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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING BEFORE THE COMMITTEE ON

4

PARKS, RECREATION AND CULTURAL AFFAIRS

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Room 400, City Hall

Philadelphia, Pennsylvania

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Monday, May 24, 2004

9:3 a.m.

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10 Bill 040508 - Ordinance authorizing the President of
the Fairmount Park Commission, the
11 Executive Director of Fairmount Park
and the Public Property Commissioner
on behalf of the City of Philadelphia
12 to enter into a lease and related
agreements and an easement agreement
13 relating to utility conduits with PTM
II Limited Partnership, etc.

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PRESENT: COUNCILWOMAN BLONDELL REYNOLDS-BROWN,
(Chair)

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COUNCILMAN W. WILSON GOODE, JR.,
(Vice-Chair)

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COUNCILMAN FRANK DICICCO

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COUNCILMAN JACK KELLY

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COUNCILMAN FRANK RIZZO

COUNCILWOMAN MARIAN B. TASCO

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1 5/24/04 - Parks, Recreation & Cultural Affairs

2 COUNCILWOMAN BROWN: We will now call
3 the Committee on Parks, Recreation and Cultural
4 Affairs to order.

5 First of all, let us apologize on this
6 end. We are now ready to proceed with the hearing
7 on Recreation, Parks and Cultural Affairs.

8 Good morning. Before we get started, I
9 need to read to everyone the letter I submitted to
10 President Verna just this morning.

11 "I write to disclose a potential
12 conflict of interest and to announce my intention to
13 disqualify myself from taking official action in
14 related matters as a member of Council.

15 "I serve as an uncompensated member of
16 the board of directors of the Please Touch Museum.
17 Under the State Ethics Act and the Philadelphia
18 Code, I may not take official action affecting a
19 corporation of which I am a board member.

20 "Philadelphia Code, Section 20-608,
21 mandates the particular procedure for officials to
22 disclose financial interest in outside entities and
23 announce their intent to disqualify themselves in
24 matters involving such interest. This letter is for
25 that purpose.

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2 "I intend to have no official
3 involvement as a member of City Council in any
4 matters that come before Council that have a
5 financial impact on the Please Touch Museum with the
6 exception of matters that have only a" -- this is
7 Latin -- "de minimus economic impact or which affect
8 to the same degree a class consisting of the general
9 public or a subclass consisting of an industry,
10 occupation or other group which includes this
11 nonprofit.

12 I will, therefore, not be participating
13 in these proceedings, and I am pleased to turn these
14 proceedings over to the vice-chair of Recreation
15 Parks and Cultural Affairs, Councilman W. Wilson
16 Goode. He will carry us from there. Thank you.

17 COUNCILMAN GOODE: I note that a quorum
18 is present. Members of the committee participating
19 today include Councilman Frank Rizzo, Councilman
20 Jack Kelly, Councilwoman Marian B. Tasco, myself, W.
21 Wilson Goode, Jr.

22 I will ask the clerk to read the title
23 of the bill.

24 THE CLERK: Bill No. 040508, an
25 ordinance authorizing the president of the Fairmount

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2 Park Commission, the executive director of Fairmount
3 Park, and the public property commissioner on behalf
4 of the City of Philadelphia to enter into a lease
5 and related agreements and an easement agreement
6 relating to utility conduits with PTM II Limited
7 Partnership (PTM II), a Pennsylvania limited
8 partnership, under which the City would lease
9 Memorial Hall and adjoining land (together the
10 premises) to PTM II, which would sublease the
11 premises to PTM III Limited Partnership (PTM III), a
12 Pennsylvania limited partnership, which would
13 sub-sublease the premises to Please Touch Museum
14 (Please Touch), a Pennsylvania not-for-profit
15 corporation under Please Touch, through PTM II and
16 PTM III, would restore, improve and adapt Memorial
17 Hall for use as a children's museum and operate the
18 Please Touch Museum at Memorial Hall, all under
19 certain terms and conditions.

