

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HEALTH

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May 2, 2013
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HELD AT: Council Chambers
City Hall

B E F O R E: MARIA DEL CARMEN ARROYO
Chairperson

COUNCIL MEMBERS:

Inez E. Dickens
Mathieu Eugene
Julissa Ferreras
Helen D. Foster
Rosie Mendez
Joel Rivera
Peter F. Vallone, Jr.
Albert Vann
Deborah L. Rose
James G. Van Bramer

A P P E A R A N C E S (CONTINUED)

Thomas Farley
Commissioner
New York City Department of Health and Mental Hygiene

David Frankel
Commissioner
New York City Department of Finance

Edgar Domenech
Sheriff
City of New York

Fran Freedman
Deputy Commissioner
New York City Department of Consumer Affairs

Marie Wilkins
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Craig Thompson
President and CEO
Memorial Sloan Kettering Cancer Center

Danny McGoldrick
Vice President for Research
Campaign for Tobacco Free Kids

Robert Bookman
Counsel
New York City Newsstand Operators Association

Tom Bryant
Executive Director and Legal Counsel
National Association of Tobacco Outlets

Ramon Murphy
President
Bodega Association of the United States

Chung Lee
Concerned Citizen

A P P E A R A N C E S (CONTINUED)

Michelle Bonan
American Cancer Society
Cancer Action Network

Dr. Tara Narula
American Heart Association

Michael Silbak
Vice President for Public Policy and Communications
American Lung Association of the Northeast

David Schwartz
New York Association of Grocery Stores

Jay Peltz
Vice President of Public Affairs
Food Industry Alliance of New York State

Arthur Katz
Statewide Association of Cigarette Tax Collection
Agents

Dr. Kurt Ribisl
Professor
UNC School of Public Health

Stephen Allen
Tri-Edy's Deli

Sung Su Kim
Concerned Citizen

Ralph Bombardiere
Executive Director
Gasoline and Automotive Service Dealers Association

Jim Calvin
President
New York Association of Convenience Stores

A P P E A R A N C E S (CONTINUED)

La Tanisha Wright
Founder and Director
Follow the Signs

Mona Golub
Price Chopper Supermarkets

Dr. Anise Kim
Social Scientist
RTI International

Dante Natoli
Concerned Citizen

Gregory Connolly
Volunteer Legislative Director
Consumer Advocates for Smoke Free Alternatives
Association

Brandon Critser
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Esther Zar
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Sandra Mullen
Senior Vice President
World Lung Foundation

Sheila Feinburg
Executive Director
New York City Coalition for a Smoke Free City

Louise Feld
Senior Policy Associate
Citizen's Committee for Children

Phil Konigsberg
Community Advocate
Queens Tobacco Control Coalition

A P P E A R A N C E S (CONTINUED)

Keith Mortener
Concerned Citizen

Russell Wishtart
Concerned Citizen

Francisco Correa
Concerned Citizen

Daniel Carpas
Concerned Citizen

Julianne Heney
Concerned Citizen

John Lasorsa
Concerned Citizen

Spike Babaian
President
Nation Vapers Club

David Ross
Concerned Citizen

Antoinette Lansa
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Lisa Gardener
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Tiffany Brown
Organizer
New York Public Interest Research Group

Jeffrey Phong
Professor
University of Waterloo

Barbara Sullivan
Concerned Citizen

A P P E A R A N C E S (CONTINUED)

Micah Berman
Concerned Citizen

Christopher Mikovitz
Concerned Citizen

John Urban
Concerned Citizen

Salvatore Vario
Concerned Citizen

Romeo R. Campbell
Concerned Citizen

Stewart Bowers
Concerned Citizen

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2 CHAIRPERSON ARROYO: Good afternoon
3 everyone. My name is Maria del Carmen Arroyo. I
4 chair the Committee on Health and I extend a
5 profound apology for the delay. There was a real
6 complicated Land Use matter being taken up in the
7 Land Use Committee, and if I don't get there and
8 vote, I get marked absent, and then the press
9 writes nasty stories. I needed to be there, so I
10 do apologize for that. My testimony was going to
11 open with good morning, but good afternoon. Today
12 the Committee is conducting a hearing on three
13 pieces of legislation with one goal in mind, and
14 that is to reduce the prevalence of youth smoking
15 in our city. The first piece of legislation
16 proposed Intro 250-A, which is sponsored by my
17 colleague Council Member Gennaro, would raise the
18 legal age to sell tobacco products to consumers to
19 the age of 21. The second piece, Intro 1020 was
20 introduced by the request of the mayor and
21 prohibits the display of tobacco products to
22 consumers except at the time of sale. Finally,
23 Intro 1021 was also introduced by request of the
24 mayor and has several components. The first is
25 increasing the fines and penalties for selling

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2 illegal, untaxed tobacco products; number two,
3 prohibiting coupons and discounts on cigarettes;
4 number three, setting a price floor of \$10.50 per
5 pack of cigarettes and little cigars, and number
6 four, requiring that cigars be sold in packs of
7 four and little cigars be sold in packs of 20 at a
8 minimum, and I think that we are going to hear a
9 lot of information about the prevalence and the
10 statistics regarding smoking and the damage that
11 it does to our young people, so I am going to
12 forgo all of that, and at this point turn it over
13 to my colleague, Council Member Gennaro, the
14 primes sponsor of the legislation that would raise
15 the legal tobacco product sale to the age of 21.
16 Council Member?

17 COUNCIL MEMBER GENNARO: Thank you,
18 Madam Chair and thank you for holding this
19 hearing. Good afternoon. My name is Councilman
20 Jim Gennaro. I'd like to thank the Chair for
21 holding this hearing on this very important issue,
22 which affects health, the wellbeing and lives of
23 young people throughout our city and beyond.
24 Today I am not just going to speak as an elected
25 official, but as a son who has lost his mother

1
2 prematurely as a result of smoking, and as a
3 father who has seen his daughter celebrate her 18th
4 birthday without the precious wisdom and love of
5 her grandmother. We are here today to talk about
6 my bill, 250-A, and those put forward by the
7 administration, and mine would propose that the
8 legal age for tobacco use be raised in the city
9 from 18 to 21 years. First I would like to say
10 that this bill has been the result of years of
11 careful consideration, scientific evidence and
12 data on youth smoking and that data has shown that
13 raising the age of maturity for tobacco use will
14 result in a significant reduction in youth smoking
15 rates. I think you will hear the commissioner
16 talk about a study that says as much as 55 percent
17 reduction for those aged 18 to 21 and just in case
18 you missed that the data shows that raising the
19 age of maturity for tobacco use will result in
20 this kind of reduction and will reduce the number
21 of lifelong users of a product that leads to
22 thousands of deaths in our city every year. As we
23 all know smoking is the leading cause of
24 preventable death in New York City and in the U.S.
25 Currently 100,000 young people in our city use

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2 these products. Of that number 20,000 are public
3 high school students. Studies have shown
4 consistently that young people frequently get
5 cigarettes from older friends and siblings. This
6 proposal acts as a simple deterrent putting a
7 barrier between our young people and a lifetime
8 addiction to nicotine. Through proven measures,
9 the Bloomberg Administration and the Council we
10 have reduced youth smoking rate from 17.6 percent
11 when we came in in 2002 to 8.5 percent in 2007;
12 however, it has been hard to move that number down
13 from 8.5 percent, but we can and must do better.
14 We think these measures combined will do that.
15 For every percentage point we shave off, we save
16 thousands of young people from an ever increasing
17 risk of developing cancer, all kinds of lung
18 diseases, heart disease and a host of other
19 serious illnesses. Currently, the city smoking
20 rate is lower than the national teen smoking
21 average of 18.1 percent, and we are at 8.5, so we
22 have done a good job and the things we do work.
23 And the state average is 12.5 percent, so we are
24 doing better than the state as a whole. So
25 everything we have done in the last decade to

1
2 reduce smoking has worked and the science drive
3 process and the science driven proposals to raise
4 the smoking age to 21 would be no different.
5 Nationally 285,000 people are suffering from
6 smoking related lung cancer right now with untold
7 millions having already died and untold millions
8 already in the pipeline who will get lung cancer
9 from smoking. The tragic staggering number of
10 smoking victims includes as I said my mother lost
11 her battle with lung cancer in 2002 and though she
12 found the willpower to quit, something that even
13 the president of the United States has struggled
14 with, he is like a focused guy, he is smart, he
15 figured out how to become the president by the age
16 of 47 years old, but he couldn't figure out how to
17 put down a cigarette, and so this is the kind of
18 addiction that we are talking about. Sorry, Mr.
19 President, but you know--it's true. There you go.
20 And even though my mother was smoke free for the
21 last 16 years of her life, the damage had been
22 done. When she started her habit, the dangers of
23 smoking were not well known. When they became
24 well-known she stopped, but that was not good
25 enough for her. But that is not true today. We

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2 know the dangers. Scores of studies tell us that
3 smoking is deadly, and tobacco is more addictive
4 than cocaine. And those few years between 18 to
5 21, which gets to the bill, are crucial in
6 preventing a lifetime addiction to nicotine. We
7 know that once you start smoking, it is nearly
8 impossible to quit, but we also know that if you
9 don't start smoking by age 20, you are not likely
10 to start, and that can make the difference for
11 people like my late mother, who started smoking
12 when she was 18. Critics of this bill say it
13 won't work or will result in lost tax revenue from
14 sales, so I ask which one is it? If the city
15 loses tax revenue, it means that less people are
16 taking up the habit that costs us millions if not
17 billions of dollars in long term healthcare costs
18 and lost worker productivity. This is tax revenue
19 that if I have anything to say about it we want to
20 lose. More than seven years after I introduced
21 this bill to raise the smoking age in the City
22 Council I am very grateful to be able to work with
23 the Health Department, to work with the Speaker,
24 to work with the members of the Council, and
25 particularly Speaker Quinn for this lifesaving

1
2 proposal. I'd also like to thank Mayor Bloomberg
3 for his incredibly leadership on this issue. We
4 have Commissioner Farley and Commissioner Frankel
5 both from the Health Department here and all the
6 medical community and advocate organizations for -
7 - co-sponsor of the two bills from the Bloomberg
8 Administration that the commissioner is going to
9 talk about and let me just talk a little bit
10 about--just - - 'cause I'm running too long--I am
11 passionate about this subject. This is the 2009
12 zillion page bill that was passed by the federal
13 government that gives us the ability to do the
14 kind of regulation that we are doing here in New
15 York City, but this bill did a couple of things.
16 It gives cities the ability to regulate tobacco.
17 It gives states the ability, but it also mandates
18 that the FDA come up with a nicotine level that
19 does not create serious tobacco dependence, and
20 once it comes up with that answer, the FDA is then
21 empowered to set nicotine levels to those that
22 will not create addiction, and so my point is that
23 this got passed in 2009. The FDA has all kinds of
24 authority, all cities and states around the
25 country have all kinds of authority, but if nobody

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2 does anything then what was the purpose of doing
3 this? I would certainly encourage the FDA to get
4 moving to answer the question about what nicotine
5 level what get people hooked and for the federal
6 government to use the power it already has to set
7 nicotine at that level, but that day is not going
8 to happen for a while, so we need to act now. I
9 thank you very much for your indulgence, Madam
10 Chair, and I am grateful to the Commissioner for
11 being here and all my colleagues. Thank you very
12 much.

13 CHAIRPERSON ARROYO: Thank you,
14 Council Member. Good afternoon, Commissioner
15 Farley. Your staff--we need one of these little
16 slips. We don't have one, but since I know who
17 you are, I can welcome you. David Frankel,
18 Commissioner Department of Finance and to answer
19 questions we have Mr. Edgar Domenech, sheriff of
20 the city of New York, and on the sideline, Fran
21 Freedman, deputy commissioner for the Department
22 of Consumer Affairs. Thank you all for being
23 here. For those of you who are going to testify,
24 identify yourself for the record and flip a coin
25 to see who goes first. Commissioner, before you

1
2 begin, let me acknowledge the members from the
3 Health Committee who are here: Council Member
4 Vallone, Van Bramer, Rodriguez, Rose, Eugene and
5 Gennaro. Thank you all for being here. We are in
6 for a long afternoon, folks, so I hope you have a
7 lot of patience. Council Member Ferreras, thank
8 you for joining us.

9 COMMISSIONER FARLEY: Good
10 afternoon, Chairperson Arroyo and members of the
11 New York City Council Committee on Health. I am
12 Dr. Thomas Farley, commissioner of the New York
13 City Department of Health and Mental Hygiene.
14 Thank you for the opportunity to comment on Intros
15 1020, 1021 and 250-A, three complementary bills
16 that will reduce smoking among youth and young
17 adults and save thousands of lives. Working
18 together, the Bloomberg Administration and the
19 City Council have made historic progress to reduce
20 smoking and protect all New Yorkers from the
21 harmful effects of tobacco. I want to thank this
22 Committee and the Council for your courage in
23 supporting groundbreaking legislation that has
24 been central to the success, but there is more
25 that still can be done particularly to protect the

1 city's youth from the deadly effects of smoking.
2 These bills would build on the success that we
3 have had so far and give our next generation the
4 opportunity to live tobacco free. Beginning in
5 2002, we launched a comprehensive program to
6 reduce and prevent smoking. We raised cigarette
7 taxes, promoted smoke free spaces, educated New
8 Yorkers about the risks of smoking and helped
9 smokers quit, and the result is that smoking rates
10 in adults have fallen by almost a third to less
11 than 15 percent and the smoking rate in teenagers
12 has fallen in half as you see on the slide up
13 here; however, tobacco was still a leading cause
14 of preventable premature death in New York City
15 and the rest of the country. Smoking increases
16 the risk of lung cancer, heart diseases, stroke,
17 asthma, emphysema, pre-term delivery, low birth
18 weight and many types of cancer. When used
19 exactly as intended cigarettes kill one third of
20 their users. We estimate that some 7,000 New
21 Yorkers die each year from tobacco related
22 illnesses. In 2010, one of seven deaths of New
23 Yorkers over the age of 35 was smoking related.
24 Currently 930,000 adults and 20,000 public high
25

1
2 school students in New York City close to one
3 million people smoke. Today we are particularly
4 worried about the smoking rate in teenagers, which
5 has been declining as you can see on the graph,
6 but has stalled at 8.5 percent since 2007.

7 Preventing young people from smoking is critical.

8 We know that 80 percent of New York City adult
9 smokers started smoking regularly before reaching
10 the age of 21. Nationally, 99 percent of daily
11 adult smokers tried smoking by age 26 and the
12 average age at which they tried their first
13 cigarette was 15 or 16. Young people are often
14 simply unaware of how likely they are to become
15 addicted to cigarettes. Only three percent of
16 high school seniors who smoke daily think that
17 they will still be smoking five years later, but
18 the reality is that about eight years later nearly
19 two-thirds of them will still be regular, daily
20 smokers. Adolescents tend to believe they are
21 less likely to develop smoking related diseases
22 than others and that they will be able to quit
23 whenever they wish; however, studies show that
24 symptoms of nicotine dependence can start soon
25 after an adolescent first tries smoking. If

1 children experiment with smoking, there is a
2 substantial risk they will become long term users.
3 Because tobacco use is still a leading cause of
4 death and because it starts almost exclusively in
5 youth and young adults, it is imperative that we
6 do all we can to protect our young people from
7 addiction and death. It is difficult to imagine
8 any other scenario where we would stand by as
9 28,000 of our youth experiment each year with a
10 substance that could eventually kill one-third of
11 them. These three bills seek to reduce suffering
12 and death associated with smoking and other
13 tobacco products by helping to reduce the
14 visibility and accessibility of tobacco products
15 by the city's young people. First I would like to
16 spend some time discussing Intro 1020, which would
17 restrict the display of tobacco products in most
18 city retail stores. I want to thank Chairperson
19 Arroyo for sponsoring this bill and more than a
20 dozen other council members who have co-sponsored
21 it. Prominent displays of cigarettes and other
22 tobacco products in retail stores both entice
23 youth to try smoking and make it harder for
24 current smokers to quit. Studies consistently
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1
2 show the more often young people are exposed to
3 cigarette displays in retail stores, the more
4 susceptible they are to starting smoking. It is
5 no surprise that retail displays of cigarettes and
6 other tobacco products heighten awareness of these
7 products. We also know that the prominent
8 presence of tobacco products alongside candy,
9 snack foods and other items creates the impression
10 especially among children and adolescents that
11 tobacco use is not only normal and socially
12 acceptable, but also more common than it actually
13 is, which increases the likelihood that young
14 people will experiment with smoking. Children and
15 adolescents are influenced by what they see around
16 them. For instance having a parent who smokes
17 greatly increases the likelihood that a young
18 person will smoke. What is disturbing and
19 extremely important to today's discussion is that
20 retail tobacco marketing and product displays are
21 nearly as influential. Youth who are frequently
22 exposed to tobacco product displays are more than
23 two times as likely to start smoking than youth
24 who receive less exposure. Studies show that when
25 young people are exposed to cigarette marketing

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2 that includes product displays in retail stores
3 one or more times per week it increases the odds
4 that they will smoke by 40 to 60 percent.

5 Similarly, a study of New York City youth show
6 that the odds of experimenting with smoking in the
7 past 12 months was 40 percent higher among youth
8 exposed to tobacco retailers two or more times per
9 week compared to those exposed less often. That
10 is shown in the slide here. As you can see in
11 this graph, the more times that New York City
12 youth visited the local retailer where he was
13 exposed to tobacco marketing, the more likely he
14 was to start smoking. Restricting the display of
15 cigarettes and tobacco products discourages youth
16 from attempting to make illegal purchases by
17 creating the impression that they are more
18 difficult to purchase. One recent study indicated
19 that banning the display of tobacco products is
20 the most important factor in reducing purchase
21 attempts by underage youth regardless of the
22 presence of other forms of advertising. To
23 protect their children from smoking other
24 countries around the world have prohibited
25 retailers from displaying tobacco products. Where

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2 this has been evaluated, those countries,
3 including Canada, have experienced significant
4 drops in youth smoking. This slide shows the
5 different provinces in Canada that implemented
6 product display laws at different times since
7 2005. In general after these rules went into
8 effect youth smoking rates went down. Looking
9 from left to right on this slide you can see that
10 the provinces where product display laws have been
11 in effect the longest show the greatest reductions
12 in youth smoking. Other countries that have
13 enacted product display restrictions include
14 Ireland, Australia, England, Wales, Scotland,
15 Iceland and Norway. Industry representatives
16 warned retailers in virtually of these countries
17 that a product display law would be difficult to
18 implement. As it turned out, implementation was
19 neither costly, nor burdensome, and the industry
20 warnings proved to be unfounded. This slide shows
21 what a typical tobacco retail display looks like
22 now--this is what we call the power wall, but
23 under the proposed law, retailers can put them in
24 drawers as shown here or by simply putting a
25 curtain over them. Product display restrictions

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2 can also help smokers who want to quit achieve
3 their goals. When smokers who are trying to quit
4 see a pack of cigarettes, it can trigger a craving
5 to smoke, which can lead to their buying a pack on
6 impulse. Removing product displays removes that
7 cue, and makes it easier for smokers to quite
8 successfully. Overall though product display
9 restrictions have not resulted in substantial
10 declines in cigarette sales to adults. According
11 to several studies adult customers who are not
12 actively trying to quit are extremely loyal to
13 their brands and do not notice product displays as
14 much as youth, nor do they use tobacco displays to
15 decide what brand of cigarettes to buy.

16 Restricting the display of cigarettes and other
17 tobacco products is an important step forward to
18 prevent youth smoking in New York City and one
19 that enjoys widespread support. According to a
20 recent poll of New York City voters two-thirds
21 supported product display restrictions, and we
22 expect support for the measure to increase further
23 after implementation as it has elsewhere. The
24 next bill I would like to discuss today, Intro
25 1021, or the sensible tobacco enforcement bill,

1
2 addresses the availability of illegal and low cost
3 tobacco products in the city. Thanks again to
4 Chairperson Arroyo and more than a dozen other
5 city council members who have co-sponsored this
6 important piece of legislation. It is well-
7 established that increasing cigarette prices helps
8 reduce smoking, especially among young people. A
9 ten percent increase in cigarette prices reduces
10 demand among adult smokers by three to five
11 percent and among youth by seven percent, but
12 cigarette tax evasion and the sale of discounted
13 tobacco products are increasing, which undermines
14 the benefit of the city and state's high cigarette
15 taxes. The sensible tobacco enforcement bill
16 targets many of the sources of inexpensive tobacco
17 including smuggled cigarettes that are untaxed,
18 cigarette discounting and individually sold and
19 low cost cigars. Although the Department of
20 Finance and the Law Department have increased
21 enforcement and have had success in stopping many
22 illegal operations, more needs to be done to
23 address the serious problem of cigarette
24 trafficking and tax evasion. A pack of cigarettes
25 sold legally in New York City generally cost about

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2 11 or \$12. A pack of cigarettes that sells for \$5
3 at retail value in Virginia can be trafficked to
4 New York City and sold illegally for \$9, well
5 below the legal price. This is bad for New York
6 City for several reasons. I will touch on some of
7 the economic implications very briefly, and
8 Commissioner Frankel and Sheriff Domenech will
9 expand on these when you hear from them
10 momentarily. First, retailers who sell illegal,
11 untaxed cigarettes are cheating and have an unfair
12 advantage on their honest competitors. A store
13 that cheats the system can sell cigarettes for
14 less than the legitimate retail price enabling
15 them to sell more cigarettes along with other
16 products that that customer purchases. That means
17 that honest retailers who sell properly taxed
18 cigarettes lose business. Second, an estimated
19 250 to 600 million is lost annually in unpaid
20 taxes from cigarette trafficking in New York City.
21 Third, illegal tax - - cigarettes are cheap and
22 when prices are lower young people can buy them
23 more easily. This bill would increase penalties
24 when retailers are found in possession of illegal
25 cigarettes - - along the chain of distribution

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2 authorizing the Department of Finance to crack
3 down on stores that repeatedly break the law by
4 offering to sell these illegal products. Together
5 these and other provisions promote fairness,
6 reduce the incentives for retailers to break the
7 law and to cheat and to help law abiding retailers
8 compete on a level playing field. The bill also
9 eliminates discounting of tobacco products.

10 Retail price discounts are widely available in New
11 York City. Research shows these price reductions
12 are particularly appealing to young adults, women
13 and minorities, especially among African American
14 smokers who smoke menthol cigarettes. Recent
15 evidence suggests that tobacco companies target
16 discount coupons are young smokers. These
17 discounts work to keep people buying and smoking
18 cigarettes when they might otherwise be persuaded
19 by the high price to quit. Intro 1021 would end
20 discounting by prohibiting specials like buy one
21 get one free and prohibiting retailers from
22 redeeming discount coupons for tobacco products.
23 Intro 1021 would require that cigarettes and
24 little cigars must be sold for no less than 10.50
25 per pack. In a recent study that included more

1
2 than 300 New York City tobacco retailers, we found
3 that this price floor was lower than most posted
4 prices for cigarettes available for retail sale.
5 This price floor would complement these
6 prohibitions on discounting. The price floor is
7 easy for the public to understand. It is simply
8 to enforce and it maintains high prices that
9 protect public health. The sensible tobacco
10 enforcement bill will also help reduce youth
11 smoking by decreasing access to cheap cigars. The
12 tobacco industry has carefully manipulated these
13 products over time so that they are very similar
14 to cigarettes, but different enough to quality for
15 lower tax rates and less regulation. This slide
16 here shows an example of a pack of cigarettes
17 under the brand name Cheyenne. The company then
18 changed it slightly so they were categorized as
19 little cigars in the middle there, and then added
20 just enough weight so they were categorized as
21 cigars over there on the right, both of which are
22 taxed at a much lower rate than cigarettes. Here
23 are two products, here is one and here is another
24 that look virtually identical except that this is
25 a pack of cigarettes that cost about 12.50 and

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2 this is a pack that is categorized as cigars that
3 sells for roughly 6.50. They are definitely not
4 what we think of as cigars, and let me show you.
5 Here is a cigarette, and this is categorized as a
6 cigar. Many cigars--this is categorized as a
7 cigar. Many cigars are sold in packs of 20 and
8 they are virtually indistinguishable from
9 cigarettes.

10 [background conversation]

11 COMMISSIONER FARLEY: Little cigars
12 are the same size as cigarettes. They have
13 filtered tips. They are inhaled like cigarettes
14 and they are dangerous like cigarettes. The
15 physical difference is that cigarettes are wrapped
16 in white paper and little cigars have brown
17 wrappers that have a little bit of tobacco in
18 them. Lower prices have contributed to a surge in
19 the popularity of smaller cigars including little
20 cigars. They are especially popular with youth.
21 We are seeing a shift towards cigar use here in
22 new York City where the proportion of youth
23 smokers who smoke cigars exclusively nearly
24 tripled from 2001 to 2009. Youth and adults are
25 less aware of the health risks associated with

1
2 cigar smoking than with the health risks of
3 cigarettes, which is especially dangerous because
4 nicotine levels in cigars are generally much
5 higher than nicotine levels in cigarettes, which
6 makes them even more addictive. Given the
7 similarities of cigarettes this bill simply
8 requires that cigars be sold like cigarettes, in
9 packs of no fewer than 20 with the same 10.50
10 minimum price. The bill also requires larger
11 cigars costing three dollars or less be sold in
12 packs of at least four. These measures would
13 raise the price at which these cigars can be sold
14 and help reduce their use among adolescents.
15 Finally, I would like to address Intro 250-A,
16 which would simply raise the minimum age for
17 selling tobacco products from 18 to 21. This bill
18 is an important complement to the other two bills
19 I have just discussed. As I mentioned earlier,
20 the vast majority of smokers started before the
21 age of 21. What is notable is that the transition
22 from experimental to regular smoking occurs around
23 the age of 20. This bill is also important
24 because increasing the legal age will reduce the
25 accessibility to tobacco products to kids who are

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2 much younger than 18. We know that 90 percent of
3 people purchasing cigarettes for minors are
4 themselves between 18 and 20 years old. We also
5 just received data that strongly suggests that
6 increasing the legal age of sales works for
7 reducing teen smoking. In 2005, the town of
8 Needham, Massachusetts increased the legal sales
9 age from 18 to 21 years. Between 2006 and 2012
10 the percent of high school students in Needham who
11 reported smoking in the past month declined from
12 12.9 percent to 5.5 percent, and I should say that
13 is the lowest rate I have seen in teen smoking
14 anywhere. This decrease is far greater than the
15 decrease in smoking seen in the other regions of
16 Massachusetts or here in New York City. There is
17 also evidence from other countries that raising
18 the legal sales age works. After the minimum
19 sales age in England was increased from 16 to 18
20 there was a 30 percent decline in smoking among
21 youth age 16 and 17 and younger students, those
22 between 11 and 15, were also less likely to be
23 regular smokers. Obviously proper enforcement of
24 the law is critical, which is one more reason why
25 the sensible tobacco enforcement bill I discussed

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2 earlier is also important. Preventing youth from
3 starting to smoke and helping adult smokers
4 succeed when they want to quit are two of the most
5 critical steps we can take to improving the health
6 of New Yorkers. The city is recognized worldwide
7 as a leader in smoking prevention and because of
8 our efforts smoking rates in the city are at
9 historic lows, but despite implementing leading
10 evidence based practices, tobacco use is still a
11 leading cause of preventable death in the city and
12 we need to do more. These bills help ensure that
13 we continue to decrease smoking rates in our
14 children and young people. If we succeed, we just
15 may be able to raise an entire generation free of
16 addiction to the world's most dangerous drug.
17 Thank you, and I'd be happy to answer any of your
18 questions after Commissioner Frankel speaks.

