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COUNCIL OF THE CITY OF PHILADELPHIA
PUBLIC HEARING AND PUBLIC MEETING
BEFORE COUNCIL COMMITTEE ON LICENSES AND INSPECTIONS

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, 6/5/01
10:09 a.m.

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BILL 000602 - Amending Subcode PM of Title 4 of the
Philadelphia Code, entitled "The Philadelphia
Property Maintenance Code," by providing for the
suspension and revocation of a residential rental
property license, multifamily dwelling license,
rooming house license, or vacant lot or building
license for failure to correct code violations
related to licensed properties or for failure to pay
fines and costs imposed for such violations and by
providing that there shall be no right to recover
possession of the premises or to collect for rent
during a period of license suspension or revocation,
all under certain terms and conditions.

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BILL 000657 - Being held until L&I hearing on
6/12/01, 10 a.m.

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PRESENT: COUNCILMAN RICHARD T. MARIANO, Chair
COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILMAN DARRELL CLARKE, Vice Chair
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK DICICCO
COUNCILMAN ANGEL L. ORTIZ
COUNCILWOMAN FRANK RIZZO

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VINCENT VARALLO ASSOCIATES, INC.
Registered Professional Reporters
Eleven Penn Center, Suite 600
Philadelphia, PA 19103
(215) 561-2220

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I N D E X

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Bill 000657

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Otis Haigler, Jr. 4

Legislative and Regulatory Affairs Manager

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Department of Licenses and Inspections

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Darryl Zaslow, Esq. 7

Home Owners Association of Philadelphia

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P R O C E E D I N G S

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COUNCILMAN MARIANO: We're here for a public hearing for L&I. We have a quorum: myself, Councilman Mariano; Councilman Clarke, Councilman Rizzo, and Councilwoman Blondell, and Councilwoman Blackwell.

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Will the clerk will please read the title of the first bill.

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THE CLERK: Bill No. 000602, an ordinance amending Subcode PM of Title 4 of the Philadelphia Code, entitled "The Philadelphia Property Maintenance Code," by providing for the suspension and revocation of a residential rental property license, multifamily dwelling license, rooming house license, or vacant lot or building license for failure to correct code violations related to licensed properties or for failure to pay fines and costs imposed for such violations and by providing that there shall be no right to recover possession of the premises or to collect for rent during a period of license suspension or revocation, all under certain terms and conditions.

24

(Witness comes forward.)

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COUNCILMAN MARIANO: Are you going to

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2 testify Mr. Haigler?

3 MR. HAIGLER: Yes.

4 COUNCILMAN MARIANO: You're going to
5 testify for the Administration?

6 MR. HAIGLER: Yes, sir.

7 COUNCILMAN MARIANO: Thank you, sir.
8 Please go ahead with your testimony.

9 MR. HAIGLER: Good day, Councilman
10 Mariano and members of the Committee. I am Otis
11 Haigler, Jr., Legislative and Regulatory Affairs
12 Manager for the Department of Licenses and
13 Inspections.

14 Today I'm here to provide testimony on
15 000602, which if enacted, will amend the
16 Philadelphia Property Maintenance Code by providing
17 for the suspension and revocation of licenses issued
18 by the Department pursuant to the property
19 maintenance code for failure to correct code
20 violations and pay fines and costs imposed for such
21 violations.

22 The Department offers no objections to
23 the enactment of this bill with the proposed
24 Administration amendments and will work
25 cooperatively with Councilwoman Krajewski and other

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2 members of Council to address the concerns expressed
3 in the bill.

4 We in Licenses and Inspections
5 understand the frustration of Council and the public
6 regarding the problems associated with the failure
7 of persons to correct violations in a timely manner.
8 This bill, along with other tools such as the
9 enactment of Bill No. 980711, giving us the
10 authority to issue code violation notices tickets
11 for certain code violations, will strengthen our
12 enforcement efforts to gain compliance for
13 violations that have been ignored in the past. The
14 Department will continue to use all of its resources
15 to gain voluntary compliance for violations, which
16 is the ultimate goal of code enforcement.

