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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING AND PUBLIC MEETING

4

BEFORE THE COUNCIL COMMITTEE ON

5

COMMERCE & ECONOMIC DEVELOPMENT

6

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, November 10, 1998
2:30 p.m.

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Bill No. 980716 - An ordinance amending Title 16
of The Philadelphia Code, entitled "Public
Property," by prohibiting billboards, commercial
signs, or other advertising signs on City property
unless Council shall have, by ordinance,
authorized such signs, all under certain terms and
conditions.

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PRESENT: COUNCILMAN MICHAEL A. NUTTER, Chairman
COUNCILMAN DAVID COHEN
COUNCILWOMAN JANNIE BLACKWELL
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN ANGEL L. ORTIZ

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2 COUNCILMAN NUTTER: Ladies and
3 gentlemen, we now have a quorum of the Committee
4 on Commerce and Economic Development. I'd like to
5 get the hearing started. We apologize for any
6 delay or inconvenience.

7 I'm Councilman Nutter, Chair of the
8 Committee. To my right is Councilwoman Donna
9 Reed-Miller. To my left, appointed by Council
10 President Street for today's hearing, is
11 Councilman Cohen. To his left is Councilman Ortiz
12 and -- I'm sorry, it's actually Councilwoman
13 Blackwell to my right and Councilwoman Donna
14 Reed-Miller to my left. Sorry about that.

15 This is a public hearing on Bill No.
16 980716, introduced October 8, 1998. The title of
17 the bill is: Amending Title 16 of The
18 Philadelphia Code, entitled "Public Property," by
19 prohibiting billboards, commercial signs, or other
20 advertising signs on City property, unless Council
21 shall have, by ordinance, authorized such signs,
22 all under certain terms and conditions.

23 Members of the committee have a
24 schedule of a list of witnesses. We've received a
25 number of calls inquiring about citizens wanting

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2 to testify. Others have sent letters, and we will
3 address those in a few minutes, .

4 Just one housekeeping item. The City
5 Solicitor and Mr. Feder are here, although they
6 are not scheduled to testify at this moment, and
7 it is my understanding that they have one other
8 matter somewhere else in City Hall to deal with.

9 For purposes of keeping the committee
10 moving, what I'd like to do is acknowledge their
11 presence, and they will make themselves available
12 later on, after their meeting that they need to
13 attend.

14 Councilmembers have a copy of the
15 testimony from the City Solicitor's Office, as
16 well as a -- I'm sorry, we'll get you one, it was
17 sent up, Councilman -- as well as a memo from
18 Richie Feder to the City Solicitor, and we'll get
19 one for Councilwoman Clark, articulating a bill if
20 not an opinion with regard to Bill 980716.

21 The Solicitor and Mr. Feder are excused
22 to go to their meeting, and we anticipate seeing
23 you some time later on today. Thank you.

24 The first witness for today's hearing
25 is Mary Tracy for the Society Created for the

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2 Removal of Urban Blight. Miss Tracy, come to the
3 -- Councilman, what do you call this now? This
4 is not the witness table?

5 Councilman Cohen doesn't like to call
6 it the "witness table"; some people call it the
7 "hot seat."

8 (Mary Tracy comes forward.)

9 COUNCILMAN NUTTER: Please identify
10 yourself for the record and proceed with your
11 testimony.

12 MS. TRACY: Good afternoon. My name is
13 Mary Tracy, and I am the President of SCRUB, which
14 stands for "The Society Created to Reduce Urban
15 Blight."

16 SCRUB was formed in 1990 to enable
17 community groups, health organizations, religious
18 organizations, and the business community to speak
19 as one voice on the issue of outdoor advertising.
20 The coalition, through a citywide network of these
21 groups, lobbied vigorously for the passage of the
22 1991 sign control ordinances.

23 SCRUB strongly supports Bill No. 980718
24 for the same reasons that we supported the 1991
25 sign control ordinances, agreeing with the

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2 legislators' finding at that time that the
3 excessive number of outdoor advertising signs:

4 Contributed to the visual clutter and
5 distracted from the aesthetic beauty of our city;

6 That billboard proliferation
7 contributed to the appearance of deterioration of
8 commercial and industrial areas and, therefore,
9 have a negative impact upon the economic vitality
10 of our city;

11 That outdoor advertising signs
12 jeopardize public safety by distracting
13 pedestrians and, to a greater extent, passing
14 motorists, since these signs, by their nature, are
15 erected in areas intended to be seen by drivers of
16 motor vehicles.

17 We also believe, as Council did, that
18 billboards can prevent a serious threat to the
19 health and welfare of Philadelphia's children
20 because of high concentration of alcohol and
21 tobacco advertising that are promoted on
22 billboards.

23 Billboards dominate or obscure
24 important scenic vistas and gateway areas and
25 detract from the beauty of Philadelphia. Council

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2 determined in 1991 by a unanimous vote that the
3 removal of these signs would protect public and
4 private investment, promote economic development
5 and commercial revitalization.

6 Our ordinance was hailed in 1991 as the
7 first city in the United States to really set
8 tough standards for outdoor advertising signs.
9 Philadelphia's lack of enforcement of these signs
10 -- of this ordinance is a national
11 embarrassment. There is a constitutional crisis
12 in our city when an elected body passes an
13 ordinance that is not enforced by the
14 administration.

15 The major areas of concern regarding
16 this lack of enforcement are the identifying tags
17 which should be affixed to every licensed sign in
18 this city. They have never been distributed.

19 There are also over 1500 illegal signs,
20 signs that have never been licensed have never
21 been licensed, have never paid any money to the
22 administration of this city and yet continue to
23 exist, and most of these signs are located in our
24 poorest neighborhoods, and they proliferate with
25 messages of tobacco and alcohol.

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2 There's also in the ordinance that was
3 passed reconstruction of billboards in certain
4 prohibited areas was prohibited. The City of
5 Philadelphia has never monitored that
6 reconstruction, and we actually know of several
7 locations where new billboards have emerged that
8 should have actually been removed because they
9 were located in prohibited areas.

10 And while I've been speaking about the
11 1991 lack of enforcement of those ordinances, I'd
12 also like to just mention for the committee that
13 the 1988 Vine Street Expressway bill had a clause
14 in there for amortization, which actually meant
15 that all of those signs should have been removed
16 by 1993. Not only have those signs not been
17 removed, but we have seen the Zoning Board of
18 Adjustment grant variances to add new signs in
19 that prohibited area.

20 And, lastly, I would just like to say
21 that SCRUB and the community has been at wit's end
22 trying to gain enforcement before the Zoning Board
23 of Adjustment of these fine laws that were passed
24 unanimously by City Council through the
25 intervention of neighborhood groups across the

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2 City. And despite the overwhelming support of
3 stronger sign-control laws and despite testimony
4 of neighborhood groups and SCRUB members before
5 every Zoning Board hearing, the Zoning Board of
6 Adjustment has granted 13 out of 16 variance
7 requests since this law was enacted.

8 The very first one that was -- the very
9 first Zoning Board variance that was granted was
10 to a property at 1200 Byberry Road, and I would
11 like to pass to the committee for references, this
12 particular location SCRUB appealed, and it went
13 all the way to the Commonwealth Court, and the
14 Commonwealth Court overtured that decision with
15 the very clear message that the billboard laws in
16 Philadelphia should be enforced, and that there
17 was no reason -- there was never a hardship that
18 could be proven to erect a billboard in a
19 prohibited area. And yet, the Zoning Board of
20 Adjustment continues to grant these variances.

21 And I'll be just very briefly 'cause I
22 know there's so many people here from the
23 community who are interested in this issue that
24 would like to speak today, and I don't want to
25 take a lot of time, but I think it's just

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2 important for everyone to understand just how
3 great of a problem this has been.

4 On Front Street, in the food
5 distribution area, which has always prohibited
6 billboards, it's an area where our taxpayers have
7 paid over \$21 million to redevelop that land, and
8 any store or business that opened there signed a
9 deed restriction saying that they would never put
10 a billboard up.

11 And despite the long history of
12 billboards not being allowed in that area and an
13 ordinance later being imposed saying that no
14 billboard could be allowed in that area, on
15 February 6, 1997, the Zoning Board approved four
16 billboard locations to be erected in the food
17 distribution center.

18 And then about six months later, on New
19 State Road, another non-accessory sign across from
20 a park, another prohibited area, the Zoning Board
21 granted a variance allowing that billboard to go
22 up.

23 And then on Vine Street, an area that
24 was within 660 feet of a school, a park, the
25 Benjamin Franklin Bridge, and within 500 feet of

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2 four other billboards -- not to mention that it's
3 in sight of the Independence National Mall -- and
4 the billboard would be placed on the same rooftop
5 as an existing sign.

6 I mean it's hard to image that a body,
7 a governing body in this city would so ignore such
8 clear laws and grant variances to this industry.
9 But they have, and SCRUB has made appeals.

10 And recently, First Union Center has
11 received two variances to erect billboards in a
12 parking lot. A sports stadium is a prohibited
13 area.

14 You're not allowed to have more than
15 one sign on any one lot. You can't have signs so
16 close to I-95. These pretty much about I-95.

17 I mean, it just goes on and on. And
18 yet, these signs are granted variances.

19 COUNCILMAN NUTTER: Should we take it
20 as a major part of your testimony that you oppose
21 generally the placement of billboards on
22 publicly-owned property? Is that --

23 MS. TRACY: Yes. We oppose -- and I
24 know I've sort of gone off onto what the old law
25 was, and I apologize.

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2 COUNCILMAN NUTTER: It's okay, I
3 understand.

4 MS. TRACY: But I do think it's
5 important to understand why we've come here
6 today. And I think it's because not only is the
7 City not enforcing a law that was passed in 1991,
8 but now we are moving on to a whole new level. We
9 are saying, Well, why not join the industry in
10 putting up signs on City property? Hey, we all
11 can make money here.

12 And, you know, it's not -- it's not for
13 the City to use public land to make money on
14 billboards which our policy has been so clear
15 since 1991 and even before then, that billboards
16 are not considered an asset in the city, that they
17 do not promote tourism, that they do not attract
18 residents or new businesses.

19 And for the City to continue on in this
20 vein is something that SCRUB would like to see
21 stopped, and we strongly support this law.

22 COUNCILMAN NUTTER: Okay.

23 MS. TRACY: And before I end, I'd also
24 just like to pass up for the perusal of the
25 committee some correspondence between our

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2 Philadelphia Department of Transportation, which
3 strongly criticizes the granting of variances and
4 has said that that actually jeopardizes our
5 federal highway dollars, because not only are we
6 not following our own City guidelines and
7 ordinances, but the federal and state highway laws
8 are also being completely ignored at the granting
9 of these variances.

10 COUNCILMAN NUTTER: We'll get that
11 testimony from you.

12 County Cohen, do you want to ask a
13 question?

14 COUNCILMAN COHEN: You referred to the
15 Zoning Board granting variances for billboards.
16 If mystifies me, I know they've been doing it. My
17 understanding has always been that the only basis
18 for granting a variance is a hardship, and I
19 cannot understand how denying the Water Department
20 the right to put a billboard on its property is
21 any kind of hardship.

22 So I think we're going to have to
23 revisit it. I don't know whether legally or not
24 Council has the power -- I believe it does -- to
25 pass an ordinance that takes away the right of the

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2 Zoning Board to issue variance with respect to
3 billboards 'cause I don't know of any legal basis
4 for the grant of variance except an indiscriminate
5 abuse of power by the Zoning Board, which is what
6 I regard has been happening.

7 So I would just like to make that
8 comment, Mr. Chairman, and I hope I didn't go
9 beyond what you intended, but if anyone wants to
10 address that subject, we're ready for combat on
11 it.

12 Thank you.

13 COUNCILMAN NUTTER: Councilman,
14 regardless of whether I thought you had gone
15 beyond what I intended, would have gone there
16 anyway, so I really don't --

17 COUNCILMAN COHEN: Well, probably.

18 COUNCILMAN NUTTER: Yes.

19 MS. TRACY: It would certainly seem to
20 me that City Council's ordinances have been
21 greatly diminished, if not totally ignored,
22 through the process of the Zoning Board variance
23 applications. And I would believe that any
24 measure that could be taken to assure that
25 Councilmatic laws are being enforced in the city

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2 would be greatly necessary and I think, indeed,
3 necessary.

4 COUNCILMAN NUTTER: Okay. Thank you.
5 Any questions?
6 (No questions.)

7 COUNCILMAN NUTTER: Thank you very much
8 for your testimony.

9 COUNCILMAN COHEN: And thank you for
10 waging the battles the organization wages before
11 the Zoning Board and in the courts against the
12 grant of variances.

13 I just hope you continue. I think
14 every case ought to be battled all the way up to
15 the Supreme Court because I see no legal basis
16 whatever for the actions that the Zoning Board has
17 taken with respect to billboards.

18 MS. TRACY: Well, thank you,
19 Councilman. I agree with you but, it falls on a
20 very grass-roots organization with very limited
21 means, and it would be very much appreciated if
22 City Council could come to the rescue of the
23 enforcement of its own ordinances because it's
24 getting beyond our very limited means.

25 COUNCILMAN NUTTER: Okay, thank you.

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2 (Reverend Jessie Brown comes forward.)

3 COUNCILMAN NUTTER: Reverend Jessie
4 Brown, Acting Executive Director, National
5 Association for African-Americans for Positive
6 Imagery, and Uptown Coalition for Tobacco Control
7 & Public Health.

8 Please identify yourself for the
9 record.

10 REVEREND BROWN: I'm Reverend Jessie
11 Brown. You gave me all the hats I had on. I'm
12 also a clergy person here in Philadelphia.

13 I want to first remind of what we
14 actually said in the ordinance in 1991. And
15 provisions A, B, and C read as follows:

16 A. Existing regulations have done
17 little to prevent citywide proliferation of
18 commercial outdoor advertising signs, nor to
19 provide for an adequate source of funding to
20 administer the insurance of permits, licenses and
21 violations for inspections of these signs.

22 B. The excessive number of commercial
23 outdoor advertising signs contribute to the visual
24 clutter and distract from the artistic beauty of
25 the City of Philadelphia.

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2 And C. The proliferation of commercial
3 outdoor advertising signs contribute to the
4 appearance of deterioration in residential,
5 commercial and industrial areas of the city and,
6 therefore, negatively impact upon the economic
7 viability of these areas.

8 Now, what changed? And I raise that
9 question because we are here to support the bill.
10 The City has -- the Rendell administration has
11 blatantly failed to enforce the law as we worked
12 so hard to get it passed in 1991.

13 Even the provisions of the law that
14 said that all the billboards had to be licensed is
15 not being followed through. The distance between
16 billboards being more than 500 feet has not been
17 followed through. The tagging of all billboards
18 in the City has not been followed through. The
19 making sure that these billboards are not placed
20 in front of churches and other areas that young
21 people congregate have not been followed through.

22 And I see no reason at all for someone,
23 a poor corporate citizen as an outdoor sign
24 advertiser having to receive grant or any special
25 protection, whether under the laws of variance or

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2 under some variance or other some other provision,
3 and I think we should take this opportunity now to
4 stop the outdoor advertising industry from
5 continuing to proliferate the number of the
6 billboards, particularly in light of the flouting
7 of the law. It's most disappointing that
8 Philadelphia -- the Rendell administration seems
9 not to care whether communities are inundated with
10 outdoor advertising.

11 This past December, I found some kind
12 of disturbing trends. The outdoor advertising
13 deliberately did this, but it was part of our
14 preparation in looking at the billboard law. We
15 surveyed neighborhoods, selected neighborhoods of
16 comparable area in Philadelphia, looking at
17 neighborhoods in North Philadelphia, Northeast
18 Philadelphia, South Philadelphia, and so forth,
19 and we began to identify where in particular
20 tobacco and alcohol billboards and signage was
21 placed.

22 We quickly noticed that, first of all,
23 the African-American communities usually had twice
24 as many and as much as three times as many outdoor
25 advertising signs than there are in other

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2 comparable communities.

3 Secondly, we found somewhere upwards of
4 60 or 70 percent during the months of December
5 1997 to January of 1998, that 60 to 70 percent of
6 all of the signage in those communes were tobacco
7 and alcohol.

8 Even more disturbing to me was the fact
9 that even though we have the law on the books that
10 say they cannot put advertising up in front of our
11 churches, we found that a higher percentage of
12 those outdoor advertising signs were in front of
13 the churches in the African-American community.

14 I then took the responsibility to go
15 and check other parts of our neighborhoods,
16 whether it be Kensington or Northeast
17 Philadelphia, and I quickly found that I could not
18 find a single -- not one single outdoor
19 advertising sign that had tobacco or alcohol on it
20 in front of any religious institutions outside of
21 the African-American community, and that is a
22 disturbing, a very disturbing fact.

