

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON PUBLIC HEALTH AND
HUMAN SERVICES

Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday February 11, 2015
10:30 a.m.

PRESENT:

COUNCILWOMAN MARIAN B. TASCO, CHAIR
COUNCILWOMAN CINDY BASS
COUNCILMAN WILLIAM K. GREENLEE
COUNCILMAN KENYATTA JOHNSON
COUNCILMAN ED NEILSON
COUNCILMAN MARK SQUILLA

BILLS 140517, 140635, 140649, and 140886

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COUNCILWOMAN TASCO: Good morning. The Committee on Public Health and Human Services will come to order. I will recognize that we have a quorum in the presence of Councilman Greenlee, Councilwoman Cindy Bass, Councilmen Neilson and Johnson, and yours truly.

We will ask the Clerk to please read the bills.

THE CLERK: Bill No. 140517, an ordinance amending Section 10-602 of The Philadelphia Code, known as the "Clean Indoor Air Worker Protection Law," by providing for a limited period of time during which certain Private Clubs may apply for and obtain a waiver of the provisions of the Section prohibiting smoking in certain places, under certain terms and conditions.

Bill No. 140635, an ordinance amending Section 10-602 of The Philadelphia Code, known as the "Clean Indoor Air Worker Protection Law," by providing a limited period of time during

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which certain Drinking Establishments may
apply for and obtain a waiver of the
provisions of the Section prohibiting
smoking in certain places, under certain
terms and conditions.

Bill No. 140649, an ordinance
amending Section 10-602 of The
Philadelphia Code, known as the "Clean
Indoor Air Worker Protection Law," by
providing a limited period of time during
which certain Drinking Establishments may
apply for and obtain a waiver of the
provisions of the Section prohibiting
smoking in certain places, under certain
terms and conditions.

Bill No. 140886, an ordinance
amending Section 10-602 of The
Philadelphia Code, known as the "Clean
Indoor Air Worker Protection Law," by
providing a limited period of time during
which certain Drinking Establishments may
apply for and obtain a waiver of the
provisions of the Section prohibiting
smoking in certain places, under certain

1 2/11/15 - PUBLIC HEALTH - BILL 140517, etc.

2 terms and conditions.

3 COUNCILWOMAN TASCO: Good

4 morning. We have a panel from -- the

5 Administration's panel. We will now call

6 Dr. James Buehler, who is our Health

7 Commissioner. Next after that we'll call

8 them as they come up.

9 (Witnesses approached witness

10 table.)

11 DR. BUEHLER: Good morning.

12 COUNCILWOMAN TASCO: Good

13 morning.

14 DR. BUEHLER: Thank you,

15 Chairwoman Tasco, for the opportunity to

16 be here today with you and the other

17 members of the Public Health and Human

18 Services Committee and for giving me the

19 opportunity to provide testimony on these

20 four bills, 140517, 635, 649, and 886.

21 All four of these bills

22 would --

23 COUNCILWOMAN TASCO: Would you

24 identify yourself for the record.

25 DR. BUEHLER: I'm sorry. My

1 2/11/15 - PUBLIC HEALTH - BILL 140517, etc.

2 name is Dr. James Buehler. I'm the
3 Health Commissioner for the City of
4 Philadelphia.

5 All four of these bills would
6 grant specific establishments an
7 exemption from our city's Clean Indoor
8 Air Worker Protection Law of 2007. Three
9 businesses are seeking exemptions under
10 the drinking establishment or bar waiver.
11 Two of these three businesses operate as
12 gentlemen's clubs. The fourth entity is
13 seeking exemption as a private club.

14 Respectfully, as Health
15 Commissioner, I must oppose all four
16 bills, just as I did in December 2014
17 when they were first introduced. I
18 commend the Committee for its wise
19 decision to hold those bills then, and I
20 respectfully encourage you to do the same
21 this time.

