

1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 PUBLIC HEARING
4 BEFORE THE COMMITTEE OF THE WHOLE
5 - - -
6 Room 400, City Hall
7 Philadelphia, Pennsylvania
8 Thursday, April 16, 1998
9 10:00 a.m.
10 - - -
11 BILL NO. 980022 - Amending Section 9-206 of the
12 Philadelphia Code, entitled "Sidewalk Vendors in
13 Neighborhood Districts."
14 - - -
15 PRESENT:
16 COUNCILMAN JOHN F. STREET, Chair
17 COUNCILWOMAN ANNA C. VERNA, Vice-Chair
18 COUNCILWOMAN HAPPY FERNANDEZ
19 COUNCILMAN JAMES F. KENNEY
20 COUNCILMAN W. THACHER LONGSTRETH
21 COUNCILWOMAN AUGUSTA A. CLARK
22 COUNCILMAN DAVID COHEN
23 COUNCILMAN FRANK RIZZO
24 COUNCILMAN ANGEL ORTIZ
25 COUNCILMAN FRANK DiCICCO
COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILMAN MICHAEL A. NUTTER
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN BRIAN J. O'NEILL
- - -
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3 BILL 980022

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1 BILL 980022

2 PRESIDENT STREET: May I have your
3 attention, please.

4 I would appreciate it very much if
5 the people in the balcony would please hold down
6 your voices. Those folks in the balcony, we would
7 appreciate it very much if you would be respectful
8 of this Council.

9 Thank you very much. This is a
10 recessed hearing of the Council Committee of the
11 Whole.

12 We have under consideration Bill No.
13 980022, which is a bill amending Section 9-206 of
14 the Philadelphia Code entitled "Sidewalk Vendors in
15 Neighborhood Business Districts," by designating the
16 University of Pennsylvania, the area in the general
17 vicinity of the campus of the University of
18 Pennsylvania in West Philadelphia as a Neighborhood
19 Business District in which sidewalk vending is
20 regulated pursuant to Section 9-206, enacting
21 special provisions regulating vending, both sidewalk
22 vendors and street vendors, in University City, all
23 under terms and conditions.

24 This record shall reflect that we had
25 an all-day Public Hearing I guess on Tuesday, April

1 BILL 980022

2 14. That hearing was recessed until Wednesday
3 morning at 8:30, at which time we had additional
4 Public Hearing. The hearing was then recessed until
5 this morning.

6 The Chair notes that a quorum is
7 present.

8 Does any Council member have anything
9 to add to the Public Hearing record? If not, this
10 brings us to the end of our Public Hearing. We will
11 now go into our Public Meeting.

12 I have three things to distribute to
13 the members of City Council. I have a letter that I
14 have received, dated April 15, 1998, from Carol R.
15 Scheman, Vice-President for Government, Community
16 and Public Affairs.

17 The letter reads as follows -- I will
18 make this letter available in full form to members
19 of the City Council and, as available, to members of
20 the press.

21 "In light of the concerns expressed
22 by the Department of Licenses & Inspections
23 regarding the inclusion of language in Bill No.
24 980022 establishing a Vending Advisory Board, we
25 would like to express once again our willingness to

1 PUBLIC MEETING

2 participate in any form City Council and the
3 Department would consider appropriate to ensure the
4 smooth implementation of the vending ordinance and
5 to address issues that may arise in the future as
6 vending in University City continues to evolve.

7 "We anticipate that our neighbor
8 institutions, such as the University City Science
9 Center and the Children's Hospital of Philadelphia,
10 would also participate in this forum.

11 "Assuming that such an arrangement
12 would be acceptable to City Council and the
13 Department of Licenses & Inspections, we will
14 promptly begin working with you, Councilwoman
15 Blackwell, Commissioner Egan, and all other
16 necessary parties to establish such a body as
17 quickly as possible."

18 This letter was written to the Chair
19 for the members of Council because it is the
20 sentiment of this Council that we should not
21 establish the Vendor Advisory Board by way of this
22 ordinance.

