, include graphics, and are changed periodically to avoid becoming familiar and ignored. Additionally, using images and pictures, and requiring warnings in different languages has been documented as beneficial in effectively communicating with all consumers, including those who are not literate or who do not read English.

The Campaign for Tobacco-Free kids believes the pending proposal is carefully designed to follow these research findings by directly requiring that the warning signs be placed in key locations where purchasers and potential purchasers of tobacco products are most likely to see them and be large enough to make sure they will be noticed and clearly seen. Equally important, the proposal also authorizes the Health Department to employ colors, pictures and images, as well as text, and to change the warning sign's content and character as necessary to better promote the proposal's goals of educating consumers and preventing and reducing tobacco use and its harms.

There is no magic bullet to prevent and reduce the disease and death caused by tobacco use. The smoke-free laws, high tobacco tax rates, and solid levels of tobacco control funding in New York City have been enormously helpful in reducing the many harms and costs caused by tobacco use in the City. But as the Institute of Medicine, the President's Cancer Panel, the Surgeon General and many others have all said: new tobacco control measures are also needed to work in concert with the others – and implementing this proposal would be a constructive addition.

Thank you.

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Laila

Last_Name: Modzelewski

Email: laila.modzelewski@cancer.org

Phone Number: 570-242-8399

City: Staten Island

State: NY

Zip Code: 10301

Comments: Many students shop at local convenience stores before and after school, this is the best way to target youth with a message about the dangers of smoking. On Staten Island we need this type of messaging to help prevent youth from picking up the habit and to encourage smokers to quit.

REMOTE_HOST: 24.168.16.4

HTTP_ADDR: 24.168.16.4

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 7.0; Windows NT 5.1; Trident/4.0; GTB6; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30; .NET CLR 3.0.04506.648; msn OptimizedIE8;ENUS)

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Lauren

Last_Name: Young

Email: caltabelly55@yahoo.com

Phone Number: 718-351-1333

Street Address: 363 Ross Avenue

City: Staten Island

State: NY

Zip Code: 10306

Comments: As a mother of four children and grandmother I urge this law to be passed. I have lost both my parents from smoke related illnesses. My Dad died from lung cancer and my Mom just died in June from COPD. Both were heavy smokers. To date my two daughters smoke and I do hope that they kick the habit before it's too late. I pray that my granddaughter never smokes, along with my two sons. But I do know that my granddaughter, who is 11 years old, is so impressionable. She knows every commercial on television by heart and does pay close attention to advertisements in local stores. Therefore, I endorse the passage of Article 181 of the NYC Health Code requiring the posting of tobacco health warnings be posted where everyone can see them, especially young and impressionable children.

REMOTE_HOST: 98.113.49.8

HTTP_ADDR: 98.113.49.8

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30; .NET CLR 3.0.04506.648)

10001
Re article 181.19 (proposed amendment)

There are 3 grounds on which I object to this proposal:

THE VISCERAL, THE CONSTITUTIONAL, AND THE FACTUAL

Let's start with The Visceral.

IT VIOLATES THE BORDERS OF PUBLIC DECENCY

It is-- to pick adjectives-- ghoulish; lurid; pornographic; disgusting. In short, it's an assault-- an almost literal sock in the eye.

In yet another form of humorless, authoritarian, paternalistic overkill, you apparently feel entitled to inflict a whole series of stomach-turning images on everyone who happens to wander into a store.-- including the 80% of New Yorkers who don't, and have no intention of, smoking, but are mortal nonetheless. And who know that they're mortal. And so you'd accost us, on a sunny afternoon, with a nasty *memento mori*--a reminder that, regardless of whether or not we smoke, we're all, in the end, just a vulnerable mass of viscera waiting around for rot..

In Robert Welch's famous words to McCarthy: "Have you no sense of decency?"

BESIDES, IT WON'T WORK.

In fact, it'll backfire. Psychologically, it's a dud.

A UK study on smokers' reactions to pictures such as these showed that, to the contrary, it made them want to smoke, the researcher observing in a quote to The New York Times, that "they appear to work mainly as an advertising tool to keep smokers smoking." ("Inhaling Fear," NY Times, Dec 11, 2008)

And everyone's reaction to repulsive, invasive and shocking images is to quickly avert their eyes, not absorbing-- or immediately erasing-- your "message." So your Clockwork Orange

efforts at applied revulsion will merely cause vague generalized anxiety that's instantly rejected, denied, and erased.

(Everyone I know, both smokers and nonsmokers, quickly changes channels when your commercials come on the air. And aside from disquiet, what most of us feel is anger. At you. For intruding this ugliness into our homes.)

AND WHAT ABOUT THE CHILDREN ?

Ah, but you tell us you're doing it for Them. And so you force very easily-spooked children to look at pictures out of a horror movie-- a movie you yourselves would undoubtedly rate X in order to-- ironically-- "protect the children."

(The witch in Snow White gave me nightmares at age 5; I can't begin to imagine what a rotting tongue would do.)

And the children you'll frighten most are the ones too young to read, who couldn't, even possibly, understand what you're doing, let alone why you're doing it.

IT VIOLATES THE SPIRIT OF THE FIRST AMENDMENT.

I have no idea about the legal technicalities, but it violates the common understanding of Free Speech in that it's Forced Speech. Which abrogates Free Speech. Forced speech is when the government requires its citizens to express a particular statement or opinion.

The posters you'll be forcing the proprietors to post-- without compensation, further costing them the space they require to sell their merchandize-- are pure propaganda in the nastiest sense of the word: scare tactic scolding, hectoring half-truth . And it's not just proprietors you're forcing this speech on; you're also indirectly forcing it on the taxpayers who are forced to foot the bill for producing these posters and enforcing the

regulations. Thomas Jefferson once called that "sinful and tyrannical."

The opinions, agendas, and prescriptions of the state-- or, in this case, the city-- are not necessarily those of its citizens (and the store owners, just in case you've missed it, are citizens). The administrations in power at any particular time should not be free to force those people who disagree to either speak or to hear-- to post or to see--and certainly not to fund-- its particular propaganda.

AND, YES: THIS IS PROPAGANDA, NOT "TRUTH"

The illnesses you graphically and gruesomely represent as being "caused" by smoking, and also, implicitly, only by smoking (while you're further implying that smoking will all but inevitably cause them) are in actual truth linked with up to 300 "risk factors" (which aren't the same as causes) and among which smoking may, in truth, present a far weaker risk than the list of others. The major cause of many of these conditions is diabetes (Will you post missing limbs at the bakery counter, too?), or cholesterol clogged arteries (At the hamburger counter too?) or, to name a few of the others: obesity, genetics, stress, lack of exercise, infection, occupational exposure and urban air. (Will you post decaying lungs on the highways into the city?)

Your posters are, therefore, cherry picked and "truthy." You are not, in fact, fully informing the public, you're pushing a pet agenda; and thuggishly, by law, forcing others to do it for you.

In sum, this proposal is entirely revolting. And I do sincerely hope that New Yorkers will revolt.

Linda Stewart
NYC

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Lyudmila

Last_Name: Bezprozvannaya

Email: Skiff0713@yahoo.com

Title: Nurse Practitioner Student

Organization: Downstate Medical Center College of Nursing

Comments: I'm a nurse practitioner student in the Downstate Medical Center College of Nursing and I fully support this new amendment. The emphasis of our educational program is placed on preventative measures. Preventative measure starts with education. Giving the general public (particularly smokers) this type of information will help them to visualize the harmful effects of tobacco to self and others. It will provide important information about getting assistance with smoking cessation.