20 COUNCILMAN GOODE: Thank you.

21 Our first witness today is Nancy Kolb of
22 the Please Touch Museum.

23 Please state your name for the record
24 and proceed with your testimony.

25 MS. KOLB: Thank you, Mr. Chairman.

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2 My name is Nancy Kolb, president and CEO
3 of the Please Touch Museum, and I'm present today to
4 testify in support of Bill 040508 proposing the move
5 of Please Touch Museum to Memorial Hall in Fairmount
6 Park.

7 Memorial Hall, one of Philadelphia's
8 most endangered national historic landmarks, has
9 fallen victim to time and lack of resources. Please
10 Touch Museum will be the means of restoring and
11 rejuvenating this grand old building to its original
12 purpose, a museum, all at the museum's own cost and
13 expense.

14 In addition, we will keep and maintain
15 the premises in good order and condition throughout
16 the 80-year term of the lease.

17 The new Please Touch Museum at Memorial
18 Hall will be a place for learning and a place for
19 fun for children and families. Our goal is to tell
20 the story of the Centennial Exhibition, which
21 generated over nine and a half million visitors to
22 Philadelphia in six months in 1876, a goal we should
23 have for today.

24 In addition, Please Touch Museum's
25 involvement with our new neighbors, the Parkside

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2 Kelly Pool.

3 In our restoration and operation of
4 Memorial Hall, we will be employing a number of
5 people in connection with that, and we have
6 developed an economic opportunity plan approved by
7 the Park Commission and City representatives for
8 including disadvantaged business enterprises and
9 minority and female employees in the construction
10 and operation of the museum.

11 And I will be happy to answer any
12 questions.

13 COUNCILMAN GOODE: Thank you for your
14 testimony, Miss Kolb.

15 Any questions from members of the
16 committee?

17 Our next witness is Karen Borski.

18 Please state your name for the record
19 and proceed with your testimony.

20 MS. BORSKI: Good morning, Chairman
21 Goode, Members of City Council. My name is Karen
22 Lloyd Borski, and I'm the interim executive director
23 of the Fairmount Park Commission.

24 I am pleased to appear before you today
25 on behalf of the Fairmount Park Commission in

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 support of Bill 040508, allowing the Fairmount Park
3 Commission to enter into a lease with the Please
4 Touch Museum for their use of Memorial Hall.

5 I would also like to acknowledge that
6 with me today is the vice president of the Fairmount
7 Park Commission, Debra Wolf Goldstein, who spent
8 countless hours working with the museum and our law
9 department in negotiating this arrangement and
10 ultimately bringing it to fruition.

11 Memorial Hall has served many and varied
12 purposes since it was built for the Centennial
13 Exposition in 1876. Over the last 40 years it has
14 been a full-service recreation center with indoor
15 swimming pools, a venue for major City events, the
16 home for a variety of different police department
17 districts and units and, most notably, the
18 headquarters of the Fairmount Park Commission.

19 Despite this storied past, the building
20 is in need of significant restoration if it is to
21 remain as a true historic Philadelphia landmark.

22 Council Bill No. 040508 would authorize
23 the City to enter into a long-term lease with the
24 Please Touch Museum to restore, improve and adapt
25 Memorial Hall for use as a children's museum. This

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 project will not only expand a popular children's
3 activity destination but also invest millions of
4 dollars into the restoration and stabilization of
5 one of Philadelphia's most treasured buildings.
6 Scheduled to open in 2007, the museum will also
7 greatly enhance the public's ability to visit and
8 learn about Memorial Hall.

9 There is also great benefit to the City
10 beyond the restoration of this historic building.
11 Savings will be realized in both the operating and
12 capital budgets, as all of these annual costs
13 related to the building will become the
14 responsibility of the Please Touch Museum. Relief
15 from the utility costs alone will save the City
16 \$100,000 annually.

17 Visitors and community residents alike
18 will also benefit from improvements made through
19 this partnership to the landscape and grounds around
20 Memorial Hall. Together with the Philadelphia Zoo,
21 the Mann Center for the Performing Arts and
22 neighborhood development in the Parkside community,
23 this project will breathe new life into West
24 Fairmount Park.

25 Plans are also underway to create a

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2 Centennial District among these cultural
3 institutions on the very same grounds where our
4 country celebrated its centennial anniversary in
5 1876.