23 I have talked to Councilwoman
24 Blackwell about this, and she has advised me that
25 she will work with the University of Pennsylvania,

1 PUBLIC MEETING

2 the Department of Licenses & Inspections, vendors,
3 and others in the area to make sure that an
4 opportunity exists for everyone that's impacted by
5 the bill that we are about to report from this
6 committee is involved in the process.

7 We will leave it to her discretion,
8 as the district Councilperson, along with the other
9 people involved, to make sure that such an advisory
10 group is put into place.

11 And I think that that pretty much
12 satisfies the University's need to work with the
13 community, the various communities, involved, as
14 well as our interests as a City Council.

15 So I will make a copy of this letter
16 available.

17 Now, there are also some proposed
18 amendments. The proposed amendments do several
19 things.

20 One, they delete any reference to
21 Vending Advisory Board. They delete all references
22 to a Vending Advisory Board. And there are several
23 references, and you will see that. I will pass them
24 out in a minute.

25 The second thing that the amendments

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2 do is delete any reference to -- there is a sentence
3 that says, "the Department shall promulgate
4 regulations advising procedures to choose among
5 applicants for particular block face or location,
6 including but not limited to preference based on
7 seniority."

8 This language is not deleted; it is
9 inserted in the bill because what it does is, gives
10 the Department of Licenses & Inspections the right
11 to device a seniority process in the allocation of
12 the existing spots.

13 There is also a proposed amendment
14 which allows the Department of Licenses &
15 Inspections to collect the \$2,750 annual fee from
16 those people who will be operating trucks in spots
17 that otherwise would be metered parking spots.

18 And this section refers to the other
19 part of the code, which allows this procedure to be
20 implemented.

21 The effective date of the bill was
22 changed, so that the bill will take effect 90 days
23 after it becomes law. I think the University
24 agrees, and certainly the Department agrees, that
25 this is not a bill that can be implemented on a

1 PUBLIC MEETING

2 day's notice.

3 What I would like at this time to do
4 is circulate a copy of the pink bill, which is not
5 pink because it is a copy, with the proposed
6 amendments marked on it; a copy of the letter from
7 the University of Pennsylvania; and a copy of the
8 proposed amendments as amendments.

9 And we'll take just a minute to have
10 Councilmembers take a look at them. When every
11 member of Council has a copy, please make them
12 available to the press.

13 Will Councilman Nutter please
14 approach the Chair.

15 I would also like to call attention
16 specifically to Page 18 of the bill, the marked-up
17 bill, which eliminates Section J and J(3), which is
18 a provision that would have allowed a person with a
19 stand to convey that stand to another person, as in
20 selling the rights to them.

21 This provision is eliminated. And
22 substituted for it is the amendment which provides
23 for the \$2,750 in lieu of the metered fees that
24 would be paid under the parking.

25 And I think that that is probably

1 PUBLIC MEETING

2 very appropriate, given the problems that
3 Councilwoman Miller has indicated that she is having
4 in her area, you know, with the whole parking meter
5 situation.

6 Now, does every member have a copy of
7 the letter, a copy of the proposed amendments, and a
8 copy of the bill as marked up? Is there any member
9 who does not have it?

10 The Chair recognizes Councilman
11 Kenney.

12 COUNCILMAN KENNEY: Thank you,
13 Mr. President.

14 On Page 18, relative to the insertion
15 language on reimbursement for the \$2,750, is there
16 something specific that would indicate that this
17 money is going to the city General Fund, and not to
18 the Parking Authority?

19 PRESIDENT STREET: No.

20 COUNCILMAN KENNEY: How will we
21 ensure that that money is paid to the city, and not
22 to the Parking Authority?

23 PRESIDENT STREET: Because it gets
24 paid to the Department of Licenses & Inspections.
25 And once it gets paid to the Department of Licenses

1 PUBLIC MEETING

2 & Inspections, then it goes into the General Fund,
3 as do all other fees collected by that department.

4 COUNCILMAN KENNEY: Do you believe
5 that because of the ambiguity, there may be any
6 opportunity for the Parking Authority to make a
7 claim that this money would come to them?

