



**Testimony of
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before the

New York City Council Committee on Health

on

Preconsidered Introduction No. _

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**City Council Chambers
New York, New York**

Good morning, 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 this Preconsidered Introduction, a bill that would amend the Smoke-Free Air Act by prohibiting electronic cigarette use in all places where smoking conventional cigarettes is prohibited. This legislation will help address electronic cigarette use, which is growing rapidly among both youth¹ and adults² and poses a threat to the progress we have made in reducing smoking in New York City.

Since 2002, the Bloomberg Administration and the City Council have worked hard to reduce smoking and protect all New Yorkers from the harmful effects of tobacco. Perhaps the single most effective policy change that has been made has been passing the Smoke-Free Air Act, which has not only protected nonsmokers from second-hand smoke but also radically changed the social acceptability of smoking. We also made cigarette taxes the highest in the nation, produced public awareness campaigns warning about the risks of smoking, and offered direct assistance to tens of thousands of New Yorkers to help them quit. With your help, last month we became the first major city in the United States to increase the age of sale for cigarettes to 21 and one of the first jurisdictions in the country to prohibit discounts on tobacco products. To address the growing trade in illegal cigarettes, we also increased our ability to enforce against tax evasion, which will help ensure high cigarette prices and level the playing field for honest retailers.

As a result of these efforts, the smoking rate of adult New Yorkers has fallen by more than a quarter³ and the smoking rate of teenagers has been cut in half.⁴ We have estimated that this

¹ Centers for Disease Control and Prevention. Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012. *Morbidity and Mortality Weekly Report* 2013;62(35):729-30.

² McMillan et al. Three Year Trends in the Use Of Emerging Tobacco Products. Presented at 141st APHA Annual Meeting; 2013 November 5; Boston, MA.

³ New York City Department of Health and Mental Hygiene. Community Health Survey 2001-2012.

⁴ New York City Department of Health and Mental Hygiene. Youth Risk Behavior Survey 2001-2011.

decline in smoking is preventing thousands of unnecessary deaths in New York City, contributing to our significant gains in life expectancy.⁵ However, our adult smoking rate has leveled off in the last two years, the youth smoking rate has remained stagnant for several years, and smoking is still the number one cause of preventable death in New York City. For these reasons, we are constantly seeking new ways to discourage youth from starting to smoke and assist adult smokers in quitting. Even more important, we feel we must protect the gains we have worked so hard to achieve and prevent smoking rates from rising again.

Electronic cigarettes, commonly called e-cigarettes, are nicotine delivery devices that emit vapor and are designed to look like conventional cigarettes. Among United States high school students, electronic cigarette use more than doubled between 2011 and 2012, from 4.7 percent to 10 percent.⁶ In 2012, more than 1.78 million middle and high school students nationwide tried electronic cigarettes.⁷ Sales of these products have doubled in just two years from nearly \$300 million in 2011 to \$600 million in 2012,⁸ and are expected to reach \$2 billion in 2013.⁹ All of this country's big cigarette companies are now producing and heavily marketing e-cigarettes.

A key point for the hearing today is that e-cigarettes are so new that we know very little about them. We cannot answer many of the important questions that health experts have about their short-term, long-term, and indirect effects. Electronic cigarettes are not regulated by any

⁵ Li W, Maduro G, Begier EM. Life Expectancy in New York City: What Accounts for the Gains? New York City Department of Health and Mental Hygiene: Epi Research Report, March 2013; 1-12.

⁶ Centers for Disease Control and Prevention. Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012. *Morbidity and Mortality Weekly Report* 2013;62(35):729-30.

⁷ Centers for Disease Control and Prevention. Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012. *Morbidity and Mortality Weekly Report* 2013;62(35):729-30.

⁸ CBSNews.Com. Booming E-cigarette industry raises questions on safety, regulation. July 22, 2013. Last accessed November 25, 2013. Available at:

http://www.cbsnews.com/8301-505263_162-57594842/booming-e-cigarette-industry-raises-questions-on-safety-regulation/

⁹ Wicznier, Jenn. The Wall Street Journal. 10 Things E-Cigarettes Won't Tell You. November 10, 2013. Last accessed November 25, 2013. Available at: <http://online.wsj.com/news/articles/SB10001424052702304448204579184052293918312>

federal agency. Because there are not government reporting requirements for e-cigarettes, there is no way of knowing the levels of nicotine or amounts or kinds of other chemicals they deliver to the lungs of users.¹⁰ The Food and Drug Administration (FDA) has found that some electronic cigarettes contain toxins and carcinogens and has expressed concern about their safety.^{11,12} Some studies suggest that electronic cigarettes release emissions containing volatile organic compounds¹³ and fine particulate matter,^{14,15} which are associated, in large enough concentrations, with respiratory problems.