REMOTE_HOST: 138.5.178.85
HTTP_ADDR: 138.5.178.85
HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 7.0; Windows NT 5.1)

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Maria

Last_Name: Paladino

Email: maria.paladino@cancer.org

Phone Number: 718-987-8872

Organization: American Cancer Society

Street Address: 173 Old Town Rd

City: Staten Island

State: NY

Zip Code: 10305

Comments: Please Amend Article 181 of the NYC Health Code to require the posting of tobacco health warnings and smoking cessation info in all places in NYC where cigarettes are sold.

Thank You
Maria Paladino

REMOTE_HOST: 98.113.49.8
HTTP_ADDR: 98.113.49.8
HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30; .NET CLR 3.0.04506.648)

-----Original Message-----

From: PortalAdmin@doitt.nyc.gov
Sent: 07/29/2009 08:53:10
To: sbladmp@customerservice.nyc.gov
Subject: < No Subject >

From: ()
Subject: Article 181 - Tobacco Warning Signs

Below is the result of your feedback form. It was submitted by
() on Wednesday, July 29, 2009 at 08:53:10

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Mary Anne

Last_Name: Donohue

Email: Mary.Ann.Donahue@cancer.org

Phone Number: 718-987-8872

Organization: American Cancer Society

Street Address: 173 Old Town Rd

City: Staten Island

State: NY

Zip Code: 10305

Comments: As a grandmother of 7 - I would like to recommend that Article 181 of the NYC Health Code require posting of tobacco health warnings and smoking cessation all places in NYC where cigarettes are sold. This is very important legislation.

REMOTE_HOST: 98.113.49.8
HTTP_ADDR: 98.113.49.8
HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30; .NET CLR 3.0.04506.648)



WRITTEN COMMENTS OF THE CAMPAIGN FOR TOBACCO-FREE KIDS

SUPPORTING THE PROPOSED AMENDMENT TO THE NEW YORK CITY HEALTH CODE TO REQUIRE EDUCATIONAL WARNING SIGNS REGARDING TOBACCO USE HARMS AT ALL RETAIL OUTLETS THAT SELL TOBACCO PRODUCTS

PUBLIC HEARING, JULY 30, 2009

We are submitting these comments to express our support for the proposed amendment to the New York City Health Code to require all retail sellers of tobacco products to post educational warning signs that will alert consumers to the health harms from tobacco use and give current tobacco users information on how they can get help with their efforts to quit.

Tobacco products, unlike any other consumer product, are harmful and deadly even when used precisely as intended. Unlike other legal consumables, tobacco products are also highly addictive, with the vast majority of all users beginning to consume tobacco products before reaching the minimum legal age. Further, the evidence consistently shows that most tobacco users report that they want to quit but many find it difficult to do so. To make matters worse, the most common form of tobacco use, smoking, also causes substantial harm to innocent nonusers through exposure to secondhand smoke.

Indeed, our national policy reflects that more needs to be done to better and more effectively inform consumers about the harms of tobacco use. Repeated reports of the Surgeon General of the United States as well as the recently enacted Family Smoking Prevention and Tobacco Control Act conclude that more must be done to communicate to tobacco users and potential tobacco users and discourage tobacco use, particularly by youth. These goals are also reflected in the reports of the National Academy of Sciences Institute of Medicine 2007 Report entitled "Ending the Tobacco Problem: A Blueprint for the Nation" and the 2008 Report of the President's Cancer Panel entitled "Maximizing our Nation's Investment in Cancer: Three Crucial Actions for America's Health".

There is no magic bullet to prevent and reduce the disease and death caused by tobacco use. Effectively addressing the problem requires a wide range of different strategies and tools, with each one working to complement and strengthen the beneficial impacts from the others. The smoke-free laws, high tobacco tax rates, and solid levels of tobacco control funding for cessation assistance, public education and prevention activities in New York City have been enormously helpful in reducing the many harms and costs caused by tobacco use in the City. But as the Institute of Medicine, the President's Cancer Panel, the Surgeon General and others have all said: new tobacco control measures are also needed – and implementing the pending proposal would be a constructive addition.

This proposal is particularly important because it reaches consumers at the point of purchase. There is substantial research about the power of information and cues on consumers at the point of purchase. Those who sell products recognize the power of these cues and the impact of messages and visibility just as a consumer is about to make a purchase. At present those cues, including the visibility of attractive product packages carefully displayed, often at the point of check out, almost uniformly make tobacco products more visible, more attractive and more alluring. At the same time the health warnings on product packages can't be seen or are hard to see until after the purchase has taken place.

While this proposal is focused on insuring that the public is warned prior to a purchase decision and not as a counter to tobacco marketing, it is clear that the tobacco industry recognizes the importance of seeking to influence consumers at the moment of purchase by the amount they spend on product placement, product packaging and marketing at the retail outlet, especially in the types of stores that youth most often frequent – convenience stores.. For example, in one survey eighty percent of retail outlets had interior tobacco product advertising, 60 percent had exterior tobacco product advertising, and over 70 percent had tobacco product functional items, such as display racks, counter mats, entrance and exit signs, and change cups; and forty percent of retailers that also sell gas had tobacco product advertising in the driveway and parking lot area.¹ An additional survey found that the average retail outlet had 25 pieces of in-store cigarette advertisements while another found more than 3,000 cigarette ads in just 184 stores.²

More generally, point-of-purchase tobacco product displays and advertising at the point of purchase have been found to increase average retail tobacco product sales by as much as twelve to twenty-eight percent.³ A more recent study found that cigarette pack displays at retail outlets stimulate impulse purchases among smokers and that those trying to avoid smoking commonly experience urges to purchase cigarettes when confronted with these displays, suggesting that cigarette pack displays undermine intentions to quit among established smokers.⁴ That same study also found that 25 percent of the surveyed smokers had made an unplanned purchase of cigarettes in the last 12 months as a result of seeing point-of-purchase tobacco product displays. Similarly, a 2009 study based on interviews with persons having just bought cigarettes at retail outlets with point-of-purchase displays found that more than one out of five of the purchases were unplanned.⁵

The informational warning signs required by the pending proposal will directly address the existing imbalance between the power of pro-tobacco-use cues at retail outlets and the lack of visible consumer information about tobacco use health harms or cessation assistance. The signs required by the pending proposal will reach, warn, remind and educate consumers right at the key moment before final purchase decisions are made, which is exactly when those trying to quit or resist are most vulnerable to making impulse buys they will later regret.

The need for this action is not decreased by the warning label requirements in the recently enacted Family Smoking Prevention and Tobacco Control Act. Current warnings are rarely seen by purchasers until after they make their purchase. The new warnings on cigarettes will not be implemented for approximately three years and, even then, it is uncertain whether they will be displayed in such a way that consumers will see the warnings until after they have made their purchase.

A growing body of research and real-world experience with cigarette pack warning labels has established that warning signs work effectively among both youth and adults to make smoking appear less attractive, increase knowledge about tobacco use harms, reduce the amounts consumed, and increase both the intention to quit and the likelihood of quitting – especially if the warnings are large, prominent and colorful, include graphics, and are changed periodically to avoid becoming familiar and ignored.⁶ Using images and pictures, and requiring warnings in different languages has been documented as beneficial in effectively communicating with consumers, including those who are not literate or who do not read English.⁷

The pending proposal is carefully designed to follow these research findings by directly requiring that the warning signs be placed in key locations where purchasers and potential purchasers of tobacco products are most likely to see them and be large enough to make sure they will be noticed and clearly seen. Equally important, based on the growing body of scientific evidence of

what is most effective in communicating with consumers, the proposal authorizes the Health Department to employ colors, pictures and images, as well as text, and to change the warning sign's content and character as necessary to better promote the proposal's goals of educating consumers and preventing and reducing tobacco use and its harms.