8 PRESIDENT STREET: Not really. I am
9 very comfortable that when L & I gets the money,
10 nobody else touches it.

11 COUNCILMAN KENNEY: Well, L & I will
12 be receiving the check first?

13 PRESIDENT STREET: L & I gets the
14 money. And L & I really has no authority to
15 transfer that money to anybody else, in any event.

16 I mean, I can guarantee you that the
17 Finance Department -- I mean, I don't know how L & I
18 would even be able to physically give money that it
19 collects to the Parking Authority.

20 COUNCILMAN KENNEY: I just want to
21 make sure that the record is clear from our
22 discussion in the hearing and today that this money
23 be paid to the city and not to the Parking
24 Authority.

25 PRESIDENT STREET: Absolutely.

1 PUBLIC MEETING

2 COUNCILMAN KENNEY: Thank you very
3 much.

4 PRESIDENT STREET: Certainly.
5 Does any other member of Council have
6 any question?

7 Councilman Nutter.

8 COUNCILMAN NUTTER: Thank, you
9 Mr. President.

10 One question to follow up Councilman
11 Kenney. And, first, I apologize for having to ask
12 both of these questions. I think I missed the
13 Parking Authority testimony yesterday morning.

14 Who is actually going to remove these
15 meters?

16 PRESIDENT STREET: The meters will be
17 removed by the Parking Authority, working with the
18 Department of Licenses & Inspections.

19 COUNCILMAN NUTTER: Right. And,
20 again, with no anticipated reimbursement for their
21 services in removing meters?

22 PRESIDENT STREET: Yes.

23 COUNCILMAN NUTTER: Okay.

24 Any other question?

25 The Chair recognizes Councilman

1 PUBLIC MEETING

2 Cohen.

3 COUNCILMAN COHEN: Just on Page 18,
4 the bottom line.

5 PRESIDENT STREET: Councilman, I need
6 you to speak into that microphone.

7 COUNCILMAN COHEN: As an old English
8 teacher, I would like to suggest that the word
9 "effected" on Page 18 begins with the letter A, and
10 not the letter E. The first word in the bottom
11 line.

12 I don't think it needs an amendment;
13 I'm just suggesting the correction.

14 PRESIDENT STREET: Thank you very
15 much, Councilman.

16 First letter of the first word in the
17 last line.

18 Is there any other question from any
19 other member?

20 The Chair recognizes Councilwoman
21 Blackwell.

22 COUNCILWOMAN BLACKWELL: Thank you,
23 Mr. President.

24 Would you speak, the vendors have
25 just spoken and are concerned about the

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2 transferability clause. I have not spoken with them
3 about it. And they are not pleased with this
4 section.

5 They are particularly upset with this
6 section of the bill, with that section being
7 deleted. Would you please speak to this.

8 PRESIDENT STREET: Yes.

9 I think it is the overwhelming
10 sentiment of the members of Council that we are, the
11 City of Philadelphia, is going significantly beyond
12 where we traditionally go when we say a person who
13 is vending in the public way not only has a right to
14 vend in a public way, but has a right to establish a
15 business, and then to transfer that business for a
16 profit, a business which has taken place on someone
17 else's property pursuant to an easement that the
18 property owner gives up to the public generally.

19 There would really only be two ways
20 that a person could use private property of another
21 person.

22 One would be if that private party
23 gives the other private party permission to use his
24 or her sidewalk; and, two, is if that private
25 property owner's sidewalk can be used as a result of

1 PUBLIC MEETING

2 an easement or a right that the Commonwealth of
3 Pennsylvania, both through statutes and through
4 common law decisions, reserves from the property
5 owner to the general public.

6 So that it would be unlawful for a
7 property owner to put up a barricade on his or her
8 sidewalk and say, "You may not pass," or, "You must
9 pay to pass." Couldn't do that.

10 But a property owner might be able to
11 allow somebody to conduct some business on parts of
12 his or her sidewalk, assuming that it didn't
13 interfere with the public easement.