17 Thank you for the opportunity to allow
18 the Department to provide this testimony. I will be
19 happy to answer any questions you may have at this
20 time.

21 COUNCILMAN MARIANO: Mr. Haigler, will
22 you read the amendment into the record.

23 MR. HAIGLER: Sure.

24 Proposed amendments to Bill 000602,
25 under Section PM-102.7.2, Suspension and

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2 Revocation: Any license issued pursuant to the
3 provision of this code shall be -- strike the
4 bracket before the word "subject to" and insert
5 "subject to, bracket, revocation" to read as
6 follows:

7 "Any license issued pursuant to the
8 provisions of this code shall be subject to
9 suspension by the Department for failure to comply
10 with the requirements of this code after a
11 re-inspection has been made to determine compliance
12 pursuant to Section A-503.1 of the administrative
13 code, or for failure to pay any fine and/or cost
14 imposed under this code or the administrative code,
15 and such suspension shall continue until there has
16 been compliance and until any unpaid fines and costs
17 have been paid.

18 "If a person has had a license suspended
19 under this provision on three occasions within a
20 period of three years, then each subsequent failure
21 to comply with the requirements of this code or
22 failure to pay any fine and/or costs imposed under
23 this code or the administrative code shall result in
24 revocation of the license, and the person shall not
25 be permitted to apply for a any new license under

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2 this section for one year after such revocation.

3 The Department shall provide written notice and an
4 opportunity for a hearing prior to any suspension or
5 revocation of a license under this section."

6 COUNCILMAN MARIANO: Thank you,
7 Mr. Haigler.

8 Any questions from anyone of the
9 committee of Mr. Haigler?

10 (No questions.)

11 COUNCILMAN MARIANO: Seeing none, we
12 have some more witnesses. Mr. Darryl Zaslow, will
13 you please come to the table.

14 Mr. Haigler, you might want to hang
15 around, all right?

16 MR. HAIGLER: Yes, sir.

17 (Witness comes forward.)

18 COUNCILMAN MARIANO: Good morning,
19 Mr. Zaslow. State your name and spell it for the
20 record.

21 MR. ZASLOW: Darryl Zaslow, Z-A-S-L-O-W.

22 COUNCILMAN MARIANO: And the group
23 you're testifying on behalf of.

24 MR. ZASLOW: On behalf of the Home
25 Owners Association of Philadelphia that is named

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2 HAPCO.

3 COUNCILMAN MARIANO: Thank you.

4 MR. ZASLOW: Thank you.

5 To members of Council, Henry Ford had no
6 license to drive his first automobile. Driving a
7 wagon on the street was considered a fundamental
8 right, not a privilege which the government can
9 withhold. In our day, we take it for granted that a
10 license is necessary for driving an automobile and
11 that that license can be suspended or revoked upon
12 severe and abusive violations.

13 We believe, however, that the government
14 should act sparingly in revoking or refusing to
15 provide a license when declaring that something
16 which was a fundamental right, the right to own
17 property, is now licensed by the State.

18 The City of Philadelphia has already
19 declared that you have the right -- and, in fact,
20 you do so have that right by law -- to suspend a
21 license for rental properties and to require a
22 license for rental properties. Before such a
23 license is granted, a property needing to meet
24 standards, which you have set. But that's an
25 extraordinary power, the power to grant a license,

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2 to say to me as an attorney, which I am, that you
3 may not practice law upon a certain violation
4 occurring or to say to any of us that you may not
5 drive an automobile upon the occurrence of a certain
6 level of violation.

7 And in the same way, when you say to a
8 property owner whose business is providing good and
9 decent housing in our city that if you have some
10 violation on your property, you're going to lose
11 your license to collect your rents and to operate
12 your property. That's the severest penalty that a
13 government can impose upon a business person, short
14 of saying that the conduct that you're now engaged
15 in is criminal.

16 So we would suggest that there needs to
17 be some concern over the language of the bill which
18 provides that upon the occurrence of one single
19 violation, that an owner is unable to correct, that
20 that person's license to collect rent on that
21 property, to evict a tenant, to deal with a tenant
22 who's creating a nuisance is going to be suspended.

