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COUNCIL OF THE CITY OF PHILADELPHIA
PUBLIC HEARING - COMMITTEE on LAW AND GOVERNMENT

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- 2 040771 - An Ordinance providing for the submission
3 to the qualified electors of the City of
4 Philadelphia of the proposal set forth in
5 a Resolution approved by Council
6 proposing amendment of the Philadelphia
7 Home Rule Charter relating to City
8 leases, contracts, concessions and the
9 provision of financial assistance; fixing
10 the date of a special election for such
11 purpose; prescribing the form of ballot
12 question to be voted on; and authorizing
13 the appropriate officers to publish
14 notice and to make arrangements for the
15 special election.
- 16
- 17 040772 - An Ordinance amending Title 17 of The
18 Philadelphia Code, entitled "Contracts
19 and Procurement," by adding provisions
20 regulating the process by which the City
21 awards professional services contracts
22 and other non-competitively bid
23 contracts, and prohibiting persons from
24 entering into such contracts or from
25 receiving City financial assistance if
 they or certain related parties have
 made certain contributions to elected
 City officers or candidates for City
 officers, all under certain terms and
 conditions.
- 17 040818 - Resolution proposing an amendment to the
18 Philadelphia Home Rule charter relating
19 to City leases, contracts, concessions
20 and the provision of financial
21 assistance, and providing for the
22 submission of the amendment of the
23 electors of Philadelphia.
- 24
- 25

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2 040819 - Resolution proposing an amendment to the
3 Philadelphia Home Rule Charter relating
4 to the date by which the Mayor must
5 submit to Council his operating budget
6 message, proposed operating budget
7 ordinance, and proposed capital budget
8 and capital program, and the date by
 which the Planning Commission must
 prepare and submit to the Mayor its
 recommended capital budget and capital
 program, and providing for the submission
 of the amendment of the electors of
 Philadelphia.

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PRESENT:

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11 COUNCILMAN DAVID COHEN, Chair
12 COUNCIL PRESIDENT ANNA C. VERNA
13 COUNCILWOMAN JANNIE L. BLACKWELL
14 COUNCILWOMAN BLONDELL REYNOLDS BROWN
15 COUNCILMAN DARRELL L. CLARKE
16 COUNCILMAN W. WILSON GOODE, JR.
17 COUNCILMAN JAMES F. KENNEY
18 COUNCILMAN RICHARD T. MARIANO
19 COUNCILMAN MICHAEL A. NUTTER
20 COUNCILMAN JUAN F. RAMOS

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1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 - - -

3 P R O C E E D I N G S

4 - - -

5 COUNCILMAN COHEN: The Committee on
6 Law and Government will now be in session for
7 the purpose of considering testimony on one
8 bill, I understand, although all were
9 advertised. Is that right, Chairman Nutter?

10 COUNCILMAN NUTTER: Yes, Mr.
11 Chairman.

12 COUNCILMAN COHEN: Bill Number...
13 the one that ends on 772.

14 Would the clerk of the committee
15 read the title of that bill.

16 CLERK: Bill Number 040772, an
17 Ordinance amending Title 17 of The
18 Philadelphia Code, entitled "Contracts and
19 Procurement," by adding provisions regulating
20 the process by which the City awards
21 professional services contracts and other
22 non-competitively bid contracts, and
23 prohibiting persons from entering into such
24 contracts or from receiving City financial
25 assistance if they or certain related parties

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 have made certain contributions to elected
3 City officers or candidates for City
4 officers, all under certain terms and
5 conditions.
6 COUNCILMAN NUTTER: Mr. Chairman.
7 COUNCILMAN COHEN: Thank you.
8 COUNCILMAN NUTTER: Mr. Chairman.
9 COUNCILMAN COHEN: Mr. Nutter.
10 COUNCILMAN NUTTER: Mr. Chairman,
11 just for the record, that particular bill has
12 two other companion pieces of legislation
13 that are required.
14 One is the actual amendment to the
15 Home Rule Charter, and the other is the
16 ordinance requiring the ballot question. So,
17 I would only ask --
18 COUNCILMAN COHEN: Those two will be
19 added.
20 COUNCILMAN NUTTER: Yes.
21 COUNCILMAN COHEN: Would you read
22 those two.
23 COUNCILMAN NUTTER: Thank you, Mr.
24 Chairman.
25 CLERK: Bill Number 040771, An

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 Ordinance providing for the submission to the
3 qualified electors of the City of
4 Philadelphia of the proposal set forth in a
5 Resolution approved by Council proposing
6 amendment of the Philadelphia Home Rule
7 Charter relating to City leases, contracts,
8 concessions and the provision of financial
9 assistance; fixing the date of a special
10 election for such purpose; prescribing the
11 form of ballot question to be voted on; and
12 authorizing the appropriate officers to
13 publish notice and to make arrangements for
14 the special election.

15 COUNCILMAN NUTTER: Yes, first one
16 on the second page.

17 CLERK: Bill Number 040818.
18 Resolution proposing an amendment to the
19 Philadelphia Home Rule charter relating to
20 City leases, contracts, concessions and the
21 provision of financial assistance, and
22 providing for the submission of the amendment
23 of the electors of Philadelphia.

24 COUNCILMAN COHEN: And that would be
25 the package that would be necessary?

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 COUNCILMAN NUTTER: Yes, Mr.

3 Chairman. And those at the moment, and for
4 this hearing, at least, those are the only
5 measures that I expect to propose amendments
6 with regard to those, any one of those three
7 bills or the resolution.

8 COUNCILMAN COHEN: Do you need those
9 three bills to put 727 on the Home Rule
10 Charter?

11 COUNCILMAN NUTTER: Yes. Those
12 three go together.

13 COUNCILMAN COHEN: Those three go
14 together.

15 COUNCILMAN NUTTER: And those are
16 the measures that we're looking at at the
17 moment.

18 COUNCILMAN COHEN: All right.
19 Councilman Nutter, could you tell the
20 committee why you choose the Home Rule
21 Charter amendment process rather than the
22 more laid back bill and ordinance method?
23 Why is it necessary to consider the subject
24 matter in the form of a Home Rule Charter
25 amendment?

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2 COUNCILMAN NUTTER: Sure. I
3 appreciate that, Mr. Chairman, although for
4 some matters I don't know that anyone would
5 consider our ordinance process to be a laid
6 back -- laid back method, but I understand
7 your -- I understand your question.

8 The heart of this matter really
9 goes, Mr. Chairman, to, if you go to bill --
10 I'm sorry. If you go to Resolution Number
11 040818 and take in the context of what Bill
12 Number 040772 seeks to accomplish, we know
13 from the Home Rule Charter, for instance,
14 that in Section 8-200 contracts, the only
15 contracts that require competitive bidding
16 under the Home Rule Charter are those that
17 involve the purchase of services or other
18 contracts that are not professional services.

19 And so presently there is no
20 authority for this Council, under the Home
21 Rule Charter, to establish a process to
22 govern how professional services or also
23 known as no bid contracts are awarded or the
24 process is conducted because the Council
25 doesn't have the authority under the Home

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 Rule Charter.

3 Therefore, one of the amendments
4 that's involved in Resolution 040818 gives
5 the Council by ordinance the authority, as
6 the legislature says, to regulate the process
7 by which purchases and contracts not subject
8 to the lowest responsible bidder requirement
9 of this paragraph are awarded.

10 COUNCILMAN COHEN: Oh, so this would
11 establish power in the City Council to set
12 these procedures.

13 COUNCILMAN NUTTER: Yes, by
14 ordinance.

15 COUNCILMAN COHEN: Otherwise, it
16 might be ruled by the City Solicitor or by
17 the Law Department generally that Council
18 lacks the authorization to do so.

19 COUNCILMAN NUTTER: I think it's
20 extremely likely that the Law Department
21 would make that ruling.

22 COUNCILMAN COHEN: Well, that's been
23 the history in the past, hasn't it?

24 COUNCILMAN NUTTER: Yes, it has.

25 COUNCILMAN COHEN: All right.

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2 COUNCILMAN NUTTER: That's on that
3 matter.

4 COUNCILMAN COHEN: Now...

5 COUNCILMAN NUTTER: Go ahead.

6 COUNCILMAN COHEN: Have you
7 completed the answer to the question?

8 COUNCILMAN NUTTER: Well, with
9 regard to the concessions, the issue is the
10 same. Council has no jurisdiction with
11 regard to concession agreements presently
12 under the Charter because that is not a
13 contract that involves the expenditure of
14 funds, but it's a contract that involves the
15 city receiving funds.

16 And so, in Section 8-201,
17 concessions, under the Home Rule Charter, we
18 would be giving the Council the authority to
19 approve concession contracts that are of the
20 term of one year or more or the contracts --
21 or the concessions, rather, awarded by the
22 Department of Commerce under Section 4-500-B
23 or C of the Home Rule Charter.

24 Again, that is a part of the reason
25 why we have to seek the Charter change route

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 requiring --

3 COUNCILMAN COHEN: Would the airport
4 concessions fall under this provision?

5 COUNCILMAN NUTTER: Yes, it would,
6 Mr. Chairman.

7 COUNCILMAN COHEN: And without such
8 a change in the Home Rule Charter, then the
9 Mayor would have strong ground for asserting
10 that only the administration could adopt
11 rules regarding concessions.

12 COUNCILMAN NUTTER: Yes.

13 And the last issue goes to the one
14 year or more contracts. We... Again, the
15 Charter requires Council approval of
16 contracts that are of a term of more than one
17 year.

18 We are quite aware, though, that in
19 some instances, contracts are signed for one
20 year, with clauses that allow for multiple
21 year renewals, and in essence, for all
22 intents and purposes, seem to act like a
23 multi-year contract.

24 Part of Resolution 040818
25 establishes a series of provisions that

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 relate to one-year contracts that have
3 multiple renewals.

4 And while Council will not -- would
5 not have to approve all of those contracts,
6 it lays out the guidelines for the ones that
7 we would have to approve, as well as
8 establishes reporting and advertising
9 requirements for those that are multi-year in
10 nature, again, a requirement to change the
11 Charter to allow Council to have authority in
12 this particular area.

13 COUNCILMAN COHEN: Could you also
14 state the time elements that apply to the
15 Home Rule Charter, to consider an amendment
16 that would be for when do you have in mind?

17 COUNCILMAN NUTTER: The proposed
18 time frame would be that there would be a
19 question on the ballot at the upcoming
20 election, which is May 17, 2005.

21 There are certain... under, I
22 believe, state statute, certain advertising
23 requirements that you must meet certain time
24 frames. And as we have best been able to
25 determine, in order for a question to be on

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 the ballot, an ordinance would have to be
3 approved or made law no later than March 31,
4 2005.

5 That's either by a vote of the
6 Council and subsequent signing of any measure
7 by the Mayor or any other procedure that is
8 available to us through the Home Rule
9 Charter.

10 But in any event, final action and
11 approval would have to be taken no later than
12 March 31, 2005.

13 COUNCILMAN COHEN: Why would that be
14 in connection with the May 17th primary?

15 COUNCILMAN NUTTER: It's my
16 understanding, I believe, that there's about
17 a 45-day...

18 COUNCILMAN COHEN: Requirement.

19 COUNCILMAN NUTTER: Requirement,
20 yes.

21 COUNCILMAN COHEN: Okay.

22 COUNCILMAN NUTTER: So, when you
23 go -- You know, when you go backwards...

24 COUNCILMAN COHEN: Would March 30th
25 allow time in the likely or unlikely event of

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 a Mayoral veto, for the Council to overcome
3 such a veto, if Council so desired?

4 COUNCILMAN NUTTER: Well, in that
5 particular -- In order to prepare for that
6 kind of scenario, Mr. Chairman, what you
7 would need to do is to add or back that
8 process up of two weeks, at least, from the
9 time that's required for final passage.

10 So, for instance, while March 31st
11 is the date by which any final action would
12 need to be taken, if there was a possibility
13 of a veto, the bills would need to be passed
14 by March 17, 2005.

15 The measures, if they were vetoed,
16 would then come back to us on March 31st
17 coincident -- by coincidence, and we would
18 then need to take action on that particular
19 date.