19 COMMISSIONER FRANKEL: Good
20 afternoon, Chair Arroyo, Speaker Quinn and members
21 of the Committee on Health. I am David Frankel,
22 Commissioner of the Department of Finance, and I
23 am joined this afternoon by the city Sheriff Edgar
24 Domenech. Since the Sheriff doesn't get too much
25 publicity around here, let me just take a second

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2 to say that the Sheriff's Office is responsible
3 for enforcing the civil law in the city. Amongst
4 other things, it is enforcing civil penalties and
5 other things for failure to observe tobacco tax,
6 for going out and finding deadbeat moms and dads,
7 for helping take mentally ill people off the
8 street if they pose a danger to themselves or
9 others. It's an interesting sometimes dangerous,
10 but critical job. When we hired Sheriff Domenech
11 in 2011, it was clear to us that there was a new
12 sheriff in town, and he certainly proved that and
13 along with his team including First Deputy Sheriff
14 Joseph Aceito [phonetic], who is also here, they
15 have done a remarkable job over the last two
16 years. Thank you for the opportunity to testify
17 regarding Introductory number 1021, which would
18 give the Department of Finance new and greater
19 authority to enforce cigarette tax laws. Before I
20 discuss the bill's provisions, I would first like
21 to describe our current enforcement efforts. Over
22 the past three years, Finance has made cigarette
23 tax enforcement one of the core responsibilities
24 of the Office of the Sheriff. In 2011, we created
25 the Tobacco Task Force, consisting of

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2 investigators, deputies, and a lieutenant charged
3 with combating the flow of untaxed cigarettes into
4 New York City. To date, the Task Force has
5 performed more than 2,063 inspections, and as you
6 can see from the map over here to the left of me,
7 our enforcement efforts have blanketed the five
8 boroughs. Through these efforts, however, it has
9 become clear that cigarette tax evasion is
10 pandemic to our city. During inspections, Deputy
11 Sheriffs found contraband—that is to say,
12 cigarette packs with counterfeit stamps or no
13 stamps at all—at more than 970 of the locations or
14 47 percent of all the retail establishments that
15 we inspected. Some inspections resulted in the
16 seizure of a significant amount of untaxed
17 product: the Sheriff's Office made 235 arrests,
18 including 21 felony arrests in situations where
19 retailers were in possession of more than 50
20 cartons of untaxed cigarettes at the time of
21 inspection. And we seized more than 7,300 cartons
22 of illegal product. That's 1.4 million
23 cigarettes. The pervasiveness of cigarette tax
24 evasion presents serious problems. First, it puts
25 law abiding cigarette retailers at an incredible

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2 disadvantage. When smokers patronize retailers
3 who, because they are not paying tax, sell their
4 products at a cut rate, it diverts those customers
5 from small business owners who play by the rules.
6 Once they are in the door, smokers also make all
7 of their other purchases—their newspapers, lottery
8 tickets, coffee, et cetera—at the same location.
9 That means that law-abiding store owners lose out
10 on untold revenue; simply put, they can't compete.
11 Furthermore, cigarette tax evasion takes an
12 enormous toll on our city's budget. Illegal
13 tobacco sales are estimated to cost federal and
14 state governments five billion dollars annually,
15 and here in New York City, we lose out on
16 significant revenue in unpaid taxes from cigarette
17 trafficking. Through this lens, it's all New
18 Yorkers—not just the law-abiding small business
19 owners—who suffer the consequences of a tax
20 evading cigarette retailer's illegal behavior.
21 Clearly, there is still much to be done to crack
22 down on those who break the cigarette tax laws.
23 For our part, Finance is doubling our efforts: we
24 recently announced the hiring of a new class of 20
25 deputy sheriffs—our first new class in more than

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2 15 years. With this added personnel, we will
3 create a second tobacco unit to augment our
4 existing enforcement. And beyond that, we
5 strongly support the legislation before you today.
6 Introductory number 1021 is an important step in
7 enhancing our ability to effectively enforce
8 against those who break the law. Time and time
9 again, the lax regulations currently on the books
10 hamstringing our inspectors from issuing summonses—
11 and the modest monetary penalties for those caught
12 with bags full of contraband are chalked up to the
13 cost of doing business. This bill would create
14 new, firm penalties along every point of tax
15 evaders' operations—from purchasing cigarettes
16 from unauthorized sources, to transporting untaxed
17 product, to selling counterfeit tax stamps, to
18 hiding the contraband. Most importantly, though,
19 it would also give the Sheriff's Office the
20 authority to padlock the stores of repeat
21 offenders for 60 days. This will send a clear
22 message that tax evasion will not be tolerated,
23 and the sheriffs will use every tool at their
24 disposal to shut down illegal operations. Thank
25 you for the opportunity to testify. We'd be happy

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to answer any questions.

CHAIRPERSON ARROYO: Thank you, Commissioner. We have been joined by Council Member Vann and Speaker Quinn. Speaker, would you like to...

SPEAKER QUINN: Thank you very much, Chair Arroyo and Commissioners and Sheriff, thank you very much. I want to take a moment to thank the sponsors of all of the bills, but in particular Jim Gennaro, who is the sponsor of the piece of legislation to raise the age to 21, and I want to thank everyone from the advocacy community who is here. We in the Council in my opinion working with the Bloomberg Administration have a unparalleled record of taking the issue of smoking and tobacco use in this city seriously, so for me this hearing is incredibly exciting because it gives us more opportunities to move that agenda forward in a way that we know based on the facts and the data will reduce the use of tobacco in New York City and when that happens people will live longer and will live healthier, better lives and the financial implications of that for the city are enormous. We also have a particularly unique

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2 opportunity here around reducing youth and young
3 people smoking and that is perhaps the most
4 important focus for all of us because if we can
5 cut it off before people are addicted to it, we
6 are literally preventing a lifetime of struggle
7 and misery, and that really is what we can do
8 here, and it is just so exciting to me that we are
9 having this hearing, that we are talking about
10 these bills that we are going to be moving forward
11 and already the State of New York is following
12 suit in some of these areas, which is just another
13 example of when New York City leads in so many
14 areas, but when New York City leads in the area of
15 tobacco control the rest of the state and the rest
16 of the country and even at times the rest of the
17 world will follow, so I just want to thank
18 everyone who has been part of all of this work,
19 everyone who is here today. There are few
20 opportunities you have in life or in government to
21 do something that you literally know will save
22 lives. That is what we are talking about today,
23 and I just want to thank everyone from the Chair
24 to the Commissioners to Jim and all the advocates
25 and all the council members who are part of this

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2 important step forward, but I do have a question
3 for you Commissioner. How do you raise the taxes
4 on little cigars?

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COMMISSIONER FARLEY: The cigars
6 have lower taxes at the federal level, am I right,
7 as well as at the state level - - but at the city
8 level. So raising the tax on cigars at the city
9 level would require action I believe at the state
10 as well as at the city, so it is not impossible,
11 but it would be complicated.

12

SPEAKER QUINN: Well, we have
13 something to follow up on. Thank you all very
14 much.

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CHAIRPERSON ARROYO: Thank you,
16 Madam Speaker. We have been joined by Council
17 Member Foster. Thank you for joining us. I am
18 going to ask a couple of questions, and then I
19 will turn it over to my colleagues. I am
20 particularly interested in how this legislation or
21 the one that has the four different components
22 impacts electronic cigarettes, vapor products and
23 the flavor issue?

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COMMISSIONER FARLEY: The bills
25 were written with no intention of addressing

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2 electronic cigarettes at all, not to change any of
3 the current status. Currently under state law
4 ecigarettes can't be sold to someone under the age
5 of 18.

6 CHAIRPERSON ARROYO: Cannot.

7 COMMISSIONER FARLEY: Cannot be
8 sold to someone under the age of 18. It can be
9 sold to people over the age of 18. There
10 otherwise are no restrictions on their display,
11 discounting, that sort of thing. So these bills
12 were not written with any intention to change that
13 current status. I understand that the ecigarette
14 manufacturers have raised a question about whether
15 the definition of tobacco products here might
16 inadvertently swept up ecigarettes, and if that is
17 a concern of the Council I think that that is
18 something that we can address in a subsequent
19 conversation, but they were not written with that
20 intent.

21 CHAIRPERSON ARROYO: And the other
22 component of the bill that has the multiple layers
23 is the need for the clerk to produce
24 identification, and one that raises some concern
25 for some of us given that some of these clerks are

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2 very low level paid employees, what is the
3 rationale for that requirement?

4 COMMISSIONER FRANKEL: When the
5 Sheriff's Office goes in and does an inspection if
6 the contraband there reaches a certain level, they
7 will issue a criminal complaint. You can't issue
8 a criminal complaint to somebody who doesn't have
9 identification. If somebody doesn't have
10 identification, then you have to arrest them and
11 take them and put them through the whole process.
12 The last thing in the world that we want to do is
13 put more people through the whole process, so
14 generally what happens is most people do have
15 identification, and they will issue the criminal
16 summons to that person or if they don't the
17 Sheriff's Office will wait until somebody from
18 their home or someone else will bring them
19 identification. The whole desire is not to put
20 people through the process, so this way if someone
21 is required to have identification there, it will
22 make it much easier to go through this whole
23 scenario.

24 CHAIRPERSON ARROYO: It's a legal
25 issue. - -

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[crosstalk]

CHAIRPERSON ARROYO: So what is happening now if I don't have an ID and I am selling the cigarettes?

COMMISSIONER FRANKEL: Right now we will wait until somebody brings you an ID.

CHAIRPERSON ARROYO: And if that ID is not produced?

COMMISSIONER FRANKEL: Eventually, we would arrest you. We fortunately have not had to do that with respect to--these are misdemeanor offenses. If it is a felony offense, if it rises to that level, which is over 50 cartons of contraband cigarettes, we will arrest you and put you through the system, and it is the person unfortunately who is there at the time in the store, not necessarily the store owner, but we arrest whoever is doing the activity at that moment.

CHAIRPERSON ARROYO: So this is not an issue of the Department of Finance being able to collect on the debt from the business from the violation that is received.

COMMISSIONER FRANKEL: This has

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2 nothing to do with money. This is a criminal
3 offense, and by the way I mean someone made the
4 comment about whether this would affect the city's
5 revenue. We would be thrilled never to collect a
6 penny for cigarette tax--thrilled.

7 CHAIRPERSON ARROYO: Okay. Council
8 Member Vallone?

9 COUNCIL MEMBER VALLONE: Thank you,
10 Madam Chair. Thank you for your testimony. I am
11 an ardent anti-smoker. It was my father who put
12 in the first anti-smoking bill. I have voted for
13 every enhancement of that bill, and I support the
14 goals of these bills, but I as a business person I
15 have some concerns. I always loathe to give the
16 city more fining power because we know how that
17 has been misused in the past. In this situation,
18 we have got a bill that would create a \$1,000 fine
19 on a small business for leaving one of those
20 drawers open. Just two weeks ago, we passed a
21 bill in the City Council saying city come back to
22 use with bills that should be warnings and not
23 fines as long as they don't affect public safety
24 immediately, and - - come back to us with that,
25 and now we are discussing a bill with a \$1,000

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2 first offense for leaving one of those drawers
3 open. Can we work together to amend that and
4 change that?

5 COMMISSIONER FARLEY: In other
6 jurisdictions where they have--other countries--
7 where they have the display ban the retailers in
8 generally comply with it, and that would certainly
9 would be our interest is in having them comply.
10 It is not an interest in fining them. - - have
11 them in the drawers, they have them behind the
12 curtain, it is not hard for them to just keep it
13 that way except for when they are actually pulling
14 out a pack. The fines in general are in this
15 range of \$1,000 because our experience has been as
16 you heard from Commissioner Frankel that there is
17 a tremendous amount of - - other rules because you
18 can make a lot of money by selling things
19 illegally. I don't think there is going to be a
20 big financial advantage in displaying packs of
21 cigarettes, so I think most of them will comply,
22 but that is why the fines are high.

23 COUNCIL MEMBER VALLONE: I don't
24 have a problem with the fines that Commissioner
25 Frankel discussed. I mean if you are making money

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2 selling illegal cigarettes, that is a whole
3 different level of violation than not understand
4 the proper display laws, and as you said nobody is
5 making money by showing too much of a cigarette
6 package, so I don't have a problem with those
7 fines, but I do have a problem with owners in good
8 faith trying to comply and not having a big enough
9 curtain or another employee leaving it open or
10 something along those lines, and I really would
11 ask the sponsors and you to come back with a
12 version of this that wouldn't hurt our small
13 businesses, which are struggling right now, but
14 again, these goals are noble, especially getting
15 cigarettes out of our schools by raising the age
16 to 21. That will solve a lot of that problem. An
17 interesting thing to look at for the sponsors of
18 this bill is the fact that it is still legal. If
19 you had a 15 year old kid with a cigarette, that
20 is legal right now. They can't sell it to them,
21 but they can smoke it. I am not taking a position
22 on that, but that is an interesting situation that
23 exists on our streets right now. I do have to
24 run, but I thank you, Madam Chair, for letting me
25 ask the questions so quickly, and I thank you,

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2 sponsors especially, and you for your work on this
3 matter and the way you have been leading the
4 entire country on this.

5 COMMISSIONER FARLEY: Thank you,
6 Council Member. I know you have been very strong
7 on health, and which I very much appreciate. I
8 would be happy to talk to you more about this
9 particular bill later.

10 COUNCIL MEMBER VALLONE: Let's get
11 the fluoride out next.

12 CHAIRPERSON ARROYO: Council Member
13 Gennaro?

14 COUNCIL MEMBER GENNARO: Thank you,
15 Madam Chair and thank you, Commissioner, for
16 getting the data from Massachusetts. I think one
17 of the things that we are going to hear is that if
18 we go to 21 here people will cross into Nassau or
19 to Jersey and buy cigarettes where the age is set
20 at 19, but it seems that what happened in Needham
21 and which I don't think is a very big place. - -

22 COMMISSIONER FARLEY: It's about
23 20,000 people.

24 COUNCIL MEMBER GENNARO: And so the
25 city limits or the town limits of Needham are not

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2 that big. It would be pretty easy for them to
3 cross the line to go to the next town to buy
4 cigarettes, and does that lead you to believe that
5 with the rate of success they had in Needham where
6 cigarettes that could be purchased at a lower age
7 were literally like hundreds of yard away perhaps,
8 but that we still go this very good result. Could
9 you speak to that a little bit? I think we are
10 going to be hearing from people that stores on the
11 border of Nassau County are going to have some
12 kind of bonanza from the law that we are doing,
13 and like what your thoughts are on that.

14 COMMISSIONER FARLEY: Yeah, that is
15 a really excellent point. Could people travel
16 from the Bronx up to Westchester or from Manhattan
17 over to Jersey to buy cigarettes? They could, but
18 it's an awful long way to travel, a fair amount of
19 inconvenience to buy simply a pack of cigarettes.
20 Needham, Massachusetts is a small town in terms of
21 population geographically. I am sure it is not
22 that hard for them to travel to nearby towns where
23 the sales are available, and the result in Needham
24 is really surprisingly good. Again, lowering the
25 teen smoking rate to the lowest I have seen

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2 anywhere, so I think the evidence is strong that
3 that amount of trafficking of people going across
4 the town line or the city line is not going to be
5 a big enough issue to really blunt its overall
6 effect.

7 COUNCIL MEMBER GENNARO: Thank you,
8 Commissioner. Also, I have an editorial from the
9 Times back in 2006 where by the makes of tobacco
10 products in order to mount an offensive to combat
11 very common sense measures by cities and states to
12 curb smoking or spiking the amount of nicotine
13 they are putting in various kinds of tobacco
14 products and so the point that I am trying to make
15 is that we are trying to do something and we are
16 always faced with this business that is always
17 trying to get more customers, and I think it makes
18 the steps that we have taken in the city all the
19 more noble and all the more--very significant in
20 that we are making these gains in the face of
21 cigarettes that are spiked with more and more
22 nicotine. I do hope that the federal government
23 does follow through on its 2009 law where it is
24 mandated that the FDA has to come up with that
25 magical number of what is the level of nicotine

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2 that will not cause addiction, and I hope that
3 they will follow through with the power that they
4 have given themselves to actually set the rate of
5 nicotine by regulation by the FDA, but I just want
6 to compliment the efforts of the city because we
7 have been making these gains in the face of these
8 products that have been spiked with more and more
9 levels of nicotine. So do you have anything to
10 say about that?

11 COMMISSIONER FARLEY: We do worry a
12 lot about levels of nicotine in cigarettes and
13 cigars. As we said, the cigars may have far
14 higher levels of nicotine than cigarettes. The
15 way that the federal law is written basically says
16 that the FDA has the authority to regulate the
17 product, but that the state and in this case it
18 could come down to the city can regulate the time,
19 place and manner in which that product can be
20 sold. So what we are doing here is taking the
21 authority that the city has and the opportunity of
22 that authority to try to protect our young people
23 from smoking. We can't regulate this product.
24 The FDA can, and I hope at some point in the
25 future they will, but in the meantime there are a

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2 lot of things we can do as we have got examples of
3 to really again try to protect our young people
4 from these products.

5 COUNCIL MEMBER GENNARO: Thank you,
6 and one more question, Madam Chair. With regard
7 to herbal cigarettes and as was mentioned before
8 these so called ecigarettes, I think they have not
9 be included in the bill, they are not technically
10 products that are made of tobacco and so they are
11 not in the bill. I have my own idea about whether
12 or not maybe the bill should include something
13 that would require the Department of Health to
14 kind of put those products on some sort of watch
15 list and like follow the science, and perhaps,
16 make a recommendation sometime in the future. I
17 think we should take a look whether or not the
18 ecigarettes are some kind of pathway for people to
19 get off of a tobacco product or is it some kind of
20 gateway into some kind of addiction to nicotine.
21 I think we should take a look at that. With
22 regard to the herbal cigarettes speaking as a
23 scientist even though it's not tobacco, you are
24 burning some kind of plant matter and that results
25 in carbon monoxide and all kinds of exotic

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2 hydrocarbons that could not be good for people and
3 so I am thinking about that and I just wondered
4 what you thought about perhaps creating something
5 in the bill that would make the New York City
6 Department of Health kind of follow the science in
7 those products and make a recommendation sometime
8 in the future towards what you may do for those
9 products if the science--we want to do everything
10 that is science drive--if the science says that
11 would make sense for us to do something with
12 regard to those products.

13 COMMISSIONER FARLEY: A couple
14 things, first ecigarettes are a product--it is not
15 burned, but it gives you nicotine when you breathe
16 in this product. The main problem with that is
17 that these are not regulated at the federal level.
18 Nobody really knows what are in those products.
19 They are presented--they are not advertised, but
20 they are often presented as a way to help people
21 quit, but it is not clear whether they might also
22 be a way to help people not quit--to sort of tide
23 them over until the next time they can smoke an
24 actual cigarette, so there is much that is just
25 unknown about ecigarettes and these bills don't

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2 address that and we want to get more information
3 on that. Herbal cigarettes are things that are
4 burned. That I think we have good information
5 that that is bad for your health. When you burn
6 that product you are going to get carbon monoxide.
7 You are going to get cancer causing chemicals.
8 Now they are not smoked nearly at the rate that
9 these tobacco product are. They are not supposed
10 to have nicotine in them, and so they shouldn't be
11 as addictive. To the extent that they are smoked,
12 we are concerned about them, but how big a problem
13 that is is also unclear. We would be happy if you
14 or the members of the Council want to think about
15 what things in the future we may want to do on any
16 of those. We would be happy to discuss that.

17 COUNCIL MEMBER GENNARO: Thank you
18 very much. I want to thank this panel. I want to
19 thank you, Madam Chair.

20 CHAIRPERSON ARROYO: We have been
21 joined by Council Member Rivera and Council Member
22 Rodriguez has a question.

23 COUNCIL MEMBER RODRIGUEZ: Thank
24 you, Madam Chair. Commissioner in previous
25 occasions at a press conference you said how

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2 tobacco has a negative impact, especially on the
3 black and Latino community. Can you describe is
4 the cigarette company advertising more in those
5 communities than others? How aggressive, how
6 active are they doing advertising in those
7 communities?

8 COMMISSIONER FARLEY: The
9 advertising is no longer on television, and it's
10 not on billboards. Much of the marketing takes
11 place in the retail store itself, and so you see
12 in some retail stores advertising itself and other
13 places you see price discounting and other things,
14 which promote cigarettes and then of course you
15 see the cigarette packs themselves, which does
16 encourage people to take up those. The low income
17 neighborhoods in general are probably going to
18 have more outlets selling tobacco than the high
19 income neighborhoods, and then there is some
20 evidence that there may be more distribution of
21 discount coupons to low income people, to young
22 people and maybe some to low income people.
23 Certainly, it makes a lot of sense that people who
24 have less income are always looking for a bargain
25 are going to be more sensitive to a discount

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2 coupon than people who have a higher income, so I
3 think they are going to be more susceptible to the
4 discounting, and so I worry a lot about that
5 discounting enticing people who are trying to quit
6 or try not to start in the first place into
7 grabbing that pack of cigarettes that might really
8 hurt them over the long term.

9 COUNCIL MEMBER RODRIGUEZ: Great.

10 And I heard someone that I spoke to, a member of a
11 grocery store association, he has told me I would
12 support this, I support this bill because I care
13 for children and our youngsters. My concern is
14 will small business be a target--what can we say
15 about it?

16 COMMISSIONER FARLEY: I think
17 nobody wants their children to become smokers.
18 Even smokers don't want their children to become
19 smokers. Everybody supports this. We recognize
20 at the same time that there will be, no matter how
21 successful we are, there will always be a market
22 for adult smokers who continue to buy cigarettes.
23 So businessmen can continue to sell cigarettes to
24 adult smokers. They are going to be able to make
25 a profit off of that sale, and this wouldn't stop

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2 that. Nothing in any of these bills would prevent
3 an adult smoker over the age of 21 from going in
4 and buying his pack of cigarettes at a store and
5 the store making a profit off of that, but we all
6 agree that we don't want to have our next
7 generation get addicted to that. And I would say
8 to businessmen if you are looking for growth in
9 your business, try a product that isn't addictive
10 and as dangerous as this one.

11 COUNCIL MEMBER RODRIGUEZ: How far
12 are we assuming that we will pass this bill, how
13 far are we to guarantee our children our future
14 generation that they will live in a free smoke
15 city?

16 COMMISSIONER FARLEY: Let's be
17 honest. I don't think we are going to get smoking
18 rates down to zero, but there was one study that
19 Council Member Gennaro talked about that is
20 estimated that raising the age to 21 could
21 theoretically reduce the smoking rate among people
22 age 18 to 21 by more than 50 percent, so we might
23 be able to see a huge reduction. I think we saw a
24 huge reduction in Needham, so we may be able to
25 get teenage smoking rates down to just a few

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2 percent, and that would mean adult smoking rates
3 would ultimately be down to that level. If we did
4 that we would save many thousands of lives here in
5 New York City. It would be probably the single
6 best thing we can do to improve the health of New
7 Yorkers.

8 COUNCIL MEMBER RODRIGUEZ: So to
9 end I would like to say that first of all that
10 someone has been in different sides with the
11 mayor, for me this is a great opportunity to be on
12 the same page because I think that this is
13 important and - - especially to small businesses,
14 grocery store owners to come on board, think about
15 our children. We can find a way on how to make
16 our - - to do good to get a return to see our
17 business be closed, but I think that we need to
18 bring all New Yorkers, most of the New Yorkers
19 support this bill. Then the numbers there - -
20 area will save lives, we will save money and we
21 will send a message to the future generation that
22 they can live in a free tobacco city, so for me,
23 it is a pleasure to be a part as a co-signer of
24 this bill, and I also have another bill for the
25 future, which is trying to not allow smoking in a

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2 street - - in our city, so I am committed to keep
3 working with the mayor. I believe this is a great
4 initiative, and I know that even though we cannot
5 agree on everything, but his administration and
6 your leadership has made major improvements when
7 it comes to sending a message to our city and that
8 smoking is wrong, a lot of great and beautiful
9 people have lost their life, and I know that we
10 have talked about it, and thank you.

11 COMMISSIONER FARLEY: Thank you so
12 much for your support. I really appreciate it,
13 Council Member.

14 CHAIRPERSON ARROYO: Council Member
15 Van Bramer?

16 COUNCIL MEMBER VAN BRAMER: Thank
17 you very much, Madam Chair and Council member
18 Gennaro for introducing your important piece of
19 legislation and Chair Arroyo for hers and
20 commissioners, thank you very much for being here
21 and as you know, commissioner, I care a great deal
22 about this issue. I have a very sadly similarly
23 story to Council Member Gennaro watching my
24 stepfather pass away after a very painful ten year
25 struggle with lung cancer, dying at 60 years of

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2 age, after having been a lifelong smoker and
3 having started when he was a teenager, and I
4 thought about this today because on my way to a
5 breakfast in Long Island City I passed one of my
6 many high schools and saw a young man smoking
7 outside of the high school, and he was young and
8 thin and healthy and all the great things we want
9 for all of our young people and then smoking a
10 cigarette, and I thought about how painful it was
11 for my stepfather even at the very, very end when
12 the morphine is as high as it possibly can be.
13 The last thing he said to me before he died was to
14 ask for more morphine, that he felt a little pain,
15 and I wish that young people could know that it's
16 why I support the commercials and all the things
17 that your Department has done and the
18 administration has done because it is not a joke.
19 This is very serious. It is a horrific, horrific
20 disease and way to die and I saw it firsthand, and
21 we have to do everything we possibly can, but
22 speaking of that high school and the young person
23 I saw, I am sure you are doing a lot in the high
24 schools already with regard to this, but is there
25 more that you will do in terms of education about

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2 the new law in high schools, working with the
3 schools and do we show young people other than the
4 commercials obviously they can watch at home as
5 well, just how awful this is and how painful it is
6 because thinking that it is cool or hip or
7 whatever and then if you are confronted with what
8 we saw in the hospital, those are two very
9 different scenarios, and it is important that
10 young people know that that is at the end of a
11 life of smoking.

12 COMMISSIONER FARLEY: Thank you,
13 and thank you for your support on other issues--I
14 know the smoke free parks is there where you were
15 really a key supporter of ours. As a physician, I
16 have seen people dying of cancer, and like you,
17 when you see that, you are transformed. You don't
18 feel the same way again about this issue. As far
19 as our addressing high schools and kids in high
20 schools, they get information about the risks of
21 smoking in their health curriculum. The Health
22 Department used to put a lot of funding directly
23 into high schools to give them more detailed
24 information and more detailed education, and as
25 much sense as that makes, scientific evidence says

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2 that those interventions don't really do much--
3 that the way to reach kids is the way to reach
4 everybody at the same time, through the mass media
5 commercials you see on TV as well as the taxes.
6 Our taxes here have really being central to the
7 reduction in teen smoking, and the smoke free air
8 bills, which changed the social norm, changed the
9 acceptability, so it makes it a lot less cool to
10 smoke. We have redirected much of our resources
11 to those issues, and that is when we really
12 started to get the big success.

13 COUNCIL MEMBER VAN BRAMER: Well, I
14 just want to encourage you to keep doing as much
15 as you can for the remaining of your tenure and I
16 look forward to supporting more of your efforts
17 with respect to this because it is incredibly
18 important and we can't do enough, so thank you
19 very much.

