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2 COUNCIL OF THE CITY OF PHILADELPHIA

3 COMMITTEE ON LEGISLATIVE OVERSIGHT

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Room 400, City Hall
Philadelphia, Pennsylvania
Monday, March 13, 2006, 1:25 p.m.

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8 PRESENT:

9 COUNCILMAN JAMES KENNEY
10 COUNCILMAN JACK KELLY
11 COUNCILMAN MICHAEL NUTTER

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13 Resolution No. 051029

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1 Legislative Oversight - 3/13/06

2 COUNCILMAN KENNEY: Good

3 afternoon, ladies and gentlemen. Thank
4 you very much for waiting. I apologize
5 for being late. This is a hearing of the
6 Legislative Oversight Committee to take
7 testimony on Resolution No. 051029, which
8 is a resolution authorizing City
9 Council's Legislative Oversight Committee
10 to hold public hearings for the purpose
11 of investigating the presence of an
12 overwhelming number of violations present
13 in and around licensed liquor
14 establishments. Thank you all for coming
15 to what I believe is a very important
16 public hearing to address nuisance bars
17 and stop-and-go's located within our
18 city. My participation in the Act 39
19 liquor takeout permit process along with
20 meeting with constituents affected by
21 nuisance liquor establishments has opened
22 my eyes to destruction by allowing these
23 noncompliant and sometimes dangerous
24 establishments to operate. I recognize
25 that there is not an easy fix to these

1 Legislative Oversight - 3/13/06
2 problems. However, I know that with the
3 proper training, resources, and
4 collaboration, nuisances surrounding
5 licensed liquor establishments can be
6 dramatically decreased. As you will
7 hear, the commitment to address these
8 issues is already present and I
9 appreciate and commend the dedication of
10 both state and local levels to manage
11 liquor establishment issues. However, no
12 one can deny that more is needed. Today
13 we will identify what the current issues
14 are plaguing our communities, what steps
15 have been taken to resolve specific
16 issues, and what resources are needed to
17 address the issues that remain. From
18 these discussions, I hope the proper
19 adjustments and actions will be taken on
20 both the state and local level to
21 properly address these destructive
22 nuisances in our communities.

23 Let me state from the outset
24 this is hopefully a hearing that will
25 bring us up to date on what is going on

1 Legislative Oversight - 3/13/06
2 and what the government -- various levels
3 of government are doing to try to address
4 the problems. There's no attempt to
5 assign any blame or criticism to anyone.
6 I think the nuisance task force has done
7 a great job in identifying issues and
8 moving forward to try to resolve them,
9 but I do think at some level in the state
10 liquor code there probably needs to be
11 some adjustments to allow the city more
12 autonomy and take into consideration some
13 urban issues that affect licensing liquor
14 establishments as opposed to rural issues
15 and suburban issues. I think the city
16 has a specific problem that is not always
17 shared throughout the rest of the
18 Commonwealth and that liquor laws in the
19 state don't always reflect the needs that
20 we have here in Philadelphia.

21 So I'd like to thank everyone
22 for coming here today. We'd like to hear
23 from the District Attorney first giving
24 us an update on just what's going on.

25 Your Honor, thank you for

1 Legislative Oversight - 3/13/06

2 coming and please identify yourself for
3 the record.

4 D.A. ABRAHAM: Good afternoon,
5 Mr. Chairman and members of the City
6 Council and their staffs who are here on
7 this important issue. I'm pleased to be
8 with you today. And seated to my right,
9 your left is Michael Erdos, the chief of
10 my public nuisance task force. As you
11 know, a little bit of history may be in
12 order to complete the record. Almost 13
13 years ago, we started a public nuisance
14 task force in the District Attorney's
15 office as part of my commitment to
16 community prosecution. It started out
17 with David Castro, who came to our office
18 through Pepper, Hamilton & Sheetz, and we
19 teamed up with the Philadelphia Bar
20 Association and they loaned us lawyers to
21 help in our efforts at closing nuisance
22 bars. We established ourselves in that
23 era and then went on to create the
24 full-blown unit where on a geographic
25 basis assistant district attorneys are

1 Legislative Oversight - 3/13/06
2 assigned to work with and through City
3 Council people, state legislators from
4 both sides of the aisle, community
5 groups, and other interested officials
6 and people who want to address the issue
7 of nuisance bars. With the help of our
8 partners, law enforcement, the
9 Philadelphia Police Department, the
10 department of licenses and inspection,
11 the health department, the fire
12 department, other city departments, and
13 with our state cooperation from the LCE,
14 which does the investigations, and the
15 LCB, we have effectively closed more
16 than -- and this is a conservative
17 estimate, more than 2,000 properties.
18 Some of the largest clubs, some of the
19 most terrible stop-and-go's and corner
20 delis and the like in neighborhoods that
21 are across the city of Philadelphia. And
22 closing down these businesses,
23 confiscating liquor licenses, and/or
24 seeing that the board does not renew a
25 liquor license is a hallmark of our work.

1 Legislative Oversight - 3/13/06
2 We do this, of course, always through and
3 with the help of the community
4 organizations and groups. And we are
5 prepared to go anyplace and do anything
6 within the law as we know it, including
7 but not limited to attempting to change
8 the law when that needs to be done either
9 through City Council ordinance and/or
10 through state legislation. Community
11 leaders, whether they're civic
12 associations, elected officials, or other
13 are our first line of defense at
14 identifying who the nuisance or what the
15 nuisance establishments are, the houses,
16 the bars, the stop-and-go's, the
17 brothels, the after-hours clubs, and the
18 other establishments that helps us to get
19 started. We obviously use the
20 participation and collaboration of L&I,
21 which does administrative inspections.
22 Working with the City's law department,
23 we can issue citations and cease
24 operations orders. And, of course, cease
25 operations orders can be appealed to the

1 Legislative Oversight - 3/13/06
2 courts, the Common Pleas courts.
3 Sometimes our luck is really good and our
4 evidence is clear, and sometimes even
5 with clear evidence our luck is bad
6 because the judges don't believe that a
7 liquor establishment ought to be shut
8 down. We would respectfully suggest that
9 even though knowing that there is a
10 separation of powers between the
11 legislative branch and the judicial
12 branch that it might be helpful for this
13 body or some people working with this
14 body to go to court and monitor what
15 happens when we go to a court with cease
16 ops to find out exactly what's going on.
17 It's the best way to see how the system
18 either works well or to somebody's
19 judgment may not work well. We are
20 sometimes mystified why a court does not
21 keep a cease op in effect. And once that
22 has happened, the cease operations is
23 lifted, because there is not an
24 exhaustion of remedies that yet we can
25 see, the place opens up and, you know,

23 And I think it's important that
24 your hearings are being held because if
25 there's anything we can do to encourage

1 Legislative Oversight - 3/13/06
2 community involvement, we rely on the
3 community and they must in turn be
4 willing if necessary to go to court and
5 testify to what they are experiencing.
6 It's good that they call the police and
7 it's good that the police come, but
8 sometimes by the time the police get
9 there, depending on the night of the week
10 and the priority of the phone call or the
11 message, the information that they may
12 have been given may have ceased by the
13 time the police arrive. So this is
14 important when you have a community group
15 and individuals working in tandem with us
16 and the Philadelphia Police Department.
17 We do have -- and I think this
18 is important for the record that we do
19 have very good working relations with
20 City Council and their members and other
21 bodies. It is essential that I mention
22 here that obviously we are always at the
23 mercy of our resources and we have
24 consistent with our budget cuts have had
25 to cut down on our public nuisance task

1 Legislative Oversight - 3/13/06
2 force staff giving fewer lawyers greater
3 geographic areas to cover. And it's
4 extremely labor intensive, requires
5 hundreds and hundreds of hours at
6 community meetings, always at nighttime,
7 plus going out during the day, going to
8 court, doing things that need to be done
9 administratively and legally to make sure
10 that the cases are properly handled. And
11 I might also mention Mike Erdos, the
12 chief who's sitting next to me and from
13 whom I think you'll be hearing, does a
14 fabulous job of going out and visiting
15 hundreds and hundreds of communities
16 throughout the city helping his attorneys
17 and my attorneys do a good job for the
18 community. We have cooperated with City
19 Council's liquor task force chaired by
20 Council President Verna and we've used
21 the Old City liquor code task force as a
22 model in helping us resolve some of those
23 issues. We also are participating in the
24 managing director's office working group
25 where we have nuisance bar information,

1 Legislative Oversight - 3/13/06
2 abatement strategies, sharing of
3 information, discussing amongst relevant
4 law enforcement agencies what we can do,
5 what our plans are, how we can best
6 effectuate the best possible outcome for
7 the community without at the same time
8 trampling on any licensee's rights. We
9 are obviously looking to more cooperation
10 from communities as we go forward.