20 So, as you start to look at the
21 calendar and take into consideration our
22 timetable, if we were going to pass a bill by
23 March 17th, we would need to take action on
24 it either that date or on March 10th, which
25 then incorporates the minimum 10-day

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 requirement for the Mayor to take action.

3 Additionally, Councilman -- Mr.
4 Chairman, rather -- if you look at the March
5 10th date, that would still provide... if
6 there were amendments from the floor on that
7 date, you could still take action on March
8 17th.

9 If we end up in a situation where
10 we're seeking final passage solely on the
11 17th, then there is -- there is no time,
12 then, to accommodate potential amendments
13 because as you well know, amendments have to
14 sit over for a week.

15 COUNCILMAN COHEN: So we're still
16 within the time range for Home Rule Charter.
17 But you're saying that if by March 24th... if
18 an amendment were offered on March 24th,
19 say...

20 COUNCILMAN NUTTER: Well, the
21 problem there is that we don't have a session
22 on March 24th.

23 COUNCILMAN COHEN: Yeah.

24 COUNCILMAN NUTTER: There's no
25 advertised session that date because of the

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 Holy Thursday holiday. And I believe, at
3 least during my time, Council has never had a
4 session on Holy Thursday. And I don't think
5 there's going to be one this year either.

6 So, there is a loss of a week. But
7 even at that point Mr. Chairman, the
8 problem -- even if, in a hypothetical
9 discussion, even if we were meeting on the
10 24th, I --

11 COUNCILMAN COHEN: Well, they say
12 Wednesday, the 23rd. The Council President
13 has the authority to call a meeting upon two
14 days' notice.

15 COUNCILMAN NUTTER: That is true.
16 The problem with that scenario, Mr. Chairman,
17 is, even if the Council took action on
18 Wednesday, March 23rd, the Mayor -- and if
19 the Mayor were to exercise a veto, the bill
20 would not come back to us until the following
21 Thursday, which is probably about April 6th
22 or so, in which case you would not meet the
23 advertising requirement in order to have...
24 It's April 7th, which is the next Thursday.
25 You would not be able to have a ballot

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 question on May 17th.

3 COUNCILMAN COHEN: I'm raising the
4 question because the Mayor's Office says that
5 it is working on a series of amendments to
6 this bill, that it has no objection to the
7 main purpose of the bill, but it thinks
8 there's certain ways the bill can be
9 improved.

10 And that they believe that agreement
11 could be arrived at with Council if they
12 could have another week, March 9th or maybe a
13 few days before. And I'm wondering, could
14 that be accommodated or is that still on the
15 basis of lack of time?

16 What is the most time, if Council
17 were of a mind to permit a few more days for
18 study? And I don't need an answer now but
19 I'd like you to give me an answer later on.

20 I've arranged for three possible
21 dates, today, tomorrow and March the 7th.
22 They are three dates in which the Law and
23 Government Committee has hearings scheduled.

24 COUNCILMAN NUTTER: Right.

25 COUNCILMAN COHEN: But if during the

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 hearing you could work that out, I'd be
3 appreciative to know whether it's possible.
4 COUNCILMAN NUTTER: Right.
5 COUNCILMAN COHEN: That's different
6 from whether we do it or not.
7 COUNCILMAN NUTTER: I understand.
8 COUNCILMAN COHEN: All right.
9 Now...
10 COUNCILMAN NUTTER: Let me at least
11 put one concern on the record.
12 COUNCILMAN COHEN: Go ahead. Yes.
13 COUNCILMAN NUTTER: The concern
14 would be, Mr. Chairman, if we went to March
15 9th, we would get a first reading on the
16 10th.
17 COUNCILMAN COHEN: Right.
18 COUNCILMAN NUTTER: The bill would
19 be ready for a vote on the 17th.
20 COUNCILMAN COHEN: Right.
21 COUNCILMAN NUTTER: My concern there
22 is if, and who knows, you know, what would
23 happen between now and then. But if there
24 were a situation where some other amendment
25 were to come -- And it's certainly impossible

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 for me to either predict what that might be
3 or seek to restrain amendments from the
4 floor.

5 If an amendment were made at that
6 point on the 17th, the bill then could not be
7 voted on until the 31st.

8 COUNCILMAN COHEN: Unless another
9 meeting were set up by the President for,
10 say, March 23rd.

11 COUNCILMAN NUTTER: Well, that's
12 true. But, again, that takes us back to the
13 other scenario which is, if there were a
14 Mayoral veto, you would not get the veto back
15 until April 7th.

16 If an amendment were made on the
17 17th --

18 COUNCILMAN COHEN: Let me say
19 something on that answer.

20 COUNCILMAN NUTTER: I'll give it
21 back to you again.

22 COUNCILMAN COHEN: Why would it be
23 different if the meeting were on Wednesday,
24 the 23rd instead of Thursday, March 24th?
25 Why does that change the scenario?

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 COUNCILMAN NUTTER: Because we don't
3 meet again -- It's the same scenario.

4 If an amendment were made on the
5 17th, which actually... I don't know...
6 This is probably a legal issue. I don't know
7 that...

8 COUNCILMAN COHEN: Well, if we meet
9 on the day of final passage, if instead of
10 final passage there were an amendment.

11 COUNCILMAN NUTTER: There were an
12 amendment. And if the President scheduled a
13 session on the 23rd...

14 COUNCILMAN COHEN: Yes.

15 COUNCILMAN NUTTER: ...actually, I'm
16 not even sure that we could consider it that
17 day because of the seven-day requirement.

18 But putting that aside, at that
19 point if we were to vote it on the 23rd, if
20 there were a veto scenario, the bill would
21 not come back to us until April 7th.

22 COUNCILMAN COHEN: That would be too
23 late to...

24 COUNCILMAN NUTTER: Exactly.

25 COUNCILMAN COHEN: All right. If

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 there are any Mayoral representatives here,
3 be mindful that if such a request is made,
4 before it could be considered you'd have to
5 show that Council would have the same rights
6 as if action were taken under the current
7 timetable available.

8 COUNCILMAN NUTTER: And obviously --

9 COUNCILMAN COHEN: I understand that
10 you prefer to have Mr. McElhatten as the
11 first witness?

12 COUNCILMAN NUTTER: That's certainly
13 fine with me. I didn't -- I didn't know Mr.
14 McElhatten was coming until you told me, but
15 that's fine. But whatever witnesses, we have
16 they should come.

17 COUNCILMAN COHEN: My office got a
18 request this morning.

19 COUNCILMAN NUTTER: I understand.
20 That's fine with me.

21 COUNCILMAN COHEN: Mr. McElhatten,
22 are you the chairman? No, it's really
23 Councilman McElhatten because once you have
24 this title you never lose it. Councilman
25 McElhatten was a very respected member of the

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 Council.

3 COUNCILMAN NUTTER: Sure.

4 COUNCILMAN COHEN: Councilman
5 Clarke, before Mr. McElhatten makes his
6 statement, you had your hand raised?

7 COUNCILMAN CLARKE: Yes, Mr.
8 Chairman.

9 COUNCILMAN COHEN: Go ahead.

10 COUNCILMAN CLARKE: Mr. Chairman,
11 there were several questions that I had, and
12 I think those questions will probably be of
13 the bill sponsoring --

14 COUNCILMAN COHEN: Do you mind?

15 COUNCILMAN CLARKE: Councilman.

16 COUNCILMAN COHEN: Stay in your
17 seat, but...

18 COUNCILMAN CLARKE: The weather's
19 bad, and we're required to be here by virtue
20 of our employment obligations.

21 Mr. McElhatten is our guest, so I
22 didn't want to precede him.

23 But I just wanted to know at the
24 appropriate time, there are a number of
25 questions I'd be interested in. And he's

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 also a constituent of mine.

3 COUNCILMAN COHEN: This matter is of
4 importance, and I think it very urgent that
5 everybody have a chance to know every facet
6 of the bill because whatever leaves here, if
7 it's passed, is going to influence perhaps
8 the way that we do business for the rest of
9 our lives. Now, in my case it may not be too
10 many years. But in your case Darrell, it may
11 be a long time.

12 COUNCILMAN CLARKE: I only wish.

13 COUNCILMAN COHEN: Go ahead. It's
14 certainly relevant.

15 Do you want to hold your question
16 till later?

17 COUNCILMAN CLARKE: I just wanted to
18 let you know, since I'm not a member of the
19 committee --

20 COUNCILMAN COHEN: Because Mr.
21 McElhatten, I asked him how long he would be.
22 He says, it might be as short as two hours.

23 MR McELHATTEN: No, Councilman. I
24 said it wouldn't be any greater than two
25 years.

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05

2 COUNCILMAN COHEN: Okay. You'll be
3 held at least to the two-hour limit.

4 It's good to see you back here in
5 Chambers, and we welcome you.

6 MR. McELHATTEN: Mr. Chairman, thank
7 you.

8 COUNCILMAN COHEN: Please identify
9 yourself by name and by position held.

10 MR. McELHATTEN: Good afternoon, Mr.
11 Chairman.

12 My name is Daniel McElhatten, and I
13 appear here today as the vice chair of the
14 City's Board of Ethics.

15 Mr. Chairman, members of the
16 committee on Law and Government, Council
17 members-at-large, and District Councilman
18 Clarke, my Councilman, I appreciate the
19 opportunity to be here today.

20 And I know that the committee has,
21 by public notice, had a number of bills
22 before it. And it's my understanding that
23 certain of the bills will only be called for
24 a vote.

25 However, the Board of Ethics met

1 Law/Gov't - Bills 771, 772, 818 - 2/28/05
2 this morning. I appear today at their behalf
3 and on my own behalf. I appeared before this
4 committee in the fall of this year.

5 At that time I prepared a statement
6 which was incorporated into the record. And
7 at that time we were requesting that the
8 Council act on one of a series of bills. And
9 some of the bills were, in fact, a bill by
10 Councilman Nutter and a bill by the
11 administration, with regard to the creation
12 and the implementation of certain rights and
13 responsibilities of a board of ethics.

14 I think that Council knows that the
15 City of Philadelphia is one of the few cities
16 and one of the only major cities in the
17 United States that does not have a separately
18 functioning independent board of ethics.

19 And our recommendation in the fall
20 was that the Council use its power to
21 incorporate whatever the Council felt was
22 appropriate, using as a guideline that which
23 appears in other jurisdictions.

24 Among the things that we felt were
25 appropriate were investigatory power,

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2 independence from an appointing authority or
3 appointing authorities, and the type of
4 resources that are needed to enforce and
5 educate on the area of ethics.

6 My final comment to the Committee of
7 Law and Government in the fall was that
8 everyone must recognize that we cannot
9 establish in 30 days or even 6 months what
10 has taken years to formulate in other cities.
11 Philadelphia cannot wait to begin this
12 process.

13 Rest assured, however, that the
14 Board of Ethics expects that there will be a
15 collaborative effort among Council, the
16 administration and the board that will result
17 in an entity of which we can all be proud.
18 And our employees in our city deserve nothing
19 less.

20 It is my understanding, from the
21 actions of the board -- of the committee and
22 the other media reports, that actually no
23 board of ethics legislation will be voted on
24 by Council.

25 If that's the case, as a member of

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2 the Board of Ethics and as a member of the
3 21st Century Review Forum, I am very
4 disappointed, not because of any particular
5 aspect of the legislation, whether it was
6 nepotism or whether it was employment,
7 outside employment. Those are issues, I
8 think, could be dealt with either by
9 amendment...

10 But the heart and the soul of an
11 independent board of ethics needs the
12 resources, both investigatory, educational
13 and independence and the appearance of
14 independence.

15 If the Council chooses not to go
16 forward with a board of ethics, then the
17 board that is constituted by executive order
18 has taken and is sworn to uphold the
19 obligations that are set forth in that
20 executive order.

21 We took an oath that we would well
22 and duly administer the executive order and
23 the ethics laws of the City of Philadelphia
24 in whatever way we could.

25 We hoped, and I still hope, that

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2 Council will, by way legislation that it is
3 ultimately approved by the Mayor, establish
4 another board, an independent board,
5 superseding what we've done, and maybe
6 building on what we've done, but at least
7 give us the same kinds -- us as a city now,
8 generically -- the kinds of resources that
9 other cities have to do these jobs.