14 Now, when we say to a property owner,
15 "You literally must allow people to conduct
16 economic activity on your sidewalk as a part of the
17 public's right-of-way over your property," that's
18 one thing.

19 Then to say, "And these people have a
20 right to establish this economic activity and then
21 sell it to someone else," is another whole different
22 thing.

23 And I think it is the strong view of
24 most Councilmembers that we do not want to establish
25 that precedent here in this bill.

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2 COUNCILWOMAN BLACKWELL:

3 Mr. President.

4 PRESIDENT STREET: The Chair

5 recognizes Councilwoman Blackwell.

6 COUNCILWOMAN BLACKWELL: Thank you.

7 In the discussion, seeing that part
8 of the question was transferring a spot, as opposed
9 to transferring a business, I don't know how legally
10 we could -- because the discussion just came up
11 yesterday or the day before in our hearings about
12 the ability to transfer business, as opposed to
13 transferring a spot.

14 And I don't know that that was
15 resolved legally, as to how that could happen.

16 PRESIDENT STREET: The Chair

17 recognizes Councilwoman Clark.

18 COUNCILWOMAN BLACKWELL: But let me
19 also state --

20 PRESIDENT STREET: Councilwoman, your
21 light.

22 COUNCILWOMAN BLACKWELL: Thank you.

23 Let me also say that we certainly did
24 support the vendors in this agreement, and prevailed
25 upon Penn, and that is why it is in the ordinance,

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2 the original ordinance, because it was one of the
3 concessions that Penn made to the vendors to allow
4 them to try to transfer a license at the time of
5 retirement.

6 If a person vends 20 years and
7 decides they are at that age they would like to let
8 it go, it would give them a chance to get a little
9 nest egg, so that they could move on and retire, and
10 then the next person would have the license, et
11 cetera, in their name.

12 So the spirit of it was a positive
13 one, and we were trying to come up with some way to
14 do this. But apparently how we do that seems to be
15 the crux of the problem where we are, how that can
16 happen.

17 PRESIDENT STREET: The Chair
18 recognizes Councilwoman Clark.

19 COUNCILWOMAN CLARK: Mr. President,
20 coming as late as I am, I am totally without any
21 benefit of any previous discussion.

22 But it does seem to me clear that a
23 person is free to sell that part of the business
24 that he or she can pick up and take with them.

25 Therefore, if you have a cart and you

1 PUBLIC MEETING

2 have merchandise and you have good will, which I
3 guess you could carry on your balance sheet as a
4 dollar, you can sell that to anybody you want to.

5 But the right to maintain an
6 easement, which was never yours in the first place,
7 you can only divide that which is yours.

8 It was never in the vendor; it was,
9 at best, a grant of a permission. You can't raise
10 that to the level of a property right, so that they
11 can then sell it, rent it, lease it, or divide it by
12 will.

13 That is in such derogation of the
14 property rights as to be an outright taking. And I
15 would think that the University would not give it
16 away, and certainly we as legislators should not
17 codify such bad law into a piece of legislation.

18 PRESIDENT STREET: Thank you very
19 much.

20 The Chair recognizes Councilman
21 Kenney.

22 COUNCILMAN KENNEY: Thank you,
23 Mr. President. I agree wholeheartedly with
24 Councilwoman Clark on this issue.

25 We have to remember that nine times

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2 out of ten, these vendors are vending on the public
3 highway or on the public side of the pavement. It
4 is not only a private property right, it is a public
5 right.

6 And even hypothetically if we thought
7 it was good public policy to allow that conveyance,
8 there would have to be a price associated with that
9 conveyance.

10 They would have to have an assessment
11 of that property and its value, and that individual
12 would have to pay for that all in turn.

13 I am not suggesting that we do that.

14 The way you get around this issue is to have the
15 vendor buy a property, as every other retail
16 businessperson in the city does, establish a
17 business, and they can sell that property 20, 25
18 years from now, as every other retail business
19 establishment does.

20 But to get into the opportunity or
21 possibility of selling public right-of-way because
22 an individual has put a hot dog cart or a truck
23 there makes absolutely no sense whatsoever.