11 And we have entered into
12 productive dialogues with the Liquor
13 Control Board. We know that we have no
14 authority over the board. They on the
15 one hand have begun to be more responsive
16 to us, although we need to make them more
17 responsive to us and not to renew liquor
18 licenses that we believe and that
19 community groups believe with proof,
20 sufficient proof, ought to not be
21 renewed. We understand this is a matter
22 of administrative law judges that they
23 may claim they don't have any money for,
24 but the Liquor Control Board does have
25 the authority to do this and it's not

1 Legislative Oversight - 3/13/06
2 beyond the realm of possibility,
3 Councilman, that you and I can talk to
4 the governor about providing additional
5 funding or removing some of the funding
6 that the board has from one place and
7 perhaps considering hiring more
8 administrative law judges. It shouldn't
9 take two years to not renew or to renew a
10 license. And it takes a long time to not
11 renew a license and to get a license
12 taken away.

13 We have begun to see better
14 cooperation and understanding with the
15 LCB with our recommendations and we are
16 grateful to them for that, but we need to
17 have a bigger clout in making sure that
18 when we produce the evidence that the
19 board does not renew. We are, however,
20 satisfied that resources aside the LCB
21 and the LCE have been responsive to the
22 communities, but there are only a few
23 agents on the LCE, 22 I think, to cover
24 four big counties. And it's a lot to ask
25 of 22 agents to cover thousands of

1 Legislative Oversight - 3/13/06
2 establishments in Philadelphia plus the
3 surrounding counties.

4 So we are very much committed
5 to working with people like yourself.
6 We've been working with Councilwoman
7 Blackwell and Darwin Beauvais of late of
8 her staff to do more work on the
9 stop-and-go's, which we think we're
10 making some progress on, but we need to
11 have obviously additional resources and
12 additional manpower and need to make sure
13 that we're working in tandem and closely
14 with you and your constituents to make
15 sure that the whole package is neatly and
16 effectively tied up so that we can serve
17 the community better.

18 COUNCILMAN KENNEY: Thank you
19 very much for your testimony.

20 Michael, you're going to offer
21 testimony?

22 MR. ERDOS: No.

23 COUNCILMAN KENNEY: A question
24 I have is have your staff been able to
25 kind of evaluate what needs to be changed

1 Legislative Oversight - 3/13/06
2 in the Pennsylvania liquor Code That
3 would better enable you to be responsive
4 and to get some of these licenses either
5 revoked or nonrenewed? Is there specific
6 changes you would recommend in the state
7 liquor code?

8 D.A. ABRAHAM: I think
9 Mr. Erdos and I have discussed this and
10 I'll be happy to have him answer.

11 COUNCILMAN KENNEY: Please
12 identify yourself.

13 MR. ERDOS: Michael Erdos,
14 E-R-D-O-S. Good afternoon, members of
15 Council, Councilman Kenney. One of the
16 working groups in the City Council
17 nuisance bar and stop-and-go task force
18 is a legislative subgroup and through
19 that group we have a package of three
20 bills which we're hoping to pass through
21 the legislature in Harrisburg as soon as
22 possible which may have an impact here.
23 Two of them deal directly with issues
24 pertaining to renewal or transfers of
25 licenses. One of those bills would

1 Legislative Oversight - 3/13/06
2 require that every time the Liquor
3 Control Board objects to the renewal of a
4 license and lists that establishment to
5 undergo a renewal hearing that the
6 establishment has to post on their
7 establishment the same way they do with
8 the orange placards now when there's a
9 transfer pending that there's going to be
10 such a hearing. What we found is while
11 we have law enforcement documentation on
12 a lot of these places, the thing that
13 would really round out the testimony and
14 make our case much stronger is community
15 testimony. After all, they're the ones
16 that work and live nearby on a daily
17 basis. Yet often times they're hard to
18 identify from our standpoint who are
19 they, are they willing to come to court.
20 And by establishing the requirement to
21 post, that would go a long way.

22 Another of the bills we have in
23 mind would require that the LCB not
24 transfer any license to an establishment
25 that hasn't undergone all the requisite

1 Legislative Oversight - 3/13/06

2 city checks: fire, electric, health,
3 zoning, city tax, state tax. Right now
4 the state law only requires a state tax
5 clearance and health check, but if a
6 place doesn't have its own shop in order
7 with respect to the city code, we really
8 can't expect them to have much of a shot
9 when it comes to the state laws.

10 And I believe there's one other
11 law pending as well that would give the
12 community greater rights when it comes to
13 protesting a transfer. Right now it's
14 very difficult to protest what's called a
15 person to person transfer. You can only
16 do that successfully if the applicant has
17 a bad reputation. It's often difficult
18 to produce that type of evidence at a
19 hearing. But if we change the law to
20 make it parallel to place to place
21 transfer where a community member can say
22 here's the adverse impact this transfer
23 would have, a liquor license would have
24 here in our neighborhood, then the
25 community has greater rights and this

1 Legislative Oversight - 3/13/06
2 might lead to either the outright denial
3 of a transfer of a license or to
4 conditional licensing where there are
5 additional restrictions placed on the
6 license. So that's a package that we
7 have that I think would go a long way.
8 It won't solve all the problems but would
9 put the community in a better situation
10 and put law enforcement in a better
11 position as well.

12 D.A. ABRAHAM: If I could add
13 just one last thing, one of the things
14 we've been discussing is we don't -- I
15 don't know personally how well enforced
16 the tax on drinks is being aggressively
17 collected. And obviously if Council saw
18 fit to impose that tax, I'd be curious to
19 know how many bars are being made to pay
20 up. I get the sense that there's
21 something missing there. One of the
22 revenue-producing possibilities is that
23 that may be a method or a mechanism by
24 which we could fund or help to fund not
25 only the work that parts of the city

1 Legislative Oversight - 3/13/06
2 government are doing, but it also tends
3 to make people more responsive when they
4 have to cough up that tax. So the bill
5 is good. Like everything else, it's the
6 enforcement.

7 COUNCILMAN KENNEY: In your
8 enforcement efforts, do you find that the
9 records provided by the police are
10 sufficient in your attempt to build a
11 case that a particular establishment is,
12 in fact, a nuisance? I know anecdotally
13 myself when I've called to get a premise
14 history for a bad bar or takeout beer
15 deli often there is no premise history
16 because even the complaints of the
17 community have not been written up in a
18 proper way so that it can be directly
19 related to the establishment that's
20 causing the problem. And, therefore,
21 when you guys go to court or the LCB,
22 there's no real premise history from the
23 police on those establishments. Do you
24 find that there should be better training
25 or more understanding as to how to write

1 Legislative Oversight - 3/13/06

2 up these 48s and other reports?

3 D.A. ABRAHAM: That would be
4 helpful but it is difficult. For
5 example, if I was a neighbor calling in
6 loud noise or fighting on the highway or
7 something at a bar, and depending on what
8 the police officer is doing at that
9 moment, if the officer's nearby and
10 doesn't have something of a higher
11 priority than that, then the chances are
12 better that the officer will come up at
13 the very time that something is
14 happening, especially if it's a part 1
15 crime, a robbery in progress or a
16 shooting, homicide or something like
17 that. The chances are better. However,
18 when it's loud music, disturbance on the
19 highway, public urination, fight on the
20 highway, and the officer is busy doing
21 part 1 crimes, by the time the officer
22 does arrive, assuming the officer
23 arrives, and notes the call, loud music,
24 the loud music may have stopped or the
25 question is how loud is loud and what

1 Legislative Oversight - 3/13/06
2 hour of the night is it. So loud music
3 at 9 o'clock may not be the same as loud
4 music at 3 o'clock. And sometimes if you
5 have a case and you call the officer back
6 three months, four months, six months
7 later when the case is all ready, you
8 say, officer, how loud is loud? I don't
9 remember because, you know -- so it's
10 really difficult. It's putting the
11 officer -- no disrespect intended to the
12 officer's ability to observe -- at a
13 terrific disadvantage if you have a whole
14 string of 48s with 20 of them being loud
15 music and you can't say how loud is loud
16 or what the music was or what was the
17 effect on the neighbor and there's no
18 neighbor out there to identify himself or
19 herself to the officer, say, officer, I'm
20 the person who made that phone call,
21 please use me. I live across the street
22 and I'll be happy to testify. Pretty
23 much it's the officer out there by
24 himself or herself. And that's the
25 important part of the community

1 Legislative Oversight - 3/13/06

2 involvement.

3 COUNCILMAN KENNEY: Let me ask
4 you a question about enforcement from the
5 police department side. I've never been
6 able to understand why in the area of
7 liquor enforcement there seems to be this
8 major wall. We as Philadelphia -- our
9 police enforce state law all the time.
10 The murder is a state statute, robbery
11 statute. They're all state statutes.
12 Why would not then the Philadelphia
13 Police be able to enforce the liquor laws
14 because they're also state statutes? We
15 wouldn't be asking them to do anything
16 beyond their scope of responsibility. If
17 they're sworn officers in the County of
18 Philadelphia and Commonwealth of
19 Pennsylvania, why are the liquor laws
20 seem to be this specialty that only the
21 state police can deal with?

22 D.A. ABRAHAM: I'm going to let
23 Mr. Erdos do that, but I really must make
24 an observation. It's not that the police
25 officers can't or don't or won't. It's

1 Legislative Oversight - 3/13/06

2 strictly a matter of how many boots are
3 on the street sometimes and what else
4 they have to do and the evidence that's
5 presented to them when they go there.