23 Three violations occurring over no set
24 length of time and arising to three violations which
25 are uncorrected, revoking a license permanently for

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2 this period of a year, not permitting an owner to go
3 into City Hall and get other licenses for other
4 pieces of real estate for three violations is also a
5 severe penalty of the highest order.

6 I would suggest with all due respect to
7 the members of Council that we could send a team
8 through this very building -- in fact, probably
9 through this very room -- and find a violation.

10 COUNCILMAN MARIANO: Mr. Zaslow, up in
11 my office, you could find about 120 violations, and
12 if you do that and document it for me and get it to
13 the right people, I would appreciate that 'cause
14 I've been complaining for a long time. You're
15 absolutely right.

16 MR. ZASLOW: Thank you, Councilman.

17 COUNCILMAN MARIANO: Thank you.

18 MR. ZASLOW: Thank you.

19 From the vantage point of someone who
20 needs to make a living from it is if upon the
21 occurrence of just one violation, your right to deal
22 with the property is suspended, that's a problem.

23 Taking a look at Bill 602, before this
24 amendment that was just read into the record, the
25 bill as it stood dealt with the issue of delegation

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2 of legislative authority. As the members of Council
3 well know, you are not permitted by law to delegate
4 your legislative power to an administrative agency.
5 You as the elected officials are the ones elected to
6 do the thinking as to what you want the policy to be
7 and your administrators are to just administratively
8 carry it out.

9 Now, the bill as originally written with
10 this terrible harshness of a suspension for one
11 violation or one revocation permanently for three is
12 very clear in the bill and is not a violation of the
13 standard of not delegating legislative authority.
14 The way the bill is originally written, it was
15 terribly harsh but it didn't run afoul of the
16 requirement that you not impermissibly delegate
17 legislative authority.

18 The bill is clear. You say to the
19 people in L&I, if there's a violation you suspend
20 it, that's the started period. Now, we argue with
21 that standard and it's most appreciated by HAPCO and
22 all of the people providing decent housing in this
23 city your willingness to listen and to contemplate
24 the amendment which has been proposed this morning,
25 the amendment which gave discretion to L&I to decide

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2 whether or not there should be a suspension. That's
3 appreciated because now we're giving some human
4 thought to it, not just to mechanically suspend a
5 license. There are always extenuating
6 circumstances.

7 The problem with the amendment is, is
8 that the amendment now precisely runs afoul of the
9 mandate that you not delegate legislative authority
10 to an administrative agency. That's what has
11 occurred with the amendment. You're saying to the
12 administrative agency, If you think you should
13 suspend it, suspend it, and if you don't think you
14 should suspend it, then don't, without providing a
15 standard. We would suggest, with all due respect,
16 that that is inappropriate and impermissible.

17 The law provides for what we call "the
18 heart of due process." As we all know, the very
19 heart of due process is notice and an opportunity to
20 be heard, and you've given property owners facing
21 this drastic suspension of license, you've given
22 them that right. They have a right to have a
23 hearing.

24 The problem with the bill is that in
25 giving the right to have a hearing, this due process

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2 right to be heard, there are no standards in the law
3 which says what is the standard for whether or not
4 the right should be granted or not. There are no
5 standards. It says, and it's very nice, you have
6 the right to go and file an appeal.

7 But once the appeal is placed, what are
8 the standards? From the point of view of the board
9 who will be sitting there, what standards should
10 they apply? From the standpoint of property owner
11 or an attorney who wants to bring a case before the
12 board, how do we know if we have a frivolous case or
13 a case which can be argued? Surely, it's not just
14 whether or not the board feels sorry for the owner;
15 we appreciate that as well.

16 But there needs to be something of a
17 more precise standard. And we would suggest that
18 the amendment which we're hearing read this morning
19 does not correct that problem. As a matter of fact,
20 it creates the problem.

21 We also would ask Council to focus on
22 another constitutional issue, which is the
23 interference by government in the right of private
24 contract. America is built on the greatness of
25 enforcing private contracts between individuals.