20 COMMISSIONER FARLEY: Thank you.

21 CHAIRPERSON ARROYO: Council Member
22 Rivera?

23 COUNCIL MEMBER RIVERA: Thank you
24 very much, Madam Chair and thank you,
25 Commissioner, for joining us here today.

1
2 Obviously, we have been talking about this issue
3 for a number of years and how can we curb the
4 smoking rate within the city of New York and I
5 want to commend the Department of Health along
6 with the Mayor's Office and the Council for
7 instituting initiatives that help to curb and
8 prevent smoking, especially amongst the young
9 within the city of New York. One of the biggest
10 concerns that I am aware of is that young people
11 obviously who get their hands on cigarettes start
12 off with one, advance to two, and then obviously
13 it becomes a gateway to other types of smoking
14 paraphernalia that they can get their hands on, so
15 I think that initiatives like this that can
16 increase the age to 21 is extremely important.
17 One thing that I think that we need to increase
18 the enforcement on is the trafficked cigarettes
19 because I have heard on the street that people
20 find them more lucrative to sell cigarettes than
21 it is to sell other types of drugs, and since the
22 penalty for selling trafficked cigarettes are not
23 as high as selling saying marijuana, pot,
24 whatever, it becomes a better business for them.
25 So what can we do to strengthen the laws to make

1
2 sure that a person receives a larger penalty if
3 they are selling unstamped cigarettes within the
4 city of New York?

5 COMMISSIONER FARLEY: I want to say
6 something quickly, and then I am going to turn it
7 over to Commissioner Frankel, who this is really
8 is area, but most of the illegal sales are
9 actually taking place from stores, so it is not
10 necessarily the people buying on the street. You
11 have heard how many stores are selling untaxed or
12 counterfeit cigarettes. That is what happens.
13 People bring them up from another state and they
14 sell them to a bodega manager, owner, who then in
15 turn sells it, so the customer doesn't even know
16 he is buying illegal cigarettes, and so that is
17 what this is particularly meant to address.

18 COMMISSIONER FRANKEL: Before I
19 address your question specifically I am going to
20 repeat and sort of expand on something that I said
21 during my testimony. The Department of Finance
22 when we look to collect unpaid tax, we do it for
23 two reasons. This is with respect to anything
24 that we--any tax that we are trying to collect.
25 The second reason is to raise legitimate revenue

1
2 for the city. The primary reason though is to
3 protect the people who are behaving legally in the
4 city from people who are not behaving legally to
5 level the playing field. As you can imagine when
6 a business doesn't pay its tax, it has a
7 tremendous advantage over those who do. As you
8 can see from the chart up here, the number of and
9 the percentage of businesses that are behaving
10 illegally is extraordinary. As our inspections
11 have shown, it is 47 percent of all the businesses
12 that we have inspected are selling untaxed or
13 counterfeit stamp taxed cigarettes. It is also
14 very different than when you think about trying to
15 collect unpaid business income tax. There many
16 times we have a different interpretation with the
17 taxpayer, and we may go back and forth and
18 eventually come to some kind of understanding.
19 This is not like this at all. This is people
20 willfully disobeying the law. This is not a
21 matter of interpretation. This is people doing
22 this blatantly violating the law to make more
23 money. It has just got to stop, and these
24 additional penalties that we have asked for in
25 this legislation will help us do that. We are

1
2 also going to go to the state and ask for
3 additional authority to make our enforcement even
4 more significant. Right now we believe that this
5 is simply a cost of doing business to people who
6 are willfully violating the law. They didn't
7 think they were going to get caught and when they
8 do get caught, I will pay the penalties. They are
9 very clever. Many store owners have hidden
10 compartments. Many store owners keep just a
11 limited amount of contraband material on the
12 premises and then continually come back and
13 replenish that because they know when we come in
14 if we only find five cartons or ten cartons, the
15 penalties are either nothing, just us taking the
16 contraband or very insignificant, so everybody is
17 very clever. We need to make this not a cost of
18 doing business. We need to make this cost much
19 too high for you to want to sell these contraband
20 cigarettes, and that is what this legislation
21 does.

22 CHAIRPERSON ARROYO: Thank you,
23 Council Member. We have been joined by Council
24 Member Crowley. Thank you for being here.
25 Commissioners, on the product display component of

1
2 the legislation that we are considering, the
3 concern, and we have talked about inspections and
4 inspectors and how they behave when they show up,
5 whether it is a restaurant or a truck or whatever
6 the business. What direction are we providing to
7 the business owners about the product display, you
8 will not be penalized if you are restocking. Are
9 you not concerned that restocking claim could be
10 the reason they use every time somebody shows up,
11 and what direction are we providing to the
12 inspectors about how to implement this component
13 of the legislation?

14 COMMISSIONER FARLEY: So the law
15 says that the products have to be hidden except
16 for when they are being sold to a customer or
17 during restocking. As to how we would interpret
18 that and what our guidance is to the retail
19 owners, the departments working together would be
20 sending out materials to store owners to give them
21 guidance on that. It is not our intention to
22 catch people who happen to be restocking and try
23 to find them. We are not interested in getting
24 fines here. We are however interested in getting
25 people to come into compliance if it is clear that

1
2 they are consistently having their products out
3 there as a way of promoting those products, and so
4 I think we can come up with rules for inspectors
5 that do that. It is not about gotcha. It is not
6 about getting a fine. It is about really trying
7 to identify those people that that is what their
8 standard is is to have those products out for
9 show.

10 CHAIRPERSON ARROYO: What you
11 intend or what the intent of the law is and how
12 inspectors are behaving on the field are often two
13 different things and the complaints that we get
14 locally from either a restaurant or a bodega owner
15 is that the inspector tends to be a little bit
16 overzealous and not being very helpful in the
17 process just to get that violation written, and
18 that is the concern that I have.

19 COMMISSIONER FARLEY: I understand
20 that concern--

21 CHAIRPERSON ARROYO: [interposing]
22 Although I am the prime sponsor, right, but I did
23 say it is upon the request of the mayor.

24 COMMISSIONER FARLEY: If there is
25 suggestions you have on the bill or on the

1
2 implementation of the bill to address those
3 concerns, we would be happy to talk about them.
4 Again, our experience in other countries--I was up
5 in Canada, and they were complying. They had them
6 in drawers. There was not a problem. I would
7 think most of them would be like that, but there
8 does need to be some--it needs to be done
9 carefully, so that is not abused in one direction
10 or the other.

11 CHAIRPERSON ARROYO: I look forward
12 to that conversation. Let's talk about hookah for
13 a minute, and that the product that is used in
14 that type of smoking, and I know that one of my
15 colleagues has a piece of legislation pending
16 before us that would ban further permits from
17 being issued in the city, but the product that is
18 used in that, is that tobacco? Why is it not
19 regulated in the same way that we are speaking?
20 We have to have a particular piece of legislation.

21 COMMISSIONER FARLEY: There are
22 hookah bars. Those are places where people smoke
23 through a water pipe a product that is presented
24 as not having tobacco in it, and the way that the
25 current law is written if you are smoking

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2 something that doesn't have tobacco in it, then
3 the smoke free air act doesn't apply. They can do
4 that. Now there is concern under the part of the
5 Department that often in fact there is tobacco in
6 that product, but it is very difficult to prove
7 that without some difficult and expensive
8 laboratory testing. The smoke that people breathe
9 in when they are smoking anything that is burning
10 in a water pipe is dangerous. It has carbon
11 monoxide in it. It has cancer causing chemicals
12 in it, and so we are concerned about smoking in
13 hookah bars, which is also presented often as
14 being safe when we don't view it as being safe.
15 So this issue came up to us as I think you noticed
16 a few days ago and so we didn't have a chance to
17 think through all of the issues around the bill,
18 but we would be happy to talk to you and Council
19 Member Gentile about what might be appropriate to
20 do about those hookah bars.

21 CHAIRPERSON ARROYO: Okay. And we
22 will pursue that conversation. The Committee is a
23 little bit overwhelmed given Sandy and everything
24 else that is happening, but it is something that
25 we do want to pursue a conversation about.

1
2 Council Member Mendez has joined us. Any
3 questions? Okay. One more question.

4 COUNCIL MEMBER GENNARO: Yes.

5 Thank you. Something that is in the bill that
6 would raise the age to 21, something that we have
7 talked to the administration about would have to
8 do with vending machines, which are licensed by
9 the city I believe and certain kinds of
10 establishments where people would normally be of
11 age to purchase cigarettes and the bill for 21
12 there would now be an obligation on the part of
13 the entity that had the vending machine to make
14 sure that no one under the age of 21 purchases
15 products from that machine. I want to make sure
16 that the administration is prepared to do that and
17 prepared to enforce that.

18 COMMISSIONER FARLEY: The bill is
19 written simply scratches out 18 and substitutes 21
20 in there. My understanding is that cigarette
21 vending machines are not allowed in establishments
22 in general. Am I right here? They are only
23 allowed in establishments where only adults can be
24 admitted. So are those establishments only
25 allowing people over the age of 18 or only

1
2 allowing people over the age of 21? Maybe 18, so
3 what this bill would mean is that those
4 establishments that have cigarette vending
5 machines--and there are not a large number of them
6 in the city I don't believe--would have to somehow
7 make sure that they are not being used to sell to
8 someone between the ages of 18 and 21. So but let
9 us look into that--

10 COUNCIL MEMBER GENNARO:

11 [interposing] That was my understanding. I just
12 want to put it out here on the record, even at the
13 risk of invoking the ire of people that are going
14 to have a problem with that, but I just felt for
15 the purposes of full disclosure the people here
16 who are representing businesses I am not trying to
17 hide anything. That would be the intent, and so
18 to--I don't want people between 18 and 21 to be
19 running to vending machines rather than going to
20 the store to get them. It is on my mind and I am
21 free to hear from whatever people want to say
22 about that. I just want to point out as a last
23 point, but not a question since this hearing began
24 a little more than an hour ago, it is just about
25 the same number of people that are in this room,

1
2 which is about 60 people, have died in this
3 country from diseases related to smoking. So as
4 soon as we started this hearing, everyone in this
5 room has died some place. So I thought that was
6 something to make people think. So there you have
7 it, and I want to thank this panel, and I want to
8 thank you, Madam Chair.

9 CHAIRPERSON ARROYO: Thank you,
10 Council Member. Commissioners, thank you. Mr.
11 Sheriff, thank you for being here. Commissioners,
12 I look forward to the follow up conversation
13 regarding the electronic cigarettes, the issue of
14 the flavored tobacco and certainly the enforcement
15 of the display issue. The other components of
16 these laws, I don't have any issue with. Illegal
17 activity is illegal activity, and if you are
18 engaging in it, you should pay a penalty for it,
19 and the more severe the penalty, the less likely
20 people will continue to behave illegally, but
21 there are some nuances here that we need to
22 clarify and we are going to hear from the public
23 and the different stakeholders in this
24 conversation. I really do look forward to that.
25 So Commissioners, the Sheriff, I hope that you

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leave your staff in the room, so that they can take a message back to you, and if you can spare the next three hours of your life, better because then you hear it directly. Thank you, and we look forward to ironing out the details.

COMMISSIONER FARLEY: Thank you, and we will follow up.

COMMISSIONER FRANKEL: Thank you.

CHAIRPERSON ARROYO: I am going to call up the first panel. We are organize panels alternating panels in favor of the legislation, panels opposing the legislation. As a rule, I don't like to put the public on a clock, so I ask that you summarize your statements, give us your written testimony--it all goes into the record--so that we can have a conversation that is not--that we don't have added pressure by you having to look at that clock and having it tick down and ding dong when you are in the middle of a statement. I encourage you to do that. I will stop you if you go too long. I don't want to do that either. We have 40 members of the public who have signed up to testify. We will hear from every single one, so we are going to be courteous to each other. If

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2 you disagree do so very quietly. Clapping is
3 going to be done like this. If you disagree, do
4 like that, so that we don't interrupt and keep
5 moving. I will repeat that a couple of times
6 until people get it. I tend to be pretty mellow
7 as a chair, but I have another side of me not many
8 people get to see very often. I don't like to
9 display it publically. Okay I am calling up Marie
10 Wilkins, Craig Thompson [phonetic]. Marie is
11 testifying on her behalf. Craig is from Memorial
12 Sloan Kettering. We have Daniel McGoldrick
13 [phonetic], Campaign for Tobacco Free Kids, and as
14 they make their way up, the next panel that is
15 going to come up is Chung Sek Lee [phonetic],
16 Ramon Murphy, Robert Bookman and Jim Calvin
17 [phonetic]. I know that there are people in the
18 other room, so please pay attention for your
19 names. If I don't see people step up, I will go
20 to the next person, but I will call you again if I
21 have to. So next is Chang, Ramon, Robert and Jim.
22 Okay, so pull the mic as close to you as possible,
23 state your name for the record. You can testify
24 in whatever order you would like to go in, and if
25 you gentlemen believe in the chivalry stuff,

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ladies first. You may begin when you are ready.
When the light is on the button--

MARIE WILKINS: Alright. We got it now. Good afternoon. My name is Marie, and I am here today because I am a victim of smoking. I want to make sure others, especially young people, don't become victims too. Even more important I want you, the City Council, to protect young people from becoming victims of big tobacco like I did when I started smoking at age 17. I have Buerger's disease, which is a terrible circulation disease. It stops oxygen and blood from flowing freely through your arteries. This then causes amputations, which I have several--my leg, partial foot, and several of my fingertips. This disease is unbelievably cruel and painful, and it comes from smoking, which is so addictive. Let me give you an example, after my leg was amputated, all I could think about was getting out of the hospital so I could get a cigarette. Now if that is not addiction, I don't know what is. Luckily I got help and I am proud to say it will be seven years May 17th that I will be smoke free. I hope my story helps those that are trying to stop smoking

1
2 get help and for those who don't smoke never to
3 start. Not everyone that smokes will get this
4 disease, but why take that chance of being that
5 unlucky one like me, and if a smoker doesn't get
6 Buerger's disease from smoking, odds are they will
7 still suffer addiction, lung disease, heart
8 disease, cancer or some other horrible, painful
9 disease, and I don't know anyone who hasn't
10 suffered the loss of someone they love due to
11 smoking. Mayor Bloomberg is trying to stop the
12 big tobacco companies from forcing our young
13 adults and children to see ads, posters and
14 displays of cigarettes wherever they enter a
15 store. A section that hides cigarettes all the
16 way in the back of the store sounds good to me.
17 After all, out of sight, out of mind. I also
18 support the idea of raising the age for cigarette
19 sales to 21 and cracking down to make sure
20 cigarette smuggling, coupons and promotions don't
21 make cigarettes affordable for young people. I
22 endorse these ideas, and I hope you will too.
23 Let's try to keep cigarettes as far away as we can
24 and to try to encourage people to see what smoking
25 really does. Thank you.

1
2 DR. CRAIG THOMPSON: I'm Doctor
3 Craig Thompson. I am the president and CEO of
4 Memorial Sloan Kettering Cancer Center, and I
5 thank you, Chair Arroyo, the committee and the
6 Council for the opportunity to testify. Tobacco
7 remains the leading cause of preventable death in
8 America. It accounts for more than 440,000 deaths
9 annually and results in 193 billion dollars of
10 health related economic loss in this country, 96
11 million in direct medical costs and 97 billion in
12 lost productivity. Smoking accounts for at least
13 30 percent of all cancer deaths in America and 80
14 percent of the deaths from lung cancer, which is
15 the leading cause of death in both men and women.
16 To put this in perspective, more than 228,000
17 cases of new lung cancer are diagnosed each year,
18 and over 160,000 Americans die of the disease.
19 Decades of research has linked tobacco use to the
20 development of cancer and life-threatening
21 conditions as we have just heard from Marie,
22 cardiovascular and respiratory diseases. Despite
23 widespread agreement on the dangers of tobacco use
24 an estimated 19 percent of adults smoke
25 cigarettes. That is 45 million Americans. In

1
2 2012, the surgeon general's report on preventing
3 tobacco use among youth and young adults
4 emphasizes that the prevention efforts that focus
5 on adolescents and young adults are key to
6 reducing tobacco use. Nearly nine of ten adults
7 who currently smoke started before the age of 18,
8 and few start smoking after the age of 25.
9 Compared to a decade ago, few New Yorkers smoke
10 and die from smoking related illnesses thanks to
11 the successful health - - initiatives initiated
12 here at this Council. Smoking rates in teenagers
13 are well under the national average of 18.1
14 percent. Over the last 15 years, teenage smoking
15 in New York has dropped from 25 percent 15 years
16 ago to as we heard from the Commissioner, 8.5
17 percent today, but there is still room for
18 improvement. As many as 19,000 New York high
19 school students still smoke and more than one-
20 third of them will die prematurely by an average
21 of 14 years from tobacco use. I believe that
22 additional efforts such as those pending before
23 the City Council will help New York City further
24 reduce its smoking rates. Tobacco experimentation
25 is often an impulse decision. Reducing the

1
2 display of tobacco products in stores where
3 teenagers shop can be expected to decrease the
4 impulse to experiment. Raising the age of tobacco
5 purchases may do the same. One encouraging
6 example we heard today that I will not recount is
7 the experience in Needham, Massachusetts. The
8 city of New York has demonstrated leadership in
9 mandating smoke free workplaces and public spaces
10 and tobacco taxation and strong funding for
11 tobacco prevention and cessation programs,
12 including the current media campaign to help
13 people quit. The anti-smoking efforts of New York
14 have been based on an evidence based tobacco
15 control program. A key element is helping to
16 frame tobacco as a public health issue. What does
17 the evidence show? Smoking cigarettes harms
18 nearly every organ in the body. It is the leading
19 cause of at least 18 different types of cancer.
20 Tobacco is the leading cause of premature and
21 preventable death in America leading to more
22 deaths than AIDS, alcohol, car accidents, murders,
23 suicides, illegal drugs and fires combined, and
24 smoking is especially harmful to our youth. In
25 fact unless current smoking rates decline, more

1
2 than six million American kids under the age of 18
3 today will die ultimately of smoking related
4 diseases. At Memorial Sloan Kettering Cancer
5 Center, our team of physicians, nurses and other
6 health professionals witness the devastating
7 consequences of cigarette smoking on a daily
8 basis. Public health policies save lives. We
9 stand shoulder to shoulder with the Department of
10 Health in support the passage of the tobacco
11 product display restriction bill, the tobacco 21
12 bill and the sensible tobacco enforcement bill.
13 Thank you.

14 DANNY MCGOLDRICK: Good afternoon.
15 I am Danny McGoldrick. I am vice president for
16 research at the Campaign for Tobacco Free Kids in
17 Washington D.C. Thank you members of the
18 Committee and Chairperson Arroyo for your
19 leadership on this issue as New York City once
20 again leads the way in tackling the tobacco
21 problem, particularly among kids. I am here to
22 speak in strong support of all three bills you are
23 considering to reduce tobacco use in New York
24 City. As you have heard from Commissioner Farley
25 and you will hear from others throughout the day,

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2 the science is strong that these interventions
3 will in fact reduce smoking particularly among
4 our kids. As you know, the tobacco companies
5 spend billions to make their products attractive,
6 available and affordable to our kids. These bills
7 will help counter those efforts. We know that
8 price is one of the most effective ways to reduce
9 smoking particularly among our kids. The tobacco
10 companies, everybody agrees with this, and that is
11 one of the reasons New York has been so
12 successful, but the tobacco companies' efforts
13 with coupons and discounting have reduced the
14 effectiveness of that intervention even as it has
15 succeeded, so prohibiting discounts and coupon
16 redemptions, creating a minimum price and pack
17 sizes and enhancing enforcement to stop untaxed
18 sales will keep price up and deter kids from
19 smoking. Similarly the ban on display of tobacco
20 products will contribute to reducing tobacco use.
21 Again, billions spent by the tobacco companies to
22 make sure tobacco products are displayed
23 prominently in every retail outlet in New York
24 City and around the country, this makes tobacco
25 use seem normal, acceptable and even cool to our

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2 young people. Two-thirds of teenagers visit
3 convenience stores at least once a week. They are
4 in their vulnerable years, and they are the ones
5 that are most affected by these displays, so the
6 display ban will work. I have submitted detailed
7 testimony on these issues, so I won't go into all
8 of that, but I wanted to hit just a couple of
9 issues really quickly before I close.

10 Commissioner Farley raised the cigar issue. The
11 package size minimum price and display provisions
12 will all help address an explosion of small cheap
13 cigars that are targeting our young people these
14 days. Even as cigarette sales have declined by
15 33.8 percent in the last ten years, cigar sales
16 have nearly doubled and have more than doubled.
17 And almost all of that is attributable to these
18 small cigars, some that are really just cigarettes
19 disguised as cigars as Commissioner Farley
20 explained by adding tobacco and adding weight.
21 They clearly target our young people because they
22 are cheap. They avoid taxes by being cigars
23 rather than cigarettes, and in fact in New York
24 cigars are taxed lower at the federal, state and
25 local level, so the minimum price and pack sizes

1
2 will help there. These characteristics make them
3 appealing and affordable to young people. These
4 are not your grandfather's cigars. They are not
5 even your father's cigars, and that is not who is
6 smoking them. It is our children who are smoking
7 them and these provisions will help fight this
8 explosion of cheap cigars that are targeting our
9 kids. On the minimum sale, we know many kids move
10 from experimentation to regular use between the
11 ages of 18 to 21. It is a key target of the
12 tobacco companies who say raising the legal
13 minimum age for cigarette purchases to 21 can gut
14 out - - .

15 CHAIRPERSON ARROYO: [interposing]
16 - - our first victim.

17 DANNY MCGOLDRICK: 17 to 20 market,
18 so I urge you to strongly consider all of these
19 provisions protecting the kids of New York and
20 again, set an example for the country and the
21 world. Thank you.

22 CHAIRPERSON ARROYO: Thank you. I
23 apologize. I hate doing that. Please keep it
24 brief. Council Member Gennaro?

25 COUNCIL MEMBER GENNARO: Thank you.

1
2 I just really wanted to thank this panel for this
3 very, very compelling testimony, and I am grateful
4 for all of your efforts in your various capacities
5 to fight this scourge [phonetic]. Just one quick
6 question--this is maybe going a little far field
7 because it gets to like the federal effort on this
8 but Dr. Thompson, I presume, would you be aware of
9 this 12 member committee that was supposedly put
10 together pursuant to the federal family smoking
11 prevention and tobacco control and federal--the
12 whole big name of the bill, and I am wondering
13 whether or not when the federal government put
14 this panel together whether Sloan was part of that
15 or do you know of their activities because it is
16 the charge of this panel to sort of set the level
17 of nicotine or to find out that magic level of
18 nicotine below which it will not be addictive. It
19 is hard to imagine that the federal government
20 would try to go forward with something like that
21 without talking to Sloan Kettering.

22 DR. CRAIG THOMPSON: So we do not
23 have a member of the specific panel that you are
24 asking about, Council Member, but we do do and
25 undertake research as part of our effort in public

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2 health to understand the carcinogens involved in
3 tobacco. Tobacco has over 60 chemicals that cause
4 cancer, and so it is very difficult to get to a
5 simple answer. They have to be studied each
6 individually and look at the combined of these
7 different products that bring together--cause we
8 have heard from several of the questions of the
9 council members additional additives that are
10 added to the product that is tobacco based. We
11 believe no level of tobacco is effective and so
12 decreasing the use in our young where you become
13 addicted is actually the key to all three of these
14 bills and what we are about, but I do think we
15 need to set federal standards to make people
16 understand how great the risk is for each of the
17 things that are added to tobacco.

18 COUNCIL MEMBER GENNARO: Thank you
19 and Dan if you want to speak to this--

20 DANNY MCGOLDRICK: Yeah, we were
21 very involved in the passage of the tobacco
22 control act and the FDA has under this act the
23 authority to set product standards, which includes
24 reducing nicotine to less than addictive levels,
25 and we know that the center for tobacco products

1
2 at the FDA is investing in research so that they
3 get that right, so that they set a standard that
4 works, that smokers don't compensate just because
5 it is reduced a little bit, and so we think this
6 holds great potential, but just like the things
7 you are considering today those efforts need to be
8 based on the science, and the FDA is currently
9 investing heavily in that research.

10 COUNCIL MEMBER GENNARO: Thank you,
11 and I will take this opportunity once more also to
12 thank Marie for being here and for your wonderful
13 advocacy and I wish you all the best. I want to
14 thank this panel and thank you, Madam Chair.

15 CHAIRPERSON ARROYO: Thank you for
16 being here and sharing your insight with us. I
17 often say to the public and I'll say it a couple
18 more times this afternoon, your insight helps us
19 do what we do better so we thank you for taking
20 the time to come and share that with us. Thank
21 you. Chang, Ramon, Robert and instead of Jim
22 there is Thomas. Right? You guys are lined up,
23 right? So the panel on deck is Tara Narula
24 [phonetic], American Heart Association, Michael
25 Silbak [phonetic], American Lung Association and

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2 Michelle Bonan [phonetic], American Cancer. - - .
3 You guys are up next. Okay. I think you guys
4 have done this before. Thank you for being here.
5 As soon as you are ready, you may begin.
6 Summarize your statement for the records please.
7 Speak into the mic; we are being recorded and the
8 sergeants get kind of ornery when they can't
9 record right.

10 ROBERT BOOKMAN: Thank you very
11 much. My name is Robert Bookman. I am here as
12 counsel to the New York City Newsstand Operators
13 Association. It's a 25 year old trade group that
14 represents the mom and pop newsstand operators on
15 the sidewalks in New York, the smallest of small
16 business owners. We respect the intentions of
17 these bills. We certainly have the greatest
18 respect for you, Madam Chair and Councilman
19 Gennaro, but as long as tobacco remains a legal
20 product and over a million New Yorkers, adult New
21 Yorkers want to use that product, these well
22 intentioned after well-intentioned restrictions
23 only serves to hurt honest business owners by
24 driving business away from them, especially now in
25 this very tough economy and towards black market

1 sales of tobacco. I want to correct an outrageous
2 statement that the Commissioner made before when
3 he said that most illegal cigarettes are being
4 sold from our 10,000 licensed stores in New York.
5 That is a libel on our honest supermarkets and
6 bodegas and sidewalk newsstands. 94 percent of
7 the undercover inspections in New York were
8 successful in that no sales to minors were made.
9 94 percent success rate, compliance rate. So to
10 the extent that there are illegal cigarettes that
11 minors are getting, they are not getting it from
12 our licensed stores. That is for sure. They
13 seized 7300 cartons. There are millions of
14 illegal cartons of cigarettes being sold in New
15 York every day and they are not being sold from
16 stores. They are being sold from the street.
17 They are being sold from shopping bags. They are
18 being sold from organized crime has got into it.
19 It has been well-documented. They are being sold
20 from trunks of cars. These bills do nothing to
21 attack the tsunami of illegal cigarettes out there
22 that you are only going to add to now by taking
23 more legal adults who are currently allowed to
24 smoke and forcing them into the illegal market,
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2 and they are not going to be getting it from us
3 because we do comply with them law as their own
4 statistics show. They are going to be getting
5 them unlawfully and you are going to have to share
6 some of the responsibility for that illegality,
7 for the fake IDs that are going to be used, for
8 the people who are going to be buying it on the
9 sidewalks, for the organized crime that is going
10 to increase and flourish because you are giving
11 them tens of thousands of new customers. The
12 display ban particularly makes no sense, and in
13 fact, will be counterproductive to its stated goal
14 of making tobacco products less visible and
15 attractive. Unlike that beautiful concept that
16 they have where everybody is going to create these
17 beautiful drawers where the tobacco is going to be
18 had, that is not what is going to happen in the
19 real world. In the real world, the least
20 expensive way for us to comply with us is that
21 same wall you saw of cigarette packs is going to
22 be replaced with sliding wood panels, and what do
23 you think is going to go on those sliding wood
24 panels? Do you think they are going to be empty,
25 blank for retailers that use every inch of space?