In this regard, the informational warning signs required by the pending proposal would not only work effectively on their own to educate those who use or might use tobacco products but would also serve as effective supplementary components of the ongoing public education efforts of the Department of Health regarding tobacco use and its harms, which are, in turn, complemented by the public education efforts of the state government, the National Legacy Foundation and others.⁸

Additional evidence of the effectiveness of providing key information and encouragement at the point-of-purchase comes from research showing that informational and promotional signage are effective at impacting consumer perception and choice. Recent studies have found that this type of information has led consumers to choose lower-fat snack options and healthier beverages from vending machines or to get shoppers to use stairs to get exercise rather than elevators.⁹ Another study found that posters and messaging at elevators and in stairwells prompted employees in a five-story building to use the stairs more, with overweight workers the most likely to make the switch.¹⁰ Five out of six studies found that simply providing calorie-content information at restaurants and cafeterias produced healthier food choices, and it appears that larger and more consistent results can be obtained by going beyond just providing the calorie information and also offering related promotional messaging.¹¹

Further support for the pending proposal comes from additional research studies that have found that providing smokers with information about how to quit or about how they can get cessation assistance helps to increase both the number of quit attempts and the related success rates. Several studies, for example, have confirmed the expected finding that publicizing quitline phone numbers increases the number of tobacco users who call to get cessation assistance.¹² More specifically, adding the national quitline phone number onto new graphic image cigarette warning labels in Australia doubled the number of calls by smokers to obtain quitting help.¹³ Along the same lines, another study, in New York, found that cold calling smokers to offer cessation assistance through the state's quitline prompted 41 percent to accept and receive the assistance.¹⁴ Not surprisingly, smokers who call quitlines also have a much better chance of quitting successfully compared to those trying to quit with no assistance, and smokers receiving quitline assistance with cessation medications are more successful at quitting than those using cessation medications alone.¹⁵

Despite the impression that "everyone knows smoking is bad for you," there are still important areas of consumer ignorance or misunderstandings that the informational signs required by the pending proposal could directly address. For example, many smokers continue to believe that cigarettes labeled or marketed as light, low or mild are safer or less risky, when they are actually at least as dangerous as other cigarettes; and studies have found that correcting this mistaken belief will prompt more smokers to try to quit.¹⁶ While the new FDA tobacco law is scheduled to prohibit the use of misleading terms such as light, low or mild effective June 22, 2010, new research shows that other kinds of words, such as silver, can also mislead many smokers into thinking a particular brand is safer or less risky, as can brands sold with lighter colors or with pictures of filters.¹⁷ The informational signs required by the pending proposal could correct these and other misconceptions caused by ongoing and new tobacco industry marketing, as well.

There are many other examples of a lack of consumer knowledge or misunderstandings about tobacco products that impact tobacco use rates. For example, the vast majority of Americans are not aware of the many dangerous chemicals in cigarettes and cigarette smoke.¹⁸ Most youth do not understand how powerfully addictive cigarettes are, with one survey finding that fewer than five percent of daily smokers in high school thinking that they will still be smoking at all in five years but more than 60 percent of high school smokers still regular daily smokers seven to nine years later.¹⁹ There is a common false belief that cigar smoking is not very risky, much less deadly, at all; and many smokers, in particular, are confused about the relative risks of different types of tobacco and nicotine products.²⁰ Similarly, many smokers grossly underestimate their own risks of harm and death from smoking, with one study even finding that substantial numbers inaccurately thinking that they can offset most of the risks and harms from smoking by exercising, taking vitamins, or simply having good genes.²¹ The informational signs required by the pending proposal could help to correct these kinds of misperceptions and inaccuracies that increase initiation into tobacco use and keep current users from doing more to try to quit or cutback.

All of the research and information described so far indicates that implementing the pending proposal will supplement and reinforce other ongoing tobacco prevention efforts by working directly to educate and warn consumers, thereby helping to prevent and reduce tobacco use and its harms throughout New York City. At the same time, because it only requires the posting of one or a few signs, provided by the Public Health Department, at each retail outlet that sells tobacco products, its implementation will not be unduly burdensome to retailers.*

This proposal will have the greatest positive impact in convenience stores. Reports from Convenience Store News note that convenience stores account for almost two-thirds of all cigarette sales nationwide and more than 85 percent of all other tobacco product sales.²² Implementing the pending proposal will provide both current and potential tobacco users with information that will enable them to make more informed consumer decisions, it will offer helpful cessation assistance guidance to the large majority of smokers and other tobacco users who want to quit, and it will help to dampen unplanned impulse purchases at retail stores by those trying to quit or cutback. In addition, the new requirement will pose little or no financial or administrative burden on retailers and will not occupy an undue amount of space.

In sum, this modest proposal will have a positive impact on consumer knowledge and perception and is consistent with the goals of the federal government, New York State and New York City. It is smart, focused public health policy. We urge you to adopt it.

Respectfully Submitted for the Campaign for Tobacco-Free Kids on July 30, 2009 by:



Matthew L. Myers
President

* The proposal requires an educational warning sign at each customer payment location and at each separate location where tobacco products are displayed. So small retailers that display all their tobacco products behind a single register or payment counter, for example, would likely have only one such sign.

Endnotes

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This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Melissa

Last_Name: Robson

Email: Melissa.robson@cancer.org

Comments: By amending Article 181 to the New York City Health Code, the city and its residents would benefit greatly. By placing cessation information where cigarettes are sold, smokers see a constant reminder to quit smoking. Not only are they reminded but they are also exposed to the measures they can take to quit smoking with the cessation information provided. By placing a visual warning about the dangers of smoking, children and adults are deterred from beginning smoking. The visual images also remind smokers of the effects that other smokers have experienced. This may deter the smoker from buying their next pack of cigarettes.

REMOTE_HOST: 98.113.49.8

HTTP_ADDR: 98.113.49.8

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30; .NET CLR 3.0.04506.648; .NET CLR 3.0.4506.2152; .NET CLR 3.5.30729)

Comments prepared for the New York City Department of Health and Mental Hygiene Board of Health in regard to a proposal to require health warnings and smoking cessation information where tobacco is sold

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July 24, 2009

I'm writing to offer my support for the proposed amendment to Article 181 of the New York City (NYC) Health Code to require the posting of tobacco health warnings and smoking cessation information in all places in NYC where tobacco is sold. Below are ten reasons why this proposed amendment to Article 181 deserves your strong support and adoption.

1. The most obvious reason is that tobacco use continues to be the leading cause of preventable death in NYC, responsible for an estimated 7,400 premature deaths annually [1].
2. The public is not fully informed about the health risks of tobacco [2-18]. While studies do show that most people know that smoking is dangerous and can cause lung cancer [2-8, 10, 11, 16]. These same studies also reveal that many people are unaware of common diseases caused by smoking such as stroke, mouth cancer, impotence, osteoporosis, and blindness [2-8, 11, 16]. For example, in a 2008 study conducted in Buffalo, New York, we found that among 239 adult current smokers only 20% were aware that smoking caused osteoporosis, and 17% were aware that smoking caused blindness [16]. In this same group, we found that the risks of secondhand smoke exposure was grossly underestimated; 54% failed to recognize that secondhand smoke was a cause heart attacks in non-smoking adults and only 17% had heard that secondhand smoke was a cause of sudden infant death [16]. Several studies have found that people do not fully appreciate the addictive nature of tobacco products [6, 9, 10, 16]. Research also shows that many smokers do not appreciate that switching to a low-tar or filtered cigarette does not make smoking less hazardous for them [6-9, 12-17]. For example, where we showed smokers a pack labeled full-flavor and one labeled light, 9 out of 10 smokers incorrectly said that the full flavor cigarette would deliver more tart to the smoker [18]. Additionally, evidence suggests that
3. Understanding and acceptance of the health risks of tobacco use is predictive of whether someone uses tobacco products and among those who do use tobacco

whether they consider quitting [2, 3, 18, 19]. Disparities in knowledge about the health risks of smoking is likely one of the main causes of higher rates of tobacco use and lower rates of quitting smoking in lower SES populations [18].

