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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE ON COMMERCE AND ECONOMIC

4

DEVELOPMENT

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, October 7, 2009
10:10 a.m.

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PRESENT:

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COUNCILMAN W. WILSON GOODE, JR., CHAIR

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COUNCILMAN DARRELL L. CLARKE

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COUNCILMAN FRANK DiCICCO

14

COUNCILMAN CURTIS JONES, JR.

15

COUNCILWOMAN MARIA QUINONES-SANCHEZ

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BILL 090579 - An ordinance amending Chapter
17-1300 of The Philadelphia Code, entitled
"Philadelphia 21st Century Minimum Wage and
Benefits Standard"...

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COUNCILMAN GOODE: Good

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morning. This hearing is called to

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order. This is a public hearing of the

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Commerce and Economic Development

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Committee on Bill No. 090579. My name is

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W. Wilson Goode, Jr., Chair of the

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Committee.

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I note that a quorum is

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present. To my left is Councilman

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Darrell Clarke. To my far right is

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Councilman Frank DiCicco, and to my

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immediate right is Councilman Curtis

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Jones.

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The title of the Bill No.

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090579, amending Chapter 17-1300 of The

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Philadelphia Code, entitled "Philadelphia

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21st Century Minimum Wage and Benefits

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Standard," by providing that those who

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violate the Chapter may be suspended from

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receiving financial assistance from the

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City or from bidding on or participating

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in future City contracts for a period of

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time, and further providing that Council

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may by resolution determine that there

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2 are reasonable grounds to believe that a
3 violation of that Chapter has occurred,
4 that the violator be subject to
5 debarment, and that the appropriate City
6 agency shall, after notice and hearing,
7 make a final determination as to whether
8 there has been a violation of the Chapter
9 and whether debarment should be imposed,
10 all under certain terms and conditions.

11 Our first witness is Mr. Ian
12 Phillips from ACORN. And let me say that
13 as Mr. Phillips approaches the table,
14 that I have enjoyed my working
15 relationship with ACORN. It actually
16 began on the original ordinance back in
17 2005 and with the amendment that was made
18 last year, and I thank you for coming
19 today to testify on this legislation as
20 well.

21 (Witness approached witness
22 table.)

23 MR. PHILLIPS: Thanks for
24 having me.

25 Chairman Goode and members of

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2 the Committee, my name is Ian Phillips,
3 and on behalf of the thousands of ACORN
4 member families in Philadelphia, I would
5 like to thank the Committee again for
6 giving us the opportunity to speak in
7 support of the bill before your
8 committee.

9 ACORN continues, despite all
10 the recent hubbub, to be a leading voice
11 in fighting for living wages and
12 increases to the minimum wage. We have
13 been active in Philadelphia since 1977,
14 and our members are proud to enter the
15 21st century with a robust and modern
16 living wage standard. It is critical to
17 Philadelphia's future that we ensure
18 those working to build and maintain our
19 city can build their own futures at the
20 same time.

21 In 1998, ACORN established the
22 Living Wage Resource Center to track the
23 living wage movement and provide
24 materials and strategies to living wage
25 organizers all over the country. We were

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2 proud, as the Chairman mentioned, to
3 support his efforts in seeing
4 Philadelphia implement a living wage
5 ordinance, well ahead of many
6 municipalities.

7 Since then, ACORN has hosted
8 three National Living Wage Training
9 Conferences, drawing organizers from
10 scores of different living wage campaigns
11 across the country to learn from each
12 other about the elements of a living wage
13 campaign such as building local
14 coalitions, doing research, working with
15 city councils, developing message,
16 responding to the substantial opposition
17 to some of these ordinances and using
18 living wage campaigns to build thriving
19 communities.

20 According to the 2008
21 Self-Sufficiency Standard conducted by
22 PathwaysPA, a Southeast PA organization,
23 a woman with one child in Philadelphia
24 would need to earn over \$17 an hour to
25 provide for basic necessities like

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2 housing, healthcare, transportation, food
3 and childcare. This again is a
4 hypothetical example of someone who works
5 without a single day off for the entire
6 year, never missing a day because of
7 sickness of her own or that of her child.
8 This theoretical family does not have a
9 car, does not shop outside of providing
10 for the barest of needs and never
11 deviates from these barest of budgets.
12 Unfortunately, in our city, many working
13 families are unable to meet even this
14 hypothetical standard of
15 self-sufficiency.

16 We live in an era in which
17 unprecedented worker productivity is
18 rewarded with steadily declining wages in
19 inflation-adjusted terms. We live in an
20 era in which a working woman can work 40
21 hours a week 52 weeks a year without a
22 single day off and still be unable to
23 provide for herself and her child. If a
24 society does not reward hard work and
25 offer a path for hard-working people to

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2 improve their lives and the lives of
3 their children, what do we value and what
4 do our tomorrows hold?

5 We know that working people on
6 tight budgets for the most part spend any
7 extra money they earn locally, more so
8 than those with higher incomes.
9 Economists, including the Center for
10 Budget and Policy Priorities, have shown
11 in study after study that for each dollar
12 of extra income that a low-income family
13 earns, more than \$1.50 and in some cases
14 in some areas \$2 is returned to the local
15 economy.

