



Testimony

of

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Commissioner

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Before the

New York State Senate Standing Committee on Health

Regarding

New York State Clean Indoor Air Act

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250 Broadway
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Good morning, Chairperson Duane and members of the New York State Senate Health Committee. I am Dr. Thomas Farley, Commissioner of the New York City Department of Health and Mental Hygiene. I would like to thank you for the opportunity to comment on our agency's enforcement of New York State's Clean Indoor Air Act, and ways to enhance the law to afford greater protection to New Yorkers from secondhand smoke.

New York City has been a national leader in the fight to help people quit smoking and protect our residents from second-hand smoke. Through a combination of tax increases, legal curbs on smoking, public education campaigns, cessation services, and rigorous evaluation, the Health Department has reduced the smoking rate in New York City from 21.5% in 2002 to 15.8 in 2009. New York City's current smoking rate is the lowest on record, with fewer than 1 million adult smokers in the City. This represents about 350,000 fewer smokers than in 2002. We estimate that this reduction in smoking is leading to approximately 1,000 fewer deaths attributable to smoking every year.

We are particularly proud of the dramatic decrease in smoking rates among public high school students -- a 64% decline between 1999 and 2009, according to a survey we conducted. This is critical because more than 90% of smokers start smoking before they reach age 20. At 8.4%, New York City's current rate of youth smoking is among the lowest in the country.

I am grateful to Chairman Duane and the Health Committee for supporting our efforts, including the most recent increase in the cigarette tax. Thanks to you and your colleagues, a pack of cigarettes in New York City now costs more than \$11, making it the most expensive pack of cigarettes in the country. As you know, it has been shown repeatedly that cigarette sales follow basic economic principles: when you raise the price, people buy less -- and many quit altogether. We estimate that this tax increase alone will result in 47,000 fewer smokers and more than 15,000 lives saved. But we still have a lot of work to do.

Smoking is still the leading cause of preventable death in New York City, responsible for 1 in 3 preventable deaths and 1 in 7 deaths overall. More than 950,000 adults and almost 20,000 public high school students still smoke in New York City.

To build on what we have accomplished, we will continue to produce more hard-hitting public education campaigns depicting the ugly reality of smoking. The purpose of these campaigns is not to offend people but rather to persuade smokers to quit by showing them the true effects of smoking, counterbalancing the glamorous images presented by the tobacco

industry. Since 2006, these campaigns have spurred more than 300,000 calls for smoking cessation assistance to 311 and the New York State Smokers' Quitline. We will also continue working to protect children from marketing by the tobacco industry, building on two important steps. Last October, the New York City Council passed a bill restricting the sale of flavored non-cigarette tobacco products, including cigars, cigarillos, chewing tobacco and new smokeless products. With flavors such as pina colada and chocolate chip cookie dough, many of them are obviously marketed towards kids. Also in September 2009, the New York City Board of Health passed regulations that require tobacco retailers to post graphic warning signs with cessation information near cash registers and tobacco displays.

Last week, Mayor Michael Bloomberg, City Council Speaker Christine Quinn and Council Member Gale Brewer announced the introduction of legislation that would prohibit smoking in all New York City public parks and beaches. Residents and visitors enjoying New York City's world-renowned parks and beaches should not be exposed to the harmful effects of secondhand smoke or the ugly and dangerous litter produced by cigarettes. A 2009 Zogby International poll indicated strong public support for such a ban, and we are confident that New York City's parks and beaches will soon be smoke-free under this amendment to our Smoke-Free Air Act of 2002. If the bill becomes law, New York City will be the latest of many municipalities nationally with such protections in place. Among the changes we recommend to strengthen the Clean Indoor Air Act is the inclusion of all State parks and beaches.

While the Smoke-Free Air Act and the Clean Indoor Air Act offer tremendous protections to New Yorkers, certain aspects of these laws demand careful reevaluation and consideration.

Although most businesses covered by the Clean Indoor Air Act and the City's Smoke-Free Air Act comply with them, a small number of establishments in New York City continue to permit smoking. Unfortunately, these lawbreakers tend to be nightclubs and bars that attract younger patrons and celebrities. Bringing them into compliance, and reinforcing the public message that smoking will not be tolerated anywhere, is an important goal of the Department.

Enforcement of the Clean Indoor Air Act is inherently difficult because it requires the Health Department to establish not only that smoking occurred, but also that it was permitted by the offending business. To prove permissiveness, an inspector must collect evidence of an establishment's interactions with its patrons, ideally over time and ideally in a manner that does not affect the interactions. Further difficulties in enforcement exist because of the nature of the

clubs that tend to permit smoking in New York City. They open late at night and close early in the morning. Their entrances are guarded by velvet ropes and security staff with radios, who can forewarn staff inside of the club of an inspector's arrival. When a violation is established, the maximum penalty established by state law that the Health Department can seek is only \$1,000. This amount is less than what many clubs charge for a table reservation or bottle service for hundreds and even thousands of customers a day, and hardly serves as a disincentive to allowing patrons to smoke.

To address these issues, we have changed how we enforce the Clean Indoor Air Act and New York City's Smoke-Free Air Act. Rather than sending an identified inspector to cite any violations he or she might see, we now send on multiple nights undercover inspectors, posing as patrons, to clubs we suspect are flouting the law. If the undercover agents' observations show multiple violations of the State and City smoke-free laws, we bring an action to revoke the club's food service establishment permit and to shut it down because of its willful and continuous violation of those laws. In all of the cases in which we have proceeded this way, we have reached agreements with the clubs that have included their adoption of zero tolerance "no smoking" policies. And, in two cases, the clubs were temporarily closed.

Three amendments to the Clean Indoor Air Act would promote our enforcement of it. First, its penalties must be increased. A fine capped at \$1,000 is simply too low to be a deterrent for many restaurants and nightclubs. We suggest a graduated penalty schedule with the fine amount increasing for each repeat offense of the law, with a maximum penalty of \$5,000. Second, the law should be amended to allow the enforcing agent to recover the costs it incurs investigating violations of the law. We have had success with our new program, but it is expensive to operate. In addition to the overtime we incur, our inspectors often have to pay cover charges and steep reservation fees to gain entry into clubs that are violating the law. If the Health Department succeeds in establishing a violation of the Clean Indoor Air Act, it should be able to recover these costs from the offending establishment. Finally, the law should be amended to make clear that "good faith" means that an establishment cannot serve a patron who is smoking. Currently, clubs will fight violations claiming to have told a smoker to stop smoking before the inspector arrived. "Good faith" should not end there. A club that serves smokers, even after telling them unsuccessfully to stop, is permitting smoking and violating the law.

With the passage of New York City's Smoke-Free Air Act of 2002 and New York State's Clean Indoor Air Act the following year, New York State has led the charge in tobacco control. Because of pioneering efforts such as these, today smoke-free standards across America and the world have changed. However, we cannot rest on our success, and there is still much work to be done. The percentage of New Yorkers who smoke is at an all-time low, but the decreases we have seen in recent years are showing signs of leveling off. We have to make adjustments of our own. Amending the Clean Indoor Air Act is crucial to this effort. I want to thank the Committee for considering our ideas today, and for continuing to work with us to reduce smoking in New York City. I am happy to answer your questions. Thank you.