6 It's not in my judgment a lack of
7 willingness on the part of the police.

8 COUNCILMAN KENNEY: I'm talking
9 more to conduct the investigations that
10 the state police -- I mean, we have 22
11 state troopers doing this in a
12 four-county area. What makes the
13 Philadelphia Police in a different status
14 that they couldn't conduct surveillance
15 or underage drinking stings or anything
16 else that other states' sworn officers
17 do?

18 MR. ERDOS: Well, the liquor
19 code --

20 COUNCILMAN KENNEY: I don't
21 mean to interrupt, but it would seem that
22 a large number of a particular district's
23 problems emanate often from nuisance
24 establishments and, therefore, it's all
25 crime and quality of life related.

1 Legislative Oversight - 3/13/06

2 MR. ERDOS: A couple points to
3 make. First of all, I think the police
4 are doing a much better job now in
5 helping with enforcement of alcohol
6 establishments. Even if they're not
7 trained or able at this point to write
8 the actual liquor code citations, I think
9 they now understand the importance of
10 doing a great job of at least writing up
11 the police incident report in a way that
12 will allow the LCE to write the citation.
13 And through their legal counsel, the
14 police are forwarding those incident
15 reports. So they are playing a critical
16 role in enforcement.

17 As far as whether they could
18 actually participate in the citation
19 process, if they get called on a 9-1-1
20 call and find a minor in there, could
21 they just write a citation the same way
22 they write a summary citation, I think
23 the answer lies with the statute, the
24 liquor code. The language seems to be a
25 little gray. I haven't reviewed it

1 Legislative Oversight - 3/13/06
2 recently, but my recollection is it gives
3 the authority to do those types of task
4 to the Bureau of Liquor Control
5 Enforcement and so it sort of begs the
6 question of whether the police could also
7 participate. And then I'm sure their
8 counsel may have an opinion that as well
9 as the LCE.

10 COUNCILMAN KENNEY: I'll ask
11 them that question too, but I could see
12 in a problem district where you have two
13 or three or four problem establishments
14 to put undercover officers in there to do
15 an underage drinking sting. I mean, they
16 know the area. They know who the people
17 are. I think historically what has
18 happened is because the liquor code was
19 always enforced by the LCB and then
20 transferred to the state police and
21 recently you think it's changing, but
22 there seems to be this this is not our
23 area of enforcement because the state
24 deals with that. And, again, with 22
25 state troopers, it's a pretty difficult

1 Legislative Oversight - 3/13/06
2 task to get them to do all the things
3 they need to do. So I'm just wondering
4 whether we could at some point press the
5 envelope and test what the status of the
6 Philadelphia police officer or detective
7 is when it comes to enforcement of the
8 liquor code.

9 D.A. ABRAHAM: I don't speak,
10 neither does Mr. Erdos speak for the
11 Philadelphia Police Department, but I am
12 going to make an observation at the risk
13 of passing this over for somebody in the
14 police department. I'm sure there's
15 somebody here who will speak for the
16 police department. It seems to me that
17 in addition to the legal question, which
18 we may want to address, is that like
19 everything else that we want to do well,
20 it's a matter of resources and manpower.
21 If you have 6,300 police officers and you
22 have some off duty, some on vacation, and
23 you have X number of officers on duty,
24 with better and higher expectations in
25 cases where the police are going to be

1 Legislative Oversight - 3/13/06
2 required to do more work, more paperwork,
3 more detail work, photographs, films,
4 tapes, and all the other things, if you
5 want police in addition to be capable of
6 and arm them with the ability to do
7 liquor control -- and I understand
8 they're life quality. I'm not passing
9 that up for a moment. I appreciate it as
10 you do as extremely important to the
11 health and vitality of the city -- you
12 need to have far more police officers
13 than we do with dedicated funding to do a
14 specific task. There's no doubt that for
15 a police officer working undercover let's
16 say in a narcotics sting in a bar where
17 the officer also has the ability to see
18 minors being served, fights, and all the
19 other business going on, there's no doubt
20 that that liquor establishment can be put
21 out of business with relative ease. But
22 with everything else being asked of our
23 Philadelphia Police, it's going to take a
24 lot more monetary commitment and more
25 boots on the street to be able to do that

1 Legislative Oversight - 3/13/06
2 and also most likely a change in our
3 legislative picture.

4 COUNCILMAN KENNEY: Again, I
5 just know that in certain districts the
6 nuisance establishments are the core of
7 all the crime -- most of the crime
8 issues.

9 D.A. ABRAHAM: No doubt.

10 COUNCILMAN KENNEY: And to be
11 able to have a captain or inspector be
12 able to mobilize Philadelphia Police to
13 take out that place would probably free
14 up some of the time that they --

15 D.A. ABRAHAM: I agree. If you
16 read the papers and see how our homicides
17 are happening, while there are many out
18 on the street and many in homes, some
19 emanate in bars, drug sales,
20 prostitution, fights, robberies,
21 disturbances, you name it and it's in and
22 around the bar. And the bartender or the
23 barkeep or the manager says take it
24 outside, well, that's great. Now it's
25 not only in the bar and endangering 50 or

1 Legislative Oversight - 3/13/06
2 75 people or 100 people in the bar, now
3 it's destroying the rest of the
4 neighborhood on top of everything else.
5 So you're right that sometimes in a
6 neighborhood it's just that festering
7 sore, but it's going to take a lot more
8 manpower intensive labor to get this
9 under control. We can do it. There's no
10 doubt we can do it.

11 COUNCILMAN KENNEY: Councilman
12 Kelly.

13 COUNCILMAN KELLY: Thank you.
14 First of all, I want to commend you,
15 Madam District Attorney and Mr. Erdos,
16 because of the fine work that you've been
17 doing with the Burholme community. I
18 know you've closed two really terrible,
19 terrible bars up there and I know I can
20 speak for the community up there that
21 it's much, much better since you took
22 action on that. I just want to put that
23 out.

24 D.A. ABRAHAM: Thank you very
25 much.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KELLY: You
3 mentioned in your testimony it takes two
4 years to close a bar. Could you tell me
5 why it would take that long?

6 MR. ERDOS: Well, I believe the
7 District Attorney was referring to the
8 renewal process. Renewals come up every
9 two years in Philadelphia and the Liquor
10 Control Board will process applications
11 for renewal license. And they're here
12 and they can speak to that. There are
13 other mechanisms we use to try to abate
14 an alcohol nuisance. Some of those take
15 far less than two years. But even with
16 respect to a court case, by the time we
17 gather all the evidence and take it to
18 court and have a final hearing, sometimes
19 that's pushing a year or more as well.
20 But every case is different. So if
21 there's a bar that's selling drugs under
22 the watchful eye of the owner and we're
23 able to file a forfeiture petition and
24 seize it, we can shut that place down
25 within a matter of weeks and sometimes

1 Legislative Oversight - 3/13/06

2 keep it closed indefinitely. But in
3 other situations when we're relying on
4 the renewal process or the liquor code
5 injunction process, it can take anywhere
6 between a year and two years.

7 COUNCILMAN KELLY: Well, the
8 renewal process, you would have to go
9 back and see what the history was as far
10 as do you have any previous infractions
11 and whatnot or strikes against that bar,
12 then you would make a decision on whether
13 you're going to fight it or not?

14 MR. ERDOS: The Liquor Control
15 Board has the ultimate and final
16 authority as to which licenses will be
17 renewed. However, the different law
18 enforcement agencies within Philadelphia
19 in conjunction with the Liquor Control
20 Enforcement, LCE, we provide our
21 recommendations to the Liquor Control
22 Board of dozens and dozens of bars that
23 we think are causing nuisances to the
24 neighborhood. And the LCB factors our
25 recommendations into the equation, but

1 Legislative Oversight - 3/13/06
2 they're the ones who ultimately schedule
3 the hearings, object to the renewal of
4 licenses, and make the final
5 determinations.

6 COUNCILMAN KELLY: How many
7 members of your task force did you lose
8 over the last two years?

9 D.A. ABRAHAM: We're three
10 people short because of the budget cuts
11 last year.

12 COUNCILMAN KELLY: How many
13 members do you have?

14 MR. ERDOS: We have eight
15 total, six who are working on the drug
16 house alcohol.

17 COUNCILMAN KELLY: So you lost
18 three then?

19 D.A. ABRAHAM: And three
20 people -- because these assistant DAs do
21 nothing but nuisance bars related to drug
22 sales, alcohol, fights, sometimes
23 homicides and other infractions, it's a
24 big loss to lose three people.

25 COUNCILMAN KELLY: What was the

1 Legislative Oversight - 3/13/06

2 cost reduction in that?

3 D.A. ABRAHAM: Let's see. The
4 year before last we lost 1,300,000. Last
5 year we lost a million 200 some thousand.
6 So we're down about 2.3 million as of
7 last I calculated.

8 COUNCILMAN KELLY: Two and a
9 half million over the last two years.

10 D.A. ABRAHAM: Close to two and
11 a half million over the last two years.
12 And with no money put in our budget this
13 year it's not going to get any better,
14 probably going to get worse.