4. Currently, no jurisdiction in New York State requires its tobacco retailers to post information about the health risks of tobacco use, even though this would be a logical requirement since virtually all tobacco purchases are made in retail stores where tobacco advertising is prominent and has been shown to prompt impulse buying of tobacco products [20-22].

5. The display of health warning notices at the point of sale has been done elsewhere without any problems. For example, several states and territories in Australia have required tobacco



retailers to display health warning notices with their Quitline number displayed at or adjacent where tobacco products are displayed as shown in the picture [23].

6. Repeated exposure to health warnings has been found to be an effective way to educate the public about the health risks tobacco [11, 24-30]. Several studies have shown that pictorial health warnings on cigarette packs work better than text-only messages [24-30] Pictorial warnings, in contrast to text-only warnings are more effective for getting the attention of adolescents and with population with low literacy and those who do not have English as their primary language [24, 29].

7. Tobacco products are addictive [31, 32]. Most smokers are addicted to cigarettes [31]; 95% of smokers say they regret their decision to ever start smoking [33].

- 2/3rds say that they want to quit, but need help to be successful in staying off cigarettes [34].
8. The proposed regulation will help counteract the tobacco product displays that give the impression that tobacco is socially acceptable and more commonly used than is truly the case [35]. For young people especially these displays undermine efforts to prevent uptake of tobacco use such as prohibiting the sale of tobacco products to children under 18 [20-22, 29].
 9. If more people were simply reminded about the health risks of tobacco more would try to quit [28, 30, 35] The NYS Smokers' Quitline gets thousands of calls from smokers seeking assistance to quit each year but this represents only a fraction of the number we could assist if only people were made aware of and prompted to contact this toll-free service [30].
 10. The Health Communications Testing Laboratory at Roswell Park Cancer Institute is willing to assist the New York City Department of Health and Mental Hygiene and the Board of Health in identify the most effective health warning messages to post in tobacco selling retail outlets. For example, while health warnings messages are important and needed other types of messaging should be consider also. For example, I would also suggest that consideration be potentially given to messages related to the personal financial cost of smoking, e.g. "Quit, save money" ("a pack a day costs \$3000/year"). In addition, at some point we hope that the Board of Health will also consider regulations that would prohibit the visible display of tobacco products at retail as it would make the health warning notices proposed in this amendment to Article 181 of the New York City (NYC) Health Code more impactful [22, 35].

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Testimony of Michael Seilback
Vice President, Public Policy & Communications
New York City Board of Health
July 30, 2009

- Good Afternoon. My name is Michael Seilback, Vice President, Public Policy & Communications for the American Lung Association in New York.
- I am here to speak in favor of the proposal to amend Article 181 of the NYC Health Code to require all NYC tobacco retailers to prominently display health warnings and smoking cessation information near cash registers and tobacco product displays.
- The American Lung Association in New York strongly supports this amendment. There is much that can and must be done to protect the public, especially children, from deadly tobacco products. Educating the public on the dangers of smoking and the tools available to help smokers quit will force them to think twice about buying that pack of cigarettes and help to reduce smoking rates.
- Tobacco use is the leading cause of preventable death in New York City, New York state and across the country. Here in NYC, 7,400 residents die annually from the effects of smoking.

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mseilback@alany.org
www.alany.org

- 2/3 of smokers want to quit, but need help to be successful. When people are aware of and understand the health risks of smoking, they are more likely to be motivated to quit. Displaying warnings at locations where people buy cigarettes will force smokers to think about the health consequences of their behavior.
- Having smoking cessation information available gives them the tools to quit smoking right at their fingertips. Quitting smoking is certainly not easy, so we must do everything possible to provide support for those who want to quit.
- Currently, there is no health information being offered at the retail point of sale to provide information about the health effects of smoking or about the alternatives available to smokers to help them quit their addiction. This proposal would educate consumers about things like nicotine replacement therapy, such as the patch, and gum and other successful interventions including the Quitline.
- While New York City and NYS have taken great strides to reduce smoking rates, there are still almost 1,000,000 smokers in NYC, of which 20,000 are high school students.
- NYC's hard-hitting media campaign has been a proven way to help reduce smoking, but this proposal would bring that education campaign right to the point of sale.

† AMERICAN LUNG ASSOCIATION®
IN NEW YORK

- The proposed warnings will also help prevent people from becoming smokers. Each day, the tobacco industry lures 1,100 kids into becoming regular, daily smokers. The recently-passed Family Smoking Prevention and Tobacco Control will go a long way to curb marketing to teens, but these proposed warnings will send a strong health message to teens thinking about buying their first pack.
- Smoking prevalence rates are often the highest among the lowest socio-economic groups. Requiring these messages to be displayed at the point of sale of all tobacco retailers in NYC will ensure that all smokers will receive the educational benefits, regardless of socioeconomic status.
- This proposal will not only motivate people to quit smoking but will help prevent another generation of children from taking up the deadly habit. Reducing the number of new and existing smokers in New York state will ultimately save lives. The American Lung Association in New York strongly supports this amendment and urges the Board to pass it when it comes to a vote in September.
- Thanks.

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www.alany.org

-----Original Message-----

From: PortalAdmin@doitt.nyc.gov
Sent: 07/30/2009 09:26:37
To: sbladmp@customerservice.nyc.gov
Subject: < No Subject >

From: ()
Subject: Article 181 - Tobacco Warning Signs

Below is the result of your feedback form. It was submitted by
() on Thursday, July 30, 2009 at 09:26:37

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Paige

Last_Name: Frothingham

Email: Pfrothingham@siuh.edu

Phone Number: 718-226-6532

Title: Health Educator

Organization: Staten Island University Hospital

Street Address: 242 Mason Ave

City: Staten Island

State: NY

Zip Code: 10305

Comments: I think warinig signs will deter people, especially our adolescent population from picking up the habbit. Hopefully it causes a smoker to pause and consider quitting. Article 181 - Tobacco Warning Signs is a wonderful tool to combat tobacco use.

REMOTE_HOST: 66.155.178.66

HTTP_ADDR: 66.155.178.66

HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30)



COMMENTS

**By the Food Industry Alliance of New York State, Inc.
On the
Proposal to Amend Article 181 of the Health Code
To Require Tobacco Retailers to Post Health Warning Signs**

The New York City Department of Health and Mental Hygiene has proposed that the Board of Health amend Article 181 of the Health Code to require all tobacco retailers in the City to post large, graphic health warning signs at the point of display and sale. The Food Industry Alliance of New York State, Inc. (FIA), representing 850 corporate retail and wholesale grocery companies statewide and nearly 800 individual supermarkets doing business in New York City, has several serious concerns about this proposal as it relates to food stores.