16 We support the enforceability
17 measure before you today that would add
18 to our existing living wage ordinance.
19 Regulated entities, from City contractors
20 to most recently the City's depository
21 banks, have shown little willingness to
22 cooperate with actions taken by Council
23 without clear enforceability language.

24 As an aside, this
25 enforceability language is not YouTube

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2 based like our recent attacks have been
3 and they've been able to enforce whatever
4 we're claimed to have done through
5 YouTube. That's not in the bill, so
6 that's nice to see, too.

7 In conclusion, a living wage is
8 critical to a society that values work.
9 The ability to enforce regulations is
10 similarly critical to an effective living
11 wage ordinance.

12 We would urge you to take as
13 one of the lessons of our recent economic
14 collapse that designing complex
15 derivatives and, more broadly, designing
16 tools for the movement of money was and
17 still continues to be more valued than
18 actually building or producing something
19 in our country. Labor is valued less
20 today than aptitude for the next great
21 Wall Street scheme. If the old adage
22 that if you work hard and do right you'll
23 live a comfortable, if not prosperous
24 life is no longer true, then we have
25 bigger problems on our hands than even

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2 foreclosures or 100 days without a state
3 budget.

4 That concludes my testimony.
5 I'm happy to answer any questions.

6 COUNCILMAN GOODE: Thank you
7 for your testimony, Mr. Phillips.

8 Let me note for the record
9 we've been joined by Councilwoman
10 Sanchez.

11 Are there questions from
12 members of the Committee?

13 (No response.)

14 COUNCILMAN GOODE: Thank you
15 very much.

16 MR. PHILLIPS: Thanks.

17 COUNCILMAN GOODE: Our next
18 witness is Hugh Ortman, Procurement
19 Commissioner.

20 (Witness approached witness
21 table.)

22 COUNCILMAN GOODE: Good
23 morning, Commissioner.

24 COMMISSIONER ORTMAN: Good
25 morning, Councilman.

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2 Good morning, Councilman Goode
3 and members of the Committee. I am
4 Procurement Commissioner Hugh Ortman. I
5 am here to provide testimony in support
6 of Bill No. 090579. This bill provides
7 that vendors who violate the 21st Century
8 Minimum Wage and Benefits law may be
9 suspended from receiving financial
10 assistance from the City or submitting
11 bids. The bill also provides that
12 Council may by resolution recommend to
13 the Finance Director or me that the
14 vendor be debarred.

15 As Procurement Commissioner, I
16 have authority to suspend and debar
17 vendors from City bids for a period of up
18 to three years. The City's policy for
19 the debarment and suspension of vendors
20 and contractors ensures that the City's
21 contracting process is free of fraud,
22 waste and abuse. The policy, which has
23 been adopted as a formal regulation of
24 the Department of Finance, identifies
25 specific grounds by which a vendor can be

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2 suspended or debarred. The regulation
3 also prescribes a procedure for
4 debarment, which includes notice and an
5 opportunity to be heard.

6 Provisions implementing the
7 21st Century Minimum Wage and Benefits
8 law are contained in all bids for
9 service, supply and equipment. In fact,
10 our contract provisions were just revised
11 at the inception of Fiscal Year 2010 to
12 include the recently enacted amendments
13 concerning benefits and the federal
14 minimum wage standard.

15 Under the City's debarment
16 regulation, I am already authorized to do
17 what the bill proposes. If a City vendor
18 violates a City contract provision,
19 including the 21st Century Wage and
20 Benefit law, the vendor can be suspended,
21 leading to debarment. Also, if an
22 individual member of Council or any City
23 department head presents information to
24 me about a vendor that constitutes
25 grounds for debarment, I will certainly

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2 investigate and follow the appropriate
3 procedures under the debarment
4 regulation. However, having this
5 specifically provided for in the Code as
6 the bill proposes helps to ensure the
7 importance of compliance with the 21st
8 Century Wage and Benefit law.

9 The Procurement Department and
10 the Department of Finance have previously
11 suspended and debarred vendors, more
12 frequently for indictment or conviction
13 under criminal law. Debarment is a
14 serious measure. Not only does it
15 prevent the vendor from doing business
16 with the City for a period of time, it
17 calls that vendor's responsibility into
18 question in any other governmental
19 jurisdiction where it seeks to do
20 business. I am not opposed to this bill,
21 but want you to know that the mechanisms
22 are already in place to sanction those
23 vendors who violate City laws.

24 I'd like to thank you, and any
25 questions, I'll feel free to answer as

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2 many as I can.

3 COUNCILMAN GOODE: Thank you
4 for your testimony, Mr. Ortman.

5 How many contractors are
6 currently on the City's debarment list?

7 COMMISSIONER ORTMAN: There are
8 no contractors on our current City
9 debarment list.

10 COUNCILMAN GOODE: There are
11 none?

12 COMMISSIONER ORTMAN: None. We
13 have defaulted vendors, but we have no
14 debarred vendors.

15 COUNCILMAN GOODE: Since you've
16 been Procurement Commissioner, how many
17 contractors have been debarred?

18 COMMISSIONER ORTMAN: Since
19 I've been Procurement Commissioner, no
20 contractors have been debarred.
21 Contractors, again, as I said, have been
22 defaulted, but not debarred.