15 COUNCILMAN KELLY: Thank you.

16 COUNCILMAN KENNEY: Thank you.

17 Just one final question, Your Honor. Do
18 you find in general or your people find
19 in general there's a disconnect or lack
20 of experience when it comes to
21 understanding the problems of an urban
22 environment and liquor issues as it
23 relates to the rest of the state? I've
24 always felt -- and it's very
25 subjective -- that the LCB is run out of

1 Legislative Oversight - 3/13/06
2 Harrisburg, it's a statewide entity, it
3 deals with counties throughout the state
4 with varying degrees of population. I
5 just feel that there's a little lack of a
6 lack of understanding not with the LCE
7 actually on the ground doing the work but
8 just kind of the overall issue of the
9 urban environment is a different
10 environment and whatever happens that
11 affects all of us affects us more because
12 we're so compact and so close together.

13 D.A. ABRAHAM: Well, there's no
14 question in my mind that because we are
15 the largest city in the Commonwealth even
16 though we've lost population that we have
17 more problems, more complex problems,
18 more issues to deal with than anybody
19 else. And there may be some either
20 subtle or not so subtle feeling from the
21 center of the state, i.e., Harrisburg,
22 that Philadelphia has so many problems
23 they can't quite deal with it. I don't
24 want to say a disconnect because I don't
25 want to -- because I don't think I really

1 Legislative Oversight - 3/13/06
2 want to go there. That's more of a
3 political issue than anything else. But
4 obviously it's impossible in my judgment
5 to deal with the problems of Philadelphia
6 with 22 state troopers who are also doing
7 work in other counties. I think by far
8 because of the number of liquor
9 establishments we have and also the
10 nature of the infractions, for example, I
11 have a club and now I'm permitting nude
12 dancing in my club. I don't have a
13 license. People object to it. There's
14 all kinds of stuff going on there,
15 enforcing closing hours, the liquor tax,
16 the L&I issues, fire code, health,
17 safety, seating, the whole issue of what
18 establishments can open up in a
19 neighborhood. So I think the problems
20 are so many and so varied in Philadelphia
21 and we need a lot of attention. We need
22 more resources that sometimes there may
23 be a tendency to look at us and say,
24 well, we always have our hand out. And
25 you know what, we always do, but our

1 Legislative Oversight - 3/13/06
2 needs are greater than almost anyplace
3 else. If I were in Pike County or
4 Crawford County or Forrest County, I can
5 guarantee you we wouldn't have the
6 problems in Forrest County we have in
7 Philadelphia. So if there's one rod and
8 gun club that has trouble, the sheriff or
9 local police chief would make a stop at
10 the club and say, you know, guys you, you
11 got to tone it down and that would be
12 enough. In Philadelphia with thousands
13 of establishments and thousands of other
14 issues, it's really difficult to get that
15 kind of responsiveness given the nature
16 of the problems.

17 COUNCILMAN KENNEY: Thank you
18 very much for your testimony. No other
19 questions. Thank you for coming.

20 We had allowed the District
21 Attorney to go first because she had a
22 prior engagement. What we wanted to do
23 with the hearing was do a little
24 something different than we usually do
25 and that is hear a little bit from the

1 Legislative Oversight - 3/13/06
2 community first so the people who come to
3 the table to respond either from the
4 state police or L&I or Philadelphia
5 police or liquor board can address the
6 issues in context of what the community
7 presentation is. So I know they have
8 specific testimony they've submitted, but
9 we want to go a little bit with the
10 community so we can kind of frame this so
11 the people responding know what to
12 respond to.

13 So with that, I'd like to ask
14 Laura Siena and then Rich Horrow and then
15 Tracey Gordon and the Reverend Brown,
16 Vivienne Crawford, and Bonita Cummings
17 will do a presentation. So please
18 identify yourself for the regard.

19 MS. SIENA: I'm Laura Siena,
20 executive director of West Mount Airy
21 Neighbors Association.

22 COUNCILMAN KENNEY: Please
23 proceed.

24 MS. SIENA: Thank you. I'm
25 grateful to Councilman Kenney, thank you,

1 Legislative Oversight - 3/13/06
2 and all of City Council to be asked to
3 testify on this subject. I do so not
4 only representing West Mount Airy
5 Neighbors but also East Mount Airy
6 Neighbors, Mount Airy USA, and the other
7 organizations and individuals who came
8 together to take advantage of the unique
9 opportunity afforded us last fall by
10 Pennsylvania Act 39 to rid Mount Airy of
11 a long-term nuisance. Act 39 was a
12 Godsend to our community because it gave
13 us an organizing principle and a set of
14 deadlines which enabled us to marshal
15 community support and action against a
16 long-term public nuisance in our
17 neighborhood, the Corner Deli.

18 Corner Deli, 6643-45 Germantown
19 Avenue, at the corner of East Horter
20 Street, had long been a thorn in our
21 community's side. Its takeout beer
22 license was used to promote a host of
23 ills. It was the locus of public
24 drunkenness, drug dealing, loitering, and
25 public urination. Patrons of Corner Deli

1 Legislative Oversight - 3/13/06
2 harassed passersby, including students
3 from the nearby Project Learn School who
4 had to walk by regularly on their way to
5 Lovett Library. Customers could be seen
6 drinking outside from 8 a.m. until the
7 wee hours of the morning. Several years
8 ago there was a shooting at the Corner
9 Deli. For many years, neighbors tried to
10 do something about this nuisance but were
11 thwarted by a lack of coordination among
12 the various agencies which have
13 jurisdiction over establishments of this
14 type. Although Corner Deli had changed
15 hands a couple years ago, any hopes for a
16 community-minded business were dashed
17 when the new owner, Adam Xu, continued to
18 sell takeout beer and malted beverages to
19 the same clientele as before, nor did he
20 discourage loitering and other antisocial
21 behavior which characterized this
22 establishment for many years. He also
23 did not respond to the overtures of our
24 community development corporation, Mount
25 Airy USA, with offers of grant funding to

1 Legislative Oversight - 3/13/06
2 improve his store but instead installed
3 even more bulletproof glass to the point
4 that a customer could not even purchase a
5 bag of potato chips without having them
6 handed to him by the man behind the
7 glass. Needless to say, this didn't
8 build the image of a business which
9 wanted to be a good neighbor and an
10 integral part of our community.

11 Along came Act 39 and community
12 leaders quickly gathered to take
13 advantage of this great opportunity. Of
14 the eight businesses licensed to sell
15 beer and malted liquor for takeout in
16 Mount Airy, which is the 19119 Zip Code,
17 community leaders only targeted one for
18 denial under Act 39. That's Corner Deli.
19 The others are good neighbors and good
20 businesses. We formed a coalition, which
21 included Councilwoman Donna Reed Miller
22 and her staff, Project Learn School, East
23 Mounty Airy Neighbors, Mount Airy USA,
24 St. Michael's Lutheran church, and Pelham
25 Town Watch. When the date of our hearing

1 Legislative Oversight - 3/13/06
2 came, we were ready. Not only did each
3 group testify, but we heard from 14th
4 district police and Jerry Mondesire,
5 owner of the Philadelphia Sun newspaper,
6 whose office is a few steps away. All in
7 all, 17 of us testified. We were very
8 ably assisted by Steven David Masters of
9 City Council staff who served as our
10 Council. Six hours later we felt we had
11 finally told the whole story of how
12 detrimental the Corner Deli had been to
13 the overall fabric of our community, to
14 our economic revitalization and crime
15 prevention efforts, and to our desire to
16 show our children good and neighborly
17 behavior on the part of all our citizens.
18 You can imagine our delight when just a
19 week or so later we heard the Corner Deli
20 had been denied a license to continue
21 selling beer for takeout.

22 The story didn't end there,
23 however. Corner Deli appealed and
24 continued to sell illegally during and
25 after the appeal process. We distributed

1 Legislative Oversight - 3/13/06
2 the contact information for the state
3 police's office of liquor enforcement,
4 the nuisance bar program of the
5 Pennsylvania Liquor Control Board, and
6 L&I's public nuisance task force widely
7 on these little handmade postcards all
8 around the neighborhood and encouraged
9 residents to call when they witnessed
10 violations.

11 Finally, after several weeks
12 the business closed. Today no one is
13 loitering outside. We don't see drug
14 deals being made and passersby are no
15 longer being harassed. What we learned
16 from this experience is that community
17 groups can be successful in working
18 together to rid the neighborhood of a
19 bona fide nuisance if they have a
20 galvanizing factor such as what was given
21 to us through Act 39. This enabled us
22 not only to come together effectively but
23 to draw on the knowledge, resources, and
24 accountabilities of the police and state
25 police as well as some city agencies.