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It is going to be a wall of cigarette advertising.

CHAIRPERSON ARROYO: So we should do that next.

ROBERT BOOKMAN: Well, fortunately or unfortunately depending on your position we do have something called the first amendment in this country, which also goes to--so you cannot regulate that. The city has tried to regulate tobacco advertising. That is clearly pre-empted by the federal government. You are going to be replacing a wall of cigarettes to the extent that might be attractive or not, I don't know personally, but we are certainly going to replace it with a wall of cigarette advertising which clearly is attractive to individuals. So it is going to be counterproductive. And of course there is going to be gotcha fines. You know, Madam Chair, and you know, Councilman, that what is going to happen is in the busy times there are going to be employees that are opening that sliding wood panel, closing that sliding wood panel, it is going to be open a few inches by mistake, an inspector is going to come in and give you \$1,000 gotcha fine because ten percent of the

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cigarettes were visible.

CHAIRPERSON ARROYO: Robert, please
sum up.

ROBERT BOOKMAN: Yes. So in
summary, you have my testimony. I think I have
reached most of the major points I want to say. I
think we need to discuss in an adult fashion that
these are legal products like it or not. What is
next? No display of cookies or pretzels? 21 to
buy a bag of potato chips? I think the argument
here is that people don't like the fact that 18
years is an adult in the state of New York for all
legal purposes and that perhaps, you want to go to
the state of New York to change what an adult is,
but I know that I can't even get my college kids'
transcripts or bills without their permission
because they are over 18. Alright, I'm done.
Thank you.

TOM BRYANT: Madam Chair, members
of the Committee, my name is Tom Bryant, and I am
the executive director and legal counsel for the
National Association of Tobacco Outlets, which is
a national trade association of stores that sell
tobacco products. I am going to discuss two of

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2 the ordinances, numbers 1021, which has various
3 provisions and then the display ordinance.

4 Regarding 1021 that ordinance requires that
5 cigarettes be sold at a minimum per pack price of
6 \$10.50; however, there is currently a New York
7 State law that sets a minimum cigarette pack price
8 statewide, and the minimum pack price under that
9 state law is \$10.72--higher than the proposed city
10 law. Since--

11 CHAIRPERSON ARROYO: The provision
12 is on cigars, not cigarettes.

13 TOM BRYANT: I believe the
14 provision includes both cigarettes and little
15 cigars.

16 CHAIRPERSON ARROYO: We won't
17 debate it, but go ahead.

18 TOM BRYANT: Since the minimum
19 price in New York City's ordinance is less than
20 the state minimum price for cigarettes, the city
21 ordinance would be contrary to state law and
22 unnecessary because it is already higher at the
23 state level. Regarding the coupon ban and then
24 the prohibition on multi-pack products, the
25 proposed law would ban the redemption of all

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2 tobacco product coupons and then like multi-pack
3 buy one get one free offers; however, the city of
4 Providence, Rhode Island, did the same thing in
5 January of 2012--banned coupons and multi-packs.
6 That ordinance is currently under a federal
7 lawsuit that is at the U.S. circuit court of
8 appeals for the first circuit. One of the main
9 claims in that lawsuit is that federal law, called
10 the federal cigarette labeling and advertising
11 act, preempts any locale or state from adopting a
12 prohibition on advertising or promotion of
13 cigarettes, and since every federal court that has
14 looked at what constitutes promotion under that
15 law has determined that couponing and multi-pack
16 sales constitute promotion then we would ask you
17 to defer any action on those parts of the
18 ordinance until the U.S. circuit court of appeals
19 rules on the Providence case because it would be
20 very applicable here. Finally, on the display
21 ordinance it bans all tobacco to - - completely in
22 tobacco retail stores. That violates the first
23 amendment to the U.S. Constitution, which
24 protects the right to advertise legal products.
25 It is called commercial speech. It is the way

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2 manufacturers and retailers speak to their
3 customers. Now the package of a product according
4 to the U.S. Supreme Court is a form of
5 advertising so the proposed display ban violates
6 that constitutional right because it eliminates
7 the package from the public view. In 2001, the
8 U.S. Supreme Court issued a decision in the case
9 of - - Tobacco Company versus Riley. The Supreme
10 Court rules and I quote "so long as the sale and
11 use of tobacco is lawful for adults, the tobacco
12 industry has a protected interest in communicating
13 information about its products and adult customers
14 have an interest in receiving that information."
15 By requiring under the ordinance all packaging to
16 be out of view, that display ban stifles the
17 communication that retailers have with their
18 customers and it fails to adhere to the first
19 amendment constitutional protections for
20 advertising, so for those reasons, we ask you to
21 either defer or postpone action or not consider it
22 because of the legality or potential
23 unconstitutionality. Thank you.

24 RAMON MURPHY: Good afternoon. My
25 name is Ramon Murphy. I am the president of the

1
2 Bodega Association of the United States. I am
3 also an owner to a bodega. - - bodega almost 30
4 years. All - - is fine because we understand
5 cover the cigarettes that is not a solution
6 because Joe Camel is - - for 50 years and keeping
7 smoking that means advertising is not a real
8 problem. Hiding cigarettes we don't think that is
9 going to resolve the problem because the kids
10 smoking and they are going to ask. We believe
11 that the bigger problem we have is two components-
12 -number one, - - cigarettes - - is easy to - -
13 underage to get cigarettes - - because they can
14 afford it, and also it is easy to go to the black
15 market and get a pack of cigarettes for six
16 dollars even - - store if you are going, you are
17 going to pay \$12 for a packet, and I am going to
18 ask you for ID. I can give you one example. - -
19 four weeks an inspector went into my store to try
20 to push - - , but they cannot get it. When I - -
21 he said, okay, because you don't sell the
22 cigarettes. You know what? I go outside, and I
23 say listen, why don't you - - markets in look, he
24 sells cigarettes, he sells cigarettes and he sells
25 cigarettes. Why you don't go to him? Oh no, I

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2 can't do it because I need orders. I need so many
3 things. I said, okay, you come into my store, I
4 pay for the license, I do the legal ways to do
5 things and you come to me. Those people outside,
6 they are illegal, they sell cigarettes. They
7 don't ask for ID and they push to minors to
8 smoking and you don't do nothing. Two weeks
9 later, I spoke to the police and - - my store, and
10 I said you know what, they sell cigarettes outside
11 in front of my store. Why don't you busy them?
12 And they told me, no, we can't do it. We need an
13 order. - - that proposal - - 90 percent the sale
14 to the - - and second, we would have more underage
15 smoking because it is going to be easy to - - ,
16 and also we are going to get more fines. I think
17 it is unfair because somebody go into my store and
18 ask for a pack of cigarettes, coffee and bread and
19 then maybe when I - - close the door, and they
20 gave me a \$1,000 fine. I am agreeing to just come
21 to educate our community, educating our business
22 people and - - for the real - - just giving fines
23 to us, and also, if we want to stop it, we can
24 stop it. The mayor says that is - - maybe for him
25 because he is main street with Wall Street. That

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2 is what we have. The Association wants to just
3 come together and say let's educate our people.
4 Let's stop young people from smoking. And also
5 when you drink beers outside they give a fine to
6 you for \$25. Why if you get a minor with a
7 cigarette why you no give a fine too, and that we
8 can make it balanced. You are going to give me
9 for \$1,000, give one fine to him. - - they are
10 going to ask you, my father is smoking, you know
11 what, I can never touch the cigarette. I have a
12 kid. They got into my store. They know they can
13 sell - - a beer. - - . Thank you.

14 CHAIRPERSON ARROYO: Council Member
15 Gennaro?

16 COUNCIL MEMBER GENNARO: I really
17 just want to thank the panel for its very
18 compelling testimony as I am going to stay for the
19 entire hearing, and I will give all of your
20 testimony very due consideration, and I appreciate
21 you bringing it to my attention. We don't want
22 to--we just have to have an eye on unintended
23 consequences and I think this panel brings that to
24 light and we appreciate you being here very much.

25 ROBERT BOOKMAN: And we would like

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to work with you on the issue of unintended consequences.

COUNCIL MEMBER GENNARO: We always work with you, Robert.

CHAIRPERSON ARROYO: We end up in a place where we can get as comfortable as anybody can with anything that we do. I am missing a panelist--Chung Lee? You should be up here with these guys. Sergeant, can I have another chair, please? Thank you. We have Tara, Michael and Michelle on deck, right? Go ahead, Mr. Lee.

CHUNG LEE: I start now? Okay. Good afternoon. My name is Chung Sek Lee [phonetic]. I am the president of Korean American - - Association of New York. We represent approximately 4,000 stores in the New York Metropolitan area. I am here today to order you to oppose these new regulations, which will impose new cost on our members and subject them to more fines. I am sorry I am not perfect speaking English. Understand me.

CHAIRPERSON ARROYO: You are doing just fine.

CHUNG LEE: Our members are - - in

1
2 pursuit of the American dream and they work hard
3 day after day selling legal products in compliance
4 with existing laws and regulations; however, it is
5 harder and harder to keep up with the multitude of
6 - - regulations at the federal, state and the city
7 level, and it is making it difficult to continue
8 to operate in New York City. We work very, very
9 hard successfully to stop underage tobacco sales,
10 but if a mistake is made and for example, we don't
11 have the most recent sign up, we get fined. These
12 new - - requirements and fines as high as \$10,000.
13 We cannot afford that. On top of that, the
14 proposal requires to make - - to hide tobacco
15 products. Why do we have to hide tobacco
16 products? We are very proud of our business, and
17 we buy legal products. We sell legal products.
18 This kind of regulation hurts small businessmen
19 mine. And the second thing, not only is there a
20 cost to comply with this, but it will cause us to
21 lose sales. Our customers come in each day to buy
22 not only tobacco products, but also milk, bread,
23 and other items. If they do not see the products
24 they want to buy, they will leave and take their
25 business elsewhere. We lose customers. These

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2 customers may then go and they buy tobacco on the
3 corner or through other illegal means. This is
4 bad for New York and it is unfair to our stores
5 that must compete with illegal sellers. - - the
6 cost of doing business continues to grow in New
7 York City and our stores close, who will provide
8 groceries and - - we operate in and how will our
9 members earn livelihood and pursue the American
10 dream? How will they build up business they can
11 pass on to their children? - - the city seemed to
12 want to help small businesses like ours by
13 removing unnecessary regulations and reducing the
14 fines that struggling small business in the city.
15 Less than two weeks later, you have proposed these
16 measures despite the high rate of compliance with
17 existing laws preventing tobacco sales to minors.
18 As small business owners, our members share the
19 mayor's goal of preventing minors from smoking and
20 work hard every day to comply with the law, but we
21 strongly believe this measure will help for the -
22 - and could in fact make the issue worse. It is -
23 - like these that force responsible compliance
24 with business creating new opportunities for the
25 illegal sellers to fill the void. We urge the

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2 City Council to look to ways to help legitimate
3 businesses to - - today's difficult economic
4 climate, not burden them with additional - -
5 mandates that do not serve their intended purpose.
6 Please oppose these measures. Thank you very
7 much.

8 CHAIRPERSON ARROYO: Thank you.
9 Thank you for your testimony. Okay. Coming up
10 after the three As, we have another panel. Jay
11 Peltz [phonetic], Arthur Katz [phonetic]. And
12 David Schwartz [phonetic]. So we have David,
13 Arthur and Jay on deck. Okay. Welcome. Thank
14 you for being here. You know the drill. Go
15 ahead. When the light is on, the mic is on.

16 MICHELLE BONAN: Thank you. Thank
17 you, Chair Arroyo, Council Member Gennaro,
18 members. Thank you for the opportunity to testify
19 today. My name is Michelle Bonan and I represent
20 the American Cancer Society Cancer Action Network,
21 a non-partisan, non-profit advocacy affiliate of
22 the American Cancer Society and we are so pleased
23 today to be able to speak in support of a package
24 of legislation that once again places New York
25 City at the cutting edge in curbing tobacco use.

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2 Tobacco is the leading cause of cancer death in
3 New York, and it is estimated that more than
4 11,000 New Yorkers will die from cancers caused by
5 smoking this year. I think Speaker Quinn said it
6 best earlier. New York City has shown
7 unparalleled leadership in understanding the way
8 to combat tobacco use and you have laid a strong
9 policy foundation on which to build. We have just
10 celebrated ten years of a smoke free air act. We
11 have the highest tobacco tax in the nation. We
12 have one of the finest tobacco control programs in
13 the country, and numerous other supportive
14 legislation, but despite these successful efforts
15 to discourage tobacco use, the tobacco industry
16 continues to spend \$196 million a year marketing
17 in New York encouraging adults and children to buy
18 more of their products. Tobacco companies
19 appropriately face multiple restrictions on how
20 they can promote their products and reach their
21 consumers. You can't advertise on TV, radio or
22 the internet. The master settlement agreement
23 keeps tobacco off of billboards and out of most
24 magazines and because of those limitations the
25 tobacco industry has poured resources into the

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2 retail environment to the tune of \$10.5 billion
3 and 90 percent of that annual marketing dollar is
4 spent in the retail environment, and there is a
5 growing body of evidence that indicates that
6 tobacco advertising in stores is influencing
7 children to become smokers. I have submitted more
8 detailed testimony with lots of research. I am
9 not going to share it all right now. Right now
10 the retail marketing consists of these large eye
11 catching tobacco displays called power walls.
12 They are usually directly behind the cash register
13 in proximity to snack foods and candies and they
14 are ubiquitous in convenience stores and small
15 groceries around the city. The marketing strategy
16 is successful, and we have heard it before but I
17 just want to say again there is a clear
18 association between youth exposure to retail
19 tobacco promotion and the risk of taking up
20 smoking. I also just wanted to point out an
21 earlier panelist mentioned the - - lawsuit in
22 Providence, and I just wanted to share that while
23 that is being appealed, Providence won that
24 lawsuit on every count. Youth who shop in
25 convenience stores filled with tobacco

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2 advertisements are twice as likely to start
3 smoking. The good news is there is something we
4 can do about this problem. Intro 1020 will reduce
5 or eliminate visibility, not availability of
6 tobacco products in retail stores and help reduce
7 youth exposure. I want to emphasize again the
8 bill does not prohibit retailers from
9 communicating information about the product to
10 their customers. They can do that. It doesn't
11 necessarily have to be a costly way of hiding the
12 products. They are able to do it in whichever way
13 they would like. A recent poll as you heard
14 earlier shows that this is extremely popular with
15 New York City residents. 68 percent of New York
16 City voters support keeping cigarettes out of
17 sight to discourage youth from smoking. While we
18 have done terrific work in reducing youth smoking
19 rates, they have remained stagnant since 2007 so
20 we have got to do more. New York City we believe
21 is the appropriate venue for this. I also just
22 want to quickly say that we would strongly support
23 Intro 1020. Tax evasion makes it easier for cheap
24 tobacco to get in the hands of youth and it is
25 costing the city and the state hundreds of

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2 millions of dollars. Recent estimates show New
3 York City loses about \$250 million in revenue from
4 untaxed cigarette sales and I regret I didn't
5 bring the pack of cigarettes I have in my bag over
6 there, but I will show you it has a Virginia tax
7 stamp and was purchased in New York City. So New
8 York City's high cigarette tax has been very
9 successful in reducing smoking rates as we know,
10 and all of the provisions in that bill do a very
11 good job of making sure that we can maximize the
12 impact of price by prohibiting retailers from
13 accepting coupons, price discounts and by
14 maximizing the impact of the tax and as well as
15 leveling the playing field for retailers who are
16 abiding by the law--

17 CHAIRPERSON ARROYO: Please wrap
18 up.

19 MICHELLE BONAN: I will wrap up
20 quickly just by saying that also proposed Intro
21 250-A raising the minimum age to 21 research is
22 showing that it is likely to work and New York
23 City is the appropriate place to try something
24 like that given the strong foundation you all have
25 built in tobacco control. Thank you very much.

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2 DR. TARA NARULA: Good afternoon.
3 I am Dr. Tara Narula, the associate director for
4 the cardiac care unit at Lennox Hill Hospital, and
5 I am here representing the American Heart
6 Association. Thank you, Chair Arroyo and members
7 of the Council Committee on Health for the
8 Opportunity to provide testimony regarding the
9 three proposed introductions addressing tobacco
10 control here in New York City. In deference to
11 everyone's time we have submitted lengthier
12 written comments, but I want to highlight just a
13 few components of the AHA's support of these three
14 bills. The mission of the American Heart
15 Association is to build healthier lives free of
16 cardiovascular diseases and stroke. These
17 diseases remain our nation's number one and number
18 four causes of mortality while stroke is a leading
19 cause of disability and tobacco use persists as
20 the leading preventable cause of heart disease and
21 stroke in our country. Indications of heart
22 disease such as atherosclerosis, hypertension,
23 increased tendency for blood clotting, cholesterol
24 problems as well as a decreased exercise tolerance
25 are all directly tied to tobacco use and cigarette

1 smoking produces a greater relative risk in
2 persons under age 50 than in those over 50. New
3 York City should be applauded for its steadfast
4 focus to reduce tobacco use within its borders.
5 We believe the city has made great progress on the
6 three most impactful elements to curb tobacco use-
7 -clean indoor air, excise taxes and prevention and
8 cessation funding. Given this solid foundation we
9 believe that it is certainly warranted that city
10 leaders focus their attention on new policy
11 interventions that strengthen our efforts and can
12 build upon the existing science in support of
13 tobacco control policies. Overall, the American
14 Heart Association is supportive of these three
15 proposals and is eager to use this opportunity to
16 deepen the body of research that would indicate a
17 public health benefit to these policies. The AHA
18 values New York's leadership in conducting rebus
19 surveillance and evaluation of innovative public
20 health policy and expects a similar commitment
21 with these policies as they are implemented. The
22 AHA supports Intro 1020 because the more tobacco
23 marketing and displays are presented at retail
24 locations the greater the potential for impulse
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2 purchasing thereby making it harder for smokers to
3 quit. Additionally, tobacco displays have a
4 tremendous impact on our youth with a direct
5 corollary between tobacco marketing and stores and
6 smoking initiation. The AHA supports Intro 1021
7 because research indicates that for every ten
8 percent increase in the real price of cigarettes,
9 it reduces overall cigarette consumption by
10 approximately three to five percent, lowers the
11 number of young adult smokers by three and a half
12 percent and cuts the number of kids who smoke by
13 six to seven percent. With New York City's own
14 tax rate at \$1.50 coupled with the state rate of
15 4.35 public health in New York City should be
16 benefitting from the highest tax rate in the
17 nation. Unfortunately, there is a concern that
18 the city's high tax rate is being undermined by
19 illegal sales and the permitted use of coupons and
20 other retail pricing schemes. The AHA supports
21 Intro 250-A. The AHA believes it is reasonable
22 for the city to address the rate of youth smoking
23 by redefining the legal age to purchase these
24 products. Alarmingly 90 percent of individuals
25 currently purchasing cigarettes for minors are

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reported to be between 18 and 20 years of age.

Thank you very much for your time.

CHAIRPERSON ARROYO: Okay. I am sorry, but the clock is going on.

MICHAEL SILBAK: Good afternoon. My name is Michael Silbak. I am the vice president for public policy and communications for the American Lung Association of the Northeast. Thanks for having us here today. This suite of bills will help prevent New York kids from succumbing to a deadly addiction. The science is clear. This legislation will save lives and help counteract big tobacco's never ending efforts to find replacement smokers for the thousands who die from tobacco every year. You have heard from the commissioners, you have heard from my colleagues and you will hear from many experts today, but I was hoping to veer a little off, and tell a story of a major reason why I do the work that I do. My grandpa, Sy Beckerman [phonetic], like most people born in the 1930s was a smoker. He smoked regularly as a young adult and through his 20s. As he got older and raised his family, he drastically cut back on smoking, but still spent

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2 his 40s and 50s sneaking a cigarette here or
3 there. I remember when I was a child visiting
4 their apartment in Forest Hills. We would
5 sometimes discover a hidden pack of cigarettes in
6 one of his coat pockets while we were playing hide
7 and seek, which we would quickly run and show my
8 grandma, and then we would all break them in half
9 and throw them out. My grandpa finally quit for
10 good when he was in his late 50s. When I was 13
11 years old, my parents sat my brothers and I down
12 and told us that our grandpa had been diagnosed
13 with stage four lung cancer. At that age, I had a
14 lot of questions and had trouble understanding
15 exactly what that diagnosis meant for my grandpa
16 who I was so close with. I distinctly remember
17 sitting next to my grandpa as his body had already
18 begun to be ravaged by his cancer. He looked me
19 in the eyes and he said, don't worry about me. I
20 am going to beat this. I gave him a hug and a
21 kiss and I went outside to play. Unfortunately my
22 grandpa's battle with lung cancer was short. From
23 the time of his diagnosis, through chemo and
24 radiation and his untimely death at the age of 62,
25 it was just six months. This story, my grandpa's

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2 story, Councilman Gennaro's story, they are far
3 too common. Too many people start smoking at a
4 young age and then face a lifetime of addiction,
5 which ends up not only affecting them, but the
6 many people that love them. While we have made
7 great progress in the 20 years since my grandpa
8 died, I implore you to pass this suite of bills so
9 that we have less stories like this and more kids,
10 parents and grandparents and even great
11 grandparents who could live longer healthier lives
12 together. The Lung Association strongly supports
13 all three of these public health bills. I
14 strongly support all three of these public health
15 bills. Please pass them.

16 CHAIRPERSON ARROYO: Thank you.
17 Council Member, any questions?

18 COUNCIL MEMBER GENNARO: I just
19 said amen. I thought that was the thing to say,
20 and thank you Michael for your tribute.

21 CHAIRPERSON ARROYO: I have a panel
22 on deck. I don't see anyone moving though. We
23 have Jay, Arthur and David. Are you here? Yes,
24 okay. And the panel coming up after will be
25 Stephen Allen [phonetic] and Dr. Kurt Ribisl

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2 [phonetic]. I am sorry. You will correct your
3 name for the record when you come up. Turn on the
4 mic.

5 DAVID SCHWARTZ: I am David
6 Schwartz, and I represent the New York Association
7 of Grocery Stores. Well, it's the great Houdini
8 again at work. There is magic in the air in this
9 body and as well as the Mayor's Office because if
10 anyone believes in this city that in 2002 we sold
11 42 million cartons of cigarettes a year, and now
12 in 2013 we are selling seven million cartons of
13 cigarettes a year, I have heard all the accolades.
14 I have read this statement, which talks about the
15 high cigarette taxes reducing tobacco among
16 adults. I have heard everything and if you
17 believe that I have a bridge to sell you right
18 across over there. This is a joke. This is an
19 attack on small business. This is an assault on
20 our grocery stores and this attack and assault
21 needs to be stopped. We have legislation after
22 legislation after legislation, regulation after
23 regulation after regulation that has no other
24 effect but to assault small business in the city
25 and thousands of stores across the state have

1 closed up because of these wonderful policies.
2
3 When the mayor raised cigarette taxes 1776 percent
4 in 2002, do you really believe that 50 percent of
5 New Yorkers stopped smoking? Do you really
6 believe that? Does anyone in their right mind of
7 any kind of logic or common sense whatsoever would
8 they actually believe that 50 percent of New
9 Yorkers just stopped smoking overnight? This
10 defies logic. All these policies defies logic.
11 Every single one of them over the past 12 years
12 defies logic, and we hear story after story after
13 story. Someone ought to look at the American
14 Cancer Society when they testify here when 85
15 percent of their money doesn't even go towards a
16 treatment cure of cancer. Someone ought to
17 challenge them on that. If anyone wants to give
18 money, they raise a billion dollars a year. If
19 anyone wants to give money to fight cancer, I have
20 a whole bunch of private labs and private people
21 that will gladly accept your money that actually
22 are researching a cure and prevention of cancer.
23 What a joke that they spew their nonsense on this
24 body and other bodies across the country. These
25 laws are horrible for New York. They are horrible

1
2 for the citizens of New York, and sir, I
3 understand the amen that you said before, but you
4 certainly weren't looking at it from a standpoint
5 of small business. I understand that there are
6 health issues involved with smoking--

7 COUNCIL MEMBER GENNARO:

8 [interposing] I was raised in a small business
9 family. You don't have to lecture me--

10 DAVID SCHWARTZ: I was too. This
11 is my time, sir. Can I have more time?

12 CHAIRPERSON ARROYO: Just a second.
13 I am going to ask you to do one thing. First,
14 calm down. We are in a very dignified public
15 forum. There is no need for your attacks.

16 [crosstalk]

17 CHAIRPERSON ARROYO: Wait just a
18 second. I can handle him. I got this. Chill.
19 Okay. Lower your voice and let's have a dignified
20 conversation.

21 DAVID SCHWARTZ: And I agree. It
22 is hard to when we have a hearing by a body, we
23 are supposed to hear from New Yorkers and there is
24 about 30 people that could fit in the room when
25 you are waiting downstairs on a line that is

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2 wrapping around the building. I apologize for
3 that. But I am just trying to speak on behalf of
4 the New Yorkers hat I represent, small businesses,
5 grocery stores, mom and pop shop, people who are
6 trying to live the American dream by selling a
7 legal product and for this body and the mayor to
8 assault these businesses and to drive the biggest
9 black market in the history of the city of New
10 York, rivaling the drug market, that is
11 unconscionable, and I am sorry I raised my voice
12 'cause I have a lot of respect for you, Chairman
13 Arroyo, but this is a joke. I am done.

14 CHAIRPERSON ARROYO: Okay. I hope
15 you take a page from that book, and don't do that,
16 and for those of you who are coming up to testify
17 against we are here to listen to everyone. There
18 is no reason for disrespect and to get into a
19 nasty back and forth. That is not why we are
20 here.

