



Testimony

of

**Thomas A. Farley, MD, MPH, Commissioner**

**New York City Department of Health and Mental Hygiene**

before the

**New York City Council Committee on Health**

on

**Intros 1020, 1021 and 250A**

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250 Broadway

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Good afternoon, Chairperson Arroyo and members of the New York City Council Committee on Health. I am Dr. Thomas Farley, Commissioner of the New York City Department of Health and Mental Hygiene. Thank you for the opportunity to comment on Intros 1020, 1021, and 250A, three complementary bills that will reduce smoking among youth and young adults and save thousands of lives.

Working together, the Bloomberg Administration and the City Council have made historic progress to reduce smoking and protect all New Yorkers from the harmful effects of tobacco. I want to thank this committee and the Council for your courage in supporting groundbreaking legislation that has been central to this success. But there is still more that can be done, particularly to protect the City's youth from the deadly effects of smoking. These bills would build on the success we have had so far and give our next generation the opportunity to live tobacco-free.

Beginning in 2002, we launched a comprehensive program to reduce and prevent smoking. We raised cigarette taxes, promoted smoke-free spaces, educated New Yorkers about the risks of smoking, and helped smokers quit, and the result is that the smoking rate in adults has fallen by almost a third, to less than 15 percent, and the smoking rate in teenagers has fallen in half.<sup>1,2</sup>

However, tobacco is still a leading cause of preventable, premature death in New York City<sup>3</sup> and the rest of the country.<sup>4</sup> Smoking increases the risk of lung cancer, heart disease, stroke, asthma, emphysema, pre-term delivery, low birth weight, and many types of cancer. When used exactly as intended, cigarettes kill one-third of their users.<sup>5</sup> We estimate that some 7,000 New Yorkers die each year from tobacco-related illnesses.<sup>6</sup> In 2010, one of seven deaths among New Yorkers over the age of 35 was smoking-related.<sup>7</sup> Currently, 930,000 adults and 20,000 public high school students in New York City—close to one million people—smoke.<sup>8,9</sup>

Today we are particularly worried that the smoking rate in teenagers, which had been declining – as you can see on the graph - has stalled at 8.5 percent since 2007.<sup>10</sup> Preventing young people from smoking is critical. We know that 80 percent of New York City adult smokers started smoking regularly before reaching the age of twenty-

one. Nationally, 99 percent of daily adult smokers tried smoking by age twenty-six, and the average age at which they tried their first cigarette was 15 or 16.<sup>11,12</sup>

Young people often are simply unaware of how likely they are to become addicted to cigarettes. Only 3 percent of high school seniors who smoke daily think they will still be smoking in five years, but the reality is that about 8 years later, nearly two-thirds of them will still be regular daily smokers.<sup>13</sup> Adolescents tend to believe they are less likely to develop smoking-related diseases than others, and that they will be able to quit whenever they wish.<sup>14</sup> However, studies show that symptoms of nicotine dependence can start soon after an adolescent first tries smoking.<sup>15</sup> If children experiment with smoking, there is a substantial risk of them becoming long-term users.

Because tobacco use is still a leading cause of death and because it starts almost exclusively in youth and young adults, it is imperative that we do all we can to protect our young people from addiction and death. It is difficult to imagine any other scenario where we would stand by as 28,000 of our youth experiment each year<sup>16</sup> with a substance that could eventually kill one-third of them. These three bills seek to reduce suffering and death associated with smoking and other tobacco use by helping to reduce the visibility and accessibility of tobacco products by the City's young people.

### ***Product Display***

First, I'd like to spend some time discussing Intro 1020, which would restrict the display of tobacco products in most City retail stores. I want to thank Chairperson Arroyo for sponsoring this bill and more than a dozen other Council members who have co-sponsored it. Prominent displays of cigarettes<sup>17,18,19,20</sup> and other tobacco products<sup>21,22</sup> in retail stores both entice youth to try smoking and make it harder for current smokers to quit.<sup>23,24,25,26,27,28</sup> Studies consistently show the more often young people are exposed to cigarette displays in retail stores, the more susceptible they are to starting smoking.<sup>29,30,31</sup> It's no surprise that retail displays of cigarettes and other tobacco products heighten awareness of these products.<sup>32</sup> But we also know that the prominent presence of tobacco products alongside candy, snack foods and other items creates the impression, especially among children and adolescents, that tobacco use is not only normal and socially

acceptable, but also more common than it actually is, which increases the likelihood that young people will experiment with smoking.<sup>33,34,35,36</sup>

Children and adolescents are influenced by what they see around them. For instance, having a parent who smokes greatly increases the likelihood that a young person will smoke.<sup>37</sup> What is disturbing—and extremely important for today’s discussion—is that retail tobacco marketing and product displays are nearly as influential.<sup>38</sup> Youth who are frequently exposed to tobacco product displays are more than two times as likely to start smoking than youth who receive less exposure.<sup>39,40</sup> Studies show that when young people are exposed to cigarette marketing that includes product displays in retail stores one or more times a week, it increases the odds that they will smoke by 40 percent to 60 percent.<sup>41,42,43</sup> Similarly, a study of New York City youth showed that the odds of experimenting with smoking in the past 12 months was 40 percent higher among youth exposed to tobacco retailers two or more times per week compared to those exposed less often.<sup>44</sup> As you can see on this graph, the more times a New York City youth visited a local retailer where he was exposed to tobacco marketing, the more likely he was to start smoking.