1 Legislative Oversight - 3/13/06
2 Leaders in Mount Airy have taken the new
3 energy and organization that flowed from
4 this success to identify other businesses
5 which are a nuisance, although they don't
6 have all liquor licenses, and encouraged
7 Councilwoman Miller to name parts of
8 Mount Airy a local nuisance task force
9 area. We are much better positioned to
10 take advantage of any new initiatives
11 which presumably will be forthcoming from
12 the testimony today which will streamline
13 city agencies working together and with
14 the neighborhood groups for effective
15 action on these matters. What is needed
16 now we believe are more tools which will
17 enable us to match our coordinated effort
18 with the coordinated efforts of all the
19 city agencies and state agencies which
20 can have a role in eliminating these
21 nuisance businesses from our community or
22 at least getting them to change their
23 ways and become good neighbors. In order
24 for this to happen, nuisance businesses
25 need to be a priority for the Mayor and

1 Legislative Oversight - 3/13/06
2 each member of City Council. The hearing
3 today as well as other efforts underway
4 demonstrate that the opportunity exists
5 right now to make real headway on this
6 issue. The interest that City Council
7 members are taking in this issue is
8 deeply appreciated and will go a long way
9 to bringing us to a better places
10 neighborhoods. Thank you again for
11 giving me the opportunity to testify on
12 behalf of all Mount Airy institutions and
13 residents who worked on this.

14 COUNCILMAN KENNEY: Thank you
15 for your testimony. Do you know what the
16 disposition of the license is from the
17 Corner Deli? You said they closed, but
18 do you know whether or not they
19 transferred the license to another
20 location or they put it in safekeeping?
21 Do you have any idea?

22 MS. SIENA: Steve Masters would
23 probably be a little more up on what the
24 latest is than I am. Hadn't they
25 transferred it to the brother-in-law or

1 Legislative Oversight - 3/13/06

2 tried to? I think that was --

3 COUNCILMAN KENNEY: The
4 establishment's closed; correct?

5 MS. SIENA: It's currently
6 closed. It's on sale apparently.

7 COUNCILMAN KENNEY: Please
8 identify yourself.

9 MR. MASTERS: Sure, Steven
10 David Masters, attorney for City Council.
11 Good afternoon. This business had -- we
12 denied this business the takeout beer
13 permit. They appealed to the Common
14 Pleas Court. They sought a stay. They
15 were denied a stay. They appealed that
16 to Commonwealth Court. We were able to
17 get the Commonwealth Court to knock their
18 appeal out for lack of jurisdiction. And
19 at that point they closed their doors.
20 Now, as the Council, we only said that
21 they can't sell beer for takeout. We
22 didn't regulate at all their ability to
23 sell potato chips or anything else inside
24 their establishment. They've closed and
25 they haven't given us any formal

1 Legislative Oversight - 3/13/06
2 information as to how long the closing is
3 for.

4 COUNCILMAN KENNEY: And you
5 don't know that there's any movement to
6 transfer the license to another location
7 or you're not aware of it?

8 MR. MASTERS: No, we're not
9 aware of anything like that. Apparently,
10 what I just heard recently was all five
11 of the establishments that had appealed
12 to Commonwealth Court and we had
13 prevailed on have closed. And I believe
14 that it could be an attempt to create an
15 argument that we've created a hardship on
16 their businesses when, as we know, we
17 haven't restricted at all their ability
18 to conduct business other than the
19 takeout sale of beer.

20 COUNCILMAN KENNEY: Councilman
21 Nutter.

22 COUNCILMAN NUTTER: Thank you,
23 Mr. Chairman.

24 Mr. Masters, and I know all of
25 this is recent, but is there some other

1 Legislative Oversight - 3/13/06
2 provision -- I could possibly be confused
3 on this. Is there some provision that
4 causes a license possibly to go into
5 safekeeping if an establishment has not
6 conducted business for a certain amount
7 of time?

8 MR. MASTERS: Yes.

9 COUNCILMAN NUTTER: What's the
10 time frame?

11 MR. MASTERS: The attorneys for
12 the LCB are here who would be able to
13 answer it in much more detail. I believe
14 it is something in the neighborhood of 30
15 days. If you cease business for the most
16 part for a certain period of time, then
17 you must put your license in safekeeping.

18 COUNCILMAN NUTTER: Exactly.
19 Okay. We'll get into that when they come
20 up.

21 COUNCILMAN KENNEY: Thank you
22 very much. Any questions for this
23 witness?

24 (No response.)

25 COUNCILMAN KENNEY: Thank you

1 Legislative Oversight - 3/13/06

2 very much.

3 Rich Horrow and then after
4 that -- please identify yourself.

5 MR. HORROW: Good afternoon,
6 Councilman Kenney and members of the
7 Legislative Oversight Committee. My name
8 is Rich Horrow and I'm president of the
9 Old City Civic Association. Today I
10 would like to testify on the issues our
11 community faces in dealing with the over
12 95 licensed liquor establishments in Old
13 City. The vast majority of these
14 establishments are concentrated in a
15 small area of Old City stretching from
16 Market to Chestnut and from Front to 4th
17 Street. The density of these licenses is
18 so great that Old City is second in the
19 country to only Bourbon Street in New
20 Orleans in terms of having so many
21 licensed establishments in such a small
22 area. With this backdrop, the sheer
23 volume of liquor licenses severely
24 affects the quality of life of Old City
25 residents and businesses.

1 Legislative Oversight - 3/13/06

2 The problems relating to the
3 proliferation of these licenses fall into
4 two categories. First, we have had to
5 deal with specific establishments whose
6 behavior is so bad as to create a public
7 nuisance. These businesses seem to go
8 out of their way to flaunt the rules and
9 thumb their nose at the community. They
10 serve minors, create an environment where
11 fighting and disorderly conduct among
12 patrons is a regular occurrence, get
13 caught with patrons with concealed
14 weapons and drugs, and other nuisance
15 activities such as noise and trash. We
16 consider these establishments to be our
17 problem children. Second, the large
18 number of licensed establishments has in
19 effect created an entertainment district
20 in Old City. This entertainment district
21 brings thousands of people to Old City on
22 Friday and Saturday evenings, which
23 overwhelms our streets and taxes the city
24 resources dedicated to control it. The
25 consequence of this fact creates a

1 Legislative Oversight - 3/13/06
2 spillover effect on the quiet residential
3 areas of our community such as the area
4 north of Market Street where on a given
5 Friday or Saturday night there is a huge
6 swell in noise, trash, vandalism,
7 gridlocked traffic, and parking problems.
8 These problems cannot be traced to any
9 one establishment but, rather, exist as a
10 result of the large concentration of
11 licenses.

12 Considering the overwhelming
13 nature of these problems, I'm pleased to
14 report that we have been making some
15 progress in dealing with them. First, we
16 are now able to be proactive in
17 controlling the number of liquor licenses
18 and the type of liquor establishments we
19 allow into our community. This is a
20 direct result of legislation enacted by
21 City Council in 2004 extending our zoning
22 overlay prohibiting new restaurants south
23 of Market Street. And for that we would
24 like to thank Councilman DiCicco and the
25 rest of City Council for passing this

1 Legislative Oversight - 3/13/06
2 important piece of legislation. We have
3 also been assisted at the state level by
4 the ability to require new operators to
5 enter into conditional licenses with the
6 Liquor Control Board that prohibit
7 certain activity that exacerbates these
8 problems. With the use of these
9 legislative tools, the Old City Civic
10 Association board created a separate
11 liquor committee to review all
12 applications for license transfers within
13 Old City as well as new applications.
14 This committee's work is proving to be
15 very effective in enabling us to get a
16 handle on the number of licenses which
17 prior to that point were spiraling out of
18 control. Just as important has been the
19 use of conditional licensing to make sure
20 that good restaurants don't flip into
21 nightclubs overnight when their business
22 falls off. Secondly, and just as
23 importantly, we have been aided in the
24 enforcement of nuisance bars by the
25 creation of the Old City liquor task

1 Legislative Oversight - 3/13/06
2 force. For the past several years, this
3 task force has met bimonthly to address
4 enforcement in licensing issues in Old
5 City. Its work has been exemplary and is
6 a testament to the level of cooperation
7 between its participants. Our
8 organization, the Old City district, the
9 police, the District Attorney's office
10 nuisance task division, the law
11 department, licenses and inspections, the
12 managing director's office, the state
13 liquor control enforcement, and
14 spearheaded by Councilman DiCicco,
15 Senator Fumo, and Representative Lederer.

16 As part of the task force, I'm
17 very proud of our accomplishments and the
18 level of our cooperation from our elected
19 officials, community and city and state
20 agencies. We discuss real problems. We
21 share information. And we come up with
22 real solutions. And I think our model of
23 cooperation and effectiveness can clearly
24 be the model for other city neighborhoods
25 with significant problems resulting from

1 Legislative Oversight - 3/13/06
2 its liquor establishments. Examples of
3 our effectiveness has been the task force
4 work in dealing with nuisance bars in our
5 community through the filing of 611
6 actions such as the one against Club M,
7 which has since closed, and our pending
8 case against Suede Lounge.

9 I would also like to add that
10 the problems of stop-and-go
11 establishments addressed by Resolution
12 051029 is not prevalent in Old City. We
13 have approximately 12 liquor
14 establishments licensed for takeout beer
15 and malt liquor. These businesses are
16 long-time relatively good citizens in our
17 community and do not create problems.
18 For these reasons, we are not protesting
19 their applications under Act 39.