6 Lastly, realizing the challenges to
7 Fairmount Park's operations that this project will
8 pose, I am pleased to report that the Please Touch
9 Museum has committed \$500,000 towards the cost of
10 relocating City employees and facilities from
11 Memorial Hall including moving Fairmount Park
12 employees and offices into the One Parkway Building
13 and other park sites and facilities later this year.

14 It is with great satisfaction that I
15 appear before you today to pledge the wholehearted
16 support of the Fairmount Park Commission for this
17 legislation.

18 I would also like to thank all of the
19 commissioners and staff of the Fairmount Park and
20 the Please Touch Museum for their hard work and
21 diligence in making this project become a reality.

22 I also am glad to answer any questions
23 you may have. Thank you.

24 COUNCILMAN GOODE: Thank you for your
25 testimony, Miss Borski.

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2 The Chair recognizes Councilman Rizzo.

3 COUNCILMAN RIZZO: Director, could you
4 please comment on this letter in reference to
5 Fairmount Management?

6 MS. BORSKI: There was a letter
7 delivered today. Councilman, that is a matter that
8 is being handled by the legal entities for both
9 Please Touch and Fairmount Park.

10 COUNCILMAN RIZZO: If you will excuse me
11 for a second, this call is in reference to this.

12 MS. BORSKI: Certainly.

13 COUNCILMAN GOODE: Miss Borski, Miss
14 Kolb, thank you for your testimony. We actually
15 will just take testimony from Judith Nylon right now
16 from Fairmount Management.

17 Councilman, we are actually going to
18 take testimony from Fairmount Management.

19 COUNCILMAN RIZZO: Okay. Fine.

20 MS. BORSKI: Councilman, I have
21 conferred with counsel, and it is our understanding
22 that commission action or Council action on this
23 bill would not affect the contract with Fairmount
24 Management in any way.

25 COUNCILMAN RIZZO: I need to hear that

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 from them.

3 MS. BORSKI: Oh, sure.

4 COUNCILMAN RIZZO: We will wait until
5 they testify. Thank you.

6 COUNCILMAN GOODE: Please state your
7 name for the record and proceed with your testimony.

8 MS. NYLON: My name is Judith Nylon. I
9 am president of Fairmount Management, Fairmount
10 Park's master concessionaire.

11 By way of testimony, if I may, I would
12 like to read to you a very brief letter written by
13 our counsel who, unfortunately, could not be here
14 today, if I may.

15 COUNCILMAN GOODE: Please proceed.

16 MS. NYLON: "Re: Memorial Hall, Bill
17 No. 040508. Dear committee members: I am writing
18 on behalf of Fairmount Management, LLC, which just
19 learned of your upcoming hearing today and asked me
20 to present to you the legal considerations of which
21 you may already be aware but from the point of view
22 of Fairmount Management.

23 "Fairmount Management is an ongoing and
24 hardworking business which presently has a real
25 contractual interest in the use of Memorial Hall

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2 pursuant to a contract authorized by Council and
3 entered into with Fairmount Park Commission as the
4 exclusive operator of Memorial Hall.

5 "Pursuant to the contract, Fairmount
6 Management has expended hundreds of thousands of
7 dollars on various elements of the contractual
8 facilities including Memorial Hall.

9 "The Fairmount Park Commission has
10 completely failed and refused to comply with the
11 provisions of the contract, which would be violated
12 and negated by the proposed bill to turn Memorial
13 Hall over to the Please Touch Museum.

14 "Fairmount Management has indicated to
15 the City and the Park Commission its willingness to
16 work towards mutually beneficial arrangements for
17 the operation of Memorial Hall with the Please Touch
18 Museum. In violation of the contract, these
19 indications have been ignored.

20 "In these circumstances, in our opinion,
21 adoption of the proposed ordinance would clearly
22 violate Fairmount Management's contract rights and
23 subject the City and Fairmount Park Commission to
24 significant legal damages. In addition, the
25 proposal would adversely affect the utilization of

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 Memorial Hall by the public through the assistance
3 of Fairmount Management.

