

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENT TO ARTICLE 181
OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of the intention to amend Article 181 of the New York City Health Code was published in the City Record on June 26, 2009, and a public hearing on the proposal was held on July 30, 2009. DOHMH received comments from 46 persons on behalf of themselves or organizations. Of those comments, 33 were in support of the proposal and 13 were in opposition. Changes were made in response to the comments received and for clarity. At its meeting on September 22, 2009, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

This amendment to the Health Code is promulgated pursuant to §§558 and 1043 of the New York City Charter (the “Charter”). Sections 558(b) and (c) of the Charter empower the Board of Health to amend the New York City Health Code (the “Health Code”) and to include in the Health Code all matters to which the authority of the Department of Health and Mental Hygiene (the “Department” or “DOHMH”) extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

I. **Background**

Reducing the burden of tobacco use is a core function of DOHMH. In 2002, the Department launched a comprehensive tobacco control program to reduce and prevent smoking in New York City. By implementing multiple, intensive interventions – taxation, legislation, public education, and cessation strategies – and rigorously evaluating these efforts, the Department has taken a pioneering approach to tobacco control that has yielded unprecedented results.

Despite the Department’s tobacco control successes, more than 950,000 adults and 20,000 public high school students still smoke in New York City.^{1,2} Continued tobacco use among these smokers may reflect a lack of awareness and comprehension of the negative health outcomes associated with tobacco use, as well as a lack of knowledge about the availability of smoking cessation assistance.

¹ Unpublished data. New York City Department of Health and Mental Hygiene, Bureau of Epidemiology Services: New York City Community Health Survey 2008; April 2009.

² Unpublished data. New York City Department of Health and Mental Hygiene, Bureau of Epidemiology Services: New York City Youth Risk Behavior Survey 2007; April 2009.

The Department proposes that the Board of Health enact the proposed amendment to require that locations that sell tobacco products post signs describing the health harms associated with tobacco use and the smoking cessation resources available to New Yorkers. This amendment will promote further reductions in smoking prevalence in New York City.

II. **Tobacco use is the leading cause of preventable death.**

Smoking is the leading cause of preventable death in the United States and in New York City. Up to one half of life-long smokers, depending on age, are expected to die of tobacco-related diseases.³ Smokers who die of tobacco-related diseases lose an average of 14 years of life.⁴ In New York City, nearly one in seven deaths are smoking-related; smoking kills about 7,400 people a year, a third of them before age 65.⁵ Despite a 27% reduction in adult smoking prevalence since 2002, nearly one million New Yorkers still smoke.

There are numerous health risks associated with smoking. Research has linked tobacco use with chronic diseases including lung cancer, heart disease, stroke, blindness, asthma, chronic obstructive pulmonary disorder and emphysema. Bladder, larynx, esophagus, cervix, kidney, lung, pancreas, and stomach cancers have also been shown to be associated with tobacco. Smoking also has numerous reproductive effects including infertility, pre-term delivery and low birth weight.⁶

III. **Tobacco users' behaviors are influenced by their awareness and understanding of the health risks associated with tobacco use**

Since the first Surgeon General's report was published in 1964, much information has been made public about the health risks associated with smoking. Despite this, there remain significant gaps in smokers' understanding of these risks.^{7,8,9} These gaps in risk awareness are widest among lower socioeconomic groups.¹⁰

Smokers' health behaviors are strongly influenced by their understanding of the health risks of smoking. Smokers who perceive greater smoking-related health hazards are more likely

³ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

⁴ Centers for Disease Control and Prevention (CDC). Annual Smoking-Attributable Mortality, Years of Potential Life Lost, and Economic Costs—United States, 1995-1999. *MMWR* 2002;51(14):300-303.

⁵ New York City Department of Health and Mental Hygiene (NYC DOHMH), Bureau of Vital Statistics.

⁶ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004.

⁷ Oncken, C et al. (2005). Knowledge and perceived risk of smoking-related conditions: a survey of cigarette smokers. *Prev Med* 40 (6): 779-784.

⁸ Weinstein, ND et al. (2005). Smokers' unrealistic optimism about this risk. *Tob Ctrl* 14: 55-59.

⁹ 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.