23 COUNCILMAN GOODE: Does the
24 City require responsibility certification
25 that a contractor is not on any debarment

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2 list?

3 COMMISSIONER ORTMAN: Excuse

4 me, sir?

5 COUNCILMAN GOODE: Does the
6 City require responsibility certification
7 that contractors are not on any other
8 debarment list?

9 COMMISSIONER ORTMAN: In some
10 contracts, yes.

11 COUNCILMAN GOODE: But not on
12 all contracts?

13 COMMISSIONER ORTMAN: Mostly in
14 our public works contracts and some of
15 the larger SS&E contracts.

16 COUNCILMAN GOODE: But you do
17 not require responsibility certification
18 on all contracts?

19 COMMISSIONER ORTMAN: We
20 require responsibility. We don't
21 actually check to see if they've been
22 debarred from somewhere else. If they
23 have been, that's usually brought to our
24 attention by another vendor, to be quite
25 honest with you.

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2 COUNCILMAN GOODE: Which is my
3 next question. Are there contractors
4 that are doing business in the City of
5 Philadelphia that are on other debarment
6 lists?

7 COMMISSIONER ORTMAN: Yes. I'm
8 familiar with at least one.

9 COUNCILMAN GOODE: So there are
10 contractors allowed to do business even
11 if they're on other debarment lists?

12 COMMISSIONER ORTMAN: After
13 investigation, I can speak for one
14 contract in particular where a vendor was
15 debarred in the State of New Jersey
16 because one of his subcontractors in, I'm
17 going to say, 2005 -- I'm not sure.
18 Maybe it was 2006 -- did not pay the
19 prevailing wage, which is very difficult
20 obviously for the prime contractor to be
21 aware of. It was determined by a
22 committee of three members of the --
23 three City employees that that particular
24 violation should not bar this vendor from
25 receiving a City contract and he was

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2 allowed to receive the award.

3 COUNCILMAN GOODE: Which leads
4 to my next question. I think you said
5 that you do not review other debarment
6 lists. Do you at least review the
7 Pennsylvania debarment list and the New
8 Jersey debarment list?

9 COMMISSIONER ORTMAN: For
10 public works, yes.

11 COUNCILMAN GOODE: But not for
12 all contracts?

13 COMMISSIONER ORTMAN: No.

14 COUNCILMAN GOODE: Because
15 essentially this relates to supply and
16 service contracts, and that's what the
17 bill is pertaining to, so public works is
18 not really relevant at this hearing.

19 COMMISSIONER ORTMAN: Correct.

20 COUNCILMAN GOODE: The
21 Pennsylvania Labor and Industry has a
22 debarment list. Have you reviewed it?

23 COMMISSIONER ORTMAN: No, I
24 have not.

25 COUNCILMAN GOODE: It's not

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2 that extensive, but it has at least 20 or
3 so names on it. But the New Jersey
4 debarment list is extremely extensive.
5 New Jersey has been very aggressive about
6 debarring people, particularly related to
7 prevailing wage. Have you reviewed that
8 list?

9 COMMISSIONER ORTMAN: I have
10 reviewed that list. I was quite
11 surprised by the number that are actually
12 for criminal violations. There are some
13 for prevailing wage, but, again, they go
14 way deep down into the subcontractors,
15 whereas when we find out that a
16 subcontractor is not being paid, we go to
17 the prime vendor and give them the chance
18 to correct that, and whatever I have,
19 they have.

20 COUNCILMAN GOODE: What City
21 agency is responsible for implementation
22 of the existing local minimum wage
23 ordinance?

24 COMMISSIONER ORTMAN: Within
25 the City of Philadelphia?

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2 COUNCILMAN GOODE: Yes.

3 COMMISSIONER ORTMAN: The only
4 agency that we have that is charged with
5 enforcement of wages is Labor Standards
6 for prevailing wages.

7 COUNCILMAN GOODE: What City --

8 COMMISSIONER ORTMAN: They do
9 look at this particular minimum wage
10 situation when a vendor may ask for a
11 waiver, but that's very rare. They are
12 the department that's allowed to give a
13 waiver, but it's very rare that it's even
14 requested.

15 COUNCILMAN GOODE: The question
16 was simply which agency is responsible
17 for implementation, and that's the Office
18 of Labor Standards, correct?

19 COMMISSIONER ORTMAN: Yes.

20 COUNCILMAN GOODE: What City
21 agency is responsible for enforcement?

22 COMMISSIONER ORTMAN: If it is
23 brought to the Procurement Commissioner's
24 attention, the Procurement Department
25 will initiate an investigation.

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2 COUNCILMAN GOODE: The question
3 was which agency is responsible for
4 enforcement.

5 COMMISSIONER ORTMAN: To be
6 responsible, I believe it would have to
7 be legislation. I don't know there is
8 any legislation that determines the exact
9 responsibility. May I ask Michelle
10 Flamer that question?