4 Accordingly, in our opinion, Fairmount
5 Management would suffer a severe legal wrong, in
6 violation of the Pennsylvania Constitution and law,
7 if this ordinance is enacted and the proposed
8 contract is executed, and Fairmount Management would
9 have legal right to relief.

10 "Thank you to your consideration in this
11 matter."

12 This letter is signed by Robert J.
13 Sugarman, our counsel.

14 COUNCILMAN GOODE: Thank you for your
15 testimony.

16 The Chair recognizes Councilman Rizzo.

17 COUNCILMAN RIZZO: Thank you.

18 Did you hear Miss Borski say this would
19 not affect your relationship with --

20 MS. NYLON: I did.

21 COUNCILMAN RIZZO: Do you agree with
22 that?

23 MS. NYLON: Absolutely not.

24 COUNCILMAN RIZZO: How would she have
25 that impression. She is very reliable.

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2 MS. NYLON: I am not counsel,
3 Councilman, and therefore I dare to get into the
4 legalities, but we have an existing contractual
5 right to operate at Memorial Hall through the year
6 2016 and therein I base the letter.

7 COUNCILMAN RIZZO: Mr. Chairman, could
8 you bring the counsel to Miss Borski or the
9 Fairmount Park Commission to the table, please?

10 COUNCILMAN GOODE: Miss Borski, will you
11 please approach the witness table?

12 MS. BORSKI: Yes.

13 COUNCILMAN RIZZO: Counselor, could you
14 state your name for the record and who you
15 represent?

16 MR. COPELAND: My name is Larry
17 Copeland, senior attorney with the City of
18 Philadelphia Law Department.

19 COUNCILMAN RIZZO: Counselor, I'm
20 hearing conflicting stories here. I'm hearing one
21 saying that enacting this ordinance would have
22 potential litigation against the City, and then I'm
23 hearing the Fairmount Park Commission, the director,
24 saying that that is not the case. Could you
25 clarify, please?

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2 MR. COPELAND: Councilman, I first saw
3 this letter this morning. I would point out that
4 what Council would do by this ordinance is merely
5 authorize the City to proceed. The City and Please
6 Touch Museum are aware of Fairmount Management and
7 the parkwide concession which is referenced in the
8 letter. They have been discussing it. Nothing
9 about the ordinance or the actions so far would
10 terminate those rights that Miss Nylon was referring
11 to.

12 COUNCILMAN RIZZO: Thank you.

13 COUNCILMAN GOODE: Miss Nylon, do you
14 have a response?

15 MS. NYLON: No, I don't have a response.

16 COUNCILMAN GOODE: Councilman DiCicco?

17 COUNCILMAN DICICCO: Thank you.

18 I apologize. I got here a few minutes
19 late. Explain to me briefly what the management
20 company has to do with the building, in particular
21 the Please Touch Museum -- excuse me -- Memorial
22 Hall.

23 They are the general concessionaires for
24 Fairmount Park; is that correct?

25 MR. COPELAND: Yes, the Park Commission

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 issued a -- I'm sorry, Councilman.

3 The Park Commission issued what they
4 call a parkwide concession, and under that Fairmount
5 Management has rights to use certain facilities
6 within the park. One of those rights includes
7 catering events in Memorial Hall.

8 I would point out that contract was not
9 approved by City Council. It was a concession
10 agreement.

11 COUNCILMAN DICICCO: Is it exclusive
12 rights to the use of Memorial Hall, or is it on a
13 job-by-job, if you will, basis? If they have a
14 catering, then they get to use it, or is it -- if I
15 wanted to go use that facility, I would have to go
16 through them?

17 MR. COPELAND: It would depend on the
18 use, but the use is for catering in Memorial Hall.

19 COUNCILMAN DICICCO: I know. I have
20 been to a wedding, not that I'm ready to get married
21 again, but if I wanted to rent the hall for a
22 wedding or some event, affair, how would I do that?
23 Would I go to the Fairmount Park Commission or the
24 management company?

25 MS. BORSKI: You would be sent to

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 Fairmount Management.