23 And now I also want to go one step
24 further from this meeting to lay a challenge on
25 the table. We know that there have been -- that

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2 they have not kept up and done what they wanted to
3 do with the billboard law, so why not treat all of
4 our legal billboards like all other legal notices
5 in the paper, putting in the addresses and how
6 much money they got from those billboards,
7 publishing them. The City could do it. And if
8 the City doesn't do it, I hope the news media
9 publishes them so that the communities can see how
10 they're being treated.

11 Secondly, regardless of what the
12 Rendell administration does about billboards, it
13 is clear to me that they want the communities to
14 go ahead and take matters into their own hands and
15 figure out how to take down the illegal billboards
16 that are still up and figure out what to do about
17 billboards.

18 Also, in that '91 law, there was a
19 provision there essentially saying that before we
20 do anything about outdoor advertising, we have to
21 make sure that the companies that are seeking
22 these things will feel that it's the law and not
23 just a simple request. All of us are held under
24 those kinds of restrictions or provisions. So
25 passing this law simply puts a dot on the i or

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2 crosses the t on something that's already been
3 passed once, which we're having to revisit again
4 some seven years later.

5 COUNCILMAN NUTTER: Reverend Brown.
6 Just for the record, and I think you said it
7 earlier, what is your particular view of this bill
8 as it relates to prohibiting, under certain terms
9 and conditions, billboards on public property?

10 REVEREND BROWN: Absolutely. I believe
11 that there should be no billboards on public
12 property, including billboards that are on the bus
13 shelters. Advertising should be removed even from
14 those, but particularly tobacco and alcohol. And
15 there is no reason why a private entity should be
16 able to make money off of public property.

17 COUNCILMAN NUTTER: Okay. One last
18 question. In the statement that you made, that
19 private entities should not make money off of
20 public property, one of the arguments I'm sure
21 we're going to hear at some point in time is that
22 not only will the private entity make money from
23 advertising revenue, but there is the prospect of
24 the public entity, or some group associated with
25 the public entity, that they might share in the

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2 proceeds from the revenues generated from a
3 billboard on public property.

4 Do you have any particular view of
5 that?

6 REVEREND BROWN: Sure. I would still
7 argue against it for the real reason why we didn't
8 want the proliferation of billboards, which is
9 that we didn't want to give the perception of the
10 deterioration of our neighborhoods and
11 communities. We wanted the quality of life to
12 appear to be bright, not gloomy or cast over by
13 big signs.

14 And since we have little or no laws in
15 Philadelphia that govern what goes on those
16 billboards -- in other words, content laws -- I
17 would be very, very skeptical to give the outdoor
18 advertising any more space to put up negative
19 images, negative information, tobacco, alcohol, or
20 gambling on these billboards.

21 COUNCILMAN NUTTER: Okay.

22 Councilman Cohen, any questions?

23 COUNCILMAN COHEN: Aren't you, Reverend
24 Brown, a plaintiff in a recent case in lobbying --
25 I think it's tobacco and --

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2 REVEREND BROWN: Absolutely.

3 COUNCILMAN COHEN: Well, I wanted to
4 commend you for that. Reverend Brown was very
5 instrumental, together with some others who are
6 here and others who are not here in the passage of
7 the original 1991 bill. The year of passage was
8 1991, but the activity to get the bill passed
9 started some four or five years before that.

10 And I think you're absolutely right. I
11 think in this case, the Rendell administration's
12 appearance, it looks very bad because, in fact, it
13 is very bad. Instead of ever doing anything to
14 enforce the law, they've come up with excuse after
15 excuse after excuse, and finally, apparently,
16 joined the opponents; that is, joined the people
17 they were supposed to be against, the
18 proliferation of billboards, and they're aiding
19 it.

20 As I understand it this bill, Mr.
21 Chairman, and I think that's what Reverend Brown
22 was referring to, basically, the 1991 law outlawed
23 the kind of billboards that this bill is also
24 aimed at protecting, except that this bill goes
25 one step beyond that -- even if a legal billboard

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2 could be put up, if it's on government property,
3 City property, it can't be put up even if it
4 otherwise meets the legal requirements.

5 REVEREND BROWN: Correct, that's how I
6 understand it.

7 COUNCILMAN NUTTER: That is true, yes.

8 COUNCILMAN COHEN: Thank you, Mr.
9 Brown.

10 REVEREND BROWN: Thank you.

11 COUNCILMAN COHEN: And thanks from the
12 whole community to you.

13 COUNCILMAN NUTTER: Councilman Rizzo?
14 I'm sorry.

15 COUNCILMAN RIZZO: Thank you, Mr.
16 Chairman.

17 Reverend Brown, I heard you mention the
18 bus shelters, and I'm presently working with the
19 administration. Many people aren't aware that the
20 bus shelters, as you mentioned, are public
21 property in that they don't belong to SEPTA; they
22 belong to the City of Philadelphia. Your concern
23 with advertising.

24 I'm also concerned that the City
25 administration allows alcohol and tobacco

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2 advertising on those bus shelters, and I'm pleased
3 to report that it appears that at the next renewal
4 of that advertising contract, that they will
5 prohibit alcohol and tobacco advertising on those
6 structures, but we're working on how we can make
7 this binding so that a new mayor, a new
8 administration won't allow alcohol and tobacco
9 advertising.

10 I heard what you said, that you would
11 like to restrict all advertising, but at least
12 it's a step in the right direction that my efforts
13 and my staff, we've been able to get an agreement
14 from the administration that when that contract
15 renews -- and I think it's in 2001 -- that the
16 alcohol and tobacco advertising will not be
17 allowed.

18 REVEREND BROWN: We would be more than
19 willing to work with your staff on constructing
20 even a -- particularly a content bill around
21 tobacco and alcohol advertising.

22 I recently convened a national
23 conference on August 8th, at Morgan State
24 University, on the billboard laws nationwide. We
25 have collected them and determined, of course,

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2 what the Supreme Court has upheld in those laws,
3 and we have model legislation that we could
4 certainly suggest to you, or at least pieces of
5 those legislation that would be appropriate for
6 Philadelphia, that could be used and legally be
7 upheld should there be a challenge to that in the
8 Supreme Court.

9 There is another piece to this that we
10 might want to discuss -- that we don't have to
11 wait on a law. The tobacco industry has already
12 conceded the notion that tobacco advertising --
13 that they have stopped advertising tobacco in at
14 least four states. Why wait? They could remove
15 them now, and we could go ahead and pass the law.

16 COUNCILMAN RIZZO: The Public Property
17 Commissioner is empowered to decline any
18 advertising that he chooses today. He could do
19 that, but he does not want to do that, and I'd be
20 pleased to hear what you just described.

21 But, again, in 2002, my staff informed
22 me, is when the contract renews. But I'm really
23 pleased to hear if there's a way that we could get
24 on this thing today, starting today.

25 And I'm also pleased that you're here

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2 today, and I learned additional information about
3 a subject that I have a lot of interest in.

4 REVEREND BROWN: We'd be more than
5 happy to work with you.

6 COUNCILMAN RIZZO: Thank you.

7 Thank you Mr. Chairman.

8 COUNCILMAN NUTTER: Sure. Thank you
9 very much, Reverend Brown.

10 Jeff Barg and Dave Nichols.

11 (Messrs. Barg and Nichols come
12 forward.)

13 COUNCILMAN NUTTER: If you could
14 identify yourself for the record and proceed with
15 your testimony.

16 MR. BARG: My name is Jeffrey Barg. I
17 am Chairman of TEACH, the Tobacco-free Education
18 and Action Coalition for Health. I have a very
19 brief statement and then I'd be happy to take any
20 questions you might have.

21 COUNCILMAN NUTTER: Okay.

22 MR. BARG: I thank you for the
23 opportunity to testify today.

24 I've enjoyed the privilege of working
25 with City Council and the Rendell administration

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2 on a number of successful tobacco prevention
3 initiatives. Together we are making it less
4 likely that our kids will die prematurely of
5 nicotine addiction.

6 But the tobacco industry has not given
7 up on seducing our kids, and we have still not
8 provided adequate protection for them. While it
9 has been several decades since we've banned
10 tobacco advertising on television and radio, our
11 kids are still exposed to countless tobacco ads on
12 billboards throughout the city -- even next to
13 schools, parks, playground, and churches.

14 Back in 1991, City Council attempted to
15 correct this, but the will of Council has been
16 thwarted. This is the first piece of legislation
17 I ever worked on so I remember it quite well.

18 My colleagues and I, flush from a
19 successful battle against R.J. Reynolds Tobacco
20 Company over release of a new brand of cigarettes
21 targeting African-Americans urged Council not only
22 to limit the number of billboards, their
23 concentration, and their placement near locales
24 full of children, but to also ban all tobacco
25 advertising on billboards. And I know Councilman

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2 Cohen will remember this well.

3 To my surprise, the ban of all tobacco
4 billboards was voted out of committee with a
5 favorable recommendation. But on the morning of
6 the final vote, the then-City Solicitor circulated
7 a legal opinion of the ban, advising that it
8 violated federal law. The tobacco advertising ban
9 was summarily stripped from the bill without
10 debate, and the weakened bill passed a week or two
11 later.

12 I must add that since then, tobacco
13 billboard limitations in Baltimore have withstood
14 legal challenge all the way up to the U.S. Supreme
15 Court.

16 But we supported the weakened bill
17 because we thought it would provide some level of
18 protection against child exposure to tobacco
19 advertising and to the concentration of tobacco
20 advertising in low-income neighborhoods, which
21 Reverend Brown was referring to before.

22 But, unfortunately, we were wrong. The
23 billboard companies have routinely flouted the
24 1991 law with impunity, aided by their appeals to
25 the Zoning Board. Now these same companies are

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2 hoping to further expand the number of billboards
3 in direct contradiction to the 1991 law by putting
4 billboards on City-owned property. Such a
5 proposal calls into question the credibility of
6 our City government.

7 Bill 980716 is a modest attempt to
8 forestall the further steamrolling of the City by
9 new billboards on City property. But the public
10 deserves more. At a minimum, this bill should
11 stipulate that there will be no tobacco
12 advertising on public property, period. And I
13 commend Councilman Rizzo for his proposal.

14 Council also should take measures to
15 ensure that the 1991 law is enforced, as intended.

16 And, finally, Council should re-examine
17 stricter limitations on tobacco billboards such as
18 are now existing in Baltimore and other cities
19 around the country.

20 Thank you.

21 COUNCILMAN NUTTER: Thank you.

22 Any questions? Councilman Cohen.

23 COUNCILMAN COHEN: Just a comment.

24 Everything I said about Reverend Brown also
25 applies to you, because you were two of the most

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2 stalwart stalwarts that we ever had against
3 billboards and in getting that 1991 bill passed.

4 And thanks for telling us about the
5 Baltimore situation.

6 I think the Council will be acting on
7 your recommendations. I think the bill, as
8 weakened back in 1991, ought to be restrengthened
9 again. And we will be taking your recommendations
10 very seriously.

11 Thank you.

12 MR. BARG: Thank you, Councilman.

13 COUNCILMAN NUTTER: Any other
14 questions?

15 (No further questions at this time.)

16 COUNCILMAN NUTTER: Thank you, thank
17 you very much.

18 I had a call to Dave Nichols, although
19 I did not see him come up.

20 Darlene Messina?

21 (Not present.)

22 COUNCILMAN NUTTER: Jane Rozmiarek?

23 (Jane Rozmiarek comes forward.)

24 COUNCILMAN NUTTER: Please identify
25 yourself for the record. And I'm sure you'll say

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2 your name exactly the way you want it said,

3 so. . .

4 MS. ROZMIAREK: You did fine.

5 Good afternoon. My name is Jane

6 Rozmiarek. I'm a resident of Philadelphia, a

7 member of the Overbrook Farms Club Board of

8 Directors, and I'm on the Fairmount Park

9 Commission Advisory Council. It is in this

10 capacity that I address you today to support

11 Councilman Nutter's Bill No. 980716.

12 Since 1885, there's been a park in

13 Philadelphia -- Fairmount Park, which has grown to

14 8700 acres, touches virtually every section of the

15 city and offers recreation and other leisure

16 activities to Philadelphians and visitors.

17 Since 1991, there has been an ordinance

18 in Philadelphia governing size, placement, and

19 proliferation of billboards. The ordinance

20 specifically prohibits billboards within 660 feet

21 of parks and playgrounds.

22 This ordinance has gone largely

23 unenforced, which means that in several areas of

24 the city, billboards virtually abut the park. A

25 glaring example is in the Parkside Evans area,

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2 very near the Mann Music Center. Four large
3 billboards and one small one, all of them illegal,
4 remain standing, unchallenged by the City.

5 In addition to being an illegal
6 eyesore, these and hundreds of other illegal signs
7 represent a loss of revenue to the City in
8 uncollected fees for billboards which are legal,
9 and in uncollected fines for illegal signs.
10 Enforcing the existing ordinance and strengthening
11 it would more than offset any income generated by
12 new signs, which are clearly illegal and
13 undesirable.

14 Thank you.

15 COUNCILMAN NUTTER: Any questions?

16 (No questions.)

17 COUNCILMAN NUTTER: Thank you very much
18 for your testimony. Thank you.

19 MS. ROZMIARKEK: Thank you.

20 COUNCILMAN NUTTER: Gray Smith and Bob
21 Turino.

22 (Messrs. Smith and Turino come
23 forward.)

24 COUNCILMAN NUTTER: Please proceed.

25 MR. SMITH: Good afternoon, Mr.

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2 Chairman and members of the committee. My name is
3 Gray Smith. I am the Chair of the Zoning and Code
4 Enforce Committee of the South Street Neighborhood
5 Association. Our President, Fluffy Palmer, who
6 participated in the preparation of this testimony
7 couldn't be here today.

8 I should also mention that I'm one of
9 the founding members of SCRUB back in those four
10 years where we fought to pass the bill in 1991.

11 My comments are very brief and focus on
12 a couple of different issues than have been
13 discussed before.

14 Philadelphia is a beautiful city. As
15 an architect, I believe that -- except for a few
16 major flaws. One of the rips in the fabric is the
17 preponderance of gigantic advertising billboards
18 in the most visible of locations.

19 And I have copies here of my testimony
20 if somebody can. . .

21 For example, the drive to and from the
22 airport on I-95, at 65 miles an hour, consists of
23 a steady bombardment of monuments to liquor,
24 cigarettes, casinos, go-go bars and the rest of
25 the seven deadly sins.

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2 In 1991, the members of the South
3 Street Neighborhood Association rejoiced in the
4 passage of the comprehensive billboard ordinance
5 championed by Councilman Cohen and shoe-horned in
6 the City policy by the good work of Mary Tracy and
7 SCRUB members, our colleagues in the City's
8 neighborhoods.

9 At that time, the City Planning
10 Commission, part of the City administration, was
11 extremely supportive in that process, and we thank
12 them for that. We applauded City Councilmembers
13 who voted for that ordinance, and we hereby thank
14 Mary Tracy for her unswerving persistence on this
15 critical area to this day.

16 We would like to believe that the 1991
17 ordinance has prevented billboard purveyors from
18 blighting our very commercial neighborhood, the
19 South Street corridor, from Front Street to Broad
20 Street, where 30 to 40,000 people, including lots
21 of young people, come every weekend.

22 Recently, however, that belief was
23 shattered by the appearance at Third and South
24 Streets of a three-story high, sixty-foot long
25 Budweiser beer advertisement on the side wall of

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2 Mako's bar. There's a photo of it attached to my
3 testimony.

4 Such advertising may not now be
5 prohibited by the Pennsylvania Liquor Control
6 Board. That's why we say thousands of bill
7 banners strung on the parapets and the front walls
8 of every bar and restaurant in Philadelphia --
9 again, unpermitted and unlicensed, of course,
10 because that state law is no longer in effect.

11 But that Budweiser billboard, in full
12 view to all the kids who populate South Street, is
13 against Philadelphia law. It is next door to some
14 very expensive condominiums in Abbott Square. And
15 there too, some half-a-million-dollar townhouses
16 and historic buildings in Society Hill. It's one
17 block from St. Peter's School and Church, probably
18 one of the most prominent private schools in the
19 City of Philadelphia, and it's near three other
20 internationally-famous churches and three
21 synagogues, and it is near the new charter school
22 that is being installed in our neighborhood at
23 Fourth Street.

24 And this Budweiser billboard is one of
25 those in a not-North-Philadelphia neighborhood.

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2 It's very close to the churches and advertises
3 bill and liquor.