11 Michelle, are you familiar with
12 who is actually responsible to impose the
13 21st century wage --

14 COUNCILMAN GOODE: Who is
15 responsible for enforcement of the local
16 minimum wage ordinance?

17 (Witness approached witness
18 table.)

19 MS. FLAMER: Good morning.
20 Michelle Flamer, City of Philadelphia Law
21 Department.

22 The 21st Century Minimum Wage
23 provisions are part of our contract
24 provision. So they're included in all
25 service, supply and equipment contracts.

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2 Any responsible contractor who receives a
3 contract from the City of Philadelphia
4 makes a representation that they will, in
5 the performance of those services, pay
6 their employees the 21st century minimum
7 wage, which is currently about \$10.88.

8 COUNCILMAN GOODE: Ms. Flamer,
9 my question is which City agency is
10 responsible for enforcement.

11 MS. FLAMER: Well, the way the
12 bill is written or the ordinance is
13 written, it's primarily the Labor
14 Standards Unit. In terms of granting any
15 waivers, there's also a private cause of
16 action, which would not be something that
17 the City enforces.

18 COUNCILMAN GOODE: I'm not sure
19 I got an answer to my question yet. Is
20 there one agency that is responsible for
21 enforcement? Can we single out one?

22 MS. FLAMER: There's really not
23 one agency. It's a combination of the
24 Procurement Commissioner and the Labor
25 Standards Unit working in cooperation.

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2 COUNCILMAN GOODE: Because the
3 Procurement Commissioner in his testimony
4 almost seemed to say that this ordinance
5 was not necessary because all the
6 mechanisms were in place. In fact, he
7 said, "I am not opposed to the bill, but
8 want you to know that the mechanisms are
9 already in place to sanction those
10 vendors who violate City laws."

11 MS. FLAMER: Yeah. He's
12 referring to the debarment regulations
13 since this bill amends the 21st Century
14 Minimum Wage to add the recommendation of
15 debarment. The debarment policy and
16 regulation has been in effect in the City
17 probably since --

18 COUNCILMAN GOODE: But is it --

19 MS. FLAMER: -- the early
20 1990s.

21 COUNCILMAN GOODE: Excuse me
22 for interrupting you.

23 Is it fair to say that it's
24 very possible that no one was enforcing
25 this ordinance?

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2 MS. FLAMER: I'm sorry. I
3 can't hear you.

4 COUNCILMAN GOODE: Is it fair
5 to say that it's possible that no one was
6 enforcing this ordinance? I mean, I know
7 for a fact and previous testimony --

8 MS. FLAMER: No, that's not
9 fair to say at all.

10 COUNCILMAN GOODE: Well --

11 MS. FLAMER: Because it's been
12 included in the Procurement Department
13 boilerplate and it is --

14 COUNCILMAN GOODE: It's been
15 included in the Procurement Department
16 boilerplate --

17 MS. FLAMER: In all service,
18 supply and equipment contracts.

19 COUNCILMAN GOODE: For how
20 long?

21 MS. FLAMER: I believe since
22 2006.

23 COUNCILMAN GOODE: Seven. It
24 was 2007. In fact, because it was not
25 included for the first two years, the

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2 City had to go back and give backpay to
3 those City workers. So at first, it
4 wasn't even being implemented.

5 COMMISSIONER ORTMAN:

6 Whenever -- it has fallen on the
7 Procurement Commissioner and the
8 Procurement Department to do their best
9 to get -- to enforce this regulation. It
10 is not spelled out in any legislation
11 that it is the Procurement Department's
12 responsibility. That's why I was having
13 difficulty answering your initial
14 question.

15 COUNCILMAN GOODE: Can you
16 explain the current enforcement process?
17 Let me put it a little bit more
18 specifically.

19 COMMISSIONER ORTMAN: Well, the
20 current enforcement process would be the
21 Procurement Department would receive a
22 complaint from City Council, from a
23 department head, possibly even from
24 another vendor. The Procurement
25 Department would then initiate through

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2 the Law Department, if necessary, a
3 request for payroll -- proof of payroll,
4 et cetera, to prove one way or the other
5 that this vendor has done this. We give
6 them the chance to explain themselves,
7 possibly even fix the situation. If they
8 don't, then we continue with the
9 debarment process as it's spelled out in
10 the procedure that was attached to the
11 paperwork today.

12 COUNCILMAN GOODE: Who is the
13 current head of the Office of Labor
14 Standards?

15 COMMISSIONER ORTMAN: His name
16 is Perri DiVirgilio.

17 COUNCILMAN GOODE: He testified
18 before Council on June 2nd, 2008 and he
19 actually said here, "Okay. Well, as we
20 talked before, under the prior
21 Administration, I was basically told not
22 to do it. Basically what they told me
23 was I work for the Administration, I
24 don't work for the Council, and they
25 asked me that anyone that called, to

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2 refer it to them."

3 COMMISSIONER ORTMAN: I've
4 never had that -- I never heard that
5 testimony and I've never been told that.

6 COUNCILMAN GOODE: It's from a
7 transcript June 2nd, 2008.

8 COMMISSIONER ORTMAN: I
9 understand. I just wasn't --

10 COUNCILMAN GOODE: So if the
11 Office of Labor Standards is the primary
12 agency responsible for implementing and
13 enforcing and the ordinance was not
14 enforced for the first couple of years --
15 was not implemented for the first couple
16 of years and you have not received any
17 complaints that you've acted upon, is it
18 fair to say that this ordinance was not
19 being enforced?