3 COUNCILMAN DICICCO: Mr. Hawkins was
4 married in that facility a couple years ago. I
5 forgot, John.

6 MS. BORSKI: It's a fabulous facility,
7 and we hope to make it even better.

8 COUNCILMAN DICICCO: I know it is a
9 great facility. I know.

10 Miss Nylon, in your testimony you have
11 testified that your company has put hundreds of
12 thousands of dollars into -

13 MS. NYLON: Into Fairmount Park,
14 Councilman.

15 COUNCILMAN DICICCO: Not into Memorial
16 Hall?

17 MS. NYLON: Some into Memorial Hall.

18 COUNCILMAN DICICCO: Do you have any
19 idea how much your investment was in Memorial Hall?

20 MS. NYLON: In Memorial Hall for
21 physical improvements, almost nothing; only
22 improvements to sort of hide the plaster damage and
23 so forth while it is being repaired, but that is
24 because there has been an ongoing repair project in
25 Memorial Hall almost from the inception of the

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2 contract. What we have done with regard to Memorial
3 Hall is to mount a significant and costly marketing
4 campaign to develop Web site materials and so forth
5 to promote the use not just of Memorial Hall but of
6 the catering facilities at the other facilities we
7 represent within the park.

8 So Memorial Hall is part of all of our
9 efforts on behalf of promotion of Fairmount Park and
10 services therein.

11 COUNCILMAN DICICCO: I'm aware of the
12 condition of that building. It certainly leaves
13 much to be desired.

14 Have you had or has your company had any
15 discussion with the folks at Please Touch Museum
16 about possible -- and I'm not even sure if they
17 would entertain this -- about possible uses for
18 catering in that museum?

19 MS. NYLON: Councilman, we have not.
20 When we first learned of the project nearly a year
21 and a half ago, we immediately registered our
22 concerns and the contractual problems we saw with
23 the arrangement with the Fairmount Park senior
24 officials, and we have tried literally since then to
25 have our voice heard to discuss this. We have had

21 I'm a firm believer that if all sides
22 sit down, the likelihood is that agreements and
23 arrangements can be worked out for everyone. It
24 does take some time.

25 I would like to through the Chair maybe

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2 request that all the parties sit down in a room, get
3 all your lawyers together. I know that can be
4 difficult in and of itself, getting a lot of lawyers
5 together. You may not get anywhere, but maybe
6 nonlawyers should get in that room and figure
7 something out. I think there is an opportunity here
8 for the Please Touch to move forward and for
9 Fairmount Management Company to have some ability to
10 use or coexist, if you will.

11 And I can't speak for Please Touch.
12 They have their agenda obviously, but I have a
13 feeling there is a way of working this out. And I
14 see Miss Kolb raising her hand. But I would ask
15 that all parties sit down in a room once and for all
16 and try to work through this, and I'm certain that
17 the Chair would be more than willing to -- I don't
18 want to give you a job that you don't want, Wilson,
19 but they might be willing to negotiate or this
20 committee would be willing to sit down with all of
21 you to see if we can work something out.

22 I don't think we can do that here.
23 Obviously there is just not enough time. I think
24 there is an opportunity here. I'm looking at it in
25 an entrepreneurial way in which all factors, all

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2 people, all parties could benefit by this.

3 The building certainly needs repair. I
4 don't think your company is in the position
5 financially to take that huge capital investment.
6 They may be. I just have a feeling they don't
7 because that's a big, big, very expensive project
8 there to get that building back to the grandeur that
9 it once had. So since Please Touch would be making
10 this huge capital investment -- I'm sure they are
11 going to have rooms in there that would be available
12 for parties and other kinds of events, and I see
13 Miss Kolb with her hand up again. If you want to
14 approach the table, you can. I'm not the chair of
15 this committee, but...

16 Thank you.

17 MR. COPELAND: Councilman, thank you. I
18 would point out that City officials have met with
19 Fairmount Management, so the conversations are going
20 on. So from our perspective we are working towards
21 a solution.

22 COUNCILMAN DICICCO: Thank you.

23 COUNCILMAN GOODE: Thank you,
24 Councilman.

25 Councilman Rizzo, do you have any

1 5/24/04 - Parks, Recreation & Cultural Affairs

2 further questions for this panel?