Restricting the display of cigarettes and tobacco products discourages youth from attempting to make illegal purchases by creating the impression that they are more difficult to purchase.<sup>45,46</sup> One recent study indicates that banning the display of tobacco products is the most important factor in reducing purchase attempts by underage youth, regardless of the presence of other forms of advertising.<sup>47</sup>

To protect their children from smoking, other countries around the world have prohibited retailers from displaying tobacco products. Where this has been evaluated, those countries, including Canada, have experienced significant drops in youth smoking.<sup>48,49,50</sup> This slide shows the different provinces of Canada that implemented product display laws at different times since 2005. In general, after these rules went into effect, youth smoking rates went down. Looking from left to right on this slide, you can see that the provinces where product display laws have been in effect the longest show the greatest reductions in youth smoking.

Other countries that have enacted product display restrictions include Ireland, Australia, England, Wales, Scotland, Iceland, and Norway. Industry representatives warned retailers in virtually all of these countries that a product display law would be difficult to implement. As it turned out, implementation was neither costly nor burdensome, and the industry warnings proved to be unfounded. This shows what a typical tobacco retail display looks like now. But under the proposed law, retailers can put them in drawers, as shown here, or simply put a curtain over them.

Product display restrictions also help smokers who want to quit achieve their goals. When smokers who are trying to quit see a pack of cigarettes, it can trigger a craving to smoke, which can lead to their buying a pack on impulse.<sup>51,52,53,54,55,56</sup> Removing product displays removes that cue, which makes it easier for smokers to quit successfully.<sup>57</sup>

Overall, though, product display restrictions have not resulted in substantial declines in cigarette sales to adults. According to several studies, adult customers who are not actively trying to quit are extremely loyal to their brands and do not notice product displays as much as youth,<sup>58,59,60,61</sup> nor do they use tobacco displays to decide what brand of cigarettes to buy.<sup>62,63</sup>

Restricting the display of cigarettes and other tobacco products is an important step forward to prevent youth smoking in New York City, and one that enjoys widespread support. According to a recent poll of New York City voters, two thirds support tobacco product display restrictions,<sup>64</sup> and we expect support for the measure to increase further after implementation, as it has elsewhere.<sup>65</sup>

### ***Sensible Tobacco Enforcement***

The next bill that I would like to discuss today, Intro 1021, or the Sensible Tobacco Enforcement bill, addresses the availability of illegal and low-cost tobacco products in the City. Thanks again to Chairperson Arroyo and more than a dozen other Council members who have co-sponsored this important piece of legislation. It is well established that increasing cigarette prices helps reduce smoking, especially among young people.<sup>66</sup> A 10 percent increase in cigarette prices reduces demand among adult smokers by 3-5 percent and among youth by 7 percent.<sup>67</sup> But cigarette tax evasion and

the sale of discounted tobacco products are increasing, which undermines the benefit of the City and State's high cigarette taxes. The Sensible Tobacco Enforcement bill targets many of the sources of inexpensive tobacco, including smuggled cigarettes that are untaxed, cigarette discounting and individually sold or low-cost cigars.

Although the Department of Finance and the Law Department have increased enforcement and have had success in stopping many illegal operations, more needs to be done to address the serious problem of cigarette trafficking and tax evasion. A pack of cigarettes sold legally in New York City generally costs about \$11 or \$12. A pack of cigarettes that sells for \$5 at retail value in Virginia can be trafficked to New York City and sold illegally for \$9, well below the legal price.

This is bad for New York City for several reasons. I will touch on some of the economic implications very briefly, and Commissioner Frankel and Sheriff Domenech will expand on these when you hear from them momentarily. First, retailers who sell illegal, untaxed cigarettes are cheating and have an unfair advantage on their honest competitors. A store that cheats the system can sell cigarettes for less than the legitimate retail price, enabling them to sell more cigarettes, along with other products that that customer purchases. And that means that honest retailers who sell properly-taxed cigarettes lose business. Second, an estimated \$250 to \$600 million is lost annually in unpaid taxes from cigarette trafficking in New York City.<sup>68,69</sup> Third, illegal tax-free cigarettes are cheap, and when prices are lower, young people can buy them more easily.

This bill would increase penalties when retailers are found in possession of illegal cigarettes and at different points along the chain of distribution, authorizing the Department of Finance to crack down on stores that repeatedly break the law by offering to sell these illegal products. Together, these and other provisions promote fairness, reduce the incentives for retailers to break the law and to cheat, and help law-abiding retailers compete on a level playing field.

