

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HEALTH

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May 21, 2009  
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HELD AT:                   Committee Room  
                                  City Hall

B E F O R E:                   JOEL RIVERA  
                                  Chairperson

COUNCIL MEMBERS:  
                                  Kendall Stewart  
                                  John C. Liu  
                                  Helen Sears  
                                  Albert Vann  
                                  Maria del Carmen Arroyo  
                                  Inez E. Dickens  
                                  Rosie Mendez  
                                  Mathieu Eugene  
                                  Kenneth Mitchell

## A P P E A R A N C E S

Anne H. Pearson  
Senior Legal Counsel for Policy  
NYC Department of Health

Andrew Eiler  
Director of Legislative Affairs  
Consumer Affairs Department

Dr. Suzanne Steinbaum  
Director of Women and Heart Disease  
Heart and Vascular Institute  
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Irwin Berwin  
Chief  
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Kevin O'Flaherty  
Regional Director of Advocacy  
Campaign for Tobacco-Free Kids

Audrey Silk  
Founder  
NYC Citizens Lobbying Against  
Smoker Harassment

Michael Murphy  
Nat Sherman Inc.

Barry Schavitz  
Altadis USA Inc.

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

Misra Walker  
Vice President  
Activists Coming To Inform Our Neighborhood

Amanda Septimo  
Former member  
Activists Coming To Inform Our Neighborhood

Janet Arroyo  
NYC Coalition for a Smoke-Free City

Aleah Gathings  
Deputy Director  
NYC Coalition for a Smoke-Free City

Jessica Safier  
Program Manager of Youth Initiatives  
NYC Coalition for a Smoke-Free City

Stephanie Chan  
American Heart Association  
American Stroke Association

Susan Moscarello  
Guest  
Hope Lodge

John Wedeles  
Program Coordinator  
Manhattan Tobacco Cessation Program

Martin Getelman  
Public Health Association of NYC

Michael Seilback  
VP of Public Policy  
American Lung Association

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

Robin Vitale  
On behalf of  
Jane Lewis/Christine Delnevo  
UMDNJ School of Public Health

Matthew Hurley  
Medical Director  
Harlem Quit Smoking Program

Eugenia Black Graham  
Program Director  
Quit Smoking Program

Ruth Tripp  
Director of Tobacco Control  
Training Project  
Cicatelli Associates

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2 CHAIRPERSON RIVERA: Good morning,  
3 ladies and gentleman, my name is Joel Rivera. I'm  
4 the chair of the City Council's Health Committee.  
5 Today's hearing will focus on a package of  
6 legislation pertaining to tobacco regulation in  
7 New York City. The first bill, Proposed Intro  
8 433-A, which I am sponsoring, would prohibit the  
9 sale of certain flavored tobacco products. The  
10 second piece of legislation, Proposed Intro 642-A,  
11 sponsored by my colleague Council Member Dickens,  
12 would prohibit smoking around hospitals.  
13 Additionally, we will be hearing Resolutions 293  
14 and 1927, sponsored by Council Members Fidler and  
15 Felder respectively. These resolutions deal with  
16 the issue of advertising of tobacco products. The  
17 proliferation of a new and younger generation of  
18 smokers comes with a very high cost to New York  
19 State. It is estimated that more than 1.2 million  
20 children in New York will start smoking and about  
21 400,000 will die as a result. Each year there are  
22 approximately 23,900 new youth smokers and half of  
23 all public high school students in New York City  
24 have tried smoking. In addition, there has been a  
25 recent increase in the use of smokeless tobacco

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2 products by city youth. While there has been an  
3 overall decline in the number of young smokers in  
4 the city, experts fear that flavored tobacco  
5 threatens these achievements. Flavored tobacco  
6 products are a serious public health issue because  
7 they appeal to and are predominately used by young  
8 individuals. Many advocates believe that these  
9 products are especially outrageous because they  
10 target children by using chocolate, vanilla and  
11 various alcohol and food flavors. Proposed Intro  
12 433-A would address this problem by banning the  
13 sale of most flavored tobacco products in the  
14 city. Today we will also hear testimony on  
15 Proposed Intro 642-A, which would restrict smoking  
16 on hospital grounds, any sidewalk adjacent to a  
17 hospital and 15 feet from any hospital entrance.  
18 Similar versions of this commonsense piece of  
19 legislation have already been enacted by states  
20 and localities including Arkansas, Colorado, Idaho  
21 and Washington. This legislation would help to  
22 reduce the exposure of secondhand smoke. A study  
23 by the Department of Health and Mental Hygiene  
24 revealed more than 2.5 million nonsmoking adults  
25 in New York City have been exposed to a high

1  
2 enough level of secondhand smoke to leave  
3 measurable residue in their bodies. People should  
4 not have to worry about exposure to secondhand  
5 smoke when they are near a place devoted to health  
6 care such as a hospital. Finally, Council Members  
7 Fidler and Felder's resolutions pertain to  
8 advertising by tobacco companies. Currently  
9 tobacco companies have some restrictions on how  
10 they can advertise and promote their products.  
11 For example, they can't use cartoon characters in  
12 their advertising. Despite these restrictions,  
13 tobacco companies have found ways to promote their  
14 products to our young people. They advertise in  
15 areas where young people congregate and market  
16 youth-oriented brands. Current federal law  
17 prohibits states and localities from creating  
18 their own advertising regulations. Council Member  
19 Fidler's resolution calls upon Congress to tighten  
20 advertising restrictions in the Federal Cigarette  
21 Labeling and Advertising Act and allow localities  
22 to legislate in this area. In order to reduce the  
23 exposure of youth to tobacco advertising, Council  
24 Member Felder's resolution would call upon  
25 Congress to pass the Family Smoking and Prevention

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2 Act, which would empower localities to restrict  
3 the advertising and promotion of cigarettes. My  
4 colleague Council Member Inez Dickens is in  
5 leadership right now, so she's not with us, but  
6 she'll be joining us shortly thereafter. She'll  
7 have a statement to make about her legislation. I  
8 also wanted to give an opportunity to Council  
9 Member Felder to say a few words in reference to  
10 his. Before we do that, I want to introduce my  
11 colleagues who are here with us today and to thank  
12 legal counsels Joseph and Adira for working on  
13 these pieces of legislation. We have Council  
14 Member Simcha Felder, Council Member Rosie Mendez,  
15 Council Member Mitchell, Council Member Stewart  
16 and we will have members coming in and out as we  
17 have multiple hearings taking place here in City  
18 Hall and budget negotiating downstairs. At this  
19 point in time, Council Member Felder, the  
20 microphone is yours. You're limited to however  
21 long you want.

22 COUNCIL MEMBER FELDER: Thank you  
23 very much, Chair Rivera, for your work in this  
24 Council and particularly in this committee. For  
25 those that don't remember, the current Speaker



1  
2 used to be the chair of the Health Committee. I  
3 look forward to the current chair, I won't say  
4 being the Speaker next time around, but I look  
5 forward to his being in position as time goes on.  
6 He's a young guy. How old are you? Well, we know  
7 that he's a young guy, whatever it is, and he had  
8 a long, long career ahead of him, and we look  
9 forward to his success continuing. This bill  
10 really is my son's piece of legislation. I have a  
11 20-year-old son who tells me he doesn't smoke and  
12 I trust him. His name is Hude. Even though there  
13 are no cameras around, I wanted to make sure that  
14 he gets the credit for it. He came back from  
15 overseas. I think he was in Canada and he noticed  
16 that you can't just go into a store and see  
17 cigarettes all over the place. They're covered or  
18 they're in places where you can't see them. He  
19 came back and he said, "Why don't you make a law?"  
20 I said, it's a good idea. So we did the research  
21 with the Health Committee and the staff here. We  
22 found out we obviously don't have the discretion  
23 to pass the legislation, but at least to suggest  
24 that the federal legislation gets done to allow  
25 the city or other localities to figure out how

1  
2 they feel it would be appropriate to discourage  
3 people from smoking. Not by grabbing cigarettes  
4 out of their mouth, or as some have said, they're  
5 opposed to taxes. I'm not getting into that. But  
6 a very simple thing, especially from someone who  
7 is overweight is if you see cake, you eat cake.  
8 If you see cigarettes, you smoke cigarettes. A  
9 cigarette is an addiction like anything else.  
10 I've said I don't want a number of times, but I'll  
11 say it again. I don't want to use the word lust,  
12 but that's what it is with a kid and cigarettes.  
13 I remember my first cigarette. When you see  
14 cigarettes there's a lot more that you see than  
15 just the cigarette, it means a lot. Once you get  
16 started it's very hard to stop. So again, I think  
17 it's a simple thing. Sometimes government gets  
18 too involved and it's a lot of expense and it  
19 hurts people in one way or the other. This is a  
20 very simple thing. For the most part this is not  
21 going to affect anything. Those are the opponents  
22 of the bill calling me, but it will not help.  
23 It's my son. I think it's a no-brainer. It's  
24 really a no-brainer. I want to thank you again  
25 for your help.

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2 CHAIRPERSON RIVERA: Thank you very  
3 much. At this point in time, we'll call on the  
4 first panel. It will be from the Department of  
5 Health and Mental Hygiene. We have Anne Pearson  
6 here. Just state your name, your title and you  
7 may proceed with your statement.

8 ANNE H. PEARSON: My name is Anne  
9 Pearson and I'm the Senior Legal Counsel for  
10 Policy at the Department of Health.

11 ANDREW EILER: I'm Andrew Eiler.  
12 I'm the Director of Legislative Affairs for the  
13 Consumer Affairs Department.

14 ANNE H. PEARSON: Good morning,  
15 Chairperson Rivera and members of the New York  
16 City Council Committee on Health. I'm Anne  
17 Pearson, the Senior Legal Counsel for Policy in  
18 the Bureau of Tobacco at the New York City Health  
19 Department. On behalf of Commissioner Frieden,  
20 I'd like to thank you for the opportunity to  
21 comment on Intro 433-A and 642-A. Smoking is the  
22 leading cause of preventable death in New York  
23 City. It's responsible for 1 in 3 preventable  
24 deaths and 1 in 7 deaths overall. Preventing  
25 tobacco-related illness and death continues to be

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a key priority for the administration. As part of the administration's comprehensive tobacco control strategy to reduce tobacco use among New Yorkers, the Health Department has prioritized several initiatives, including raising cigarette excise taxes, using health education to make New Yorkers aware of the serious health effects of tobacco use and establishing smoke-free environments. New York City now has the highest tax on cigarettes in the nation, with a pack price of more than \$9. Our hard-hitting health education campaigns have motivated hundreds of thousands of New Yorkers to get the help they need to quit smoking for good. Thanks to the collaborative efforts of the City Council and the administration in securing passage of the Smoke-Free Air Act of 2002, nearly all workplaces in New York City are smoke-free, including restaurants and bars. Earlier this month, the Health Department announced that New York City has reached its lowest rate of smoking on record, with fewer than one million adult smokers in the City. This represents 350,000 fewer smokers than in 2002. We are equally proud that from 1997-

1  
2 2007, there was a 64% decline in smoking among  
3 public high school students. At 8.5%, New York  
4 City's current rate of youth smoking is among the  
5 lowest in the country. Yet, despite significant  
6 progress in reducing the prevalence of smoking,  
7 more than 950,000 adults and 20,000 public high  
8 school students still smoke in New York City. In  
9 the past few years, we have focused our efforts  
10 on proven tobacco control strategies. For  
11 example, we successfully advocated for increases  
12 in the state and federal cigarette excise taxes,  
13 and estimate that these price increases will  
14 ultimately result in about 75,000 fewer smokers,  
15 and 25,000 lives saved. We have also launched a  
16 series of hard-hitting public health educational  
17 campaigns showing the ugly reality of smoking.  
18 Since the campaign launched in 2006, more than  
19 500,000 calls for smoking cessation assistance  
20 have been received from New York City residents  
21 by 311 and the New York State Smokers' Quitline.  
22 These anti-smoking public health campaigns have  
23 contributed to a significant adult smoking  
24 decline of 16% between 2005 and 2008,  
25 corresponding to 190,000 fewer adult smokers in

1  
2 New York City. This decline accounts for more  
3 than half of the overall 27% decline in adult  
4 smoking prevalence since 2002, the year  
5 comprehensive tobacco control began in New York  
6 City. With these strategies firmly in place, we  
7 think that now is the time to explore additional  
8 tobacco control approaches, particularly those  
9 that respond to recent trends in youth tobacco  
10 behaviors as well as new tobacco industry  
11 products and promotional efforts. One notable  
12 and troubling change in youth smoking trends is  
13 that between 2001 and 2007, the percentage of  
14 youth smokers in New York City who smoke cigars  
15 or cigarillos only, nearly tripled. Because the  
16 cigars and cigarillos that are affordable and  
17 accessible to youth are typically flavored, the  
18 availability of peach, strawberry and chocolate  
19 flavored products may be fueling this trend.  
20 These products are easily found in corner stores  
21 and bodegas, wrapped in colorful packaging to  
22 resemble candy and gum. They are products that  
23 appear designed to appeal to children. By  
24 disguising the harsh flavor and odor of regular  
25 tobacco, flavorings such as pina colada and

1 chocolate chip cookie dough make these tobacco  
2 products attractive to young smokers. In fact,  
3 despite tobacco industry claims that flavored  
4 cigarettes are meant for adults, teens are at  
5 least twice as likely as adults to try them.  
6 Although some people believe that cigars are less  
7 dangerous than cigarettes, this is not the case.  
8 A single cigar can contain as much tobacco as  
9 five cigarettes, if not more, and has a much  
10 higher level of nicotine, the chemical in tobacco  
11 that causes addiction. Like other tobacco  
12 products, cigars are linked to various cancers,  
13 respiratory illnesses and heart disease. The  
14 dramatic surge in cigar and cigarillo use among  
15 youth is cause for concern and requires a  
16 response. Another notable change since 2006 has  
17 been the advent of new tobacco products. In  
18 2008, RJ Reynolds introduced into the New York  
19 City area, Snus, a smokeless, spitless tobacco  
20 product that comes in four flavors: frost,  
21 original, spice and mellow. Snus consists of  
22 pasteurized powdered tobacco apportioned into  
23 small teabag-like pouches that are placed between  
24 the cheek and the upper lip where the nicotine is  
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2 absorbed by the oral cavity. Packaged in  
3 colorful metal tins, Snus looks more like candy  
4 or mints than a tobacco product. The fact that  
5 Snus can be used discreetly is part of the  
6 product's appeal to youth. Snus can be used in  
7 school and home, without the knowledge of parents  
8 or teachers. The Health Department shares the  
9 Council's goals of preventing the initiation of  
10 smoking among young people and improving the  
11 health of all New Yorkers. For this reason, the  
12 Health Department supports Intro 433-A which  
13 would prohibit the sale of flavored tobacco  
14 products in New York City. It is well known that  
15 because nearly 90% of all smokers begin smoking  
16 at adolescence, the tobacco industry targets  
17 youth. We believe that one way this targeting  
18 occurs is through the marketing and promotion of  
19 flavored tobacco products. A ban on flavored  
20 tobacco products would reduce the tobacco  
21 industry's ability to market to youth which may,  
22 in turn, decrease youth experimentation and  
23 initiation. Since the Council last held a  
24 hearing on this bill in 2006, the tobacco control  
25 landscape has changed. As a result of the



1  
2 department's aggressive pursuit of proven tobacco  
3 control strategies, we are now closer than in  
4 2006 to creating an environment in which smoking  
5 is the exception rather than the rule. In the  
6 wake of these successes, we believe that now is  
7 the time to prohibit the sale of flavored tobacco  
8 products. And New York City is not the only  
9 jurisdiction to come to this conclusion. In July  
10 of this year, the State of Maine will implement a  
11 ban on most flavored tobacco products. In  
12 addition, Congress is currently considering the  
13 Family Smoking Prevention and Tobacco Control  
14 Act, which would permit the federal Food and Drug  
15 Administration to regulate tobacco products, and  
16 would ban all flavored cigarettes except those  
17 that are mentholated. Because the FDA bill's ban  
18 on flavored products is limited to cigarettes,  
19 Intro 433-A is still needed to halt the growing  
20 market of flavored cigars and cigarillos.

21 Although the Health Department supports Intro  
22 433-A, we are concerned about the exemption for  
23 flavored tobacco products that are designed for  
24 use in a hookah, as well as the exemption for  
25 products that are mentholated. Like cigar

1 smoking, hookah use is a fast growing trend among  
2 youth. In the past few years, New York City has  
3 seen a surge in hookah bars, many of them in  
4 youth-oriented neighborhoods such as the East  
5 Village and the Lower East Side. Hookah  
6 paraphernalia is also widely available in stores  
7 near colleges like NYU, suggesting that hookah  
8 use is not limited to hookah bars, but takes  
9 place in young people's residences as well.