4 The billboard and our review of what
5 allowed its creation -- it's not permitted and
6 it's not licensed -- demonstrated to us the
7 inherent weaknesses in billboard regulations in
8 Philadelphia.

9 To begin with, there is too little
10 enforcement of the current billboard ordinance.
11 It is a part of the zoning code and within the
12 enforcement responsibilities of the Department of
13 Licenses and Inspections, and I noticed that
14 nobody I recognize from L&I is attending this
15 hearing. Yet there are hundreds of these
16 monstrosities that get no L&I scrutiny. Many are
17 unlicensed, are unpermitted, and are in the most
18 prominent of locations, certainly noticeable by
19 L&I inspectors.

20 A larger number of Philadelphia
21 billboards fail to meet the criteria of the 1991
22 billboard ordinance, licensed or unlicensed, and
23 L&I does little about it. There are no billboard
24 police in L&I. If it weren't for the Mary Tracy's
25 out there, there would be zero billboard

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2 enforcement in Philadelphia.

3 A second problem. Without permitting
4 licensing and enforcement, by the City, the City
5 has lost thousands and thousands of dollars in tax
6 revenues.

7 Third, since billboard erectors and
8 their clients represent, quote, big business,
9 unquote, and economic development in the mind of
10 Mayor Rendell, there appears to be a
11 look-the-other-way policy rather than an
12 obey-the-law policy at the very top of our
13 administration.

14 Everyone who deals with the Zoning
15 Board of Adjustment -- and I do frequently --
16 knows that the Zoning Board is keenly aware of the
17 Mayor's wishes on such matters. I mean, he
18 appointed them all, right? To the extent that the
19 Art Commission is involved, its members also
20 adhere to the Mayor's messages. Thank goodness
21 the City Planning occasionally shows some real
22 moxie on this issue and opposes in front of the
23 board, in front of the commission.

24 And the fourth problem with the current
25 billboard ordinance is that now that a City

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2 property is being proposed for a very prominent
3 billboard location, City Council apparently has no
4 say in the matter -- you're left out of the deal,
5 No matter how many millions it represents.

6 Hence, the need for Bill No. 980716 to
7 become an ordinance. It is essential that City
8 Council participate in decisions of this nature.

9 Currently on matters of this kind, the
10 City Planning Commission -- who, incidently,
11 opposed the latest City property billboard deal --
12 has been ignored by the Mayor. And it should be
13 quite interesting to watch the Art Commission
14 squirm over the matter when it reaches its agenda.
15 Therefore, City Council's oversight is absolutely
16 essential.

17 Now, we would like to propose a couple
18 of additions to the bill, if we could. An added
19 agreement to the ordinance might also be the
20 requirement that City Council review and approve
21 all contracts and leases between the billboard
22 erectors and the City if a billboard location is
23 ever approved by the City Council within the
24 confines of the new ordinance.

25 In other words, the ordinance says if

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2 somebody wants to do this, they can come to you
3 with a special ordinance. I suggest that you
4 participate in all the inner workings of the
5 implementation of such an ordinance, if you ever
6 approve it.

7 Another bite at the apple would give
8 City Council more say in the matter. And in this
9 event, assurance of Art Commission review, for
10 what it's worth, must be emphasized.

11 We would also suggest one important
12 technical improvement for the ordinance -- and I
13 say this because I deal with the zoning code
14 almost on a daily basis and with people at L&I who
15 administer it.

16 Since the lion's share of billboard
17 control language in the City is found in Section
18 14-1604 of the Philadelphia Zoning Code, and this
19 new ordinance, which deals with Section 16 of the
20 City Code, should be then repeated in that section
21 of the Zoning Code to make sure that approvals are
22 not improperly granted by zoning officials.

23 I mean, L&I have no authority within
24 Title 16 of The Philadelphia Code, and zoning
25 examiners are very limited as it is when they

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2 review these things. And to put anything besides
3 zoning code provisions in front of them might
4 confuse them terribly. So it needs to also be
5 folded into that code.

6 COUNCILMAN NUTTER: Mr. Smith, if I
7 could, on that particular point, we believe that
8 -- there is an amendment that has been drafted.
9 It will be offered shortly. It may not exactly
10 mirror the language that you talked about, but it
11 does address the issue of even upon approval, if a
12 billboard were approved at a particular location,
13 the site is still subject to the rest of the
14 Zoning Code, that that approval is not superceding
15 the regular zoning ordinance.

16 There is the, though, legally, the
17 ability through legislation for a particular site
18 to supercede, and I feel compelled to put that on
19 the record. But that would certainly be at the
20 discretion of the member introducing such a bill
21 to authorize a particular billboard at a certain
22 location.

23 MR. SMITH: Right. I'm just simply
24 wanting to make sure that the information in your
25 bill, should it be passed with any amendments, be

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2 always in front of the zoning reviewer whenever
3 someone comes in proposing to put a billboard on
4 City property, that they know that the first
5 prohibition is that it can't be done.

6 COUNCILMAN NUTTER: Right.

7 MR. SMITH: I mean, all the other
8 prohibitions, assuming it can be done, would then
9 come into effect.

10 COUNCILMAN NUTTER: Right.

11 MR. SMITH: As an adjunct to this
12 issue, we would recommend that City Council -- and
13 prior testimony, I think, has emphasized a need
14 for this too -- that City Council insist on a
15 public hearing and a thorough review of L&I's
16 current permitting, licensing and enforcement
17 activities regarding billboards already in the
18 City.

19 Chances are you might discover that the
20 potential fees, penalties, fines, and revenues
21 from the enforcement and demolition -- permit
22 fees, for example -- of illegal billboards would
23 yield a lot more cash for the City's coffers than
24 the 20-year rental income sought by Mayor Rendell
25 at the Water Department's sludge site.

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2 Again, we need to find that out. We
3 talked about it with you, we talked about it in
4 1991. Nothing's changed, there's no enforcement,
5 and all those fees have been lost, all those fines
6 have not been collected.

7 Thank you for the opportunity to
8 present our comments from a neighborhood
9 perspective. We hope that you will pass this
10 ordinance with suggested additions as well as
11 stimulate L&I's focus on this major citywide
12 problem as well as ask them to go after that big
13 Budweiser billboard in our neighborhood.

14 If not. Philadelphia can add another
15 accolade to its tourism brochures: "Philadelphia,
16 Billboard Capital of the World."

17 COUNCILMAN NUTTER: Just for my
18 understanding, in the material that you passed up,
19 I mean as I look at this, I'm left with the
20 impression that this is not so much a billboard in
21 the classic use of the term; I mean, this is
22 something that is, I assume, painted on the
23 building.

24 I mean, the building almost looks like
25 one of our SEPTA buses with that shrink wrap stuff

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2 or however they do that. I mean, I don't know how
3 they did this, maybe it's just paint. I mean,
4 this is really a building be something
5 participated on it.

6 MR. SMITH: Painted on the building,
7 right.

8 COUNCILMAN NUTTER: As opposed what we
9 commonly refer to as "a billboard," which is a big
10 sign with a supporting structure. I mean, it is
11 what it is, right?

12 MR. SMITH: There is not an independent
13 sign mounted on this building. The entire side of
14 the building has been used as billboard, and it
15 still fits the definition in the Zoning Code, and
16 it is an advertisement.

17 COUNCILMAN NUTTER: It's an
18 advertisement, okay, all right.

19 Any questions?

20 Councilman Cohen.

21 COUNCILMAN COHEN: Again, another
22 comment. This room is full of heroes in the
23 original struggle to get a billboard control
24 ordinance passed by City Council. And Gray Smith
25 has been among the group that I've referred to

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2 before and been out in the forefront.

3 You know, you made the point about
4 economics. It's kind of ironic that the Mayor,
5 who has permitted millions and millions of dollars
6 in permit fees from the various billboard
7 companies to go uncollected, is now attempting to
8 justify this bill billboard on the ground -- the
9 one on the Water Works down at Delaware and
10 Pattison Avenue, on the ground that it's going to
11 produce some pittance of revenue.

12 MR. SMITH: Ah, the irony of it all.

13 COUNCILMAN COHEN: The irony of it all.

14 Also a further irony will be that,
15 undoubtedly, we'll hear from the City Solicitor
16 'cause this is what city solicitors do. There
17 will be an opinion by the City Solicitor saying
18 that City Council has no right to do anything in
19 this area, that it's merely a matter of mayoral
20 prerogative.

21 I just want to note for the record that
22 in a state law, the outlying of Council's
23 responsibility on zoning is clearly defined in
24 what lawyers refer to as 53 Perdon (ph.) Section
25 14758 entitled "Approval by Council," which says

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2 that any zoning action must be approved by City
3 Council. And beyond zoning, it's a basic City
4 policy, whether City property should be permitted
5 to be defamed really by a billboard sign.

6 And the City Solicitor will undoubtedly
7 say that this is a mayoral prerogative, and I'm
8 hoping that before I have to leave this hearing, I
9 will have the opportunity to read into the record
10 what the President of City Council said is the
11 worth of the City Solicitor's opinions to City
12 Council.

13 In a court case, ongoing, in which I
14 happen to be the plaintiff and the mayor is the
15 defendant. City Council President Street was
16 called as a witness. And he was asked the
17 following question, and I will read his answers.
18 This appears on page 83 of the transcript.

19 The attorney questioning the Council
20 President was Mr. Stretton. And Mr. Stretton
21 asked:

22 "Now, as City Council President, you
23 are to give great weight to opinions you seek from
24 the City Solicitor; am I correct, sir?"

25 Answer by City Council President

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2 Street. "You are not correct."

3 Question: "Well, when you seek an
4 opinion from the City Solicitor, do not they have
5 some binding effect on you as Council?"

6 Answer: "They have no binding effect
7 on us whatsoever. Literally, we can take them and
8 put them in the trash."

9 Now I'll. . .

10 MR. SMITH: Thank you, thank you for
11 that, President Street.

12 COUNCILMAN COHEN: The reason for that
13 is, unfortunately, one of the quirks in the City
14 Charter, the Mayor appoints the City Solicitor
15 subject to confirmation by City Council. But once
16 City Council has finished approving the selection,
17 the City Solicitor becomes an adjunct of the
18 Mayor's Office. No City Solicitor could remain in
19 office if an opinion were rendered that the Mayor
20 disagreed with.

21 So, Mr. Chairman, I mention that simply
22 because I may not be able to be at this hearing
23 when the City Solicitor presents that opinion.
24 There's a Bar Association event honoring attorneys
25 who are veterans of World War II, and I understand

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2 there are about 150 of us still left, and so I'm
3 going to ask shortly the permission of the Chair
4 to leave this hearing to participate in that
5 ceremony.

6 But I did want you to know that we're
7 used to the City Solicitor saying that the Mayor
8 is all-powerful; City Council doesn't count. And
9 I guess all executives -- all legislative bodies
10 would disappear.

11 Thank you, Mr. Chairman.

12 COUNCILMAN NUTTER: Thank you,
13 Councilman Cohen. I'm sure that --

14 MR. SMITH: And I'd just like to add
15 that Councilman Cohen is one of my heroes, so
16 we're not the only ones over here.

17 COUNCILMAN NUTTER: Okay. And I am
18 quite sure the Solicitor will regret your absence
19 from the chamber.

20 (Laughter.)

21 COUNCILMAN NUTTER: Bob Turino.

22 COUNCILMAN COHEN: Incidentally, may I
23 just add, City Council President Street was
24 appearing on behalf of the Mayor's Office at the
25 time he made that statement. He was a witness

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2 presented by the City Solicitor's Office.

3 COUNCILMAN NUTTER: Mr. Turino, please
4 proceed with your testimony, identify yourself for
5 the record.

6 MR. TURINO: Yes. My name is Bob
7 Turino.

8 COUNCILMAN NUTTER: Would you pull the
9 microphone a little closer to you, please.

10 MR. TURINO: I am President of the
11 Upper Roxborough Civic Association. I'd like to
12 thank you for the opportunity to share with you
13 the views of my neighbors in upper Roxborough.

14 Although we don't have much of a
15 billboard problem right now, we believe that
16 billboards are a quality-of-life issue, as we have
17 other issues in Roxborough of the same nature. We
18 believe the City would be misguided to take this
19 direction now about signing and billboards.

20 We as a city will be on display to the
21 world with the Republican National Convention.
22 And we believe what need are more green spaces,
23 small parks, and gardens on City property,
24 possibly with art work of local talent on display.

25 With regards to the sludge treatment

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2 plant, it's a fact of life. By putting a huge
3 billboard on the site, it will only draw the wrong
4 kind of attention to it.

5 We believe that a stand of trees, maybe
6 a large mural painted by local people would be a
7 better image. The people of Philadelphia care
8 about their city, even the sludge plant. So clean
9 it up, dress it up, don't put a spotlight on it to
10 say how ugly it is.

11 This is another attempt, we believe, to
12 sell the city to the lowest bidder. It's a quick
13 buck, it's not long-term planning.

14 Do we really want people to come to our
15 city, as was quoting in The Inquirer by one of the
16 sour grapes who lost the Republican National
17 Convention -- people only come to Philadelphia
18 because they have to. That's what the statement
19 was, not because it's a wonderful and unique city
20 with much to offer.

21 Will the people who live in Roxborough
22 benefit from the Eagles NovaCare project on City
23 property? We don't believe so. Do the people in
24 Pennypack need a billboard to look at from their
25 park? We don't believe so. We don't believe

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2 Roxborough needs any more TV towers, and we don't
3 believe the City of Philadelphia needs any more
4 billboards advertising liquor, tobacco, Atlantic
5 City. Everybody has the right to drink and smoke,
6 everybody knows where Atlantic City is; we don't
7 need billboards to tell us where.

8 We believe all of the above are
9 quality-of-life issues, and we'd like to see the
10 billboard ordinance made stronger, if possible.

11 Thank you for the opportunity to
12 express our views.

13 COUNCILMAN NUTTER: Thank you very
14 much.

15 Any questions?

16 (No questions.)

17 COUNCILMAN NUTTER: As I mentioned
18 earlier, there are a couple of proposed amendments
19 for the bill, and I'd like to read them into the
20 record.

21 At this point in time, Councilman Cohen
22 needs to be excused and wishes to leave his vote
23 on the amendments as well as the bill. These
24 amendments have been circulated to members of the
25 committee. If there are any other Councilmembers,

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2 we can get copies of the amendments to them as

3 well.

4 The proposed amendments to Bill No.

5 980716 read as follows:

6 Amend page 2 of the bill,

7 Section 16-204, paragraph (2) to read as follows:

8 (2) No structure used to display any
9 billboards, commercial signs, or other advertising
10 signs shall be -- delete the word "placed," insert
11 the word "erected" on any City land, buildings, or
12 facilities related thereto without specific
13 authorization of Council by ordinance, comma. . .
14 Delete "except for the following," insert "with
15 the following exceptions," colon.

16 The second amendment. Amend page 2 of
17 the bill at Section 16-204, paragraph (2) by
18 striking small letter a, small letter b, small
19 letter c, and replacing them with (.1), (.2), and
20 (.3).

21 The third amendment. Amend page 2 of
22 the bill, Section 16-204, by inserting a new
23 paragraph (2)(a) to read as follows:
24 a. This section shall not prohibit the display of
25 the following signs, colon.

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2 The fourth amendment. Amend page 2 of
3 the bill, Section 16-204, paragraph (2) by
4 inserting a new (2)(b) to read as follows:

5 b. This section shall not prohibit the erection
6 of a structure that is an inherent part of a City
7 building or facility and not erected for the
8 primary purpose of displaying signs.

9 The last amendment. Amend page 2 of
10 the bill, Section 16-204, by adding a new
11 paragraph (3) to read as follows:
12 (3) Nothing in Subsection (2) is intended to
13 supercede any other provision of the Philadelphia
14 Code, including, without limitation, the
15 provisions of the Zoning Code. If Council by
16 ordinance authorizes the placement of a billboard,
17 commercial sign, or other advertising sign on any
18 City land, building, or facility, pursuant to
19 Subsection (2), the placement of such sign must
20 also comply with all other provisions of The
21 Philadelphia Code, including, without limitation,
22 the licensing provisions of Section 9-602 and the
23 provisions of the Zoning Code regulating the size
24 and location of such signs.

25 (Copy of above amendments attached to

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 testimony.)

3 COUNCILMAN NUTTER: Councilman Cohen?

4 COUNCILMAN COHEN: Mr. Chairman, I
5 request permission to leave the meeting to attend
6 to the function that I previously mentioned.

7 And in so doing, at the public meeting
8 that will follow this public hearing, I would like
9 to have my vote recorded in favor of the amendment
10 that you've just read and in favor of the bill,
11 whether amended or not. Is that agreeable?