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2 We're not some big collective that people can't make
3 their own agreements. Everybody can have a private
4 contract.

5 In the law, the government does not have
6 the right to interfere with a private contract
7 except in limited circumstances, and those
8 circumstances are where the contract may be illegal,
9 there's a danger arising out of the contract; or in
10 the housing field, it's been judicially determined
11 that if the property is unfit for human habitation,
12 then the government is going to step in and say, No,
13 we're going to interfere with that contract. You,
14 Mr. Property Owner, cannot have a contract which
15 says I'm going to rent an unfit house.

16 We would suggest, however, looking at
17 the matter from a legal point of view and a
18 constitutional point of view that the interference
19 with the contract between the landlord and the
20 tenant suspending the license but the ripple effect
21 of it being that the ability to collect rent is
22 suspended, the ability to evict a tenant is
23 suspended, the ability to operate your business and
24 your property is suspended because the license is a
25 requirement to operate your business.

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2 So we would suggest that the severity of
3 the penalty here, the very severe penalty which is
4 being placed upon the property owner is far beyond
5 what the law would permit to say is a protection of
6 the public from a constitutional basis.

7 We would ask that Council consider
8 considering the bill by way of further amendment as
9 may be appropriate, contemplating an easing of the
10 admirable concern to make properties better but
11 recognizing that suspending the right of every
12 property owner in this city upon a single violation
13 and a revocation upon three violations. Violations,
14 as we all know, can be of the most minuscule nature;
15 it can be the tiniest violation which an owner who
16 knows 30 days for a re-inspection is such a short
17 time. Someone is away for a week and they're busy
18 for a week and they're sick for a week and they've
19 lost their time limit and their license is
20 suspended.

21 Council, HAPCO appreciates your concern
22 for the needs of providing housing in Philadelphia
23 and we would request that Bill 602 be subjected to
24 further review and refinement of appropriate
25 standards truly warranting the critical action of

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2 the suspension and revocation of a hard-earned
3 license.

4 I thank you for your attention.

5 COUNCILMAN MARIANO: Thank you,
6 Mr. Zaslow.

7 Any questions for this witness? And I
8 want Mr. Haigler -- do you want to comment on a
9 couple things Mr. Zaslow said?

10 Councilman Rizzo has a question first.

11 COUNCILMAN RIZZO: For Haigler, when
12 he's done.

13 COUNCILMAN MARIANO: Oh, for Haigler?
14 We'll let Haigler do his thing.

15 Mr. Zaslow, stay.

16 Mr. Haigler?

17 MR. HAIGLER: Yes, Councilman Mariano.
18 In reference to giving the Department the discretion
19 to determine whether or not to suspend or revoke a
20 license, under the current provisions of the code,
21 which is already currently the law, if I would read
22 under Section PM-102.7.2, this deals with
23 revocation, there was no provision in there before
24 for suspension, so suspension is more or less a
25 mitigating factor before we went straight to

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2 revocation.

3 And under the provisions of the current
4 law, as I read it, under this section, it says: Any
5 license issued pursuant to the provisions of this
6 code shall be subject to revocation. So we inserted
7 -- or it was inserted the word "suspension," and
8 "revocation" was deleted from that provision. So
9 there was already discretion given under that
10 section; it was given for revocation, not
11 suspension. So, in essence, this mitigates it a
12 little bit.

13 As far as the administrative hearing
14 process, the Department currently conducts
15 administrative hearings now for certain violations
16 of the code. I established an administrative
17 hearing process when I was chief of the Commercial
18 Industrial Fire Unit primarily to help the
19 homeowners out, because to a certain extent,
20 homeowners were being held subject to problems that
21 their contractors were responsible for. Like, for
22 instance, with submitting reports, documents for
23 certain types of work that was done by the
24 contractor, the contractor had not submitted the
25 report to document, we would cite the homeowner for

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2 not having those reports and documents in our
3 possession. So we would conduct administrative
4 hearings periodically to bring the homeowner in
5 because they paid the contractor and they were under
6 the assumption that the contractor did whatever they
7 were supposed to do.