Electronic cigarettes have not been subjected to any long-term scientific studies and their impact on health over time is unknown. What we do know with certainty is that most of these devices contain nicotine, a highly addictive substance, and many electronic cigarettes look virtually identical to and mimic the action of smoking a conventional cigarette.

I am sure you will hear later today from e-cigarette advocates that e-cigarettes, by delivering nicotine to addicted smokers, help those smokers quit. Based on this argument, they believe health experts should condone or actually promote e-cigarette use. And initially the FDA tried to regulate e-cigarettes as drug delivery devices. But remarkably, it was the electronic cigarette industry itself that sued the FDA over this, arguing in court that electronic cigarettes were not drug delivery devices but instead were tobacco products and should be regulated as tobacco products. And in 2010, the federal court agreed with them.¹⁶ In the Associated Press article on

¹⁰ FDA and Public Health Experts Warn About Electronic Cigarettes, Jul. 22, 2009. Available at: <http://www.fda.gov/20NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>.

¹¹ FDA warns about health risks posed by e-cigarettes. Last accessed November 27, 2013. Available at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm173401.htm>

¹² Food and Drug Administration. Evaluation of e-cigarettes. May 4, 2009. Last accessed November 27, 2013. Available at: <http://www.fda.gov/downloads/drugs/scienceresearch/ucm173250.pdf>

¹³ Schripp T, Markewitz D, Uhde E, et al. Does e-cigarette consumption cause passive vaping? *Indoor Air* 2013;23:25–31.

¹⁴ Schripp T, Markewitz D, Uhde E, et al. Does e-cigarette consumption cause passive vaping? *Indoor Air* 2013;23:25–31.

¹⁵ Zhang Y, Sumner W, Chen D-R. In Vitro Particle Size Distributions in Electronic and Conventional Cigarette Aerosols Suggest Comparable Deposition Patterns. *Nicotine & Tobacco Research* 2013;15(2):501-508.

¹⁶ *Sottera, Inc. v. Food and Drug Administration*, 627 F.3d 891 (D.C. Cir. 2010).

this legislation last week, a representative of the Tobacco Vapor Electronic Cigarette Association reiterated this position, saying that e-cigarettes should be regulated as tobacco products. By the industry's own logic, then, e-cigarette use should be discouraged by health experts and prohibited in places where use of conventional cigarettes is prohibited.

In addition, there are reasons to question the claim that e-cigarettes help smokers of conventional cigarettes quit. The use of electronic cigarettes, particularly in places where smoking is prohibited, may actually have the opposite effect, helping smokers avoid quitting by acting as a "bridge" – that is, helping them maintain nicotine levels in their blood until they have an opportunity to smoke a conventional cigarette again.

Several e-cigarette companies are now running advertisements, including ads on television, with attractive models and celebrities, glamorizing the act of smoking in a way that we have not seen since conventional cigarette ads were banned from television in the early 1970s. I view this marketing as highly irresponsible and dangerous because it may entice children to experiment with smoking.

Allowing the use of electronic cigarettes in places where smoking is prohibited could accentuate this problem, making the act of smoking conventional cigarettes socially acceptable again and undermining the enormous progress of tobacco control efforts over the past few decades. The impact of the social acceptability should not be underestimated; children and young adults are heavily influenced by whether they feel a behavior is viewed positively by their peers. If smoking becomes more socially appealing or even glamorous again we can be virtually certain that smoking rates in teenagers will rise. Another concern is that young people who experiment with electronic cigarettes may become addicted to nicotine and then switch over to smoking conventional cigarettes.

Finally, allowing use of e-cigarettes indoors may make it difficult to enforce the Smoke-Free Air Act against conventional cigarettes, because e-cigarettes and conventional cigarettes look so much alike. New Yorkers have come to enjoy and greatly benefit from smoke-free restaurants and bars. We do not want to return to a day in which smoking conventional cigarettes in these places is allowed, simply because restaurant and bar staff can't easily distinguish them from e-cigarettes.

Various jurisdictions around the country have prohibited the use of electronic cigarettes in areas where smoking is prohibited, including New Jersey, Utah, North Dakota, Boston and various counties in New York, California and Kentucky. Last week, Chicago announced that it is pursuing similar legislation.

Because of these concerns, prohibiting the use of electronic cigarettes in areas where smoking is restricted is a prudent step. While more research is needed on the health effects of electronic cigarettes, waiting to act could jeopardize the progress we have made over the last 12 years.

Thank you for the opportunity to testify. I am happy to answer any questions.