22 I want to make two main points
23 today. First, I want to highlight the
24 purpose behind our smoke-free law. It
25 was designed to protect workers and the

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public from secondhand smoke. I see it as part of my job to ensure that Philadelphians do not have to choose between their health and their employment. I know this is a concern shared by many members of Council. The recent progress of a mandatory paid sick leave bill in this body is only the most recent demonstration of Council's commitment to worker health and well-being.

Second, continuing to whittle away at Philadelphia's smoke-free law will further jeopardize the City's chances to host major health-related conferences and the millions of dollars in economic activity that these events bring with them.

It's a fact that secondhand smoke is toxic. Exposure to secondhand smoke increases the risk for and can cause cancer, heart attacks, emphysema, and strokes in non-smokers, as reported in the most recent Surgeon General's

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2 report. Levels of secondhand smoke in
3 bars can be two to six times higher than
4 in homes where people smoke. Every
5 worker and business patron, including
6 those of bars and gentlemen's clubs,
7 deserves protection.

8 Philadelphia's Clean Indoor Air
9 Worker Protection Law prohibited smoking
10 in bars, restaurants, workplaces, and
11 other indoor spaces. It did, though,
12 include some exemption provisions. They
13 were meant to provide a one-time waiver
14 application period for small bars and
15 private clubs in existence at the time of
16 the law's passage seven years ago. The
17 waiver period was never meant to be
18 reopened. Waivers were a compromise to
19 ease the transition to a comprehensive
20 progressive law that protected employees,
21 customers, and members of the public from
22 secondhand smoke to the greatest degree
23 possible. By granting new waivers now, a
24 time-limited circumscribed compromise
25 grows bill by bill into a larger and

1 2/11/15 - PUBLIC HEALTH - BILL 140517, etc.
2 larger loophole. One bar and one private
3 club obtained exemptions through a
4 similar legislative amendment process in
5 2011 and 2013. Today we are considering
6 four more exemptions. I worry about how
7 many more will be added in the future.

8 Moreover, I note that three of
9 the four entities seeking exemptions
10 today actually applied for waivers in
11 2007, but were ineligible. The time for
12 eligibility is now long passed.

13 The two gentlemen's clubs
14 seeking exemptions may argue that they
15 are at a competitive disadvantage because
16 most other such clubs have exemptions
17 that allow smoking. However, currently
18 only four gentlemen's clubs in
19 Philadelphia have smoke-free waivers, and
20 a quick review suggests that at least
21 nine other similar clubs operating in
22 Philadelphia today don't have such
23 waivers.

24 It may seem that a few more
25 bars or a few more gentlemen's clubs that

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allow smoking is no big deal, but let's think about the workers and the non-smoking patrons of these businesses. The Clean Indoor Air Law was meant to protect people, no matter where they work, where they go to dinner or where they have a drink, from the harms of secondhand smoke. Private clubs are no exception, because the Indoor Law currently defines a private club in a manner that allows these establishments to have employees. If you have workers, the law should apply to you.

In sum, the law was a good idea when it was originally passed by the Council and it's still a good idea for all the same reasons.

As Health Commissioner, I sit on the Advisory Board for the Life Sciences Division of the Philadelphia Conventions Bureau, and you'll be hearing more, I believe, from a representative of that organization later. In this role, I've learned that creating more

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exemptions from the smoke-free law puts Philadelphia at risk for losing health and life sciences conventions. Such conventions account for approximately half of all conventions in the City. Twenty-seven health organizations, including the American Heart Association, the American Lung Association, and the U.S. Centers for Disease Control and Prevention, will only host conferences in cities with comprehensive smoke-free laws that limit exemptions to the greatest degree, cities like Chicago, New York, Los Angeles, Boston, Newark, and Baltimore. These are our competitors, and we are in a precarious situation.

Take the American Heart Association as a case in point. It recently announced that it will be hosting its 2019 annual conference in Philadelphia, with 25,000 attendees and approximately \$68 million in economic impact. Yet, representatives from the Convention and Visitors Bureau noted that

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Philadelphia almost lost that conference because of our existing smoke-free exemptions. Rightfully so, the Heart Association had questions about the scope and the nature of the exemptions and expressed their concerns. Ultimately, Philadelphia was successful in winning the convention, but it was a near miss and it could become a complete miss as the Heart Association continues returning to Philadelphia for future meetings. Therefore, just as in December, the Convention and Visitors Bureau has submitted a letter in opposition to these bills. And I believe a representative from the Bureau is here as well.