- The signs, to be designed and provided by the Department, are very large – a minimum of 18 inches x 18 inches up to a maximum of 36 inches x 36 inches. There is simply no place at the register to place a sign of those dimensions. At the courtesy counter, which is typically the location in stores where cigarettes are displayed and sold, there is no room amidst all the other required notices for a sign of that size. The practical barriers to posting the signs required by the proposal are insurmountable.
- Food stores' primary business is the sale of a wide variety of wholesome foods and those are the products that grocers promote. As is true for the general population, most customers do not smoke and they are not in the store to buy cigarettes. To display scary graphic images and negative messages in an environment where consumers are focused on food preparation and healthy eating is distasteful and runs counter to the positive shopping experience that a retailer seeks to create. More prominent health warnings should more properly and productively be placed on the package itself, which is now mandated by federal law.
- There is a proliferation of regulations that have nothing to do with maintaining an orderly marketplace and a safe food supply. Instead, there are extra mandates that retailers carry out programs which could oftentimes be accomplished voluntarily or elsewhere. These extra burdens contribute to the overwhelming sense of some retailers that New York is an impossible place in which to run a business which is why so many good operators have closed up shop. FIA and its members have been actively engaged in working with the Bloomberg administration and the City Council to address the prevalence of diet related disease by promoting the establishment and retention of grocery stores, particularly in underserved neighborhoods. We have discussed the economic and land use barriers to opening successful stores and have made good progress with a package of zoning and financial incentives. But we must also address the problem of regulatory overload and evaluate all proposed regulations in that context.
- If the net result of an onerous and unworkable sign posting requirement is that more legitimate retailers – retailers that assiduously adhere to the laws regarding proofing minors to guard against underage sales and collecting state and city taxes – abandon tobacco sales, then the regulation could have the unintended negative consequence of an increase in unregulated, untaxed and unlawful sales of tobacco products.

Respectfully submitted,
Patricia Brodhagen, Vice President Public Affairs
pat@fiany.com

NYC DEPT OF HEALTH
PUBLIC HEARING
JULY 30, 2009

GOOD AFTERNOON,

MY NAME IS PHIL KONIGSBERG, A MEMBER OF SMOKEFREE EDUCATIONAL SERVICES SINCE 1988, AND I'M HERE TO SPEAK IN FAVOR OF AMENDING ARTICLE 181 OF THE NYC HEALTH CODE TO REQUIRE THE POSTING OF TOBACCO HEALTH WARNINGS AND SMOKING CESSATION INFORMATION IN ALL PLACES IN NYC WHERE TOBACCO IS SOLD.

I WOULD ENCOURAGE THE STRONGEST POSSIBLE "IN YOUR FACE" WORDING AND GRAPHICS FOR THE WARNING SIGN POSTINGS. AT THE SAME TIME, SOME CREATIVITY SHOULD BE CONSIDERED. WHAT COMES TO MIND IS THE NYC DOT TRAFFIC ENFORCEMENT SIGNS THAT WERE INTRODUCED IN MANHATTAN SEVERAL YEARS AGO, SPECIFICALLY, DON'T EVEN THINK OF PARKING HERE! AND NO STOPPING, NO STANDING, NO PARKING, NO KIDDING!

THE BLOOMBERG ADMINISTRATION AND DR. THOMAS FRIEDEN HAVE DONE A REMARKABLE JOB IN REDUCING THE SMOKING RATE IN NEW YORK CITY AND HOPEFULLY COMMISSIONER FARLEY WILL CONTINUE IN DR. FRIEDEN'S FOOTSTEPS NOW THAT PRESIDENT OBAMA HAS CALLED UPON DR. FRIEDEN TO SERVE OUR COUNTRY AS THE CDC COMMISSIONER.

WHILE THE SMOKING RATE AMONG NEW YORKERS HAVE DROPEd SIGNIFICANTLY, I STILL SEE HUNDREDS OF TOBACCO ADDICTS STANDING OUTSIDE OF OFFICE BUILDINGS FOR THEIR MULTIPLE NICOTINE FIXES ON A DAILY BASIS. SO IT IS CLEAR THAT WE MUST TAKE FURTHER STEPS TO REDUCE THE 950,000+ ADULTS WHO STILL SMOKE.

HAVING REPETITIVE TOBACCO WARNINGS AND SMOKING CESSATION INFORMATION AT POINT OF PURCHASE LOCATIONS OF TOBACCO PRODUCTS THAT TELL BUYERS THAT THOSE PRODUCTS WILL KILL THEM WILL DEFINITELY RESULT IN FURTHER REDUCTION OF NYC'S SMOKING RATES.

IN ADDITION, IF A RESULT OF THE PROPOSED WARNING SIGNS RESULT IN RETAIL ESTABLISHMENTS CURTAILING

THE SALE OF TOBACCO PRODUCTS, WELL HALLELUHLAH!
IT IS UNCONSCIONABLE FOR MANY RETAILERS TO SELL
TOBACCO PRODUCTS IN THE FIRST PLACE. THE MOST
FLAGRENT OF THESE RETAILERS ARE DRUG STORES AND
PHARMACIES WHO MARKET THEMSELVES AS
REPRESENTATIVES OF HEALTH AND WELLNESS. YET THESE
SAME RETAILERS WHO DISPENSE MEDICATION TO KEEP
YOU HEALTHY HAVE NO RESERVATIONS ABOUT SELLING
TOBACCO PRODUCTS THAT IF TAKEN AS DIRECTED WILL
KILL THE CONSUMER AT THE SAME CASHIER.

PERHAPS THE HEALTH COMMITTEE OF THE CITY COUNCIL
SHOULD CONSIDER ADOPTING LEGISLATION SIMILAR TO
SAN FRANCISCO AND SEVERAL CANADIAN PROVINCES
THAT PROHIBIT THE SALE OF TOBACCO PRODUCTS IN
PHARMACIES?

SO IN CONCLUSION, I HOPE MY TESTIMONY WILL HELP
MAKE YOUR DECISION TO MOVE FORWARD WITH THE
PROPOSED HEALTH WARNINGS AND SMOKING CESSATION
INFORMATION POSTINGS AT ALL LOCATIONS WHERE
TOBACCO PRODUCTS ARE SOLD.

PHIL KONIGSBERG
BAY TERRACE, NY

New York City Newsstand Operators Association

325 BROADWAY • SUITE 501
NEW YORK, NEW YORK 10007
(212) 513-1988

RECEIVED
DOMINION POLICE
RECORDS SECTION
2009 JUL 22 PM 4:11

July 21, 2009

Rena Bryant
Secretary
Board of Health
125 Worth St. - Rm CN-31
New York, NY 10013

Dear Ms. Bryant:

On behalf of the New York City Newsstand Operator's Association, we submit this letter in opposition to the notice of Proposed Rule.

New York City's iconic sidewalk newsstands are an endangered species. Once over 1400 of them, there are now a mere 280 or so remaining. These small businesses are all mom and pop owned and operated -- no chains, no large corporations. They provide the ideal beginning entrepreneurial opportunity for new immigrants. The stands range in size from as little as 40 sq. ft. to a maximum 72 sq. feet, with the average stand measuring about 55 sq. ft.

As you can imagine, every square inch of display space is of critical importance when a business is that small, especially in this difficult economy and in an era when newspaper and magazine sales are down dramatically

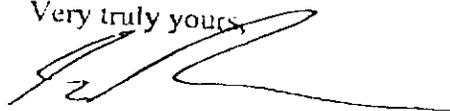
There is simply no space for yet another government required sign, especially one that at its smallest is proposed to be 1 ½ feet & 1 ½ feet. That is in addition to the numerous signs and licenses a newsstand is currently required to display, including the 11"x17" DCA complaint sign, the 8"x11" no sale to minors sign, the two (2) 8 1/2"x11" DCA license documents and the New York State license as well. To add yet another sign, one that is more than double the size of these existing signs, would mean some items can no longer be displayed and sold. The display space for the proposed new sign must come from somewhere. What do you suggest we stop selling - - The New York Times? Newsweek? softdrinks?

In addition to the above practical issues, there are the legal ones. It is our belief that the Board of Health has no jurisdiction over this issue or over our newsstands. They are not licensed by the Board of Health, you have no legal ability to issue newsstands summonses or of adjudicating those summonses if issued. (It is interesting to note that your proposed Rule does not contain a penalty provision or an adjudication provision as indeed, it cannot for lack of legal jurisdiction.)