21 JAY PELTZ: Thank you for the
22 opportunity to testify at today's public hearing.
23 My name is Jay Peltz, and I am the vice president
24 of public affairs for the Food Industry Alliance
25 of New York State. The FIA is a non-profit, trade

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2 association that promotes the interest state wide
3 of New York's grocery stores, drugstores and
4 convenience stores. Our members include chain and
5 independent food retailers that account for a
6 significant share of New York City's retail food
7 market and the wholesalers that supply them as
8 well as drug stores and convenience stores. Many
9 of our members are small businesses struggling to
10 survive as we approach the end of the fourth full
11 year of the weakest of 11 post war recoveries. As
12 a result, weak consumer spending has become the
13 new normal. In turn, unemployment remains
14 stubbornly high in the city at 8.9 percent in
15 March 2013. On top of that an era of regulatory
16 overreach continues. As noted in April 14th
17 article in Crains New York Business, "despite lip
18 service about small business being the city's and
19 the country's economic backbone, entrepreneurs are
20 reeling from the slew of new rules and regulations
21 enacted at every level of government. Obama care
22 and paid sick leave are both slated to go into
23 effect in 2014. Last month state legislators
24 increased New York's minimum wage. Additionally,
25 the City Council enacted the nation's broadest

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2 statute giving perspective employees the right to
3 sue for not being hired, and last week the Council
4 held a hearing on a bill that will bar employers
5 from using credit checks in hiring." Separately
6 any of these new mandates may have been
7 manageable; however, having all of them take
8 effect within a relatively short timeframe has
9 heightened anxiety for employers already dealing
10 with the high cost and bureaucratic hurdles in
11 doing business in New York City. Given this
12 economic and policy context, these three bills
13 taken together would further hurt our members,
14 especially our small business members. All three
15 - - were designed to cause legitimate sellers of a
16 legal product to fully informed adult consumers to
17 suffer losses of sales and customer traffic.
18 Consequently profits will decline creating the
19 possibility of cuts to jobs and hours and for what
20 public policy benefit? As a scholar from the Cato
21 [phonetic] Institute recently noted in
22 jurisdictions that impose high taxes and other
23 pricing and sales restrictions "consumers are more
24 likely to go to illegal, untaxed retailers for
25 their tobacco needs." In addition, because the

1
2 proposed legislation would limit the choices of
3 fully informed adult consumers an increase of
4 price of legitimate tobacco products offered by
5 city retailers those consumers would be incented
6 to visit legitimate competitors outside city
7 limits, on the Internet or in Native American
8 outlets in search of their preferred brands at
9 lower prices. An uneven playing field would thus
10 be created where city retailers would lose sales,
11 city taxpayers would have to make up the lost tax
12 revenue and sales of tobacco products could merely
13 shift rather than decline. According to reporting
14 under the - - amendment this is regarding
15 compliance, the national weighted average retailer
16 violation rate has plummeted from 40.1 percent in
17 '97 to a record low 8.5 percent in 2011. In New
18 York the retailer violation rate was even lower
19 reported at 5.6 percent. This data combined with
20 a weak economy that is causing retailers,
21 especially small retailers to struggle suggests
22 that the imposition of substantial fines is
23 unwarranted especially if there is no willful
24 misconduct or the violator is not a repeat
25 offender. The legislation that would raise the

1 minimum legal purchase age to 21 is misguided.
2 Very few teens buy cigarettes at a retail outlet.
3 Reportedly 95 percent of teens get their tobacco
4 from friends or family. In addition research
5 shows that none of the reasons for adolescent
6 smoking relate to the legal age for buying
7 cigarettes. According to this "social
8 determinance [phonetic] of health approach" youth
9 smoking is primarily the result of lower incomes,
10 poor academic achievement, - - satisfaction with
11 school/inadequate schools, dysfunctional family
12 relationships, whether or not parents and siblings
13 smoke and peer pressure. The persuasiveness of
14 the social determinance approach led to its
15 adoption by the World Health Organization as the
16 basis for its tobacco control program. The City
17 Council should follow this approach as well.
18 Finally, we believe that the proposed tobacco
19 display ban is unconstitutional as preempted under
20 federal and state law. The first amendment
21 protects the communication of truthful and non-
22 misleading commercial messages about lawful
23 products. The supreme court has stated that those
24 protections apply to communications about tobacco
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2 products. A retailer is to display a product for
3 sale with which its package bearing the
4 manufacturers trademarks and trade dress is core
5 commercial speech protected by the first
6 amendment. In addition courts have felt that
7 coupons and discounts constitute protected
8 commercial speech. Regarding preemption the
9 federal cigarette labeling and advertising - -
10 includes states and localities from prohibiting or
11 otherwise regulating the advertising and promotion
12 of cigarettes. Moreover, while New York State law
13 prohibits certain forms of tobacco product
14 couponing and discounting other forms of couponing
15 and discounting are expressly permitted thus
16 according to the New York Attorney General New
17 York State Law preempts cities from restricting
18 tobacco product discounting in a manner permitted
19 by state law. Accordingly, the Food Industry
20 Alliance on behalf of its members opposes adoption
21 of these three bills. Thank you for your time and
22 attention to the FIA's concerns.

23 ARTHUR KATZ: My name is Arthur
24 Katz, and I am the representative of the Statewide
25 Association of Cigarette Tax Collection Agents and

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2 bear witness daily to the tragedy of the Mayor's
3 policy of having created the highest cigarette
4 taxation in the nation while allowing massive
5 cheating in an atmosphere of non-enforcement. It
6 is costing the city mega millions in lost revenue
7 and lost jobs basically from first generation
8 immigrants and their employees, that includes the
9 Koreans, the Chinese, the Pakistanis, the Indians,
10 and anybody else. They stand on their feet. If
11 you are in this kind of business, they stand on
12 their feet from six in the morning until about 11
13 or 12 o'clock at night just trying to eke out a
14 living. - - mega millions and lost jobs and
15 frustration health initiatives and making it
16 impossible for honest storekeepers to compete a
17 policy that has endured to the benefit only of
18 criminals and just as importantly terrorists.
19 Please find the enclosed articles which I have
20 included in here, the Great Houdini New York Post
21 article refuting high taxes reduces smoker,
22 Brooklyn DA press release The Illegal Cigarette
23 Market: The Case of the South Bronx and our
24 Recommendations. In the south Bronx a recent
25 study not sponsored by the Health Department nor

1 sponsored by industry by sponsored by Columbia
2 College found that 70 percent or more of all
3 cigarettes smoked were not those purchased legally
4 in New York State. That is a real serious
5 problem. I have an extensive background in law
6 enforcement before I retired and took this job.
7 Mayor Bloomberg's slight of hand approach to
8 cigarette policy is costing the city hundreds of
9 millions in lost revenue and jobs while failing to
10 decrease either teenage smoking or inner city
11 usage. The several articles attached herein
12 confirm that which both the trade and unbiased law
13 enforcement has known for years. Taxes can only
14 raise revenue if people pay them. The Mayor's
15 prolific tax policy of 1,875 percent during his
16 first five months in office became only the
17 catalyst for criminals and terrorists to flock to
18 New York and cause illegal untaxed cigarettes to
19 become ubiquitous and if you go to the south Bronx
20 and other places you will find the packages
21 crumpled up all over the street, none of them
22 bearing a tax or any other indices that tax was
23 paid. While the national smoking rate has
24 decreased by 27 percent, not 30 some odd percent
25

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2 in the past 12 years because of greater individual
3 health awareness and local restrictions, the rate
4 of decline of taxes purchases in New York City
5 during the administration has fallen 83 percent--
6 42 million cartons in 2001 and seven million
7 cartons in 2013. That is not a realistic number
8 for it to drop like that, and the only way that we
9 know that and the mayor knows that or anybody else
10 knows that is by taxed [phonetic] purchases, not
11 what is coming in illegally from Virginia, from
12 Carolina, from Jersey, from Pennsylvania and even
13 Connecticut as well as the Indian reservations.

14 CHAIRPERSON ARROYO: Arthur,
15 please. I am going to ask you to wrap up.

16 ARTHUR KATZ: What I would like to
17 say is that we need a greater effort in
18 enforcement to enforce the illegal sales of
19 cigarettes coming into New York City and they are
20 being sold primarily on the streets despite what
21 anybody tells you, but anybody in law enforcement
22 will tell you that is really is on the street is
23 that they are selling it from the trunks of their
24 cars, from inside their buildings and from
25 backpacks and right in front of the stores that

1
2 are trying to sell it legally. We need some kind
3 of law enforcement approach. We also may consider
4 special tobacco tax court, establishment of that
5 so that when you go to court with five cartons of
6 cigarettes that some kid was selling or three
7 cartons from his backpack, it will get attention.
8 No judge in New York City, perhaps in New York
9 City - - what are you picking on that kid for?
10 You want somebody who is dedicated, that
11 understand the problem.

12 CHAIRPERSON ARROYO: Okay, Arthur.
13 I am going to interrupt you, and then say that we
14 will follow up with you for your thinking round
15 that particular issue in particular. I really do
16 appreciate your input. Council Member--

17 ARTHUR KATZ: [interposing] Let me
18 tell you just one more thing about my background.
19 I was an inspector in New York City Police
20 Department - - and its predecessor, so I
21 understand something about this and the problem
22 and where it leads.

23 COUNCIL MEMBER GENNARO: thank you,
24 Mr. Katz. I certainly support you and certainly
25 do salute all of your efforts on behalf of law

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2 enforcement like the career you had before this,
3 and the very compelling testimony that you make
4 regarding how we may be creating some consequences
5 that we didn't want to make and we thank you for
6 being here today, and Mr. Peltz, we have always
7 worked very closely with the Food Industry
8 Alliance, and I appreciate your being here. I'd
9 recommend to the New York City Association of
10 Grocery Stores that they get another
11 representative that is not going to come in and
12 insult--

13 DAVID SCHWARTZ: [interposing] That
14 is insulting. I think the people of the city of
15 New York should get another Councilman who doesn't
16 weigh in before the testimony is.

17 CHAIRPERSON ARROYO: Excuse me.
18 Excuse me. We are done.

19 [background conversation]

20 COUNCIL MEMBER GENNARO: Good bye.

21 [background conversation]

22 CHAIRPERSON ARROYO: Stephen Allen-
23 -I pronounce ph as an F. I am sorry. That's
24 because English my second language, and Dr. Kurt
25 Ribisl. On deck we have Jim Calvin, Sung Su Kim

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[phonetic] and Ralph Bombardiere [phonetic].
Okay. When the light is on the mic it's on. Try
not to have both of them on at the same time,
otherwise we get feedback. Handle by the base.
Okay. When you are ready.

DR. KURT RIBISIL: Great. Thank
you very much. My name is Dr. Kurt Ribisl. I am
professor at the UNC School of Public Health. I
am also a--

COUNCIL MEMBER GENNARO:
[interposing] Doctor, if you just talk into the
microphone, we can hear you better. Just right
into the microphone like I am now. Closer.

DR. KURT RIBISIL: My name is Dr.
Kurt Ribisil. I am a professor at the UNC School
of Public Health. I am also a member of the FDA
Tobacco Product Scientific Advisory Committee. I
have researched tobacco control policy issues for
18 years, and in New York City your smoking rates
have pretty much started to stagnate. You now
have to take your program to the next level to
make another reduction. That next frontier is the
point of sale, and so far, all of these three
policies that you are talking about are going to

1
2 focus on the point of sale, and that is where the
3 tobacco industry is spending the lion's share of
4 their efforts. They spend over 86 percent of
5 their marketing budget at the point of sale, and
6 they also are spending over one million dollars
7 per hour at stores. So why are they spending this
8 money there? It is for who they can reach. They
9 can reach kids, smokers and people who have quit
10 to tempt them back into relapsing. A CDC study
11 that was just published in April found that 87
12 percent of high school students reported seeing
13 tobacco ads in stores. I recently did a study
14 that showed that 50 percent of stores have tobacco
15 ads three or below, which is the eye level of a
16 small child. These displays are big. In fact,
17 this is actually a life size 32 square foot image-
18 -this is again the size of about two
19 refrigerators, so the average tobacco retailer in
20 New York City has about 32 square feet of display
21 space. If you times this by the 10,000 tobacco
22 retailers, you would actually be able to entirely
23 cover the front of the Empire State Building.
24 There is that much display space in your city.
25 Now the tobacco companies don't just prey on kids.

1
2 They also focus on vulnerable populations.
3 Smoking rates are about 50 percent higher for
4 people who are below the poverty line than people
5 who are above the poverty line. In a national
6 study that was funded by the National Institutes
7 of Health that I am leading we found that Marlboro
8 and Newport cigarettes are about a dollar cheaper
9 in poor neighborhoods. We also see that they have
10 targeted diverse groups such as African Americans.
11 In our study we found in neighborhoods that had
12 very few African Americans about 60 percent of the
13 stores had a price promotion. In neighborhoods
14 with a high percentage of African Americans, about
15 80 percent has a price promotion, so you see that
16 they are more likely to put these price promotions
17 in African American neighborhoods, and that is one
18 of the things that these policies will address
19 because by banning the price discounting you will
20 not have the tobacco industry have the ability to
21 restrict, to target minority communities any
22 longer. In the comments you will also see that I
23 have attached the whole series of initiatives such
24 as the black marketing task force, the - - market
25 program and so forth that the tobacco companies

1
2 have done so that they can market point of sale in
3 these communities. My final point has to do with
4 price and that when price goes up, consumption
5 goes down and by banning the price discounting and
6 couponing and other things, and also the free
7 cigarettes where they will have buy one get one
8 free, you will actually see significant public
9 health impact from that. So I think it's a
10 fantastic set of policies that are being
11 considered here, and in my comments I say I have
12 an explanation of a study I did at Columbia
13 University showing they won't hurt business. So
14 smoking rates have been dropping and retail
15 employment has been flat, and so they are not
16 going to hurt business as you heard mistakenly
17 today. Thank you very much.

18 CHAIRPERSON ARROYO: I understand
19 that you came all the way up from North Carolina
20 just to provide this testimony.

21 DR. KURT RIBISL: I did. I have
22 waited 18 years for a day like this. This is
23 exciting. You guys are making history here. Okay
24 Go ahead.

25 STEPHEN ALLEN: Good afternoon. My

1
2 name is Stephen Allen. I am a sixth generation
3 Bronx resident, home owner, taxpayer, and proud
4 small business owner. I am here today to speak on
5 behalf of my parents' small business Tri-Edy's
6 Deli [phonetic]. Tri-Edy's Deli is located in the
7 Woodlawn section of the Bronx, and has been in
8 business for over 34 years. because of economic
9 downturn and other circumstances many of the old
10 mom and pop stores on our avenue have closed--the
11 butcher, the tailor, the candy store, the five and
12 dime, the stationery store are all gone. These
13 stores have been replaced with I call them 24 hour
14 bazaars. I went to business school for
15 accounting, understand the concepts of capitalism
16 and competition. I celebrate both those
17 principles and I think capitalism and fair
18 competition is what makes our nation and city
19 prosper. We are here today to hear testimony on
20 proposed changes to tobacco laws in New York City.
21 The first two aspects of the law relate to
22 changing the age requirements from 18 to 21 and
23 the display of cigarettes. As a deli owner and
24 New York City tobacco retailer, I am not opposed
25 to any of these proposed changes. I do not

1
2 believe that changing the age requirements or
3 taking the ability to display cigarettes will
4 affect our business in any way. Our business is
5 not made on cigarettes. In fact, in the current
6 landscape we operate in, the actions of our direct
7 competitors of ours and the proliferation of
8 illegal, trafficked, unstamped cigarettes sold by
9 our competitors in our neighborhood has ruined the
10 business my parents have worked so hard to build.
11 For 34 years my parents have done one thing; they
12 have played by the rules. The majority of other
13 shops in my neighborhood have not been playing by
14 the rules for some time now. A majority of the
15 other stores in our neighborhood sell illegal,
16 unstamped cigarettes, which are brought in from
17 other states and sold to consumers at a reduced
18 cost as compared to a legitimate New York City
19 tobacco retailer like ourselves. These unjust
20 retailers pay as little as \$30 for a carton of
21 cigarettes and sell them to the consumer for \$9 a
22 pack. That amounts to a \$60 per carton profit
23 going directly into the retailer's pocket, cash
24 untaxed and New York State and City excise tax
25 evaded. My parents on the other hand pay \$112 for

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2 a single carton of cigarettes, and they sell them
3 for 11.50. We make three dollars on the total
4 carton of cigarettes selling them legally while
5 these criminals are making six dollars per pack
6 evading all the taxes. After two years of
7 fighting this, there is still no accountability.
8 Five to seven years ago when our prices on
9 cigarettes were on par with other stores in our
10 neighborhood, we used to sell upwards of 150 to
11 200 cartons of cigarettes a week. We now sell
12 eight cartons of cigarettes a week. I know as a
13 result of costs, health concerns and various
14 initiatives put forth by the city and the Health
15 Department people are smoking less than they were
16 five or so years go; however, knowing my
17 neighborhood the one I grew up my entire life in,
18 my neighborhood is still a very heavy smoker
19 neighborhood. My friends, my neighbors and former
20 customers now shop elsewhere at those retailers
21 selling illegal unstamped cigarettes. As I
22 previously mentioned before, our business has
23 never been made on cigarettes rather our
24 reputation, our relationship with our customers
25 and the quality product we are able to deliver.

1
2 The proliferation of illegal cigarettes made
3 readily available by retailers in my neighborhood
4 not playing by the rules has cost us customers,
5 customers who without an uneven playing field will
6 never return and shop with us. What people fail
7 to realize is we are not losing just because the
8 customer will not buy a pack of cigarettes from
9 us, we lose on the whole sale. The customer who
10 went into that store now buys a pack of
11 cigarettes, a loaf of bread, a gallon of milk,
12 cold cuts, and that is the true impact. Five to
13 seven years ago we never really made money on
14 cigarettes selling 150 to 200 cartons a week. My
15 family doesn't look at those cigarettes as lost
16 profit, but true indicator of sheer volume of the
17 amount of customers and shoppers we have lost as a
18 result of the regulatory and enforcement
19 environment we are in. The truth is in the
20 numbers and as a result of losing many of our
21 loyal customers to these other retailers not
22 playing by the rules conservatively our sales are
23 down 40 to 50 percent as compared to five to seven
24 years ago.

25 CHAIRPERSON ARROYO: Please sum it

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up.

STEPHEN ALLEN: Alright.

Throughout all areas of the city local businesses that play by the rules are being ruined by these criminal operations selling cigarettes.

Businesses lose, neighborhoods lose and most importantly the city and state lose out. I implore City Council to pass all aspects of this law.

CHAIRPERSON ARROYO: Thank you, Stephen.

STEPHEN ALLEN: Thank you.

COUNCIL MEMBER GENNARO: I want to thank both of you. This is a wonderful panel for coming all the way up from Carolina and the testimony that was very, very compelling and will help us, particularly like the business things that you were talking about. Mr. Allen, coming from a small business family, which my father ran for 40 years, I certainly salute you for coming forward and I think one of the takeaways for this hearing from me is the need, like whether or not we do these laws or not, which I think we will or I hope we will that we have to do something to

1

2 protect small business from people who are not
3 playing by the rules and flouting the law and
4 taking profit out of the pockets of people who are
5 playing by the rules. Great testimony. Really
6 appreciate it. Thank you very much.

7

CHAIRPERSON ARROYO: Thank you,
8 Council Member. Thank you both for your
9 testimony. We have on deck, Jim, Sung and Ralph.
10 Are you here? Yes? Okay.

11

[background conversation]

12

COUNCIL MEMBER GENNARO: So it was
13 purchased here, but it has a Virginia stamp on it.
14 Okay. I see. Oh, and it's empty--just so
15 everyone knows it is empty.

16

CHAIRPERSON ARROYO: On deck La
17 Tanisha Wright [phonetic], Mona Golub [phonetic],
18 Anise Kim [phonetic]. You are up next.
19 Gentlemen, you may begin.

20

SUNG SU KIM: I'll go first because
21 I am oldest. My name is Sung Su Kim. Thank you
22 very much. Chairman and also Councilman Gennaro,
23 long time I didn't see you. - - by listening to
24 what the people are saying - - that the small
25 business people are considered as ill knowledged

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2 [phonetic] and contentious and don't care about
3 taking the break in the laws. The true people are
4 conscientious - - the justice. This kind of
5 impression - - , but this is not true. I want to
6 say a couple of things. By the way, I am - -
7 organizations in the city, and we are not against
8 this bill. We highly admire the spirit underlying
9 these bills, but in practice, it's going astray
10 from the original purpose by exclusively damaging
11 small business communities and the city losing
12 tax. It is encouraging the black market, so it
13 doesn't guarantee - - from the public policy
14 sense. So I want to remind all my friends - -
15 small business is in the crisis - - fundamentally
16 all the practices going on is against the basic
17 spirit of founding American capitalism. They - -
18 speculation and we are hardworking people. We are
19 not respected and we are in a crisis right now. I
20 have included in my testimony so I do not repeat,
21 but this is real crisis. I have a few suggestions
22 to make - - recommendation. Number one, please
23 Council Members, put this on a moratorium. Don't
24 let it go any further. There are three conditions
25 you have to do. First of all, it is - - to

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2 intensive economic impact - - and the - - City
3 Council's authority to not to allow the taxation
4 without representation. We don't want to decree a
5 new chapter of - - tea party. - - . Look at
6 this. Sorry. I am a Korean - - , so you have to
7 give me one minute more extension. Chairman
8 Arroyo, this is a sign, if you don't have this
9 sign Consumer Affairs issue ticket \$1,450.
10 Everybody knows. - - if the sign is missing
11 electronic cigarettes right there, and also - -
12 Consumer Affairs will charge you \$450. You used
13 to be one of the seven warnings--the codes. Now
14 they are - - if the three bills pass, this will
15 give an opportunity to Consumer Affairs to
16 additional seven to 11 violation codes. - - up to
17 10,000 - - a lot of money. Number two - -
18 recommendation. - - I have a Korean dream
19 [phonetic] so you have to give me one more
20 extension, okay, thank you. Policy number two--
21 CHAIRPERSON ARROYO: [interposing]
22 I am not going to because I am trying to be fair.
23 I don't want to interrupt you. Finish.
24 SUNG SU KIM: Number two - -
25 recommendation number two, I have a good - - to

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2 make. Look, in China, oriental way, Confucianism
3 survived 5,000 years - - they do nothing by the -
4 - it only went 50 years, so these - -. Korean
5 governments are very successful to keep the kids
6 from smoking. The reason being that - -

7

CHAIRPERSON ARROYO: [interposing]

8

Mr. Kim, please wrap up.

9

SUNG SU KIM: I am suggesting this
10 very new idea, it's very good things, all because
11 - - neighborhood tobacco surveillance team in New
12 York City and this team is composed of police,
13 neighborhood influential - - and do two things--it
14 functions as a street corner education agent as
15 well as surveillance. I think it is perfect and
16 working. You can see minors in your neighborhood,
17 if you go there, stop it and educate them. I
18 think it's a good solution. Number three--

19

CHAIRPERSON ARROYO: [interposing]

20

No, no, no. I'm trying to be fair. We are going
21 to go on to the next panelist.

22

SUNG SU KIM: It's very important
23 one. Oh my God. - -

24

25

RALPH BOMBARDIERE: I feel like I'm
in front of a firing squad, and it's up to me to

1
2 say fire. Thank you for the opportunity to
3 testify before this committee. My name is Ralph
4 Bombardiere. I am the executive director of the
5 Gasoline and Automotive Service Dealers'
6 Association representing repair shops, gasoline
7 stations and convenience stores throughout the
8 metropolitan area. GASDA was established in 1931
9 in Brooklyn, New York and has been in business for
10 82 years. Our office recently moved to Inwood,
11 Long Island when we merged with a Long Island
12 association. GASDA is a member of New York State
13 Association of Service Stations and Repair Shops
14 and is a member of the Service Station Dealers of
15 America. It is our obligation to protect our
16 members in the industry against unreasonable,
17 unfair regulations and legislation. Unfortunately
18 unreasonable and regulations run rampant in New
19 York City. Our members are constantly harassed
20 and badgered by city enforcement agencies. If it
21 is not New York City's Consumer Affairs, it is the
22 Department of Environmental Protection or the
23 Health Department. To say this industry needs
24 relief is an understatement. The three proposals
25 before the Council today rank among the highest of

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2 the insults and injuries bestowed upon the service
3 station industry in the city along with other
4 businesses. On any one given day New York City
5 inspectors run rampant throughout business
6 districts issuing violations and draconian fines
7 destroying any possibility at financial security
8 for business in this city. The association is
9 forced to retain attorneys on staff just to handle
10 the violations which are constantly being
11 enforced. We expect and we do comply with city
12 laws and regulations, but as the smallest
13 violations reaches a magnitude of exorbitant fines
14 along with the procedure or even if the member is
15 innocent, it is almost impossible to present a
16 defense. Some of the agencies have what they call
17 settlement hearings. I challenge you to go to one
18 and recognize this as a fair procedure; however,
19 we are here today to express our concern for 1020,
20 1021 and 250. We recently went through a court
21 procedure against New York City regulations from
22 the posting of signs. Intro 1020 and 1021 are bad
23 enough, but 250 is mind boggling. Do not
24 interpret this to mean that we would accept 1020
25 and 1021 and they would be okay. The city cannot

1
2 continue to expect retail clerks to challenge
3 persons under the age of 21. An individual may
4 have just returned from Afghanistan and is 20
5 years of age, and the clerk has to challenge his
6 age. Enforcement and regulatory agencies and you
7 in the legislature haven't even been able to
8 successfully collect taxes on tobacco products
9 and here we are placing the clerk in the position
10 of turning down someone who is over 20 and buying
11 cigarettes. If you are serious about this, then
12 make it illegal for anyone under the age of 21 to
13 purchase cigarettes, make it illegal to purchase
14 tobacco products if you are under the legal age.
15 I thank you for the opportunity to speak before
16 this Committee, and I wanted to beat the bell.

17 JIM CALVIN: Good afternoon. My
18 name is Jim Calvin. I am the president of the New
19 York Association of Convenience Stores. We are
20 headquartered in Albany and we serve minimarts and
21 community stores statewide. Thank you very much
22 for the opportunity to comment. Proponents of
23 this legislation have a noble cause. It is the
24 cause of trying to prevent youth smoking, and we
25 are trying to do the same thing, and I think that

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2 the convenience store community in New York City
3 has demonstrated that by helping to improve
4 dramatically the compliance rate. When I joined
5 NYACS 15 years ago, the compliance rate was only
6 around 80 percent, and today it is in the mid-90s.
7 That is not good enough. One sale to a minor is
8 unsatisfactory, is unacceptable. So we have a
9 ways to go, but I want you to know that through
10 training, through policies, through ID techniques,
11 we are moving in the right direction and we are
12 committed to continuing to improve that rate. One
13 thing I do want to bring up is that while the
14 proponents have a noble cause I think they are
15 trying to hoodwink you. And here is what I mean.
16 They want you to believe all of the following:
17 number one, that this is exclusively a health
18 issue. Wrong. It is a public health issue, but
19 it is no less a small business issue. Number two,
20 that because smoking is unhealthy that because
21 someone's mom or dad died of a smoking related
22 illness that store owners who sell legal tobacco
23 products deserve to be harassed and preemptively
24 punished. Number three, that the smoking
25 population is a captive audience and that whatever

1
2 tobacco restrictions you may pass, smokers will
3 have no choice but to abide by it. I wish that
4 were true, but the reality is--the sad reality--is
5 that tens of thousands of New York City smokers,
6 including teenagers, are routinely dodging your
7 taxes, avoiding your legal purchase age and
8 ignoring your age verification laws every single
9 day supplied by the smugglers and bootleggers who
10 control half of the city's cigarette market.

11 Number four, that the higher purchase age will
12 automatically lower the smoking rate--that is
13 baloney. Two of the four states that have 19
14 tobacco ages have smoking rates that are well
15 above New York state's. Those are Alabama at 24.3
16 percent and Alaska at 22.9. Number five, that the
17 mere sight of packs of cigarettes on a wall in a
18 store compels kids to start smoking. If you
19 believe that then you believe that the sight of
20 toothpaste on the store shelf compels kids to
21 start brushing their teeth or that when they see
22 beer in our stores, it compels them to start
23 drinking alcohol or when they see condoms on a
24 store shelf in the pharmacy, it compels them to
25 start having pre-marital sex. Come on. It's a

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2 stretch. Number six, the convenience store
3 operators who sell legal tobacco products are... out
4 of time. But I thank you for the opportunity to
5 comment.

6 CHAIRPERSON ARROYO: You have one
7 more point. I have Mr. Kim enough.

8 JIM CALVIN: You certainly did.
9 Last point is that they want you to believe that
10 the legal purchase age is the legal smoking age.
11 Nothing could be farther from the truth. New York
12 city's policy with regard to minors possessing
13 cigarettes is smoke 'em if you got 'em, and they
14 get them quite readily from older relatives,
15 friends and illegal street dealers, and that will
16 continue regardless of passage of any or all of
17 these pieces of legislation. Thank you.