8 COUNCILMAN MARIANO: And they didn't do
9 it.

10 MR. HAIGLER: And they didn't do it. So
11 we brought the homeowner in before we sent them to
12 court. So that was a way of trying to resolve that
13 issue before we would send the homeowner or the
14 person who owned the property to court. That was
15 that little bit of a stopgap measure that we placed
16 in place.

17 Now, we've been doing this within the
18 Department for years administrative hearings for
19 various code violations, various units of the
20 Department does it. They do perform that service
21 for the public. So I just wanted to clarify that
22 this is not something new.

23 COUNCILMAN MARIANO: Thank you,
24 Mr. Haigler.

25 Councilman Rizzo, you have a question

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2 for Mr. Haigler?

3 COUNCILMAN RIZZO: Yeah.

4 Mr. Haigler, I just want to take a
5 minute of your time. You heard the exchange about
6 the condition of public buildings. I'd like to talk
7 about for a moment a double standard. Could you
8 describe L&I's involvement in inspecting public
9 buildings versus the private sector and I'd like to
10 give you an example and have you comment on it.

11 If you inspected, or L&I inspected, a
12 building and it didn't have panic bars on the
13 exterior doors, they most likely would -- especially
14 if they're dead-bolted would be cited. In this
15 building, City Hall, you need a key to get out of
16 this building in the event of an emergency, fire,
17 panic, people could be trapped in this building.

18 Why do we allow conditions like that to
19 exist in public buildings when we won't tolerate
20 that in the private sector?

21 MR. HAIGLER: We shouldn't.

22 COUNCILMAN RIZZO: But we do.

23 (Unintelligible, parties talking over
24 each other.)

25 COUNCILMAN RIZZO: When I first came

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2 here to government, I came from the private sector
3 and had some experience in corporate safety. And I
4 asked the question and I was told that public
5 buildings are exempt from the same standards that
6 public buildings are.

7 MR. HAIGLER: Well, then I would
8 appreciate you looking at the doors on this
9 building. Councilman Mariano indicated about the
10 conditions in his office.

11 MR. HAIGLER: Because as chief of the
12 Commercial Industrial Fire Unit, I can unequivocally
13 tell you that when I was in charge of the inspectors
14 that were out doing the inspections, we wrote up all
15 kinds of schools for locks on doors. We wrote up
16 all kinds of public buildings.

17 COUNCILMAN MARIANO: Mr. Haigler, will
18 you cite City Hall today? I mean, would you do
19 that? Seriously.

20 COUNCILMAN RIZZO: If you have --

21 MR. HAIGLER: I believe City Hall has
22 been cited in the past for violations of the code.

23 COUNCILMAN RIZZO: Well, what's done
24 about it?

25 MR. HAIGLER: I can't tell you that, I

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2 really don't know. That's in the enforcement
3 process and --

4 COUNCILMAN RIZZO: Then, Mr. Haigler,
5 then you're wasting L&I inspectors' time if you're
6 just going to be citing public buildings and not
7 doing anything about it. Today, I'd appreciate --

8 MR. HAIGLER: It may be in the court
9 system --

10 COUNCILMAN RIZZO: -- you looking at the
11 exit doors on the ground floor of this building and
12 tell me if them being dead-bolted is an appropriate
13 -- is appropriate. And I think you know the answer
14 to that.

15 COUNCILMAN MARIANO: Thank you,
16 Councilman.

17 Let me just say Councilman DiCicco
18 joined us. Thank you, Councilman.

19 COUNCILMAN DICICCO: With all due
20 respect to my colleague, Councilman Rizzo, in case
21 you don't already know, there is a double standard
22 when it comes to public buildings and politicians
23 versus the private sector. I mean, all you need to
24 do is look around the City of Philadelphia and see
25 where political posters are allowed to flourish on

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2 every pole.

3 COUNCILMAN MARIANO: That's another
4 bill, Councilman.

5 COUNCILMAN DICICCO: God forbid if you
6 stand still too long in the City of Philadelphia,
7 someone will either attach an honor box to you or
8 staple a political poster.