24 And I think we are getting in a very,
25 very tricky legal and public policy area there, and

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2 would not support that in any way.

3 Thank you, Mr. President.

4 PRESIDENT STREET: Thank you very

5 much.

6 The Chair recognizes Councilman

7 Nutter.

8 COUNCILMAN NUTTER: Thank you,

9 Mr. President.

10 So by way of process, I agree with
11 the comments of all of my colleagues. We certainly
12 cannot allow our Code to put into effect something
13 that we're not in the middle of, have no authority
14 to grant in the first place. So we cannot be in the
15 middle of these transactions anyway.

16 The process for picking or deciding
17 who gets what spot, I assume now, is totally covered
18 by Letter B on Page 13 of the bill, that talks about
19 the Department shall promulgate regulations devising
20 procedures to choose among applicants for a
21 particular block face or location, including but not
22 limited to preference based on seniority.

23 Now that this provision has been
24 appropriately removed, I assume that when the person
25 sells or when a space becomes available, it will be

1 PUBLIC MEETING

2 left in the normal course to the Department of
3 Licenses & Inspections to determine who ends up in
4 that spot?

5 Mr. President, if you could just say
6 yes, I would appreciate it.

7 PRESIDENT STREET: The Chair
8 recognizes Councilwoman Clark.

9 COUNCILMAN NUTTER: Mr. President, I
10 have a pending question, to which I believe the
11 answer is yes, but I will --

12 PRESIDENT STREET: What's the
13 question?

14 COUNCILMAN NUTTER: The question is,
15 after agreeing with all of my colleagues that the
16 process and procedure now, if a person should engage
17 in this private transaction between two vendors,
18 which we are choosing not to codify in the
19 Philadelphia Code, I'm now assuming that the process
20 for deciding who gets in what space is now fully
21 governed by Letter B on Page 13, that talks about
22 the Department figuring out who gets in what block
23 face or what space?

24 PRESIDENT STREET: Yes. And what we
25 have done is, if we adopt this amendment, we refuse

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2 to involve the city in any of that.

3 And if people want to try to
4 fraudulently get around the process that will be set
5 up by the Department of Licenses & Inspections for
6 allocating these spots on the seniority basis,
7 working with Councilwoman Blackwell, they can try to
8 do that.

9 COUNCILMAN NUTTER: And we will get
10 them.

11 PRESIDENT STREET: Maybe we will,
12 maybe we won't.

13 But I will tell you, if I were a
14 buyer, I would be very, very careful about
15 surrendering large sums of cash under circumstances
16 that might not be wholly legal and which might very
17 well be set aside when exposed.

18 COUNCILMAN NUTTER: Right.

19 PRESIDENT STREET: So there is a big
20 risk involved in that.

21 COUNCILWOMAN CLARK: Caveat emptor --

22 PRESIDENT STREET: Councilwoman Clark
23 has a big legal word she just put on the record,
24 caveat something.

25 COUNCILWOMAN CLARK: Caveat emptor.

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2 PRESIDENT STREET: Let the buyer
3 beware.

4 COUNCILWOMAN CLARK: When you buy
5 something, you make sure you get what you think you
6 bought.

7 If you have an illusory transaction
8 and no quantum of ownership transferred by this
9 sale, you will open your hand and find you have no
10 land and the money is gone.

11 Now, if you want to give some money
12 away, I have nothing against that. But you really
13 ought to know that you can only sell that which you
14 have.

15 PRESIDENT STREET: Thank you very
16 much.

17 COUNCILWOMAN CLARK: That's the
18 federal law and makes good common sense. If you
19 don't have it, you can't sell it. But if somebody
20 out there wants to buy it, okay.

21 PRESIDENT STREET: The Chair
22 recognizes Councilman Cohen.

23 COUNCILMAN COHEN: I just wanted to
24 make sure that everybody knows, there is in fact a
25 controversy.

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2 I've been listening to the
3 discussion, and I think it is a case where we are
4 engaged in a lot of legal technicalities, but
5 distancing ourselves from the realities of the
6 situation.