18 CHAIRPERSON ARROYO: Thank you very
19 much.

20 COUNCIL MEMBER GENNARO: I just
21 have one question. Mr. Calvin--and I like you so
22 good. Mr. Kim and I go back a long time. And
23 Ralph I just met. He seems like a great guy. Who
24 wouldn't like you? In point three of your points,
25 you made a statement regarding that the smugglers

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2 and bootleggers currently control half of New York
3 City's trade in cigarettes. Is that based on a
4 study you have done?

5

JIM CALVIN: We have done studies.
6 The Tax Foundation, which is based in Washington,
7 recently issued a report saying that New York
8 state leads the country in cigarette smuggling and
9 that fully 60 percent of the cigarettes sold in
10 New York are smuggled in from other states.

11

COUNCIL MEMBER GENNARO: I know
12 that people in the Bloomberg Administration
13 probably have this information too, but to the
14 extent that you can provide the information that
15 backs up that statement, we would like to have it.
16 We think it is very compelling, and we should
17 listen to that. Thank you.

18

CHAIRPERSON ARROYO: Thank you.
19 Thank you for your testimony. La Tanisha, Mona,
20 Anise.

21

COUNCIL MEMBER GENNARO: Mr.
22 Calvin, and that info would go to Dan. He is the
23 counsel to the committee.

24

CHAIRPERSON ARROYO: I am adding
25 Dante Natoli [phonetic]. We are adding Dante to

1
2 the panel because he has got to go home and do
3 homework. I hope I didn't embarrass you, Dante.
4 I am sorry. Come on up to the table. You are
5 going to have to get close to the mic when you
6 testify. Okay. Thank you. You may begin when
7 you are ready. Before you start--Gregory Connolly
8 [phonetic], Gaddis [phonetic]--I can't make out
9 your first name, Brandon Critser [phonetic] and
10 Esther Zar [phonetic], you are on deck. Go ahead.
11 I am sorry.

12 LA TANISHA WRIGHT: Good afternoon.
13 It is a pleasure to be here today. I am the
14 founder and director of Follow the Signs. I am
15 also a former big tobacco marketing manager. The
16 tobacco industry spends nearly a million dollars
17 an hour to market tobacco in the United States.
18 Without tobacco industry's support retailers often
19 cannot afford to provide ongoing discounting to
20 their customers. The tobacco industry offers
21 retailers strict retail contracts providing them
22 with ongoing discounting, advertising and other
23 contract incentives in exchange for control of the
24 store's tobacco category. Their tight control of
25 the tobacco category often leaves retailers

1
2 feeling intimidated to discuss and/or reduce
3 excessive tobacco marketing in their own stores.
4 The majority of U.S. tobacco retailers are
5 contracted with at least one big tobacco company
6 and contract non-compliance results in the
7 suspension and/or termination of the store's
8 retail contract with the tobacco industry. Due to
9 predatory tobacco industry retail marketing
10 practices stores located in low income communities
11 are heavily burdened with excessive tobacco ad and
12 display placement. Their storefronts are often
13 covered with tobacco advertising. These stores
14 receive higher quantities of more high profile
15 tobacco displays. The displays are often
16 merchandised in a manner in which the more
17 addictive brand styles have a higher quantity or
18 better brand visibility on the cigarette display.
19 In addition, these stores receive higher
20 allocations of promotions, which also include a
21 higher allocation of the more addictive brand
22 styles. Flavored tobacco products like cigars,
23 little cigars and mentholated cigarettes are
24 heavily marketed in these stores. The tobacco
25 industry often enforces no return policies on

1 tobacco products meaning retailers must sell all
2 tobacco product in their store or risk losing
3 money. The problem with that is these contracts
4 often require retailers to meet 100 percent
5 distribution on certain brands that might not sell
6 in the retailer's store. Whatever does not sell
7 will go stale. Expiration codes on tobacco
8 products are difficult for both the retailer and
9 customers to decipher, meaning retailers can sell
10 and customers can consumer stale and infested
11 tobacco product. The proposed New York City
12 tobacco control, New York City bans will restrict
13 the tobacco industry's ability to use discounting
14 as incentive to lure retailers into contracts and
15 therefore manipulate the marketing in their
16 stores. It will allow retailers to place tobacco
17 product in containers or in drawers, which can
18 possibly keep tobacco fresh for longer periods of
19 time for those adult smokers who enjoy using
20 tobacco, and in addition, these bans will restrict
21 the tobacco industry's ability to heavily
22 discount, advertise and promote more addictive
23 products to low income residents that might not
24 have adequate health insurance to help them to
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2 survive a smoking related disease. Retailers do
3 have the right to sell tobacco in a responsible
4 manner that does not harm the public, but the
5 tobacco industry's tight control over them is
6 definitely an issue. As a tobacco industry
7 manager, I sit here today sacrificing my own well-
8 being knowing that the tobacco whistleblowers
9 before me have had their lives threatened. These
10 laws are well justified and they will save lives.
11 Thank you.

12 CHAIRPERSON ARROYO: It was
13 whispered to me that you did not state your name
14 for the record, so before you begin your
15 testimony, you must always do that. Your name?

16 LA TANISHA WRIGHT: La Tanisha
17 Wright.

18 CHAIRPERSON ARROYO: Thank you.

19 MONA GOLUB: Good afternoon,
20 Chairwoman Arroyo, council members and
21 commissioners. My name is Mona Golub, and I
22 represent Price Chopper Supermarkets, an American
23 owned, family managed, chain of 130 stores
24 headquartered in Schenectady, New York with 80
25 retail locations across New York state. I

1
2 appreciate the opportunity to address you here to
3 say specifically in support of the tobacco product
4 display restriction legislation that has been
5 proposed. I do so not only as an advocate for the
6 philosophy that inspires this legislation, but as
7 the representative of an 81 year old business, a
8 retail business that has already voluntarily
9 enacted exactly that which is being proposed for
10 New York City. Back in 2008, Price Chopper
11 Supermarkets made a commitment not to entice the
12 next generation of smokers. As such we muted the
13 visual impact of the tobacco cases in our stores
14 by covering their facades with two sheets of an
15 opaque film that neutralizes all color and brand
16 recognition. All that remains visible is generic
17 item and price signage. We have also controlled
18 consumer access to the category meaning that
19 tobacco products are sold completely full service
20 only requiring the assistance and inviting the
21 scrutiny of an adult Price Chopper team mate, who
22 is accountable for responsibly handling each and
23 every transaction. We also decided to no longer
24 promote tobacco product in our stores or in our
25 advertising. We have proven that it can be done

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2 by standing on principle and making relevant
3 evolutionary adjustment to our business. By the
4 same token it has been proven and spoken about
5 many times today that kids are attracted to the
6 colorful marketing and advertising elements that
7 are associated with tobacco products so we had to
8 believe that the action that we were taking would
9 contribute to a broader effort to keep tobacco
10 away from children. Receiving thank you notes and
11 county fair petitions of support and even
12 accolades from several youth and adult tobacco
13 free coalitions and advocacy groups confirmed our
14 belief and has led to ongoing partnerships with
15 those constituencies who are dedicated to having
16 them same positive impact. We also had to believe
17 that the removal of the categories alluring
18 visuals in our stores would cause our tobacco
19 sales to decrease, and it did, though we recognize
20 that a number of other variables contributed to
21 this result as well--rising taxes, increased cost
22 in retail amongst the category and of course, the
23 proliferation of that advertising that conveys the
24 health consequences of smoking. Category sales
25 decreases notwithstanding I can assure you that we

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2 sleep a little bit easier at night knowing that
3 our action speaks to our commitment not to entice
4 the next generation of smokers. It has been my
5 privilege to share Price Choppers experience at
6 various conferences over the years empowering
7 others to make the compelling argument that
8 restricting the display of tobacco products does
9 deter the adoption of this addictive habit by
10 children. As supermarket operators, we do
11 business on a very competitive landscape, but the
12 truth of the matter is is that we would gladly
13 hold hands with our competitors in the food,
14 convenience store and gas station channels in
15 order to support the adoption of legislation like
16 this statewide. Thank you.

17 DR. ANISE KIM: Chairwoman Arroyo
18 and members of the Health Committee, thank you for
19 the opportunity to speak here today. I am Dr.
20 Anise Kim, and I am a social scientist at RTI
21 International, a non-profit research institute. I
22 have been conducting studies on tobacco marketing
23 for over ten years and today I want to share some
24 key highlights from a study I led that lends
25 support for Intro 1020. In 2011, my colleagues

1
2 and I conducted a randomized controlled study
3 using virtual convenience stores to experimentally
4 test to whether enclosing tobacco product displays
5 and banning tobacco ads in the stores would
6 influence youth purchasing behavior. We created
7 different versions of the virtual convenience
8 store. Some versions had the tobacco products
9 visibly displayed as they are currently in retail
10 stores while in other versions the tobacco
11 products were enclosed behind a cabinet.

12 Similarly tobacco ads throughout the store were
13 either present or banned. Approximately 1200
14 youth across the U.S. who were between the ages
15 of 13 to 17 participated in our study. Some were
16 smokers and some were not. Youth were randomly
17 assigned to one of six different virtual store
18 conditions. They were told to conduct a shopping
19 task in the virtual store. They had up to ten
20 minutes to select four items of their choice with
21 the only constraint being that they had to select
22 one drink from the cooler, one snack from the
23 aisles, and two items of their choice at the
24 checkout counter. When youth clicked on an item
25 in the store, it was placed into their virtual

1 shopping basket. If they selected an item by
2 mistake, they could unselect it and choose
3 another. Any teen who tried to click and purchase
4 tobacco were denied by the cashier because of
5 their age, but what we were interested in was how
6 many would attempt to purchase, and if this
7 behavior would differ depending on whether youth
8 shopped in stores where the tobacco product
9 display was visible versus enclosed. After the
10 shopping task was completed, youth filled out a
11 survey about their shopping experience, and we
12 also asked about their perceptions and their
13 smoking behavior. Here is what we found. When we
14 asked kids if they saw tobacco products for sale,
15 85 percent of kids who shopped in the open display
16 conditions said yes compared to only 32 percent of
17 kids who shopped in the enclosed display store.
18 When we looked at what products they purchased, 24
19 percent of kids who shopped in the open display
20 store selected tobacco products versus only nine
21 percent of kids who shopped in the enclosed
22 display store. We conducted some additional
23 statistical analysis and tried to account for
24 other factors like youth's age, race, gender,
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2 whether or not they buy their own cigarettes, and
3 even when we accounted for all these other
4 potential explanations, we still found that there
5 was a statistically significant association that
6 kids who were shopping in the enclosed display
7 conditions were less likely to purchase tobacco
8 products. Now we don't know for certain whether
9 or not the youth's behavior in the virtual store
10 would translate to real world behaviors; however,
11 we do know from our study that 85 percent of the
12 kids who participated in our study agreed that the
13 virtual store resembled a real convenience store
14 in their own neighborhood, and it would be nearly
15 impossible to conduct a study of this nature in
16 real life. The key strength of our study is that
17 by using a virtual reality application we were
18 able to simulate these policy scenarios that
19 currently do not exist, randomly assign kids to
20 the different stores, immerse them in that
21 environment and then observe to see what they
22 would do. For these reasons virtual reality
23 applications are widely used by marketing
24 researchers even government agencies and even
25 manufacturers and retailers to study individual

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2 behavior that would be difficult to do in real
3 life. In conclusion the results of our study
4 suggest that policies requiring retailers to store
5 tobacco products out of view could have a positive
6 public health impact by deterring youth from
7 attempting to purchase tobacco products. The
8 study was published in the Journal of Pediatrics
9 and a copy of the study is attached to my written
10 statement. Thank you.

11 DANTE NATOLI: Good afternoon,
12 everyone. My name is Dante Natoli. I am
13 currently a freshman at Iona Preparatory School
14 and I am a graduate of St. Teresa's grammar school
15 in the Bronx. I am here to support the three
16 bills to reduce tobacco marketing to young people.
17 I remember even two years ago as a 12 year old
18 walking around in my neighborhood, I would notice
19 walls of tobacco products in the same places my
20 friends and I might be looking for gum, magazines,
21 and other items. All the discounts and special
22 offers made cheap cigarettes seem like something
23 people my age could afford and just the quantity
24 of marketing everywhere made smoking seem like a
25 normal, maybe even cool thing to do. Now I know

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2 that the tobacco companies are targeting me and my
3 friends and they want us to start smoking and keep
4 smoking until we die. I have watched my family
5 members struggle with smoking and harm their
6 health, but still not quit. I won't let it happen
7 to me, and I hope that the City Council will make
8 sure that it doesn't happen to any of my friends
9 or any kid in the city. While I attended St.
10 Teresa, I worked with a small group to help spread
11 awareness of the dangers of cigarette advertising
12 in neighborhoods. While conducting research in
13 our project we came across a worker in a local
14 deli who was surprisingly adamant about not
15 selling cigarettes to customers. He explained how
16 he also thought it was terrible that cigarette
17 advertisements had to be in the faces of the
18 children that came into the stores every single
19 day. As we moved on, we interviewed the owner of
20 a local pharmacy. He expressed his disgust for
21 some of the chain pharmacies in the area such as
22 CVS and Rite Aid because of the fact that they are
23 being hypocritical by selling cigarettes. A
24 pharmacy is an establishment in which medical
25 supplies are carried to better the health and the

1
2 well-being of an individual suffering from a
3 health condition; however, these pharmacies sold
4 and advertised cigarettes. I don't understand how
5 an establishment that can proclaim that they help
6 people get by giving them the medical supplies
7 that they need, I don't know how they can do that
8 while they sell cigarettes right next to do the
9 door. I don't understand why these establishments
10 partake in the selling of cigarettes. I never
11 have, and I never will. I have noticed troubling
12 things about cigarettes and tobacco marketing
13 during my life. I understand that increasing
14 taxes and therefore the prices of cigarettes help
15 reduce smoking, especially among young people who
16 are less likely to have a lot of income, but I
17 despise the fact that if someone develops an
18 addiction the amounts of money accumulated. For
19 example if someone buys one pack of cigarettes
20 every three days they are spending about \$100 in
21 cigarettes a month alone. Cigarettes are terrible
22 for people's finances and terrible for their
23 health on top of that. In conclusion, don't pick
24 up that cigarette. It can be the one that ends
25 your life. I hope that the City Council passes

1
2 these three bills to protect the kids and young
3 people in the city from these deadly products.

4 Thank you.

5 [applause]

6 CHAIRPERSON ARROYO: Thank you,
7 Dante, and I don't know but I think he should get
8 a pass on homework tonight.

9 [laughter]

10 CHAIRPERSON ARROYO: Dante, thank
11 you so much. it is absolutely essential that we
12 hear all the voices concerning this issue, and
13 that you represent the very population that these
14 bills seek to protect I think is awesome. Thank
15 you for being here. Thank you for bringing him
16 and sharing him.

17 COUNCIL MEMBER GENNARO: I
18 certainly wish to be associated with the Chair's
19 comments regarding your being here today. No
20 homework for sure, but I also want to commend the
21 other panelists--Dr. Kim with your good research
22 that we will put to good use as we try to grasp
23 this issue and come to terms with what we will
24 ultimately do, and Price Chopper, good for you,
25 and thank you for showing that this can be done,

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and for doing it and getting out ahead of us.
This is very, very commendable. And Ms. Wright,
you still work in this field?

LA TANISHA WRIGHT: No, I am a
former--

COUNCIL MEMBER GENNARO:
[interposing] Former, and so I thought you were
putting yourself at great risk by being here, but
you bring a wonderful perspective that is really
going to inform what we do here. I think this is
the best panel so far. Thank you.

CHAIRPERSON ARROYO: Thank you.
Thank you all for your testimony. Gregory, I
can't make out the first name but Gaddis, Brandon
and Esther. I don't see movement towards the
table. Okay. 'Cause I move on to the next panel.
We have three. We are missing one. Who is
missing? Gregory is here?

GREGORY CONNOLLY: I am Gregory.

CHAIRPERSON ARROYO: Esther,
Brandon, and maybe I will spell the last name G-A-
D-D-I-S?

GREGORY CONNOLLY: I believe that
is the person from Bedford Slims. Yeah, he had to

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go home. He might try and come back.

CHAIRPERSON ARROYO: On deck,
Sandra Mullen [phonetic], Louise Feld [phonetic]
and Sheila Feinburg [phonetic]. Okay.

GREGORY CONNOLLY: Good afternoon,
Chairman Arroyo and distinguished members of the
Health Committee. My name is Gregory Connolly and
I serve as the volunteer legislative director for
the non-profit organization, the Consumer
Advocates for Smoke Free Alternatives Association,
known as CASAA. We are the leading U.S. advocate
that represents consumers of low-risk alternatives
to smoking, including vapor products commonly
referred to as electronic cigarettes. I am here
to encourage you to report unfavorably on proposed
ordinances 1020 and 1021 unless and until
amendments are put in place that ensure that
enactment of these ordinances will neither harm
public health nor accidentally protect cigarette
markets. Electronic cigarettes are one of the
most significant technological breakthroughs and
public health breakthroughs of the past decade.
Even though the market is still in its infancy
when compared to the multi-billion dollar

1 cigarette market, every month more and more
2 evidence is released showing that electronic
3 cigarettes are not only far, far less hazardous
4 than regular cigarettes, but that they are helping
5 millions of smokers across the world quit smoking
6 or significantly reduce their cigarette
7 consumption. In fact, Wall Street analysts are
8 now reporting that the increase in ecigarette
9 sales is leading to a significant decrease in
10 cigarette sales in the United States above and
11 beyond the gradual declines that were forecasted
12 well before ecigarettes were available on the
13 market. Even though these proposed ordinances do
14 not make a single mention of ecigarettes, their
15 enactment would impact present and future
16 ecigarette consumers in New York City. The
17 current definition of tobacco product used in
18 several subchapters of New York City
19 administrative code does not encompass electronic
20 cigarettes. New York State law meanwhile wisely
21 does ban ecigarette sales to minors, but does not
22 define ecigarettes to be a tobacco product.
23 Nonetheless because both of these ordinances
24 broadly redefine tobacco products to include any
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2 product "made or derived from tobacco" it is
3 unquestionable that the enforcing authority could
4 decide that ecigarettes are covered under these
5 ordinances. There are numerous changes that
6 should be made to these ordinances to protect
7 public health, but the most pressing issue to New
8 York City ecigarette consumers, many of whom are
9 here today and many of whom had to leave because
10 they are not familiar with City Councils and
11 realizing that meetings often take longer than
12 three hours, and thank you for all still being
13 here. With no public warning through the issuance
14 of a media release, enactment of these ordinances
15 would lead to a virtual ban on the sale of
16 ecigarettes and ecigarette liquid in flavors other
17 than tobacco, menthol, mint and wintergreen.
18 Under these ordinances, the only place where an
19 ecigarette user could legally purchase a flavored
20 ecigarette product in New York would be what New
21 York City calls a tobacco bar. These are smoke
22 filled rooms and we submit that it would be a
23 negative for public health to send people who are
24 trying to quit smoking into a smoke filled bar.
25 Proponents of this redefinition may claim that

1
2 flavored ecigarettes are target marketed to
3 children. I would ask them to present any
4 evidence that in the fives ecigarettes have been
5 widely available on the U.S. markets minors have
6 been using ecigarette products, let alone a
7 flavored one. They will be unable to present of
8 this evidence. Indeed as outlined in my
9 testimony, and I am wrapping up--two recently
10 published journal articles surveying teenagers and
11 adults age 18 to 34 were unable to find a single
12 non-smoker who had ever even try an electronic
13 cigarette let alone a flavored one. For the
14 forgoing reasons and for others outlined in our
15 written testimony, CASAA encourages the Health
16 Committee to either return to the current
17 definition of tobacco product or amend the
18 definition to ensure that vapor products are not
19 subject to the same laws and deadly tobacco
20 cigarettes, and I thank you for your time.

21 COUNCIL MEMBER DICKENS: Thank you
22 so much. Thank you. Mr. Brandon Critser, is
23 that correct? State your name please.

24 BRANDON CRITSER: Brandon Critser.
25 I have worked for numerous electronic cigarette

1
2 companies, and banning flavors would essentially
3 put most of these companies out of business--

4 COUNCIL MEMBER DICKENS:

5 [interposing] Excuse me. Can you speak closer to
6 the mic please?

7 BRANDON CRITSER: Banning flavors
8 would essentially put these companies out of
9 business. From a personal level if I still was
10 only using tobacco flavors I would be constantly
11 reminded of cigarettes, and I would constantly be
12 pulled towards wanting a cigarette. As dealing
13 with customers, people would come in and honestly
14 about 50 percent off the bat had the same
15 mentality. They were more interested in flavors
16 and forgetting about cigarettes and by the time
17 they would leave the store it was more like 80
18 percent that ended up with non-tobacco and menthol
19 flavors and thanking us later for that and never
20 returning to cigarettes. So...

21 COUNCIL MEMBER DICKENS: Thank you
22 so much for your testimony. Esther Zar?

23 ESTHER ZAR: Hi.

24 COUNCIL MEMBER DICKENS: State your
25 name please and pull the mic close.

1
2 ESTHER ZAR: Hello. My name is
3 Esther Zar. I started smoking when I was 15 years
4 old, and I was desperately trying to quit over the
5 last five years, especially with all of the ads
6 airing on television, it was creating an enormous
7 amount of guilt. The problem with quitting
8 smoking is that it is very daunting. The patch
9 and all those other replacements don't work for
10 many people, including me. When I came across
11 electronic cigarettes, it was a great
12 alternative, and I will get to flavoring in a
13 second, but the reason is that to successfully
14 quit smoking, it needs to be done in stages.
15 There are several factors of addiction there.
16 There is a nicotine addiction. There is an oral
17 fixation. So what happens with these electronic
18 cigarettes is and especially with the flavoring is
19 first of all you are able to continue acting as if
20 you are smoking and having this nicotine, and you
21 are just creating a replacement that you don't
22 feel so bad about. Then after that, you slowly
23 lower the nicotine and the flavoring, which is I
24 think one of the most important aspects of keeping
25 you off the cigarettes and keeping you quit, which

1
2 I have quit for the last year, and I have
3 absolutely no willpower whatsoever is the fact
4 that when you switch over to these flavorings you
5 disassociate the act of smoking with that
6 flavoring and as a result you actually become
7 repulsed and repelled by the smell of smoke and
8 smoking altogether, and it further helps you quit.
9 I think it is one of the most genius parts of
10 electronic cigarettes, and it is really going to
11 encourage people to quit. People do not want to
12 stay on electronic cigarettes forever. They
13 graduate from electronic cigarettes to the
14 flavored electronic cigarettes, that creates that
15 disassociation from smoking and then you slowly
16 lower your nicotine, and after a while you are
17 either smoking electronic cigarettes every once in
18 a while or not smoking at all, and it is amazing.
19 I can run ten miles now. I can breathe. I don't
20 have to worry about having kids and not being able
21 to run a marathon or being embarrassed when I go
22 to meetings. I actually cleared my entire
23 schedule today--I work in the corporate world--
24 because I feel so passionately about this, and I
25 really wanted to call attention to this.

1
2 CHAIRPERSON ARROYO: Thank you for
3 your testimony. I don't know if you heard earlier
4 when the Commissioner was testifying--my question
5 because we have heard that there is concerns
6 beyond intended consequences on the smokeless
7 vapor alternatives. I don't know what to call it.

8 GREGORY CONNOLLY: I kind of like
9 that term--smokeless vapor alternatives. Feel
10 free to use that in your legislation.

11 CHAIRPERSON ARROYO: And the
12 administration understands that concern, and they
13 are willing to work on language that will clarify
14 the intent.

15 ESTHER ZAR: We are in full
16 agreement that there should be some regulation and
17 there should be analysis of the composition of
18 what these liquids are, especially when they are
19 coming from foreign countries and there may a lot
20 of miscommunication. We are totally in agreement
21 that there should be an age limit, that they
22 shouldn't be advertised to children, but I can't
23 see why a child would pick up an electronic
24 cigarette. The days where smoking was cool we are
25 way past that especially in New York.

1
2 BRANDON CRITSER: I work at the
3 retail stores and to be honest it has never really
4 been an issue dealing with children. It is
5 generally parents and adults that have new
6 children that are searching for something that
7 they can use.

8 COUNCIL MEMBER GENNARO: Yes, thank
9 you. This has been a wonderful panel. I want to
10 talk to Mr. Connolly, and this has been a topic
11 with us. We have talked about it with the
12 administration. They don't want to touch the
13 ecigarettes, but they want to continue to look at
14 the science and find out if this is the pathway
15 out of smoking or like a pathway in. I don't
16 think people think so much it is a pathway in, and
17 I don't really know, and so it is really--this is
18 not our intent, but to the extent that you came
19 here I guess from Virginia to talk about this I
20 just--when you made your testimony, I spoke to the
21 counsel to the Committee, and we are going to do
22 everything we can to make sure that this is fully
23 understood and that we won't hurt something that
24 could be a really great alternative to smoking. I
25 don't have your statement. The young lady who

1
2 testified--but it is very compelling what you had
3 to say and how your life has been transformed by
4 this technology, and so rest assured, this is what
5 I am saying.

6 GREGORY CONNOLLY: And so I just
7 wanted to note that in our written testimony we do
8 have a suggestion for amendments to the tobacco
9 product--

10 COUNCIL MEMBER GENNARO:
11 [interposing] That is the best kind of testimony
12 we can get when they just say this is how to say
13 it.

14 GREGORY CONNOLLY: In the event
15 that the Bloomberg Administration is very stuck on
16 keeping that made or derived definition, they can
17 add to that tobacco product vapor definition--a
18 tobacco product shall not include in the
19 legislations that says cigarettes or any product
20 approved by the FDA as a smoking cessation
21 treatment--it can say tobacco products shall not
22 include cigarettes, vapor products or any product
23 approved for smoking cessation for the FDA and
24 then we suggested an amendment that gives a vapor
25 product definition that encompasses all products

1
2 currently on the market whereas the New York State
3 law banning sales of ecigarettes to minors, that
4 is not a very good definition because it only
5 encompasses the little disposables that you can
6 buy at 7-11, but it would not encompass this
7 liquid that I buy to put in mine, and so we would
8 encourage you to not use the state law, but to
9 look at the definition that we suggested that is
10 currently being implemented in sales to minors
11 bans in Oklahoma.

12 COUNCIL MEMBER GENNARO: Thank you
13 very much.

14 GREG CONNOLLY: Thank you.

15 CHAIRPERSON ARROYO: So we will
16 work on it. Sandra, Louise, Sheila and Phil - - .
17 He is sitting there a long time. On deck, we have
18 - - Russell - - , Francisco Correa [phonetic],
19 Keith - - [phonetic] and Mr. G-A-D-D-I-S again.
20 Okay.