This proposal is clearly legislative in nature and beyond the scope of the Board of Health to promulgate as a Rule.

For the above reasons, the proposed Rule should not be adopted.

Very truly yours,



Robert S. Bookman

RSB:tad

Dear Ms. Bryant,

August 15, 2009

2009 AUG 20
I am writing to summarize my testimony in opposition to mandating point-of-sale "health warnings" where cigarettes are sold (adding Paragraph 181.19 to Article 181 of the NYC Health Code) which I gave in-person July 30.

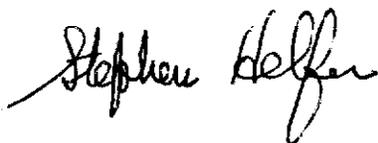
The New York Department of Health and Mental Hygiene in 2008 sponsored TV ads which purported to show children who were sickened by second-hand smoke (SHS) exposure. The American Council of Science and Health, however, discovered and brought to the attention of the Department of Health that there was no evidence these children were, in fact, *exposed* to SHS.¹ The board had simply used footage of children who suffered from illnesses which are often blamed (wrongly or rightly) on SHS.

Although such ads run by a private business would violate Federal Trade Commission regulations, the Department of Health unapologetically continued to run them. This shows the Department is quite willing to deceive the public. The Department would undoubtedly repeat this deception if NY requires—regardless of the wishes of store owners—"graphic photographs" of persons allegedly harmed by smoking in stores that sell cigarettes.

It is also likely the Department of Health will use computer-enhancement of such photographs, which again would be deceptive. Additionally posting such photographs violates patient privacy and raises questions regarding informed consent. The Canadian Council for Nonsmoking calls such photographs as "medical pornography."²

Because this proposal to amend Article 181 will further a pattern of deception and coercion on the part of the Department of Health and Mental Hygiene I oppose it.

Yours truly



Stephen Helfer

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¹ "Sick Kids Misused in Photographs," ACSH, 3/17/08.

http://www.acsh.org/factsfears/newsID.1143/news_detail.asp

² "Rotten Teeth and Dead Babies," New York Times, 2/04/01.

<http://partners.nytimes.com/library/magazine/home/20010204mag-salientfacts.html>



뉴욕한인소기업서비스센터

KOREAN AMERICAN SMALL BUSINESS SERVICE CENTER OF NEW YORK, INC.
146-03 34th Ave., Flushing, New York 11354 • Tel: (718) 886-5533/5536 • Fax: (718) 886-5535

TESTIMONY

PUBLIC HEARING ON THE PROPOSED AMENDMENT
OF ARTICLE 181 OF NYC HEALTH CODE BY
NYC DEPARTMENT OF HEALTH & MENTAL HYGIENE
JULY 30, 2009, 3RD FLOOR BOARDROOM

BY

SUNG SOO KIM
PRESIDENT
KOREAN AMERICAN SMALL BUSINESS SERVICE CENTER
OF NEW YORK, INC.

MY NAME IS SUNG SOO KIM, PRESIDENT OF KOREAN AMERICAN SMALL BUSINESS SERVICE CENTER OF NEW YORK, INC. (KASBSC), A FEDERATION OF KOREAN AMERICAN TRADE ORGANIZATIONS IN THE CITY ESTABLISHED IN 1985 TO ADVOCATE CONCERNS AND INTERESTS OF 9,500 KOREAN AMERICAN SMALL BUSINESSES IN NEW YORK. DOH & MH PROPOSAL OF THE MANDATORY POSTING OF POS TOBACCO HEALTH WARNING SIGNS SHOULD BE PUT UNDER A MORATORIUM AS THE PROPOSAL SERIOUSLY OVERLOOKS MANDATORY, BOTH LEGALLY AND IN PRACTICE, PREREQUISITES.

THE FAMILY SMOKING PREVENTION & TOBACCO CONTROL ACT WHICH WAS SIGNED BY PRESIDENT OBAMA ON JUNE 22, 2009 EMPOWERED FDA TO DECLARE NATIONWIDE REGULATORY CODES. FDA ON JUNE 30 INVITES PUBLIC INPUT ON THE IMPLEMENTATION OF ITS REGULATORY AUTHORITY. NYCDOH & MH'S PROPOSAL IS TO PREEMPT FDA'S LEGALLY ASSIGNED MISSION OF PROVIDING NATIONAL UNIFORMITY ON HEALTH WARNINGS FOR TOBACCO PRODUCTS.

LOOKING THROUGH THE WINDOW OF SPACE CONDITIONS OF TOBACCO RETAILING PREMISES, ARTICLE 181.19 (b) (c) ARE ABSOLUTELY BEYOND THE REALTY. I AM STRONGLY DOUBTFUL ABOUT ANY FIELD SURVEY OR ANY PILOT STUDY HAVE EVER EXPERIMENTED BY DOH & MH BEFORE PRESENTING THIS PROPOSAL.

- 1). ANY NORMAL GROCERY STORE SELLING TOBACCO PRODUCTS IN NYC PHYSICALLY DOES NOT HAVE ENOUGH SPOTS FOR THOSE SIGNS "THAT CAN BE READ EASILY." IN ANOTHER WORD, THE CODE REQUIRES POSTING SIGNS "CONSPICUOUSLY" AND ON EITHER SPOTS IN FRONT OF CASH REGISTER(S) OR THE WALL BEHIND THE COUNTER. THE WALL SPACE AS ONE OF TWO SPOTS SURROUNDING CASH REGISTER(S) IS CRUCIALLY VALUABLE SPACE DISPLAYING SPECIFIED MERCHANDISES ALSO GUARANTEEING HIGHER REVENUES. THE ALTERNATIVE SPOT, "IN FRONT OF CASHIER(S)" IS ALREADY OCCUPIED WITH OTHER ENFORCEMENT AGENCIES' MANDATORY, CONSPICUOUSLY DISPLAYED SIGNS AND POSTERS, I.E., DAC COMPLAINT SIGN, SIGN FOR "NOT TO SELL TOBACCO PRODUCTS TO A MINOR", 7 LABOR CODES POSTERS, ETC. A GROCERY STORE IS NORMALLY OBLIGATED TO HAVE OVER 28 TO 34 POSTERS, SIGNS, PERMITS DISPLAYED. DOH & MH NEEDS TO LOBBY THE OTHER GOVERNMENT AGENCIES TO YIELD IN "CONSPICUOUS" SPOTS FOR THE SIGN (S).
- 2). AS FOR ARTICLE 181-19 (C) 3, "FOUR FEET" AND "8 FEET" DISTANCE REQUIREMENTS ARE IMPRACTICABLE FOR ANY ORDINARY GROCERY STORE SELLING TOBACCO PRODUCTS. THERE IS NO STORE COUNTER (S) WHOSE HEIGHT DOES GO BEYOND 4 TO 5 FEET. SHOULD A CASHIER HOLD THE SIGN ABOVE THE SHOULDER TO MEET "7 FEET" REQUIREMENT?

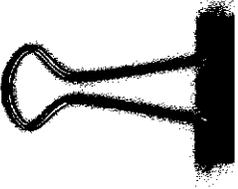
"INVASION OF PRIVACY" IS ANOTHER SERIOUS PROBLEM. 7 OUT OF 8 CUSTOMERS ARE NOT SMOKERS. IT IS NOT A MATTER OF ETHIC BUT THAT OF FEELING: 7 OUT OF 8 CUSTOMERS EMOTIONALLY FEEL DISTRESSED TO SEE UNPLEASANT GRAPHIC SIGNS. A BETTER WAY WOULD BE DISTRIBUTING FLYERS OR PAMPHLETS TO THOSE CUSTOMERS WHO SMOKE OR PURCHASE TOBACCO PRODUCTS.