20 Even with these successes,
21 there are still areas that need to
22 improve significantly in Old City. What
23 is needed are greater resources to handle
24 the weekend problems that overwhelm our
25 community and diminish our quality of

1 Legislative Oversight - 3/13/06
2 life. Although the police working in the
3 6th district do a fantastic job in our
4 community, there is simply not enough of
5 them to handle the problems created by
6 the volumes on Friday and Saturday night.
7 We continue to need help in addressing
8 these problems and I would echo the
9 testimony of the District Attorney in
10 this regard. On the whole, however, I
11 think our work in Old City shows how
12 important community input is to solving
13 liquor-related problems. We are now
14 involved in every step of the process
15 from licensing to enforcement. In
16 conclusion, for these reasons, we
17 wholeheartedly endorse Resolution 051029
18 and ask that Council pass it. Thank you.

19 COUNCILMAN KENNEY: Thank you
20 for your testimony. One of the issues
21 that I would like L&I to address and
22 we've had come to light in our
23 discussions prior to the hearing is that
24 one of the issues when it comes to
25 permitting or granting a license to sell

1 Legislative Oversight - 3/13/06
2 liquor, the state does not take into
3 consideration our zoning laws. So it's
4 kind of done almost like in a total
5 environment that has nothing to do with
6 the reality of what you're living with in
7 Old City or in other parts of the city.
8 So one of the things we are hoping to
9 recommend or try to deal with is allowing
10 the state or requiring the state to take
11 into consideration local zoning when it
12 comes to the granting or not granting of
13 a new license even or a transfer. So
14 that's one of the issues that is kind of
15 in a disconnect between urban living and
16 urban reality and the bureaucracy of the
17 state.

18 MR. HORROW: I would add that
19 it does create confusion at times, but I
20 think we look at it that we take it as a
21 positive and we say that there's a
22 two-pronged approach, that we have two
23 bites of the apple to prevent a bad
24 establishment from coming in both with
25 zoning and both with the conditional

1 Legislative Oversight - 3/13/06
2 licensing, but definitely I think better
3 coordination would make the process
4 simpler.

5 COUNCILMAN KENNEY: Thank you.
6 Councilman Kelly.

7 COUNCILMAN KELLY: Thank you,
8 Mr. Chairman.

9 Mr. Horrow, you mentioned
10 something in your testimony that pending
11 your case against the Suede Lounge.
12 Could you tell me what that's about?

13 MR. HORROW: Well, I believe
14 their address -- I don't quite recall
15 offhand. It's at 2nd and Market between
16 Front and 2nd and Market.

17 COUNCILMAN KELLY: Is it
18 operating now?

19 MR. HORROW: Yes, it's
20 operating. It has fortunately calmed
21 down. I think that might be from a lack
22 of business and just that they're not
23 putting any more money into the place.
24 And there have been rumors that it's up
25 for sale. But there have been a number

1 Legislative Oversight - 3/13/06
2 of problems since they opened. And
3 unfortunately this was an
4 establishment -- and this is typical of
5 what happens in Old City is they come in
6 and they claim that they're a full
7 service restaurant. And, you know, they
8 march all these people in who say -- they
9 bring the chef in, bring the partners,
10 we're good people, we're going to put a
11 nice full service restaurant. And they
12 might start serving food and before you
13 know it the food has diminished, the
14 kitchen size has diminished, and it
15 becomes a nightclub. Now, unfortunately,
16 in this situation the conditional license
17 that was created with them was really
18 before we got a foothold in dealing with
19 the conditional licenses and it was
20 certainly before the zoning overlay came
21 in, but these particular operators seem
22 to -- they didn't care what was in their
23 conditional license. I think at one
24 point when we were looking through the
25 task force we were looking at their

1 Legislative Oversight - 3/13/06

2 conditional license and they might have
3 violated six out of ten provisions right
4 off the bat.

5 COUNCILMAN KELLY: How are they
6 operating now then, as a nightclub or
7 restaurant or --

8 MR. HORROW: They claim to be a
9 restaurant, but I believe it's mostly as
10 a lounge/nightclub. But, again, the
11 problems -- there was some bad times
12 there for a while and I think it's calmed
13 down based on just the nature of their
14 business. But when the weather gets
15 warm, we're always very, very cautious.
16 And I think that the location of this
17 particular business was severely harmful
18 to Old City because it was so close to
19 the residential component and the tourism
20 that it really created a much greater
21 problem.

22 COUNCILMAN KELLY: You
23 mentioned something about this Club M
24 that presently it's closed? How long has
25 it been closed?

1 Legislative Oversight - 3/13/06

2 MR. HORROW: I believe it's
3 been closed -- I think one of the other
4 gentlemen from the city agencies would be
5 better able to say, but I believe it's
6 been at least a year.

7 COUNCILMAN KELLY: Okay. And
8 you have no idea where the license is at
9 this point, do you?

10 MR. HORROW: No, I don't
11 believe I know.

12 COUNCILMAN KELLY: Was that a
13 conditional license?

14 MR. HORROW: No, that was not a
15 conditional license.

16 COUNCILMAN KELLY: And that was
17 operating as a club evidently; right?

18 MR. HORROW: That was operating
19 as a club. And I believe there might
20 have been a prior incarnation of it. We
21 go through so many of these things. They
22 actually closed not necessarily because
23 of success with the 611 action, although
24 I think that pressured some of the
25 parties, but they had a landlord-tenant

1 Legislative Oversight - 3/13/06

2 dispute that actually closed them down.

3 COUNCILMAN KELLY: Thank you.

4 COUNCILMAN KENNEY: Thank you
5 very much for your testimony.

6 Since she's from Old City also,
7 Ms. Philo, since we're consistent in
8 testimony relative to neighborhoods, if
9 you could just come up and please
10 identify yourself. And since you've
11 heard Mr. Horrow's testimony, if you
12 could touch on some new areas, that would
13 be helpful. Please identify yourself.

14 MS. PHILO: Thank you. I'm
15 Cynthia Philo. I'm the executive
16 director of the Old City District. Philo
17 is P as in Peter, H-I-L-O. As executive
18 director of the Old City District, just
19 to give you a background, it's a
20 municipal authority that's been operating
21 I guess almost eight years now.
22 Primarily, we are endowed with doing
23 clean and safe programming throughout the
24 22 square block Old City District area.
25 We also do economic development. Old

1 Legislative Oversight - 3/13/06
2 City is an amazing neighborhood. We have
3 as Rich mentioned I think actually I was
4 counting while he was giving testimony,
5 over 110 restaurants, over 137 boutique
6 retailers, 40 art galleries, and what I
7 think should be over 4,0000 residents at
8 some time very soon all within this 22
9 square block area. As the director of
10 the Old City District, probably about
11 three years ago a group of us got
12 together to form the Old City liquor task
13 force. And one thing that I have to
14 emphasize and I can't emphasize it enough
15 is cooperation. The Old City liquor task
16 force has had cooperation of the Liquor
17 Control Enforcement, with Lieutenant
18 Comerer, L&I with Dominic Verdi and his
19 fabulous staff, Senator Vince Fumo,
20 Representative Marie Lederer, as well as
21 Councilman Frank DiCicco. I'd also like
22 to mention that Carl Engelke has been
23 very instrumental in keeping this group
24 focussed on what any type of liquor task
25 force should be focused on and that

1 Legislative Oversight - 3/13/06
2 really is the quality of life issues that
3 a potential liquor license establishment
4 can cause to a community. I also served
5 as an Act 39 hearing judge, but today I
6 am here focusing on the Old City
7 emphasis. The Mayor's managing
8 director's office also has been involved
9 in this particular task force.

10 As I said before, the community
11 really needs to be involved. And as you
12 heard from Mount Airy, it has to be a
13 coordinated effort. It can't just be a
14 community who decides that on an
15 individual basis their morality doesn't
16 like a particular business because in
17 Philadelphia and in Old City and as part
18 of the Old City District, we want
19 businesses to thrive. I mean, when you
20 talk about entertainment district, we
21 have probably the first place in
22 Philadelphia tourists come to. They come
23 to Old City. They want to see the bell.
24 They want to see the hall. And they want
25 to go out and eat and drink and have a

1 Legislative Oversight - 3/13/06

2 wonderful time. So we want to promote
3 those good businesses there. So if the
4 community is looking to get rid of an
5 establishment that is not working well
6 with the community, they also have to do
7 their homework and become prepared and
8 have all of the documentation behind
9 them.

10 One thing I have to mention,
11 without the work of the 6th district
12 police force and Captain Brian Korn and
13 lieutenant -- or Sergeant Frank Millilo,
14 I don't believe that we would be able to
15 make sure that our calls from the
16 community to the police force were put on
17 a priority. And that is one thing I know
18 that the DA had mentioned, that a lot of
19 times quality of life issues are not
20 considered a priority because there are
21 other crimes out there that obviously are
22 much greater in their scope. However,
23 when you have enough people calling
24 enough times over and over again, quality
25 of life can really disrupt a

1 Legislative Oversight - 3/13/06
2 neighborhood, not just residential but
3 business community. And in our
4 situation, when we were talking about the
5 Club M incident, with that particular
6 establishment, which I believe is at 126
7 Chestnut Street, it really was the
8 businesses that spearheaded that closure
9 of that particular business because
10 people were saying we don't want to come
11 down to Old City because there's fights
12 that go on from this club, we heard all
13 sorts of bad things. And other
14 businesses that operate on a good basis,
15 and we're talking about restaurants,
16 which happen to have liquor licenses,
17 don't want that. So you really have to
18 engage the entire community as well as
19 the residents to make things go.