10 According to the World Health Organization, smoke  
11 from a hookah contains numerous toxicants known  
12 to cause lung cancer, heart disease, and other  
13 diseases. Because a typical hookah smoking  
14 session lasts 20-80 minutes, smokers may take 50-  
15 200 puffs and may inhale as much smoke in one  
16 hookah session as a cigarette smoker would inhale  
17 consuming 100 cigarettes. The current bill would  
18 also exempt any tobacco products with a menthol  
19 flavor. More than one-fourth of all cigarettes  
20 sold in the United States are mentholated.

21 African-American smokers overwhelmingly smoke  
22 menthols. Mentholated cigarettes are also  
23 popular among young and new smokers, in part  
24 because the menthol flavor masks the harsh flavor  
25

1 of tobacco smoke and their irritating effects.  
2 While we understand that banning mentholated  
3 products is not under consideration in this  
4 legislation, from a tobacco control perspective,  
5 banning such products would likely have a strong  
6 impact on adult smoking prevalence and youth  
7 initiation. Another intervention that we believe  
8 can have an impact on smoking prevalence is  
9 restricting smoking near building entrances, such  
10 as hospitals, as proposed in Intro 642-A. In  
11 2002, the administration worked closely with the  
12 Council to ensure passage of the Smoke-Free Air  
13 Act. Since that time, hundreds of thousands of  
14 workers have been protected from exposure to  
15 secondhand smoke while on the job. Contrary to  
16 historical predictions, the law is very popular.  
17 New Yorkers have grown to expect smoke-free  
18 environments as the norm. One unintended but  
19 very serious consequence of the Smoke-Free Air  
20 Act is that many smokers comply with the ban on  
21 indoor smoking by smoking outside the entrances  
22 to buildings. While exposure to secondhand smoke  
23 near building entrances is brief, it is a  
24 repeated and unavoidable daily occurrence for  
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1  
2 many New Yorkers. It is well documented that  
3 there is no safe level of exposure to secondhand  
4 smoke. Research has shown that when smoking is  
5 allowed near buildings, outdoor concentrations of  
6 secondhand smoke can be as high as concentrations  
7 measured indoors from smoking. According to a  
8 Health Department study, more than half of non-  
9 smoking New Yorkers have elevated levels of  
10 cotinine in their blood, resulting from recent  
11 exposure to secondhand smoke in concentrations  
12 high enough to leave residues in the body.

13 Cotinine, a byproduct of nicotine breakdown, is  
14 not harmful itself but signals exposure to  
15 environmental tobacco smoke. The study indicates  
16 that 57% of adult nonsmoking New Yorkers, about  
17 2.5 million people, have elevated cotinine  
18 levels, compared to 45% of nonsmoking adults  
19 nationwide. Given that exposure to secondhand  
20 smoke has been associated with lung cancer, heart  
21 disease, asthma attacks and respiratory  
22 infections, 14 states and 851 municipalities have  
23 adopted smoke-free air laws that prohibit smoking  
24 at building entrances. The Health Department  
25 supports Intro 642-A which would prohibit smoking

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2 on hospital grounds and within 15 feet of  
3 hospital entrances. While nobody should have to  
4 walk through a cloud of potentially dangerous  
5 secondhand smoke, people suffering from illnesses  
6 are often the most vulnerable to the consequences  
7 of secondhand smoke. In addition, medical  
8 professionals, such as EMTs, regularly pass  
9 through hospital entrances as a condition of  
10 their employment. They should be free from  
11 exposure to secondhand smoke as they go to their  
12 jobs. The department would be happy to work with  
13 the Council to craft appropriate language,  
14 including a specific definition of hospitals.  
15 Thank you for the opportunity to testify. The  
16 Department of Health and Mental Hygiene is  
17 dedicated to protecting the health of all New  
18 Yorkers, reducing youth smoking rates and  
19 expanding smoke-free venues. We look forward to  
20 working with the Council to achieve these mutual  
21 goals and I'm happy to answer your questions.

22 CHAIRPERSON RIVERA: Thank you very  
23 much. Before we go into the question portion, I  
24 want to give an opportunity to my colleague, Inez  
25 Dickens, who is the prime sponsor of the hospital

1  
2 legislation. At this point in time, Inez, the  
3 floor is yours.

4 COUNCIL MEMBER DICKENS: Thank you  
5 so much Chair Rivera for allowing me to speak on  
6 this. I ask your forgiveness that I have to  
7 leave to go to leadership as soon as I do. I'm  
8 here today to introduce and ask my colleague's  
9 support for Intro 642-A which bans smoking within  
10 15-feet of a hospital entrance. As all of us  
11 know, outside of any large building, there is a  
12 concentration of people standing there smoking,  
13 sometimes as many as 10 and 15 people. That  
14 means that those that are going into the hospital  
15 and leaving are forced to inhale this smoke. New  
16 York City's hospitals should be an oasis of  
17 health and well-being. When people are on the  
18 way to treatments, appointments, visits and other  
19 business at a New York City hospital, they must  
20 not be forced to walk through a cloud of smoke to  
21 get into the building. This does not promote  
22 good health or wellness. This ban is a  
23 commonsense measure that will prevent bad habits  
24 from impacting on the health of those who are  
25 entering a hospital to improve their own well-

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2 being. We have taken the steps to ban smoking in  
3 bars, nightclubs, restaurants and other public  
4 facilities. We must be safe also from secondhand  
5 smoke on hospital grounds. I credit Harlem  
6 Hospital, Dr. John Palmer, Eugenia Graham and  
7 Silvia White with bringing this to the forefront  
8 of what was occurring, not only at Harlem  
9 Hospital but at all of the hospitals within New  
10 York City. To be truthful, you would not hold  
11 Alcoholics Anonymous meeting in the rear of a  
12 bar. People on their way to a smoking cessation  
13 program should be in a smoke-free environment,  
14 it's just commonsense. I ask my colleagues to  
15 please support this, it is about our future.  
16 Thank you.

17 CHAIRPERSON RIVERA: Thank you very  
18 much, Council Member. I'm going to ask just one  
19 question and then I'm going to have to head to  
20 leadership myself and I'll turn it over to my  
21 colleague Kendall Stewart to chair. Commissioner  
22 Frieden, he has been a very strong advocate and a  
23 champion on issues of this nature. When he goes  
24 to a national level, will he be doing the same?

25 ANNE H. PEARSON: I expect he will

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2 be. It's certainly one of his biggest  
3 priorities, and so I expect that he'll be taking  
4 that passion with him to Atlanta. Unfortunately  
5 I have to go to leadership at this point in time,  
6 so we're going to turn it over to Council Member  
7 Stewart to chair the hearing until I come back  
8 up.

9 COUNCIL MEMBER STEWART: Thank you.  
10 Do you have any testimony, sir?

11 ANDREW EILER: No.

12 COUNCIL MEMBER STEWART: Does the  
13 department have any recommendation to any of  
14 these bills that we're talking about right now?

15 ANNE H. PEARSON: We strongly  
16 support both bills, as I stated in my testimony.  
17 We have some limited reservations about the ban  
18 on flavored products because of the two  
19 exemptions, but are otherwise very supportive.  
20 We're also very supportive of banning smoking at  
21 hospital entrances.

22 COUNCIL MEMBER STEWART: Should it  
23 be at all large buildings or just hospitals?

24 ANNE H. PEARSON: Well, as I stated  
25 earlier, we found that one of the very unintended



1  
2 consequences of the Smoke-Free Air Act is that  
3 people do congregate outside of buildings and  
4 that's where the smoking occurs. And we've all  
5 walked through it many, many times. We do  
6 understand that people who go to hospitals are  
7 often particularly health-compromised and so it's  
8 a special situation for them and they deserve  
9 special protection from exposure. As Council  
10 Member Dickens explained also, many of these  
11 hospitals do operate smoking cessation programs,  
12 so it would be helpful to those participants that  
13 they not have to walk through smoke as they go  
14 their cessation program. But you're right, the  
15 health implications of the exposure are the same  
16 at any building entrance, and so we do think that  
17 all New Yorkers should be free from that exposure  
18 whenever they enter into their office place, or  
19 for the many workers who go in and out of  
20 buildings as a part of their employment.

21 COUNCIL MEMBER STEWART: I feel the  
22 same when I walk to 50 Broadway and I see five or  
23 six people standing at the entrance and they're  
24 all smoking and I have to pass through that. I  
25 feel the same way. I'm just wondering if people

1  
2 in other buildings may feel the same way if they  
3 have to enter or leave the buildings and they  
4 have to pass through the smoke. How is that  
5 going to be linked to discouraging young people  
6 from smoking? With the ones they're selling in  
7 the stores now, the color or candy-coated or  
8 whatever kind of cigarettes, apart from banning  
9 that type of cigarette, what can we do to  
10 discourage them from getting to those cigarettes?

11 ANNE H. PEARSON: These products  
12 have flavors like mint chocolate chip and banana  
13 and honey. They're clearly appealing to young  
14 smokers or to young youth would consider smoking.  
15 So obviously, removing those from the marketplace  
16 is the best way to get kids to stop smoking them.  
17 Apart from that, one of the other problems that  
18 we've seen is the widespread advertising of these  
19 products. I think you're going to be hearing  
20 later from people who will talk about how many  
21 tobacco advertisements they have found in their  
22 communities that are within only six inches of  
23 candy, the products that kids would be looking  
24 at. The resolutions that you have proposed are  
25 encouraging passage of the FDA bill, which would

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authorize the FDA bill to impose some

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restrictions on tobacco advertising. It would

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also, for the first time, allow New York City to

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consider doing the same. In addition to the bill

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that's before you to ban these products, we're

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hopeful that in the coming months there will be

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new federal authority for us also to look at

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regulating tobacco advertising.

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COUNCIL MEMBER STEWART: So the

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tobacco that has chocolate and those different

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flavors, are there other health issues, such as

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sugars in the chocolate or whatever? I have

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never seen a cigarette with chocolate in it. I

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would want to know if we have the problem with

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obesity and we're now adding sugar to another

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product that young people may use, I just want to

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know. Could you elaborate on that?

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ANNE H. PEARSON: I don't know what

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ingredients are added to make them flavored like

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chocolate. I don't know if there are sugars and

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I don't know if those have any other health

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effects, apart from the obvious health effects of

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smoking.

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COUNCIL MEMBER STEWART: So it

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might be just the taste then?

ANNE H. PEARSON: That's right.

COUNCIL MEMBER STEWART: Do you have any stats as to how many New Yorkers use the flavored tobacco now or cigarettes?

ANNE H. PEARSON: We don't. The Health Department conducts a number of surveys that asks questions about tobacco use but we don't currently ask about whether that's used if flavored. So we don't have New York City specific statistics on that. There have been some national surveys that found that of youth smokers, about 11% of them had tried flavored cigarettes. But, as I said, we don't have New York City specific data.

COUNCIL MEMBER STEWART: Have you reached out to the tobacco companies to let them know that we oppose what they're trying to do?

ANNE H. PEARSON: I think many of them are here today.

COUNCIL MEMBER STEWART: Many of them are here today? All right, well we will hear from them soon. We're trying to pass all of these bills at the same time, when do you expect

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2 us to have these bills go into effect? I'm  
3 talking to Consumer Affairs.

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ANDREW EILER: It has an effective  
5 date. I'm not sure what it is. It will take  
6 effect 120 days and we can certainly gear up  
7 enforcement within that timeframe. The  
8 enforcement is not going to be that difficult  
9 because essentially it's our inspectors see them  
10 they'll cite them. So when they go into the  
11 store as part of the undercover cigarette  
12 enforcement program, if they're there, the ban  
13 will be enforced.

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COUNCIL MEMBER STEWART: You feel  
15 that we'll have enough inspectors to go around?

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ANDREW EILER: Let me just say that  
17 in the last fiscal year we did about 15,000  
18 undercover compliance inspections for tobacco  
19 products. During the first six months of this  
20 fiscal year we've done 7,400, so it's a pretty  
21 widespread coverage. There is an enforcement  
22 program in place that we'll be able to enforce  
23 compliance for this.

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COUNCIL MEMBER STEWART: Tell me a  
25 little bit more about inspection in terms of the

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2 places like bodegas and so on. When you find  
3 that there is violation and you find these folks  
4 guilty, do you take away the cigarettes from  
5 their store? What do you do?

6 ANDREW EILER: It depends. If  
7 there is an unlicensed store that sells tobacco,  
8 then we can seize the tobacco. Otherwise, what  
9 we're citing them for is like selling to minors  
10 or other violations and provisions of the law  
11 that they're not supposed to be doing. For those  
12 things we just cite them for a violation and then  
13 impose the penalties. If necessary they end up  
14 losing their licenses. The fastest way to lose  
15 the license is to sell to minors. But the  
16 compliance is fairly good, 91% of the inspections  
17 we've conducted in the current fiscal year found  
18 compliance with the law. So, we're doing fairly  
19 well, but it's still not 100%.

20 COUNCIL MEMBER STEWART: Repeat  
21 offenders?

22 ANDREW EILER: The repeat  
23 offenders, once you've done it twice within a  
24 timeframe then you lose your license mandatory.  
25 There is a point system that the state has and

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2 once you hit the points, you're done. You not  
3 only lose your retail cigarette dealer's license,  
4 but you also lose your lottery license. So  
5 that's a pretty hefty penalty, plus I think it's  
6 about \$1,000 fine. It costs to violate that law.

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COUNCIL MEMBER STEWART: Do you  
ever do inspections at pharmacies that sell  
cigarettes?

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ANDREW EILER: Anyone that's a  
retail cigarette dealer we inspect them. There's  
a process. They're on a regular schedule for  
being inspected. If you're hit once, we  
definitely go back to see if you do it again  
because that's two strikes and you're out.  
Council Member Eugene has a question.

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COUNCIL MEMBER EUGENE: Thank you,  
very much, Mr. Chair. I've got to go to another  
hearing, but I do have a few questions.  
According to the text of the Proposed Intro 433-  
A, it would unlawful to sell flavored tobacco,  
yet all of the tobacco products, such as the  
menthol cigarettes would still be lawful. How  
would the Department of Health and Mental Hygiene  
and the Department of Consumer Affairs educate

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businesses on the distinction between the  
unlawful cigarettes and lawful cigarettes?

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ANDREW EILER: How we make the  
distinction between them?

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COUNCIL MEMBER EUGENE: How the  
department would educate the businesses people  
and the consumers?

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ANDREW EILER: I think the Health  
Department is focused on the educational outreach  
component of identifying the kinds of products  
that are banned. That's the 120-day effective so  
that you can have an outreach program to make  
clear to people what they're not supposed to be  
selling. It's pretty clear from the legislation  
flavored cigarettes with the kind of flavoring  
that's in there you're not supposed to sell it.  
If you take a look at the photographs that are  
there, it's pretty clear the kind of tobacco  
products that are meant, that's part of the  
testimony that the Health Department has  
submitted. It's pretty clear what is meant by  
this legislation. I don't think anyone is going  
to have a problem understanding that.

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COUNCIL MEMBER EUGENE: Just for



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2 the record, my name is Council Member Mathieu  
3 Eugene. As a follow-up question, what is the  
4 department doing to prevent young people from  
5 smoking the other cigarettes, like menthol which  
6 are popular among teen smokers?

7

8 ANNE H. PEARSON: What we do to  
9 prevent smoking initiation is really to focus on  
10 the tried and true tobacco control strategies.  
11 We focus on increasing the prices of cigarettes  
12 because for teenagers to afford a pack of  
13 cigarettes that's now nearly \$10 is very  
14 difficult. We've found that youth are especially  
15 responsive to price increases in the sense that  
16 they quit at the highest rates, or they stop  
17 smoking at the highest rates when price goes up.  
18 So a big part of our efforts to try and prevent  
19 smoking initiation really is focused on keeping  
20 the price of cigarettes high. We also are  
21 engaged in a series of hard-hitting health  
22 educational campaigns that are designed to show  
23 everyone, not only youth, about the health  
24 effects of smoking. We hope that when you see  
25 these ads and see these campaigns that they'll  
have a better sense of the realities of smoking,

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that it's not a glamorous activity but one that can really cost you your life.

COUNCIL MEMBER EUGENE: Proposed Intro 642-A would ban smoking 15 feet in and around the hospital. Is 15 feet enough? Many other states with similar laws have imposed 20 feet. Do you believe that 15 feet would be enough?

ANNE H. PEARSON: There is a range of distances when you look at the other states and localities that have done this. I think they tend to be between 15 and 20 feet. We've seen research that would suggest environmental smoke can travel up to 23 feet from the source, although the distance from where it's very irritating is a little bit less than that. So we think that 15 feet and perhaps 20 feet would be appropriate.