21 SANDRA MULLEN: Good afternoon, and
22 thank you very much, Chair Arroyo and the City
23 Council for allowing me to give testimony this
24 afternoon. My name is Sandra Mullen and I am a
25 senior vice president at World Lung Foundation. I

1
2 am submitting testimony in support of Intro 1020-
3 213 prohibiting the display of cigarettes and
4 tobacco products. World Lung Foundation just so
5 you know is a leading international organization
6 dedicated to reducing illness and death caused by
7 tobacco and we focus on other public health
8 issues. Ten years ago, I was director of
9 communications at the New York City Department of
10 Health when Mayor Bloomberg and then Commissioner
11 Tom Frieden [phonetic] decided to introduce a 100
12 percent smoking ban. At the time, people on both
13 sides of City Hall felt we were nuts, that we
14 would infringe on smokers' rights, that businesses
15 would suffer, a concern that we all know did not
16 materialize, but we stood firm risking serious
17 political capital, the mayor and Council Member
18 Quinn at the time decided that politics would take
19 a backseat and put forward a progressive piece of
20 legislation that has us all breathing cleaner air
21 today. The question then now is will we once
22 again put health and kids ahead of politics. A
23 reminder that in 2002 no country in the world was
24 brave enough to have an anti-smoking law as strong
25 as New York City's, within months Ireland, yes,

1
2 Ireland followed our lead. Today dozens of cities
3 and countries have pursued the example set by New
4 York City and more are on the way. As many have
5 said today as New York City goes, so does the
6 world. New York City leads, but we can also
7 learn. At World Lung Foundation I have the
8 privilege of seeing the best anti-smoking policies
9 around the globe. I am often out there pushing
10 New York City's 100 percent smoke free model
11 urging countries in Asia, Latin America, Africa
12 and Europe to follow our example, but I am here to
13 tell you something that no New Yorker, this one
14 included, wants to hear. Countries like New
15 Zealand, Singapore, Australia, Canada and we have
16 heard about others today as well are ahead of us.
17 Several are doing some things better than we are.
18 We can follow Canada's example in this case. They
19 have done what the World Health Organization has
20 recommended, which is to take down these displays
21 because they are plainly and simply advertising
22 and promotion. Canada has seen their youth
23 smoking rate drop as a result. Exposure to
24 tobacco marketing is a top predictor of youth
25 smoking, even more than peer pressure. We have

1
2 done a decent job of banning advertising in
3 regular channels like television, so the industry
4 has redirected its massive marketing budget to
5 unregulated channels like tobacco displays in our
6 corner bodegas, grocery stores, newspapers and
7 candy shops. Industry pays a premium for these
8 slick displays because they have research to know
9 that they work. They hook kids and seduce them
10 into thinking that cigarettes are as innocent and
11 normal as purchasing a pack of chewing gum. The
12 pro tobacco advocates who set aside the health
13 impact of smoking will argue that putting
14 cigarettes below the counter or behind curtains
15 will take away choice and destroy small business.
16 It sounds just like what they said in 2002 that
17 the smoking ban would destroy bars and restaurants
18 and the nightlife industry. Evidence, the corner
19 of smart policy, showed that this did not happen.
20 We have compelling evidence globally to know with
21 confidence that these display restrictions work.
22 Opponents have the same kind of hollow threats of
23 economic doom we hear every time tobacco
24 restrictions are considered. At World Lung
25 Foundation we wholeheartedly support this bill.

1
2 Save our kids from years of addiction to tobacco
3 by relegating the product to the bottom where they
4 belong, out of sight and hopefully eventually, out
5 of mind. Tobacco deserves nothing less, and our
6 kids deserve so much more. Thank you.

7 SHEILA FEINBURG: Good afternoon,
8 and thank you, Council Member Arroyo and Gennaro
9 and Inez Dickens for sticking around. It's a long
10 afternoon. Thank you so much. My name is Sheila
11 Feinburg and I am the executive director of the
12 New York City Coalition for a Smoke Free City. We
13 support neighborhood efforts for long term change
14 and believe that all New Yorkers have the right to
15 breathe clean, smoke free air where they live,
16 work and play. I don't want to repeat the
17 speakers who have already gone before me, but I do
18 want to make a couple of points, and I do want to
19 highlight some of the work that we have been doing
20 on this issue. In 2011, the coalition
21 collaborated with the American Lung Association of
22 the northeast on a series of youth led events
23 called Take a Walk in our Shoes, and these tours
24 highlighted that 75 percent of tobacco retailers
25 are within 1,000 feet of a school, and we also

1
2 worked with the Asian Americans for Equality, and
3 they released a report that looked at tobacco
4 sales and displays in pharmacies and AAFE found
5 that of the pharmacies they surveyed, 71 percent
6 not only prominently displayed tobacco products
7 but had them closely placed to candy, gum and
8 other products typically purchased by youth. New
9 York City's youth as you already heard today are
10 bombarded with tobacco products and marketing. I
11 just want to take one second. I know that the
12 panel before us was talking about ecigarettes, and
13 I just wanted to make sure that that didn't cloud
14 the issue that we are talking about here--the
15 three bills that we are talking about--so I just
16 wanted to put that out there as well. We feel
17 strongly that the proposals being discussed today
18 will address this critical public health issue
19 directly, and just again, I don't want to repeat
20 what people have said, but I do want to say that
21 Intro 1021 will level the playing field for
22 retailers who play by the rules and do not sell
23 loose or unstamped tobacco products by increasing
24 the penalty for those that do, and we feel
25 strongly that this will discourage retailers from

1 evading tobacco taxes or selling without a
2 license, and intro 250 takes the important step of
3 raising the minimum age to purchase tobacco
4 products to 21 targeting both youth access and
5 addiction. Research shows that 90 percent of
6 people purchasing cigarettes for minors are 18,
7 19, or 20 years old, so I just wanted to echo that
8 point. Finally, I want to say while opponents of
9 tobacco control are often vocal, well-funded, or
10 both, public opinion polls show that 59 percent of
11 New Yorkers support prohibiting tobacco displays
12 in stores and 67 percent support raising the
13 minimum age to purchase tobacco products to 21.

14 In closing, despite the great progress, I think we
15 would all agree in this room and the folks who
16 have spoken before me, that we all take credit and
17 great pride and we are very proud of that success.
18 Tobacco use still causes hundreds of thousands of
19 preventable deaths in the United States annually
20 including thousands of lives lost here in our
21 hometown in New York City. For over 20 years, the
22 Coalition for a Smoke Free City has been a proud
23 supporter of the leadership and historic tobacco
24 control work for New York City, and we are ready
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to make history again.

LOUISE FELD: Good afternoon. My name is Louise Feld, and I am a senior policy associate at the Citizen's Committee for Children. CCC is a multi-issue child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated and safe, and with that mission, we are strongly in support of the three proposed measures being discussed here today. CCC would like to thank the Chairwoman and the members of the Health Committee for holding today's hearing, and we are also very grateful to the Speaker, the Mayor and the Department of Health and Mental Hygiene and the Council for their ongoing commitment to reducing smoking particularly by youth. I have submitted written testimony, and much of what is in my testimony about the statistics about youth smoking has been very ably covered by speakers before me, so I would just add an additional piece of data from our bi-annual book, keeping track, which is a comprehensive book about child well-being indicators. So our data show that in the rate of youth smoking among high school students gets

1
2 larger with each grade, but in 2011 it was clearly
3 much higher among 12th grade students than among
4 students in the 9th through 11th grades, so we see
5 that the proposed legislation to increase the
6 smoking age would make it more difficult for these
7 particular high school students, many of whom are
8 18 years old, to access tobacco products. I will
9 just add that because of all the statistics that
10 we have heard about today and those included in
11 our written testimony the evidence that we have
12 heard about smoking's dangers and the evidence
13 about similar measures successfully enacted in
14 other jurisdictions we really do assert that these
15 proposals will profoundly and positively impact
16 the health of the next generation of New Yorkers.
17 We know much more about the inherent dangers of
18 smoking than we knew a generation ago, and it
19 would be quite irresponsible not to use this
20 knowledge to protect the health and the next
21 generation of New Yorkers. These common sense
22 proposals do just that. We are grateful to the
23 mayor's office and the Council for your diligence
24 on this issue and we look forward to working
25 together to ensure these proposals are voted into

1
2 law. Thank you for the opportunity to testify
3 today.

4 PHIL KONIGSBERG: Good afternoon.
5 My name is Phil Konigsberg. I am a member of
6 Queens Community Board 7, the vice president of
7 the Bay Terrace Community Alliance and a community
8 advocate for the Queens Tobacco Control Coalition.
9 My testimony that you have was prior to me
10 realizing that age 21 was going to be coming up
11 for today, so I am just going to take parts of my
12 testimony--the rest you have there. First, I
13 would just like to say that this has been 25
14 years that I have been coming to the City Council
15 hearings. It is great to see this come about. I
16 would like to just give some recognition to former
17 City Councilman Stanley Michaels [phonetic] from
18 back in the 70s or actually the 80s that he was
19 here, and Councilman Gennaro, you reflect a lot of
20 his inspiring and comments here today, and I want
21 to thank you for that.

22 COUNCIL MEMBER GENNARO: Thank you,
23 Phil.

24 PHIL KONIGSBERG: I am in favor of
25 all three proposals, 1020, 1021 and 250, so let's

1
2 make that clear if you didn't figure it out yet.
3 I would also like to recognize Mayor - - who is
4 mayor of the village of - - last year he actually
5 proposed and the village of - - passed a bill
6 prohibiting the display of tobacco products in all
7 retail stores in that village. As soon as the
8 tobacco industry found out about it, they sent an
9 army of litigation to that town and was taking
10 them to court in federal court to prohibit that
11 from going through, and the village of - - did not
12 have enough finances to fight a never ending
13 battle that would be brought by the tobacco
14 industry, and I am waiting here. I don't know if
15 I see anywhere here from the tobacco industry, but
16 I am sure once this gets to the point where it is
17 going to be a law hopefully, you are going to have
18 people coming out from the woodwork. They will be
19 coming out from the wall right through there to
20 knock this down. Please be aware of that. I have
21 only got 42 seconds left, so let me just say that
22 the tobacco industry knows that the best way to
23 attract new smokers is to recruit them when they
24 are still impressionable and have a sense of
25 immortality. They know that seeing images of

1
2 tobacco products on a daily basis is perceived as
3 smoking being a normal behavior in society and are
4 susceptible to experimenting with its use before
5 they are old enough to buy cigarettes. I recall
6 seeing photographs of cigarette advertisements
7 placed on a huge mobile billboard truck that was
8 strategically parked in front of schools and
9 playgrounds all day long so they were seen by
10 school kids going in and out of school and they
11 stay there. Basically that would be the job.
12 The guy would drive the truck there, stay there
13 the whole day, so the kids from school age would
14 be seeing big tobacco advertisements showing how
15 great, how pleased it was, how sexy it was. We
16 know that is all being done by the tobacco
17 industry, and that is it. Thank you very much.

18 COUNCIL MEMBER GENNARO: I want to
19 thank this panel for its very good testimony.
20 Thank you, Phil, for your personal remarks
21 regarding me and Stan who is a great guy--a
22 blessed memory who I served with for many years.
23 I did have a question for Ms. Mullen regarding
24 the other two bills. It looks like you took a
25 stance on 1020.

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SANDRA MULLEN: [off mic]

COUNCIL MEMBER GENNARO: I just want that on the record - - . I want the World Lung Foundation on the record in support of all three, if that is your position.

SANDRA MULLEN: We do support all three bills. We just wanted to talk about the specific--

COUNCIL MEMBER GENNARO:
[interposing] Great. Thank you. Thank you very much. Great job.

CHAIRPERSON ARROYO: Thank you. Keith - - , Russell Wishtart [phonetic], Francisco Correa [phonetic], Daniel Carpas [phonetic] and Mr. G-A-D-D-I-S. Are you here? - - On deck before you begin gentlemen--we are missing one. Keith? Russell? Francisco, Daniel--Daniel going once. Daniel, join us. Daniel, please. You're up. Yes, join the panel. On deck before you begin, we have Julianne Heney [phonetic], John Lasorsa [phonetic] and Charles Maseo [phonetic]. You are on deck. Gentlemen?

KEITH MORTENER: Hello. Thank you very much for having me today. My name is Keith

1
2 Mortener [phonetic]. I am a resident of the five
3 boroughs. Currently I am opposed the bill 1021,
4 which consists of flavors, banning ecigarette
5 flavors. I have been a fellow vapor for now going
6 on using ecigarettes for almost four years. I
7 quit smoking after 18 years from an electronic
8 cigarette. I was a menthol smoker, and currently
9 use coffee flavored eliquids for the past almost
10 four years now. I am opposed to the bill. It
11 saved my life I feel. It saved my mother's life
12 and many people I know--electronic cigarettes. I
13 feel that this would do more harm than good in the
14 eyes of people that are using electronic
15 cigarettes today. Thank you very much.

16 RUSSELL WISHTART: Hello. My name
17 is Russell Wishtart, and I am a resident of
18 Manhattan. Thank you for having the opportunity
19 for us to speak today. I am going to keep my
20 testimony very short because it seems like you are
21 such a reasonable and open minded group of
22 legislators. I would currently strongly oppose
23 1020 and 1021 because it does leave the ability to
24 have vapor products thrown in with tobacco
25 products and have flavored eliquid banned. You

1
2 seem to be extremely receptive to the testimony
3 earlier from CASAA to amend this legislation to
4 specifically exclude vapor products. If that was
5 done, I would have no problem supporting this
6 legislation, and I yield the remainder of my time.

7 FRANCISCO CORREA: Hello. My name
8 is Francisco Correa. When I picked up an
9 ecigarette about four years ago, I had no
10 intention of quitting. I had smoked for more than
11 35 years and tried to quit so many times before
12 that I just quit trying to quit. Instead I was
13 looking to cut down on smoking and looking for an
14 alternative to traditional tobacco. I was shocked
15 when the first day that I tried an ecigarette was
16 the last time I smoked. My story isn't unusual.
17 There are tens of thousands of people like me who
18 have made the switch and our numbers grow daily.
19 Ordinances 1020 and 1021 would redefine
20 ecigarettes as a tobacco product which will
21 subject ecigarettes to a whole host of taxes and
22 laws. Treating ecigarettes the same as treating
23 traditional packed tobacco products will not
24 protect the public. In fact it will have
25 devastating impact on the ecigarette market within

1
2 the five boroughs, leaving consumers who live,
3 work, shop in New York City with few if any
4 alternatives. Ordinance 1021 would ban the sale
5 of any flavors other than tobacco, menthol,
6 wintergreen and mint. While I understand the
7 Council has passed this law limiting traditional
8 tobacco products to tobacco and menthol flavors, I
9 firmly believe this is the wrong approach for
10 ecigarettes. Time and time again, we hear people
11 say the wide variety of flavors is one of the
12 things that makes ecigarettes so successful in
13 keeping them from smoking. Especially in the
14 beginning I chose not to use tobacco, menthol
15 flavors in an effort to distance myself from
16 smoking. In fact if the only flavors available to
17 me had been tobacco and menthol I honestly think
18 that ecigarettes would not have been nearly as
19 successful for me. There is a good chance I would
20 not have been able to make the transition from
21 smoking to ecigarettes. For the forgoing reasons
22 I respectfully request the Council not pass this
23 ordinance. Thank you.

24 DANIEL CARPAS: I don't know if I
25 have ever been cool. From the time that I was a

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member of Community Board 7, a few decades ago--

COUNCIL MEMBER GENNARO:

[interposing] Which borough?

DANIEL CARPAS: Manhattan 7.

Daniel Carpas. Smoking was allowed at meetings.

CHAIRPERSON ARROYO: State your

name for the record.

DANIEL CARPAS: Daniel Carpas,

former member of Community Board 7 in Manhattan.

Smoking was allowed in meetings, then we got moved

to the back of the room, and then I left the

community board. Decades my nieces and nephews

growing up knew it was not cool to smoke. Uncle

Danny, why don't you quit? I couldn't, wouldn't

and didn't want to. Four years ago I found

electronic cigarettes while trolling the web late

at night. I knew there was something there that

nobody had ever seen before, something that was

growing from the ground up, not being introduced

by any major corporation. These people here along

with me have seen the growth of this industry.

What happened? The first ones were tobacco, and

yes, we loved it. The electronics, the sensation,

it satisfied us. It changed us. Our body

1
2 chemistry, our brain chemistry was changed. As
3 time went on we needed more power, this is one of
4 the latest models. This is still not cool. If I
5 am standing in line in a movie theater I do not
6 use this because people may think something weird.
7 Can you put marijuana in it? No, it doesn't work
8 with marijuana. If I put tobacco flavor in there,
9 then they would go it's just like smoking, isn't
10 it? No, I use--in this case it's Turtle. One of
11 the people out there sells it. Turtles, you know
12 those chocolate nut things--

13 COUNCIL MEMBER GENNARO: No, I
14 don't. Sorry.

15 DANIEL CARPAS: You don't know
16 turtles. It's chocolate - - . That is the flavor
17 I use. I like it and when people smell it, they
18 go hmm, that is nice. It satisfies me, no
19 secondhand smoke, except they get a little--I am
20 still not cool.

21 CHAIRPERSON ARROYO: I don't know,
22 Danny, but those suspenders rock.

23 DANIEL CARPAS: Thank you. Late at
24 night.

25 CHAIRPERSON ARROYO: I think that

1
2 early I don't know if you were here when the
3 Commissioner was testifying and one of the
4 questions that was posed was the concern that has
5 been raised regarding the ecigarettes, the vapors,
6 alternatives, and I think somebody gave me the
7 green light to use all three to refer to this.
8 The administration is amenable to revisiting
9 language to clarify any ambiguity that there could
10 be in the legislation that would impact the
11 industry, so your concerns have been heard.
12 Before the meeting actually I had a meeting
13 yesterday with someone that brought it to our
14 attention, so we were kind of ahead of the
15 Commissioner on it.

16 COUNCIL MEMBER GENNARO: Also, I
17 just wanted to see who is still here from the
18 Department of Health. Just raise your hand. You
19 guys are all from the city Department of Health.
20 So I just want to let you guys know that not only
21 are we very receptive to what you are saying--

22 CHAIRPERSON ARROYO: [interposing]
23 We don't let them leave the room.

24 COUNCIL MEMBER GENNARO: --this is
25 heard by many ears from the people in the

1
2 Department of Health and you have my commitment,
3 and if you were here earlier, you can see I can be
4 a little bit of a tough guy sometimes, but - -
5 certainly advocate for this and make sure that we
6 get this all squared away. Thank you so much - -
7 very, very compelling testimony. I got to check
8 out the turtle thing.

9 CHAIRPERSON ARROYO: Julianne, John
10 and Charles, are you here? Coming up Spike
11 Babaian, [phonetic], David Ross, Antoinette Lansa
12 [phonetic] and Lisa Gardener [phonetic]. You are
13 up next guys. And if I butcher your name, please
14 correct it for the record when you speak. Oh,
15 more young people. Hi. Speak into the mic,
16 identify yourself for the record. He is going to
17 put a clock on you, three minutes.

18 CHARLES MASEO: I'm Charles Maseo.
19 I believe that these changes should be made for
20 what I think is a pretty simple reason. It saves
21 lives. Some people go on about spending money to
22 find a way to prevent cancer, which is great, but
23 I know a way. Don't smoke. Now here is the
24 problem with that solution. When you advertise
25 smoking to children from an early age, you are not

1
2 even giving them a choice. I understand that the
3 world doesn't revolve around the right thing, even
4 at my age, and most of the time it really doesn't,
5 but that shouldn't stop us from trying. I have no
6 story of family members with illness who have died
7 due to smoking related illnesses. I simply don't
8 want to experience that, as I am sure no one else
9 does. If children aren't exposed to smoking, they
10 are less likely to smoke, and if it is more
11 difficult to obtain tobacco products, I don't have
12 to watch my friends and classmates kill themselves
13 in such an easily avoidable way. On behalf of a
14 friend who could not make it, I actually have a
15 statement from her. I am here today because I am
16 tired of seeing tobacco advertising everywhere I
17 go. Tobacco advertising is the reason my mother
18 started smoking at 14 years old, and it is also
19 the reason she is suffering from emphysema today.
20 Tobacco retailers average about 18 ads per store.
21 Do you see 18 ads for any other product that is
22 being sold at these stores? No. These
23 advertisements have affected me and my friends and
24 I have seen enough. I have seen enough of my mom
25 barely able to breathe and needing a nebulizer at

1
2 least once a day. I see my mom struggling for a
3 breath and I think to myself, why? I recently
4 asked her if you could choose to never pick up a
5 cigarette and be free of this terrible disease
6 would you? She looked me in the eyes filling up
7 with tears and through catching her breath she
8 mumbled yes. Tobacco companies have caused
9 nothing but pain, and it must stop now. I will
10 take the next step in stopping these deadly
11 products by supporting the proposal. Council
12 Members, how would you feel if you were close to
13 losing someone due to a product that tobacco
14 companies say is not harmful, yet kills 1200
15 people a day?

16 JULIANNE HENEY: Hi. My name is
17 Julianne. I am here because my grandparents both
18 started smoking from a very, very young age and
19 now my grandfather now has lung cancer from it,
20 and my grandmother still smokes at least three
21 packs because the nicotine is so addictive she
22 can't stop, and it is actually killing her
23 husband, and I am pretty much watching her kill
24 him, and it is absolutely ridiculous, as well as
25 killing herself. I think this proposal is the

1
2 best thing to determine youth from becoming
3 smokers and having a similar thing happen to them.
4 I also think increasing the age limit to 21 to
5 purchase tobacco products will limit the access
6 teens have to these products.

7 JOHN LASORSA: Hi. I am John
8 Lasorsa, and I have been fighting big tobacco with
9 reality check for two years now. Did you know at
10 least 75 percent of kids including me and my
11 friends, we go into convenience stores at least
12 once a week. When we walk in the stores we are
13 bombarded with tobacco marketing, packages with
14 bright boxes, and they are placed right next to
15 candy. My seven year old brother his favorite
16 candy is Reeses. Last week we went into a CVS and
17 right next to the Reeses was the power wall.
18 Later on in the car he was talking about smoking
19 cigarettes. It is a proven fact that youth are
20 twice as likely to recall advertisement as adults.
21 In New York State, 22,500 youth become daily
22 smokers every day. The display ban will help
23 decrease the amount of youth that become smokers.
24 Throughout my two years in reality check, I have
25 had my eyes opened to big tobacco's marketing

1
2 tactics, and I have seen enough. I hope you also
3 have seen enough and will help support us in
4 taking the next step.

5 CHAIRPERSON ARROYO: Thank you for
6 your time and for-- do you guys have homework? We
7 can give you a pass on homework too. I think we
8 are going to set a precedent here. Thank you for
9 taking the time to come and share your insight
10 with us. We really do appreciate it. Thank you.

11 [applause]

12 CHAIRPERSON ARROYO: Spike, David,
13 Antoinette, Lisa. Yes, sorry about that. On deck
14 we have Marlene Fox, Jacqueline Bitterman, Tarique
15 Rumey [phonetic], Tiffany Brown [phonetic]. You
16 are on deck. Okay. We have an advertisement up
17 here for turtles, so we will give that to Council
18 Member Gennaro. Identify yourselves for the
19 record, speak into the mic, and you may begin.

20 SPIKE BABAIAN: Thank you, Health
21 Committee and Chairwoman Arroyo. I thank you for
22 meeting with me yesterday on last minute notice.
23 My name is Spike Babaian. I am president of the
24 Nation Vapers Club. We are a consumer
25 organization for electronic cigarette users. I am

1
2 also a store owner here in New York City. I own
3 an electronic cigarette store in New York City.
4 It is actually the only electronic cigarette
5 store, physical store, in New York City. I am
6 here obviously for a number of reasons. Since I
7 am aware that you are already willing to work with
8 the bill to try to hopefully exclude electronic
9 cigarettes, I just wanted to briefly say since
10 there is some concern about the health of
11 electronic cigarettes, I also do research on
12 electronic cigarettes. I have written two papers
13 as a co-author in peer reviewed scientific
14 journals and we are working on a new study on
15 cardiopulmonary disease in electronic cigarette
16 users. Most people who use electronic cigarettes
17 use them to prevent disease caused by smoking.
18 Obviously, the intention here in this bill is to
19 stop people from smoking cigarettes, and as you
20 have heard ecigarettes seem to do that. I do want
21 to say that many studies have shown that even
22 people unmotivated to quit smoking who had no
23 intention to quit smoking either reduce or
24 completely stop using cigarettes when they start
25 using electronic cigarettes. There were a number

1
2 of studies that - - some on the U.S. and some in
3 other countries. So the question of whether or
4 not it does I mean the research speaks for itself.
5 I did e-mail a bunch of you different research
6 papers and there is some in your packet also that
7 show this. The first study that we did was on
8 indoor air quality with electronic cigarettes to
9 show that they don't produce smoke because that
10 was a very big concern of ours that ecigarette
11 users would be forced to stand with smokers
12 outdoors, and we showed that ecigarette vapor is
13 not what is in smoke. There is a very significant
14 different in the quantity of the toxins in the
15 vapor as opposed to the smoke. The levels in
16 vapor are not toxic. So I did want to bring that
17 up because I am sure that we will be back here in
18 about a year to prevent indoor ecigarette use
19 because New York wants to prevent a lot of things.
20 I just did want to bring that up and make it
21 clear. If any of you has questions on the safety
22 of electronic cigarettes, I do encourage you to
23 reach out to people and ask them for copies of
24 studies before making any laws on them, and I
25 appreciate that you are willing to consider the

1
2 amendment to exclude electronic cigarettes and
3 vapor products. This helps a lot of people, and
4 they need to be able to have easy access to the
5 product. The only other thing I wanted to say
6 that as a store owner, we have a number of elderly
7 people who do not have internet, who do not know
8 how to use a computer. They don't even really
9 know how to turn it on. A lot of mothers and
10 grandmothers and they use electronic cigarettes.
11 They have a hard time learning, but they learn how
12 to use them, and these people cannot order their
13 electronic cigarettes online, so if this law were
14 to pass the way that it is and they couldn't come
15 into our store and purchase ecigarette liquid,
16 they would go to the corner store and buy
17 cigarettes. They smoked for 50, 60, 70 years some
18 of them including Danny with his wonderful
19 suspenders, many, many years, 50, 60 years, and it
20 is very hard when you have started using this to
21 not have access to the product. That is it.

22 Thank you.

23 DAVID ROSS: Hi everyone. My name
24 is David Ross. I think everybody has gone through
25 a lot of the legislation type talk, but I just

1
2 wanted to share a personal story. About less than
3 a year ago, my dad passed away unexpectedly. It
4 wasn't through smoking. He wasn't very healthy.
5 A few months later I learned my mom has stage four
6 lung cancer from smoking. It has been really hard
7 for me the last year. I was a 20 year smoker. I
8 started when I was 14 and as soon as I picked up
9 my first electronic cigarette I got this big fancy
10 one here, I was able to quit instantly that day.
11 I haven't touched a cigarette since. I have no
12 desire to. They smell disgusting to me now. So
13 with the electronic cigarette I started out with
14 some tobacco flavors. My mom gave me my first
15 one. She wanted me to quit, and I thought it was
16 kind of gimmicky. It was okay. but once I got
17 some good juices and some good flavors, that was
18 really when I was able to quit. I just didn't
19 want to see myself on the same path as my mom that
20 she is on now. She is stag four. She is not
21 going to be around too much longer, so that is
22 just kind of a personal story that I wanted to
23 share with everyone.

24 ANTOINETTE LANSA: Hi. Good
25 afternoon. My name is Antoinette Lansa. I was a

1
2 smoker for 15 years, a pack a day from the age of
3 15. In late 2008, I discovered electronic
4 cigarettes, and it forever changes my life not
5 only because I made the switch to electronic
6 cigarettes but because I found great interest in
7 becoming a vendor and have been a vendor of
8 electronic cigarettes since 2009. I would love to
9 be able to put a store into Manhattan as well, but
10 the way that the current ordinance stands, the
11 vast, vast majorities of the flavors that I sell
12 are non-tobacco, non-menthol flavors and would
13 therefore not make me very competitive in the
14 marketplace. In addition I just want to say that
15 I have blueberry and I love it. That is it.
16 Thank you.