THIS LEADS TO AN UNEXPECTED SERIOUS THREAT TO ANY TOBACCO RETAIL DEALERS' SURVIVAL: 7 OUT OF 8 CUSTOMERS WILL DECLINE TO COME BACK TO THE STORE BUT RATHER CHANGE SHOPPING PLACE FROM OTHER GROCERY STORES WHICH HAVE NO VISIBLE GRAPHIC SIGNS. LOSS OF SALE WILL LEAD TO BANKRUPTCY WHEN THE MAIN STREET IN NYC IS

IN CRISIS ALONG WITH THE WALL STREET BANKRUPTCY.

THE STATE OF NEW YORK RANKS NO.45 OUT OF 51 STATES IN TERMS OF MOST FRIENDLY TO LEAST FRIENDLY PUBLIC POLICY ENVIRONMENTS (ENC.#1). THAT IS, NY GOVERNMENT'S LEAST FRIENDLY PUBLIC POLICIES CONTRIBUTE THE MAIN STREET/ SMALL BUSINESS CRISIS. THE YEAR OF 2008 SHOWED MY ORGANIZATION FACED WITH MEMSHIP STORES" BANKRUPTCY BY 9 %. PLEASE ALLOW ME TO REMIND YOU HOW NEW YORK'S PUBLIC POLICIES CONCERNING TOBACCO CODES ENFORCEMENTS CREATE AN ANTI SMALL BUSINESS ENVIRONMENT: Tobacco license fees by the state increases 10 to 50 times; NYC is the only city in the world that requires double licenses and a double enforcement; Posting a "selling tobacco products to a minor" warning "NOT CONSPICUOUSLY" leads to DCA's fine amounting \$1,300; Simple delay of state's cigarette license renewal leads to "TAX EVASION" charge with a monetary penalty amounting to \$1,500. for the first violation, second one being \$2,500.

SMALL BUSINESS OWNERS THOROUGHLY LEARNED LAST YEAR HOW A PUBLIC HEALTH ISSUE BECAME POLITICIZED WITHOUT PRE SURVEY OR EXPERIMENTS AND UNFORTUNATELY WAS ENDED UP WITH A FIASCO. THE GREEN CART BILL IS THE CASE. I AM SINCERELY EXPECTING THE GOVERNMENT DOES NOT CREATE ANOTHER FIASCO ON A PUBLIC HEALTH ISSUE, BUT RATHER ALLOW THE MERCHANTS TO JOIN IN A JOINT PROJECT TO PRACTICALLY AND EFFECTIVELY AND FAIRLY IMPLEMENT THE TOBACCO HEALTH WARNING PROJECT.



REVISED & EXPANDED

SMALL BUSINESS & ENTREPRENEURSHIP COUNCIL'S

SMALL BUSINESS SURVIVAL INDEX 2008:

**RANKING THE POLICY ENVIRONMENT FOR ENTREPRENEURSHIP
ACROSS THE NATION**

13th Annual Edition

by Raymond J. Keating
Chief Economist

Small Business & Entrepreneurship Council

December 2008

Small Business & Entrepreneurship Council
2994 Hunter Mill Road • Suite 204 • Oakton, VA 22124
Telephone: 703-242-5840 • Fax: 703-242-5841
www.sbecouncil.org

Small Business Survival Index 2008: State Rankings*

(Ranked from the Friendliest to the Least Friendly Policy Environments for Entrepreneurship)

Rank	State	SBSI	Rank	State	SBSI
1	South Dakota	26.357	26	Wisconsin	57.601
2	Nevada	30.447	27	Louisiana	57.752
3	Wyoming	37.255	28	New Hampshire	57.795
4	Florida	43.824	29	New Mexico	58.054
5	Washington	44.325	30	Arkansas	58.511
6	Texas	45.543	31	Kansas	58.965
7	South Carolina	48.012	32	Oregon	60.420
8	Alabama	48.807	33	Montana	60.625
9	Virginia	49.073	34	Delaware	60.856
10	Colorado	50.170	35	Idaho	61.614
11	Tennessee	51.310	36	Nebraska	62.359
12	Georgia	52.330	37	Connecticut	62.685
13	Arizona	52.535	38	Maryland	63.289
14	Missouri	52.880	39	North Carolina	63.943
15	Utah	53.028	40	West Virginia	65.384
16	Alaska	53.228	41	Hawaii	67.395
17	Mississippi	53.367	42	Iowa	68.354
18	Ohio	53.853	43	Vermont	70.316
19	Michigan	54.180	44	Massachusetts	71.239
20	Indiana	54.325	45	New York	71.835
21	Oklahoma	54.551	46	Minnesota	71.910
22	North Dakota	56.206	47	Rhode Island	72.671
23	Kentucky	56.373	48	Maine	74.553
24	Illinois	56.404	49	California	77.358
25	Pennsylvania	57.108	50	New Jersey	78.130
			51	Dist. of Columbia	83.751

* (Please note that the District of Columbia was not included in the studies on the states' liability systems, eminent domain legislation and highway cost efficiency, so D.C.'s last place score actually should be even worse.)



BE OUR GUEST: SUNG SOO KIM, leader of Korean-businesses group

Aiding greengrocers would be healthier choice for city

The City Council has passed, and the mayor has signed, Intro 665 — the so-called Green Carts bill. The legislation, watered down some due to opposition from greengrocers and other food store operators, will soon allow 1,000 fruit and vegetable peddlers in neighborhoods that the Department of Health claims lack access to healthy fresh produce.

If, however, the city is truly interested in creating better access to fresh produce, it will now need to redirect its attention away from peddling, toward the food stores that are vitally important in achieving this laudable goal.

In spite of the assertions from the advocates of Intro 665, and from the Health Commissioner himself, that many areas of the city are "food deserts," the reality is more complex. For instance, there are more than 2,000 predominantly Korean-run produce stores; and many of these food outlets are in those areas that are targeted by the green carts bill. In addition, there are also many neighborhood supermarkets in these same neighborhoods, stores that do provide fresh produce, as well as a full range of other grocery items.

What the city needs to do now is to focus on how it can promote these taxpaying neighborhood retailers so that they can not only prosper, but can also expand into communities that may truly lack a sufficient num-

ber of food stores that sell healthy food. This will mean that the city will have to take a hard look at the issue of commercial rent; and address the skyrocketing cost of leasing space in so many commercial shopping areas.

Rising real estate values are driving out not only greengrocers, but neighborhood supermarkets as well. If the city truly believes that access to healthy food is a public necessity, then it needs to put its money where its mouth is. Beyond the issue of rising rents, a thorough examination of punitive regulatory policies and exorbitant commercial real estate taxes must be undertaken. Once done, a policy of mitigation needs to be put in place, or else all that will be left in many neighborhoods are multiple banks and chain drug stores.

The impact of the bill must be fully examined

The city is promising that it will undertake to implement a comprehensive food policy, and is establishing a commission to examine policy alternatives. This is an absolute necessity, and it should have commenced long before the introduction of the recently passed peddler initiative. Food retailers, predominantly immigrants, have done an incredible job in many areas of the city, and these entrepreneurs need to be nurtured.

As we go forward in developing a food policy, the impact of the green carts bill needs to be fully examined. In Intro 665, there is a healthy provision that mandates a review of

the effectiveness of the green carts law. Here are some of the questions that need to be asked:

- Are the peddlers simply setting up in front of already-existing produce stores, and not in areas that truly lack access?
- Are the peddlers selling fresh and healthy fruits and vegetables?
- Has an adequate inspection and enforcement system been devised?
- If peddlers are operating in thriving shopping areas, is the business they're generating new business, or is it simply sales cannibalized from existing stores?