12 COUNCILMAN NUTTER: I didn't hear the
13 last thing you said.

14 COUNCILMAN COHEN: Well, I'm asking to
15 leave with permission to cast my vote in favor of
16 this amendment and then in favor of the bill, as
17 amended; or if the bill passes without the
18 amendment, I would be in favor of the bill, in
19 either form.

20 I assume the bill will be amended, but
21 if it happened not to be, I still would want to be
22 in favor of the bill.

23 COUNCILMAN NUTTER: All right. And
24 what about voting it out of committee?

25 COUNCILMAN COHEN: And I support

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 reporting the bill out favorably, with a favorable
3 recommendation as a City Council, and with a
4 request for the suspension of the rules and to
5 permit first reading at the next session of
6 Council, which occurs on Thursday.

7 COUNCILMAN NUTTER: Okay, thank you,
8 thank you very much, Councilman.

9 Let's have -- I think she's in the room
10 now -- Darlene Messina, Judith Eden, and Kathy
11 Tomosky.

12 (Ms. Messina, Ms. Eden and Ms. Tomosky
13 come forward.)

14 COUNCILMAN NUTTER: Please proceed and
15 identify yourself for the record.

16 MS. MESSINA: Hi. My name is Darlene
17 Messina. I represent a civic association called
18 "Residents United for Greater Manayunk."

19 Thank you for allowing me to testify
20 today on behalf of Bill No. 980716 prohibiting the
21 City of Philadelphia from erecting billboards on
22 City-owned properties, unless specifically
23 authorized by Council ordinance.

24 I represent one of many Philadelphians
25 who promote the City of Philadelphia as a liveable

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 city, a memorable place to visit. We have chosen
3 to live here. In some sense, we are ambassadors
4 for the City of Philadelphia. Whenever and
5 wherever we travel, we are the best advertisers of
6 the City of Philadelphia.

7 There are many reasons why one would
8 want to live here. Philadelphia is a city with
9 multiple appeals. We have a cultural and
10 architectural richness rooted in history like no
11 other city, an urban scape uniquely located
12 between two scenic rivers, a vibrant arts and
13 entertainment community, vast park land, and
14 thriving neighborhoods and more.

15 It is our belief that we should allow
16 our magnificent uniqueness to shine. More
17 specifically, we strongly believe we should avoid
18 cluttering our extraordinary urbanscape,
19 neighborhoods, and river banks with billboards and
20 advertising. Billboard and advertising signs
21 create a disjointed and blemished skyline. They
22 are distracting and destroy our sense of place.

23 Information about a place is gathered
24 by what people see. What they see is their first
25 impression. First impressions are often what

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2 people remember. Few people like outdoor
3 advertising and billboards.

4 We realize it is difficult to place a
5 measurable economic benefit on prohibiting
6 additional billboards on public property.
7 However, we believe by supporting this bill,
8 tourism will increase. Tourists will see
9 Philadelphia without the visual clutter;
10 therefore, Philadelphia will become a more
11 inviting and welcoming place to visit, and our
12 magnificent urbanscape will leave a favorable and
13 lasting impression.

14 Sign controls are conducive to healthy
15 economies. Many states in this country with
16 thriving tourism economies have implemented sign
17 control ordinances, and all have recognized that
18 the aesthetic benefit has increased tourist
19 dollars, an aid to the local economy.

20 Please allow Philadelphia to stand
21 apart from other cities and shine in its glory and
22 history without the billboard clutter by proudly
23 supporting this bill. Thank you.

24 COUNCILMAN NUTTER: Please proceed.

25 MS. EDEN: Good afternoon. My name is

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 Judith Eden. I am here on behalf of the Center
3 City Residents Association, one of the largest and
4 oldest civic associations in Philadelphia, with a
5 membership boundary from South to Market Streets,
6 from Broad to the Schuylkill River.

7 And we were one of the original groups
8 supportive of the billboard regulation legislation
9 in '91, and we continue to be active in this area
10 until today and have participated as a protestant
11 before the Zoning Board with SCRUB and other
12 community groups in, I would estimate,
13 approximately ten cases in the last year.

14 None of those billboards are actually
15 located within the membership area that I have
16 just described. And a question frequently asked
17 is, Why does Center City Association, with the
18 Rittenhouse Historic District residential area,
19 care so much? We care so much because we want to
20 be Georgetown in Washington, D.C. We want to be
21 like Beacon Hill in Boston. We want to be like
22 these areas that you go to as a premiere
23 residential area without a forest of billboards.

24 And we recognize that the original
25 legislation was intended to improve and protect

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 the gateways of I-95, 76, the Vine Street
3 Expressway, the airport corridor, the bridges over
4 the Delaware River, areas that have plenty of
5 City-owned land, which, of course, brings us here
6 in support of today's bill.

7 I think we often do not have the chance
8 to see ourselves as others see us. But I guess
9 with the Republican Convention, we will. I'm
10 fortunate enough to travel a great deal and also
11 to entertain many people who do come to
12 Philadelphia for business. And they ask me, you
13 know, what do you do with these civic groups? I
14 say, Well, you know, I'm very active in a group
15 that's trying to keep the city beautiful.

16 Ten years ago, they'd say, God, you
17 have your work cut out for you. You know, the
18 streets and sidewalks are so dirty. Well, we've
19 made progress on that front. And now when I say
20 this to people, the most common answer is, Wow,
21 you have your work cut out for you, all those
22 billboards.

23 So, here we are, a number of years
24 later. And in many ways, nothing has changed.
25 When we were here before, there was a thick stack

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 circulating around of 1200 illegal billboard
3 locations.

4 And another thing that I think was kind
5 of noteworthy that I remember from those hearings
6 -- and I brought a copy today -- was the
7 testimony that had been prepared by David Wismer,
8 the Deputy Commissioner of L&I, pertaining to the
9 advertising sign permit and license fee revenue.

10 And I think one of the reasons this
11 bill passed unanimously in '91 was because there
12 was a realization that from the City's revenue
13 points of view, this is not an impressive
14 industry. There may be a lot of money or value to
15 the leased areas of these billboards, but it's not
16 a real estate-taxable item. This is also not a
17 labor-intensive industry, so there's not a lot of
18 wage taxes.

19 So the primary element really was the
20 licensing fees, which then were \$92,000. And I
21 did bring this with me today.

22 I also -- we also have with us today
23 another fat stack, and this is a fat stack of the
24 legal billboard locations and their current status
25 as to whether they pay their \$100 location fee.

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2 It's 56 pages, and I would estimate that revenue
3 has now fallen from approximately 100,000 to less
4 that \$10,000. So in a way, we are not where we
5 were even further back.

6 And I'd like to close just by relating
7 one little inner change that took back at the
8 Zoning Board hearing pertaining to the sludge
9 plant. An expert witness for the billboard
10 company was asked, What other municipalities near
11 Philadelphia permit billboards on City-owned
12 property? And the answer was Atlantic City, and
13 Pennsauken. And I wanted to jump up and say, We
14 rest our case. Which I can do today.

15 Thank you.

16 COUNCILMAN NUTTER: Thank you.

17 (Applause.)

18 COUNCILMAN NUTTER: Please identify
19 yourself for the record.

20 MS. TOMOSKY: I'm Kathy Tomosky,
21 President of the Manayunk Neighborhood Council,
22 Democratic Committeewoman, organizer of the
23 Manayunk Garden Club, and an advocate of Tree
24 Tenders and Green Space.

25 I come here today before you, my

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 Councilman, to appeal to you to get the bill
3 passed to eliminate billboards from our life.

4 COUNCILMAN NUTTER: Well, I don't know
5 if I can go that far today. I'm just dealing with
6 public property.

7 MS. TOMOSKY: You know, outdoor
8 advertising is not new. Ted Turner's father
9 started his lucrative business in billboard
10 advertising, and thank God his son went into
11 broadcasting.

12 Lady Byrd Johnson, in the sixties and
13 seventies advocated most beautiful highways, and
14 fought for the elimination of billboards. I guess
15 Mayor Rendell doesn't remember her.

16 I have never seen an attractive
17 billboard that I would look twice at. In fact,
18 the mere fact that they are not only distracting
19 in a negative way, they are anti-green space. I
20 am for City Council to forfeit the use of
21 billboards as revenue raisers.

22 Billboards should not be placed 500
23 feet from his historic bridges or buildings. The
24 Art Commission and Historical Society should be
25 responsible for that aspect of advertising.

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2 Therefore I summarize my testimony and
3 authorize my members also to help to eliminate
4 billboards altogether.

5 Thank you.

6 COUNCILMAN NUTTER: Thank you very
7 much.

8 MS. TOMOSKY: You're welcome.

9 COUNCILMAN NUTTER: Connie Winters and
10 Ann Buchart.

11 (Ms. Winters and Ms. Buchart come
12 forward.)

13 COUNCILMAN NUTTER: Please identify
14 yourselves for the record and proceed.

15 MS. WINTERS: Hi. My name is Connie
16 Winters. I own and operate Historic Properties in
17 Germantown. And for the last year, I have served
18 as President of the Germantown Business
19 Association. I'm here to testify on behalf of the
20 bill proposed by Councilman Nutter.

21 I understand this bill to be a further
22 effort to get the City to uphold the billboard law
23 that is already on the books. I would like to put
24 this issue in the broader context of encouraging
25 business in the City of Philadelphia.

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2 Everyone knows that Mayor Rendell has
3 gone to extraordinary lengths to bring business
4 back to our city. And on the face of it, it
5 appears that our mayor is attempting to increase
6 revenues to the City by making an exception to
7 existing legislation which was intended to
8 regulate billboard proliferation in the City.

9 An article by Tom Feret (ph.) estimates
10 that the deal proposed by the Mayor will bring in
11 \$60,000 a year to the City. This is not much when
12 compared to the potential real estate tax base
13 that is lost when homeowners move to outlying
14 suburbs. This is not much when compared to the
15 revenues that are lost every time a new business
16 decides to locate outside of the City of
17 Philadelphia.

18 What makes middle-class homeowners and
19 small businesses decide to leave Philadelphia?
20 Well, I can speak to that issue because I am one
21 of them myself. Philadelphia should change its
22 motto to "The City of the Special Deal."
23 "Philadelphia, the city where you need to have
24 influence to get your government to do the job."

25 Is this the case in every city? No,

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2 it's not. Is this the case in neighboring Lower
3 Merion? No, it's not. But it is the case in
4 Philadelphia.

5 When an individual buys a house, he
6 buys into a set of rules known as "the Zoning
7 Code." This Zoning Code should guarantee that the
8 property surrounding his property will be utilized
9 according to certain rules that protect the value
10 of his or her property and guarantee that certain
11 standards will be maintained. This individual has
12 a right to expect that the Zoning Code will be
13 upheld, without a protracted legal battle.

14 When a city gets a reputation for
15 making exception after exception, then that
16 reputation gets around and individuals decide to
17 buy outside of the City of Philadelphia in areas
18 where the ground rules are clear and the law is
19 upheld. In Philadelphia, citizens are expected to
20 hire lawyers and file appeals on their own time and
21 at their own expense, just to see that the law is
22 upheld.

23 Ultimately, this reality and the
24 reputation that follows damage real property
25 values and property tax revenues. This is a far

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2 greater cost to the City than \$60,000 that will
3 flow in if the administration makes another
4 exception to the law.

5 A month ago, I was privileged to attend
6 the 21st Century Neighborhoods Conference, at
7 which Mayor Ed Rendell gave opening remarks. I
8 don't know if he was in the audience for Mayor
9 Riley's (ph.) presentation on his efforts in
10 Charleston, South Carolina, a city which is known
11 as "the most beautiful city in America," a city
12 which has revitalized its economy by enhancing its
13 historic buildings and making aesthetic standards
14 mandatory.

15 Mayor Riley talked at length about his
16 efforts to create beauty in public spaces in
17 Charleston, beauty for all the citizens to enjoy.
18 He attends to the smallest detail and insists on
19 high standards. Mayor Riley does not make
20 exceptions for billboard companies. I lived in
21 Charleston, and I know that zoning laws are
22 rigorously upheld. Citizens, property owners, and
23 businessmen can count on the same level playing
24 field.

25 A level playing field that consists of

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 enforcement of the laws that are on the books will
3 encourage business development in the City of
4 Philadelphia and will ultimately result in greater
5 revenues to the City.

6 Thank you.

7 COUNCILMAN NUTTER: Thank you very
8 much. Thank you for your testimony.

9 Miss Buchart.

10 MS. BUCHART: Good afternoon. My name
11 is Ann Buchart. I'm here as a resident of
12 Kensington South and also as President of the
13 Kensington South Neighborhood Advisory Council.

14 The Executive Board of the Kensington
15 South Neighborhood Advisory Council supports the
16 enactment of Bill No. 980716, which would prohibit
17 the erection of commercial signs and billboards on
18 City-owned property.

19 Effective control of billboards has a
20 direct economic impact on neighborhoods such as
21 Kensington South. I pause to point out that
22 Kensington South is one of the three empowerment
23 zones of Philadelphia and is adjacent to I-95 and
24 the Frankford-Market El.

25 Studies have shown that billboards are

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2 a disincentive to developers, in large part,
3 because removal of an already-existing billboard
4 is time-consuming, expensive, and difficult.
5 Communities like ours, which are attempting to
6 rebuild and re-populate will be challenged by the
7 erection of billboards on City-owned property.

8 The rooftops of our schools and our
9 playgrounds would be attractive to billboard
10 companies since an elevated sign would be visible
11 to travelers on I-95 and the Market Frankford
12 line.

13 Additionally, by encouraging commercial
14 use of City-owned property, the City embarks on a
15 dangerous precedent. If a billboard company can
16 lease City property, who can't? This
17 short-sighted approach to utilization of City
18 resources can and may prove to be a major legal
19 problem for municipal government.

20 This use raises questions about
21 expanded municipal liability for accidents that
22 may occur when billboards are not properly
23 maintained or are neglected. The City could
24 easily be found to be financially responsible for
25 injuries to children hurt while playing on

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2 billboards in recreational or educational

3 facilities.

4 We are also concerned about the
5 products and services advertised on the signs. The
6 City has an abundance of billboards greeting
7 motorists, advertising everything from Delaware's
8 lottery to Atlantic City's casinos, to the various
9 strip clubs, as well as numerous beer and
10 cigarette brands. It seem incongruous at best for
11 City government to actively participate in the
12 aggressive marketing of goods, service, and
13 products that do not further the health or
14 well-being of Philadelphians.

15 For these reasons, Kensington South
16 Neighborhood Advisory Council supports Bill No.
17 980716 and encourages its immediate enactment.

18 I've been asked to bring with me today
19 statements from two neighboring communities -- the
20 Friends of Fishtown, I have a letter from Sandy
21 Saltzman, the Co-Chair; and a letter from Theresa
22 Youngblut, the Executive Director of the Northern
23 Liberties Neighbors Association.

24 I've also spoken today with Sister
25 Carol Keck (ph.) and Patricia DeCarlo of the

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2 Norris Square Neighborhoods. All of these
3 communities are what is considered to be
4 East-North, Philadelphia. All of us share the
5 same concern because we all about the
6 Market-Frankford El and I-95, and we all represent
7 lower-income communities. They join me today in
8 requesting that this bill be enacted and in
9 thanking you for your support.

10 COUNCILMAN NUTTER: Thank you. Just,
11 again, for the record for both of you, there's
12 certainly been a lot of discussion about the
13 content on various billboards, and this particular
14 bill does not address content issues. It is a
15 location-based bill.

16 And just for the record, is it your
17 testimony that you both oppose the locating of
18 billboards on public property? Notwithstanding
19 whatever may be on them, but the issue of
20 billboards on public property without some
21 Councilmatic approval.

22 MS. BUCHART: We certainly do.

23 MS. WINTERS: Yes.

24 COUNCILMAN NUTTER: Okay, thank you
25 very much.

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2 Any other questions?

3 (No further questions at this time.)

4 COUNCILMAN NUTTER: Let me read by name
5 and organization and acknowledge to get into the
6 record various people who have sent letters of
7 support and some letters of opposition.

8 Before I do that, though, are there any
9 other members of the general public who wish to be
10 heard in support or opposition to this bill that
11 we may not be aware of?

12 Carl, we have you. You're a citizen of
13 the world; you're not a general member of the
14 public.

15 Seeing none, we received letters of
16 support -- I'm sorry. Oh, I'm sorry, sir. Go
17 ahead.

18 MR. MELIDOSIAN: Thank you for this
19 opportunity to address you. My name is Craig
20 Melidosian, M-E-L-I-D-O-S-I-A-N. I'm a member of
21 the Fairmount Park Commission Advisory Council.
22 However, I come as a private citizen, and I live
23 in the southwest section of Philadelphia. I'm a
24 frequent business user of I-95.