20 The other thing I would like to
21 mention is that I think that -- in a
22 different role, I'm also the vice chair
23 of the Pennsylvania Downtown Center and
24 we deal with main street programs
25 throughout the entire Commonwealth. And

1 Legislative Oversight - 3/13/06
2 you had mentioned something about whether
3 or not other communities, maybe smaller
4 communities that may be a city but
5 obviously not as big as Philadelphia or
6 Pittsburgh, are dealing with issues
7 similar to what we have. And they may
8 not be dealing with them in scope, but
9 they are dealing with them in the quality
10 of life issues in the same way that we
11 are. The difference is a lot of them
12 want to have the liquor licenses there
13 because they want to have the businesses
14 grow so their tourism element can grow
15 and different things like that. We in
16 Philadelphia have so many of them, and
17 obviously we've capped at a level, but
18 the problem is they transfer back and
19 forth into different communities. And I
20 think one of the things that as the
21 director of the Old City District, and
22 I'm sure that Rich Horrow as the
23 president of the civic association would
24 back me on this, unless you're
25 coordinating, you know what's going on, a

1 Legislative Oversight - 3/13/06
2 lot of times when someone transfers
3 something, you have no clue that that
4 transfer's happening. And unless there's
5 some type of posting, which I believe
6 that Mike Erdos had mentioned they're
7 trying to get through as to a state law,
8 something to let the community know what
9 is going on, if they maybe don't have an
10 organized group at first, there needs to
11 be something there for them to see. And
12 I think that that is very important and
13 can go a long way to helping some of
14 these communities deal with these problem
15 issues.

16 Let me just see if there's
17 anything else I wanted to add to that.
18 No. Just on the end of this, I just
19 wanted to thank you very much, Councilman
20 Kenney, as well as Councilman Kelly for
21 having time here and letting us talk to
22 this particular issue.

23 COUNCILMAN KENNEY: Thank you.
24 Thanks for coming in.

25 Tracey Gordon, Reverend Brown,

1 Legislative Oversight - 3/13/06

2 Vivienne Crawford, Boninta Cummings,
3 however you want to set it up.

4 Greg, do you want to come up
5 with this panel or -- okay.

6 MS. CUMMINGS: Good afternoon
7 Councilman Kenney, Councilman Kelly,
8 oversight committee chair or oversight
9 committee. Reverend Jesse Brown's
10 projection presentation is going to
11 reflect the unity and solidarity of
12 communities, more, quote/unquote, urban
13 communities and how we do work
14 collectively to show how hard it is for
15 the type of establishments that end up in
16 our community. Unlike maybe some of the
17 other, quote/unquote, Center City
18 neighborhoods, we face a totally
19 different type of business liquor license
20 business establishment. Actually, if we
21 get one more, we're at a riotous
22 proportion. So the focus today is to try
23 to help the Liquor Control Board
24 understand that we have a need for them
25 to take a look at reducing and/or even

1 Legislative Oversight - 3/13/06
2 eliminating some of the licenses they
3 have given us in our community. These
4 pictures that you are about to see are
5 the degraded conditions that our
6 children witness on a daily basis by
7 being served in establishments that they
8 should no longer or should not at all be
9 allowed into. The seating, the
10 loitering -- and as you can see, the
11 seating is chained. There is no
12 invitation for even a social environment.
13 Our children are being trained to be
14 animals. Taverns were designed to
15 promote social behavior, social conduct.
16 Neighbors come together to have a social
17 and good time. As you can see, these
18 establishments as they set up in our
19 urban neighborhoods are not your good
20 deli, have a nice beer type of
21 establishment. These are establishments
22 that promote addiction where malt liquor
23 is the primary source of sale. The
24 regulation violations in this particular
25 shot is there is not even 300 square feet

1 Legislative Oversight - 3/13/06
2 of space there. As you can see, there's
3 only one or two chairs. It's so narrow
4 in that location that it's not even
5 conducive to being pleasant as you would
6 be a patron in this type of
7 establishment. It's conducive to making
8 you angry and want to be violent. As you
9 can see, the gentleman really has space
10 to move. He's kind of sideways trying to
11 place his order.

12 COUNCILMAN KENNEY: So the
13 service window is to the left of the
14 screen?

15 MS. CUMMINGS: Yes.

16 COUNCILMAN KENNEY: Is that
17 glass covered?

18 MS. CUMMINGS: Glass, right.
19 And most of the floor space is, as you
20 can see, taken up by the rearrangement of
21 that location, which is always the
22 Plexiglas. This type of location here,
23 this location here is in the 2200 block
24 of North Bouvier Street. This is how
25 they service patrons, with debris atop

1 Legislative Oversight - 3/13/06
2 tables. Those tables are also chained.
3 Our children witness this type of scenery
4 as they go into these locations to stand
5 behind drunkards to purchase chips or
6 lollipops. They witness these types of
7 conditions, as you can see, broken down
8 chairs, very filthy, dirty conditions
9 here, cardboard boxes stacked atop the
10 tablets. This location the tables and
11 chairs are chained down. There is no
12 invitation here in this location to have
13 a social time, to even sit down. The
14 real objective of these businesses is to
15 stop and go. There is no sit down
16 invitation in these locations. Excessive
17 advertising, as you can see, is inside
18 and outside. Reverend Jesse Brown will
19 speak more to the excessive advertising.
20 Again, these are various establishments
21 throughout the North Philadelphia
22 community and these are the conditions
23 that we experience in our neighborhoods.
24 This is a graffitied door, again debris
25 stacked in the corner. There are only

1 Legislative Oversight - 3/13/06
2 three chairs when there should be 30
3 seats to tables. That is not happening.
4 We are not sure how these establishments
5 continue to be licensed as this visual
6 shows that there is in most cases
7 definitely not at least 30 seats to
8 tables. There is no extra window for our
9 children so they go into bar
10 establishments or licensed alcohol
11 establishments and are waited on like an
12 adult where they stand behind adult
13 patrons. They are fondled and in some
14 cases witness lewd and lascivious
15 behavior from drunks that are in front of
16 them in line. And if Reverend Jesse
17 Brown wants to talk about the excessive
18 advertisement, I'll turn it over to him.

19 MS. GORDON: Good afternoon.
20 My name is Tracey Gordon. I'm
21 representing today Southwest Philadelphia
22 Concerned Citizens. First of all, I'd
23 like to thank Councilman Kenney. We met
24 with you as a coalition several months
25 ago and we asked and begged that you

1 Legislative Oversight - 3/13/06
2 would hold a type of hearing of this
3 structure whereas the community would be
4 able to make testimony before the Liquor
5 Control Board because we found in the
6 last five testimonies that, you know,
7 normally they would come in and testify
8 and leave and not hear the community. So
9 I think that you're setting a precedence
10 if that's the word and I would hope that
11 the other councilmanic members will
12 follow suit in the way you did this.
13 This is brilliant. Thank you.

14 The only thing is, is the
15 health department here?

16 COUNCILMAN KENNEY: No. L&I is
17 here. I don't believe the health --
18 Dominic, the health department's not
19 there; right? Any questions we have for
20 the health department will get
21 transcribed.

22 MS. GORDON: Very good because
23 the health department needed to be here
24 basically for that testimony to see. You
25 know, I'm really glad that Old City and

1 Legislative Oversight - 3/13/06
2 Mount Airy went first because you'll see
3 and you'll hear that in the urban
4 settings of South Philly, Southwest, West
5 Philly, North Philadelphia, we have
6 different problems. And although it was
7 courageous with Act 39, you'll hear from
8 Attorney Steve Masters, who, by the way,
9 thank you, he really helped me testify in
10 behalf of certain establishments that I
11 wanted closed in our area. The
12 unfortunate part about his testimony
13 that's going to come up was out of the
14 870 liquor licenses that's in the city,
15 723 of these establishments was
16 automatically approved due to lack of any
17 protest by the community surrounding the
18 premises. And we will tell you that the
19 protests, the 140 protests actually came
20 from just a few of us sitting in this
21 room, had to take off from work. Most of
22 the community didn't even know about Act
23 39. It was not advertised as if you
24 advertise when it's time for reelection.
25 I felt that in the future there should be

1 Legislative Oversight - 3/13/06
2 ads in neighborhood papers as well as in
3 the Daily News as well as even taking
4 media ads out in that regard because just
5 because 723 did not protest is because
6 the community really are not empowered to
7 really know that they could protest. And
8 we're saying these particular ones she
9 shot in Philadelphia that you can come to
10 West Philly, Southwest Philly, parts of
11 Germantown, and any of the urban or poor
12 areas and you will see the same type of
13 disrespect with the chairs.