20 COMMISSIONER ORTMAN: Not at
21 all. I believe that I -- I never
22 indicated that Perri DiVirgilio and Labor
23 Standards was responsible for the
24 enforcement of this particular provision.
25 It has fallen on the Procurement

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2 Department to try and enforce it when we
3 are so informed of a violation.

4 COUNCILMAN GOODE: Mr. Ortman,
5 how many contractors have been penalized
6 or debarred for violating the existing
7 minimum wage ordinance?

8 COMMISSIONER ORTMAN: For the
9 existing minimum wage ordinance?

10 COUNCILMAN GOODE: How many
11 have been penalized or debarred?

12 COMMISSIONER ORTMAN: None.

13 COUNCILMAN GOODE: How many --

14 COMMISSIONER ORTMAN: I've
15 received --

16 COUNCILMAN GOODE: --
17 contractors have been penalized or
18 debarred for violating local prevailing
19 wage ordinances?

20 COMMISSIONER ORTMAN: I can't
21 answer that question. I don't recall of
22 any since I have --

23 MS. FLAMER: Well, no. I can
24 answer that question.

25 COMMISSIONER ORTMAN: Okay.

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2 Please.

3 MS. FLAMER: Because that's
4 Labor Standards.

5 Right now I believe there are
6 currently three appeals of violations of
7 Labor Standards provisions on prevailing
8 wage and there are probably two that are
9 ripe for the lower-level proceedings
10 before Labor Standards. But there are
11 three pending appeals before the Board of
12 Labor Standards, before the Board. It's
13 probably a total of five right now
14 currently.

15 COMMISSIONER ORTMAN: I'm aware
16 of at least one or two contracts where
17 Perri has been successful in getting back
18 wages for particular vendors that have
19 violated the prevailing wage.

20 COUNCILMAN GOODE: Ms. Flamer,
21 I'll ask you the last two questions.

22 Does this bill remove any
23 authority from the Administration?

24 MS. FLAMER: No, it does not.

25 COUNCILMAN GOODE: And will

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2 this ordinance be legally valid without
3 an amendment to the Home Rule Charter?

4 COMMISSIONER ORTMAN:

5 Absolutely.

6 MS. FLAMER: Yes.

7 COUNCILMAN GOODE: Thank you.

8 Councilman Jones.

9 COUNCILMAN JONES: Good
10 morning.

11 Thank you, Mr. Chairman, first
12 of all for having called these important
13 hearings, and I am almost like deja vu
14 all over again when not more than a
15 couple of weeks ago we were in hearings
16 talking about the OEO enforcement. I
17 kind of remember that same exact line of
18 questioning by way of the debarment
19 process as it relates to discrimination
20 and whether or not the laws on the books
21 were actually being enforced, and the
22 evidence of it was presented similarly
23 with the fact that there have been no
24 debarments in the area of discrimination.
25 And it just baffles my mind to believe

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2 that we have arrived, Martin Luther
3 King's dream is finally here, that we
4 don't have discrimination in the City of
5 Philadelphia and, therefore, I'm hearing
6 also that there is no problems with Labor
7 Standards and that everyone is being paid
8 a comparable wage.

9 I also hear the same complaint
10 last night, and thank you for attending
11 the MED Week workshop, but I heard from
12 the actual subcontractors and minority
13 contractors and women contractors that
14 says that there is an unwritten
15 understanding that there will be no
16 enforcement of laws on the books and so,
17 therefore, in effect, and what the
18 Chairman has been alluding to, is there a
19 law. And so if people have the
20 understanding that no one is checking,
21 then they get a little lax and they get a
22 little sense of freedom to do what they
23 want to do, not what the law calls for.
24 And I'm beginning to see that pattern
25 both in OE0, in wage and in Licenses and

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2 Inspection when we, by virtue of the fact
3 that we cut inspectors, send a pretty bad
4 signal to developers and contractors and
5 GCs that we're not out there looking.
6 That's like saying if we don't have
7 traffic cops, it's okay to run the
8 lights.

9 So I'm wondering -- I guess I'm
10 leading to, do you -- when was the last
11 time someone was debarred?

12 COMMISSIONER ORTMAN: I would
13 be guessing. I have a list of people
14 that were debarred, but they were all
15 cleared waivers, as we might say.

16 COUNCILMAN JONES: I mean, what
17 year?

18 MS. FLAMER: It would have been
19 right before this current Administration.
20 It would have been probably in November
21 of that year.

22 COMMISSIONER ORTMAN: Five
23 years ago.

24 MS. FLAMER: No, not five.
25 Three.

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2 Excuse me. It's three years.

3 It's three years.

4 COMMISSIONER ORTMAN: Three
5 years. They just cleared waivers, as we
6 say, because three years is the maximum
7 that we can debar somebody for.