25 I wanted to make some comments that are

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2 more or less esoteric in how we look at what comes
3 before us today. One is the concept of beauty of
4 orderliness.

5 We have an ordinance before us that was
6 previously passed that, anecdotally, we are told,
7 is not being adhered to in terms of accruing as
8 much revenue as possible.

9 When we go to a football game or we
10 come to Council chambers, we understand best the
11 process when the rules are adhered to. And
12 normally, fairly strong sanctions are made against
13 those who fail to adhere to the rules; they're
14 asked to leave our groupings. So, one, I would
15 indicate that we should vigorously enforce
16 previously-passed legislation.

17 Two is the greater concept known as
18 "the mythology of culture" and what the values of
19 our culture are. That we pass these things on, we
20 make a statement now that stays with us for years
21 to come. When I came here today, I realized that
22 I had been a part of a family that has lived in
23 Philadelphia for a hundred years, and I hope that
24 my offspring have no intention of leaving.

25 Thirdly is another issue, an issue of

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2 education anecdotally by innocence. Being a
3 typical Philadelphian, a single parent, my wife
4 and I did not have the financial opportunities or
5 means to move to the far ends of the earth so we
6 chose the far ends of Philadelphia -- she, living
7 in the northeast; I, in the southwest.

8 As a result of being a single parent, I
9 frequently travel children up I-95. And,
10 interestingly, each of them being separated by
11 several years in age raised one question: What is
12 the smell on I-95, why is it there?

13 I thought it was rather interesting
14 because despite going over the issue over and over
15 again about sewage waste and it's a necessity of
16 the form of culture that we're a part of, they
17 were not terribly accepting of it and felt that we
18 as adults and leaders had an obligation to do a
19 better job.

20 Now, later, after going over that, they
21 then raised independently the issue of billboards
22 and signage. Quite frankly, they did not buy into
23 the concept that it was an effective form of
24 advertising, despite what the outdoor advertising
25 industry tells us.

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2 I say that because they are our
3 legacy. If our children do not buy what we are
4 doing today, it is unlikely that they will
5 subscribe to that and other things that we are
6 attempting to promulgate to them.

7 And, fourth, being a business person, I
8 am very aggressive in an attempt to generate
9 revenue for the City. Income never meets what the
10 outgo is, so I am suggesting that as a side item,
11 we consider issues of licensure of personal
12 property.

13 I have been at other meetings where the
14 Mayor tells us he has the best-looking tie here.
15 So, therefore, I suggest that when members are
16 duly elected to City Council, that they surrender
17 licensing rights to PAID, who will act as their
18 representatives. The simple issue would be men
19 would surrender licensing rights for their ties
20 and their T-shirts. And women, the more comely
21 and demure members of Council, like Jannie
22 Blackwell --

23 COUNCILMAN NUTTER: I want to caution
24 you there.

25 MR. MELIDOSIAN: No, I'm being, I'm --

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2 when you look at branding issues, we are currently
3 branding everything.

4 COUNCILMAN NUTTER: Right.

5 MR. MELIDOSIAN: We brand First Union,
6 we brand our football players, our basketball
7 players.

8 COUNCILMAN NUTTER: I understand.

9 MR. MELIDOSIAN: There is an attempt to
10 be facetious, but it is educational. There are
11 other ways to find revenue.

12 COUNCILMAN NUTTER: Gotcha.

13 MR. MELIDOSIAN: This is not a
14 particularly effective one.

15 COUNCILMAN NUTTER: Okay.

16 MR. MELIDOSIAN: Thank you for this
17 time that you gave me.

18 COUNCILMAN NUTTER: Thank you very
19 much. I appreciate it.

20 I only issued that caution because I
21 know how testimony can go, and the next thing you
22 know, Kenneth Starr will be in touch with the
23 chief clerk's office, looking for a copy of this
24 transcript.

25 (Laughter.)

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2 COUNCILMAN NUTTER: Let me read into
3 the record the names and community organizations
4 who have sent in letters of support, and there are
5 some in opposition.

6 The support letters are from:

7 Maggie Powell, Executive Director,
8 Eastwick Project Area Committee, Inc.;
9 Florence Liebman, Corresponding
10 Secretary, Woodside Park Civic Association;
11 Forest Aegiano, President, Wissahickon
12 Neighbors Civic Association;

13 Sister Sally Daly, St. Timothy School
14 Library;

15 Michael J. Toklish, President, Friends
16 of Andorra Library;

17 Don Whalen, President, Andorra Homes
18 Civic Association;

19 Patricia Wilson Aden, Senior Vice
20 President for Advocacy and Programs, Preservation
21 Alliance for Greater Philadelphia;

22 Frank Vespe, Vice President for Policy
23 and Communication, Scenic America;

24 Lorraine Brill, President, Upper
25 Northwood Community Council;

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2 Judy Cerrone, President, Stadium
3 Community Council, Inc.

4 Stephanie Bell Andrews, Executive
5 Director, Friends of Philadelphia Parks;

6 Ruth H. Becker, Senior Consultant,
7 Pennsylvania Resources Council, Inc.;

8 Theresa M. Youngblut, Executive
9 Director, Northern Liberties Neighbors
10 Association, Inc.

11 The letters in opposition are:

12 One from Joshua L. Grimes, Attorney at
13 Law;

14 And one from the South Philadelphia
15 Community Civic Association, from Anthony A.
16 Greco, Jr., President.

17 Continuing with our witness hearing
18 list, the representatives of the City Planning
19 Commission, originally, I think we were trying to
20 have Barbara Kaplan. Her schedule did not allow
21 her to directly participate, but we have Rich
22 Lombardo, who drew the short straw today.

23 (Laughter.)

24 (Richard Lombardo comes forward.)

25 MR. LOMBARDO: Good afternoon, Mr.

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2 Chairman and members of the Committee. We are
3 here responding to your request.

4 Basically, I don't want to bore you, so
5 you tell me how much you want to hear about the
6 history of the current legislation, the
7 legislative history.

8 COUNCILMAN NUTTER: I've heard enough.
9 No, thank you.

10 MR. LOMBARDO: Okay. Just to set a few
11 things straight. This current package of bills is
12 really -- though it did have all this community
13 support and it was sort of a coming together of a
14 lot of different groups, it was also a bill that
15 had at its beginning, its genesis, the business
16 community.

17 This was a bill that was sought by the
18 Chamber. And if you go back and look at the old
19 records of these package of bills, it has the
20 testimony of the Chamber of Commerce, the Tourists
21 and Visitors Bureau --

22 COUNCILMAN NUTTER: Mr. Lombardo, just
23 so our record is clear, when you continue to refer
24 to "this bill," I'm assuming you're talking about
25 the 1991 bill.

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2 MR. LOMBARD0: The 1991 bills, I'm
3 sorry, the package of bills.

4 COUNCILMAN NUTTER: Not the current
5 bill in front of you.

6 MR. LOMBARD0: That's right, I'm
7 sorry. The licensing bill, the Vine Street
8 Corridor bill, and the general citywide bill on
9 billboards.

10 And it had in its genesis the business
11 community. It began over the -- at that time,
12 construction of Vine Street and looking out and
13 seeing a new road without any billboards and
14 saying, We don't want -- you know, the business
15 community saying, This is Center City, we don't
16 want to see it look like 95 does look, so we --
17 before anything was built, we would adopt the Vine
18 Street bill.

19 Subsequently, that grew into saying,
20 Let's also put a cap on any more signs on 95.
21 And, by the way, let's also start licensing and
22 collecting revenue for the existing signs that --
23 we were deeply involved only in a drafting
24 process, both for the Chamber and the Central
25 Philadelphia Development Corporation originally

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 asked us to participate in drafting a bill. And
3 at that time, Councilman Cohen, who was Chairman
4 of the Rules Committee, and Mayor Goode, who,
5 ultimately, when these bills were all signed,
6 you're going to have to remember, had a signing
7 ceremony on Vine Street at the foot of one of the
8 billboards basically saying that this would be one
9 of the few billboards standing on Vine Street
10 because of this new legislation.

11 The issue about why the billboard --
12 you know, why the various groups were involved
13 really centered around that one point. I talked
14 about the business community and the interest that
15 was talked about by other witnesses about liquor
16 and cigarette advertising in the vicinity of
17 schools and playgrounds. And that's why the
18 legislation, when it finally came out of committee
19 and was signed and adopted by Council, had a
20 prohibition of billboards near schools and
21 playgrounds.

22 We conducted an independent survey, I
23 guess, in late eighties, early nineties at the
24 request of Council. Back in those days, the
25 Commission staff conducted an annual billboard

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 survey growing out of the 1970s legislation where
3 we reported to Council every year what the status
4 in terms of billboards were, how many new ones had
5 been added, that type of thing.

6 As part of that survey, we conducted a
7 survey of billboards around schools and
8 playgrounds, and found, even to our surprise, that
9 over 90 percent of the signs that were visible
10 from schools and playgrounds crossed every part of
11 the City; albeit there were more signs closer to
12 schools in the inner city. But where there was a
13 sign visible from a school or a playground
14 citywide -- I just want to put it on the record to
15 concur with what (unintelligible). There was
16 either a cigarette or a liquor advertising sign at
17 over 90 percent of the signs.

18 COUNCILMAN NUTTER: So your testimony
19 is supportive of earlier testimony and certainly
20 some of the more detailed testimony of Reverend
21 Brown.

22 MR. LOMBARDO: Yes. Just to reiterate,
23 that was sort of the rationale -- I just want to
24 lay out the rationale for what got the legislation
25 to where it was.

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716

2 COUNCILMAN NUTTER: Right. Are you in
3 a position to comment at all on enforcement
4 provisions of the bill? Again, talking about the
5 '91 bill. And if there were any discussions at
6 that time about anticipated difficulties in
7 enforcement in paying of license fees and the
8 like?

9 MR. LOMBARDO: I cannot testify to what
10 the experience has been. You'd really have to ask
11 L&I. I don't know what advice they've received
12 from their counsel, what logistical problems
13 they've had in enforcing or not enforcing.

14 The only thing I can say is that the
15 issue that was raised -- not the only, but one of
16 the issues was, How can we tell which signs would
17 be legal or would not be legal? And it led to the
18 whole debate about putting stickers on the signs
19 that would be legible to anybody who walked by as
20 a way of identifying that that sign was currently
21 up to date in its license.

22 COUNCILMAN NUTTER: Right.

23 MR. LOMBARDO: That was the only
24 recollection I have of problems in enforcing the
25 bill, was how you would physically know which

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 signs were legal and which ones weren't.

3 COUNCILMAN NUTTER: Let me ask you this
4 question. Do you have any knowledge or experience
5 with regard to the process whereby a potential
6 sign is located at a site? A person gets an
7 application for a zoning variance, and in my
8 experiences on just about every case in front of
9 the Zoning Board, the Planning Commission
10 articulates a particular view or a position on the
11 application, whether it's a deck, a building --
12 and in this particular case, we're talking about
13 billboards.

14 Do you have any knowledge or
15 information with regard to the general position of
16 the Planning Commission as it has related to past
17 applications, whether on public land on private
18 land regarding billboards?

19 MR. LOMBARDO: Yeah. Generally, if the
20 billboard is there as a particularly -- I could
21 tell you as a matter of policy that if it's a
22 prescribed billboard, like it's a billboard that's
23 too close to a school or playground, we would
24 recommend against it. That would be our policy.

25 If there was, you know, no quid pro quo

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2 of abiding by the removal clause that says that in
3 order to get this billboard, we're taking down one
4 over here, if it's just purely trying to get a
5 variance from the obligation to remove a sign to
6 put up a new sign, we would recommend against it.

7 COUNCILMAN NUTTER: And, again, the
8 position of the Planning Commission with regard to
9 the '91 bill was that there were serious problems
10 with billboards throughout the City and there was
11 some need for regulation at that time?

12 MR. LOMBARD0: Yes.

13 COUNCILMAN NUTTER: And is the Planning
14 Commission's position the same with regard to the
15 '91 bill in terms of maintaining the integrity of
16 the Zoning Board and ensuring enforcement?

17 MR. LOMBARD0: I'm sorry, I didn't
18 understand your question.

19 COUNCILMAN NUTTER: Has there been any
20 change in the --

21 MR. LOMBARD0: There has been no
22 change. No, as a matter of fact, you know, I
23 guess our feeling is that the 1991 bill, if
24 enforced and followed the way it was enacted, is a
25 good, fair bill. It was a bill that ultimately

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 was supported by all -- including -- there were
3 witnesses -- again, look at your records, you'll
4 see there were witnesses from the sign companies
5 who testified after they hammered out amendments
6 and agreements, that they could live with the '91
7 bill.

8 COUNCILMAN NUTTER: Okay. Any other
9 questions for this witness?

10 (No questions.)

11 COUNCILMAN NUTTER: Thank you very
12 much.

13 Dominick Cipollini, Joseph Felici and
14 -- I guess as they say in the law -- "et al."
15 Can you come forward.

16 (Messrs. Cipollini and Felici and Carl
17 Primavera come forward.)

18 MR. PRIMAVERA: Yes, good afternoon,
19 Councilman Nutter. Carl Primavera,
20 P-R-I-M-A-V-E-R-A.

21 COUNCILMAN NUTTER: All right.

22 MR. PRIMAVERA: With me is Dominick
23 Cipollini and Joseph Felici, both from Keystone.
24 I'm the attorney for Keystone. And they are
25 interested because they are in the outdoor

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 industry.

3 But perhaps more importantly for
4 today's hearing, they were the licensed company
5 with regard to the property down by the water
6 treatment plant that was approved by the Zoning
7 Board and, I guess, gave rise to this particular
8 legislation.

9 COUNCILMAN NUTTER: Well, let me put
10 one thing on the record and make sure that there's
11 agreement between -- and an understanding for
12 everyone in the room.

13 Mr. Primavera and Mr. Cipollini and Mr.
14 Felici, you understand that this bill, even if
15 enacted, has no direct impact on your proposal, if
16 not your lease agreement, or whatever other
17 arrangement you have made with the City of
18 Philadelphia on that particular location, is that
19 your understanding?

20 MR. PRIMAVERA: We're glad to hear that
21 from you. From hearing from Councilman Cohen, I
22 wasn't really sure where he was going or where the
23 committee was going. He seemed to be looking at
24 some type of collateral litigation or the
25 impairment of our contract rights, but I'm glad

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 that you as the Chair have no interest vis-a-vis
3 this ordinance to try to impair those contract
4 rights, which have been finalized in the form of a
5 license.

6 COUNCILMAN NUTTER: Well, don't let me
7 give you the impression that I'm giving you
8 anything more than already exists. Everyone knows
9 that any bill that's enacted has no ability to
10 retroactively go back and terminate somebody's
11 contract.

12 With regard to the Councilman's
13 actions, the Councilman is quite of age to take
14 care of himself and be responsible for his own
15 actions, and whatever he might try to do to you
16 will be his own business.

17 MR. PRIMAVERA: Okay. Well, that's
18 comforting at least with regard to those --

19 COUNCILMAN NUTTER: I expect that he
20 will not try to involve me in it.

21 So I just wanted to make sure that
22 we're clear. I mean, with your opening statement
23 that the southwest treatment facility, it is
24 certainly true, brought this issue to my attention
25 and to other people's attentions, but I don't want

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2 anyone to be misled to think that this particular
3 bill deals directly with that situation. You went
4 through the process, the process is what it is.

5 But I will say that I have a great
6 amount of concern, some other members have a great
7 amount of concern. And, apparently, you have some
8 concern where we get into areas of the unknown.

9 I have no idea what either your client
10 or other people who are in this business plan to
11 do going forward. And your concern, I guess, is
12 Where are we going with this?

13 I am particularly concerned about
14 billboards on public property. And there are
15 others who have more of an advocate regarding
16 billboards in other places, but I'm primarily
17 focused in on -- at least today -- on public
18 property.

19 Let me also say before we get into
20 questions, or maybe you have a statement that you
21 want to make, we appreciate your presence. All
22 members may not necessarily agree with how all of
23 the business is conducted, whether it's directed
24 at Keystone and Mr. Cipollini or not, but we
25 appreciate the fact that you took the time to come

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2 in, make your presentation.

3 You will be treated with respect and
4 dignity, as I try to treat all witnesses who come,
5 regardless of how I feel about what it is that
6 they have to say or what their viewpoint is. But
7 you at least did come.

8 I don't know the other companies.
9 They're certainly aware of this public hearing.
10 It was advertised like any other public hearing is
11 advertised. And they, for whatever reason, chose
12 not to be in contact and chose not to come. And
13 so I want to make the record clear on that.