17 LISA GARDENER: Hi. My name is
18 Lisa Gardener. I am an ex-smoker. I smoked for
19 13 years. I tried practically everything to stop
20 smoking regular gum that New York City would send
21 me for free, the patches. My doctor tried to
22 prescribe me something. Absolutely everything--I
23 tried cold turkey. I gained 20 pounds, wasn't
24 healthy at all, and I was introduced to the
25 ecigarette last year, and it helped me stop, and I

1
2 believe that if the ecigarette was not available
3 with flavors I don't think I would be able to stop
4 period. Please do not take away the flavors from
5 the hundreds of thousands or millions of New York
6 City smokers who need an innovative way to break
7 their habit. Thank you.

8 CHAIRPERSON ARROYO: Thank you. I
9 think you heard the previous comments regarding
10 not so much the City Council willingness to look
11 at the language regarding, and its unintended
12 consequences, it is the administration is willing
13 to do that. That is what the Commissioner
14 testified to. So I would imagine that there will
15 be outreach to individuals to help inform how that
16 language should read and we look forward to your
17 participating in that. So thank you for being
18 here. I have been remiss in acknowledging that
19 Council Member Dickens joined us and she filled in
20 for me for a few minutes. Thank you, Inez. Thank
21 you. To thank the committee staff for their
22 incredible work--they have been really, really
23 busy over the last several months and they have
24 had a lot of fun preparing for this hearing--Dan
25 Hayfitz [phonetic] to my right, Crystal Goldpon

1
2 [phonetic] to his right, and Krillian Francisco
3 [phonetic], who I thought was here, so thank you
4 guys for your work. Marlene Fox, Marlene?
5 Tarique, T-A-R-I-Q-U-E. No? Tiffany Brown? Come
6 on up and I think it's Phong [phonetic] is the
7 last name? Jacqueline Bitterman, is she still
8 here. Anybody else in favor? Can I have some
9 more. I think it is G-E-O. it is hard to make
10 out--something Waterloo [phonetic], and then I am
11 going to call up a couple of others Barbara
12 Sullivan [phonetic], come on up, Dr. Nicole Harris
13 [phonetic], Hollingsworth [phonetic] and Micah
14 Berman [phonetic]. Come on up. Don't be shy. We
15 need another chair, sergeant. Please state your
16 name for the record. You may begin when you are
17 ready. We can start from the end over here.
18 Thank you. Go ahead.

19 TIFFANY BROWN: Good evening. My
20 name is Tiffany Brown, and I am an organizer with
21 the New York Public Interest Research Group,
22 NYPIRG. NYPIRG is the state's largest student
23 directed, non-partisan research and advocacy
24 organization. Our board of directors consists of
25 college and university students elected from

1
2 campuses with NYPIRG chapters from across the
3 state. We would like to thank the City Council's
4 Committee on Health for holding this hearing
5 today. NYPIRG will comment on the three proposed
6 bills---intros 250-A, 1020 and 1021 separately.
7 We believe that it will benefit the city to
8 consider these as separate initiatives. In short
9 we urge your support for Intros 1020 and 1021, but
10 we urge your opposition in Intro 250-A. Youth
11 smoking is clearly a problem that must be
12 addressed; however, NYPIRG believes the proposal
13 to raise the tobacco purchase age to 21 years old
14 while well-intentioned is misguided. 18, 19 and
15 20 year olds are adults. They are legally old
16 enough to vote, sit on juries, enlist in the armed
17 services, make and enforce contracts and run for
18 mayor. The data is clear that nearly 90 percent
19 of adult smokers start before they turn 18 years
20 old age. Two studies out of Great Britain are
21 being cited by those in favor of raising the
22 tobacco purchase age; however, the reduction in
23 youth smoking rates was not attributed in full to
24 the purchase age law. Moreover, the British law
25 raised the purchase age from 16 to 18, not 18 to

1
2 21 as the City Council is considering doing.
3 There is a world of difference between allowing
4 children to buy tobacco as had been the case in
5 Britain, which is already illegal in New York and
6 preventing adults from purchase. - - 90 percent
7 of smokers will start before they hit 18 years of
8 age. Moreover adults including those who are 18,
9 19 and 20 should be treated as adults for purposes
10 of tobacco policy. Instead public policy efforts
11 should be focused on preventing manipulative
12 tobacco marketing that targets adolescents and
13 young teens. NYPIRG opposes Intro 250-A on these
14 grounds. Young people start smoking because of
15 constant and appealing tobacco marketing.
16 According to the 2012 U.S. surgeon general's
17 report, preventing tobacco use among youth and
18 young adults scientific evidence consistently and
19 coherently points to the intentional marketing of
20 tobacco products to the use as being a cause of
21 young people's tobacco use. Research shows that
22 the more tobacco advertising kids see, the more
23 likely they are to start smoking. One of the most
24 pervasive and dangerous marketing tools that
25 tobacco industries use is the power wall, a large

1
2 display of tobacco products located behind the
3 counters of tobacco sellers, such as bodegas,
4 convenience stores and pharmacies. Power walls
5 prompt impulse purchases, attract new tobacco
6 users and thwart attempts to quit and are often
7 next to candy, gum and other products. In
8 conclusion, thank you for holding this hearing.
9 NYPIRG looks forward to working on promising
10 proposals to restrict tobacco marketing that
11 aggressively targets the underage youth market and
12 empowering youth to choose not to smoke through
13 public education projects. Thank you.

14 JEFFREY PHONG: Good evening I
15 think. My name is Jeffrey Phong [phonetic], and I
16 am a professor of psychology and of public health
17 and health systems at the University of Waterloo
18 located in Waterloo, Ontario, Canada. So I have
19 come here from Canada on my own expense to support
20 the bills before you, but especially, I want to
21 talk about the display ban because I head an
22 international tobacco control policy evaluation
23 projected called the ITC project that has for the
24 last ten years conducted research on evaluating
25 tobacco control policies in 22 countries--over

1
2 half of the world's population, over 70 percent of
3 the world's tobacco users. We have seen from
4 Canada and throughout the world the leadership of
5 New York City and this administration in the fight
6 against the number one killer not only in New York
7 City or state or the U.S., but also throughout the
8 world. I won't belabor all of the statistics on
9 that, but suffice it to say that the leadership of
10 New York City in global tobacco control has been
11 impressive and also much worthy of support, and
12 this also includes the bills before you. Although
13 I only have time to talk about the POS display
14 ban, all three of these bills before you are
15 significant actions that are designed and will
16 success likely to succeed in the reduction in
17 smoking among youth, and also I should point out
18 also among adults, and that is something that
19 hasn't been talked about today. Although the
20 emphasis is on youth, it is also the case that
21 adults are going to benefit from the display ban.
22 90 percent of smokers in the United States, in
23 Canada, Australia, United Kingdom regret ever
24 having started smoking, and these are adults who
25 started as kids. so in addition, 40 to 60 percent

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2 of smokers at any time are either in the middle of
3 a quit attempt or are actively considering
4 quitting. That is an extraordinary amount of
5 people considering quitting, and if you are
6 anything like me when there is something very
7 tempting around to eat, let's say you are trying
8 to lose weight, and there is a chocolate cake
9 sitting in front of you, we absolutely know the
10 fact that temptation is when something is in
11 sight, it is also much more likely to be engaged
12 in or to be consumed or to be smoked. This is
13 true for cigarettes as well as for foods that we
14 have all experienced. So therefore in our work in
15 the ITC project and we do work in U.S., Canada,
16 U.K., Australia, we have random samples and so the
17 representative national populations of smokers.
18 What we have demonstrated is that in jurisdictions
19 where they has been a point of sale display ban,
20 they are 2.5 times less likely to report having
21 purchased unplanned cigarettes. So when smokers
22 go into a convenience store let's say, they aren't
23 planning on smoking, and yet there it is sitting
24 right in front of them. So therefore I would like
25 to emphasize in addition to the focus on youth the

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2 fact that the POS display ban is also going to
3 have significant impact on facilitating quitting
4 on adult smokers, who by the way throughout the
5 world, we studied this, the majority of adult
6 smokers support POS display bans and in fact after
7 they are implemented support either stays the same
8 or significantly increases, so for those reasons
9 for the international view and from our data from
10 which I have prepared a more extensive written
11 statement, the point of sale display ban is a
12 strong measure, and the evidence supports it.
13 Thank you.

14 BARBARA SULLIVAN: Good pre-evening
15 [phonetic] as they say in the Big Bang Theory. My
16 name is Barbara P. Sullivan. I prepared this
17 statement when the other two bills were not
18 publicized, so I would like to go on record as
19 saying I support all three bills, although the
20 statement refers to the tobacco display
21 restriction bill. Born and raised on Staten
22 Island, I am a wife, a mother, a grandmother, a
23 non-profit director and a tobacco control and
24 prevention advocate. I am also a former smoker.
25 I smoked my first cigarette at the age of 13. I

1
2 used to take them from my mother's purse and light
3 up at the bus stop on my way to school. Both my
4 parents were smokers. In the days when they
5 started, they didn't know the harm that cigarettes
6 could do or the fact that nicotine was an
7 addictive substance. After a heart attack at age
8 40, my father switched from cigarettes to little
9 cigars called cigarillos. They were supposed to
10 be less harmful. He smoked those until he had a
11 second heart attack at the age of 60, the one that
12 killed him. My mother stopped smoking on the day
13 my father died, but I continued for another ten
14 years. I am also a trained smoking cessation
15 counselor. I have helped countless smokers to
16 quit with the help of nicotine replacement therapy
17 patches and gum. One person I can't seem to help
18 is the person I love the most, my husband of 34
19 years. To paraphrase Mark Twain he is an expert
20 on quitting. He has done it 100 times. I worry
21 every day about losing him the way my mother lost
22 my father. In my work and in my neighborhood on
23 Staten Island, I see so many young men and women
24 with cigarettes in their mouths. I see the power
25 walls of cigarette packs in delis and convenience

1
2 stores that teens and younger children visit every
3 day. The proposal on tobacco display restriction
4 that has brought us here today won't help my
5 husband or other smokers to quit--although it
6 might--but it can help young people not to pick up
7 the habit and send a message that smoking is not
8 only deadly, but also unacceptable. If it stops
9 even one of them from becoming a replacement
10 smoker and dying prematurely from tobacco related
11 causes, it is the least we can do for future
12 generations.

13 MICAH BERMAN: Madam Chair and
14 members of the Committee, I thank you for the
15 opportunity to testify in support of these three
16 measures. My name is Micah Berman, and I am a
17 professor of public health law and I have worked
18 with communities around the country to develop and
19 implement effective tobacco control policies and
20 then to defend them in court. This summer I will
21 be starting a new position as a professor at Ohio
22 State University, but I am here also speaking in
23 my personal capacity at my own expense. You have
24 heard a lot so I just want to briefly mention two
25 documents that I will submit with my written

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2 testimony and then briefly address some of the
3 legal issues that have been mentioned. First I
4 encourage you to review the 2012 U.S. surgeon
5 general's report, which reviewed hundreds of
6 hundreds of scientific studies, and its main
7 conclusion was that tobacco industry marketing is
8 a key factor in causing youth smoking and it
9 particularly singled out tobacco product displays
10 and price discounting two of the measures that you
11 are considering today. Secondly, I want to direct
12 your attention to the 2006 judicial opinion in
13 United States versus Philip Morris [phonetic]. In
14 that decision all of the key players in the
15 tobacco industry were found to be racketeers who
16 had illegally conspired over decades to deceive
17 the public and in particular deceive the public
18 about marketing to youth. The judge in that case
19 found that not only had they deceived the public,
20 they were continuing even after the 1998 master
21 settlement agreement where they promised not to
22 target youth and that even in some ways that
23 targeting had increased, so we have heard a lot
24 about retailers today, and I just want to mention
25 that the key problem is coming not from the

1
2 retailers, but from the tobacco industry and that
3 is where we need to keep the focus and I think
4 that is what the measures that we are talking
5 about today do. On the legal front, I want to
6 briefly address first amendment concerns with
7 respect to the tobacco product display
8 restriction, and to put it briefly assuming that a
9 first amendment analysis is even needed, the
10 analysis breaks down to a balancing test between
11 the government's interest on the one hand and the
12 speech that is being restricted on the other hand.
13 In my view the balance could hardly be more
14 uneven. On the one hand you have the city's
15 interest in protecting youth from an addictive and
16 deadly product that kills up to half of its
17 regular users, on the other hand you have the
18 tobacco industry's interest in displaying their
19 products and doing so in a way that entices and
20 addicts the next generation of tobacco users, and
21 makes it harder for current tobacco users to quit.
22 All that is being restricted is a marketing
23 practice that conveys little if any actual
24 information, operates largely at a subliminal
25 level and has its primary impact on youth. The -

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2 - decision from the U.S. Supreme Court was
3 mentioned earlier. This is completely different.
4 That decision as was mentioned says that tobacco
5 industry needs to have a way to communicate with
6 legal adult customers in a way that does not
7 entice youth and under the tobacco product
8 display they will still have plenty of
9 opportunities to do so. They can still
10 communicate what products are available at what
11 price and they can even post advertisements, so
12 this is a completely different scenario, not to
13 mention the 2009 tobacco control act that gives
14 communities new and more powerful authority to
15 address these issues. So tobacco is a unique
16 product. It is unlike anything else, and the way
17 that it needs to be addressed needs to be
18 different. Again, I urge your support for all
19 three measures. Thank you.

20 CHAIRPERSON ARROYO: Thank you, and
21 doctor, thank you for coming all the way from
22 Canada. That is why we didn't mess with the clock
23 so much. Thank you. Okay. I didn't call up the
24 next panel. I apologize. Philip Rosemen
25 [phonetic], John Urban [phonetic], Christopher

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2 Mikovitz [phonetic], Sal Vario [phonetic] and
3 Romeo - - [phonetic]. I am looking for Romeo,
4 Sal, Chris, Sal, John, Philip. I see people
5 moving. Who is Phil? John? Sal? Come. This
6 way. And Romeo. We have five. You guys want to
7 swing around the table this way so we can give
8 them room to pull up as well? Thank you for your
9 patience and waiting so long. The next panel, and
10 it is the last panel, right, Elizabeth Garcia
11 [phonetic], Ian McGovern [phonetic], Candace - -
12 and Stewart Bowers [phonetic]. Gentlemen, handle
13 the mic by the base. They are kind of delicate.
14 State your name for the record and we will go in
15 order.

16 CHRISTOPHER MIKOVITZ: My name is
17 Christopher Mikovitz. I co-own a company in - -
18 New York called Cherry Vape [phonetic]. We
19 distribute parts and accessories of electronic
20 cigarettes globally. I got into this industry in
21 2009 by accident. I have a problem smoking. I
22 started searching around and finding it for my
23 friends and family and before I knew it it turned
24 into a business. Now we manufacture parts and
25 accessories that we export to the United States

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2 that are made here in New York. We ship them
3 globally. When we started, we had about five
4 flavors to our electronic cigarettes and by
5 request of our customers, it went up to probably
6 about 120, which was too hard to manage and we had
7 to lower it just down to about 70 because it was
8 easier to the most popular flavors. As soon as
9 people's taste buds came back they realized they
10 didn't want to taste or smell anything at all that
11 resembled a cigarette. When I heard about this
12 part in the bill when flavors would be
13 jeopardized, I am like who would want me to taste
14 tobacco? There has to be a mistake. There is no
15 reason for that. Another part of this is it is
16 not just New York State, it is not just New York
17 itself, it comes up all the time. I had a
18 wonderful interview with consumer reports about
19 the possibilities and the impact that ecigarettes
20 can do to the public. The interview went great
21 until it hit the news at the end of every news
22 media they added--or whichever news state or town
23 it was aired, they added to the bottom of it and
24 yes, the FDA does want to warn you that ecigs are
25 available in enticing flavors for children. Wait

1
2 a minute. We are adults here. I choose butter
3 toffee or caramel or cherry because I don't want
4 to taste tobacco anymore. I am not targeting a
5 child. I just don't want to smell like tobacco
6 anymore. You have all been very receptive of what
7 we have said today, and I am proud to be in New
8 York because I have spoke in Connecticut, and they
9 didn't really pay much attention to us, and I
10 really would like ask can New York City lead New
11 York State in the fact of reducing harm by
12 embracing something like this, instead of every
13 other state from week to week to week we have a
14 call to action to fight, the ban of it, the
15 coupling of it with tobacco and smoking areas,
16 flavors, taxing it, banning it online. Can this
17 Committee be the first committee in the United
18 States, the first city, New York the number one
19 place in the world lead the market in reducing
20 harm with electronic cigarettes? I thank you for
21 listening to my testimony. I thank you all for
22 understanding. Thank you very much.

23 JOHN URBAN: Hello. My name is
24 John Urban. I was raised in a house of non-
25 smokers, and after hearing all the facts and

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2 watching all the relatives suffer the consequences
3 of smoking I believed I would never touch tobacco,
4 yet at 14 years old I bought my first pack of
5 cigarettes, within a few months I was a pack a day
6 smoker, but each brand only kept my interest for a
7 brief time before I was disgusted by the taste and
8 moved on to something that I hoped would be
9 better. In college I began smoking hookah. I
10 enjoyed the variety of flavors and for a short
11 while gave up cigarettes entirely while smoking
12 hookah exclusively; however, because cigarettes
13 are a much more convenient method of nicotine
14 intake, I regressed back into my cigarette
15 addiction. This past September at age 21 I
16 ordered my first electronic cigarette kit with a
17 ten flavor sample pack and looked forward to
18 finally finding that perfect flavor. First, I
19 tried all the novelty flavors--coffee, vanilla,
20 chocolate and cherry, next were the menthols,
21 peppermint and mint tea. I saved the three
22 tobacco flavors for last and they were all
23 terrible, and I almost gave up on my transition to
24 vaping [phonetic] until I decided to go buy a pack
25 of Marlboro Lights. After just one cigarette I

1
2 realized that the ecig was not the problem. It
3 was the tobacco flavor. An estimated 45.3 million
4 people in the United States smoke cigarettes and
5 we all have very different tastes. Although it is
6 possible that some of us could enjoy using tobacco
7 and menthol exclusively I would not be one of
8 them. If it were not for the variety, I would
9 still be smoking traditional cigarettes. Please
10 allow me and the countless others who have
11 switched to vaping continue to enjoy our healthier
12 lifestyle. Thank you for your consideration.

13 PHILIP ROSEMEN: My name is Philip
14 Rosemen. I am a store owner in New York City. I
15 have a store in Queens, and you met my partner
16 actually, Spike, earlier. I know you have heard
17 from a lot of people today about flavors, and I
18 decided not to bring my little speech with me
19 because I think it is very clear what you plan on
20 doing in the future, and I am very, very thankful
21 to hear that you are being so open minded about
22 electronic cigarettes and the flavoring
23 especially. I do want to note that we have some
24 younger people who have come by who are vapers and
25 we have had some older people like Danny, and that

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2 turtle flavor is very good by the way, who have
3 come by and expressed how important electronic
4 cigarettes are to them. I smoked for 26 years and
5 had no intention of quitting. My father actually
6 passed away from it, and I thought that was my
7 destiny. Had these been around when he was around
8 he would still be here today. I have no doubt in
9 my mind about that, but I do want to mention as a
10 storeowner we are very dedicated to helping people
11 make the transition from one product that is
12 obviously very harmful to something that is just a
13 much better alternative. My partner and I and the
14 folks that help us out in the store are all very
15 clear on our mission, which was to take people who
16 have this issue and convert it to something
17 better, but also to note that we don't allow it
18 for underage people. We are very, very diligent
19 about carding people who are obviously under 25
20 years old, and in fact we enrolled recently in the
21 we card program as I think a lot of my
22 counterparts who actually have brick and mortar
23 stores are going to do in the future. We see this
24 as being a great direction here in New York. We
25 hope that happens for the rest of New York state,

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2 and we look forward to continuing to pay our taxes
3 to New York every year because we want to get
4 bigger and bigger and keep paying our share.

5 Thank you.

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SALVATORE VARIO: Hello. My name
7 is Salvatore Vario. I was a smoker for 20 years
8 and I watched my father die from smoking. He died
9 of cancer about three years ago. About three
10 months ago I moved back to New York and my friend
11 Spike said, Sal, you have to try this ecigarette.
12 You will quit smoking. And I didn't believe her.
13 I used it, and I still smoked for about a month,
14 and then I quit. I quit smoking, and I have been
15 smoke free now for 30 days. I am a new ecigarette
16 user, and I am an end user. I am not a
17 businessman. I don't know a lot of research, but
18 I know it is safer, and I know it works, and the
19 flavors help me do that. I just wanted to say
20 that and keep it nice and short. Thank you.

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ROMEO R. CAMPBELL: Hello,
22 Councilmen. My name is Romeo R. Campbell
23 [phonetic]. I represent myself, my opinion and
24 the opinion of my mother. First my mother is in
25 favor for this product because it is safer--water

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2 vapor. I have been smoking since 13 years old. I
3 am 41 years old now. Ecig is the best thing that
4 ever happened to me. I wish I knew this sooner.
5 Maybe my lungs would be better. I prefer vaping
6 than the nicotine patch. I believe many lives
7 will be saved in a safer form, which is water
8 vapor. It is very possible to have no nicotine in
9 our liquids. Flavors are important. I love
10 coffee. Everybody has different taste buds.
11 Don't you? It is like craving for food. People
12 are going to eat what they want to eat. People
13 are going to vape what they want to vape. I also
14 support the age regulation as well. As for
15 myself, I will repeat I am beyond that age, and
16 should not be treated like a kid. I should have
17 the freedom of choice, and we are living in the
18 U.S.A. Thank you, Council, for your time.

19 CHAIRPERSON ARROYO: Thank you. I
20 will repeat to the panel the same thing I have
21 repeated to the ones before; it is the
22 administration the concern and is willing to look
23 at the language to see that we limit the
24 unintended consequences that we have heard is your
25 concern. Thank you.

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[background conversation]

CHAIRPERSON ARROYO: We will go through a process, and that legislation and language will be looked at, and that is a commitment that the administration has made. The final outcome we don't know until we get a chance to go through the process.

[background conversation]

CHAIRPERSON ARROYO: I am not sure, but we will certainly keep you all posted and involved you all in that conversation about the language. I know that there has been a proposal in language that should be included or modified in the legislation that has been submitted by Vape New York I think is the - - .

MALE VOICE: Vape New York and CASAA. You can contact CASAA.

CHAIRPERSON ARROYO: We will in that process. Thank you. Thank you all for your testimony.

MALE VOICE: Thank you very much.

CHAIRPERSON ARROYO: My colleague wants to see what an electronic cigarette looks like. No, no, no. Don't approach. These guys

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don't like that. They come apparently in different sizes and colors and designs.

MALE VOICE: That is a new user product. It is an eagle battery and attached to that is an atomizer and a drip tip on the top. You drip the liquid through the top, it goes on the atomizer, you press the button, and it heats up and you vape it in. It is a very simple design. I like to drip my drops. Some people like tanks. It all depends on what you like.

[background conversation]

CHAIRPERSON ARROYO: No samples, council member.

[background conversation]

MALE VOICE: The interesting thing is that every single one of them does exactly the same thing. It takes a liquid, it heats it up and it turns to water vapor, and that is what you inhale, but they don't look like cigarettes anymore.

CHAIRPERSON ARROYO: Okay. Thank you all very much. Elizabeth, Ian, - - and Stewart? Stewart, wow you are all by yourself. Okay.

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2 STEWART BOWERS: I am going to make
3 it short and sweet. My name is Stewart Bowers,
4 and I am glad to hear that the legislation will be
5 amended to protect the products that you have seen
6 the people bring here. We are pretty passionate
7 about it. I was smoking three and a half, four
8 packs a day up until four years ago when I found
9 electronic cigarettes. I still smoke half a pack
10 a day even after the four years. The reason not
11 everybody here is so passionate about it is
12 because one, the product works, and two, we have
13 to fight pretty much every day for these things to
14 keep them in existence, to keep the - - and to
15 keep them legislating them out of our hands. You
16 will find that a lot of people will have no
17 problem consulting with you over the product. One
18 of the biggest problems that we have with the
19 legislations on electronic cigarettes are people
20 that are passing legislation have no idea how the
21 product works, no idea what it looks like, don't
22 discuss it with the people who actually use the
23 product and yet pass the legislation and they will
24 vote on something without consulting us. There
25 isn't a person that is here as far as vape wise

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2 that wouldn't sit down in a room with you, explain
3 the product to you, why it works for them, how it
4 works for them so when legislation is put into
5 something that is going to affect us that we are
6 actually sitting at the table with you discussing
7 it because 90 percent of the time that people that
8 pass legislations that affect us don't even
9 consult us. You will hear from other people that
10 there are no studies out there, that they have no
11 idea what is in the vapor, and to be honest with
12 you that is a lie. There are studies that are out
13 there, studies have been done about this stuff,
14 and it gets to the point where they look at the
15 FDA and because the product isn't FDA approved, it
16 means that it is not safe. There are products
17 that are approved by the FDA that aren't 10
18 percent safe either. There is a yin/yang here,
19 but I think knowledge right now at this point in
20 time, it is basically a new product, not everybody
21 understands it that it would be better to actually
22 have vapers, people that use the products, sitting
23 down at the table with people, the legislators, so
24 that they understand why people use them, how they
25 work. They are very simple. If you saw all the

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2 different models, it is basically just a battery
3 case. There is a heating element in there just
4 like in your toaster. The battery heats up the
5 coils, they are cherry red, it turns the liquid
6 into vapor. There is no magic here guys. The
7 only magic is that you are taking the smoke out of
8 the vapor. We are still getting our nicotine, but
9 no more smoke. If at any point in time
10 legislation is coming down you have a pile of
11 people that would be more than happy to sit down
12 and explain stuff to you.

13 CHAIRPERSON ARROYO: Stewart, just
14 to be clear, it was not the intent of the
15 legislation to address ecigarettes or vapor
16 products, not at all. To the credit of the
17 industry, you came forward, you brought your
18 concerns to our attention, and they are absolutely
19 being dealt with, and that is a commitment that
20 was being made by the Commissioner. I don't know
21 if you were here earlier and you heard his
22 testimony that the administration is absolutely
23 willing to sit down and look at language that
24 clarifies or takes away that unintended
25 consequence that the industry is so concerned

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about.

STEWART BOWERS: My main concern is that there is no dialogue with us, that legislation does come down, there is no dialogue with the people that actually use the product, and I think that would be a big help.

CHAIRPERSON ARROYO: No, no. Stewart, there is. The reason why we are where we are at is because that dialogue has happened, and I thank the industry for coming forward and raising the concern and bringing that to our attention so that we can appropriately deal with it.

STEWART BOWERS: Well, it is something that we watch out for all the time 'cause like I said we are trying to keep the product--

CHAIRPERSON ARROYO: [interposing]
We thank you for your input, the public input in this process helps to inform it, and in my opinion at the end of the day, we get better legislation because of it, so thank you for taking the time to be here and for providing your insight to us. Is there anyone who is waiting to testify

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who I have not called? Going once, going twice.

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This hearing is adjourned.

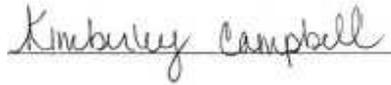
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[gavel]

C E R T I F I C A T E

I, Kimberley Campbell certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

Handwritten signature of Kimberley Campbell in cursive script, written over a horizontal line.Date _____5/20/13