10 If it doesn't, that's a legislative
11 decision that Council makes. But then
12 it's -- then the responsibility is thrust
13 back to the existing board.

14 And if we have to jury rig some
15 apparatus by using the Inspector General's
16 Office, the inherent powers of the executive
17 branch, and other powers that are inherent in
18 the Charter, to fulfill those obligations and
19 working with the state ethics board, then
20 that's what we see as our responsibility.

21 It's a challenge to all of us to be
22 able to do with the resources that are
23 currently available what other cities have
24 done with significantly greater, not
25 financial resources, but in terms of the

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2 structural resources.

3 And that's what I come before this
4 Council for today. The specific legislation
5 that may be voted on is a policy decision.
6 That's a policy issue.

7 Whether the right of Council to
8 review contracts should rest with Council or
9 with the Mayor, Board of Ethics takes no
10 position on that. That's why you're elected
11 officials.

12 But part of our obligation is that
13 at every opportunity where the ethics
14 legislation is on the agenda, is to come
15 before you and to implore you -- yes, to
16 implore you -- that we need to have as a city
17 the resources that are necessary to have a
18 first class board of ethics.

19 Under the current structure we
20 cannot because the enforcement powers that we
21 would have would not be sufficient to have us
22 be comparable to any other major
23 jurisdiction.

24 So Mr. Chairman, members of the Law
25 and Government Committee, and members of

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2 Council, I would implore you, whether it's
3 the deadline of April 1st as the drop-dead
4 date for reporting out of committee or
5 whatever that deadline might be, I would
6 seriously ask you to reconsider and look at
7 the ethics bills and look at the impact the
8 lack of action will have on the reputation of
9 the City of Philadelphia.

10 Thank you, Mr. Chairman.

11 COUNCILMAN COHEN: Thank you, Mr.
12 McElhatten.

13 Any questions from any members of
14 the board, from the Council committee?

15 (No response.)

16 COUNCILMAN COHEN: Thank you.

17 MR. McELHATTEN: Thank you, Mr.
18 Chairman.

19 CLERK: Raymond Wood.

20 COUNCILMAN COHEN: Is there a
21 Raymond Wood here?

22 (No response.)

23 COUNCILMAN COHEN: Mr. Wood and his
24 wife was present, we were informed by a phone
25 call at the last hearing, but the Chair

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2 inadvertently was not informed and didn't
3 call them.

4 And so, we've made arrangements for
5 them to be here today. We've had a number of
6 phone calls. But is Mr. or Mrs. Wood?
7 Because we made arrangements for them both to
8 testify.

9 (No response.)

10 COUNCILMAN COHEN: Well, let's wait
11 until later on. Neither are here. Maybe
12 it's the weather.

13 Is there anybody else?

14 CLERK: I have none on my list, no.

15 COUNCILMAN COHEN: Are there any
16 other witnesses to be heard?

17 Any Council members who wish to be
18 heard?

19 Councilman Kenney.

20 COUNCILMAN KENNEY: Mr. Chairman,
21 I'm sorry I was late. Is there a schedule
22 for today? Do we have a timetable of what
23 we're doing?

24 COUNCILMAN COHEN: Well, we finished
25 the scheduled witnesses.

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2 COUNCILMAN KENNEY: Okay.

3 COUNCILMAN COHEN: But Mr. Nutter,
4 you're going to testify?

5 COUNCILMAN NUTTER: Yes, Mr.
6 Chairman.

7 COUNCILMAN COHEN: You can stay in
8 your present seat. Would you rather be
9 targeted? This will be our chance.

10 COUNCILMAN KENNEY: The question I
11 have is, I'm just trying to figure out from a
12 scheduling standpoint for my own schedule,
13 whether we'll be voting today.

14 COUNCILMAN COHEN: I don't know.
15 We've been asked by the Mayor for an
16 extension of approximately a week.

17 COUNCILMAN KENNEY: Is there a
18 reason?

19 COUNCILMAN COHEN: He said -- He
20 said -- Is there anybody here authorized to
21 speak for the Mayor?

22 MR. GRACE: Councilman, If you need
23 me to, certainly.

24 COUNCILMAN COHEN: Mr. Grace, would
25 you take the witness stand for a minute.

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2 MR. GRACE: Certainly.

3 COUNCILMAN COHEN: And tell us what
4 the request is. And the reason for it, as
5 far as you're authorized to say so.

6 MR. GRACE: Certainly. Thank you,
7 Councilman.

8 Thank you Mr. Chair, and members of
9 the committee.

10 I spoke to the Chair of the
11 committee earlier today, and I also spoke to
12 the sponsor of the bills that are before the
13 committee today.

14 The administration is working on an
15 amendment to Bill 040772 that deals with some
16 of the contract issues, some of the
17 substantive provisions of the contract part
18 of the bill, the process by which contracts
19 will be awarded, determined, meted out,
20 advertised and awarded in the city, under
21 this new process.

22 The administration is supportive of
23 the idea of more disclosure and more
24 transparency in the contracting process. But
25 it has a number of concerns with the actual

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2 substantive provisions with how contracts
3 will be determined and awarded and
4 distributed in the city.

5 The amendment is not yet prepared to
6 be offered today, as I told the chairman of
7 the committee a short time ago. It will be
8 shortly.

9 And as we talk through the time
10 schedule, the time clock, for when this bill,
11 if it was going to go on the spring ballot,
12 would need to go through Council, it's the
13 time process -- some of the time process that
14 I heard earlier in this discussion.

15 But it's our understanding that if
16 the Law and Government Committee dealt with
17 the bill and any amendments to the bill, and
18 concluded that process by March 9th, that
19 there still would be time to move it through
20 for first reading, second reading, final
21 passage, and any final determination of the
22 bill by March 31st, which would still be time
23 to put such a bill on the spring ballot.

24 So, that was the basis of my request
25 when I came to you a little earlier today to

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2 talk to you about this amendment and whether
3 or not there would be a way to have a little
4 more time to make this bill the best bill
5 possible.

6 We've come a long way and done a lot
7 of work with members of Council, with bills
8 that have been transmitted up.

9 On this bill in particular, we think
10 we could reach agreement with Council to make
11 the bill a little less burdensome in how
12 contracts are awarded in the city and make it
13 a better bill.

14 COUNCILMAN COHEN: Councilman Goode.

15 COUNCILMAN GOODE: Thank you, Mr.

16 Chairman.

17 Good afternoon, Mr. Grace.

18 MR. GRACE: Good afternoon,

19 Councilman.

20 COUNCILMAN GOODE: You say you can
21 reach agreement with Council. Do you mean
22 this committee or do you mean the full
23 Council?

24 MR. GRACE: Ultimately we would hope
25 it would be a bill that would have a majority

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2 consensus of the full Council.

3 COUNCILMAN GOODE: So, is there

4 any --

5 MR. GRACE: Starting with this

6 committee.

7 COUNCILMAN GOODE: Is there any

8 preference whatsoever, any need for a

9 preference of amending the bill in committee
10 rather than in full Council?

11 MR. GRACE: I guess just... The

12 notion was to try to reach agreement with

13 this committee, with the members of this

14 committee before the bill moved.

15 COUNCILMAN GOODE: This committee is

16 just a number of seven people. Council is

17 one of 17. We've had a hard time getting

18 anything out of this committee related to

19 this legislation.

20 If you believe that the full Council

21 is going to be very agreeable to your

22 amendments, there's no reason why we couldn't

23 amend it on the floor. Do you agree with

24 that?

25 MR. GRACE: Councilman, I'm not

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2 certain to the time process on how that would
3 work, if the bill was amended on the floor.

4 COUNCILMAN GOODE: It would be the
5 same time process.

6 If the bill were reported out of
7 committee today, with a suspension of the
8 rules, essentially that bill could be on
9 second reading and final passage on the 10th.

10 The bill could be amended on the
11 floor on the 10th. It could then be passed
12 on the 17th which gives it two weeks for the
13 Mayor's potential veto; and we reached the
14 March 31st deadline that Councilman Nutter
15 talked about. It works either way.

16 So, I was asking whether the
17 administration has a preference or there's
18 any purpose for having a preference or we're
19 amending it in committee, as opposed to
20 amending it on the floor.

21 MR. GRACE: Councilman, I don't know
22 that we have a preference. Certainly my goal
23 today in talking to the Chairman of the
24 committee and the sponsor of the bill was
25 just to see if there's a way to work together

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2 to amend the bill, to seek consensus on the
3 Council, to get the best bill possible.

4 COUNCILMAN GOODE: But either route
5 gets us to where we need to be on March 31st,
6 you would agree.

7 MR. GRACE: I'm not a --

8 COUNCILMAN COHEN: Would you keep
9 your voice up, Mr. Grace?

10 MR. GRACE: Pardon me, Councilman?

11 COUNCILMAN COHEN: Would you keep
12 your voice up?

13 MR. GRACE: Yes. I'm sorry,
14 Councilman.

15 Councilman, if that gets us there
16 and gets it done in time, then certainly I
17 think that would still be our goal.

18 I'm not a master of that level of
19 the process. I listened to you carefully in
20 terms of whether we amend it on the floor if
21 we'd still get there in time.

22 COUNCILMAN GOODE: Essentially it is
23 very clear that we report out of committee
24 today with suspension of the rules.

25 We have a first reading on the 3rd.

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2 We have second reading and final passage on
3 the 10th. We amend it on the 10th. We then
4 have a final passage as amended on the 17th.
5 The Mayor then has two weeks to take action,
6 31st.

7 MR. GRACE: Assuming that you're
8 correct in that -- And I trust your process,
9 Councilman.

10 COUNCILMAN GOODE: Okay.

11 MR. GRACE: Assuming that you're
12 correct in that, our goal is to amend this
13 bill in the best way possible, to reach the
14 best reform that we can, in terms of how
15 contracts are awarded.

16 COUNCILMAN GOODE: Your goal is to
17 reach the March 31st deadline?

18 MR. GRACE: On this issue of whether
19 or not a bill to reform the contracting
20 process goes on a spring ballot, we certainly
21 did not come to the Chairman of the committee
22 today seeking delay. That wasn't -- That
23 wasn't the purpose.

24 COUNCILMAN GOODE: The issue is
25 whether you committed to the March 31

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2 deadline, as outlined by the bill's sponsor,
3 in order to meet the May 17th ballot.

4 MR. GRACE: Councilman, I don't want
5 to say ultimately how the Mayor would make a
6 decision on the bill. Obviously, that's
7 ultimately a decision that's up to the Mayor.

8 COUNCILMAN GOODE: No. Actually,
9 we're assuming that there's agreement between
10 the Mayor --

11 MR. GRACE: We think we can approve
12 that part of the bill.

13 COUNCILMAN GOODE: You're also
14 assuming there was going to be agreement
15 between the Mayor and Council. That was one
16 of the assumptions of asking us to hold it up
17 today, because you were assuming that there
18 was going to be agreement.

19 MR. GRACE: We have been working on
20 that process for many months now with members
21 of Council, and that's still our goal and
22 agenda.

23 COUNCILMAN GOODE: Because if
24 there's any extension -- If there's any
25 reason to believe there's not going to be an

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2 agreement between the Mayor and Council on
3 this bill, it would make more sense to try to
4 amend on the floor so that we can meet the
5 March 31th deadline in any case.

6 MR. GRACE: Our -- Councilman,
7 our --

8 COUNCILMAN GOODE: In other words,
9 it would move out of committee. It would
10 still on a track to meet the March 31st
11 deadline. It could be amended on the floor
12 on March 10th. And if you did not reach
13 agreement with the full Council, the
14 amendments would just go down or the bill
15 could move forward.

16 MR. GRACE: I understand.

17 COUNCILMAN GOODE: Thank you.

18 Thank you, Mr. Chairman.

19 COUNCILMAN COHEN: I have great
20 difficulty understanding how Councilman Goode
21 could possibly come to the conclusion that
22 it's easier to amend on the floor in Council
23 than it is to amend on the floor of the
24 committee.

25 I have to assume he's desirous of

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2 avoiding discussion because discussion at a
3 Council meeting is bound to be much shorter
4 in its breakdown and analysis of any
5 amendment.