14 Why don't you proceed.

15 MR. PRIMAVERA: Fine. And we
16 appreciate those opening comments.

17 We're here today really twofold. One,
18 because Keystone was, in fact, involved in the
19 licensing agreement, we wanted to be here to
20 confirm, as you already have, Councilman Nutter,
21 that we did exercise a lawful and legitimate
22 process, and that we have nothing to be
23 apologetic about.

24 And then second of all, because there
25 have been so many comments made with regard to the

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 industry, we can't be the apologists for the
3 entire industry, but I think we can set the record
4 straight.

5 I do have testimony which I'm going to
6 pass up that I won't read. Rather than reading
7 testimony reflecting my client's position, I'd
8 rather just correct the record so that you and the
9 other members of the committee will have, perhaps,
10 a more balanced and more keen insight into some of
11 these issues, rather than perhaps the well-
12 intended but unfounded comments by people who
13 really are here in the nature of a crusade.

14 And I think this will help the
15 fact-finding mission that I know is so critical to
16 any legislative process really. So I'll do that
17 really in accordance with the testimony provided
18 and fill in the blanks.

19 We were familiar with the '91
20 legislation because it did involve extensive
21 hearings. And I would have to say let's give
22 credit where credit's due. For a group that has
23 been whining all afternoon about the lack of
24 success of those legislative actions and
25 complaining about the proliferation of signs, the

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2 fact that there were only 13 approved since 1991
3 in a city that's the fourth largest in the United
4 States, suggests to me that perhaps these
5 on-the-record legislative initiatives have been
6 overwhelmingly constructive from their viewpoint
7 because I think that if you notice the Zoning
8 Board hears thousands of cases a year, and I think
9 their approval rate for variances is in the 90
10 percent, the suggestion that two signs per year in
11 industrial areas where there already are signs far
12 removed from Fairmount Park and the other areas of
13 concern, to me suggests, quite frankly, that these
14 ordinances on the record have their intended
15 effect implemented.

16 And I think that they should be
17 congratulating themselves rather than being
18 concerned about the fact that maybe one or two
19 were approved on a yearly basis.

20 COUNCILMAN NUTTER: Let me interrupt
21 you there, Mr. Primavera, and I appreciate your
22 optimistic view of the world. On the other hand,
23 13 over whatever number of years -- 6 or 7 -- you
24 may view as not that many.

25 The other side of this coin may be, How

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 many are there already, how many are legal, how
3 many should have been removed, how many are
4 actually licensed, how many are actually being
5 paid for? And so if you're already pretty much at
6 the top of the hill or at the saturation point,
7 no, I guess you can't complain if there have only
8 been a few that have been approved in the past few
9 years.

10 Unfortunately, I think -- I mean, we
11 don't necessarily need to, by adjective,
12 characterize anybody's legitimate complaint or
13 testimony, but I think that there are some
14 legitimate issues out there that possibly have not
15 been dealt with.

16 MR. PRIMAVERA: All right.

17 COUNCILMAN NUTTER: So I don't think
18 you can deal with in the isolation of, Well, it's
19 only been 13. I mean, what I need you to tell me
20 now, since you opened that door, is how many are
21 out there?

22 MR. PRIMAVERA: Yes, and we'll go into
23 that.

24 COUNCILMAN NUTTER: Okay.

25 MR. PRIMAVERA: But it just seems to me

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 that we have thousands of unlicensed vehicles, but
3 you wouldn't have a moratorium on selling cars to
4 people who have licenses and people who have
5 insurance.

6 The people who go to the Zoning Board,
7 the Keystones of the world submit engineered plans
8 and --

9 COUNCILMAN NUTTER: Well, you don't
10 want to start mixing apples and orange now, do
11 you?

12 MR. PRIMAVERA: Well, I'm just saying
13 to you that the people who, of the 13 that were
14 approved --

15 COUNCILMAN NUTTER: Let's talk about
16 billboards.

17 MR. PRIMAVERA: And you'll hear me out
18 'cause you said you were going to be you
19 deferential and allow me to present my case.

20 COUNCILMAN NUTTER: Actually, I don't
21 think I ever said "deferential." I think I said
22 I'd be nice.

23 MR. PRIMAVERA: All right. Well, let
24 me just say this. The people who go to the Zoning
25 Board are the people who should be congratulated

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 and applauded because they are following the law.
3 And I think that to say that because there may be
4 people out there not represented today who may
5 have signs that are aren't licensed or aren't
6 legal is really a non sequitur.

7 The people who go to the Zoning Board,
8 present the case in a public hearing, have the
9 bonds in place, the licenses in place, and all of
10 the scrutiny that they go through, I think that,
11 quite frankly, that's a system that works.

12 COUNCILMAN NUTTER: Okay.

13 MR. PRIMAVERA: Okay. Now, we'll talk
14 about the other things that were mentioned early
15 on by Miss Tracy, who is an advocate for the
16 elimination of all signs, she never saw a sign or
17 a location that she would ever support. And she
18 talks about --

19 COUNCILMAN NUTTER: Mr. Primavera.

20 MR. PRIMAVERA: Well, I just have to --

21 COUNCILMAN NUTTER: I understand that.
22 Even if I were being deferential, I will not allow
23 you to get into "he said/she said" --

24 MR. PRIMAVERA: Oh, no.

25 COUNCILMAN NUTTER: Or characterizing

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 other individuals' testimony by name.

3 MR. PRIMAVERA: I think it's important
4 for you to --

5 COUNCILMAN NUTTER: If you want to
6 refer to general testimony, I don't have any
7 problem with that.

8 MR. PRIMAVERA: Well, it's important
9 for you to understand the nature of their -- well,
10 as a lawyer, you know that there's such a thing as
11 bias and prejudice. And they're not coming in
12 with a --

13 COUNCILMAN NUTTER: I understand all of
14 that. We don't have to argue all that, I know
15 about all that.

16 MR. PRIMAVERA: Well, maybe the record
17 doesn't.

18 COUNCILMAN NUTTER: Just make your
19 case.

20 MR. PRIMAVERA: All right.

21 COUNCILMAN NUTTER: Make your case.

22 MR. PRIMAVERA: They talk about the
23 removal of signs on Vine Street.

24 COUNCILMAN NUTTER: Right.

25 MR. PRIMAVERA: But nobody told you

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 about the Township of Moon case in the
3 Pennsylvania Supreme Court that said that the
4 signs on Vine Street are as legal as a restaurant
5 on Broad Street, and you couldn't come in with
6 your legislative power and close a restaurant on
7 Broad Street and put that man out of business.

8 Similarly, the Pennsylvania Supreme
9 Court said that signs which are legal cannot be
10 amortized without the payment of just
11 compensation.

12 So it's not that nobody cares about
13 removing signs; it's the law of the land that says
14 that City Council, and the 1991 ordinances insofar
15 as they attempted to take signs, which are private
16 property, without compensation, made that illegal.

17 So L&I didn't forget about the law.
18 Their solicitor and the Supreme Court of
19 Pennsylvania said, You can't have private property
20 unless you pay for it.

21 And that's something that was not
22 cited. And I know you want to know what the law
23 is. So L&I may not have been here to speak for
24 itself, but a lot of what L&I has been constrained
25 by is the law of the Supreme Court and the law of

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 the land.

3 On the licensing issues, everyone's
4 complaining about the licensing fees which they
5 think they should be getting.

6 COUNCILMAN NUTTER: Hold on for one
7 second. Councilwoman Blackwell has a comment.

8 MR. PRIMAVERA: Yes.

9 COUNCILWOMAN BLACKWELL: Excuse me, Mr.
10 Primavera. You may not be aware of it, but we're
11 not in court. You know, we want to have a little
12 hearing. You can make your point, but this -- the
13 tone of it is not positive, and I don't even think
14 it helps your case.

15 MR. PRIMAVERA: All right. Well, I
16 appreciate that.

17 COUNCILWOMAN BLACKWELL: I really
18 don't. Thank you.

19 MR. PRIMAVERA: And, you know, we've
20 been waiting and listening and it's hard not to
21 have your say when it's timely so it builds up,
22 and I will temper my remarks accordingly.

23 COUNCILMAN NUTTER: We have a time-out
24 room over in the other place there if you want
25 just to take a time-out, it's fine. Then you can

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716

2 come back.

3 MR. PRIMAVERA: That's good.

4 (Laughter.)

5 MR. PRIMAVERA: The licensing scheme.

6 There was a lawsuit where the City was enjoined
7 from imposing licensing fees on billboards but not
8 on signs that say "Joe's Restaurant" or "Bob's
9 Retail" because the law doesn't allow the
10 treatment or penalty of billboards. Remember,
11 billboards are a legal use.

12 So, again, you should check with the
13 Solicitor and L&I. There are many reasons why a
14 lot of what hasn't been done hasn't been done.
15 And it's not mere neglect, but it's very
16 difficult legal issues which, perhaps, have been
17 overlooked here today.

18 COUNCILMAN NUTTER: All right.

19 MR. PRIMAVERA: Again, looking at where
20 the signs have been approved, and in my opinion, I
21 think it's only a handful. But they've been in
22 industrial areas. The one involving Keystone is
23 in an area where there are no residential
24 populations.

25 And, in fact, the umbrella group of

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2 civic associations represented by Mr. Greco came
3 in and testified and said, We want this because we
4 realize that the funds that Keystone will pay the
5 City will help eliminate the need for more taxes.

6 So, quite frankly, there are many
7 people represented by organizations who have
8 appeared on behalf of outdoor companies. And even
9 though they're --

10 COUNCILMAN NUTTER: Is there any direct
11 arrangement between Keystone and the --

12 MR. PRIMAVERA: They do it for the same
13 good reasons that the people who oppose it. They
14 have different views, different strokes for
15 different folks.

16 COUNCILMAN NUTTER: I understand.

17 MR. PRIMAVERA: And they say, Why
18 should property that's owned in private hands get
19 the income when the City, through its various
20 operating units, owns property that could make
21 money for the taxpayers? And they look at it as a
22 taxpayer-saving initiative, and I think there's a
23 lot of regard for that.

24 With regard to the alcohol and tobacco
25 restrictions, I believe there currently is an

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 ordinance approved by City Council that does
3 prohibit alcohol and tobacco advertising on City
4 property.

5 COUNCILMAN NUTTER: I think the
6 ordinance was introduced; I don't think it's been
7 passed.

8 MR. PRIMAVERA: All right. Well, we
9 know that it's there, and we quite frankly think
10 that that has gone a long way to addressing some
11 of the concerns. And maybe that ordinance needs
12 to be looked at.

13 COUNCILMAN NUTTER: I think, Mr.
14 Primavera, that it actually may be a resolution
15 calling on the City to not allow tobacco and
16 alcohol advertising in any of our contracts, as
17 opposed to a bill.

18 MR. PRIMAVERA: Okay. I know there's
19 some that Mr. Grimes has a pink copy of. I don't
20 that. That -- it could be a resolution.

21 COUNCILMAN NUTTER: It's mentioned in
22 his testimony, but I believe it's a resolution.

23 MR. PRIMAVERA: All right. And then
24 the other thing is that the license agreement,
25 which the City has with Mr. Cipollini and Keystone

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 does prohibit alcohol and tobacco advertising, so
3 that was already covered in the license agreement.

4 COUNCILMAN NUTTER: I would expect that
5 of him.

6 MR. PRIMAVERA: So I think you can see
7 already that there's some real attempt to address
8 some of the concerns.

9 With regard to a lot of what has been
10 said about the state of licenses and permits, if
11 you check Keystone's record, you'll see that he's
12 paying his license fees. As a matter of fact,
13 he's affirmatively going to the City without them
14 billing him and saying, I want to pay. And even
15 though there's collateral litigation, he's saying,
16 I'm paying whether or not I'm legally obligated to
17 because --

18 COUNCILMAN NUTTER: Now, how does that
19 work? Does Keystone pay a fee for each location?

20 MR. PRIMAVERA: Yes.

21 COUNCILMAN NUTTER: Are you saying he's
22 paying them annually and they're up to date?

23 MR. PRIMAVERA: Right. And, quite
24 frankly, he's in a litigation position to say, I
25 don't want to pay in public venue so he's going

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2 beyond the call of duty, which is an important

3 issue.

4 With regard to some of the other final

5 issues that where you're looking to fill in some

6 of the gaps, when a convention -- as a matter of

7 fact, before it was announced publicly,

8 Philadelphia was contacted by the committee to

9 bring in the Republican Convention. The

10 convention committee was anxious to know if

11 outdoor advertising signs were available here

12 because conventions won't come to a city unless it

13 has some kind of vital and exciting signs

14 available.

15 So I think a lot of testimony is that

16 the signs are anti-business, which really is,

17 perhaps, not scientific or experienced. And I

18 think those people are familiar with some of the

19 entertainment facilities that the Zoning Board has

20 been approving variances for those facilities, and

21 they would not come to the city unless they felt

22 there was appropriate signage.

23 COUNCILMAN NUTTER: Well, it's really

24 more a matter of art and taste. And, I mean,

25 reasonable people can just disagree about whether

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 they like billboards or not. I mean, it's like
3 art or, you know, some other things out there. I
4 mean, it's not pure, right? I mean, they make 31
5 flavors of ice cream at least.

6 MR. PRIMAVERA: And I would agree with
7 that. I'm just trying to add the perspective --
8 and I'm glad you're already confirming it -- that
9 if one sign is too many --

10 COUNCILMAN NUTTER: If this is a point
11 we're going to agree on, then I'm going to change
12 my position.

13 MR. PRIMAVERA: Okay. But I think
14 you're right, I think that it's like many issues
15 that don't allow for people to look at the gray
16 area. I think you have one side or the other.

17 COUNCILMAN NUTTER: Well, talk about
18 this 'cause, I mean, you have in an overwhelming
19 fashion at least made a case that this particular
20 company -- and we're not talking about any other
21 company, but that this particular company is
22 paying its license fees, is a good citizen, works
23 with people, made an agreement at least with the
24 city -- I just -- I want to go back for one
25 second.

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2 On the agreement out in the southwest,
3 you indicated that -- is it that all the revenues
4 from this only go back into the City coffers? Are
5 there any other agreements or arrangements or side
6 discussions that might enable a community group,
7 an organization, a rec center or anybody else to,
8 I guess, benefit from the revenues derived out of
9 that?

10 MR. PRIMAVERA: No. As a matter of
11 fact, the interesting thing is that originally the
12 Water Department was very excited about the
13 prospect of having its property used for this
14 purpose because they see the signs that the
15 adjoining properties have and they say, Why can't
16 we generate some income?

17 I think the Water Department wanted to
18 dedicate the income to its particular site, and I
19 think the way the City works is it goes into the
20 General Fund, so the City dictates where it goes.

21 With regard to community groups, at
22 least with regard to this site, there was no
23 request and really no participation or
24 compensation. The city, I'm sure if it wanted to,
25 if it felt it could dedicate some of that income

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2 stream to them, but it just never came up. And
3 maybe that's something -- kind of a quid pro quo
4 that would be beneficial to groups going forward.

5 But we didn't address that.

6 COUNCILMAN NUTTER: Okay. Let's talk
7 about the bill. You've made your case for
8 Keystone as a good corporate citizen. And maybe
9 you felt you had to come here today to defend your
10 reputation or get into issues from '91.

11 What's your concern about this
12 particular bill?

13 MR. PRIMAVERA: Well, I think that part
14 of it has to do with the record that's been made,
15 and I agree with you that's it's gone far afield,
16 and we needed to address it, but --

17 COUNCILMAN NUTTER: You've more than
18 defended yourself.

19 MR. PRIMAVERA: Thank you.

20 COUNCILMAN NUTTER: Let's talk about
21 the bill.

22 MR. PRIMAVERA: And with regard to the
23 bill, the concern is really this? That there are
24 always things that have to be done to make the
25 City work. And there seems to be so much --

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2 COUNCILMAN NUTTER: What does that

3 mean?

4 MR. PRIMAVERA: Well, so many different
5 approvals and licenses and permits and hearings.

6 And, as set forth in the testimony, I won't repeat
7 it here, the bill, we believe, would just add
8 another bureaucratic level to an already fairly
9 bureaucratic process that has a lot of checks and
10 balances, you have zoning hearings, you have PIDC,
11 you have the operating departments of this city.

12 So we think that there already is a
13 tremendous amount of layers of review. So this
14 isn't something that comes --

15 COUNCILMAN NUTTER: I appreciate you
16 confirming my title as "a bureaucrat."

17 MR. PRIMAVERA: What's that?

18 COUNCILMAN NUTTER: I appreciate my new
19 title as "a bureaucrat."

20 MR. PRIMAVERA: No, no, I'm not just
21 talking about any aspect.

22 COUNCILMAN NUTTER: I understand.

23 MR. PRIMAVERA: I'm talking about if
24 you go back to the Water Department, the City
25 Solicitor, PIDC.

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2 COUNCILMAN NUTTER: Right.