COUNCIL MEMBER EUGENE: Thank you very much. Thank you, Mr. Chair. I think this is a wonderful bill and I think that it is our responsibility to make sure that we protect not only the young people but the New Yorkers. I believe that the best medicine is preventive

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medicine. By doing that we are preventing people from being sick and it's going to be financially beneficial for all of us. Thank you very much.

COUNCIL MEMBER STEWART: Do you have any question, Council Member Sears?

COUNCIL MEMBER SEARS: Thank you very much. We sort of just keep going back and forth to committee meetings and budget hearings. When they're selling the stuff they're not supposed to sell, they get a fine currently. Am I correct?

ANDREW EILER: That's correct.

COUNCIL MEMBER SEARS: Is there any objection to the fact that they should absolutely have their licenses suspended which would be a better deterrent than monetary fines?

ANDREW EILER: That's part of the structure. If a retail cigarette dealer is caught twice selling to underage they lose their license.

COUNCIL MEMBER SEARS: Well I tell you, I think it should be once. They know they're breaking the law. The rise in cigarette smoking among teenagers is absolutely ludicrous.

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It's just as if we're not educating them. The fact is that those who are selling what they're selling and not supposed to is really damaging their health so much they can't even think. They're in school and they can't learn. There's a lot to this. Since we have an administration that really doesn't like smoking and we don't and we've supported him, I think we need to take much stronger steps than what we're doing. Thank you.

COUNCIL MEMBER STEWART: On that note, the tobacco company has ways in which they do their advertisements. Do you think the city should have a counteraction as far as the advertisements? In other words, should we be advertising to our youngsters and letting them know more about the dangers of cigarettes and what do you think we should do?

ANNE H. PEARSON: We absolutely believe in educating youth and all New Yorkers about the health risks of smoking. Even though it's been known for decades about the horrible effects of smoking, there are some people who don't fully appreciate those health effects. So we do feel it's important to continue to remind

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2 people that smoking is a deadly habit. That's  
3 why we run our educational campaigns as  
4 frequently as we do and why we try and put the  
5 message out there about all the varied health  
6 effects of smoking and tobacco use.

7 COUNCIL MEMBER STEWART: I think  
8 most of my colleagues tend to agree with what has  
9 been advocated here, but we would like to hear  
10 from the other side so that we can let them know  
11 what we are thinking. I want to thank you for  
12 coming in today. Thank you for your testimony.  
13 We will be working closely with you to make sure  
14 that whatever we do, we will have a bill that you  
15 can work with, that you can go out and do your  
16 inspections and make sure that our youngsters  
17 don't get involved with cigarettes. I have one  
18 other question. It is not marijuana, but there  
19 is another cigarette that folks smoke and they  
20 get it from some of these places. It's not being  
21 sold as our cigarettes are sold in packages.  
22 It's sold as a loose stuff that youngsters buy.  
23 I noticed it at a couple of places. Or even the  
24 tobacco itself, the tobacco leaf, they buy it in  
25 bulk or by weight, do you regulate that? Do you

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2 have some sort of control over that?

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4 ANNE H. PEARSON: I don't know if  
5 you're thinking about beadies, which is an herbal  
6 product.

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7 COUNCIL MEMBER STEWART: That's one  
8 of them.

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9 ANNE H. PEARSON: The sale of  
10 beadies is prohibited under both state and city  
11 law. You could also be thinking about roll your  
12 own tobacco and blunt wraps which are available.  
13 Blunt wraps are also frequently flavored. Those  
14 are sold so that youth can roll their own tobacco  
15 like cigarettes in a flavored wrap.

15

16 COUNCIL MEMBER STEWART: Do you  
17 have control over that, do you regulate that?

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18 ANNE H. PEARSON: They are both  
19 tobacco products, so they would both be  
20 prohibited for sale to youth. So DCA would  
21 enforce any sales of those products to youth.

21

22 COUNCIL MEMBER STEWART: I have  
23 noticed that the tobacco itself in bulk is being  
24 sold. Do you regulate that?

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25 ANDREW EILER: Only to the extent  
that it would involve sale of cigarette and

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tobacco products to minors.

COUNCIL MEMBER STEWART: You allow tobacco to be sold that, a tobacco bush.

ANDREW EILER: I'm not aware of any law that prohibits that sale to adults.

COUNCIL MEMBER STEWART: Don't you see where it's going in terms of with the cigarette? No longer are they buying the cigarettes in the packs as before because it's \$10 or so a pack. They will buy the tobacco leaf. I will see a gentleman take out a piece and he wraps it and he sells it like that. I was wondering if that is being controlled.

ANDREW EILER: The sale of various tobacco as loose tobacco, in other words to roll your own or all the rest of that stuff, there is nothing that we enforce that would prohibit or address the sale of that stuff, except to the extent that you can't sell it to minors as a tobacco product.

COUNCIL MEMBER STEWART: Would that be banned too because some of it is flavored?

ANNE H. PEARSON: You're right, the bill that's before you would ban all flavored

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tobacco products. So if the wrap itself, the blunt wrap, is flavored then that would be a prohibited item.

COUNCIL MEMBER STEWART: Thank you, sir, and thank you, ma'am.

ANNE H. PEARSON: Thank you.

ANDREW EILER: Thank you.

COUNCIL MEMBER STEWART: The next panel will be Dr. Suzanne Steinbaum, Irwin Berwin, Russell Sciandra and Kevin O'Flaherty. Thank you for coming in and thank you for being here. I first would like to apologize for my colleagues, but don't worry, I'm the most important person in the Health Committee. If you can first identify yourself, then we can take it from there.

DR. SUZANNE STEINBAUM: Good morning, I'm Dr. Suzanne Steinbaum. Thank you esteemed members of the Council Health Committee for allowing me the opportunity to address several measures today, all seeking to strengthen the city's overall comprehensive tobacco control plan. My name is Dr. Suzanne Steinbaum. I'm the Director of Women and Heart Disease of the Heart



1  
2 and Vascular Institute of Lenox Hill Hospital.  
3 However, today, I'm here to share my perspective  
4 as a cardiologist and a concerned citizen of New  
5 York City. Our goal essentially is to prevent  
6 our children from killing themselves. Simply  
7 stated, sitting on my shelf framed is a pack of  
8 cigarettes from a 45-year-old man who quit the  
9 day he came to see me while he was having a  
10 stroke. Cardiovascular disease is the number one  
11 cause of death in the United States and New York.  
12 It accounts for more than 930,000 deaths each  
13 year in the U.S., including an estimated 37,000  
14 to 40,000 from heart and blood vessel disease  
15 caused by secondhand smoke. According to the  
16 American Heart Association, and the Centers for  
17 Disease Control and Prevention, smoking is the  
18 leading preventable cause of coronary heart  
19 disease. Toxins in the blood from smoking  
20 cigarettes contribute to the development of  
21 atherosclerosis, which is essentially hardening  
22 of the arteries caused by the deposit of fatty  
23 plaques leading to blockages. These blockages  
24 and inflammation in the artery can lead to blood  
25 clots which then can obstruct the blood flow

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2 which causes heart attacks or strokes. Smoking  
3 low-tar or low-nicotine cigarettes rather than  
4 regular cigarettes has no effect on reducing the  
5 risk for coronary heart disease. Regarding  
6 Proposed Intro 433-A, I strongly support this  
7 effort to remove entry mechanisms to tobacco  
8 addiction from the market. According to a 2005  
9 study by the Harvard School of Public Health,  
10 "flavored cigarettes can promote youth initiation  
11 and help young occasional smokers to become daily  
12 smokers by masking the natural harshness and  
13 taste of tobacco smoke and increasing the  
14 acceptability of a toxic product." I feel it is  
15 important to note that Proposed Intro 433-A  
16 possess great potential to raise the bar  
17 nationally for the removal of flavored tobacco  
18 products from the market. This bill exceeds the  
19 current proposals we see from our federal  
20 government, in that it would not only ban  
21 flavored cigarettes, but also flavored cigars,  
22 little cigars and smokeless products. As a  
23 cardiologist, I can affirm the reality that  
24 tobacco smoke is not only dangerous when it comes  
25 from a cigarette. Tobacco destroys the

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2 cardiovascular system regardless of its source.  
3 I commend the Council for seeking to remove all  
4 flavored tobacco from store shelves in New York  
5 City. By doing so, I anticipate seeing fewer  
6 tobacco addicts in our region, thereby greatly  
7 reducing the leading preventable cause of  
8 cardiovascular diseases, that being tobacco use.  
9 Regarding Proposed Intro 642-A, I believe firmly  
10 that this legislation will serve to encourage  
11 more residents of New York City to quit smoking.  
12 I work with victims of cardiac disease routinely  
13 through my office. These patients often have to  
14 travel through environments where smokers  
15 congregate. It is simply not right that cardiac  
16 patients must greatly enhance their risk of  
17 exacerbating their illness just to gain access to  
18 their health care provider. Finally, regarding  
19 Resolution 1927, I share the Council's  
20 enthusiastic support for the Family Smoking and  
21 Prevention Act. This federal initiative will  
22 single-handedly elevate the ability for our  
23 government to enact strong national tobacco  
24 control measures to unseen heights. Within one  
25 year of this bill's implementation into federal

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2 law, for example, all outdoor tobacco advertising  
3 would be banned within 1,000 feet of schools and  
4 playgrounds. All remaining tobacco brand  
5 sponsorships of sports and entertainment events  
6 would be banned. Free giveaways of any non-  
7 tobacco items with the purchase of a tobacco  
8 product or in exchange for coupons or proof of  
9 purchase would be banned. Free samples and the  
10 sale of cigarettes in packages that contain fewer  
11 than 20 cigarettes would be banned. Limits would  
12 be placed on any outdoor and all point-of-sale  
13 tobacco advertising to black-and-white text only.  
14 Advertising would be limited in publications with  
15 significant teen readership to black-and-white  
16 text only. Vending machines and self-service  
17 displays would be restricted to adult-only  
18 facilities. And finally, retailers would be  
19 required to verify age for all over-the-counter  
20 sales and provide for federal enforcement and  
21 penalties against retailers who sell to minors.  
22 The tobacco industry has long taken advantage of  
23 this lack of regulation to market their deadly  
24 products to our children and deceive consumers  
25 about the harm their products cause. I look

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forward to the legislation's continued momentum in our nation's Capitol. In closing, I thank you for your time today. I applaud you for your attention to these valuable steps in achieving a strong national standard in tobacco control. I hope that your efforts today lead to implementing these laws in our city, and provide an example to our country on how effective health policy can lead to a healthier population. Thank you.

DR. IRWIN BERLIN: Good morning. My name is Dr. Irwin Berlin and I am the Chief of the Division of Pulmonary/ Critical Care Medicine at Elmhurst Hospital Center. I serve in a volunteer capacity for the American Thoracic Society, the American College of Chest Physicians and the American Lung Association of New York. I am here to offer support and comments on Intro 433-A, to prohibit the sale of flavored tobacco products, including flavored cigarettes, cigars, little cigars and smokeless tobacco as well as Intro 642-A, which would prohibit smoking on hospital grounds and lastly in support of the Resolutions related to federal legislation, which would give the Food and Drug Administration the

1  
2 ability to regulate tobacco. I first want to  
3 thank Health Committee Chair Joel Rivera for his  
4 leadership on tobacco control, including Intro  
5 433-A, and for his overall commitment to  
6 protecting the public health. Each of these  
7 bills has the potential to have a significant  
8 powerful effect on the lung health of our city.  
9 At Elmhurst Hospital Center, I see many young  
10 adults with compromised lung function, filling  
11 emergency department beds, medical and specialty  
12 clinic waiting rooms, in-patient medical/surgical  
13 hospital beds and critical care beds, all related  
14 to smoking. Our Queens Quits NY State Department  
15 of Health grant, to assist in getting patients to  
16 stop smoking, has been particularly effective in  
17 getting young Hispanic females to stop smoking.  
18 I have submitted Elmhurst data for 2008, which  
19 shows how an aggressive approach to smoking  
20 cessation can be successful. Last year, we had  
21 over 3,800 participants registered and counseled,  
22 99% were given pharma agents where it was  
23 prescribed or dispensed free and 60% one month  
24 after enrollment, and 41% of the total  
25 participants reported to have quit at least one

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2 month after enrollment. Not perfect, but pretty  
3 good. Smoking is the number one cause of  
4 preventable death in New York City, and every  
5 effort to prevent our children from picking up  
6 their first cigarette demands our advocacy.  
7 Cigarettes and tobacco products in assorted  
8 candy, fruit and alcohol flavors are just as  
9 addictive and just as deadly as ordinary  
10 cigarettes, but enticing to a whole different  
11 crowd. What distinguishes them from the other  
12 packs on the shelves is their flashy advertising,  
13 their sweet smelling aroma masking the harsh  
14 taste of the tobacco, and attracting a younger,  
15 more susceptible eye. By enacting Intro 433 and  
16 prohibiting the sale of tobacco products with a  
17 characterizing flavor, excluding tobacco or  
18 menthol flavoring, we would not be preventing  
19 established smokers from buying their favorite  
20 variety of smokes, we would just be preventing  
21 youth from being tempted to pick up a deadly  
22 tobacco habit. I also am urging passage of Intro  
23 642-A, which would ban smoking at and around  
24 hospital grounds. Working at a hospital, I often  
25 have to navigate through clouds of tobacco smoke

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2 just to enter the hospital. The current 15, 20  
3 or even a 50-foot rule may exist at certain  
4 individual hospitals, but is currently impossible  
5 to enforce. As unhealthy as it is for me and my  
6 colleagues, my main concern is for my patients.  
7 The fact is that secondhand smoke can and does  
8 trigger asthma attacks and exacerbates lung  
9 disease including COPD and lung cancer. This  
10 legislation is a commonsense public health  
11 measure aimed at protecting individuals who go to  
12 a medical clinic or a hospital to get better.  
13 With regard to the two resolutions, I am a strong  
14 supporter of the federal legislation which would  
15 give the Food and Drug Administration the  
16 authority to regulate tobacco. Nicotine is the  
17 drug, tobacco is the vehicle. This legislation  
18 would be one of the largest pieces of tobacco  
19 control legislation ever passed and will have a  
20 profound effect on public health. Just a couple  
21 of months ago, I visited Capitol Hill twice to  
22 advocate on the importance of this bill. I met  
23 with members of our congressional delegation and  
24 staff members to Senators Schumer and Gillibrand.  
25 I was encouraged when our New York Delegation



1  
2 unanimously voted in favor of the House version  
3 of the legislation, and that both of our senators  
4 are co-sponsors of Senator Kennedy's legislation.  
5 I hope that the Council quickly passes this  
6 resolution and that Congress passes the  
7 legislation before the June recess. Thank you  
8 again for your leadership on tobacco control  
9 initiatives. We look forward to continuing to  
10 work closely with this committee to advance  
11 legislation to prevent youth from a lifetime of  
12 tobacco addiction, enacting policies which help  
13 current smokers quit, and protecting the public  
14 from exposure to secondhand smoke. Thank you.

15 COUNCIL MEMBER STEWART: Before we  
16 have the next speaker, let me give you some  
17 clarity. When you hear that sound, it's because  
18 you have gone over the time. The time should  
19 have been three minutes because we have a stack  
20 of folks who are coming here. So, if you can  
21 just try to fit your testimony within three  
22 minutes, because after you have spoken, I may  
23 have one or two questions I may want to ask.  
24 Please try to work with us within those three  
25 minutes. Thank you.