6 COUNCILMAN GOODE: I would just say
7 that that thought process is the same reason
8 for why many members want to discharge this
9 legislation from the committee. It's
10 consistent with that thought process.

11 COUNCILMAN COHEN: Well, when did
12 Council discharge or take an action to
13 discharge this committee from consideration?

14 COUNCILMAN GOODE: It is a matter of
15 formal record that it was discussed on the
16 floor.

17 Councilman Nutter, at some point I
18 believe in December, said he actually had an
19 agreement among a majority of the members of
20 Council to discharge legislation from this
21 committee.

22 It was not moved out the following
23 week. It was not moved out the following
24 week. It was my hope that Councilman Nutter
25 move forward with discharging from the bills

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2 from the committee. It did not happen.

3 But I'm just saying, if we are in
4 belief that which we're both trying to meet a
5 March 31st deadline, we are not yet in
6 agreement to amendments that we have not seen
7 nor do we know the context of, then we can do
8 something by March 31st to move forward.

9 And if Mr. Grace, who's representing
10 the administration, is so sure that we're
11 going to come to agreement on something, then
12 it doesn't make a difference which route we
13 go.

14 COUNCILMAN COHEN: You had -- From
15 the last hearing to this time, several
16 months, you had plenty of time to seek to
17 discharge this committee from consideration.
18 You didn't move because you only had two
19 votes for it.

20 COUNCILMAN GOODE: And I'm pleased
21 to vote today.

22 COUNCILMAN COHEN: And you needed
23 seven votes. That's why no discharge took
24 place.

25 COUNCILMAN GOODE: Mr. Chairman, I'm

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2 pleased to vote today.

3 COUNCILMAN COHEN: And the effort to
4 discharge is aimed at getting Council a vote
5 at a time before Council members are fully
6 acquainted with the subject.

7 COUNCILMAN GOODE: That is our
8 decision, whether we are fully acquainted
9 with the subject or not.

10 COUNCILMAN COHEN: Councilman Nutter
11 indicated that when he talked about the bill
12 management.

13 Bill management means getting a
14 Council committee to do it, and then talk to
15 other Council members who haven't studied an
16 issue and tell them they're off the hot seat;
17 all they have to do now is to approve what a
18 Council committee considered.

19 And I presented that on behalf of
20 every member of Council who cares about being
21 a Councilman and serving the public.

22 COUNCILMAN GOODE: Well--

23 COUNCILMAN COHEN: because an issue
24 like this ought to be thoroughly debated and
25 discussed. And it ought not to be... I'm

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2 not recognizing you. I will when I finish.
3 COUNCILMAN GOODE: That's fine.
4 COUNCILMAN COHEN: Until then I
5 would appreciate it if you stop --
6 COUNCILMAN GOODE: That's fine.
7 COUNCILMAN COHEN: -- your annoying
8 tactics of trying to interfere and stop me.
9 COUNCILMAN GOODE: That's fine.
10 That's fine, Councilman. Move forward.
11 COUNCILMAN COHEN: And the subject
12 as important as this subject, it's very
13 important that Council members know about the
14 subject, that they know it, all the details;
15 they know, for example, here there's so many
16 questions.
17 Why is every department given the
18 separate right to regulate the form that's
19 going to be used? So that each contractor or
20 each contributor is going to have to
21 continually follow new forms every time he
22 wants to make a contribution.
23 Now, don't we need explanation? I
24 don't want to be met a year from now with
25 questions from Council members: How come

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2 this is required? Why wasn't it discussed?

3 On something as important as this issue.

4 It's very important not that we move
5 quickly but we move correctly, and we protect
6 people's rights. And don't try to deny them
7 by fooling them into saying, oh, it's already
8 been discussed by Council committee.

9 And that's the reason why we have
10 committee hearings. And it's the
11 responsibility of the Chairman. Perhaps you
12 don't accept your responsibility in that
13 regard, Councilman.

14 But I think most Council members do
15 accept their responsibility as Chairman. And
16 I think you have in the legislation you
17 sponsored: You've accepted your
18 responsibility to make sure that the issues
19 are clear to all the Council members before
20 you ask them for a vote. And that's what my
21 responsibility is here.

22 Councilman Goode, go ahead.

23 COUNCILMAN GOODE: Thank you, Mr.
24 Chairman.

25 I'm a little bit confused by your

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2 comments of whether you think that this
3 matter should be dealt with in committee or
4 by the full Council.

5 COUNCILMAN COHEN: What I want to do
6 is to have the committee do its job. The
7 committee's job is to examine important bills
8 and give help to Council members to
9 understand what the issues are.

10 Now, I agree that most of the bills
11 that come before Council are routine. And
12 something called bill management may be
13 appropriate to them, but --

14 COUNCILMAN GOODE: Mr. Chairman, my
15 question --

16 COUNCILMAN COHEN: -- when a bill
17 comes of this significance, it's important to
18 give everybody a full opportunity to
19 understand every facet.

20 COUNCILMAN GOODE: Mr. Chairman, my
21 was whether you actually believe this bill
22 should be dealt with first in committee or by
23 the full Council.

24 COUNCILMAN COHEN: Well, when the
25 committee has fully apprised its membership

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2 and given those Council members who wish to
3 attend, even if they're not on the committee,
4 a full opportunity to benefit from the
5 hearings.

6 And at that point, I believe
7 committee action is always better if it could
8 be taken first.

9 COUNCILMAN GOODE: So, if a majority
10 of the committee wants to move forward today,
11 we disallow that.

12 COUNCILMAN COHEN: No, it doesn't
13 mean it has to move forward. Why does it
14 have to move forward today?

15 COUNCILMAN GOODE: Mr. Chairman, I
16 asked a question.

17 COUNCILMAN COHEN: Why does it have
18 to move forward today?

19 COUNCILMAN GOODE: Mr. Chairman, I
20 asked a question. I said, if the majority of
21 the members of this committee are ready to
22 move forward today, are you going to disallow
23 that action?

24 COUNCILMAN COHEN: The Chairman has
25 an individual responsibility to determine

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2 whether a matter before the committee is of
3 such importance --
4 COUNCILMAN GOODE: I'm not sure that
5 answers the question, Mr. Chairman.
6 COUNCILMAN KENNEY: The answer is
7 no.
8 COUNCILMAN COHEN: What was the
9 question?
10 Well, you can't get a short answer
11 to some questions, Councilman Goode.
12 COUNCILMAN GOODE: You can answer as
13 long as you want but answer the question.
14 COUNCILMAN COHEN: Sometimes there
15 are important issues.
16 COUNCILMAN GOODE: The question is,
17 if a majority of the members of this
18 committee want to move forward today, are you
19 going to allow it?
20 COUNCILMAN COHEN: I don't know.
21 COUNCILMAN GOODE: Okay. Fine.
22 Let's move forward.
23 COUNCILMAN COHEN: Councilman
24 Kenney.
25 COUNCILMAN KENNEY: Mr. Chairman,

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2 with all due respect to you -- And really,
3 I'm not directing this to you.

4 I just want to express my
5 frustration with what seems to be a
6 last-minute attempt to do what is happening
7 to this committee right now.

8 The Mayor, for whatever reason, sent
9 Mr. Grace to make a request for delay, even
10 after months of discussion, months of us
11 talking together privately in trying to come
12 up to a consensus amongst ourselves. The
13 Mayor is no longer a member of this body.

14 Mr. Grace comes today and asks for a
15 delay. You and Councilman Goode are at each
16 other unfairly. I don't think it's
17 appropriate. I don't think it's necessary
18 for you to be at each other.

19 I mean, Mr. Nutter, Councilman
20 Nutter worked on this bill for a long, long
21 time; has done a lot of due diligence. And I
22 think in a very disrespectful way, no
23 disrespect to you because you're the
24 messenger. Now at the last minute, at the
25 very last minute -- This hearing was

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2 scheduled. People knew when it was going to
3 be. Do we have to do it today? Do you have
4 to make the request today?

5 And the other question I have is,
6 what are the amendments about? Do you know?
7 I mean, specifically, what are you changing?

8 MR. GRACE: Sure. Councilman, may
9 I? Well --

10 COUNCILMAN KENNEY: We allow
11 ourselves to do this to ourselves every time.
12 We allow this to happen to ourselves, and
13 it's really very frustrating.

14 MR. GRACE: Councilman. Here we go.

15 First I just want to say -- and
16 again, with respect to the Councilman, just
17 as he said it to me -- there was no attempt
18 today to delay at all.

19 Our goal, is as we have been working
20 for a year to come up with the best ethics
21 reforms possible. I think we have been
22 consistent.

23 COUNCILMAN KENNEY: Who have you
24 been speaking with? I mean, take me out of
25 the equation because I don't talk to you guys

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2 anyway. So, who have you been talking to in
3 Council or working with? I'm just curious.

4 The Chairman says it's not him.
5 Council President says it's not her because
6 she just said to me, I don't know who they
7 were talking to because they weren't talking
8 to me. So, who exactly are you guys talking
9 to?

10 MR. GRACE: When it comes to the
11 ethics legislation itself, we have certainly
12 talked to many members of Council. We have
13 interacted with the Board of Ethics. We've
14 interacted with outside advocates --

15 COUNCILMAN KENNEY: Have you talked
16 to the board of Law and Government -- the
17 Committee on Law and Government?

18 MR. GRACE: We've certainly had --
19 We've had ongoing conversations on different
20 matters concerning ethics with the Chairman
21 of the committee.

22 COUNCILMAN KENNEY: Well, I'll tell
23 you, the Council President just asked before
24 she left, the Chairman whether or not he's
25 had any discussions about this particular

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2 issue.

3 And he said, no.

4 And then she said, no.

5 So, I mean, maybe Councilman Goode
6 had been discussed with, maybe Councilman
7 Nutter. I don't know. But it doesn't seem
8 like there's a lot of time that's passed we
9 could have these discussions?

10 MR. GRACE: Well, let me just
11 address --

12 COUNCILMAN COHEN: Well, that's
13 true, Councilman Kenney. I agree with you on
14 your points, except to say, is that the
15 reason to pass legislation?

16 COUNCILMAN KENNEY: No. No. I'm
17 not arguing with or urging you to move it out
18 today.

19 All I'm saying is, I think it
20 becomes increasingly frustrating on the day
21 of the hearing, when we have had lengthy
22 discussions about this bill and what we were
23 going to move or not move, and then the last
24 minute request comes, and we get thrown into
25 chaos, and we're at each other's throats, and

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2 we have delay, and there's some confusion.

3 I mean, this is a masterful way of
4 really controlling this body and keeping it
5 from doing its job. I really believe that.

6 And again, you're the messenger.
7 I'm not directing this at you. I just think
8 at some point in time this Council needs to
9 decide that it's going to legislate on its
10 own, as opposed to being manipulated and
11 whipsawed by the second floor. That's my
12 opinion.

13 I mean, I guess it won't change
14 until the administration changes. But until
15 that time, we need to really kind of stand up
16 for ourselves once in a while.

17 Do you know what the amendments are
18 about, Mr. Grace?

19 MR. GRACE: I do. I do. And what
20 I'm not prepared to do yet today is to offer
21 up the amendment.

22 COUNCILMAN KENNEY: Can you tell us
23 about them?

24 MR. GRACE: Yes.

25 COUNCILMAN KENNEY: What are you

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2 changing?

3 MR. GRACE: I think we have concerns
4 about the actual process of the contracting
5 reforms which are in Bill 772.

6 Some examples might include that
7 there's a pre-selection advertising period
8 that will come into play under Bill 772. I
9 think now it might be 30 days. We think that
10 would be unnecessarily long. There are --

11 COUNCILMAN KENNEY: How many days
12 would you like?

13 MR. GRACE: I don't think we're at
14 liberty yet to come up with the number of
15 days and enter that as an amendment yet.

16 COUNCILMAN KENNEY: At liberty?
17 This is a legislative -- democratic
18 legislative process.

19 What do you mean, not at liberty?
20 If you don't agree with the 30 days, you must
21 have another idea.

22 MR. GRACE: How about -- I'm doing
23 my best to answer your question, and give you
24 an outline of where some of our concerns are,
25 which I certainly can do.