3 MR. PRIMAVERA: I mean, there's the
4 Zoning Board, the Planning Commission.

5 COUNCILMAN NUTTER: Mm-hmm.

6 MR. PRIMAVERA: I mean, this one
7 location involved tremendous amount of time and
8 energy. And anything that adds to that would be,
9 I think, counterproductive.

10 COUNCILMAN NUTTER: You don't think
11 that there is any particular special care or
12 oversight that should go into the citing of
13 whether it's billboard or other advertising or
14 some other private interest on public property?

15 MR. PRIMAVERA: Well, I think that
16 first of all --

17 COUNCILMAN NUTTER: I mean, it doesn't
18 require any -- just any heightened level of
19 oversight?

20 MR. PRIMAVERA: I guess what we say is
21 that the steps that were involved in our
22 experience with a telephone size agreement with
23 the Law Department, review through all the City
24 agencies, we had full-blown engineering plans to
25 make sure that the sign would not compromise the

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2 Water Department's operations. And they precluded
3 the --

4 COUNCILMAN NUTTER: Well, you can
5 understand why we would want something like that.

6 MR. PRIMAVERA: Oh, I'm just saying --

7 COUNCILMAN NUTTER: If your sign maybe
8 falls on somebody, we might be liable.

9 MR. PRIMAVERA: And \$5 million of
10 insurance. I mean, if you would see what your
11 city solicitor did, they should be complimented.
12 There's probably not a tougher agreement on the
13 books.

14 And the reason is -- you're right --
15 that they do know that City property does require
16 for the taxpayers' benefit a lot of protections.
17 My only response is that based on our experience,
18 this thing was looked at as closely as any deal
19 involving city property.

20 COUNCILMAN NUTTER: Mm-hmm.

21 MR. PRIMAVERA: Also, I know your
22 concern would be, it's one thing if you're down in
23 a sludge facility; it's another if you're near
24 residential property. Well, we only want to be in
25 industrial properties; we don't to be anywhere

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2 near residential properties.

3 So we think the same locations that
4 apply to private property are relevant to City
5 property. City property should not be easier to
6 get a billboard on.

7 COUNCILMAN NUTTER: Right.

8 MR. PRIMAVERA: And we're not proposing
9 that. We're saying apply the law in an even
10 capacity. If someone has a private piece of
11 property by the airport, in a swamp, and there's
12 nothing that can be developed, then it should be
13 considered for a billboard.

14 If the City owns that same property
15 with the same limitations and it otherwise
16 conforms with the zoning law, then it should be
17 available. So --

18 COUNCILMAN NUTTER: Well, I understand
19 that by I have to go back to the initial question,
20 and it really is a yes or no or question.

21 Do you believe that there should be any
22 higher level of scrutiny or oversight on the
23 placement of a billboard on public property versus
24 private property. Now, it's a yes or a no
25 question.

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2 MR. PRIMAVERA: Yeah. I would say no,
3 we already have criteria that addresses content of
4 the advertising, location of the advertising, and
5 all of the other administrative controls. So to
6 me, it would be redundant. I mean, not that
7 redundancy --

8 COUNCILMAN NUTTER: So you think it
9 should be the same test as -- I mean, the test
10 should be equal whether it's on a piece of
11 privately-owned property as to the roof of
12 Memorial Hall, same test.

13 MR. PRIMAVERA: Well, you just put the
14 rabbit in the hat. We wouldn't put it on the roof
15 of Memorial Hall.

16 COUNCILMAN NUTTER: I can't talk about
17 just you.

18 MR. PRIMAVERA: All right.

19 COUNCILMAN NUTTER: You're not the only
20 billboard -- as much as you may want to be, you're
21 not the only billboard company in the City of
22 Philadelphia. I don't know what you want to do, I
23 don't know sites you want to be on.

24 MR. PRIMAVERA: Well, let me explain.

25 COUNCILMAN NUTTER: I don't know that

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2 you only want to be in commercial or industrial
3 areas, and I don't know how many of them there
4 are.

5 What I do know is that there are a
6 large number of publicly-owned buildings around
7 the City of Philadelphia. And if the idea is to
8 put billboards on public property, there are a
9 whole lot of them.

10 MR. PRIMAVERA: Well, no, I would agree
11 with you there. As a matter of fact, maybe we are
12 agreeing at a point.

13 If somebody wanted to add a billboard
14 to a historic structure like City Hall or Memorial
15 Hall --

16 COUNCILMAN NUTTER: They may be covered
17 by other provisions.

18 MR. PRIMAVERA: I'm just saying that
19 what we're, on behalf of Keystone, looking at are
20 areas that are basically far-removed from either
21 residential or commercial properties, they're in
22 industrial districts, and they're, quite frankly,
23 where you would expect to see billboards.

24 COUNCILMAN NUTTER: Right.

25 MR. PRIMAVERA: We would not look -- we

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2 think that it would be disrespectful to the City
3 and to the taxpayers to try to put them in an area
4 where they would stick out and be a negative
5 influence.

6 COUNCILMAN NUTTER: So you think the
7 process is either further delayed or that much
8 more painful if you, as you say, you are already
9 working with either community groups and
10 organizations, you're already working with, at a
11 minimum, the District Councilperson, and you're
12 talking to the people who own the site or are
13 responsible for the site on the public side, that
14 it would be that more of a burden to have a member
15 of this Council introduce a bill, which doesn't
16 cost you anything, have a public hearing, which
17 doesn't cost you anything, get a bill out
18 committee, voted on by the body -- still at no
19 cost to you -- which literally can be done in two
20 weeks, three Thursdays, and that that somehow
21 creates a larger burden for you than filing an
22 application with the Zoning Board, waiting till
23 you get a hearing, paying \$500 to get an expedited
24 hearing on top of the 280 that you have to pay
25 anyway to have a hearing, and then waiting for a

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2 decision.

3 The first process is more burdensome
4 than the second process; is that your testimony?

5 MR. PRIMAVERA: Yeah. What would be
6 the standards? If I go to the Zoning Board, I
7 know what the legal standards are for success. If
8 I become involved in a Councilmatic process, what
9 would be the standards that Council would use to
10 evaluate?

11 We would all agree that if it's on
12 Memorial Hall, you wouldn't approve it. I would
13 be first to agree with that.

14 COUNCILMAN NUTTER: Based on what
15 standard?

16 MR. PRIMAVERA: Well, my suggested
17 standard. But I'm just saying, what would be the
18 standards in your ordinance? Would it be simply
19 based upon -- are you looking for a hundred
20 percent consensus? If the SCRUB people came in
21 said, We don't want it, would that be enough to
22 veto it?

23 We don't really know the parameters.
24 And it may be that the exception will eat the rule
25 so that --

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2 COUNCILMAN NUTTER: Mr. Primavera, let
3 me ask you this question: How many times have you
4 ever testified on a bill in City Council?

5 MR. PRIMAVERA: Many.

6 COUNCILMAN NUTTER: What were the
7 criteria under which that bill was approved or
8 denied?

9 MR. PRIMAVERA: I would say that
10 usually there was a criteria.

11 COUNCILMAN NUTTER: Are they written
12 somewhere?

13 MR. PRIMAVERA: In some cases, they
14 are, like in street ordinances, you know, in
15 right-of-way ordinances.

16 COUNCILMAN NUTTER: But most are not.

17 MR. PRIMAVERA: Well, usually there's
18 an accepted --

19 COUNCILMAN NUTTER: And you probably
20 have about a 98, 99 percent approval rate out of
21 this body, don't you?

22 MR. PRIMAVERA: Usually. I would say
23 this, that where there's the track record and
24 where everyone knows kind of what the parameters
25 are --

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2 COUNCILMAN NUTTER: So your testimony
3 is that -- and I don't -- and I've certainly come
4 to respect the work and the view and the judgment
5 of the Zoning Board of Adjustment, but, I mean,
6 are you making testimony now that by way of the
7 Zoning Code, which you can read and figure out,
8 that the members of City Council would not be able
9 to figure out for themselves, based on whatever
10 criteria we use to approve the million ordinances
11 that come through here on a regular basis, that
12 members of City Council would not be able to
13 figure out, based on the recommendation of the
14 District Council who member introduced the bill in
15 the first place, that we wouldn't be able to
16 figure out whether the bill should go forward or
17 not? Is that your testimony?

18 MR. PRIMAVERA: No, no. You asked me
19 what my client's position would be, and my
20 client's position would be, You may know what you
21 have in your mind, but we don't know unless you
22 tell us. And if there were some standards that
23 would allow us to know the, quote, rules of the
24 road, then maybe we could agree. So that's when I
25 said no Memorial Hall, no playgrounds.

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2 But if your mind that I can't read
3 says, Whenever SCRUB says no, that means no, then
4 I'm out of business.

5 COUNCILMAN NUTTER: But SCRUB is not a
6 member of City Council. We are.

7 MR. PRIMAVERA: But they may have an
8 impact.

9 COUNCILMAN NUTTER: You go to the
10 District Council now, right?

11 MR. PRIMAVERA: Right.

12 COUNCILMAN NUTTER: I mean, as a normal
13 course of your policy and procedure, you go and
14 talk to the District Council person, right?

15 MR. PRIMAVERA: Right.

16 COUNCILMAN NUTTER: And what do you do
17 if the District Council says, I can't support a
18 billboard at XYZ location? What do you do?

19 COUNCILMAN NUTTER: I don't know if
20 we've ever had that.

21 COUNCILMAN NUTTER: What would you do?

22 MR. PRIMAVERA: I would probably find
23 another location which they could support.

24 COUNCILMAN NUTTER: And would you ask
25 them what their criteria was, or would you just

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2 accept their judgment?

3 MR. PRIMAVERA: No, I would say, What
4 would be something that you could get behind? And
5 in past, they would say --

6 COUNCILMAN NUTTER: Suppose they said
7 nothing? Or I don't like it at that location.
8 What would you say?

9 MR. PRIMAVERA: I'd say that that was a
10 very narrow view of the world and maybe being the
11 advocate that I am, I could convince them that
12 it's in the best interests of their community and
13 the city and the business to have a more open
14 mind.

15 COUNCILMAN NUTTER: And after all of
16 that eloquence, suppose they said no at that
17 location, what would you do?

18 MR. PRIMAVERA: Probably look at
19 another location.

20 COUNCILMAN NUTTER: Okay. So what's
21 the difference? What was the criteria that was
22 used?

23 MR. PRIMAVERA: Well, I think what I'm
24 saying is that I would --

25 COUNCILMAN NUTTER: It was the judgment

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2 of the Councilperson at that time based on all the
3 factors involved, wasn't that the criteria?

4 MR. PRIMAVERA: But they would tell me
5 typically. They would say --

6 COUNCILMAN NUTTER: You think we
7 wouldn't tell you under the circumstances of this
8 bill.

9 MR. PRIMAVERA: I don't know. I'm
10 asking. You said, What would be helpful in making
11 your ordinance acceptable? And I said some
12 objective standards that would give us the rules
13 of the road so that we know what Council is
14 thinking about other than sheer prerogative.
15 Because at this point, the zoning process tells us
16 what we need to establish, and the ordinance that
17 you're prescribing basically says, Come into City
18 Council and avail yourself of a process that's
19 going to be perhaps creating a new regulatory
20 hurdle for us.

21 I don't know. If you're saying that
22 the Councilpeople will defer to the Councilperson
23 in whose district the property is located, and
24 there won't be Councilman Cohen and others putting
25 pressure on Councilpeople because they feel that

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2 they don't want the sign even if it's not in their
3 district, I don't know. I mean, that's --

4 COUNCILMAN NUTTER: You want me to
5 write that into the bill?

6 MR. PRIMAVERA: No, I'm just saying
7 that --

8 COUNCILMAN NUTTER: That Councilman
9 Cohen can't pressure anybody? I mean, come on.

10 MR. PRIMAVERA: Well, I'm saying that's
11 part of the danger. The danger is that --

12 COUNCILMAN NUTTER: Members take the
13 prerogative to talk to other members about
14 whatever it is that they want to talk about, but
15 you've been around long enough to know that in
16 most instances, if there is something that is
17 pertinent to a particular location, involves a
18 District Councilperson who, under this legislative
19 arrangement, would be the introducing member, then
20 certainly that member is going to be an advocate
21 because they're worked out all that needs to be
22 worked out with their community and in their
23 district to have this go forward.

24 MR. PRIMAVERA: Well, maybe I can
25 suggest this. Maybe the people who are supportive

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2 of your proposed bill and you as the sponsor --

3 COUNCILMAN NUTTER: I'm sorry, what did
4 you say?

5 MR. PRIMAVERA: Maybe you, as the
6 sponsor of the proposed bill, and those who are in
7 support of it, maybe there's some overriding
8 standards that we all would agree to and maybe we
9 can agree to. I mean, it may well be that we're
10 talking about things in general that lay
11 themselves open for some type of, you know,
12 compromise.

13 Now, from what I've heard today, one
14 sign is too many, so why would I want to ever add
15 any more regulatory hurdles? On the other hand,
16 if you're saying you don't want them on Memorial
17 Hall, neither do we. So I guess I have to know,
18 where is the field that we're playing on? Is it
19 in the extreme ideology?

20 COUNCILMAN NUTTER: The field that
21 you're playing on is the field of public property,
22 and if you want to be on a particular location, if
23 you have no interest in Memorial Hall, then you'll
24 never ask anyone to put one on Memorial Hall.

25 But if you want to be on a rec center,

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2 a library, a ball field or somewhere else, you'll
3 identify that property, you'll make your case,
4 you'll talk to the same District Councilperson
5 that you would have talked to at the nearby
6 privately-located site, and you'll try to work it
7 out.

8 And then the person would introduce a
9 bill and can go through the same process.

10 MR. PRIMAVERA: And you say the process
11 doesn't cost anything. Mr. Cipollini has a couple
12 of lawyers here plus his own time. This is a very
13 expensive and extensive -- the lobbying that goes
14 into it.

15 COUNCILMAN NUTTER: With all due
16 respect to the three lawyers that Mr. Cipollini
17 has, I've had a conversation with him, and I
18 firmly believe, although you're an aggressive
19 advocate on his behalf, that Mr. Cipollini could
20 have represented himself today and done a very
21 good job.

22 I mean, you know, if I were going to
23 battle, I guess if I had the opportunity to get
24 Carl Primavera, Josh Grimes, and Steve Pollack,
25 you know, I'd probably do it too. But, I mean,

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2 that was -- at some level, that was also his

3 choice.

4 MR. PRIMAVERA: Yeah, but you just said
5 it didn't cost him anything and I think --

6 COUNCILMAN NUTTER: Right.

7 Councilwoman Blackwell?

8 COUNCILWOMAN BLACKWELL: Excuse me. I
9 really think that you do your position a
10 disservice. I've been at hearings in this chamber
11 since 10 a.m. I have evening meetings, I've
12 missed my whole schedule. I would like not to
13 have a legal debate in our legislative body. It's
14 10 of 5 now.

15 MR. PRIMAVERA: That's fine. I don't
16 have any further remarks, and I'm sorry if I
17 prolonged this.

18 COUNCILMAN NUTTER: That's okay.

19 MR. PRIMAVERA: I was trying to be
20 responsive.

21 COUNCILMAN NUTTER: Sure. I know you
22 were.

23 A couple last questions. Now, can you
24 tell me what -- I mean, this is the first of
25 probably many deals to come. What are the dollars

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2 involved in the Southwest Treatment Center
3 proposal? What does the City get?

4 MR. PRIMAVERA: It's my understanding
5 that it's a 1.2 million over 30 years. That's net
6 to the City.

7 COUNCILMAN NUTTER: So it's about 30
8 grand a year.

9 MR. PRIMAVERA: Is it 40?

10 COUNCILMAN NUTTER: Okay.

11 MR. PRIMAVERA: And, you know, the
12 suspicion would be that that's just pure
13 additional dollars since it doesn't cost the City
14 any money to generate that income. And all the
15 expenses would be paid by Keystone.

16 COUNCILMAN NUTTER: Okay. And in this
17 particular project, did the Water Department seek
18 out Keystone, or was Keystone kind of going around
19 and being aggressive and hustling to find a
20 potential site and then came to an agreement with
21 the Water Department and then the Law Department?

22 MR. PRIMAVERA: In fact, that's exactly
23 what happened. They thought there was an
24 opportunity, they spoke to the Water Department.
25 The Water Department had thought about it

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2 independently but lacked the experience to know
3 whether or not they had an opportunity.