In reviewing these and other questions, it is essential that a fair and impartial panel be set up. Allowing the Department of Health to be judge and jury of its own law will not yield a true evaluation of the law's impact — on both public health as well as on neighborhood food stores.

Greengrocers and other immigrant store owners have pioneered food retailing in the inner city, and have done so with no help from city policy makers. Now, as the city goes forward, aggressively seeking to increase healthy food outlets, it needs to work collaboratively with the food industry so that the new food policy is not only healthy for New Yorkers, but for New York's retailers as well.

Sung Soo Kim is president of the Korean-American Small Business Service Center. Next week: A Be Our Guest column in favor of the Green Carts legislation.

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Susan

Last_Name: Palladino

Email: suzycent@aol.com

Phone Number: 7184421162

Street Address: 15 Miller Street

City: Staten Island

State: NY

Zip Code: 10314

Comments: To Whom It May Concern:

I strongly urge that Article 181 of the New City Health Code be amended. Graphic signs and the plain truth being posted anywhere near where cigarettes are sold is not only important , but necessary. Anything that will help to stop children or anyone for that matter from smoking is extremely important. To watch someone you love suffer from the effects of smoking is heart wrenching.. My 2 children have lost 3 of thier grandparents to lung cancer caused from smoking, so it is a subject that I am very passionate about.. Sadly it took watching the ones I love suffer from the effects of smoking that I did finally quit...The thought of my children watching me the way I watched my parents suffer made me stop instantly. Looking at those signs as a teenager when I first started would have definitely had an impact on me, and I think would have stopped many people..If a store can display a cigarette box, they can display the effects of that box will do.
Susan Palladino

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HTTP_USER_AGENT: Mozilla/4.0 (compatible; MSIE 6.0; Windows NT 5.1; SV1; .NET CLR 1.1.4322; .NET CLR 2.0.50727; .NET CLR 3.0.04506.30; .NET CLR 3.0.04506.648)

This form resides at
<http://www.nyc.gov/html/doh/html/notice/comment-form-hc-art181-0609.shtml>

First_Name: Sylvia

Last_Name: Gordon

Email: Sylvia.Gordon@cancer.org

Phone Number: 718-987-8872

Street Address: 173 Old Town Road

City: Staten Island

State: NY

Zip Code: 10305

Comments: As a concerned citizen and mother of three daughters. A sister that is a cancer survivor. Both parents lost from cancer. I would very much appreciate that Article 181 of the NYC Health Code require posting of tobacco health warnings and smoking cessation be placed at all places in NYC where cigarettes are distributed and sold. Its to my understanding that Staten Island has the highest rates of smokers out of all the five boroughs and they seem to be even more shown nowadays amongst our youth. Its time to help towards the future of our children and their children to have a fighting chance. Thank you.

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July 30, 2009

Comments on Proposed Amendment to Article 181 of the New York City Health Code

Submitted by Thomas A. Briant, NATO Executive Director

Ms. Rena Bryant
Secretary, New York City Board of Health
125 Worth Street, CN-31
New York, NY 10013

Dear Ms. Bryant:

I am submitting these comments to the proposed amendment to Article 181 of the New York City Health Code on behalf of the National Association of Tobacco Outlets, Inc., a national retail tobacco store trade association. The proposed amendment would require that each retailer of cigarettes in New York City display graphic health warning signs provided by the Department of Health at each cash register and at each cigarette display with each sign being at least 18" x 18" and up to 36" x 36" and placed at least four feet off of the floor.

Federal Law May Pre-empt Amendment to Article 181

With a new federal law enacted as of June 22, 2009 granting the U.S. Food and Drug Administration sweeping powers to regulate the manufacture, distribution, promotion, advertising, and sale of cigarettes and smokeless tobacco products, we suggest that prudence requires the New York City Department of Health postpone any further action on this proposed requirement for health warning signs until the full extent of the FDA regulations regarding the promotion, advertising and sale of cigarettes can be determined and whether such regulations would supercede similar state and local action. In fact, the new FDA regulations include provisions to require new cigarette package warning labels that will inform consumers of possible health risks of cigarette smoking.

In addition, research needs to be conducted to determine whether the Federal Cigarette Labeling and Advertising Act (FCLAA) pre-empts this proposed amendment. Specifically, Congress set forth a policy under this law that creates uniform health warnings about the adverse effects of cigarette smoking. This policy is found in Section 1331 of the FCLAA as follows:

Sec. 1331. It is the policy of the Congress, and the purpose of this chapter, to establish

a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby (1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and (2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

Since the proposed amendment to Article 181 specifically states that the warning signs are intended to inform the public about possible health consequences of cigarette smoking, this intent has already been regulated on the federal level for decades by the FCLAA. As stated in Section 1331, a primary goal of the FCLAA is to avoid non-uniform labeling and advertising regulations that relate to smoking and health. The proposed signs are by the very definitions within the proposed amendment health warnings and could very well be pre-empted by the federal law. Please note that Section 1334 of the FCLAA does specifically pre-empt any state or other local action on cigarette health warnings.

Proposed Amendment to Article 181 Not Supported by Claims and Research

As a part of the notice of the Department of Health's rulemaking notice to adopt the new health warning signage requirement, several key conclusions are made and some studies are cited purporting to support an alleged need for the health warning signs.

In Section I of the Statement of Basis and Purpose, the Department of Health claims that "Continued tobacco use among these smokers [adults and public high school students] *may reflect a lack of awareness and comprehension of the negative health outcomes associated with tobacco use....* (emphasis added). In other words, the Department of Health comes to the illogical conclusion that since adults and high school students smokes, therefore they must not be aware of the negative outcomes of tobacco use. There is no evidence in the statement to support such a conjecture and clearly no evidence to lend credence to any assertion that large graphic warning signs in stores will increase such awareness.

Then, in Section III of this Statement of Basis and Purpose, two published articles cited in Footnote Nos. 11 and 12 claim that "Health warnings are strongly associated with health knowledge" and "Pictorial warnings [on Canadian cigarette packages] appear to be especially effective among youth..." It is very important to point out that these published studies or articles which form the Department of Health's basis to require large graphic warning signs in retail stores deal with warning labels on cigarette packages, not large health warning signs. No where in this statement is any scientific evidence cited that large graphic warning signs in stores will increase awareness about health issues related to cigarette smoking. This extrapolation of published articles which do not support the proposed amendment is inexcusable and is further reason to postpone any official action on the signage regulation.

Moreover, as indicated above, the FDA will be requiring new pictorial health warnings on cigarette packages and these FDA regulations should be allowed to take effect without the

adoption of the proposed amendment because the Department of Health's own statement and cited articles claim that warning labels on cigarette packages, not health-related signs in stores, have an impact on awareness of smokers.

Health Signs Will Not Reinforce Compliance with Laws Prohibiting Sales to Minors

Retailers that sell tobacco products are not in the business of selling cigarettes to underage youth. This responsibility is taken very seriously by retailers and is demonstrated by the intense training programs that retail store employees must participate in to prevent sales to minors.

However, the Department of Health's statement once again comes to a conclusion that is not supported by any evidence. In Section V of the statement, the Department claims that "requiring health warning signs at the point-of-sale in places where cigarettes are sold will reinforce compliance with existing laws prohibiting tobacco sales to minors. Again, no evidence is cited that requiring warning signs will result in better compliance with laws prohibiting sales to minors. Rather, these laws which carry monetary fines and criminal penalties are the deterrent to selling tobacco products to youth. The placement of a health warning sign will not act to raise the compliance level that is sought by the law prohibiting the sale to minors.

Based on all of these reasons, I urge the Department of Health to postpone any further action on the proposed amendment to Article 181 indefinitely.

Sincerely,

Thomas A. Briant

Thomas A. Briant
NATO Executive Director