I respectfully say to each sponsor and to the members of this Committee that holding these bills is the right thing to do, not just for the public's health but also for the City's financial health. In so doing, you will strengthen our competitive edge in attracting major, profitable conventions

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2 from the health and biomedical industries
3 and you will prevent numerous employees
4 and patrons from suffering the harms of
5 secondhand smoke and the debilitating
6 diseases it can cause.

7 Thank you for your
8 consideration today. I am joined by my
9 colleague Dr. Giridhar Mallya, who
10 directs our Get Healthy Philly program,
11 and Dr. Mallya and I would be happy to
12 answer any questions that you might have.

13 COUNCILWOMAN TASCO: Thank you
14 very much.

15 Are there any questions on
16 behalf of the Committee?

17 COUNCILMAN NEILSON: Yes, Madam
18 Chairman.

19 You talked about comprehensive
20 laws compared to other cities. Where
21 does our law sit compared to cities like
22 Chicago and stuff like that? Do you
23 believe that ours are weaker than theirs?

24 DR. BUEHLER: We're roughly in
25 the same ballpark. Our exemption

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2 provision is a little weaker,
3 particularly with respect to private
4 clubs. Other cities have private club
5 exemptions only for clubs that have no
6 employees, where all the functions of the
7 club are maintained by club members.

8 Would you care to add to that?

9 DR. MALLYA: Yeah. Just one
10 other point. I think in addition to
11 private clubs, as Dr. Buehler mentioned,
12 all those other cities don't allow
13 exemptions for small bars, and I think
14 that's a key distinction between
15 Philadelphia's law and the laws in those
16 other cities as well.

17 COUNCILMAN NEILSON: Does the
18 Administration feel that all the
19 businesses in the City should be treated
20 equally? I mean, it's a fair question,
21 because what we have before us today are
22 some facilities and private clubs that
23 were unable to produce the documentation
24 in a timely manner and they're at a
25 disadvantage from the other facilities

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2 like themselves.

3 Do you believe that we should
4 treat all businesses equally? And that's
5 simply, Doctor, a yes or no.

6 DR. BUEHLER: In an ideal
7 world, all would be treated equally and
8 there would be no exemptions.

9 COUNCILMAN NEILSON: Thank you,
10 sir.

11 No more questions, Madam Chair.

12 COUNCILWOMAN TASCO: Thank you
13 very much.

14 Any other questions, comments?
15 Councilwoman Bass.

16 COUNCILWOMAN BASS: I have one
17 question.

18 Dr. Mallya, so you just said
19 that other cities don't have any
20 exemptions for small bars. And so
21 there's no food, like the waiver if
22 you're selling less than 10 to 15 percent
23 in food sales. So you're saying there's
24 no waivers for that?

25 DR. MALLYA: Yeah. We in

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2 Philadelphia have approximately 50 to 60
3 small bars based on the definition in the
4 Clean Indoor Air Law that were given
5 exemptions.

6 COUNCILWOMAN TASC0: Could you
7 speak up, please, into the mike.

8 DR. MALLYA: Sure. We have
9 approximately 50 or so small bars or
10 drinking establishments that were given
11 waivers here in Philadelphia back in
12 2007, and that is different than in other
13 cities. So that happened in
14 Philadelphia, but that provision isn't
15 available in the Clean Indoor Air Laws of
16 other large cities.

17 COUNCILWOMAN BASS: Okay.

18 Thank you.

19 COUNCILWOMAN TASC0: Any other
20 questions?

21 (No response.)

22 COUNCILWOMAN TASC0: Thank you
23 very much for your testimony,
24 Commissioner.

25 DR. BUEHLER: Thank you very

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2 much.

