DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF INTENTION TO AMEND ARTICLE 181
OF THE NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

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 is hereby given of the proposed amendment of Article 181 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON THURSDAY, JULY 30, 2009 FROM 2PM TO 4PM. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. WEDNESDAY, JULY 29, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY THURSDAY, JULY 16, 2009. REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 2PM. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT http://www.nyc.gov/html/doh/html/notice/notice.shtml ON OR BEFORE 5:00 P.M., THURSDAY, JULY 30, 2009. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO http://www.nyc.gov/html/doh/html/comment/comment.shtml.

STATUTORY AUTHORITY

This proposed amendment to the Health Code is 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.

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

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[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.

[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.

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 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

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[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.
[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.

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 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

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[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.

[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.

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.

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 were tobacco is sold, to read as follows:

ARTICLE 181
PROTECTION OF PUBLIC HEALTH GENERALLY
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§181.19 Required Point-of-Sale Tobacco Health Warnings and Smoking Cessation Information.

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

(a) Any person in the business of selling tobacco products to consumers located in New York City shall prominently display signs provided by the Department, which signs may include:

1. information about tobacco products and the adverse health effects of tobacco use;
2. a pictorial image of the health effects of tobacco use; and
3. information about how to get help to quit using tobacco.

(b) The signs produced by the Department pursuant to subdivision (a) of this section shall be no smaller than 324 square inches and no larger than 1296 square inches.

(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:

1. at each cash register or place of payment so that the sign(s) can be read easily by each consumer making a purchase;
2. at each location where tobacco products are displayed so the sign(s) can be read easily by each person considering a tobacco product purchase; and

3. 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 and the floor shall be no more than seven feet.

(d) The Commissioner shall have the authority to modify the text, images and other signage content requirements listed in 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 prevention of misinformation among consumers about the health effects of tobacco use.

(e) Notices of violation for failure to comply with this section may be issued by any authorized employee, officer or agent of the Department.

(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.