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2 The bill as currently drafted
3 includes -- There will be a new requirement
4 for multiple signoffs for every professional
5 service non-bid contract. I think it might
6 include the Mayor, the Finance Director, the
7 City Solicitor and the Procurement
8 Commissioner, if I have those four right.

9 COUNCILMAN KENNEY: Who would the
10 administration like it to be?

11 MR. GRACE: We think it's too many.

12 COUNCILMAN KENNEY: How many would
13 you like?

14 MR. GRACE: Certainly not four.

15 COUNCILMAN KENNEY: Okay. Three?
16 Two? Or maybe we just go to the one and have
17 the same system we have now.

18 MR. GRACE: Well, certainly fewer
19 than four. I mean, we have a concern over
20 whether every such contract should go to the
21 Mayor, and whether that's something that is a
22 proper requirement to impose on the Mayor, to
23 look at every contract that comes through it.
24 Because we're talking about thousands. It's
25 the belief that, as we testified in November,

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2 more than a thousand.

3 COUNCILMAN KENNEY: How many non-bid
4 professional service contracts have we
5 awarded in the last year?

6 MR. GRACE: As we testified in
7 November, our concern is that this would
8 include or entail more than a thousand
9 contracts.

10 COUNCILMAN KENNEY: How many did we
11 award last year?

12 MR. GRACE: I don't have that
13 number.

14 COUNCILMAN KENNEY: Could you find
15 that out so we could compare it with the
16 supposition of a thousand or more? Are there
17 any other areas that...

18 MR. GRACE: There's a new
19 requirement for monthly reports that would
20 have to be submitted with regard to every
21 non-bid contract. We think that there are --
22 it's a requirement of too many reports that
23 would have to be prepared and filed.

24 There are exceptions to the
25 advertising requirements and the disclosure

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2 requirements.

3 We think that they are too narrow,
4 and that what they don't take into account is
5 the need for the government to be flexible
6 enough to move forward swiftly with emergency
7 professional service contracts, whether it's
8 health and safety procurements or
9 procurements such as that were that there is
10 a -- time is of the essence, where there's a
11 speed of the essence, that the government has
12 to be able to move quickly.

13 And we're concerned that with some
14 of these new requirements, it will slow down
15 that process of government. And we do have
16 concerns about that.

17 COUNCILMAN KENNEY: So this bill has
18 been since -- I think as amended -- since
19 December 14th of '04.

20 MR. GRACE: Right.

21 COUNCILMAN KENNEY: And today is the
22 day we have these issues to raise.

23 MR. GRACE: Well, it is also true
24 that we have done a lot of conversation and
25 negotiation about different elements of all

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2 these bills with Councilman Nutter, the
3 sponsor of the bills. So, there has been a
4 lot of communication.

5 With regard to these changes in Bill
6 772? Yes, we're here today saying that we
7 still think we can make Bill 772 better with
8 a small -- with a small bit of time.

9 COUNCILMAN KENNEY: Councilman
10 Nutter, at the risk of interrogating you,
11 which I don't want to do, were these issues
12 raised with you, these specific issues that
13 are being testified to today?

14 COUNCILMAN NUTTER: Councilman
15 Kenney, I have heard these issues before.
16 There are no specifics, other than the
17 concerns being raised.

18 And I think as you well know, I
19 would certainly -- would have been prepared
20 prior to today if any set of proposed
21 amendments had been given to me, probably
22 including as late as this morning, to have
23 some opinion about these items, be prepared
24 to at least suggest to this committee
25 proposed changes.

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2 The issue of 30 days... I mean, I
3 think, you know, there's nothing particularly
4 magical to that date. It's a reasonable
5 amount of time to allow the broadest
6 opportunity for people to pursue professional
7 services or no bid contracts.

8 The issue regarding multiple
9 signoffs. Yes, these are some of the highest
10 ranking people in the government. I think
11 the Procurement Commissioner is in the
12 procurement business, the Finance Director is
13 in the finance business, the City
14 Solicitor... All contracts in the government
15 go through the City Solicitor's Office
16 anyway.

17 COUNCILMAN KENNEY: Is it any more
18 cumbersome, in your mind, than the
19 administrative board and the work that they
20 do to -- Kind of a group effort there, isn't
21 it?

22 COUNCILMAN NUTTER: Yeah. I don't
23 know how many times they meet or how much
24 work they do. But, I mean, it's not like all
25 these contracts would come over on one day.

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2 And I think it's important, given some of the
3 current situation, that... whether it's the
4 Mayor or the Mayor's designee.

5 I mean, I don't know that the Mayor
6 is going to sit and review every contract.
7 That's why the Mayor gets the higher staff,
8 who would probably make a recommendation to
9 him one way or the other.

10 But I think it's important that the
11 chief executive have a much greater sense,
12 given the current situation of what's going
13 on, from a contractual standpoint.

14 This emergency contracts issue, past
15 City Solicitors have already issued opinions
16 that the government has the right to secure
17 contracts of an emergency nature.

18 I mean, of course, we know that if a
19 building falls down and a demolition
20 contractor needs to be hired, that's an
21 emergency.

22 Of course, we already have people
23 generally under contract or on a list to deal
24 with those issues. But I am hard pressed to
25 know at the moment, and maybe Mr. Grace can

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2 share with us, what emergency professional
3 services contracts have come up in the last
4 six months or a year.

5 COUNCILMAN KENNEY: I just want to
6 say for the record that I came here today
7 fully expecting to vote on these three pieces
8 of legislation.

9 I think that if we allow the
10 administration to get its way here in delay,
11 and that delay causes in some way this not to
12 be on the spring ballot, I think we only have
13 ourselves to blame, if we allow ourselves to
14 be kind of manipulated the way we're being
15 asked to be.

16 So, I'm ready to move forward. Mr.
17 Chairman, it's certainly up to you in the end
18 whether we do or not, but I would like to be
19 on the record saying I would like to move
20 forward, respectfully.

21 Thank you.

22 COUNCILMAN COHEN: I question very
23 much whether because the Mayor's procedures
24 are indefensible in his lateness, in his
25 refusal to participate in discussions often

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2 with people... I don't think it excuses City
3 Council and permits City Council to act in
4 the same indefensible way.

5 I think that we ought to be about
6 the business of getting the best legislation
7 we can. And I think we ought to work to
8 achieve that legislation at the initial stage
9 of passage, and instead of passing something
10 that may have all kind of flaws.

11 Now, I think the Mayor's action in
12 being so slow is probably indefensible,
13 particularly at this stage of the game. And
14 therefore, I will likely permit and assume
15 that everything that had to be done to permit
16 this action to be an action to be taken today
17 be permitted.

18 But I think it's going to open a
19 serious floor debate which ought to be
20 avoided. But I think the Mayor is putting us
21 in a position that's very difficult to deal
22 with, except to say maybe we'll have to let
23 the thing pass today out of committee and
24 have the fight on the floor, if a fight is
25 warranted.

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2 I thought it was reasonable to
3 expect that the Mayor would be able to
4 conform or have the opportunity to conform to
5 the time requirement.

6 But it's very unclear as to what the
7 time requirement is, as to whether he can get
8 it done in time for us to have this bill
9 considered properly at the spring primary.

10 And since I don't know that, my
11 present feeling is to continue this hearing
12 until tomorrow morning, to give everybody --
13 till tomorrow at 2 o'clock, to permit
14 everybody to figure out how it can be done in
15 the time, because to me it makes sense only
16 to say no to the Mayor if he's going to
17 require us to miss the opportunity to present
18 whatever we decide on at the spring primary.

19 But if we can meet that date, then
20 it seems to me we're going down into the
21 wrong path if we say the Mayor acted badly,
22 and therefore irrespective of what he wants
23 to do, we're going to say no.

24 I think he did act badly. I have no
25 idea whether he was acting purposely to delay

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2 us, but I know when Mr. Grace raised that to
3 me, I said, I don't know what my decision
4 will be after you talk to Councilman Nutter.

5 But there are two things I'm
6 concerned about here. One is that Councilman
7 Nutter has done a yeoman job negotiating with
8 the Mayor's people.

9 It's not the Mayor. I have no idea
10 what the details are. But Councilman Nutter
11 in that negotiation did not represent the
12 City Council. He represented himself and
13 those who may have agreed with him. But
14 Councilman Nutter was never appointed to take
15 this action and to negotiate on behalf of
16 City Council.

17 But to his credit, Councilman Nutter
18 did take the initiative. And he had the
19 initiative, and the Mayor's people had the
20 initiative, and they apparently have been
21 negotiating together.

22 But there was no one appointed by
23 City Council to negotiate for it. So,
24 everybody had a right to insist on
25 negotiations with the Mayor.

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2 But I, like most others, having high
3 respect for Councilman Nutter, felt that he
4 might do just as well as if he were appointed
5 by everybody.

6 But I would like to know what's more
7 important: To show that we just say no to
8 the Mayor because he acted in the way we
9 didn't agree with or is it the quality of the
10 bill?

11 And I think that what we want to
12 keep our mind on is the quality of the bill.
13 And if there is no delay, then I think that
14 perhaps the Mayor's request ought to be
15 granted, even though it's for the time.

16 COUNCILMAN NUTTER: Mr. Chairman.

17 COUNCILMAN COHEN: Yes. Councilman
18 Nutter.

19 COUNCILMAN NUTTER: I would only
20 suggest that I think ultimately the quality
21 of legislation should always be our
22 overriding concern.

23 Having said that, because these are
24 not parking regulations, there is a timing
25 aspect to this. And it would just be helpful

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2 in this process, without getting into who did
3 what or who didn't share what or whatever the
4 case may be, if there is a proposal, a
5 concrete proposal, not a theoretical
6 proposal, not a hypothetical proposal, not a
7 thought proposal, but something actually
8 written on paper, it would be helpful to have
9 it as quickly as possible.

10 And you are correct. I certainly
11 was not in any way, shape or form
12 representing the body in these discussions,
13 although I've talked to every member about
14 this. I was representing myself because I'm
15 the person that introduced the legislation.

16 Your point, though, is well taken
17 that it should also not result in delay. So,
18 what would be helpful to me to better
19 understand from Mr. Grace, since he is here
20 and is in charge of this particular matter
21 is, I've taken down four items.

22 If he could lay out for us on the
23 record what the rest of the concerns are or
24 what the rest of the issues are or what the
25 proposed amendments seek to address, which he

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2 again is not... I heard the words earlier...
3 at liberty to share with us. When will they
4 be ready? And what do they do?

5 Because I would like to move forward
6 in a respectful fashion. And if there's
7 further discussion or negotiation that needs
8 to take place, that's fine.

9 I can't do that in a vacuum, and I
10 can't do it based on theory. I've got four
11 items here. I've addressed all four items.
12 And I'm open to the discussion, but I need to
13 know the facts. And I'd like to get them as
14 quickly as possible.

15 COUNCILMAN COHEN: Mr. Grace, what's
16 your response?

17 MR. GRACE: I think, Mr. Chairman, I
18 heard everything that the Councilman said.
19 And I've outlined what some of our concerns
20 are in Bill 772, and what our amendment --
21 the form our amendment would take. And I
22 think they're the items that the Councilman
23 just mentioned.

24 COUNCILMAN NUTTER: Are they just
25 the four things?

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2 MR. GRACE: What I don't have here
3 is to go through each and every particular
4 line by line item concern about the bill.
5 That's the amendment.

6 The Councilman's right that he needs
7 to have the amendment in his hands, and we
8 understand that.

9 And rather than me try to verbally
10 do the entire amendment, that was -- that
11 wasn't -- Our point in coming to you today
12 was in saying we were in the process of
13 finalizing an amendment.

14 We want to get it to the sponsor.
15 We want to get it to the Chair. We want the
16 best bill possible. Our concern is clear.
17 It's not delay.

18 And I think we as an administration
19 have worked very hard at ethics reform for a
20 year. And we think we have -- we can make
21 this bill a better bill.

22 And as you've pointed out, and
23 provided we do so within the time frame and
24 still enable this bill to move forward as
25 Council wants it to move forward.