3 COUNCILWOMAN TASCO: Next we
4 have Dr. Kenneth Margulies and Ms.
5 Deborah Brown from the American Lung
6 Association.

7 (Witnesses approached witness
8 table.)

9 DR. MARGULIES: Good morning,
10 Chairwoman Tasco and members of Council.
11 I am Dr. Ken Margulies, President-elect
12 of the Philadelphia Division of the
13 American Heart Association and a
14 cardiologist at the University of
15 Pennsylvania.

16 The American Heart Association
17 is joined by many health advocacy
18 partners, including the American Cancer
19 Society and the American Lung
20 Association, in urging Council to defeat
21 and reject the legislation before this
22 Committee today, which proposes to open
23 new exemptions in Philadelphia's Clean
24 Indoor Air Worker Protection Law. The
25 members of this Committee and the City

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2 Council understand that secondhand smoke
3 is dangerous to human health. We came
4 before this Committee in December in
5 opposition to these proposals, and this
6 Committee wisely chose not to advance
7 these misguided bills.

8 Echoing the comments made by
9 our Health Commissioner just moments ago,
10 the legislation in question creates an
11 impossible choice for Philadelphia's
12 workers today in a tough economy, whether
13 or not to go to work in a smoke-filled
14 environment that may kill them.

15 Philadelphia's workers shouldn't be
16 forced to expose themselves to a toxic
17 and harmful environment in order to have
18 a job and a paycheck.

19 Nothing about the science on
20 the deadly effects of secondhand smoke
21 has changed. Less than a quarter of
22 Philadelphians are smokers. The vast
23 majority of Philadelphians don't smoke
24 and don't want to be exposed to
25 secondhand smoke.

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2 And perhaps most compelling,
3 from our perspective, is the fact that
4 the American Heart Association
5 implemented a strengthened smoke-free
6 meeting policy last year, and many large
7 organizations, particularly in the health
8 and science sector, have followed this
9 lead. Additional exemptions like those
10 under consideration will jeopardize the
11 City's ability to attract large meetings
12 sponsored by the American Heart
13 Association, American Stroke Association,
14 and other major health and science
15 organizations. Tourism and conventions
16 are an economic engine for this city and
17 will remain so or we want them to remain
18 so. It's senseless to jeopardize this
19 economic driver.

20 Again, in my opinion, this
21 Committee shouldn't merely hold these
22 bills. These bills should be rejected
23 and rejected for good for the health and
24 economic benefit of Philadelphians.

25 Thank you for your attention.

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COUNCILWOMAN TASCO: Thank you
very much.

Ms. Brown.

MS. BROWN: Good morning,
Councilwoman Tasco and Councilmembers.
My name is Deb Brown and I'm the CEO for
the American Lung Association of the
Mid-Atlantic region. We are here as well
to oppose the bills proposed today. The
American Lung Association in Pennsylvania
is disappointed that Philadelphia City
Council is looking to once again permit
local establishments to request and
receive a waiver from the Clean Indoor
Air Worker Protection Law.

The Clean Indoor Air Protection
Law was passed to protect all workers and
citizens. There are many employees who
are employed at the private club,
gentlemen's clubs, and the bar proposed.
By voting for the waivers, Philadelphia
will undo the original intent of the law,
putting numerous workers in harm's way as
a result of breathing in secondhand smoke

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2 every day. Passage also sets a bad
3 precedence of others to come forth, again
4 diminishing the intent of the law.

5 The U.S. Surgeon General in
6 2006 said there is no amount of
7 secondhand smoke that is safe. People
8 who breathe in secondhand smoke are more
9 likely to become sick and die from lung
10 cancer and heart disease. Secondhand
11 smoke can also cause respiratory
12 infections and asthma.

13 The Centers for Disease Control
14 and Prevention recently released a report
15 saying that 58 million Americans were
16 exposed to secondhand smoke in 2011-'12
17 or about one in four non-smokers. The
18 total is down to about one in two
19 non-smokers who were exposed to
20 secondhand smoke back in 1999 and 2000.
21 This means that half as many American
22 non-smokers are exposed to secondhand
23 smoke now compared to a decade. By
24 continuing to establish waivers in the
25 City of Philadelphia, we will be pushing

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those numbers in the wrong direction as we expose more people to secondhand smoke in their work environment and consequently driving up overall healthcare costs.