¹⁰ Siahpush M et al. (2006). Socioeconomic and country variations in knowledge of health risks of tobacco smoking and toxic constituents of smoke: results from the 2002 International Tobacco Control (ITC) Four Country Survey. *Tob Ctrl* 15 (Suppl 3): iii65-iii70.

to consider quitting and to quit smoking successfully. Health warnings are strongly associated with health knowledge.^{11,12} Research has shown that health warnings which communicate the adverse health effects of tobacco use are among the most effective at prompting smokers to quit.¹³ In addition, research has shown that smokers find pictorial warnings more effective and engaging than text-only warnings.^{14,15} Pictorial warnings appear to be especially effective among youth: 78% of Canadian youth agree that pictorial warnings on Canadian packages have been effective in informing them about the effects of cigarette smoking, and 46% report that the pictorial warnings have been effective in getting them to try to quit smoking.¹⁶

IV. Smoking cessation information will increase the likelihood that smoking cessation aids are utilized and contribute to reductions in smoking prevalence.

In 2007, nearly 70% of all adult smokers in New York City tried to quit smoking at least once.¹⁷ But without assistance, fewer than 10% of smokers who try to quit achieve permanent abstinence.¹⁸ Studies have consistently shown that smokers can double their chances of quitting smoking successfully by getting counseling and using nicotine replacement therapy or other appropriate drug treatments.¹⁹ Free cessation counseling and nicotine replacement therapy are available to New York residents who call the New York State Smokers' Quitline, but New Yorkers must first be made aware of the availability of that service.

Research has shown that utilization of cessation services increases when smokers are made aware of their availability.^{20,21,22} Displaying this information where cigarettes are sold will ensure that smokers are informed about resources that are available to help them quit smoking

¹¹ 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.

¹² O'Hegarty M et al. (2006). Reactions of young smokers to warning labels on cigarette packages. *Am J Prev Med* 30(6): 467-473.

¹³ Biener, L et al. (2000). Adults' response to Massachusetts anti-tobacco television advertisements: impact of viewer and advertisement characteristics. *Tob Control* 9 (4): 401-407.,

¹⁴ O'Hegarty M et al. (2006). Reactions of young smokers to warning labels on cigarette packages. *Am J Prev Med* 30(6):467-73.

¹⁵ 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.

¹⁶ 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, available at <http://www.smoke-free.ca/warnings/WarningsResearch/POR-04-19%20Final%20Report%20-%205552%20Youth%20wave%209-final.pdf>.

¹⁷ Community Health Survey, 2008. NYC DOHMH, Division of Epidemiology. Unpublished data.

¹⁸ Fiore MC et al. *Treating Tobacco Use and Dependence: 2008 Update*. Clinical Practice Guideline. Rockville, MD: U.S. Department of Health and Human Services. Public Health Service. May 2008.

¹⁹ Fiore MC et al. *Treating Tobacco Use and Dependence: 2008 Update*. Clinical Practice Guideline. Rockville, MD: U.S. Department of Health and Human Services. Public Health Service. May 2008.

²⁰ Farrelly, MC et al (2007). Effectiveness and cost effectiveness of television, radio and print advertisements in promoting the New York smokers' quitline. *Tob Control* 16 (Suppl.1): i21-i23.

²¹ Campbell SL et al (2008). Tobacco quitline use: enhancing benefit and increasing abstinence. *Am J Prev Med* 35(4): 386-388.

²² Burns, ME et al. (2005). Use of a new comprehensive insurance benefit for smoking-cessation treatment. *Preventing Chronic Disease: Public Health Research, Practice, and Policy* 2 (4): 1 – 12.

for good, and increase utilization of these resources to further decrease smoking prevalence in New York City.

V. **Point-of-sale tobacco information will contribute to reductions in youth tobacco sales.**

The majority of adult smokers begin smoking during adolescence; two-thirds of them are daily smokers by the age of 19.²³ Despite existing New York State and New York City laws prohibiting tobacco sales to people under the age of 18, minors are able to purchase cigarettes illegally at some licensed retail establishments.²⁴

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. By highlighting the undesirability and unacceptability of tobacco use, health warning signs will be consistent with other Department efforts to prevent youth smoking initiation and will further de-normalize smoking.