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2                   RUSSELL SCIANDRA: Members of the  
3 Council, thank you for the opportunity to present  
4 my views on Intro 433-A. My name is Russell  
5 Sciandra. I am director of the Center for a  
6 Tobacco Free New York in Albany, and I'm speaking  
7 today on behalf of the American Cancer Society.  
8 For tobacco product manufacturers, an important  
9 function of the flavorings that would be affected  
10 by this legislation is to mask from users,  
11 particularly new users, the harsh and toxic  
12 properties of tobacco smoke and spit tobacco. A  
13 review of tobacco industry internal documents,  
14 uncovered during litigation, shows that tobacco  
15 companies have long regarded flavored products  
16 as, in their words, "starter" products from which  
17 teenage experimenters will graduate to adult  
18 mainstream brands. In other words, for the  
19 manufacturers, flavored tobacco products are like  
20 training wheels for their young customers, an  
21 introduction to a lifelong addiction to nicotine.  
22 Attached to my testimony is an article by Dr.  
23 Greg Connolly in which he talks about how the  
24 U.S. Tobacco Company had a graduation strategy.  
25 And on Page 3 of Dr. Connolly's article is a

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2 chart prepared by the company, by its marketing  
3 department, called the graduation strategy, which  
4 shows how young smokers would move up the ladder  
5 from flavored smokeless tobacco to full-flavored  
6 adult type smokeless tobacco. This marketing  
7 campaign was tremendously successful. In 20  
8 years, starting in 1970, the prevalence of snuff  
9 use more than doubled in this country. And among  
10 males 18 to 24, it increased six-fold. Today,  
11 Skoal, the most popular brand of smokeless  
12 tobacco, comes in Wintergreen, Peach, Vanilla,  
13 Apple, Berry, Spearmint, and Citrus flavors.  
14 Now, the cigarette companies saw this success and  
15 they certainly wanted to follow suit. A 1972  
16 Brown & Williamson memo says, "Apples connote  
17 goodness and freshness and we see many  
18 possibilities for our youth-oriented cigarette  
19 with this flavor. It's a well known fact that  
20 teenagers like sweet products. Honey might be  
21 considered." A 1974 RJR memo, talking about a  
22 cigarette designed for beginning smokers. "This  
23 cigarette would be low in irritation and possibly  
24 contain an added flavor to make it easier for  
25 those who have never smoked before to acquire the

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2 taste for it more quickly. The idea is based on  
3 the fact that smoking to the initiate is a fairly  
4 traumatic experience." The Office of Fire Safety  
5 requires that cigarettes meet fire safety  
6 standards and they have to be registered. I just  
7 want to read the list of flavored cigarettes for  
8 sale in New York: Vanilla, Cherry, Coffee,  
9 Honey, Chocolate, Strawberry, Wild Cherry, Mint,  
10 Grape, Anise, Mixed Fruit, Lime-Lemon, Coconut,  
11 Cinnamon, Raspberry, Orange, Licorice, Spearmint,  
12 Pineapple, Cafe Latte, and Chardonnay. Thank you  
13 very much.

14 KEVIN O'FLAHERTY: Good morning.  
15 My name is Kevin O'Flaherty and I'm the Regional  
16 Director of Advocacy for the Campaign for  
17 Tobacco-Free Kids. I'm here today to offer the  
18 campaign's strong support for the two legislative  
19 items you are considering as well as the two  
20 resolutions on your agenda today. First and  
21 foremost, I wanted to talk about what is the  
22 campaign's number one federal priority, and that  
23 is legislation that would grant the Food and Drug  
24 Administration the authority to regulate the  
25 tobacco industry. Resolution 1927 would call on

1  
2 the Congress to expeditiously do just that. This  
3 authority will benefit public health by reducing  
4 illegal sales of tobacco to kids, by limiting  
5 marketing that targets kids to begin smoking and  
6 then misleads smokers to discourage them from  
7 quitting, by ensuring that new products that  
8 claim to reduce harm actually do so, and by  
9 requiring tobacco companies to make changes in  
10 the products that would make them less harmful to  
11 smokers who are unable to quit. It also  
12 addresses the sentiments being expressed by the  
13 Council in Proposed Resolution 293 by removing  
14 FCLA preemptions and allowing cities and states  
15 the ability to regulate the time, manner, and  
16 place of tobacco advertising in your communities.  
17 To step outside of my remarks for a moment,  
18 Councilman Stewart, in answer to your question  
19 about the sugar and what goes into chocolate  
20 flavorings and all of these other things, the sad  
21 answer is that we just don't know. We don't have  
22 the money to do the research on these products.  
23 We don't know what the constituents are in these  
24 products. The industry knows, but they're not  
25 required to share that information with the

1  
2 public health community or with any branch of  
3 government. The FDA legislation would give us  
4 the answers to those questions that you're  
5 asking. Your consideration of this resolution  
6 comes at a crucial time in the passage of the  
7 bill. The Senate HELP Committee held its markup  
8 this week, and passed the bill just last night.  
9 But we're in a critical period where we need to  
10 move this to the floor with the strong support of  
11 members and the Senate president. New York in  
12 general and New York City in particular, have  
13 both often led the nation in advances to control  
14 the harm that tobacco causes. A strong show of  
15 support coming at this time from this city could  
16 have a powerful impact not only on New York's  
17 delegation, but on the momentum that we must  
18 sustain if we are going to be able to get this  
19 bill considered by the full Senate and on its way  
20 to the President this summer. That brings me to  
21 Intro 433-A. While FDA legislation would  
22 directly address the issue of flavored  
23 cigarettes, as mentioned before, it would not  
24 immediately lead to the elimination of other  
25 flavored tobacco like chew, small cigars, Snus,

1  
2 and other products that are designed to addict  
3 our kids. The tobacco companies like to claim  
4 that they are "a legal industry communicating  
5 with their adult consumers about a legal  
6 product", but let's be serious cherry flavored  
7 chew, Kahlua Kolai cigarettes, cookie-dough ice  
8 cream blunt wraps? Who are they trying to  
9 communicate with and who are they trying to kid?  
10 Really, who are they trying to addict? This  
11 legislation is one more great example of the  
12 types of things where New York takes the lead,  
13 and could even impact the speed with which the  
14 FDA would use its ongoing authority to address  
15 the tremendous impact that flavored tobacco  
16 products have creating life-long tobacco  
17 addictions in children. Finally, Intro 642-A  
18 would prohibit smoking on and around hospital  
19 grounds and the campaign encourages your support  
20 of this proposal as well. While eliminating the  
21 smoke in and around hospital campuses might not  
22 be the strongest public health intervention if  
23 taken on its own, we've learned that the stronger  
24 your clean indoor air law, the more smoothly  
25 these laws are implemented, the more positively

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2 they are accepted, and most importantly, the more  
3 effective they are at changing the social norms  
4 around tobacco use. These types of small  
5 improvements of your smoke-free law are well  
6 worth doing and will make a difference. In  
7 summary, one of the things we've realized at the  
8 campaign is that the cumulative nature of all of  
9 these interventions in our efforts to reduce  
10 tobacco use, especially among kids. Research has  
11 shown that when you keep the price of tobacco  
12 high, eliminate secondhand smoke in all public  
13 places, and fund comprehensive tobacco prevention  
14 programs, you have a much greater effect on  
15 reducing tobacco use that you would by just  
16 adding the individual effects of those  
17 interventions together. While it might seem like  
18 the four measures you are considering today are a  
19 disparate group of actions, they're all parts of  
20 an important puzzle, and your adoption of them  
21 helps to put a few of the last remaining pieces  
22 of that puzzle into place, and helps strengthen  
23 New York's efforts to reduce tobacco use among  
24 all of its residents, but especially children.  
25 Thank you very much for your time and I apologize



1  
2 by going a little bit over today. I'm happy to  
3 answer any questions you have.

4 COUNCIL MEMBER STEWART: I just  
5 feel that you guys are really on point on this  
6 issue. Do you think that the bill that seeks to  
7 ban smoking outside of hospitals goes far enough?  
8 There are other large buildings that are around,  
9 whether it's the ACS building where a lot of  
10 people go in, or whatever building it is, but a  
11 lot of people frequent. You have workers  
12 standing at the entrance. Do you think that the  
13 bill should include places like those places?

14 KEVIN O'FLAHERTY: I think the  
15 short answer is yes. I don't speak for everyone.  
16 Many jurisdictions around the country have  
17 covered 15 to 25 to 30-feet from entrances to all  
18 buildings and all entrances. I think the problem  
19 we have in large East Coast cities is that there  
20 are so many entrances to so many businesses and  
21 so many buildings on a city block that if you had  
22 a 15-foot exclusion for every entrance to every  
23 building, there would literally be no place for  
24 people to smoke. That I think most people see as  
25 too far for adults to be able to consume a

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2 product that they're legally allowed to do. I  
3 think that has been the only holdup among policy  
4 makers who would otherwise be supportive of just  
5 the type of measure you're talking about.

6

IRWIN BERLIN: Everything starts  
7 with one step. Once upon a time you could smoke  
8 in this room. Once upon a time doctors were big  
9 proponents of smoking cigarettes and many people  
10 smoked in hospitals. Once upon a time you could  
11 smoke on an airplane. I have no doubt that it's  
12 important to take this step before we get to  
13 other steps that we need to take. Yes, it would  
14 make a big, big difference if we could limit  
15 people smoking within 15, 20, 50 feet of a hospital  
16 entrance.

17

COUNCIL MEMBER STEWART: I see some  
18 of these products and I wonder, is there candy on  
19 the end?

20

RUSSELL SCIANDRA: How do they do  
21 it?

22

COUNCIL MEMBER STEWART: I don't  
23 know. Some of them may have candies?

24

RUSSELL SCIANDRA: They do it in a  
25 variety of ways. They impart the flavor and the

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2       aroma in a variety of ways. In some cases, the  
3       tobacco is soaked in something. The most  
4       sophisticated are used in the Reynolds' products  
5       where there is a little plastic bead embedded in  
6       the filter and when the hot smoke passes over the  
7       bead, it releases a flavoring and an odor that's  
8       embedded in that bead. So there's nothing in the  
9       tobacco itself, it's only when the heat causes  
10      the flavor to be released from that bead and it  
11      goes into your mouth. That's one way. There are  
12      other ways that they flavor them.

13

                  COUNCIL MEMBER STEWART: Do you  
14      know if any studies have been done as to what a  
15      concentration of those flavors will do to your  
16      system?

17

                  IRWIN BERLIN: The problem is that  
18      when you buy Kraft Macaroni and Cheese, you know  
19      you're buying macaroni and cheese. When you buy  
20      a cigarette, you really don't know what's in that  
21      cigarette, whether it's flavored or not flavored.  
22      We know that there is benzene in there. We know  
23      that there is formaldehyde in there. We know  
24      that there is nicotine in there. We know that  
25      there is licorice in there. We know that there

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2 are 4,000 chemicals, among which are chemicals  
3 designed to mask some of the harsher other  
4 chemicals. One of the goals of the Food and Drug  
5 Administration controlling what goes into a  
6 tobacco cigarette is that they have to tell you  
7 what is in there and they will have to explain  
8 that to us. I don't know what the exact amount  
9 of this or that is because they are not obligated  
10 to tell us.

11 RUSSELL SCIANDRA: We have this  
12 information because public health scientists have  
13 reverse engineered the cigarettes. They've done  
14 analysis of it. But obviously, there is a  
15 limitation to that. The fact is that unlike the  
16 manufacturers of every other product sold in the  
17 United States for human consumption, the  
18 manufacturers of tobacco products don't have to  
19 tell anybody what's in their products or in what  
20 quantities. That is what the FDA bill that  
21 you're supporting with your Resolution would  
22 finally allow the government to have that  
23 information.

24 COUNCIL MEMBER STEWART: So in  
25 other words, what you're saying is that if we

1  
2 allow this to go through and people to be smoking  
3 these cigarettes and ten years from now we hear  
4 of people getting cancer and we would just  
5 attribute it to the cigarette part of it and not  
6 the chemical part of it. And that chemical part  
7 may have increased it in terms of having cancer,  
8 whether it's lip cancer or whatever.

9           RUSSELL SCIANDRA: There is a  
10 famous story that Jeffrey Wigand told, the guy  
11 who was the subject of the movie "The Insider".  
12 When he went to work for the company Brown &  
13 Williamson, he discovered that they were putting  
14 rat poison in their pipe tobacco. They were  
15 adding this because of the taste that it imparted  
16 to the pipe tobacco. He went to the CEO of the  
17 company and he said he didn't think it was a good  
18 practice to add poison to a product. It's bad  
19 enough that the product comes with so many  
20 poisons in it and you're adding it. And he said,  
21 no, we're not going to take it out, it would  
22 affect sales. Only within the company was this  
23 fact known. They didn't have to tell any  
24 government agency that they were doing it.

25           COUNCIL MEMBER STEWART: I want to

1  
2 thank you gentleman for coming in. We're going  
3 to be working closely with other folks to see  
4 what's wrong with these products and how we can  
5 really prevent our constituents from being harmed  
6 by these products. Thank you. Our next panel  
7 will be Audrey Silk, Michael Murphy, and Barry  
8 Schavitz [phonetic].

9 [Pause]

10 COUNCIL MEMBER STEWART: If you can  
11 just identify yourself, we can get right into it.

12 AUDREY SILK: My name is Audrey  
13 Silk. I am the founder of New York City Citizens  
14 Lobbying Against Smoker Harassment, otherwise  
15 known as CLASH. I represent the interests of  
16 adults who choose to smoke cigarettes. I would  
17 beg that you give me an extra minute or two.  
18 We're about it as the opposition. If you could,  
19 just give me one or two extra minutes to state  
20 our side. Thank you, I appreciate that. As far  
21 as Intro 433-A for flavored tobacco prohibition,  
22 why is this constant appeal to act on  
23 prohibitionist tendencies in a country that  
24 prides itself on the free market system and for  
25 adults to be left free to make informed choices

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2 in regard to legal products? It's malicious, not  
3 virtuous, and a stain on anyone's record,  
4 historically speaking. This war on smokers is a  
5 model of discrimination and the suspension of  
6 personal principles, yours. Rather than apply a  
7 principle evenly to all things you apparently  
8 pick and choose which to apply it to, based on  
9 personal favorability. Otherwise we'd be hearing  
10 about a proposal to ban flavored liquors, of  
11 which there are 10 fruit and other flavors for  
12 rum, 7 for tequila, and 32 for vodka, all for the  
13 children. Or is it that you prefer the  
14 pharmaceutical version of nicotine only be  
15 available that comes flavored with Mint, White  
16 Ice Mint, Cinnamon Surge, Fruit Chill and Fresh  
17 Mint? A 2004 study printed in the Archives of  
18 Pediatrics and Adolescent Medicine found that  
19 minors were able to purchase nicotine replacement  
20 therapies like this gum 81 % of the time. Adults  
21 enjoy flavored cigarettes the same way they enjoy  
22 flavored liquors. Children deserve special  
23 attention but not at the constant expense of  
24 adults. You see the solution to the failure by  
25 tobacco control, and your own law restricting

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2 tobacco sales to minors, to reduce underage  
3 smoking by punishing adults. How much more  
4 infantilizing of adults does government intend to  
5 exercise in order to control a segment of society  
6 best left to their parents? Supreme Court  
7 Justice O'Connor delivered the opinion of the  
8 court, in the Massachusetts case, that struck  
9 down that state's tobacco advertising  
10 restrictions. In part she said, "The State's  
11 interest in preventing underage tobacco use is  
12 substantial, and even compelling, but it is no  
13 less true that the sale and use of tobacco  
14 products by adults is a legal activity." On your  
15 Proposed Intro 642-A to ban smoking on hospital  
16 grounds, just two weeks ago, May 8th, the Rutland  
17 Region Medical Center in Vermont "snuffed out its  
18 smoking ban on hospital grounds because of  
19 complaints about people smoking and littering on  
20 city streets." Another example, in Ottawa, Canada  
21 in 2007: "The hospital relaxed its rules  
22 prohibiting smoking on its property after  
23 patients were risking life and limb to drag their  
24 IV poles across traffic." The latest rationale  
25 for implementing such a ban is that hospitals



1  
2 should reflect only a healthy environment and  
3 deter unhealthy behavior. I take enormous  
4 exception to that overreaching excuse to force  
5 ever more paternalistic dictates down the  
6 public's throat. Hospitals, like car mechanics,  
7 are there to provide a service. They are a  
8 business and the patients are customers paying  
9 for that service. They are not prisoners or  
10 moralizers that are there to enforce an image of  
11 acceptable behavior. Why not also ban French  
12 fries and candy eating on the grounds then if  
13 it's to promote the image of health. Indoors and  
14 in one-on-one patient to doctor interaction is  
15 where these discussions can take place.  
16 Hospitals are also supposed to embody compassion.  
17 This is as uncompassionate as you can get.  
18 Hospital smoking bans deter smoking patients from  
19 obtaining medical treatment and procedures.  
20 Forced smoking cessation hinders recovery for  
21 admitted patients that smoke. Family members and  
22 friends of the patients who are smokers will  
23 reduce the length and frequency of their visits  
24 to comfort those patients. Staff members who  
25 smoke will become resentful and be reflected in

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2 their performance. What barbaric cruelty to  
3 hospitalized smokers, adding completely  
4 unhealthy, unnecessary stress, and to their  
5 worried, tense, frightened visitors who are often  
6 enduring all-night vigils, and/or facing the  
7 prospective death of relatives and friends, and  
8 are under great additional stress to try to make  
9 informed, often life and death, decisions under  
10 huge emotional pressure. What possible benefit  
11 can there be to anyone, or anyone's health to add  
12 this burden to people in extremis? There is  
13 absolutely no valid proof that smoke from  
14 cigarettes in the outdoors poses any risk to  
15 health. This is one of the meanest proposals  
16 yet. Behavior modifications, mandated under  
17 already stressful situations in hospitals, are  
18 sheer stupidity and inhumane and show a complete  
19 lack of respect for the well-being of a great  
20 number of the very people that you're committed  
21 to help when that help is asked for. Would it be  
22 okay to go on a little bit more? I know I've  
23 gone far over than I thought.