The bill also eliminates discounting of tobacco products. Retail price discounts are widely available in New York City.<sup>70</sup> Research shows these price reductions are particularly appealing to young adults, women, and minorities, especially among African American smokers who smoke menthol cigarettes.<sup>71</sup> Recent evidence suggests that

tobacco companies target discount coupons at younger smokers.<sup>72</sup> These discounts work to keep people buying and smoking cigarettes when they might otherwise be persuaded by the high price to quit. Intro 1021 would end discounting by prohibiting “specials” – like buy-one, get-one free – and prohibiting retailers from redeeming discount coupons for tobacco products.

Intro 1021 will require that cigarettes and little cigars must be sold for no less than \$10.50 per pack. In a recent study that included more than 300 New York City tobacco retailers, we found that this price floor was lower than most posted prices for cigarettes available for retail sale.<sup>73</sup> This “price floor” would complement these prohibitions on discounting. The price floor is easy for the public to understand; it’s simple to enforce; and it maintains high prices that protect public health.

### ***Inexpensive Cigars***

The Sensible Tobacco Enforcement Bill will also help reduce youth smoking by decreasing access to cheap cigars. The tobacco industry has carefully manipulated their products over time so that they are very similar to cigarettes, but different enough to qualify for lower tax rates and less regulation.<sup>74</sup> Here’s an example of a pack of cigarettes under the brand name “Cheyenne”, that the company changed slightly so they were categorized as “little cigars”, then added just enough weight so that they were categorized as “cigars”, both of which are taxed at a much lower rate than cigarettes. And here are two products that look virtually identical, except this pack of cigarettes costs \$12.50, and this pack of what is classified as “little cigars” costs roughly \$6.50. They are definitely not what we think of as cigars.

Many little cigars are sold in packs of 20, and they are virtually indistinguishable from cigarettes. Little cigars are the same size as cigarettes, they have filtered tips, they are inhaled like cigarettes, and they are dangerous like cigarettes. The physical difference is that cigarettes are wrapped in white paper, and little cigars have brown wrappers that include tobacco as an ingredient. Lower prices have contributed to a surge in popularity of smaller cigar products, including little cigars.<sup>75</sup> They are especially popular with youth.<sup>76,77</sup> We are seeing the shift toward cigar use here in New York City,

where the proportion of youth smokers who smoke cigars exclusively nearly tripled between 2001 and 2009.<sup>78</sup>

Youth and adults are less aware of the health risks associated with cigar smoking<sup>79</sup> than they are of the health risks of cigarettes,<sup>80,81,82</sup> which is especially dangerous because the nicotine levels in cigars are generally much higher than nicotine levels in cigarettes, which may make them even more addictive.<sup>83</sup>

Given the similarities to cigarettes, this bill simply requires little cigars to be sold like cigarettes, in packs of no fewer than 20, and with the same \$10.50 minimum price. This bill also requires larger cigars that costing \$3 or less each to be sold in packs of at least 4. These measures would raise the price at which these cigars can be sold and help reduce their use among adolescents.

### ***Tobacco 21***

Finally, I'd like to address Intro 250A, which would simply raise the minimum age for selling tobacco products from 18 to 21. This bill is an important complement to the other two bills I've just discussed. As I mentioned earlier, the vast majority of smokers start before the age of 21, but what is also notable is that the transition from experimental to regular smoking occurs around the age of 20.<sup>84</sup> This bill is also important because increasing the legal age will reduce the accessibility to tobacco products to kids who are much younger than 18. We know that 90 percent of people purchasing cigarettes for minors are themselves between 18 and 20 years old. We also just received data that strongly suggests that increasing the legal age for sales works to reduce teen smoking. In 2005, the town of Needham, Massachusetts increased the legal sales age from eighteen to twenty-one years. Between 2006 and 2012, high school students in Needham who reported smoking in in the past month declined from 12.9 percent to 5.5 percent, a decrease of over 50 percent. This decrease was far greater than the decrease in smoking in the rest of that region of Massachusetts or here in New York City.

There is also evidence from other countries that raising the legal sales age works. After the minimum sales age in England was increased from 16 to 18, there was a 30 percent decline in smoking among youth ages 16-17; and younger students, those

between 11 and 15, were also less likely to be regular smokers. Obviously, proper enforcement of the law is critical, which is one more reason why the Sensible Tobacco Enforcement bill I discussed earlier is so important.

***Conclusion***

Preventing youth from starting to smoke, and helping adult smokers succeed when they want to quit are two of the most critical steps we can take to improve the health of New Yorkers. This City is recognized worldwide as a leader in smoking prevention and because of our efforts smoking rates in the City are at historic lows. But despite implementing leading evidence-based practices, tobacco use is still a leading cause of preventable death in the City, and we need to do more. These bills will help ensure that we continue to decrease smoking rates in our children and young people. If we succeed, we may just be able to raise an entire generation free of addiction to the world's most dangerous drug.

Thank you. I am happy to answer any questions.

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