8 COUNCILMAN JONES: I'd be
9 interested in finding the exact case, the
10 exact cause and provide that to this
11 committee, because I'm beginning to think
12 we're sending the wrong signal to the
13 development/business community that we're
14 just not watching. And we have to be
15 vigilant in order for people to get paid,
16 for contractors to participate and for
17 L&I standards to be enforced, we have to
18 be vigilant.

19 COMMISSIONER ORTMAN:
20 Councilman, I do appreciate what you're
21 saying, and as I mentioned earlier, if I
22 receive a phone call from City Council,
23 an e-mail from a department head, a
24 complaint about somebody not doing what
25 they're supposed to do, I will follow

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2 through on it. The legislation doesn't
3 have any enforcement requirement in it as
4 to who is supposed to enforce this.

5 COUNCILMAN GOODE: It will now,
6 and you will receive a resolution.

7 COMMISSIONER ORTMAN: That
8 would help. Unfortunately, Procurement
9 doesn't have the people to do it and
10 don't have the expertise to do it. Perri
11 DiVirgilio, I believe he might have a
12 secretary. I'm not even sure he has
13 that. So there are definitely the need
14 for more people from the enforcement.

15 COUNCILMAN JONES: I just want
16 to kind of show the pattern once again,
17 and I'm going to yield to my colleagues,
18 but if we do the work to establish a law
19 and then by virtue of the fact that you
20 cut enforcement or stop enforcement, it
21 sends the signal that it's no law at all.

22 COMMISSIONER ORTMAN:

23 Councilman --

24 COUNCILMAN JONES: I'm saying
25 to you, we're going to fix it, but even

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2 when we fix it, you have to make it a
3 priority to enforce. That's the
4 partnership.

5 COMMISSIONER ORTMAN:

6 Absolutely. And we do the best we can to
7 enforce it currently when we receive
8 complaints.

9 COUNCILMAN JONES: Thank you,
10 Mr. Chairman.

11 COUNCILMAN GOODE: Have you
12 received any complaints regarding --

13 COMMISSIONER ORTMAN: No, not
14 in at least over a year.

15 COUNCILMAN GOODE: But you have
16 received complaints regarding the minimum
17 wage ordinance?

18 COMMISSIONER ORTMAN: One.

19 COUNCILMAN GOODE: Councilman
20 Clarke.

21 COUNCILMAN CLARKE: Thank you,
22 Mr. Chairman.

23 Good morning.

24 COMMISSIONER ORTMAN: Good
25 morning.

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2 COUNCILMAN CLARKE: I want to
3 ask a couple of questions, and I
4 understand if you're not going to be able
5 to answer them today because they're a
6 little bit related to budgetary issues,
7 and I was wondering when you were going
8 to get to the point where you talk about
9 the lack of staffing as it relates to
10 your ability to enforce, not just this
11 issue but a lot of the legislation that
12 we pass here in Council.

13 When you have your department
14 conversations with the Administration, of
15 which you are a part of, about the
16 budgeting issues and what you need to
17 adequately perform your duties and
18 responsibilities as a commissioner, do
19 you determine what the priorities are or
20 does the Administration determine what
21 the priorities are? Well, I should say
22 the Mayor's Office. I don't know how you
23 all, deputy mayors -- it's a different
24 type of setup here and I'm not sure.
25 Traditionally you had that conversation

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2 with the Managing Director.

3 Do you determine what the
4 priorities are in your department? As an
5 example, if Councilman Goode's
6 legislation is enacted and in order to
7 fully ensure full enforcement of his
8 proposal, you need additional staff
9 persons to do investigations and things
10 of that nature, do you have those
11 conversations?

12 COMMISSIONER ORTMAN: If indeed
13 we were charged with the enforcement of
14 the regulation, I would have to go to MDO
15 and ask for additional staff, yes. And I
16 would, of course, do that, because we
17 don't have the staff currently to do
18 that.

19 COUNCILMAN CLARKE: Yeah. I
20 mean, that tends to be pretty much the
21 statements from most of the commissioners
22 that come before us.

23 So as we move towards the
24 budget process, because it will be here
25 before us -- and I do believe we'll

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2 probably have an earlier budget process
3 in the upcoming year and you may already
4 be in the process of understanding our
5 fiscal situation -- can you say here
6 today, given the importance of this issue
7 to City Council and I'm assuming of the
8 Administration, that you will be
9 recommending that we devote more
10 resources to this particular issue?

11 COMMISSIONER ORTMAN: Whatever
12 legislation is passed by City Council, I
13 will do my best to enforce and to pass
14 on --

15 COUNCILMAN CLARKE: That's not
16 what I asked you.

17 COMMISSIONER ORTMAN: Well, I'm
18 not responsible to do the investigation,
19 although I am doing it right now.

20 COUNCILMAN CLARKE: But you're
21 telling me that you don't have enough
22 staffing to adequately investigate --

23 COMMISSIONER ORTMAN: Well, is
24 your legislation going to say Procurement
25 will provide the enforcement officers or

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2 is it going to say that the Labor
3 Standards will provide the enforcement
4 officers?