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COUNCIL MEMBER STEWART: The other  
two gentlemen, they are in opposition to the

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bill, right?

AUDREY SILK: Yes, they're on the business side. I'm the only person here representing smokers.

COUNCIL MEMBER STEWART: I'll give you another minute.

AUDREY SILK: Another minute? Well let's see how far I can get.

COUNCIL MEMBER STEWART: Maybe you will be able to answer some of the questions I will have.

AUDREY SILK: Well, can I take my other minute, please?

COUNCIL MEMBER STEWART: Go ahead.

AUDREY SILK: As far as Resolution 293 to reduce tobacco advertising, you justify more advertising restrictions in order to reduce the exposure of youth to tobacco advertising. I am not endorsing any notion that anyone under 18 should smoke. But there's a massive amount of anti-smoking messages on TV, in print, and in the schools to assist in weighing the choice at that time. I just discovered that the Department of Health spent \$4 million this current fiscal year

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2 on anti-tobacco commercials and whatnot. Despite  
3 protests that big tobacco outspends them it's  
4 impossible for any to say I haven't heard from  
5 the other side. I am no apologist for the  
6 tobacco industry. I'm a defender of the  
7 Constitution. You are free to tell anyone what  
8 you think about smoking. You are free to  
9 instruct kids you feel the ads are harmful. The  
10 way to protest speech is with more speech. What  
11 you are advocating, the force of law to silence  
12 speech is a perversion of the Constitution. I'll  
13 go on to just one little thing. I'll speak off  
14 the cuff real quick. As far as the resolution  
15 for passing the Family Smoking Prevention Act,  
16 Dr. Michael Siegel, who has been a tobacco  
17 control researcher for 20 years from Boston  
18 University has a blog that between him and others  
19 that have analyzed that Act have determined that  
20 this would be the worst thing ever to happen to  
21 tobacco control. So you'd be surprised to find  
22 that I'm in favor of it. I think it will be the  
23 death knoll of many of the anti-smoking groups  
24 across the country, save for the biggies like  
25 Campaign for Tobacco-Free Kids and Americans for

1  
2 Non-Smoker's Rights, who will see their power  
3 diminished. I also don't believe the FDA will  
4 ever, in all the bureaucracy, get around to  
5 playing with the ingredients of the product as  
6 planned. It will never withstand certain First  
7 Amendment challenges to some of the no-  
8 advertising edicts. The way I see it, we're  
9 either stuck with the anti-smoking groups slowly  
10 eating at and getting at whatever FDA will do and  
11 more, or with the FDA who will just mirror  
12 whatever the anti-smokers would do but probably  
13 less. Once the FDA has it, the anti-smokers lose  
14 a lot of their power and influence. Now, Stanton  
15 Glantz, who is the father of anti-smoking, who  
16 founded the Americas for Non-Smoker's Rights,  
17 take his words to heart. He has said, "I think  
18 that the damage that this bill will do extends  
19 far beyond the narrow confines of product  
20 regulation and could do great damage to tobacco  
21 control in not only the United States but  
22 globally." To me that's enough to say as far as  
23 protecting myself as a smoker, I'm all for this  
24 FDA bill. Go for it. Thank you for your  
25 consideration very much.

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2 BARRY SCHAVITZ: Thank you,  
3 Councilman Stewart. Good morning. My name is  
4 Barry Schavitz. I am here on behalf of Altadis  
5 USA, Inc. They are a leading manufacturer of  
6 cigars. My testimony will relate to cigars.  
7 First let me say that the cigar industry is  
8 relatively small. It represents approximately  
9 3.5% of the entire tobacco industry by revenue.  
10 By unit sales, there are more cigarettes sold in  
11 two days in this country than there are cigars  
12 sold in an entire year. With respect to  
13 flavorings, let me say that flavorings in cigars  
14 are not a new phenomenon by any means. Since the  
15 early 1900s, cigars have come in cherry, in  
16 apple, in rum. Flavorings have been used in  
17 cigars for many, many years. The flavored cigars  
18 that Altadis makes are intended to appeal to  
19 adult consumers. The company strongly supports  
20 minimum age of purchase laws. We've heard  
21 earlier today that those laws here in New York  
22 are being enforced and they are effective. Also,  
23 Altadis does virtually no advertising or  
24 marketing of the products that are being  
25 discussed here today. To say that the company

1  
2 advertises or markets these products to youth is  
3 just not true. There is no advertising by the  
4 company of these brands and there is no  
5 advertising of any brands to any targeted groups.  
6 With respect to the flavored products, if the  
7 ordinance is designed to limit cigars that have a  
8 flavor descriptor in the name, let me say that  
9 the company has about 15 brands that come  
10 flavored. Every one of those flavors is also  
11 used in other non-tobacco products. Some of  
12 those products are designed for youth. Apple  
13 children's toothpaste is available. At the same  
14 time, strawberry Ensure, a nutrition supplement  
15 for adults is available. The fact that a flavor  
16 is used in a product really says nothing about  
17 the appeal of the flavor itself. The point is  
18 that there is no basis to conclude that a flavor  
19 alone makes a product suspect. There is no basis  
20 at all to conclude that flavors as used in cigars  
21 make them appealing to youth. In fact, most of  
22 the flavored cigars have come on the market in  
23 the last 10 or 15 years and in that time period,  
24 youth usage rates of cigars have declined. If  
25 flavored cigars were truly an appeal to youth,

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2 youth usage rates would have increased. Finally,  
3 issues like this shouldn't be addressed at the  
4 state or local level, and in fact they have not  
5 been. Philadelphia enacted an ordinance similar  
6 to this two years ago, which was stuck down in  
7 court. We've heard earlier that Maine passed a  
8 similar ordinance that's supposed to go into  
9 effect over the summer. That's going to be  
10 subject, most likely, to a legal challenge as  
11 well. Lastly, as we've also heard, this issue is  
12 currently being considered in Washington. There  
13 is legislation to give the FDA jurisdiction over  
14 tobacco products that will address flavored  
15 products most significantly. Congress, which has  
16 looked at this issue very carefully, has chosen  
17 not to include cigars in the legislation.  
18 Including cigars in local or state legislation is  
19 counterproductive. Cigars should not be included  
20 in this legislation. Thank you.

21 MICHAEL MURPHY: Good morning. My  
22 name is Michael Murphy and I'm here today  
23 representing Nat Sherman Incorporated to comment  
24 on Resolution 293, respecting localities being  
25 authorized to enforce advertising restrictions.



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2 Our company is a small manufacturer, distributor  
3 and retailer of tobacco products and has  
4 maintained a long continuous presence in New York  
5 City. Since 1930, we have operated a retail  
6 store in Midtown Manhattan. Our factory and  
7 distribution center, now in North Carolina, was  
8 also previously located in New York City. As a  
9 member of the tobacco industry, we have always  
10 accepted our obligations as a responsible  
11 manufacturer very seriously. Our products are  
12 intended for enjoyment by adult smokers only.  
13 Our advertising activity is restricted to  
14 industry trade publications and limited retail  
15 point of sale material. Given the higher price  
16 and unique appearances of our products, which has  
17 resulted in us acquiring a luxury image, added to  
18 the limited distribution of our brands versus  
19 competitive products, our products have little if  
20 any appeal to youth smokers. The issue of youth  
21 smoking has been a major theme is supporting  
22 tobacco tax increases, public smoking bans,  
23 advertising and promotion restrictions, as well  
24 as retail licensing. A number of recent  
25 government reports have noted that the sharp

1  
2 decline in the incidence of youth smoking since  
3 the late 1990s. This time period coincides with  
4 the implementation of the master settlement  
5 agreement between the states and the cigarette  
6 industry whereby cigarette prices rose sharply  
7 and the industry voluntarily agreed to eliminate  
8 most forms of consumer advertising conducted in  
9 the past. At the same time, the retail sale of  
10 cigarettes through vending machines and self-  
11 service displays were eliminated and tobacco  
12 manufacturers and retailers actively initiated  
13 programs to verify the age of purchasers of  
14 tobacco products. We believe this speaks to the  
15 fact that reducing youth smoking is more an issue  
16 of restricting access than advertising. We also  
17 think it demonstrates that the existing body of  
18 federal and state legislation and regulation is  
19 working effectively. At this moment, Congress is  
20 now considering passage of legislation that would  
21 give the Food and Drug Administration the  
22 authority to further regulate the tobacco  
23 industry beyond what is already called for by the  
24 master settlement and the Federal Trade  
25 Commission. As a small manufacturer, we can

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2 survive and compete when there is federal  
3 standard regulation that is uniform and applies  
4 nationwide. However, given our size and  
5 resources, our business would be in jeopardy if  
6 we had to comply with a variety of local laws  
7 that vary by geography. An example of this  
8 occurred when New York City adopted their fire-  
9 safe cigarette standard. Given the cost and  
10 complexity of maintaining dual inventories on all  
11 of our brands since we are distributed  
12 nationally, our only choice was to make all of  
13 our product fire-safe nationally, requiring a  
14 significant expense as a result of the  
15 specialized paper required. We and the rest of  
16 the industry were fortunate that New York City's  
17 law became the model in other states that have  
18 since enacted a similar requirement. Thank you  
19 for your time and attention.

20 COUNCIL MEMBER STEWART: I just  
21 want to go back to something. You just mentioned  
22 that your products have little appeal to youth  
23 smokers. What are your products?

24 MICHAEL MURPHY: We make a few  
25 brands. One is called Naturals King size.

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COUNCIL MEMBER STEWART: A few brands of cigarettes?

MICHAEL MURPHY: We are involved in cigarettes as well as cigars, Councilman. Our cigarette lines would include brands called Classic, MCDs, or Naturals King Size. These are not widely distributed brands in the City of New York, even though we do have a store on 42nd Street.

COUNCIL MEMBER STEWART: Give me the reason why you feel it would not attract the youth?

MICHAEL MURPHY: Industry statistics would indicate that most cigarettes are sold in convenience stores. We are not the type of product that sells in a convenience store. We are probably \$2-\$3 more expensive than a pack of Marlboro or Winston, to use that name. Our packing is rather unconventional, compared to most competitive products. We think our taste is different because we have an all-natural cigarette.

COUNCIL MEMBER STEWART: So your product is not as was described a while ago with

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cinnamon or chocolate or whatever the flavor is?

MICHAEL MURPHY: We do make a menthol-flavored cigarette, which is common in the industry. That's the only flavor we use.

COUNCIL MEMBER STEWART: Ms. Silk, in your testimony you were saying why not also a ban on French fries and candy at the hospital sites?

AUDREY SILK: Right.

COUNCIL MEMBER STEWART: When one eats the French fry, the residue from that French fry doesn't go on someone, does it?

AUDREY SILK: You're ignoring the underlying reason. The secondhand smoke outdoors is a ridiculous contention that it's causing harm to anybody. When you're standing Empire Boulevard or Fifth Avenue with all those cars going by and you say that walking a dissipating cloud of smoke by one or two people. You don't see congregants of 20 people. You cannot tell me that momentary passing is causing anybody any long-term harm. But aside from that, if you listen closely to everybody's testimony in favor of this, their goal is deeper than that. It's to

1  
2 de-normalize and make smoking socially  
3 unacceptable by removing it from site. The  
4 Campaign for Tobacco-Free Kids says we're going  
5 to do it incrementally. When we get this, we can  
6 do more. They want to remove it from site and  
7 using hospitals is an emotion-laden place, and  
8 explaining it as it's not a place where you  
9 people should be seen smoking, it's a health  
10 place. French fries aren't healthy,  
11 cheeseburgers aren't healthy, and that Snickers  
12 bar you're going to buy and eat real fast before  
13 you go up to visit mom isn't healthy. Should  
14 kids and people being seeing that while you're  
15 standing around the hospital?

16 COUNCIL MEMBER STEWART: I don't  
17 want to debate with you, but I can tell you that  
18 I may like to drink beer and the residue from  
19 drink beer is going to the bathroom to urinate.  
20 You may like to smoke and the residue from smoke  
21 is the smoke that you may disperse on other  
22 people. My debate basically is this, if I'm  
23 going into a building and someone wants to smoke,  
24 fine. But the fact is, if I have to pass through  
25 that smoke that I may be allergic to, it should

1

2 not be on me. If you want to keep it on you,  
3 fine. If I like to drink beer, you don't want me  
4 to come and urinate on you.

5

AUDREY SILK: That's how they use  
6 it. Councilman, with all due respect, you cannot  
7 possibly contend in the law of physics that  
8 cigarette smoke outdoors does not dissipate.  
9 There is no safe level rhetoric. You can apply  
10 it to the arsenic in our water, the sunshine from  
11 the sun. You're ignoring the patients that do  
12 smoke and their visitors that do smoke. No  
13 compassion for them as well, and staff you  
14 ignore, or you don't want to believe that the  
15 staff smokes at all. Imagine going through a  
16 whole tour of duty that they're not going to turn  
17 that stress during their shift on their patients.  
18 It's not going to go well.

19

COUNCIL MEMBER STEWART: Ms. Silk,  
20 all I'm saying basically is this; I am not  
21 against people who smoke. But I'm saying when  
22 you smoke; try not to let it be on me. You're  
23 saying that when people congregate and smoke that  
24 that smoke doesn't affect people trying to enter  
25 a building and that's wrong. That's the reason

1  
2 why we ban it from enclosed areas so at least the  
3 folks who are there don't have to be partaking of  
4 that smoke. Likewise, if it's a calm day and  
5 you're smoking on the outside, you think that  
6 smoke will dissipate right away? Even if you  
7 inhale a little smoke, the fact is you're not  
8 supposed to do that.

9 AUDREY SILK: As a doctor yourself,  
10 you know the principals of sound toxicology. The  
11 does makes the poison. Transient, ambient  
12 exposure to smoke outdoors does not cause long-  
13 term health effects to anybody.

14 COUNCIL MEMBER STEWART: I disagree  
15 with you now.

16 AUDREY SILK: When they banned  
17 smoking indoors, the cry was, "can't you please  
18 just smoke outside, be considerate and smoke  
19 outside." Well, we've been pushed outside and  
20 now that's not good enough. Soon they'll be in  
21 our homes. They're going for public housing.  
22 Where will we be able to smoke? You say you're  
23 all for us to be able to smoke, but you're also  
24 for this incrementalism until we're in our own  
25 ghettos.



1  
2 COUNCIL MEMBER STEWART: I want to  
3 get some more information. Are you saying you  
4 don't want us to regulate regular cigarettes?

5 BARRY SCHAVITZ: I'm sorry?

6 COUNCIL MEMBER STEWART: Are these  
7 considered cigarettes or cigars?

8 BARRY SCHAVITZ: I can't tell what  
9 those are. What product is that?

10 COUNCIL MEMBER STEWART: It's  
11 Swisher Sweets.

12 BARRY SCHAVITZ: Those are cigars.

13 COUNCIL MEMBER STEWART: Those are  
14 cigars?

15 BARRY SCHAVITZ: Yes, sir.

16 COUNCIL MEMBER STEWART: You don't  
17 want us to regulate these?

18 BARRY SCHAVITZ: Cigars should not  
19 be included in the flavored product ban.

20 COUNCIL MEMBER STEWART: Cigars  
21 should not be included in the flavored?

22 BARRY SCHAVITZ: In the flavored  
23 product ban.

24 COUNCIL MEMBER STEWART: Why not?

25 BARRY SCHAVITZ: A number of

1  
2 reasons. First, cigars have been flavored for a  
3 century. Since the early 1900s, cigars have come  
4 in flavors just like that one. They've come in  
5 cherry, in apple, in rum. They've been used in a  
6 variety of other flavors since the 1950s. It's  
7 not a new phenomenon.

8 COUNCIL MEMBER STEWART: Let me get  
9 this straight, sir. You're saying because it was  
10 done years ago, it should not be done now?  
11 You're saying it's because the permission was  
12 granted then and it's been flavored for years.  
13 We don't know all the effects of the flavoring.  
14 We know of the problems that we have with  
15 cigarettes in terms of them being carcinogenic  
16 and all of those things. You're saying we should  
17 not ban it because of the fact it was there for  
18 years.