The American Lung Association has a campaign called Lung Force. Lung Force unites women and addresses the fact that lung cancer is the number one cancer killer of women in the United States as well as men. A majority of lung cancer is caused by tobacco use, secondhand smoke, and other environmental factors. Knowing this information, it is hard to understand why the City of Philadelphia would want to knowingly give permission to employers to harm workers. By taking a stand and permitting no more waivers, Philadelphia City Council would definitely save lives.

No one should have to choose between their health and their paycheck. Philadelphia needs to remain strong and support the original intent of the law to

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2 protect all workers and citizens equally.

3 Thank you.

4 COUNCILWOMAN TASCO: Thank you

5 very much.

6 Dr. Gambescia.

7 DR. GAMBESCIA: Yes. Good

8 morning. My name is Dr. Stephen

9 Gambescia, Drexel University. I'm a

10 Professor of Health Service

11 Administration. I've been affiliated as

12 a volunteer with the American Heart

13 Association and work on a number of

14 tobacco control issues, and I'm here to

15 support this panel in terms of any

16 questions that Council may have.

17 COUNCILWOMAN TASCO: Thank you.

18 Let me just say this: We

19 passed the no smoking bill in 2007. It's

20 been so long, I can't remember. But

21 anyway, today we're dealing with four

22 situations that present a dilemma. So I

23 just want to say we're trying to resolve

24 the issues around four situations. This

25 Council and this Committee will be

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2 looking at measures so that we won't be
3 here again. All right? But this is not
4 our effort to overturn the smoking bill
5 or to increase more waivers or increase
6 waivers. We're trying to resolve
7 circumstances around these four requests
8 that are kind of like unique. But we
9 will be looking at measures that we can
10 take so that we won't be here again. So
11 please understand that. We were sincere
12 when we passed the smoking bill, and it
13 was a trying and tough time in the
14 decision, but it was made. So understand
15 that. We're not here to open up
16 Pandora's box.

17 Thank you for your testimony.

18 Any questions?

19 (No response.)

20 COUNCILWOMAN TASCO: Thank you
21 very much.

22 Ms. Bonnie Grant.

23 (Witness approached witness
24 table.)

25 COUNCILWOMAN TASCO: Bonnie, we

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2 got all the information. You gave it to
3 us before.

4 MS. GRANT: Yes.

5 COUNCILWOMAN TASCO: We don't
6 need to eat the whole cow to know it's
7 beef.

8 MS. GRANT: I won't read the
9 whole thing.

10 Good morning, members of City
11 Council. I would like to say that at
12 this time at the Hyatt Regency Hotel,
13 there are more than 200 medical meeting
14 and pharma meeting planners meeting on
15 best practices for cities, where to
16 choose their meeting, how to conduct
17 their meeting, how to have content in
18 their meeting, and non-smoking cities is
19 a subject.

20 My name is Bonnie Grant, as I
21 was introduced, and since 2006 I've
22 served as Executive Director of the
23 Greater Philadelphia Life Sciences
24 Congress, which is a division of the
25 Philadelphia Convention and Visitors

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2 Bureau. Our mission is to generate
3 economic impact and job growth by
4 increasing the region's hotel occupancy
5 and revenues.

6 We pride ourself on attracting
7 medical and life science-related
8 meetings. We are the birthplace of not
9 only American history but also of
10 American medicine, with the first
11 hospital, the first medical school, the
12 first children's hospital and more. So
13 we commit resources to making sure that
14 our associations and professional
15 societies are aware of this.