9 So we're talking about urban blight.
10 And interestingly enough this week, there's a major
11 bill that has something to do with billboards. It
12 is okay for certain groups of people who get a half
13 million dollars to support billboards, but political
14 posters, obviously, are acceptable to everyone but
15 the private sector, so there is always a double
16 standard when it comes to government and government
17 officials.

18 Thank you.

19 COUNCILMAN MARIANO: Thank you,
20 Councilman DiCicco, for that statement. It was
21 well-intentioned for the record.

22 Any other questions for these
23 witnesses? I want to move this along if we can.

24 Councilman Cohen, who's not on the
25 committee but is a member of Council -- this is on

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2 the first bill, Councilman, we're not to the second
3 one.

4 COUNCILMAN COHEN: Is this the bill on
5 the political posters?

6 COUNCILMAN MARIANO: No, sir.
7 Councilman DiCicco just couldn't save himself. He
8 jumped ahead and he will be cited for that.

9 COUNCILMAN COHEN: He must be anxious
10 for the --

11 COUNCILMAN MARIANO: You can give him --

12 COUNCILMAN DICICCO: No, I'm just trying
13 to figure out how I can get a half a million dollars
14 for every community group in my district.

15 COUNCILMAN MARIANO: Well, maybe every
16 politician will give you a half a million dollars
17 to --

18 COUNCILMAN DICICCO: And since you were
19 a part of that deal, Councilman, I'm going to come
20 to you after Thursday to try to figure it out for
21 me.

22 Thank you.

23 COUNCILMAN MARIANO: And Councilman
24 Cohen is a senior member of Council so write him up
25 on that. He gets a gig for being out of order. I

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2 gave him a little leniency.

3 Thank you.

4 COUNCILMAN COHEN: (Inaudible, off-mic.)

5 COUNCILMAN MARIANO: No, this is the
6 first bill; we're not to the second bill, okay?

7 COUNCILMAN COHEN: We're not to the
8 second bill, okay.

9 COUNCILMAN MARIANO: So seeing no
10 questions on Bill No. -- for these witnesses on Bill
11 No. 000602, I'm going to do something a little
12 different here for expediency. At this time, I'm
13 going to recess the public hearing and go right to
14 the public meeting, and then I'm going to come back
15 into the public hearing and introduce the second
16 bill, but we're not going to do anything with it
17 today.

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2 COUNCILMAN MARIANO: So at this time, we
3 will recess the public hearing on Bill 00602 and
4 enter the public meeting, okay?

5 I'll make a motion?

6 COUNCILMAN CLARKE: I move that Bill No.
7 602 be reported out with a favorable recommendation
8 as amended.

9 COUNCILMAN DICICCO: You need to make a
10 motion on the amendment first.

11 COUNCILMAN CLARKE: I make a motion on
12 the amendment on Bill No. 602.

13 (Duly seconded.)

14 COUNCILMAN MARIANO: Okay, Bill No. 602,
15 we're going to vote on the amendment. It was
16 already entered into the record and we want to vote
17 on that amendment in the public hearing.

18 COUNCILMAN ORTIZ: Okay, it's been
19 seconded.

20 COUNCILMAN MARIANO: Okay, it's been
21 read and seconded.

22 All those in favor, say aye.

23 Those opposed, say nay.

24 Seeing none, the amendment pass.

25 Now we're going to vote on the bill as

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2 COUNCILMAN MARIANO: Now we're going to
3 go back and we're going to recess the public hearing
4 -- we're in a public meeting. Now we're going back
5 to go into the public hearing. Now we're going to
6 recess the public meeting and go into the public
7 hearing. The public hearing committee of Licenses
8 and Inspections concerning Bill No. 000657 will
9 stand in recess until June 12, 2001, at 10 a.m.

10 Thank you.

11 (Adjourned 10:33 a.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Tuesday, June 5, 2001, were reported
fully and accurately by me, and that this is a
correct transcript of same.

RE: COUNCIL COMMITTEE ON LICENSES AND INSPECTIONS
BILL NO. 000602

_____,
JOSEPHINE CARDILLO,
Registered Professional Reporter