19 BARRY SCHAVITZ: No, sir. I'm just  
20 trying to provide some historical context. I  
21 think there are primarily two reasons why cigars  
22 should not be included in this legislation.  
23 First, to have local regulation like this is  
24 counterproductive. It's bad for the business  
25 community and it doesn't achieve the objective

1  
2 that the Council is seeking to achieve. If  
3 flavored cigars were banned only in New York  
4 City, people who want to try and get them are  
5 going to travel to Westchester, they're going to  
6 travel to New Jersey, they're going to go to  
7 other places to buy them. What there needs to be  
8 is a comprehensive tobacco regulatory program  
9 like the one that's being considered in  
10 Washington. That addresses flavored cigarettes.  
11 It doesn't address flavored cigars. The reason  
12 it doesn't address flavored cigars is because  
13 when the Food and Drug Administration was  
14 considering this rule, and this goes back a  
15 number of years, they came to the conclusion that  
16 flavored cigars were not a problem. That's the  
17 reason flavored cigars were not included in that  
18 legislation. That's the conclusion of the Food  
19 and Drug Administration.

20 COUNCIL MEMBER STEWART: I'm not  
21 sure that is what's going to happen. I know a  
22 number of other states are considering similar  
23 legislation at this moment. Eventually I think  
24 something is going to be done. The fact is  
25 millions and millions of dollars are being spent

1

2 on health issues in this country. Cigarettes are  
3 one of the leading causes of health problems. I  
4 think legislators are going to look at that and  
5 they're going to continue to look at it. If you  
6 look at the budget, the health budget is always  
7 going up because of the fact that we are  
8 subjecting ourselves to a lot of risk. If we can  
9 avoid some of the risk by getting rid of  
10 cigarettes, that's one of the things that we'll  
11 have to do.

12

BARRY SCHAVITZ: Councilman, I'm  
13 not going to disagree with anything that you just  
14 said. I've got really two points. The first is  
15 that this is an issue that ought to be dealt with  
16 on a federal level, not a state or a local level.  
17 Second is to the extent that this is being  
18 offered as a youth usage issue, the facts don't  
19 support that. The fact of the matter is that  
20 there have been more flavored cigars that have  
21 come on the market in the last 10 or 15 years, as  
22 there have other non-tobacco products. Flavoring  
23 has just become a fact of life. There are a wide  
24 variety of products on the market now that are  
25 flavored, both tobacco and non-tobacco. At the

1  
2 same time, the number of flavored cigars that's  
3 come on the market has increased; youth usage of  
4 cigars has decreased. If these products were  
5 appealing to youth in any significant way, youth  
6 usage would be increasing and not decreasing.  
7 The fact that cigars have been flavored  
8 historically, Councilman, was just offered for  
9 context. It's not a reason not to do it now.

10 COUNCIL MEMBER STEWART: This  
11 debate is going to continue. I know some of the  
12 things you're saying, I oppose it because of the  
13 fact that I read different. The Department of  
14 Health in New York City shows me a chart here  
15 from 2001-2007 of a survey. You can see the  
16 increase in schools, percentage of New York  
17 public high school smokers. In 2001 it was about  
18 5%. In 2007 it's about 14%. It's almost three  
19 times higher. That's just cigars. What I'm  
20 saying is we can go on and debate for days on  
21 this issue. I just wanted to make sure you  
22 understand that we are not the only ones that are  
23 looking at this issue. There are other states  
24 and municipalities that are looking at it.

25 BARRY SCHAVITZ: One last comment

1  
2 on that. I appreciate that. When this has come  
3 up in other places, the only place where it's  
4 actually been enacted and put into effect was  
5 Philadelphia. It was subject to legal challenge  
6 and was struck down. I expect that there is  
7 going to be a legal challenge to the law in Maine  
8 as well. The basis for those challenges was that  
9 this ought to be a federal issue, not a state or  
10 a local issue.

11 COUNCIL MEMBER STEWART: I think  
12 most of the states are not going to wait on the  
13 federal government to enact this issue. They're  
14 going to try to make sure they protect their  
15 constituents. Then after that, if the federal  
16 government sees that, they will do that.  
17 Sometimes it works that way. Local laws are  
18 created and then the federal government takes  
19 effect. Then the federal government may have a  
20 law which then covers everybody. The fact is I  
21 don't think this would be any precedent that  
22 we're setting that local municipalities have a  
23 law being developed. Most of the time, this is  
24 how laws have been created throughout this  
25 country. Thank you. Our next panel is Amanda

1  
2 Septimo, Misra Walker, Janet Arroyo, Aleah  
3 Gathings and Jessica Safier. We have a panel of  
4 ladies, and is this panel for or against the  
5 bill? If you can please just identify yourself,  
6 give your name, and we'll be glad to hear from  
7 you. Your testimony should be no more than three  
8 minutes because we have other members to come.

9 MISRA WALKER: Hello, my name is  
10 Misra Walker and I'm the vice president of a teen  
11 activist group called ACTION, Activists Coming to  
12 Inform Our Neighborhood. We're a teen community  
13 leadership program at The Point CDC, a nonprofit  
14 organization located in the Hunts Point community  
15 of the South Bronx. ACTION's role in the  
16 community is to identify the environmental and  
17 social injustices with a goal of creating and  
18 implementing ongoing youth-led solutions. One of  
19 the issues we find very important is the tobacco  
20 industry targeting youth. On behalf of the  
21 ACTION team, we fully support the bill to ban the  
22 marketing of flavored tobacco towards youth. It  
23 was the combined efforts of ACTION and the  
24 American Lung Association that raised the issue  
25 of flavored tobacco targeting youth. With the

1  
2 support of Councilman Joel Rivera, our campaign  
3 reached its peak when the bill was introduced in  
4 the New York City Council in 2007. Through  
5 ACTION survey and research at Hunts Point, we  
6 have found that 90% of adults begin smoking as  
7 teens. We believe that this shocking statistic  
8 is a result of the industry's attempt to market  
9 towards youth in order to recruit replacement  
10 smokers. As teenagers, we're offended that we  
11 are exposed to the subliminal messages on a daily  
12 basis. Tobacco companies are investing the early  
13 demise of future generations and are taking  
14 advantages of the children's vulnerability in  
15 order to maximize profits, even if it means  
16 putting children's health at risk. Many of us in  
17 ACTION have seen the result of tobacco causing  
18 harm to the well-being of our family members. We  
19 want to prevent the exposure of tobacco's candy-  
20 flavored advertisement to our younger siblings  
21 and for them not to become tobacco industry's  
22 next demographic. We are grateful that our  
23 voices were heard back in 2007 and now we're here  
24 to once again stand up against big tobacco and  
25 let the industry know that we will not be today's



1  
2 target and tomorrow's victim. Here I have a  
3 collected pile from members, families and friends  
4 of the community that supported our campaign to  
5 ban the sale of flavored cigarettes in New York.  
6 Thank you.

7                   AMANDA SEPTIMO: Hello, I'm Amanda  
8 Septimo and I'm a former member of ACTION. And  
9 while ACTION is thoroughly committed to the ban  
10 of flavored cigarettes, I'm here speaking today  
11 as a concerned member of the youth community on  
12 behalf of New York City's young people that are  
13 unknowingly target by the tobacco companies.  
14 First I'd like to note that the commitment to a  
15 flavored tobacco ban is not fueled by a power  
16 struggle against big tobacco companies, and it is  
17 not a lash out against big business and its sly  
18 market schemes. While these issues do remain at  
19 hand with big tobacco companies, the health of  
20 New York City's youth is what remains at the core  
21 of this flavored tobacco ban. Each day 5,000  
22 children under the age of 18 try their first  
23 cigarette, and every single day another 2,000  
24 under 18 become established smokers. These  
25 figures speak volumes about the effect the

1 tobacco industry has on today's young minds.  
2 Flavored tobacco masks the harsh taste of normal  
3 cigarettes and the flashy ads glamorize the  
4 deadly habit, all in effort to grab the attention  
5 of teenagers and young adults. The compelling  
6 product names like Mandarin Mint and Beach  
7 Breezer show tobacco companies' blatant attempts  
8 to capture the attention of young audiences, and  
9 secure replacement smokers for their ever-dying  
10 consumers. While I am lucky to sit before you  
11 today as a young lady who has yet to touch a  
12 tobacco product, I do have a mother whose  
13 attention was captured by tobacco companies at  
14 the age of 17, and has been smoking ever since.  
15 So many uncontrollable factors can be attributed  
16 to young people smoking, which is why we need  
17 legislation to eliminate the unnecessary  
18 temptations and unfair schemes to hook young  
19 people to this deadly habit. The immense  
20 responsibility of looking after the health of  
21 today's youth cannot be left for the big tobacco  
22 companies. Not only do these companies have a  
23 clear track record of disregarding health, but we  
24 must also remember that they are in fact  
25

1  
2 companies looking to make money. Big tobacco  
3 companies have broken their promises to back off  
4 youth in the past and will continue to do so as  
5 long as a lack of legislation allows them to,  
6 because they are continuously looking to maintain  
7 and expand their markets. Thus, legislation must  
8 be passed to prevent these companies from  
9 continuously taking advantage of the malleable  
10 and very impressionable minds of today's youth.  
11 This is a chance for legislators to send the  
12 right message to tobacco companies. Passing this  
13 legislation can mark the beginning of seriously  
14 changed attitudes regarding boundaries in  
15 advertising and the unfair targeting of youth.  
16 Passing this legislation will also send a  
17 positive message to the people that are  
18 represented by all of you. This will show people  
19 that their elected officials are representing,  
20 protecting, and respecting the concerns that  
21 truly affect everyone. I urge you to remember  
22 that regardless of how big tobacco companies  
23 package it, they are marketing to children to  
24 replace the customers that die because of their  
25 product. When older consumers die, you get

1  
2 younger ones. It is unacceptable that tobacco  
3 companies market their product so that today's  
4 youth are tomorrow's dying customers, and it must  
5 come to an end. This game of replacement must be  
6 put to rest by passing legislation. I trust that  
7 legislation mandating the ban of flavored tobacco  
8 would force tobacco companies to replace their  
9 sly marketing strategies, and maybe even force  
10 these companies to examine the deadly nature of  
11 their product. But it will no longer allow these  
12 companies to replace their dying customers with  
13 the young leaders of tomorrow. Thank you.

14           JANET ARROYO: Good afternoon. My  
15 name is Janet and I'm with the New York City  
16 Coalition for a Smoke-Free City. Today I'm going  
17 to be representing a parent from the Bronx. My  
18 name is Esmirna Latorre and I am the parent of  
19 two teenagers, a boy and a girl, ages 14 and 17.  
20 I lived in the South Bronx for over 20 years and  
21 have noticed a steady increase in tobacco  
22 advertisements in my neighborhood, particularly  
23 over the past few years. It seems as though  
24 there is no escape from them. I live 3 blocks  
25 away from a building that houses two high schools

1  
2 and it makes me so angry to see ads all along the  
3 route my kids use to walk to school every day.

4 It would not be okay for stores to be covered in  
5 pornographic ads, why is it ok that they are  
6 covered in ads for a deadly product that steals  
7 precious years people have with their families?

8 How can we protect our children from the dangers  
9 of this product when they are bombarded with the

10 message that smoking is glamorous? When I go to  
11 the store, I see cigarettes with flavors like

12 vanilla, strawberry, and mint. The packaging

13 looks exactly like candy. It is scary when kids  
14 these days can't even tell the difference between

15 candy and cigarettes. It sends the message that  
16 cigarettes are as harmless as candy when in

17 reality flavored tobacco is as harmless as

18 addiction and cancer. As a parent, I work hard

19 to teach my children right from wrong. I hope

20 that they can go out in the world and make good

21 decisions. But because I work, I am not always

22 around to guide them. We owe our children the

23 opportunity to live in a community where they are

24 not constantly under siege by negative

25 influences. We expect you, as leaders in our

1  
2 community, to protect the health and well-being  
3 of our children. We're counting on you to  
4 support families like ours and rid our  
5 neighborhoods of advertisements and endorsements  
6 of tobacco products. Thank you.

7 ALEAH GATHINGS: Good afternoon.

8 My name is Aleah Gathings, Deputy Director of the  
9 New York City Coalition for a Smoke-Free City. I  
10 would like to thank the Health Committee for the  
11 opportunity to speak this afternoon. The New  
12 York City Coalition is a pro-health advocacy  
13 group comprised of numerous partner and grass  
14 roots organizations. Our priorities include  
15 protecting youth and vulnerable populations from  
16 tobacco industry targeted marketing, educating  
17 policy makers on the risks of tobacco use and  
18 secondhand smoke, and advocating for policy  
19 changes to better protect New Yorkers from  
20 tobacco addiction and disease. Our mission is to  
21 prevent more than 10,000 New York City residents  
22 from needlessly losing their lives each year due  
23 to tobacco. We believe that it is unacceptable  
24 that each year approximately 20,000 New York City  
25 teens or children smoke cigarettes, of whom, one-

1  
2 third will die prematurely from their addiction.  
3 The tobacco industry is committed to addicting  
4 their next generation of smokers, our kids. The  
5 tobacco industry profits are based on the ability  
6 to get kids to started smoking. They target kids  
7 through alluring advertisements at point of sales  
8 that feature bright colors and flavored tobacco  
9 products. Fact, 90% of all adult smokers become  
10 addicted before the age of 18. Fact, there are 3  
11 times more cigarette ads on windows of stores  
12 popular among youth than stores that are not as  
13 popular. Fact, youth, who visit a convenience or  
14 small grocery store at least weekly, have a 50%  
15 greater chance of initiating smoking. Historic  
16 and current industry trickery demonstrates how  
17 versatile the tobacco industry is in finding ways  
18 to market to kids regardless of our efforts to  
19 stop them. Product innovation, such as the  
20 addition of sensory ingredients like sugars or  
21 candy flavors, makes the overall experience of  
22 smoking smooth or pleasurable. This ease of  
23 dosing helps kids initiate smoking and reinforces  
24 addiction. In terms of secondhand smoke  
25 exposure, we believe that all New York City

1 residents deserve protection from exposure of  
2 secondhand smoke. This is especially true at  
3 hospitals where the objective is to make people  
4 well and not sick. It is unacceptable for any  
5 individual to be exposed to cigarette smoke on  
6 the grounds of a hospital. Smoke-free hospital  
7 grounds protect: number one, the health of  
8 visitors on grounds of the hospital; number two,  
9 the health of patients, especially those with  
10 asthma, COPD, or heart disease; three, the health  
11 of hospital workers who would be exposed to  
12 secondhand smoke. Smoke-free hospital bans, when  
13 supported with cessation resources, also decrease  
14 smoking prevalence among hospital employees.  
15 It's a win-win. We applaud this Committee's  
16 efforts in seeking to protect the health of all  
17 New Yorkers. The elimination of enticing flavors  
18 additives, tobacco advertising, and secondhand  
19 smoke exposure on hospital grounds can  
20 significantly diminish the promotion and use of  
21 tobacco's deadly products among our most  
22 vulnerable residents. Thank you for your time  
23 and concern.

25 JESSICA SAFIER: Good Morning. I



1  
2 would like to thank the City Council Health  
3 Committee for the opportunity to speak today. My  
4 name is Jessica Safier and I'm the Program  
5 Manager of Youth Initiatives for the New York  
6 City Coalition for a Smoke-Free City. I work  
7 directly with teens in the boroughs of Queens,  
8 the Bronx, and Manhattan to educate and empower  
9 them about social justice issues in their  
10 neighborhoods. The youth we mentor have held  
11 press conferences, written letters to newspapers,  
12 met with local government, and created a  
13 documentary film to speak out about the impact of  
14 tobacco in their communities. I am here today to  
15 express what we have documented in relation to  
16 flavored cigarettes and retail tobacco  
17 advertising. During our meetings, teens often  
18 expressed concern about what their younger  
19 brothers and sisters see on a daily basis. They  
20 can't stop by their local bodega to pick up some  
21 snacks or a carton of milk, without routinely and  
22 explicitly being encouraged to take up the deadly  
23 habit of smoking. The tobacco industry, as  
24 mentioned, must recuperate lost profits due to  
25 the thousands of smokers who are former customers

1  
2 and who quit or pass away due to smoking related  
3 illness. Therefore, more often than not, they  
4 rely on deceptive marketing strategies to recruit  
5 a new generation of addicts, our children. For  
6 instance, through grassroots community-based  
7 store surveys, our youth have uncovered several  
8 harmful trends. Tobacco industry sales  
9 representatives enter stores and strategically  
10 place advertisements at the eye level of  
11 children, below counter-tops and next to candy,  
12 comic books, toys and other child-friendly items.  
13 In order to entice children, they have also  
14 created specific products with candy flavors. In  
15 an attempt to appear innocuous, they incorporate  
16 bright colors, catchy names and clever packaging.  
17 While they claim that they do not advertise to  
18 children, we cannot possibly be expected to  
19 believe that products with names like Cherry,  
20 Vanilla, Frost, and Spice are aimed at adult  
21 markets. What I brought along also are a couple  
22 of photographs that we've taken during our  
23 community-based research and I just wanted to  
24 show that to you. This was taken at a store in  
25 Jackson Heights. As you can see, the entire

1 storefront is covered in cigarette advertising.  
2 This is absolutely appalling. We have another  
3 photo here that is from a store in Washington  
4 Heights Manhattan which is inside of a store. As  
5 you can see, they're selling candy and directly  
6 underneath candy is placement of a tobacco ad for  
7 the new Snus products which advertise Frost and  
8 Spice flavors. A third photograph we have taken  
9 also directly relates to flavored cigarettes. It  
10 is from a store in Chelsea that is advertising  
11 flavors such as Dark Mint and Mandarin Mint.  
12 Currently, our teens are working to educate store  
13 owners about the dangers of these tobacco ads  
14 that are displayed. Often the owners themselves  
15 have children and are supportive of the work we  
16 do to prevent kids from developing their  
17 addictions to tobacco. Many times the owners  
18 will remove ads only to have the tobacco sales  
19 reps return to the stores and replace these ads a  
20 few weeks later. This thereby undoes the efforts  
21 of our kids. In conclusion, there numerous  
22 advantages to growing up in a city as diverse and  
23 vibrant as New York City, including the ability  
24 youth have to participate in social change.  
25

1

2 Please support their efforts and the belief that  
3 they can make a difference. Thank you.

4

5 COUNCIL MEMBER STEWART: In this  
6 picture, which one is considered a cigarette?

7

8 JESSICA SAFIER: At the bottom of  
9 the candy, you'll see a blue banner that says  
10 "Sold Cold" and those are for Snus smokeless  
11 tobacco products.