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2 COUNCILMAN NUTTER: Mr. Chairman,
3 did I understand you to say that there was a
4 hearing scheduled also on another matter for
5 tomorrow --

6 COUNCILMAN COHEN: Yes.

7 COUNCILMAN NUTTER: -- of this
8 committee?

9 COUNCILMAN COHEN: Yes.

10 COUNCILMAN NUTTER: Is it possible,
11 Mr. Chairman, in your capacity as Chair, to
12 either request or direct Mr. Grace to provide
13 the proposed amendment to me either by the
14 end of business today or first thing tomorrow
15 morning? I'd like to continue the work. And
16 I want to be respectful about it. That's the
17 first.

18 Second, if there is time needed to
19 work on any of these matters, you asked me
20 questions at the beginning of this hearing
21 about the timing aspects of all of this.

22 I would strongly recommend, Mr.
23 Chairman, that the way for us to have time to
24 still work on the matters and adhere to the
25 kind of schedule that was talked about, and

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2 that I get the impression that you would want
3 to keep us on, the best thing for us is to
4 move these bills out of committee on either
5 today or tomorrow, get a first reading on the
6 3rd, be available for a vote on the 10th.

7 And if there are any other
8 amendments that need to be made, they can be
9 made at that time, and we can then vote the
10 bills on the 17th.

11 If there's any other action that's
12 going to be taken potentially adverse to the
13 bills, they will then come back to us on the
14 31st, which still allows this Council, under
15 the Home Rule Charter, to take any other
16 action that it wants to take.

17 That would be my recommendation, Mr.
18 Chairman, in terms of the calendar and bill
19 management.

20 COUNCILMAN COHEN: Well, I think
21 that the proposal makes a lot of sense. But
22 I also think the lateness of the Mayor in
23 coming to this decision is a difficult thing
24 for this committee to accept.

25 And... I would like to hold it in

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2 abeyance for the time being while I ask you,
3 Councilman Nutter, if this bill will cover
4 the Redevelopment Authority, all the
5 different authorities we have. Does it cover
6 Redevelopment Authority, Parking Authority,
7 Housing Authority, P.C.D.C.?

8 Because it seemed to me that once
9 before this City Council attempted to
10 regulate -- At the time that the presentation
11 of an annual financial statement was required
12 by the state, we passed a bill directing that
13 every agency in the city that deals with city
14 business follow that state law on ethics.

15 But all the authorities hired the
16 main law firms in the city to oppose us and
17 to require that we not include them in, and
18 they threatened court. I don't remember
19 whether they went to court or not.

20 COUNCILMAN NUTTER: I understand.

21 COUNCILMAN COHEN: But I know they
22 were exempted from following it.

23 COUNCILMAN NUTTER: Right.

24 COUNCILMAN COHEN: Does that mean
25 that the people that contribute to the

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2 Redevelopment Authority will not have to
3 abide by this law? Do you know anything?
4 Have you discussed it with the attorneys?
5 Have they had any opinion?

6 COUNCILMAN NUTTER: Yes, I have, Mr.
7 Chairman. And I've also talked with other
8 Council members about it.

9 The section in question is Section
10 17-1208 which talks about city-related
11 agencies. This is a somewhat fairly standard
12 provision in a variety of other sections of
13 The Philadelphia Code.

14 The subject matter, though, here is
15 rather complicated, as some would say. And
16 the point that you raise, and the point
17 raised by a number of other members, presents
18 a bit of a legislative, if not legal,
19 challenge.

20 I would suggest to you, Mr.
21 Chairman, that in an effort to make sure that
22 the bill in our language is as clean as
23 possible, and as complicated a matter as we
24 already have in front of us, this particular
25 section may further complicate the issue.

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2 And I think it is a particular
3 section that either needs further discussion
4 or may not or should not be addressed at this
5 particular time, given some of the
6 complications surrounding extending these
7 provisions to agencies that we do not
8 directly have authority over or control over,
9 although this particular section only deals
10 with those agencies as it relates to them
11 having a specific agreement, contractual
12 agreement for services, with the City of
13 Philadelphia.

14 That is a very fine, important but
15 narrow legal point which may further
16 complicate the legislation in front of us.
17 And I think it needs reconsideration.

18 COUNCILMAN COHEN: I'm not sure I
19 know the conclusion you're coming to.

20 COUNCILMAN NUTTER: Well, that was
21 my purpose, Mr. Chairman.

22 COUNCILMAN COHEN: But doesn't the
23 city often use these agencies to do
24 contracting for the city directly?

25 COUNCILMAN NUTTER: Yes, we do.

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2 COUNCILMAN COHEN: And what would
3 the role of the contractor be?

4 COUNCILMAN NUTTER: Well, that's
5 where you start to get into the matter. The
6 role of the contractor is the function of
7 what's the nature of the contract between the
8 city and the outside city agency.

9 The larger issue that has been
10 raised in many instances is the city-related
11 agency. And I don't want to pick anyone in
12 particular. But we know all of the various
13 alphabet soup agencies that are not directly
14 under the control of the government.

15 The legitimate question has been
16 raised: Since we do not necessarily control
17 them, have no control over their budgets, in
18 most instances, what is our legal ability to
19 legislate, even on a pass-through basis, with
20 regard to those agencies?

21 This is one of those questions if
22 you ask a couple of the attorneys a question
23 you'll get two, possibly three different
24 answers, all of which seem to revolve around
25 it depends. I don't like to legislate in the

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2 world of it depends.

3 And so, depending on what the
4 contract is, depending on what the agreement
5 is, depending on what the request for
6 services is; but most importantly, in most
7 instances, members of this Council do not
8 have direct involvement in any of the
9 activities at those agencies.

10 And so, you end up with the question
11 of whether or not we should be legislating in
12 that particular area, and imposing the
13 various limits on those contractors who are
14 doing work for another agency outside the
15 government.

16 It is a legitimate and serious
17 question. And I think that through
18 discussions it probably needs to be
19 revisited, if not reconsidered, as to whether
20 or not that particular provision should
21 remain in the legislation.

22 COUNCILMAN COHEN: Well, how do we
23 revisit or reconsider it? Do we do that
24 before we were to...

25 COUNCILMAN NUTTER: Yes. We

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2 would... I mean, the ultimate in revisiting
3 on this particular item is whether we
4 consider deleting it from the legislation.
5 And we would do that in the committee hearing
6 process.

7 COUNCILMAN COHEN: Councilman
8 Mariano.

9 COUNCILMAN MARIANO: Point of
10 information, Mr. Chairman, and to Councilman
11 Nutter.

12 Councilman, I was in and out of the
13 room. And I hear your statement there about
14 the R.D.A. that was the Chairman's question.

15 But really, Councilman -- please
16 correct me if I'm wrong -- we don't have
17 anything to do in no bid contracts anyhow.

18 So, you know, not to be facetious
19 here, but we're trying to do legislation that
20 gets us involved in a process that we
21 shouldn't be involved in anyhow. And then
22 you're saying now that we don't have anything
23 to do with the R.D.A. Do we really have
24 anything to do with contracts? And I see --

25 COUNCILMAN NUTTER: Well,

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2 Councilman, I appreciate the question. I
3 would make a very clear distinction between
4 our role with outside agencies versus our
5 role in the government.

6 We are elected officials.

7 COUNCILMAN MARIANO: Mm-hmm.

8 COUNCILMAN NUTTER: We approve
9 budgets. We approve bills and/or resolutions
10 that come through this Council, and we can
11 exert in many instances an incredible amount
12 of influence in a variety of places
13 throughout the government that we serve. So,
14 I would suggest to you that...

15 (Interference noise through the
16 microphones.)

17 COUNCILMAN NUTTER: I would suggest
18 to you that --

19 COUNCILMAN MARIANO: That's the FBI
20 bug, Councilman, that's working. It's a
21 check.

22 COUNCILMAN NUTTER: You never know
23 who's listening.

24 I would suggest that there is a very
25 clear and serious distinction between our

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2 roles and any, quote unquote, influence that
3 we might exert, with regard to city contracts
4 versus what we may or may not be able to do
5 with regard to outside contracts.

6 I would not want this record to
7 reflect or leave anyone with the impression
8 that somehow, even though we in many
9 instances spend a lot of time, if not a lot
10 of money, and a lot of effort trying to get
11 elected to these positions, that having
12 attained these positions we now are mere
13 spectators in the government and have nothing
14 to do with anything that happens other than
15 in our offices.

16 COUNCILMAN MARIANO: Councilman, you
17 know, I love you dearly.

18 COUNCILMAN NUTTER: Show me the
19 love.

20 COUNCILMAN MARIANO: But I have to
21 tell you that only true brothers can love
22 each other.

23 COUNCILMAN NUTTER: I appreciate
24 that.

25 COUNCILMAN MARIANO: But that's a

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2 stretch on my part. I've never -- would want
3 to or have I ever been able to influence any
4 contract in this government. And I don't
5 know how you would do that anyhow. If you
6 can do that, more power to you, pal, but I
7 don't think I can.

8 Now, the head of the R.D.A., it's no
9 secret, is the head of the electrician's
10 union. And I'm a member.

11 COUNCILMAN NUTTER: Right.

12 COUNCILMAN MARIANO: And I don't
13 know what Johnny Doc does, as far as
14 contracts go. I would doubt he has nothing
15 to do with that. It's probably Herb Wetzel
16 day to day.*

17 I mean, I can pick up a phone and
18 get a no from Herb Wetzel just as much as I
19 could get a no from maybe the L & I
20 Commissioner that's giving out a contract.

21 COUNCILMAN NUTTER: Mm-hmm

22 COUNCILMAN MARIANO: So, I mean,
23 that's a good reasoning, but it doesn't work
24 with me. And what I'm thinking here, I'm
25 thinking here, thank God we're not involved

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2 in contracts because down there at the
3 Federal building they have me, Darrell
4 Clarke, you, and maybe Councilman Cohen down
5 there. I don't want to be involved with
6 that, and I don't know if that is shirking
7 the work or not trying to do anything that
8 I'm doing.

9 COUNCILMAN NUTTER: I understand
10 that.

11 COUNCILMAN MARIANO: And I got
12 elected here to be a City Councilman, not to
13 be a Mayor. And, you know, this isn't...
14 Anything you do around here, it's like, well,
15 Mariano's on this guy's side; Nutter's not.
16 This is about good government and trying to
17 get it all out in the light and figure out
18 what's happening here.

19 I don't want to be involved in
20 contracts: Bids, no bids, or I would run for
21 Mayor.

22 COUNCILMAN NUTTER: Right.

23 COUNCILMAN MARIANO: Now, I think if
24 I was going to have influence on anybody I
25 could call Carl Green. Maybe Jannie could

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2 call Carl Green. Jannie -- Councilwoman
3 Blackwell's on that board.

4 So, for that answer that doesn't
5 work for me. It may work for the other
6 people. I don't say you're right or wrong.
7 In all due respect, that doesn't work for me.

8 So, why are we trying to get more
9 things to do that can get us in Federal
10 prison? I don't look at it.

11 My name ends in a vowel, so they're
12 always looking at you anyhow when your name
13 ends in a vowel.

14 I want to be sure what I'm doing in
15 the parameters of the job description that I
16 ran to get elected for three times now.
17 That's where -- I mean, I'm not trying to be
18 funny or smart.

19 I don't see it. I really don't see
20 it. I think Councilman Cohen, who I've
21 differed with over the years, but we always
22 go back like you, to be able to try to work
23 things out for the good of this Council and
24 good of this city. I don't get it. I don't
25 get why we're pushing this so hard.

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2 And I think that's how -- I haven't
3 talked to him about this, but I think that's
4 what he's trying to do.

5 Like, there are other agencies
6 that -- He's been a Councilman a long time.

7 COUNCILMAN NUTTER: I understand.

8 COUNCILMAN MARIANO: He could pick
9 up the phone and call anybody. He probably
10 never did it, nor would he want to. Once we
11 get into that, it never ends.

12 COUNCILMAN NUTTER: I understand.

13 COUNCILMAN MARIANO: But thank you
14 for your input.

15 COUNCILMAN NUTTER: Sure. No
16 problem.

17 COUNCILMAN COHEN: Councilman
18 Clarke.

19 COUNCILMAN CLARKE: Thank you,
20 Councilman.

21 Actually, I don't want to beat a
22 dead horse, but I just wanted to concur with
23 Councilman Mariano, with respects to our
24 involvement in influencing no bid contracts.