5 You have to have people out in
6 the field on a constant basis, which we
7 don't have anyone to do that, you know.
8 So it depends on which is the enforcement
9 agency that you as members of City
10 Council designate as the enforcement
11 agency. Maybe it's a whole separate
12 unit. I don't know.

13 COUNCILMAN CLARKE: Well,
14 unfortunately and probably, based on the
15 Administration's view, fortunately, City
16 Council, although we can legislate
17 appropriate financing for agencies and
18 staffing, the executive branch ultimately
19 gets the ability to determine whether or
20 not that money will be spent. So it has
21 to be driven from the Administration. I
22 mean, I'm sure that you want Councilman
23 Goode to put a bill in tomorrow that says
24 that the Procurement will have 20
25 inspectors and their salaries shall be

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2 the following.

3 COMMISSIONER ORTMAN: Right. I
4 understand.

5 COUNCILMAN CLARKE: He'll
6 probably put one in that says 40
7 inspectors.

8 COMMISSIONER ORTMAN: I
9 misspoke a little bit. I should have
10 said whoever is designated by whoever.

11 COUNCILMAN GOODE: Because
12 would it make sense for any agency other
13 than the Office of Labor Standards to
14 deal with the implementation and
15 enforcement?

16 MS. FLAMER: Not really.

17 COMMISSIONER ORTMAN: I don't
18 think so. Procurement is not a, quote,
19 enforcement agency, whereas Labor
20 Standards is an enforcement agency.

21 COUNCILMAN GOODE: My question
22 is, would it make sense for any agency
23 other than the Office of Labor Standards
24 to be the agency to deal with
25 implementation and enforcement? It

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2 wouldn't make any sense. If you have an
3 Office of Labor Standards, that's what
4 it's for, to enforce labor standards,
5 wage standards.

6 COMMISSIONER ORTMAN: Agreed.

7 COUNCILMAN GOODE: Councilman.

8 COUNCILMAN CLARKE: So you
9 agree with that. So our ask; i.e.,
10 budgetary resources, should be for the
11 Department of Labor Standards to have the
12 necessary people in place to do the
13 investigations and the enforcement.

14 COMMISSIONER ORTMAN: If indeed
15 it is the Administration's choice that
16 they be the enforcement agency.

17 COUNCILMAN CLARKE: No. I
18 said --

19 COUNCILMAN GOODE: At first you
20 said we had to legislate it. Now you say
21 it's --

22 COMMISSIONER ORTMAN: Well, I
23 misspoke a little bit on that one. I'll
24 rephrase it.

25 COUNCILMAN CLARKE: I

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2 understand the nature of my questions.

3 I've been around for a long time.

4 COMMISSIONER ORTMAN: Yes.

5 COUNCILMAN CLARKE: I know

6 commissioners are somewhat limited in

7 terms of what they can say in testimony.

8 But would you be willing to go

9 on the record to say that -- well, you

10 just did actually say that that would be

11 the most appropriate place to have the

12 resources established to do the

13 investigations and the enforcement.

14 COMMISSIONER ORTMAN: In my

15 opinion at this point in time, yes.

16 COUNCILMAN CLARKE: So I guess

17 we have to get the Labor Standards people

18 in here. Okay. I just wanted to make

19 sure that the norm is the inability to

20 have the appropriate staffing, and that's

21 pretty much where we are today.

22 We have been having

23 conversations with the Administration

24 here of late about priorities. Frankly

25 speaking, I'm a little concerned about

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2 some of the priorities as it relates to
3 staffing for various issues across the
4 board, and I think given our fiscal
5 situation, we may want to think about
6 shifting some of the priorities, because
7 we have limited resources and I think
8 those limited resources should be
9 attached to the things that are important
10 to us. But I understand that may be a
11 little either above or lateral to your
12 pay grade, so I won't burden you with
13 that today.

14 COMMISSIONER ORTMAN: I
15 appreciate that.

16 COUNCILMAN CLARKE: Thank you
17 so much.

18 Thanks, Mr. Chairman.

19 COUNCILMAN GOODE: Thank you,
20 Councilman.

21 Councilman Jones.

22 COUNCILMAN JONES: I just want
23 to -- and not to pile on, because that is
24 not in our nature to do, but I want to
25 emphasize one thing. There was a visit I

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2 had out in the community at 59th and
3 Girard. A single parent was living in a
4 one-bedroom studio where the rent was
5 750-odd dollars a month. She explained
6 to me that every bit of her salary, every
7 dime, went to just the rent, and she had
8 to, quote, hustle for food money and
9 utility money.

10 We're living in the land of
11 plenty. The only way that people that
12 work for a living get a fair break is if
13 we look out for them, if we stand guard
14 for them. And I understand budgetary
15 constraints, and we're going to discover
16 a word called "transfer ordinance." I
17 hear it coming up soon. So we're going
18 to help you out, but what you have to
19 have is a willingness to actually
20 enforce. I mean, it is so important.
21 When people believe you are watching,
22 they tend to do the right thing, and
23 that's all that we ask. And we have to
24 give you the tools to be able to do the
25 right thing. We get that. I think I

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2 heard that from my colleagues. But when
3 we struggle through these hearings, when
4 we put laws on the books, there's a
5 covenant that comes with that, and that
6 is enforcement. And it means so much at
7 the real neighborhood level, and I can
8 just report that back to you, that people
9 are counting on us to do our part.