4 COUNCILMAN NUTTER: And was this
5 handled as a concession or as a private negotiated
6 agreement?

7 MR. PRIMAVERA: It was like a licensed
8 agreement.

9 COUNCILMAN NUTTER: Okay. And how do
10 you do that without going to the highest
11 responsible bidder?

12 MR. PRIMAVERA: Well, I think the
13 policy was that since this opportunity was brought
14 to the City's attention by the private company,
15 that the private company -- you know, it would be,
16 in effect, given the opportunity to negotiate.
17 Otherwise, people wouldn't come to the City with
18 opportunities if they felt that they weren't going
19 to ultimately be given a first shot at it.

20 And I think they did an appraisal
21 process so that they knew that they would get, you
22 know, top value.

23 COUNCILMAN NUTTER: Right.

24 MR. PRIMAVERA: But I think that was
25 just a business decision that the City undertook.

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2 COUNCILMAN NUTTER: I understand that.

3 But how do you avoid -- I mean, there must have
4 been some other process that allowed for this kind
5 of direct negotiation versus a concession
6 agreement going to the highest responsible bidder.

7 MR. PRIMAVERA: I think when you go
8 through PIDC, they're allowed to handle that.

9 COUNCILMAN NUTTER: So the property was
10 turned over to an authority?

11 MR. PRIMAVERA: It was a licensed
12 agreement, right. So I think PIDC actually took
13 over the negotiation on behalf of the City.

14 COUNCILMAN NUTTER: Okay. So in that
15 particular case, any other company would be
16 precluded from trying to engage in a negotiation
17 at that site on the theory that Keystone found the
18 site, Keystone did an appraisal or had one done
19 and was aggressive about pursuing that location,
20 so they got the exclusive on that one.

21 MR. PRIMAVERA: Right.

22 COUNCILMAN NUTTER: Going forward, do
23 you anticipate pursuing that process or just
24 engaging in concession agreements and going with
25 the highest responsible and trying to outbid other

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2 people? What's the program?

3 MR. PRIMAVERA: It's up to the City. I
4 mean, if the City has identified some locations on
5 its own, then we expect that they would market
6 them as they deem best.

7 If we're able to locate, through a lot
8 of research and time and energy, possible
9 locations, we would have hoped that they would
10 follow through on the same process to reward those
11 who bring business opportunities to the City.

12 So it's really up to the City is the
13 answer, we don't control that. Obviously, we
14 would like as many opportunities as we can get
15 because that's our business.

16 COUNCILMAN NUTTER: Okay. And you
17 expect other companies to pursue the same
18 strategy?

19 MR. PRIMAVERA: Their not being here
20 suggests that they haven't made it a priority.

21 COUNCILMAN NUTTER: Okay. Okay.

22 MR. PRIMAVERA: And, I'm sorry, just to
23 the extent that I may have been, perhaps, overly
24 excited in my remarks, one, I had surgery on
25 Friday and I'm not feeling well. And, second of

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2 all, it's been a long day.

3 But I didn't want to be rude to you or
4 to the committee, and I think, quite frankly, that
5 I wasn't. But if it was perceived that way,
6 accept my apologies and take it in the face of the
7 advocacy which, hopefully, we can bring to bear on
8 any project that we're asked to involve ourselves
9 with.

10 COUNCILMAN NUTTER: I appreciate that.
11 I look forward to the next time we're able to
12 clash swords.

13 MR. PRIMAVERA: Thank you.

14 COUNCILMAN NUTTER: Thank you.

15 Anything else? Mr. Cipollini, would
16 you like to? You've had zealous representation
17 here.

18 MR. CIPOLLINI: I think the record
19 speaks for it is.

20 COUNCILMAN NUTTER: It does. Thank
21 you.

22 The City Solicitor herself and Mr.
23 Feder.

24 (Ms. Franklin-Suber and Mr. Feder come
25 forward.)

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2 COUNCILMAN NUTTER: Let me make mention
3 just for the record that the City Solicitor's
4 appearance, it's my understanding at least, comes
5 at the request of the City administration. And I
6 had inquired on no latter than Friday of last week
7 of the Mayor's Chief of Staff to try to get an
8 indication of who would be making any presentation
9 by the City, and the response was that the City
10 Solicitor would be the representative by the
11 City.

12 It was not my intention, certainly, to
13 leave either L&I or any other department out of
14 today's hearings, but the City administration
15 reserves the right to send who they wish to send.

16 Madame Solicitor, please identify
17 yourself for the record. As I mentioned earlier,
18 we have copies of the statement that was sent over
19 as well as the memorandum from Mr. Feder to
20 yourself. You can certainly feel free to either
21 read your testimony into the record or make
22 remarks.

23 MS. FRANKLIN-SUBER: Thank you,
24 Councilman Nutter. For the record, my name is
25 Stephanie Franklin-Suber. I'm the City Solicitor.

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2 And I'm joined at the table here with Divisional
3 Deputy City Solicitor Richie Feder.

4 If Councilman Nutter would permit, I'd
5 like to simply summarize the testimony that's been
6 circulated to members of the committee.

7 COUNCILMAN NUTTER: That would be fine.

8 MS. FRANKLIN-SUBER: Generally
9 speaking, with certain specified exceptions, Bill
10 No. 980716 requires City Council's specific
11 approval by ordinance prior to the placement of
12 any billboard or other advertising sign on City
13 property.

14 In my opinion -- and this is the
15 opinion that I would render to the administration,
16 which is why I am here on behalf of not only the
17 Law Department but the administration -- this bill
18 exceeds City Council's powers of legislation under
19 the Philadelphia Home Rule Charter. And,
20 therefore, in my opinion, it is unlawful. It
21 violates the Charter by improperly interfering
22 with the power of the executive and administrative
23 branch of government.

24 Section 1-102 of the Charter states
25 very specifically that the City's executive and

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2 administrative power is exclusively vested in and
3 exercised by the Mayor and such other officers,
4 departments, boards, and commissions as are
5 designated and authorized in the Charter.

6 Generally speaking, the grant of
7 permission to a third party to place a billboard
8 or other advertising sign on City property may be
9 structured or characterized as either a concession
10 under Section 8-201 of the Charter, or a lease of
11 surplus real property under Section 5-900(a)(4) of
12 the Charter.

13 Under either characterization, the
14 Charter expressly authorizes the administration to
15 enter into such arrangements without City Council
16 approval. So, in other words, the determination
17 as to the placement of billboards and advertising
18 signs on City property is an administrative
19 function committed by the scheme of the Charter to
20 the executive branch of City government.

21 So to the extent that this particular
22 bill purports to reassign that power to City
23 Council, this is an improper interference with the
24 power of the executive and administrative branch
25 of government.

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2 COUNCILMAN NUTTER: Is that it?

3 MS. FRANKLIN-SUBER: That's my summary.

4 COUNCILMAN NUTTER: Oh, okay.

5 Just a couple quick questions. Now,
6 Solicitor, there was a -- there was one section of
7 your opinion or another document that I have which
8 indicates that one of the departments can rent
9 City facilities when they are not being used --
10 I'm sorry.

11 Section 5-900(a)(4): Whenever City
12 real estate is not being used by a City agency,
13 public property, quote, may rent or when
14 authorized by the Council sell the same upon the
15 best terms obtainable after appropriate public
16 advertising and a receipt of competitive bids.

17 MS. FRANKLIN-SUBER: That's correct.

18 COUNCILMAN NUTTER: Can you shed any
19 light on the phraseology "whenever City real
20 estate is not being used by a City agency"? Does
21 that mean that the site has been abandoned? Does
22 it mean that we no longer use it for anything?
23 Does it mean that the ground adjacent to a
24 building where activities go on, that the ground
25 itself is not being used anymore, even though

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 we're on the site in the building?

3 Or does it complete abandonment of the
4 location?

5 MS. FRANKLIN-SUBER: Generally
6 speaking, without the benefit of any City
7 Solicitor opinions to construe the language, the
8 Charter makes it clear --

9 COUNCILMAN NUTTER: Would you mind
10 making an opinion right here at the table?

11 MS. FRANKLIN-SUBER: No. The Charter
12 does draw a distinction between City facilities
13 that are currently being used for City work by
14 City agencies. That, generally speaking, is the
15 concept.

16 So the idea is simply that where real
17 estate is not being used by a City agency for City
18 business, in other words, it may be considered
19 surplus. Then the Department of Public Property
20 is expressly authorized to lease any such surplus
21 property without City Council approval. The --

22 COUNCILMAN NUTTER: I'm sorry, does
23 that still go to the ground around -- you have a
24 building, it's surrounded by a couple acres of
25 land, the land is adjacent to the building that is

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 actively under use. Does that particular
3 provision apply to the land, even though we don't
4 necessarily do anything on that land, but the land
5 is a part of the site?

6 MS. FRANKLIN-SUBER: The Charter
7 specifically says "City real estate," so I would
8 interpret that to include building, land. It says
9 "City real estate."

10 COUNCILMAN NUTTER: So your
11 interpretation is that the building and the land
12 would to have to be deemed surplus or not being
13 used by a City agency?

14 MS. FRANKLIN-SUBER: Any a portion of
15 it. It says whenever any City real estate is not
16 being used in connection with the work of any
17 department, board or commission of the City or any
18 other governmental agency, the Department may
19 rent.

20 COUNCILMAN NUTTER: So in the
21 affirmative, does that mean that the only time
22 they can rent such a location is when the site has
23 been deemed surplus or abandoned?

24 MS. FRANKLIN-SUBER: When it is not
25 being used in connection with City work by a City

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 agency; or, actually, any other governmental
3 agency.

4 COUNCILMAN NUTTER: Okay. And --

5 MS. FRANKLIN-SUBER: The Charter does
6 make a distinction, though. The line is drawn
7 between the power of City Council and the power of
8 the executive and administrative branch of
9 government with regard to real estate very simply.

10 City Council has the authority to
11 approve the acquisition of City facilities, City
12 real estate and the ultimate disposition of City
13 facilities and city real estate.

14 And as that has been interpreted by
15 various City Solicitor opinions, the acquisition
16 process and the disposition process are considered
17 as an integral part of City Council's role in the
18 budget process. You have to establish a capital
19 program, you have to establish a capital budget.

20 But the management and the operation of
21 City facilities between the time of initial
22 acquisition and ultimate disposition is left,
23 under the Charter, to the executive branch of
24 government.

25 COUNCILMAN NUTTER: Gotcha. The other

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716
2 part of your opinion or statement does go to the
3 separation-of-powers issue. We've had numerous
4 discussions in the past about that provision, and
5 your position here today is that the Council does
6 not have the authority to enact such an ordinance,
7 that's your position.

8 MS. FRANKLIN-SUBER: The requirement in
9 the bill that the ultimate decision with regard to
10 the placement of billboards and other advertising
11 signs on City property, by reassigning the
12 ultimate decision-making authority to City
13 Council, my opinion is that that violates the
14 Charter because the Charter clearly vests, under
15 the provisions I've identified, that
16 decision-making authority and power in the
17 executive branch.

18 So I consider that language in the bill
19 to be contrary to the provisions of the Charter.

20 COUNCILMAN NUTTER: And the Law
21 Department has taken the same position with regard
22 to -- on separation of powers with regard to the
23 establishment of various boards and commissions,
24 is that correct?

25 MS. FRANKLIN-SUBER: That is correct.

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2 COUNCILMAN NUTTER: Madame Solicitor,
3 and I'm sure, Mr. Feder, you're aware of the
4 creation by ordinance of the Air Pollution Control
5 Board under Section 3-302, the Animal Advisory
6 Committee in 10-1023, the Board of Safety and Fire
7 Prevention in 5-4105, the Fair Housing Commission
8 in 9-802, the Historical Commission in 14-2007,
9 the Joint Airport Zoning Board in 18-202, the
10 Minority Business Enterprise Council in 17-505,
11 the Philadelphia Corporation on Services to Aging
12 in 21-901, and the Vacant Property Review
13 Committee in 16-404, all of which were created by
14 ordinance of City Council.

15 Are you aware of those?

16 MR. FEDER: Mr. Chairman, we're
17 certainly aware of those general provisions in the
18 Philadelphia Code. I believe they raise different
19 issues than the issue that's presented here. And
20 I don't believe there have ever been any Solicitor
21 opinions issued on those particular provisions of
22 the Code.

23 COUNCILMAN NUTTER: But you are aware
24 that the Council, in contrary fashion to,
25 apparently, past testimony from the Law Department

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2 about the Council's ability to create various
3 boards and commissions, under the City Charter,
4 has taken an opposing view on that?

5 MS. FRANKLIN-SUBER: I think the answer
6 to the question, as I understood Mr. Feder, was
7 that we have not issued an opinion with regard to
8 the legality of those commissions.

9 What I am saying here is that based on
10 prior City Solicitor opinions that go back as far
11 as 1954, we are relying on -- and I am prepared to
12 issue -- an opinion which does take the position
13 that this bill is unlawful, based on separation of
14 power and based on prior City Solicitor opinions
15 that have construed, certainly in terms of the
16 capital programs and capital facilities and the
17 construction of the real estate provisions of the
18 Charter, that those are improper interferences
19 with the executive branch.

20 We have declined to issue opinions,
21 frankly, with regard to those other sections of
22 the Code and legislation dealing with the
23 formation of commissions, boards, and agencies by
24 Council.

25 COUNCILMAN NUTTER: More than likely in

1 COMMERCE & ECONOMIC DEVELOPMENT - BILL NO. 980716

2 most of those cases, the reason for declining to
3 engage in the opinion-making process on those is
4 because the executive branch either affirmatively,
5 or with strong encouragement of the City Council,
6 chose to cooperate in those particular cases?

7 MS. FRANKLIN-SUBER: I can't answer
8 that question. I don't have any personal
9 knowledge with regard to whatever the
10 administration's position may have been with
11 regard to any particular ordinance that's on the
12 books currently.

13 COUNCILMAN NUTTER: Okay, last question
14 for the day.

15 Both Solicitor opinions and the law
16 change, expand and contract from time to time. Is
17 that a fair analysis of the law, as you know it?

18 What may have been illegal at one point
19 in time could possibly become legal? What was
20 legal becomes illegal? Doesn't that happen from
21 time to time in the law?

22 MS. FRANKLIN-SUBER: With changes in
23 law, that is correct.

24 COUNCILMAN NUTTER: Okay. Any
25 questions?

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2 (No further questions at this time.)

3 COUNCILMAN NUTTER: Okay. Madame
4 Solicitor, thank you very much for coming in. We
5 know that at least yourself, and possibly Mr.
6 Feder, have been operating slightly under the
7 weather. We appreciate your indulgence in this
8 process. Thank you.

9 MS. FRANKLIN-SUBER: Thank you.

10 COUNCILMAN NUTTER: Is there any other
11 member of the public here to testify with regard
12 to this bill?

13 (No response.)

14 COUNCILMAN NUTTER: Seeing none, the
15 public hearing on Bill No. 980716 will conclude,
16 and we will go into a public meeting.

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1 COMMERCE & ECONOMIC DEVELOPMENT - Public Meeting

2 COUNCILMAN NUTTER: I call on
3 Councilwoman Blackwell for a motion regarding the
4 amendments that were read into the record during
5 the course of the public hearing.

6 COUNCILWOMAN BLACKWELL: Mr. Chairman,
7 I move that the amendments, as previously read
8 into the record, be approved.

9 (Duly seconded.)

10 COUNCILMAN NUTTER: All in favor, let
11 it be known by saying aye. And that includes
12 Councilman Cohen, who left his vote earlier.

13 The ayes have it.

14 Councilwoman Blackwell, I ask for a
15 motion on Bill No. 980716, as amended.

16 COUNCILWOMAN BLACKWELL: Mr. Chairman,
17 I move that Bill No. 980716 be reported out of
18 committee as amended with a favorable
19 recommendation, and also a recommendation for a
20 suspension of the rules so as to be considered at
21 the next session of Council.

22 (Duly seconded.)

23 COUNCILMAN NUTTER: All in favor, let
24 it be known by saying aye.

25 Including Councilman Cohen, who left

1 COMMERCE & ECONOMIC DEVELOPMENT - Public Meeting
2 his vote as aye, the ayes have it. There are none
3 opposed.

4 The public hearing is concluded. The
5 report will made to the Council at our next
6 Council session.

7 Thank you very much.

8 (Adjourned at 5:04 p.m.)

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RE: COUNCIL COMMITTEE ON

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COMMERCE AND ECONOMIC DEVELOPMENT

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BILL NO. 980716

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JOSEPHINE CARDILLO,

Registered Professional Reporter