25 I could possibly be said to be the

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2 Council member who, quote unquote, is closest
3 to the Mayor, but I can honestly sit here and
4 say that I don't have a clue as to what the
5 process is, as it relates to the solicitation
6 and the ultimate award of no bid contracts.

7 And maybe that is a problem. Maybe
8 I should have a clue. But I don't want the
9 inference to be that somehow because I have
10 some relationship with the elected official
11 that makes that decision, that somehow I use
12 that level of relationship to influence it.

13 That's just something that I choose
14 not to be involved with; and I don't think,
15 frankly speaking, any members of Council
16 choose not to be involved with [sic].

17 As a 5th District Councilperson, I
18 have more than enough to do as it relates to
19 my responsibilities in the Council District.

20 So, as Councilman Mariano said, I
21 think this perception that somehow that
22 elected officials are automatically wheeling
23 and dealing and using their levels of
24 influence on the selection process that we're
25 not officially involved with, is a myth at

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2 best.

3 So, I am -- And I voiced my concerns
4 to several members and also to the sponsor,
5 the Chair, that if I'm involved in a process,
6 then I'm willing to entertain some level of
7 responsibility and scrutiny.

8 But if I'm not involved in the
9 process, then why should the perception be
10 that somehow I'm using some veiled attempt to
11 manipulate the process in order to get some
12 support from, you know, a campaign
13 contributor.

14 And if, in fact, that was the case,
15 I'm not doing a very good job because I only
16 have \$6,000 in my contribution list. And
17 that will probably automatically get me a
18 candidate to run against me.

19 But I just -- You know, this whole
20 perception, like somehow we're manipulating
21 the process, is really a myth.

22 So, I just wanted to on the record
23 say that that's just not something that this
24 particular Councilman is interested in being
25 involved with.

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2 Thank you, Mr. Chairman.

3 COUNCILMAN COHEN: You can wait for
4 a response from the members of the Council.

5 COUNCILMAN CLARKE: Well, I'm not
6 actually asking for a response; just a
7 statement for the record.

8 COUNCILMAN NUTTER: No. I respect
9 both my colleagues' perspectives, and I
10 understand those perspectives.

11 I think, basically, there are two
12 issues here: One, trying to establish a
13 process that has a certain level of
14 transparency and openness, provides as much
15 opportunity for people as possible to know of
16 what the contracts are, what the availability
17 is, and where to go to seek them, and
18 increase opportunity for people to access
19 those contracts.

20 Secondly, there are certainly any
21 number of situations where we all as elected
22 officials in the government, fairly or
23 unfairly, end up being looked upon in certain
24 ways.

25 And I guess, from my perspective at

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2 least, the best way to try to deal with that
3 is, if we're all covered by the same rules,
4 then -- and everyone knows what those rules
5 are, then you have much less to worry about.
6 So... But that's just my view.

7 Thank you, Mr. Chairman.

8 COUNCILMAN COHEN: Let me raise
9 another... Councilman Ramos.

10 COUNCILMAN RAMOS: Thank you, Mr.
11 Chairman. I just wanted to just for the
12 record also express my views.

13 And also, since we've gone into this
14 on a very well needed ethics reform
15 legislation here, that Councilman Nutter has
16 been sponsor of all the -- of the number of
17 ethics bills has been very forthcoming, at
18 least with me.

19 And I hear from other Council people
20 that he has -- that he has been very diligent
21 in talking to us about how can we -- We all
22 know that this has to happen.

23 And that I want to thank him
24 publicly for reaching out to me on a number
25 of occasions and spending some time with me

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2 going over all this stuff that, to me, is
3 still fairly new language to me.

4 You know, I think it is time to
5 regulate no bid contracts. I think it is
6 time the city plays where people know that
7 the best get city work, that it is time to do
8 it and it's time to do it now.

9 But we also have to do this in a
10 fashion that makes sense to all of us. The
11 framework proposed and the present pay to
12 play legislation that the committee chair
13 read off at the start of this session before
14 Council seems good, but the devil's in the
15 details, as they say.

16 And I am -- And since Councilman
17 Nutter has, particularly in Bill 040772, made
18 some recommendations, and because of his
19 dialogue with Council members and I think
20 also with the administration, that one of the
21 issues of are we going to -- you know, how
22 are we going to advertise and all that stuff,
23 that there's -- that he's made some changes
24 where the web site seems to be where we're
25 going or we will recommend be the place of

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2 first entry for contractors in the City of
3 Philadelphia.

4 But I would like to just pose these
5 questions, Councilman Nutter. And you don't
6 have to give me an answer now. But I think
7 that since we have this opportunity, let me
8 just throw them out there.

9 What agency is charged with coming
10 up with the disclosure forms the contractors
11 and applicants have to fill out?

12 My reading of Bill Number 040772
13 suggests that, for example, application forms
14 have to be developed by each city agency that
15 needs to do no bid contracting.

16 Does it make any sense to have a
17 multiplicity of different forms? Shouldn't
18 one agency of the government develop a single
19 easy-to-fill-out, plain English, maybe
20 multi-language application, similar
21 disclosure forms?

22 What's the volume of no bid
23 contracting in the government? How many a
24 year? How many a quarter? How many a week?

25 What's the administrative burden

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2 that this bill will put on the government?

3 How has the administration planned to meet
4 that burden?

5 So, I am now at this point concerned
6 about if we're going to -- we're going to go
7 ahead and pass pay to play -- to eliminate
8 pay to play through legislation, that we
9 might as well -- And since you got into it,
10 Councilman Nutter, we might as well get these
11 answers ahead of time.

12 I know that the legislative process
13 is one that we make laws and the executive
14 branch then figures out, you know, how to
15 enforce those laws.

16 And we all know that there's laws
17 have been passed around here for many years
18 that are never enforced.

19 And if this is -- This is very
20 important to this city. It's very important
21 to us, that if we've already engaged, through
22 some of the language that the sponsor has put
23 into this, that we might as well get as many
24 answers.

25 And I don't say this, Mr. Chairman,

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2 to any way impede what needs to be done today
3 on these pieces of legislation. I think that
4 we need to get this done, get it done
5 expeditiously, carefully.

6 And I think we have done -- There's
7 been some -- The sponsor has carefully worked
8 on this. He has collaborated with us. But
9 still there are some unanswered questions.

10 So, I don't want you to, Mr.
11 Chairman, take my comments that I've just
12 made in any way to stop what needs to be done
13 on your committee.

14 Thank you, Mr. Chairman.

15 COUNCILMAN COHEN: Thank you.

16 Councilman Nutter, could you answer
17 some of the questions that were raised?

18 COUNCILMAN NUTTER: Yeah, I tried to
19 take them down very quickly. And Councilman
20 Ramos, if I missed one, you'll please ask me
21 again.

22 With regard to the disclosure form,
23 you'll notice in Section 17-1202 of the bill,
24 each of the city agencies that seeks to issue
25 a no bid contract or professional services

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2 contract, they would then be required to
3 coordinate with the Procurement Commissioner
4 in carrying out the provisions of this
5 particular chapter. In fact...

6 COUNCILMAN RAMOS: The answer to
7 that question is that that one agency that I
8 referred to will be the Procurement
9 Commissioner?

10 COUNCILMAN NUTTER: Yes.

11 COUNCILMAN RAMOS: The Procurement
12 Department?

13 COUNCILMAN NUTTER: Yes.

14 COUNCILMAN RAMOS: Okay.

15 COUNCILMAN NUTTER: The Procurement
16 Commissioner shall develop procedures to
17 ensure that such contracts are advertised and
18 approved in a timely, efficient and
19 coordinated manner in the best interests of
20 the city, and shall coordinate with the city
21 agency in carrying out the requirements of
22 this chapter.

23 The Procurement Commissioner now for
24 the first time will be involved in all of the
25 professional services, no bid contract

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2 activities, which does not exist today.

3 The departments do it on their own
4 individually today. There is no one central
5 entity involved in professional services or
6 no bid contracts.

7 I think the test -- So, the issue
8 is, the Procurement Commissioner will be the
9 central person and will coordinate with all
10 of these agencies.

11 And I believe that our current
12 Procurement Commissioner or future
13 Procurement Commissioner would develop one
14 form for everyone to have, to make sure that
15 everyone's operating with the same document.

16 With regard to the number of
17 contracts, my recollection of the testimony
18 at one of the hearings was that there were a
19 little over 1500 contracts that were either
20 no bid or professional services in the last
21 fiscal year.

22 Again, those contracts take place
23 over the course of a year. It's not that
24 they all come rushing in on one particular
25 day.

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2 With regard to any additional burden
3 on the government -- and obviously I can't
4 speak for Procurement. But they were in to
5 testify.

6 I think that, quite honestly, what
7 I'm left with the impression of is, other
8 than some reporting requirements which
9 ultimately, I think, are in the best
10 interests of the city and certainly for
11 members of this Council, and the public, to
12 know what's going on, there -- the bulk of
13 their process will be the same as it pretty
14 much is today.

15 No one has testified to any
16 significant work burden or cost issue. Mr.
17 Grace has mentioned again today a concern
18 about how many people have to sign off on the
19 contracts, and which I guess will be a topic
20 of discussion.

21 But you know, all the people in the
22 government, as best I know, are hard-working
23 and diligent public servants. And all the
24 contracts either go through a department...
25 They all end up at the Law Department anyway.

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2 And so, I don't -- I would not expect that
3 there would be some significant burden on the
4 government.

5 But quite honestly, the importance
6 of the issue, I believe, is such that we
7 should take the necessary, reasonable steps
8 to make sure that the process is as open and
9 transparent as possible, and people can
10 understand and get information so that this
11 is not a mysterious kind of operation.

12 Councilman, did I answer all your
13 questions?

14 COUNCILMAN RAMOS: Yes. Thank you
15 so much.

16 Thank you, Mr. Chairman. Thank you,
17 Councilman Nutter.

18 COUNCILMAN NUTTER: Thank you,
19 Councilman.

20 COUNCILMAN COHEN: Mr. Grace?

21 MR. GRACE: Yes, Mr. Chairman.

22 COUNCILMAN COHEN: I'm inclined to
23 have both sides very angry at me, rather than
24 have one side. It's always more comfortable
25 to have both sides.

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2 I'm very much inclined to suggest...

3 Let me raise with Councilman Nutter one
4 question. Is my calendar reading correct to
5 say that tomorrow would be just as good as
6 today, from the point of view of meeting the
7 requirements of the Home Rule Charter?

8 COUNCILMAN NUTTER: Yes.

9 COUNCILMAN COHEN: Under those
10 circumstances, at the end of today's hearing,
11 I'm going to recess it for one day.

12 Now, if you can present your request
13 tomorrow -- And I'll tell you why I'm doing
14 it. I think it would be a great achievement.
15 I don't know whether it's possible. We may
16 end up in either a worse battle tomorrow than
17 today.

18 But I think it would be fine if on a
19 piece of legislation as important as this we
20 could both move the administration and
21 Councilman Nutter's general positions to the
22 point where both agree on this legislation.
23 Because then we know it will be meaningful,
24 and no side will feel as if the other side is
25 playing less than fair.

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2 So, I'm very much inclined to give
3 you an additional day, knowing if the
4 administration were serious, it could do
5 wonders in one day. If not, it could just
6 stretch us out for months.

7 So, would that be helpful? Would we
8 be able to get it together? Because I've
9 known when the administration has done lots
10 in a day and when they've done nothing in
11 months.

12 Councilman Clarke.

13 COUNCILMAN CLARKE: I didn't mean to
14 interrupt you in the middle of your question,
15 Councilman.

16 COUNCILMAN COHEN: No. Go ahead.

17 COUNCILMAN CLARKE: Mr. Chairman, I
18 just wanted to say in reference to the fact
19 that it would be a great day -- I'm
20 paraphrasing -- that Councilman -- if
21 Councilman Nutter and the administration can
22 come together and agree on some consensus
23 legislation.

24 I remind you of your earlier
25 statements that my good friend and colleague,

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2 Councilman Nutter, was negotiating with the
3 administration earlier on his behalf.