VI. **Proposed changes to Health Code to require that health warnings and smoking cessation information be posted at all tobacco retail locations.**

Accordingly, the Department requests that the Board amend Article 181 of the Health Code to add a provision that would require the posting of tobacco health warnings and smoking cessation information in all places where tobacco is sold in New York City.

VII. **Response to comments**

The Department received 46 comments from individuals on behalf of themselves or organizations. Of those comments, 33 were in support of the proposed amendment to Article 181 and 13 were in opposition. The proposal has been amended in response to comments and for clarity. Several comments expressed concern that the size of the required health warning signage was too large to be accommodated by many New York City retailers. Accordingly, the proposal has been amended to reduce the maximum size of the required signage from 1,296 square inches to 576 square inches, and to give retailers the option of posting smaller signage at each place of payment, or larger signage near tobacco displays. In addition, the proposal has been amended to authorize the New York City Department of Consumer Affairs (DCA) to distribute the health warning signage, to enforce Section 181.19, and to adjudicate at its Administrative Tribunal violations of Section 181.19 that are issued by DCA.

²³ Campaign for Tobacco-Free Kids. (2008). Smoking and kids. Available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0001.pdf>.

²⁴ Tobacco Product Regulation Act (TPRA) and Adolescent Tobacco Use Prevention Act (ATUPA) 2008 Annual Report. Prepared by DOHMH and DCA.

The proposal is as follows:

Note- Matter in brackets [] to be deleted
Matter underlined is new

RESOLVED, that Article 181 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York be, and the same hereby is, amended to add a new §181.19 concerning mandatory posting of point-of-sale tobacco health warnings and smoking cessation information in places where tobacco is sold, to read as follows:

ARTICLE 181
PROTECTION OF PUBLIC HEALTH GENERALLY

.....

§181.19 Required Point-of-Sale Tobacco Health Warnings and Smoking Cessation Information.

§181.19 Required Point-of-Sale Tobacco Health Warnings and Smoking Cessation Information.

- (a) Any person in the business of selling tobacco products face-to-face to consumers in New York City shall prominently display tobacco health warning and smoking cessation signage produced by the Department.
- (b) The signage required by subdivision (a) of this section shall be:
 - 1. designed by the Department and may include:
 - a. information about tobacco products and the adverse health effects of tobacco use;
 - b. a pictorial image illustrating the effects of tobacco use; and
 - c. information about how to get help to quit using tobacco;
 - 2. produced in two sizes:
 - a. one “small sign,” not to exceed 144 square inches; and
 - b. one “large sign,” not to exceed 576 square inches;
 - 3. distributed by the Department or by the Department of Consumer Affairs, although additional signage may be ordered by calling 311.
- (c) Persons who engage in face-to-face sales of tobacco products to consumers in New York City shall prominently display the signs required by subdivision (a) of this section by posting:
 - 1. one “small sign” on or within 3 inches of each cash register or each place where payment may be made so that the sign(s) are unobstructed in their entirety and can be read easily by each consumer making a purchase; or
 - 2. one “large sign” at each location where tobacco products are displayed so that:
 - a. the sign(s) are unobstructed in their entirety and can be read easily by each person considering a tobacco product purchase; and
 - b. in such a way that the distance between the bottom of the sign(s) and the floor shall be no less than four feet, and the distance between the top of such sign(s) and the floor shall be no more than seven feet.

- (d) The Commissioner shall have the authority to modify periodically the text, images and content of signage produced by the Department pursuant to subdivision (a) of this section based on the Commissioner's determination that such modifications may contribute to the prevention or reduction of tobacco use and its harms, the prevention of tobacco sales to minors, or the correction of misinformation among consumers about the health effects of tobacco use. Persons required to post health warning and smoking cessation signage pursuant to subdivision (a) of this section shall display any modified signage upon receipt, as set forth in subdivision (c) of this section.
- (e) The provisions of this section may be enforced by any authorized agent or employee of either the Department or the Department of Consumer Affairs, or successor agency. Any violation of this section issued by the Department of Consumer Affairs may be adjudicated at any tribunal authorized to hear such agency's violations.
- (f) If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

Notes: The Department proposes that the Board of Health 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.