12

13 COUNCIL MEMBER STEWART: Apart from  
14 passing these bills, what can we do as a city to  
15 help prevent youngsters from being caught up in  
16 this campaign of getting them involved? As you  
17 people, tell me what we can do to stop you guys  
18 from really getting involved?

19

20 AMANDA SEPTIMO: I'd say just  
21 constant education and support. Not just in the  
22 school system, but education about smoking and  
23 the horrible things that it can do to your life  
24 and the fact that it's really not as glamorous as  
25 it's made to seem. The constant reminder that  
26 these are companies that are looking to make  
27 money and that they won't necessarily keep your  
28 best interests in mind. I think that living in a  
29 world where so many people are looking to get

1  
2 things from you, you need support and you need  
3 people that do have your best interests in mind.

4 COUNCIL MEMBER STEWART: You were  
5 very clear on your wishes. We appreciate you  
6 coming in. I have always felt that cigarette  
7 smoking was a bad thing, even since I was a kid  
8 and my parents told me not to smoke, it's not  
9 good for you. I tried it once and I was trying  
10 to figure out why people were attracted to  
11 smoking. I tried it and I couldn't see the gist  
12 in it. I couldn't feel it. But thereafter, I  
13 developed this allergy to smoke and I can smell  
14 smoke I would say a mile away. If you're smoking  
15 on the other side of the room, I can tell. I  
16 developed that sensitivity to smoke over time. I  
17 hope people will understand that not everybody  
18 feels the same or gets the same feeling from  
19 smoke, so they have to be sensitive to people who  
20 may not like or want to be associated with  
21 smoking. I want to thank you again for coming  
22 in. Remember, I'm the most important person on  
23 the Health Committee, so even though you see most  
24 of the folks are at other meetings and not here,  
25 just be aware of that. Our next panel is

1  
2 Stephanie Chan, Susan Moscarello, John Wedeles  
3 and Martin Getelman [phonetic]. As we indicated  
4 before, if you can cut your testimony to a  
5 minute, we would appreciate it. We would like to  
6 hear from you but time is of the essence. We  
7 don't want you to cut out the other people who  
8 want to come after. You have three minutes. If  
9 you can package it in three minutes, I'd  
10 appreciate it. You may start, sir. Identify  
11 yourself.

12 MARTIN GETELMAN: Thank you,  
13 Councilman Stewart and thank you for the  
14 discussion that we've had this morning. My name  
15 is Martin Getelman and I represent the Public  
16 Health Association of New York City. I wish to  
17 agree with some of the presentations which have  
18 been made this morning in regard to support for  
19 pending legislation, particularly the Resolution  
20 433-A and 642-A and also support for the bills  
21 introduced and passed in the House by Senators  
22 Kenney and Waxman, the Family Smoking and  
23 Prevention Act. I wish to state that these  
24 efforts which have been discussed this morning  
25 along will not solve the problems that we have,

1  
2 but only ameliorate the public health disaster  
3 that we face in New York City and America. To be  
4 clear, if someone told you, Councilman Stewart  
5 and other members of the Council, that there was  
6 a group of international terrorists who were  
7 going to introduce a product to sell in the U.S.  
8 which would result on average each year of  
9 440,000 Americans who would die as a result of  
10 this product, and that the product would contain  
11 only small amounts of formaldehyde, arsenic and  
12 other toxic substances, what action would be  
13 taken? More die now of tobacco-related contact  
14 than the flu, HIV/AIDS, heroin, or cocaine each  
15 year. Of course, the public is now largely  
16 unaware of the toxins in tobacco. They are  
17 unaware of the enormous numbers of deaths. These  
18 deaths can be prevented, but only if a host of  
19 actions are taken. To be sure, there are warning  
20 labels in New York City on cigarette packs, if  
21 you can read the very fine print. They've really  
22 scrunched it down so it's very difficult to read  
23 it. I'll just pass around some of the packs that  
24 we have in the city. Smoking contains carbon  
25 monoxide, which may be injurious to your health.

1  
2 Increasing taxes has been an effective method to  
3 reduce smoking. More needs to be done. I would  
4 suggest we look at Europe. In Europe, they have  
5 warning labels which say in big letters, "Smoking  
6 kills". We don't do that. In America, very  
7 often the labels say "contains no additives"  
8 which makes it sound like an organic product.  
9 Other states, countries and communities have  
10 taken action and we should as well. What are  
11 some of the actions that they've taken and what  
12 we could do? Offer rewards leading to the arrest  
13 and conviction of sellers of smuggled tobacco.  
14 You can buy tobacco in the South Bronx and on  
15 125th Street for \$4. You don't have to pay the  
16 high money because it's brought in from the  
17 reservations and other states. You can ban  
18 cigarette sales in pharmacies like other states  
19 have done. You go into a pharmacy and you see  
20 the cigarettes being sold at the cashier. Label  
21 cigarettes sold in New York with accurate  
22 contents. You can also education children in New  
23 York City schools about the tobacco history and  
24 the slave trade.

25 COUNCIL MEMBER STEWART: If you can



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wrap up because you have used your three minutes.

MARTIN GETELMAN: And also the expense, the health risks and how they will be advertised too. You can tax free newspapers that advertise cigarette and tobacco-sponsored free contests.

COUNCIL MEMBER STEWART: One of the reasons why we have to speed it up is because we have another hearing that is slated for 1 o'clock.

MARTIN GETELMAN: I understand.  
Thank you.

SUSAN MOSCARELLO: My name is Susan Moscarello. I'm a guest at Hope Lodge, which is a wonderful residence provided and administered by the American Cancer Society for patients undergoing cancer treatment at no charge to them. Thank you, Council Member Stewart and members of the Health Committee, for the opportunity to speak in support of Intro 642-A, legislation to prohibit smoking on and around hospital grounds. As a person who has always led a very healthy lifestyle, it is of great concern to me to be exposed to secondhand smoke. I have undergone

1  
2 two lung surgeries because of metastasis, and  
3 though this spread was not caused by smoke, other  
4 lesions which are now present in my lungs  
5 certainly makes me more vulnerable to the  
6 toxicity of cigarette smoke. For the past  
7 seventeen months, I have been undergoing  
8 chemotherapy at the 53rd Street Annex of Memorial  
9 Sloan Kettering Cancer Center. I am very  
10 appreciative of the fact that there is an  
11 ordinance posted by the hospital forbidding  
12 smoking directly in front of the entrance, but  
13 it's seldom that I do not find someone smoking  
14 within an inch of that posted sign. Your  
15 proposed legislation would expand smoke-free  
16 areas outside a facility that I use regularly.  
17 This is a good start towards promoting health for  
18 those of us who value it. It is a proven fact  
19 that secondhand smoke is very damaging, and as a  
20 person with a cancer for which there is presently  
21 no cure, every day that I can add to my life is  
22 very precious to me and my loved ones. To think  
23 that some of that time may be taken away from me  
24 because of someone else's unhealthy choices  
25 greatly concerns me, and I would urge you to do

1  
2 all that you can to support this legislation.  
3 After hearing the testimonies against these  
4 proposed legislations, I am compelled to go off  
5 script and comment on the issue of our  
6 constitutional right to free will, and support  
7 your opinion, Councilman Stewart, that it is  
8 different to engage in an activity that only  
9 affects the initiator, as opposed to an action  
10 such as smoking that has proven to damage others  
11 exposed to it. I do hope that this is only the  
12 beginning to taking action towards banning public  
13 smoking altogether. Thank you for your time.

14 JOHN WEDELES: Good afternoon.  
15 Thank you for the opportunity to speak at today's  
16 hearing. My name is John Wedeles, and I'm the  
17 Program Coordinator for the Manhattan Tobacco  
18 Cessation Program. We're one of 19 cessation  
19 centers throughout New York State, and with  
20 funding from the New York State Department of  
21 Health's Tobacco Control Program, we work with  
22 health care institutions and providers in  
23 Manhattan to help their patients successfully  
24 quit smoking. I'm here to inform you of the  
25 current leadership efforts of two major New York

1  
2 City health care institutions, New York-  
3 Presbyterian Hospital and New York University  
4 College of Dentistry, in implementing smoke-free  
5 campus policies. New York Presbyterian Hospital,  
6 including the Columbia University Medical Center  
7 and Weill Cornell Medical College campuses, will  
8 institute a smoke-free policy on their grounds on  
9 July 4th of this year, while NYU's College of  
10 Dentistry plans to institute its smoke-free  
11 policy in September of this year. These policies  
12 will restrict smoking in outdoor common areas and  
13 at building entrances, and will provide employees  
14 who smoke with comprehensive support systems to  
15 help them quit. As direct providers of medical  
16 care, these two institutions must demonstrate  
17 their responsibility to protect the health and  
18 well-being of their patients, their patients'  
19 visitors and their employees. By officially  
20 designating their properties tobacco smoke-free,  
21 these institutions send a clear, strong message  
22 that they promote health, not disease. While  
23 some hospitals have voluntarily adopted smoke-  
24 free grounds policies, New York City residents  
25 visiting any hospital in any neighborhood deserve

1  
2 equal protection from secondhand smoke. As we  
3 all know, tobacco use is a serious detriment to  
4 our health, causing an estimated 440,000 deaths  
5 each year. Health care facilities are in a  
6 unique position to set the standards of healthy  
7 behaviors in their communities and help remove  
8 unhealthy ones from the mainstream. Every  
9 healthcare facility should lead by example and  
10 say no to tobacco use on their property. By  
11 making hospital grounds smoke-free, children,  
12 asthma sufferers, the elderly, newborns,  
13 individuals with cardiopulmonary disease and  
14 other vulnerable New York City residents are no  
15 longer forced to walk through a toxic cloud of  
16 tobacco smoke to receive health care or visit  
17 family members in treatment. Employees are  
18 protected from the dangers of secondhand smoke  
19 and supported in their efforts to quit. When  
20 patients are discouraged from going outside for a  
21 smoke they too are more likely to quit, and wound  
22 healing, surgical and overall treatment outcomes  
23 improve. Quitting smoking is an extremely  
24 difficult thing to do. Studies show that more  
25 than 70% of the 45 million smokers in the U.S.

1  
2 want to quit, and roughly 44% try to quit each  
3 year. But evidence also suggests that a smoke-  
4 free environment on hospital grounds can prevent  
5 the triggering of relapse and increase the odds  
6 of quitting. Earlier this month, the city  
7 announced that the number of New Yorkers who  
8 smoke had dropped to 15.8%, the lowest rate on  
9 record. However, New York City health care  
10 institutions lag far behind others throughout New  
11 York State. Along with education and resources  
12 for quitting, smoke-free policies can improve  
13 patient outcomes, enhance employee satisfaction  
14 and productivity and strengthen bonds with the  
15 institution's community, thus succeeding in their  
16 commitment to improving the health of New  
17 Yorkers. Thank you for your time.

18                   STEPHANIE CHAN: Good afternoon,  
19 members of the City Council Health Committee. My  
20 name is Stephanie Chan, I am a resident of  
21 Brooklyn and I am honored to speak on behalf of  
22 the American Heart Association/American Stroke  
23 Association in support of the several tobacco  
24 policies on the committee's agenda today. I am a  
25 survivor of heart disease. I know I don't look

1  
2 like someone who suffers from New York's number  
3 one killer, but it's true. At 16, I was  
4 diagnosed with Type II Diabetes, high cholesterol  
5 and high blood pressure due to genetics and  
6 unfortunately some poor lifestyle choices. These  
7 conditions went largely unmanaged until the age  
8 of 24, when I was diagnosed with coronary artery  
9 disease. Three separate arteries were blocked,  
10 two at 90% and the third at 70%, and I ultimately  
11 received three stents to keep my blood flowing.  
12 As someone who has witnessed firsthand the pain  
13 and agony of heart disease, it shocks me that New  
14 York City kids continue to pick up cigarettes,  
15 setting the stage for a lifetime of addiction.  
16 Smoking is the leading preventable cause of heart  
17 disease and stroke. Big tobacco created flavored  
18 tobacco for one simple reason, to help hook our  
19 kids on to cigarettes. There is no reason that  
20 tobacco should be disguised in various candy,  
21 alcohol or other sweet flavors. Evidence clearly  
22 shows that flavored products maintain their  
23 position as the largest growing segment of the  
24 tobacco market. Clearly, the existing agreement  
25 with the states' attorneys general is not

1  
2 working. There are too many loopholes that the  
3 tobacco companies can take advantage of. We must  
4 protect our impressionable youth from the dangers  
5 of smoking, even when it's dressed up in the  
6 cloak of appealing flavors. For this reason, the  
7 American Heart Association strongly supports  
8 Proposed Intro 433-A. My experience as a  
9 survivor of heart disease has placed a larger  
10 emphasis on my surrounding environment. Under  
11 medical advice, I simply cannot be exposed to  
12 secondhand smoke. Inhaling someone else's  
13 tobacco smoke will cause my arteries to harden  
14 and increase my risk of clotting. A clot  
15 traveling to my heart could cause a heart attack.  
16 If it travels to the brain, it could cause a  
17 stroke. For victims of cardiovascular disease,  
18 the banning of smoking on hospital campuses, as  
19 proposed in Intro 642, is much more than an  
20 effort to continue the de-normalization of  
21 tobacco use. This policy would help ensure  
22 access to our health care providers, without the  
23 threat of breathing in the devastating effects of  
24 secondhand smoke. I join with the American Heart  
25 Association in supporting this effort and look



1 forward Intro 642's passage and implementation.  
2 Regarding the remaining two components of today's  
3 agenda, the American Heart Association strongly  
4 supports all efforts to better monitor and  
5 control the outreach of big tobacco. That being  
6 said, we believe that the pending legislation in  
7 Congress H.R. 1256 and S 982, that would allow  
8 the FDA to gain oversight over the tobacco  
9 industry would also mandate stricter controls  
10 over tobacco advertising. The American Heart  
11 Association has been working with our partners in  
12 tobacco control across the country to assist in  
13 motivating this federal bill. It is unbelievable  
14 that despite all the harm that tobacco products  
15 cause, they are still virtually unregulated by  
16 the FDA. Dog food has to adhere to stricter  
17 rules than does a pack of cigarettes. And  
18 ironically, cessation medication, intended to  
19 help people stop smoking are regulated, but  
20 cigarettes aren't. The tobacco industry has long  
21 taken advantage of this lack of regulation to  
22 market their deadly products to our children and  
23 deceive consumers about the harm their products  
24 cause. Again, I humbly thank you for this  
25

1  
2 opportunity share the perspective of a young  
3 woman who struggles with heart disease. On  
4 behalf of the American Heart Association, I look  
5 forward to the implementation of these policies  
6 as we seek to champion the organization's mission  
7 of building healthier lives, free of  
8 cardiovascular diseases and stroke. Thank you.

9 COUNCIL MEMBER STEWART: I have one  
10 question for you guys. Earlier folks spoke about  
11 the fact that we have flavored alcohol and now we  
12 have different flavored cigarettes. How do you  
13 answer the critics who ask why we didn't do  
14 something about the alcohol if we want to do  
15 something about cigarettes?

16 SUSAN MOSCARELLO: In my opinion,  
17 and it's as you said, when you consume alcohol,  
18 you're affecting yourself. When you consume  
19 cigarettes, you're affecting yourself and others.  
20 It's just not right for others. What you do to  
21 yourself is your business.