10 Thank you, Mr. Chairman, for
11 having this hearing, once again.

12 COUNCILMAN GOODE: Thank you,
13 Councilman.

14 Councilwoman Sanchez.

15 COUNCILWOMAN SANCHEZ: Thank
16 you.

17 I have a request, because I
18 think it's important, and it goes to what
19 Councilman Clarke and Councilman Jones
20 were speaking to. I'd like to see for
21 the Administration -- and so we should go
22 on record -- one of the things we've
23 requested is during the budget discussion
24 that people present to us clearly where
25 they are as it relates to OEO plans. I'd

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2 like to request that the department both
3 on the Procurement side and on the Labor
4 Standards side be prepared to address
5 this initiative as it relates to the
6 Administration priority. That's so you
7 prepare us, you prepare for the budget.
8 Be prepared as part of the testimony to
9 reflect that.

10 I do want to have an ask to the
11 Chair. I'd like to see the last three
12 cases that you've had and a summary of
13 them, of what we went through, were
14 waivers issued, did we get to -- I'd like
15 to see how long that process takes so
16 that I am clear about the fact that what
17 are the resources that we need in order
18 to make sure that this happens.

19 COMMISSIONER ORTMAN: I can
20 sort of answer some of that right now.

21 COUNCILWOMAN SANCHEZ: Well, if
22 you want to give me a case study.

23 COMMISSIONER ORTMAN: Well,
24 some of the debarments we've done were
25 done because people were convicted of a

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2 criminal offense. We can debar them as
3 long as the jury says guilty, and we
4 debar them. We have done that. The
5 process --

6 COUNCILMAN GOODE: Excuse me,
7 Mr. Ortman. I think the Councilwoman is
8 referring to the minimum wage ordinance.

9 MS. FLAMER: That's what I
10 thought.

11 COMMISSIONER ORTMAN: I know,
12 and I'm trying to get to that as far as
13 debarment. As far as minimum wage, we
14 have not debarred anybody for not paying
15 minimum wage.

16 COUNCILWOMAN SANCHEZ: But you
17 say you've had cases that you've
18 investigated. So I want to know why they
19 didn't lead to debarment, what did these
20 people do.

21 COMMISSIONER ORTMAN: Okay.

22 COUNCILWOMAN SANCHEZ: And then
23 what's the follow-up, how do we make sure
24 that people who are on our radar for
25 potential violations, how do we go back

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2 and make sure that they're not happening
3 again. So I want to know the process,
4 because it leads to Councilman Clarke's
5 point. We need to understand the
6 resources, because if this is a priority
7 to us and your budget does not reflect
8 that there, then we need to be able to
9 say that's not enough resources, because
10 this is a priority. And I know we're
11 going to be looking at that as it relates
12 to OEO and obviously to this matter also.

13 Thank you.

14 COMMISSIONER ORTMAN: Sure.

15 COUNCILMAN GOODE: Thank you.

16 Any other questions for this
17 panel?

18 (No response.)

19 COUNCILMAN GOODE: Thank you
20 very much.

21 COMMISSIONER ORTMAN: Thank
22 you.

23 COUNCILMAN GOODE: Is there
24 anyone else to testify on this bill?

25 (No response.)

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2 COUNCILMAN GOODE: Seeing none,
3 we will move from our public hearing into
4 a public meeting to consider Bill No.
5 090579. There is a technical amendment
6 to the bill, which simply scraps the need
7 to connect it to an amendment to the Home
8 Rule Charter, so it deletes Section 2.

9 The Chair recognizes
10 Councilwoman Sanchez for a motion on the
11 amendment to Bill No. 090579.

12 COUNCILWOMAN SANCHEZ: I move
13 that we accept the amendment as presented
14 to Bill 090579.

15 (Duly seconded.)

16 COUNCILMAN GOODE: All in
17 favor?

18 (Aye.)

19 COUNCILMAN GOODE: Those
20 opposed?

21 (No response.)

22 COUNCILMAN GOODE: Bill No.
23 090579 is amended.

24 The Chair recognizes
25 Councilwoman Sanchez for a motion on Bill

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2 090579, as amended.

3 COUNCILWOMAN SANCHEZ: I move
4 that Bill 090579 be moved out of
5 Committee with a favorable
6 recommendation, as amended, and that the
7 rules of Council be suspended to allow
8 first reading at our next public session.

9 (Duly seconded.)

10 COUNCILMAN GOODE: All in
11 favor?

12 (Aye.)

13 COUNCILMAN GOODE: Those
14 opposed?

15 (No response.)

16 COUNCILMAN GOODE: Bill No.
17 090579, as amended, is reported out of
18 Committee with a favorable recommendation
19 and a suspension of the rules to allow
20 first reading at our next Council
21 session.

22 Thank you. This concludes our
23 public meeting.

24 (Committee on Commerce and
25 Economic Development concluded at 10:55

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2 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
foregoing matter on October 7, 2009, and that
this is a true and correct transcript of same.

MICHELE L. MURPHY
RPR-Notary Public

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