16 We are rich, as you know, in
17 medical, healthcare, biotech,
18 pharmaceutical, higher ed, research, and
19 venture capital entities that often
20 provide opportunities for long-term
21 businesses when these kinds of
22 conventions come to town. These meetings
23 and conventions support more than 53,000
24 hospitality jobs. And as Dr. Buehler
25 mentioned, in the fall we announced that

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2 we have finally landed the American Heart
3 Association's Scientific Sessions, which
4 will bring 25,000 attendees and an
5 economic impact of \$68 million. We are
6 currently being considered for 2023. We
7 almost had a deal breaker when they
8 needed more information on how we were as
9 a smoke-free city, and with the Health
10 Department's assistance, we were able to
11 prove that out of 15,000 establishments,
12 we only had 75 waivers.

13 Increasingly, these types
14 meetings, which is a very coveted market
15 for the other major convention cities,
16 are demanding not only smoke-free venues
17 but complete smoke-free cities.

18 Americans for the Non-Smokers'
19 Rights, ANR, initiated a smoke-free
20 meetings campaign in 2004, and they are
21 encouraging organizations to host
22 meetings in only smoke-free cities and
23 venues. They now have more than 30
24 organizations participating. They are
25 asking groups to adopt a resolution to

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2 make smoke-free meeting facilities a
3 priority.

4 They provide a model smoke-free
5 meetings resolution to help the meeting
6 planners do it very easily. So just as
7 meeting planners are looking for
8 sustainable and green meeting
9 experiences, they are increasingly
10 looking for smoke-free meeting
11 experiences.

12 Other conventions that are
13 coming up that are taking this highly
14 into consideration, we will have the
15 American Association for Cancer Research,
16 which is located in our hometown at 6th
17 and Chestnut. They are meeting here for
18 the first time since 1999 in April of
19 2015, this year. And we also have the
20 BIO International Convention, which is
21 meeting here in June of this year. This
22 week, as I said, more than 200 medical
23 meeting planners are discussing this very
24 subject. So if it is a choice between
25 Philadelphia and another smoke-free venue

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2 or city to bring a meeting to, let's not
3 let Philadelphia lose that business.

4 Thank you.

5 COUNCILWOMAN TASCIO: Thank you
6 very much for your testimony.

7 Is there anyone else here to
8 testify on either of the four bills?

9 (No response.)

10 COUNCILWOMAN TASCIO: We have
11 two gentlemen's clubs.

12 Are you going to testify?

13 One across the street --
14 they're across the street from each
15 other. One has no smoking; the other one
16 does smoking. We have a small bar which
17 missed the deadline for applying for a
18 waiver because of a bill owed to the
19 Water Department. So that was a
20 circumstance that we are taking into
21 consideration. And as I said before, we
22 are trying to rectify these situations
23 but, at the same time, not trying to open
24 up Pandora's box with future waivers. So
25 we will be looking at measures to address

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2 this issue, Commissioner.

3 So today if there is no one
4 else to testify, we will now go from our
5 public hearing into our public meeting,
6 and we call on Councilman Greenlee.

7 COUNCILMAN GREENLEE: Thank
8 you, Madam Chair.

9 COUNCILWOMAN TASCO: Oh, the
10 other one was a private club that has no
11 employees. It's a private club with no
12 employees. It's on the third floor
13 smoking room.

14 COUNCILMAN GREENLEE: Thank
15 you, Madam Chair. I move that the
16 following bills be reported out of this
17 Committee with a favorable recommendation
18 and a suspension of rules to allow for
19 first reading at the next session of
20 Council: Bill Nos. 140517, 140635,
21 140886, and 140649.

22 (Duly seconded.)

23 COUNCILWOMAN TASCO: It has
24 been moved and seconded that Bills
25 140517, 140635, 140886, and 140649 be

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2 reported out of Committee with a
3 favorable recommendation and that the
4 rules of Council be suspended so these
5 bills can be heard at Council's next
6 session.

7 All in favor?

8 (Aye.)

9 COUNCILWOMAN TASCIO: Is there
10 any opposition?

11 (No response.)

12 COUNCILWOMAN TASCIO: There
13 being none, the motion is carried.

14 Thank you very much.

15 (Committee on Public Health and
16 Human Services concluded at 11:00 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, and that this is a true and
correct transcript of same.

MICHELE L. MURPHY
RPR-Notary Public

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