22 STEPHANIE CHAN: I'd also like to  
23 add that the flavoring is providing enticement.  
24 It might not necessarily be causing the harm  
25 itself, but it's getting the kids to pick up

1

2 those cigarettes. The flavoring is what we're  
3 trying to prevent because that's what's being  
4 enticing to kids.

5

COUNCIL MEMBER STEWART: You're  
6 saying the flavoring with the cigarettes. How  
7 would you attribute it to enticing the young  
8 folks in terms of the cigarette and not with the  
9 alcohol? I don't see it enticing the young  
10 people with the flavoring with the alcohol.  
11 Could you explain that to me? And with alcohol,  
12 I don't care, the color or the flavor, I don't  
13 see it. It doesn't really affect me. You're  
14 saying that the color and the flavor will affect  
15 children and I'm trying to set that distinction  
16 that it does do that for children with cigarettes  
17 more so than in terms of the alcohol.

18

SUSAN MOSCARELLO: I would think it  
19 might have to do with the packing that's more  
20 childish and more attractive to children.

21

MARTIN GETELMAN: If I may, there  
22 has been a campaign now in France, going on for  
23 15 years conducted by Dr. Caralee [phonetic] in  
24 Paris on all French children between the ages of  
25 9 and 13 it has been show to be effective in

1  
2 reducing tobacco use among young people. What  
3 they do is they educate kids. They tell them  
4 about the history of tobacco and so on, what is  
5 in the tobacco, what the effects are, and the  
6 fact that they make the packages attractive.  
7 Incidentally, the packages are not as attractive  
8 in France now as they are in our country. So we  
9 don't have education what is necessary in our  
10 schools. When they educate kids they mix it up  
11 with other substance abuse. Tobacco is not quite  
12 as bad as heroin and cocaine, so that's sort of  
13 left out. But what we desperately need, in  
14 addition to the steps that are being taken, is  
15 education. Opening up kids' minds to what is  
16 going on with these people who simply want to  
17 make money, but it turns out that it kills  
18 people.

19 COUNCIL MEMBER STEWART: Thank you  
20 for your testimony. The last panel is Michael  
21 Seilback, Robin Vitale, Matthew Hurley, Eugenia  
22 Black Graham, and Ruth Tripp.

23 MICHAEL SEILBACK: Good morning.  
24 My name is Michael Seilback, Vice President of  
25 Public Policy and Communications for the American

1  
2 Lung Association in New York. Thank you,  
3 Councilman Stewart and Chairman Rivera, for  
4 holding this. I'm going to submit my testimony  
5 for the record, but I did just want to address  
6 some of the things that have been raised this  
7 morning. Let me obviously just say that we  
8 support all the resolutions and the legislation  
9 talked about today. I want to also start off by  
10 saying that the U.S. Surgeon General has declared  
11 that there is no safe level of exposure to  
12 secondhand smoke. That should be the overlying  
13 principle that we're hearing today. But the fact  
14 is, to some of the concerns raised earlier, when  
15 someone smokes, that's a point source. The  
16 things that affect where that smoke goes include  
17 humidity, wind, and temperature. So one day  
18 smoke may linger longer than another day. When  
19 there is a high wind day, maybe that smoke won't  
20 linger and have an effect. The fact is that we  
21 can't legislate the wind. What we can legislate  
22 is where people smoke. We heard an opponent say  
23 that it's a ridiculous contention that secondhand  
24 smoke exposure is harmful. That same opponent  
25 made the same argument about the Clean Indoor Air

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2 Act, saying that it was a ridiculous contention  
3 that smoking affected us inside. They're not  
4 making that argument now, so they're moving the  
5 argument outdoors. Again, the science certainly  
6 shows us something different. We heard that the  
7 cigar market is smaller or that we should wait  
8 for the federal government to act. Both of those  
9 contentions are wrong. As you heard from DOHMH  
10 this morning, cigar use has tripled. With regard  
11 to waiting for the feds, this body has time and  
12 time again taken the lead on progressive health  
13 measures that the rest of the federal government  
14 and state governments and other municipalities  
15 copied. This body isn't one to sit back and wait  
16 for the feds when we have commonsense legislation  
17 that we could move now and then let them  
18 duplicate these acts. We heard that it's  
19 hypocritical that nicotine replacement therapy is  
20 flavored, basically that the gum that they chew  
21 is flavored. That it's hypocritical that we're  
22 trying to ban cigarettes that are flavored or  
23 cigars are flavored while the NRT is flavored.  
24 That person actually made our argument for us.  
25 We are trying to encourage the use of NRT

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2 products because they're flavored, just like the  
3 tobacco companies are trying to encourage the use  
4 of those products because they're flavored. That  
5 was our argument and we're glad that they come to  
6 agreement on that. Next, they argue that the  
7 tobacco products aren't marketing to children.  
8 We've seen many examples. Here's something  
9 chocolate chip cookie dough. Here's another one,  
10 cherries jubilee. Here's a print advertising,  
11 which we'd be happy to show you, it says bling it  
12 on. That's something where the teenagers today  
13 are putting these little sparkly cell phones. I  
14 don't know about anyone in this room, but I don't  
15 have any bling on my cell phone. I'd argue that  
16 the tobacco companies are well aware that the  
17 bling it on campaign is not made for adults.  
18 Lastly, I'd say that this is not, as the opponent  
19 said, a war on smokers. The fact is that our  
20 groups are fighting to prevent another generation  
21 of kids from becoming smokers. We're fighting to  
22 protect the public from the dangers of secondhand  
23 smoke, and we're fighting to assist smokers in  
24 their attempts to quit. Thank you.

25 ROBIN VITALE: Good afternoon. I

1  
2 am Robin Vitale. Today I have the privilege of  
3 representing two individuals who could not be  
4 here with the committee. Their names are  
5 Christine Delnevo, she is a doctor from the UMDNJ  
6 School of Public Health and the director of the  
7 Center for Tobacco Surveillance and Evaluation  
8 Research, and one of her associates, Dr. Jane  
9 Lewis, also works at the center as well as an  
10 associate professor at UMDNJ School of Public  
11 Health. I'm not going to read both of their  
12 submissions in deference to time. I just want to  
13 do my best to excerpt some really profound new  
14 development research that I think will  
15 specifically address some of the opposition's  
16 points regarding smokeless and cigar use in our  
17 country and here in New York. First and foremost  
18 their research, even moderate cigar use carries  
19 significant health risks, including risk of heart  
20 and lung disease and cancer, including but not  
21 limited to oral, esophageal, larynx and lung,  
22 compared to non-smokers. Looking at their  
23 prevalence, the most recent data available  
24 nationally show that past month's cigar and  
25 smokeless use significantly increased over the



1  
2 last five years among young adult males. In  
3 2007, approximately 7% of females ages 18 to 20  
4 report past month's cigar use. According to  
5 various tobacco industry trade publications,  
6 flavored cigars and smokeless tobacco are  
7 responsible for the majority of growth in the  
8 other tobacco product market. The research of  
9 UMDNJ with the AC Nielsen market scanner data  
10 supports this. Forty-percent of the cigar market  
11 in 2008 in the U.S. was flavored. Flavored  
12 cigars are offered in both large, including the  
13 cigarillo size, cigar as well as small cigars,  
14 which are cigarette-sized. Both have financial  
15 incentives. The average unit price for a pack of  
16 small cigars is considerably less expensive than  
17 that of cigarettes, often more than half. And  
18 among large cigars, the high margin single stick  
19 cigars have grown tremendously. These single  
20 cigars often sell for under \$1. New York  
21 specific data mirrored national trends. Forty-  
22 percent of the market is flavored. And among the  
23 cheap single stick cigars, 44% are flavored. The  
24 most popular flavors in New York were strawberry,  
25 grape, vanilla, wine, peach, honey, pineapple,

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2 and watermelon. Other common flavors include  
3 Irish crème, and Caribbean peach rum. Flavored  
4 products also contributed to the overall growth  
5 in smokeless products. Indeed, the research  
6 indicates that flavored products are fairly  
7 dominant in the moist snuff market, with more  
8 than half of the moist snuff products nationally  
9 sold in 2008 being flavored products. While  
10 flavors such as wintergreen and mint are popular,  
11 other flavors such as peach, vanilla and bourbon  
12 are common and are responsible for 5% of the  
13 overall growth of moist snuff between 2005 and  
14 2008. New York specific data suggests that  
15 flavored moist snuff is even more popular. In  
16 New York State, 70% of moist snuff is flavored  
17 and the most popular flavors are wintergreen,  
18 mint and fruit flavored. The most popular fruit  
19 flavors in New York were apple, berry, cherry,  
20 citrus and peach for smokeless products. In  
21 summary, Intro 433 will send a strong message to  
22 the tobacco industry that they cannot continue to  
23 market cigars and smokeless products in candy,  
24 fruit and alcohol products to our youth and young  
25 adults. Thanks very much.

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EUGENIA BLACK GRAHAM: Good

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afternoon. I'm Eugenia Black Graham. I am the

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director of the Quit Smoking Program. Today, I

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want to take about a minute and a half and give

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my other minute and a half to Dr. Hurley to add

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to his three minutes. I do want to very briefly

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from a patient perspective. As an asthmatic and

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as an ex-smoker myself, I want people to really

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think about that if you have a respiratory

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illness, you can't already breathe. Most of the

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time when people come to the hospital they come

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because there is an acute problem, they're trying

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to prevent something, or they need intervention.

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Given the fact that you're supposed to come to a

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hospital to get help, the last thing they need to

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do is have to go through cigarette smoke. That

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doesn't speak well to health facilities or any

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hospital that is supposed to be healing not

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hurting. In the interest of time, I just want to

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put my little minute and a half in and I want to

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refer the rest of mine to Dr. Hurley.

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DR. MATTHEW HURLEY: I would like

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to thank City Councilman Stewart and Honorable

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Inez Dickens for bringing 642-A forward. It's an

1  
2 important piece of legislation. As a medical  
3 director for the Harlem Quit Smoking Program and  
4 a general internist, I can tell you the number of  
5 times I witnessed the ravages of both primary and  
6 secondary tobacco smoke. As most of you already  
7 know, tobacco smoke has over 4,000 toxins, 40 of  
8 which promote cancer. That secondhand smoke is  
9 equally as deadly as primary tobacco smoke. I  
10 have seen numerous patients with asthma over the  
11 years that have come to me in the medical clinic  
12 with acute asthma attacks because they had to  
13 wade through a sea of tobacco smoke from smokers  
14 who hover around the hospital. There is perhaps  
15 only one substantive issue that I may have with  
16 respect to 642, and that is the concept of 15  
17 feet from the entrance. The Joint Commission on  
18 Accreditation of Hospitals demand 25 feet setback  
19 from any entrance. However, even with this,  
20 smokers move to 26 in mass on both sides and  
21 still wind up choking our most precious patients.  
22 They have to walk through them to get to the  
23 hospital and clinic. I think with this one  
24 change this would do three important things, keep  
25 us within the Joint Commission on Accreditation

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of Hospitals 25 feet setback from any entrance. Equally important is to eliminate smoking from the sidewalks that are contiguous with hospital grounds. This would not only protect all patients and staff who are both within and without the hospital from being exposed to dangerous and deadly secondhand smoke. It would also send a clear and resounding message to smokers and to the public that secondhand smoke kills. It's not at all tolerated in and around our hospitals or clinics. Thank you very much.

RUTH TRIPP: Good afternoon. Thank you for the opportunity to be here and speak with you today. My name is Ruth Tripp. I'm with Cicutelli Associates, the Director of the Tobacco Control Training Program there. Cicutelli Associates is a non-profit training and capacity building agency located in mid-town Manhattan. We are proudly celebrating our 30th year. For the last five, we've had the privilege of working with the New York State Department of Health's Tobacco Control Program. The Tobacco Control Program funds community-based partners in every county of our state and charges them with

1  
2 changing tobacco-related policies and social  
3 norms. We support these partners by providing  
4 them skill-based training to maximize their  
5 success. I am going to speak broadly today about  
6 the impact and the effectiveness of policies,  
7 resolutions and legislative actions here in New  
8 York have been tremendously successful at  
9 bringing smoking rates down and saving lives.  
10 That's what each of the matters before us today  
11 has in common, if enacted; they will have the  
12 impact of furthering a tobacco-free social norm  
13 in New York City. When New York City boldly  
14 created smoke-free workplaces for all, including  
15 bartenders and food servers, the whole world  
16 noticed and followed suit. Here you have the  
17 opportunity to be global leaders in preventing  
18 death and suffering. So, what is a social norm?  
19 Lets it's a set of actions, beliefs and values  
20 generally held by a culture or subculture. With  
21 that definition in mind, let's rewind the time  
22 machine and think about what the social norm  
23 regarding smoking was 20 years ago. Let's narrow  
24 the picture down further and imagine this is a  
25 hospital in 1989. Now look around, where are

1  
2 people smoking? The answer is anywhere.  
3 Patients were smoking in their rooms; visitors  
4 were smoking in the waiting rooms, doctors and  
5 nurses puffed away in their offices or at the  
6 nursing station. How does that look through the  
7 lens of today? It's almost comical and certainly  
8 hard to believe. Slowly, over time, more and  
9 more spaces became smoke-free. In 1991 the Joint  
10 Commission issued smoke-free building standards.  
11 By '93, 96% of hospitals were compliant. This  
12 helped bring down smoking rates among staff, and  
13 also changed our perception of what is acceptable  
14 social behavior. It is not okay to smoke inside  
15 a hospital. And that's what I mean by the impact  
16 that policy and resolutions have on social norms  
17 and hence our thinking and behavior. So why not  
18 extend that norm to include hospital grounds,  
19 places where people go to be treated for chronic  
20 and acute medical conditions? Why not extend  
21 that notion that smoking, the leading cause of  
22 death, is not a behavior that's in line with the  
23 mission and values of our medical institutions?  
24 We've been working with Staten Island University  
25 Hospital on this very initiative. In January of

1  
2 this year, they took their campus smoke-free.  
3 Sure, there was pushback and resistance, but yet  
4 they persevere. Their task of communicating this  
5 policy and enforcing it for all patients, staff  
6 and visitors would be supported by a local law  
7 that made this the standard of practice and care  
8 in our great city. We support your efforts to  
9 save more lives, to create an even more cohesive  
10 smoke-free New York City. The savings will be  
11 vast and impossible to calculate. For how can  
12 you truly measure less disease, addiction, and  
13 pain? Let me close with a brief anecdote.  
14 Recently I met a man who had quit smoking 10  
15 years ago. He told me that what made him stop  
16 was his readiness. He'd been thinking about  
17 quitting for a while and when cigarettes hit \$5 a  
18 pack. That policy change pushed him over the  
19 edge. I said to him, "Think about all the money  
20 you have saved." And he clarified for me that he  
21 got something even better than the money. He  
22 used to be a singer and he had to stop because  
23 the smoking had ruined his voice. Just recently,  
24 10 years later, he had begun to sing again.  
25 "This," he said, "is priceless." Thank you for



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2 your time.

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COUNCIL MEMBER STEWART: Thank you.

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I have one question for you folks. You said 25

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feet would have been the ideal thing from the

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entrance of the hospital.

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DR. MATTHEW HURLEY: It's Joint

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Commission standard. That is a 25-foot setback

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from entrances.

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COUNCIL MEMBER STEWART: Is that

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being observed?

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DR. MATTHEW HURLEY: It's attempted

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to be observed, but it doesn't have the teeth of

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legislation.

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COUNCIL MEMBER STEWART: So with

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the law now being in place, it will be observed.

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DR. MATTHEW HURLEY: I would just

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say equally important, the fact that you put

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sidewalks around hospital grounds equally keeps

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smokers away from the hospital.

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COUNCIL MEMBER STEWART: Do we have

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any laws or policies that forbid drivers of

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ambulances and those vehicles that may transport

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sick people?

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MICHAEL SEILBACK: I believe that

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those vehicles are covered under the smoke-free workplaces law. So the drivers and the patients wouldn't be allowed to smoke.

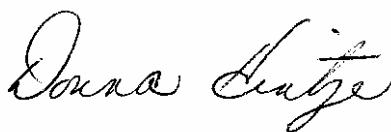
COUNCIL MEMBER STEWART: So the driver is not allowed to smoke?

MICHAEL SEILBACK: Correct.

COUNCIL MEMBER STEWART: All right. I just wanted to be sure. We think in terms of the hospital, but we have other places and facilities that we come into contact with people who might be sick. I want to thank you folks for coming in. It's been great hearing you. I think that's our last panel. We want to thank you. You will hear from us and you may see that the next hearing on this we'll be voting it out of the committee. Thank you.

C E R T I F I C A T E

I, Donna Hintze 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\_\_\_\_\_

Date June 16, 2009