7 A vendor, like any other
8 businessperson, obviously will decide, will have to
9 decide, do I improve this location, do I make it
10 more attractive, do I bring in some additional
11 equipment which may result in the food tasting
12 better, all sorts of things that businessmen have to
13 deal with.

14 It is unrealistic to expect vendors
15 to want to put in money, if all that's going to
16 happen at the end is that they lose it.

17 And, therefore, I am suggesting that
18 this is a realistic problem. We may not be able to
19 solve it today, but I think it is something that
20 deserves our attention.

21 If we say we treat vendors as
22 businesspeople -- and we have said that during the
23 course of this discussion -- then I think we have to
24 do something to see that they are treated in a
25 fairer method.

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2 I don't see how we can resolve that
3 question today, but I just want to make it clear, I
4 think it is a live problem that has to be dealt
5 with.

6 PRESIDENT STREET: Thank you very
7 much.

8 COUNCILMAN COHEN: Thank you.

9 PRESIDENT STREET: Is there anyone
10 else who wishes to comment at this time? Hopefully
11 not.

12 Thank you very much.

13 This brings us to the end of our
14 Public Hearing officially.

15 (Public Hearing adjourned.)

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2 COUNCIL OF THE CITY OF PHILADELPHIA
3 PUBLIC MEETING
4 of the
5 COMMITTEE OF THE WHOLE
6 - - -
7 Thursday, April 16 1998
8 - - -
9 Public Meeting conducted by the Committee
10 of the Whole, held in Room 400, City Hall,
11 Philadelphia, Pennsylvania, on the above date, to
12 consider action on the following:
13 BILL 980022
14 - - -
15 PRESENT:
16 COUNCILMAN JOHN F. STREET, Chair
17 COUNCILWOMAN ANNA C. VERNA, Vice-Chair
18 COUNCILWOMAN HAPPY FERNANDEZ
19 COUNCILMAN JAMES F. KENNEY
20 COUNCILMAN W. THACHER LONGSTRETH
21 COUNCILWOMAN AUGUSTA A. CLARK
22 COUNCILMAN DAVID COHEN
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COUNCILWOMAN DONNA REED MILLER
COUNCILMAN BRIAN J. O'NEILL
- - -

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2 PRESIDENT STREET: We are now in our
3 Public Meeting.

4 The Chair recognizes Councilwoman
5 Blackwell for a motion that the proposed amendments
6 be adopted.

7 COUNCILWOMAN BLACKWELL: So moved,
8 Mr. President.

9 (Duly seconded.)

10 PRESIDENT STREET: All in favor let
11 it be known by saying aye.

12 Those opposed say nay.

13 The ayes have it. The amendments are
14 adopted.

15 The Chair recognizes Councilwoman
16 Verna for a motion on Bill No. 980022.

17 COUNCILWOMAN VERNA: Mr. President, I
18 move that Bill No. 980022 be reported out of
19 committee with a favorable recommendation, as
20 amended.

21 (Duly seconded.)

22 PRESIDENT STREET: All in favor let
23 it be known by saying aye.

24 Those opposed say nay.

25 The ayes have it.

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2 COUNCILWOMAN Verna: Excuse me. Is
3 there a request for suspension?

4 Therefore, I also move that the Rules
5 of Council be suspended so as to permit
6 consideration at our next session of Council.

7 (Duly seconded.)

8 PRESIDENT STREET: All in favor let
9 it be known by saying aye.

10 Those opposed say nay.

11 The ayes have it. Bill No. 980022
12 will be reported from this committee with a
13 favorable recommendation, and a recommendation that
14 the Rules of Council be suspended to permit first
15 reading at our next session of Council.

16 Thank you very much. We would
17 appreciate it very much if the members of City
18 Council would go to the Council Caucus Room at your
19 leisure.

20 (Public Meeting adjourned at 10:35
21 a.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Thursday, April 16, 1998, were
reported fully and accurately by me, and that this
is a correct transcript of same.

RE: COMMITTEE OF THE WHOLE

DEBRA A. WHITEHEAD, RPR