

**Issues of Concern to Philip Morris Regarding  
The New York City Smoking Pollution Control Act of 1986**

Environmental tobacco smoke. The proposed legislation rests on the unsubstantiated premise that environmental tobacco smoke has been shown to be harmful to non smokers. The very name of the Act indirectly suggests this premise, but available information does not support it.

-- In a comprehensive review of the scientific literature, Drs. Sorell Schwartz and Nancy Balter of the Center for Environmental Health and Human Toxicology, Georgetown University, found no evidence that environmental tobacco smoke constitutes a health hazard.

-- The World Health Organization and the International Green Cross, organizations known for their opposition to smoking, sponsored a workshop last year which concluded that legislators cannot base their anti-smoking proposals on scientific evidence because a health hazard from passive smoking has not been demonstrated.

-- A 1985 Consumer Reports article termed the "evidence" of a connection between passive smoke and increased health risks as "sparse and often conflicting."

-- Further light is thrown on the subject by Gray Robertson, president of ACVA Atlantic, an indoor air quality research firm that has carried out extensive tests in more than 125 major office buildings with more than 27 million square feet of space occupied by more than 135,000 people. In a statement to the National Academy of Sciences on January 14, 1986, Robertson said that his firm's research indicates that environmental tobacco smoke is blamed for effects that are in fact caused by other agents and factors including airborne mold and bacteria spawned in the air circulation system, poor air circulation as a result of attempts to conserve energy, and a variety of vapors, fumes, toxins, and dust produced by materials used in the construction and furnishings of the buildings studied. Robertson, in a surprising reversal of the claims of anti-smoking proponents, says that tobacco smoke can serve as a "miner's canary;" its presence, while not harmful, can indicate that other serious problems do exist.

Discrimination. The AFL-CIO Executive Committee, in a February, 1986 statement criticizing the Surgeon General's report on smoking in the workplace, expressed its opposition to employer discrimination against the hiring of smokers. The proposed legislation has the potential to lead to discrimination.

Consider the employer who makes a substantial investment in upgrading air circulation systems, installing partitions and rearranging personnel to comply with the law as it now stands. As normal turnover occurs, positions will open up that have been held by non-smokers. Employers might seek non-smokers to fill those positions, rather than beginning another cycle of retrofitting, partitioning and personnel relocation. In short, the law has the potential for creating a de facto quota system, with positions filled based on smoking behavior rather than ability.

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Additionally, there is the fact that those who work in common work areas will be compelled to obey the law, while those with private offices will be exempt. The implications of this, in light of information gathered by various Mayoral agencies on the race, gender and socioeconomic status of the workforce and the locations where managerial and non-managerial work is carried out, are too obvious to ignore.

Finally, Philip Morris was not the first institutional member of the New York community to point out that smoking ordinances have a potential to produce discrimination. As far back as 1978, the Amsterdam News, noting the fact that 90 percent of the people hauled into the Cook County "Smokers Court" were Black, contended that one might assume the law was being applied in a discriminatory fashion, unless one believed that Blacks were nine times more lawless than other people.

Fairness. A call has been sounded for a discussion of the legislation on the merits, without recourse to language or acts that create divisiveness, intolerance and the like. Yet the very person selected to head the committee in charge of evaluating and accepting input from public comment, and of shaping the final form of the legislation, is an avowed -- passionately avowed, if you will -- anti-smoker.

The question of fairness also applies to employers' rights to run their businesses without unwarranted intrusion by government. Taxi owner-drivers would be subject to a \$200 fine, escalating to \$1,000 for repeated "offenses" for driving an empty cab with the windows open while enjoying a cigarette. Surely, cab drivers, restaurateurs and other providers of goods and services are in the best position to determine their customers' preferences. It is in their enlightened self-interest to do so and they risk losing business not to do so.

Cost. The economics of legislation that would make New York City the strictest anti-smoking city in the country have not been fully explored. The costs to businesses alone for making alterations to comply with the law, and in terms of reduced revenues and productivity, have been estimated at more than \$160 million.

Meanwhile, the enormous, purported cost savings -- reckoned in the billions by the proposal's advocates -- in the area of health care, are completely unsubstantiated. Were these estimates believable, we assume that this legislation would have been a priority for the City's leadership during the fiscal crisis of the late 70s and early 80s.

Enforceability. Clearly, the police cannot monitor the smoking behavior of two million New Yorkers, 65,000 commuters and 4.5 million tourists who choose to smoke. Furthermore, if one were to conduct a survey of New Yorkers, including the NYPD, there is no question that control of violent crime, theft, fraud, mugging, drug dealing, child abuse and similar major offenses would be far higher on the list of priorities than controlling the behavior of law-abiding smokers.

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Similarly, the Departments of Health, Buildings, Sanitation and Environmental Protection face massive problems today, and to dilute their impact on existing problems by diverting their attention to the smoking behavior of millions of taxpaying citizens will only exacerbate those problems.

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