3 COUNCILMAN RIZZO: Yes.

4 That's exactly what I was thinking.

5 Instead of this being negative, it could be very
6 positive for you, and I think with some assurances,
7 because this is just -- not just. It is coming out
8 of committee that we still have some time to deal
9 with the issue, so would you perceive this as
10 possibly an opportunity for your company rather than
11 a negative circumstance?

12 MS. NYLON: Councilman, we have always
13 perceived it that way, but our attempts to reach
14 some kind of mutually beneficial agreement have been
15 unsuccessful; herein, my appearance here.

16 COUNCILMAN RIZZO: I plan to vote for
17 this if I hear when Miss Kolb comes to the table
18 that that in fact is what is going to happen. It
19 will not affect you negatively and your recourse is
20 obviously to do what you have to do, but I would
21 prefer, like my colleague just said, to have this
22 work out in a way that is agreeable because this is
23 an opportunity we can't just let slip by here.

24 MS. NYLON: Agreed, Councilman.

25 COUNCILMAN GOODE: Councilwoman Tasco.

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2 COUNCILWOMAN TASC0: Thank you.

3 Good morning. I won't get into the
4 terms of the contract or why one organization was
5 given that kind of a contract, which I have a
6 problem with, but that's not before us today, but I
7 certainly think that to give one entity a multiyear
8 contract excludes and prevents a number of caterers
9 in this city who do business to prevent them from
10 working in the park. And it also does not help to
11 control the cost. Competition keeps the cost down.

12 So as you all -- and I see the chair of
13 Fairmount Park Commission is here -- look to
14 renegotiate or negotiate other contracts that they
15 do not negotiate contracts that are exclusive to any
16 one group, which does not provide for diversity in
17 this city.

18 The other thing I want to put on the
19 record is that Councilman Nutter is not on this
20 committee, but the Please Touch Museum is in his
21 district, and I spoke with him this morning, and he
22 wanted me to go on the record for him to say that he
23 supports this wholeheartedly.

24 I thank you very much.

25 MR. MCPHERSON: If I can make a quick

1 5/24/04 - Parks, Recreation & Cultural Affairs
2 announcement, the Committee of the Whole and the
3 Committee on Fiscal Stability that was scheduled to
4 meet at 10 o'clock today is being recessed until
5 noon. Thank you.

6 COUNCILMAN GOODE: Are there any
7 questions from this panel?

8 COUNCILMAN RIZZO: Yes.

9 I just spoke with Councilman Nutter, and
10 Councilman Nutter assures me that he is going to
11 work on resolving these issues. So I think that
12 is -- are you okay with that?

13 MS. NYLON: I'm okay with that.

14 COUNCILMAN RIZZO: Thank you.

15 COUNCILMAN GOODE: Is there anyone else
16 here to testify on this bill? Is there anyone else
17 here to testify on this bill?

18 Seeing no one else, we will move from
19 our public hearing into our public meeting.

20 The Chair recognizes Councilwoman Tasco
21 for a motion on Bill 040508.

22 COUNCILWOMAN TASCO: I move that bill
23 040508 be moved out of committee with a favorable
24 recommendation and that the rules of Council be
25 suspended so as to have first reading on the next

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2 day of Council.

3 (Duly seconded.)

4 COUNCILMAN GOODE: All those in favor?

5 MEMBERS: Aye.

6 COUNCILMAN GOODE: Those opposed?

7 (No response.)

8 COUNCILMAN GOODE: The ayes have it.

9 Bill No. 040508 is reported out of committee with a
10 favorable recommendation with further recommendation
11 that the rules of Council be suspended for the first
12 reading at our next Council session.

13 This public meeting is now adjourned.

14 (The hearing adjourned at 10:15 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the foregoing
proceedings of the Committee on Parks, Recreation
and Cultural Affairs of the Council of the City
of Philadelphia of May 24, 2004, were reported
fully and accurately by me, and that this is a
correct transcript of same.

Cynthia A. Whyte, RPR

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