4 So, I don't -- I just want to make
5 it clear that personally the 5th District
6 Councilman may have some issues outside of
7 what they ultimately agree on, for the
8 record.

9 COUNCILMAN COHEN: Yes.

10 COUNCILMAN CLARKE: I do have some
11 other issues.

12 COUNCILMAN COHEN: And everybody
13 would have till tomorrow to present them in
14 any form.

15 COUNCILMAN CLARKE: Okay.

16 COUNCILMAN COHEN: An amendment to
17 Councilman Nutter's bills, if that went
18 through.

19 See, what I see is, if there were
20 agreement between the two main positions,
21 without deciding that Councilman Nutter
22 represents himself or represents the
23 Council... But the two main positions that
24 have been talked about, if they were brought
25 together, it would mean that the Mayor has

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2 moved from his position that pay to play must
3 be decided by the state, and he's accepted
4 the Council's view that it's worth trying to
5 have the city regulate it, and that we've
6 also moved a long way to show our efforts to
7 cooperate with the Mayor.

8 Because we've -- We in Council have
9 long sought cooperation with the
10 administration, and generally the repayment
11 comes in continued ignoring our positions.

12 So, if there is a chance -- if there
13 is a chance for improving the relations of
14 both, I'd like to get both your views on
15 that.

16 MR. GRACE: Mr. Chairman,
17 respectfully, I'm not sure exactly what your
18 question is right now.

19 COUNCILMAN COHEN: The question is,
20 do you think a day would be enough time?
21 Because I'm not inclined to go beyond that.

22 MR. GRACE: With regard to our --

23 COUNCILMAN COHEN: Presentation.

24 MR. GRACE: With regard to our
25 proposed amendment --

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2 COUNCILWOMAN VERNA: The amendments.

3 COUNCILMAN COHEN: With regard to
4 the presentation of the amendments.

5 MR. GRACE: With regard to our
6 proposed amendment to some of the --

7 COUNCILMAN COHEN: Yes. It would
8 mean a lot of homework tonight.

9 MR. GRACE: With regard to the
10 proposed amendment, as it concerns some of
11 these contract issues, I'm going to go right
12 back to my colleagues and see if we can't get
13 the amendment to the sponsor of the bill just
14 as soon as possible prior to tomorrow.

15 COUNCILMAN COHEN: And I would say
16 by tomorrow 9:00 -- 10:00 a.m. in my office I
17 would be prepared to receive them.

18 And I think a copy should go to
19 Councilman Nutter at the same time, with the
20 understanding that this hearing would resume
21 at 2 o'clock tomorrow, and that something
22 will be reported out at the end of tomorrow.

23 You know... And I can't foretell
24 the efforts, you know, whether you're going
25 to be successful or not with the amendments.

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2 MR. GRACE: I understand.

3 COUNCILMAN COHEN: Councilman Goode.

4 COUNCILMAN GOODE: Thank you, Mr.
5 Chairman.

6 Mr. Grace, although the amendments
7 are not final yet, do you know if the
8 administration is amending all three pieces
9 of legislation?

10 MR. GRACE: Most of what we're
11 discussing, Councilman, concerns a proposed
12 amendment to Bill 040772. I believe there
13 also will be a proposed amendment to
14 Resolution 040818, the Charter change.

15 And there are no amendments that I'm
16 aware of in process with regard to the
17 third -- the third piece of legislation.

18 COUNCILMAN GOODE: Technically we
19 could vote that out today.

20 MR. GRACE: Pardon me?

21 COUNCILMAN GOODE: Technically we
22 could vote that out today.

23 MR. GRACE: I understand when you
24 walked me through that process before. I
25 don't have the amendments prepared for

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2 introduction.

3 COUNCILMAN GOODE: Okay. Thank you.

4 Thank you, Mr. Chairman.

5 MR. GRACE: Thank you.

6 COUNCILMAN COHEN: Apparently, the
7 Law and Government Committee already has a
8 hearing scheduled at 2 o'clock tomorrow, so
9 there's no problem setting the hearing.

10 COUNCILMAN NUTTER: Mr. Chairman?

11 COUNCILMAN COHEN: Yes, Councilman
12 Nutter. What is your view? Would that be
13 worth getting that bill of having the Mayor
14 change his position and we change our
15 position a bit and having a cooperative
16 effort?

17 COUNCILMAN NUTTER: Well, I'll vouch
18 that comment for the moment.

19 But the Chair may have been slightly
20 distracted in a conversation when Mr. Grace
21 responded to a question by Councilman Goode,
22 which I am now hearing for the first time.

23 COUNCILMAN COHEN: What is that?

24 COUNCILMAN NUTTER: Mr. Grace has
25 now put on the record that in addition to, at

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2 the moment, unknown amendments to Bill
3 040772, that the administration may also have
4 amendments to the Resolution 040818. There's
5 been no discussion of that in the course of
6 this hearing this afternoon.

7 COUNCILMAN COHEN: Well, what was
8 that Resolution?

9 COUNCILMAN NUTTER: That Resolution
10 is the actual Charter change that allows for
11 Council to have certain powers which are then
12 encapsulated in Bill 772.

13 COUNCILMAN COHEN: Well, I don't
14 understand.

15 COUNCILMAN NUTTER: It's the nature
16 of the questions that you were asking me
17 earlier about why are we going to the ballot,
18 because we need to make certain changes to
19 the Charter. That's what Resolution 040818
20 does.

21 Under questioning from Councilman
22 Goode, Mr. Grace now tells us here that the
23 administration may have amendments to that
24 Resolution also. I do not know what he's
25 talking about.

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2 COUNCILMAN COHEN: Well, could you
3 be more clear on that?

4 MR. GRACE: Councilman, it's my
5 understanding that our legal advisors from
6 the Law Department have communicated some
7 information to... It was my understanding...
8 to Councilman Nutter's legal or technical
9 advisors concerning one amendment or
10 adjustment to the Resolution, to Resolution
11 040818.

12 COUNCILMAN NUTTER: Well, Mr. Grace,
13 if it's regarding the one-year contract, I
14 already have a proposed amendment to deal
15 with that. And if that is the case, then
16 there's no need for an additional --

17 MR. GRACE: That is the case.

18 COUNCILMAN NUTTER: -- or similar
19 amendment to come from the administration.

20 But it be -- Now, are there any
21 other proposed amendments? Is there any
22 other information you'd like to share with us
23 here this afternoon?

24 MR. GRACE: There's no other changes
25 that would be proposed to the Resolution.

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2 COUNCILMAN NUTTER: Okay. Thank

3 you.

4 Thank you, Mr. Chairman.

5 COUNCILMAN COHEN: Does that clear

6 up the question you raised, Councilman

7 Nutter?

8 COUNCILMAN NUTTER: Yes.

9 COUNCILMAN COHEN: All right.

10 Does anybody have any other thoughts

11 they want to raise?

12 Councilman Mariano, anything?

13 COUNCILMAN MARIANO: I just want to

14 say that since I get home and it's snowing, I

15 might have some amendments tomorrow for the

16 Board of Ethics in the Code.

17 I just don't want to think that this

18 means there's no amendments. Everybody

19 understands that.

20 COUNCILMAN COHEN: What's that?

21 COUNCILMAN MARIANO: I want everyone

22 to understand that I might have amendments

23 tomorrow, you know what I'm saying? He might

24 have amendments -- Councilman Goode might

25 have amendments. Just because --

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2 COUNCILMAN NUTTER: I understand
3 that.

4 COUNCILMAN MARIANO: -- he only
5 speaks for him. And as far as -- Till he
6 gets fired downstairs from doing the wrong
7 thing.

8 COUNCILMAN NUTTER: Right.

9 COUNCILMAN MARIANO: Does not mean
10 there's no amendments. I mean, I'm not
11 saying there is, but I'm not saying there's
12 not.

13 COUNCILMAN NUTTER: My comment in no
14 way, shape or form has anything to do with
15 any member of City Council.

16 I'm just trying to understand, since
17 the only reason we're really having this
18 extended discussion today comes as a result
19 of a conversation between Mr. Grace and the
20 Chairman somewhere shortly before 1:30 today
21 for a 2:00 hearing, and a 1:30 hallway
22 conversation with me about the prospect of
23 amendments... But for that, I think we would
24 have had a full hearing here today, and we
25 would have discussed any proposed amendments,

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2 whether they mean adding material or deleting
3 material.

4 And we've now ventured into a whole
5 different realm because of the lateness of
6 this request and the Chair taking the
7 prerogative of the Chair to make the
8 accommodation.

9 If we can get in here tomorrow, if I
10 can have material, at least from Mr. Grace,
11 who started this process, that would be
12 helpful.

13 If other members have other matters,
14 that's... you know, that's within their
15 right, and that's our process.

16 COUNCILMAN MARIANO: Thank you,
17 Councilman.

18 COUNCILMAN NUTTER: Thank you.

19 COUNCILMAN COHEN: Well, I think
20 everybody ought to be ready. It would be the
21 intent of the Chair at this time to see to it
22 that this matter is decided by the committee
23 by the end of tomorrow. By the end of the
24 hearing tomorrow I think there will be a
25 vote. That would be my hope, unless the

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2 unknown -- there's unknown intervention on
3 somebody's part, but...

4 So, Mr. Grace, I expect to hear from
5 you. By 10 o'clock, if there's nothing in
6 the office, we will assume you decided it
7 wasn't worth your time or you couldn't do it.
8 And we'll then go ahead anyway.

9 MR. GRACE: Mr. Chairman, you will
10 hear from our office, from myself or from our
11 office by tomorrow morning by that time.

12 COUNCILMAN COHEN: All right. And
13 Councilman Nutter will also hear?

14 MR. GRACE: Absolutely.

15 COUNCILMAN COHEN: At the same time
16 that I get the material, I'd like Councilman
17 Nutter to get it.

18 MR. GRACE: Absolutely.

19 COUNCILMAN NUTTER: And that's 10:00
20 a.m. tomorrow, Councilman?

21 COUNCILMAN COHEN: What's that?
22 2:00 p.m. tomorrow.

23 COUNCILMAN NUTTER: Mr. Chairman,
24 the hearing's at 2:00 p.m. You asked for the
25 material to be provided by 10:00 tomorrow

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2 morning?

3 COUNCILMAN COHEN: Yeah. We want
4 the amendments by 10:00 in the morning, to
5 have time to consider them.

6 MR. GRACE: I understand.

7 COUNCILMAN COHEN: Now, actually, I
8 would like to suggest that you get eight
9 copies -- nine copies, one for the President,
10 one for each member of the committee. That
11 makes eight. Somewhere there's an ninth.

12 COUNCILMAN NUTTER: Just extra. You
13 need one for the stenographer.

14 COUNCILMAN COHEN: For the
15 stenographer to have it, right. So we can
16 all have a chance to look at it.

17 I don't know what happens if the
18 weather intervenes.

19 COUNCILWOMAN VERNA: I would have
20 every member get a copy.

21 COUNCILMAN COHEN: All right.
22 That's a good idea. I think every member of
23 the Council... It's an excellent suggestion
24 by the Council President... get a copy of the
25 proposals.

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2 MR. GRACE: I understand.

3 COUNCILMAN COHEN: Okay?

4 MR. GRACE: Yes, Mr. Chairman.

5 Thank you.

6 COUNCILMAN COHEN: If we could...

7 Do you want to distribute them or do you want
8 them to distribute them?

9 COUNCILWOMAN VERNA: Either way.

10 COUNCILMAN COHEN: All right. If
11 you get them to each member of Council --
12 You've done it before many times.

13 MR. GRACE: We'll be happy to. Let
14 me go.

15 COUNCILMAN COHEN: By 10:00 a.m.

16 MR. GRACE: Right.

17 COUNCILMAN COHEN: Any other
18 business that comes before I recess it until
19 tomorrow at 2:00?

20 (No response.)

21 COUNCILMAN COHEN: If not, the
22 Committee on Law and Government stands in
23 recess until 2:00 p.m. at Tuesday, March 1st.

24 (Hearing concluded at 4:00 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me upon the public hearing of The Philadelphia City Council, taken on February 28, 2005, and that this is a true and correct transcript of same.

DAVID A. DEIK, RPR and
Commissioner of Deeds

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