14 So my basic testimony is
15 another thing, communication. I
16 understand there's supposed to be a task
17 force in the second councilmanic
18 district. I don't even know who it is.
19 I don't even know if it's really
20 established. I told Sara that. It
21 puzzles me that, you know, even though
22 I'm not on the task force, how if I'm the
23 one coming out, taking off, gathering
24 people to protest, no one even told me
25 about a task that exists, who's the on

1 Legislative Oversight - 3/13/06
2 the task force, where it's located, how I
3 might be able to take and give some
4 literature to the community so they can
5 know there's a task force.

6 If you see like these
7 advertisements, these are illegal.
8 They're not supposed to have
9 advertisements in windows that's within
10 300 feet of a school, a day care, a
11 recreation center, a park, a church. And
12 all of these corner stop-and-go's there's
13 always going to be a church, a
14 restaurant -- I mean a church, a day
15 care, a school. And the particular two
16 stop-and-go's that I protested against
17 and got the neighbors to come out, one is
18 on the corner of 60th and Chester Avenue.
19 A man was going in there with his
20 daughter, bumped into one of the
21 loiterers, was beat to a coma. He died a
22 couple weeks ago to the extent that the
23 family had to be moved out of the
24 neighborhood because they found the boy
25 who beat him to death in front of the

1 Legislative Oversight - 3/13/06

2 stop-and-go. And then that's still open
3 now.

4 Every time I go out into the
5 community, people are coming up to me,
6 Councilman, saying what's up, you know,
7 we came, we signed, what's going on, why
8 are they still open? And not only that,
9 they are still operating in the same
10 manner. It's like they didn't change.
11 The only thing that I can honestly say
12 that I may see is a trash can out there.
13 As far as like them covering up -- like
14 in that store covering up the windows, if
15 you look at this community guide to
16 enforcing drug and alcohol nuisances that
17 Lynne Abraham said, there's so many
18 violations, lighting conditions, and
19 there's no clean ones in our areas, in
20 our particular neighborhoods.

21 So the reason why I'm really
22 kind of upset with the Liquor Control
23 Board is because they have a beautiful
24 web site and it's very clear. It's
25 precise. And I quote one of their

1 Legislative Oversight - 3/13/06
2 quotes. They say they hold sessions with
3 these liquor license establishments that,
4 quote, create a team atmosphere which
5 focuses on a group approach to
6 effectively deal with those
7 establishments that degrade communities
8 and harm their citizens. Now, Councilman
9 Kenney, in those establishments that you
10 just seen, and we're not going to show
11 you all of them, when did they hold these
12 sessions with them? They also said
13 that -- this is on the Liquor Control
14 Board web site -- the legislature has
15 generally limited the number of licenses
16 for the retail sale of malt or brewed
17 beverages and liquor to one license for
18 each 3,000 inhabitants in any county.
19 Can they define that? Because you can go
20 on certain blocks and there's three or
21 four of them in a block. So 3,000
22 inhabitants, does that include the
23 children? I mean -- and also another
24 thing that their web site says, this is
25 another thing too. Now, if -- you know,

1 Legislative Oversight - 3/13/06
2 the DA testified and you know, Councilman
3 Kenney, because when we had the last
4 hearing, you was like really it's a
5 no-brainer what's going on here that one
6 of the main -- most of the crime goes on
7 in the evening; right? Really in the
8 evening like midnight. That's on the
9 corner of a residential block. That's
10 not supposed to be open past 11 o'clock.
11 They're still open. I talked to
12 Commissioner Sylvester Johnson. He
13 didn't even know that. And then I talked
14 to a police officer who I know in my
15 community and I happened to see her
16 posted outside the stop-and-go, a half a
17 block from the stop-and-go that I
18 testified against on 60th and upland.
19 She had to be posted outside the
20 stop-and-go because it was like -- I
21 guess it was like a high crime area
22 because every time you go by there they
23 have the teddy bears, you know, like
24 memorials when people die. And so,
25 therefore, now we're talking about

1 Legislative Oversight - 3/13/06
2 overtime for police. If the police have
3 to do a 24/7, why do they have to do a
4 24/7 when the establishment's supposed to
5 have been closed 11 o'clock? Honest to
6 God, Councilman Kenney, the police do not
7 know that these establishments are
8 supposed to be closed at 11 o'clock.
9 That's the law. Councilman Clarke passed
10 that law.

11 COUNCILMAN KENNEY: Well, when
12 the government panel comes up, and
13 they're listening now, they can comment
14 on what the issues of hours and
15 advertising and those kind of things.

16 MS. GORDON: Okay. And finally
17 one thing else what the Liquor Control
18 Board said, which, you know, we should
19 move them to Philly. They should -- I
20 don't know where their office is. They
21 need to come to Philly because they
22 said -- we need for the Pennsylvania
23 control board to review the law that
24 allows minors to enter the licensed
25 premises without parents because they

1 Legislative Oversight - 3/13/06

2 have gross sales of food and nonalcoholic
3 beverage equal to 50 percent of more of
4 combined sales of both food, alcoholic
5 beverages that minors are permitted on
6 the premises. This is the Pizza Hut law.

7 Now, on their web site, this is
8 what the Pennsylvania Liquor Control
9 Board says, they have delivered a no
10 alcohol use or zero tolerance message to
11 all citizens under the age of 21. No way
12 in the world if the Liquor Control Board
13 comes by those stop-and-go's and see
14 those naked woman smoking the cigarettes
15 with the 40 of malt liquor in their hand,
16 that is not promoting a positive message
17 to our youth, one. Then they say on
18 their web site promoting responsible
19 alcohol beverage services and practices
20 amongst licensees and persons that serve
21 alcoholic beverages in Pennsylvania.

22 Every last one of the
23 stop-and-go's in our area -- that's nice.
24 Flip back to some of them, the naked ones
25 with the women with the blunts. And when

1 Legislative Oversight - 3/13/06
2 you go into their establishment, they
3 have Plexiglas, which I believe is
4 illegal, and they have the shelves,
5 right, and so they have all the blunts --
6 like blunts is used -- they're cigars.
7 They get the tobacco out and put
8 marijuana in them. They have the blunts
9 next to potato chips and sunflower seeds.
10 Then they have like the malt liquor in
11 the same freezer with the juices, little
12 juices for kids. And every last
13 stop-and-go, like even that one, children
14 go in there without adults. They do not
15 enforce it. Most of them have barbed
16 wire around there. Now, the last time I
17 testified they were selling loose
18 cigarettes for 50 cents. Now they 75
19 cents. They went up. Then also they
20 don't sell straight shooters no more.
21 That's the only thing they changed. The
22 areas is so dirty in all these
23 restaurants it's just an absolute mess.
24 That's the only reason why we
25 came back to you because we refuse to go

1 Legislative Oversight - 3/13/06
2 away, Councilman Kenney. We respect Act
3 39, but when Steve Masters come up and
4 just tell you of all of them got stays,
5 it's like one of the things I wanted to
6 ask the DA is how many stop-and-go's have
7 she closed down, the number, not just
8 like a general we close down bars, how
9 many stop-and-go's -- you see the little
10 hug with the kids on the seat? It's
11 really just a mess. I know, you know,
12 it's a nice thing that came from Old City
13 and everything, but what's going on in
14 our community, the quality of life is a
15 strong issue. We're supposed to be the
16 up and coming city. Every periodical and
17 e-mail I get Philadelphia is just this is
18 the new city to move into, but yet we
19 have these horrible neighborhood
20 transformations never address these
21 stores. These stores even remain where
22 the old Richard Allen where they got the
23 new pretty houses, they still have the
24 same ugly crazy stop-and-go with the boys
25 hanging out.

1 Legislative Oversight - 3/13/06

2 Thank you for letting me
3 testify and hopefully you'll be able to
4 ask the Pennsylvania Liquor Control Board
5 to address why they're not fulfilling
6 their mission statement.

7 COUNCILMAN KENNEY: Reverend
8 Brown?

9 REVEREND BROWN: Thank you,
10 Councilman Kenney.

11 COUNCILMAN KENNEY: Please
12 identify yourself for the record.

13 REVEREND BROWN: I'm Reverend
14 Jesse Brown, part of the North
15 Philadelphia Community and Business
16 Initiative. And we're dedicated to
17 looking at quality of life issues within
18 our neighborhood and improving those
19 where we can. I'm just going to get the
20 advertising issues to move on a loop
21 here. And if you want to stop at any
22 particular one for a closer look, we can
23 do that at any time. The issue of
24 advertising has always been a major
25 issue. Of course, I've been working on

1 Legislative Oversight - 3/13/06
2 that now for more than 115 years here in
3 Philadelphia and nationwide. In
4 particular, the alcohol enforcement of
5 the alcohol advertising standards have
6 not been met and they continue not to be
7 met even to this day. We have not found
8 that the LCB or Liquor Control Board has
9 been very receptive in being aggressive
10 in fulfilling what the law says in those
11 things. And quite frankly, Councilman,
12 everything needs to be simply revamped.
13 The ability to deal with the advertising
14 issues are very cumbersome and they
15 simply are outdated, outmoded, and have
16 not been updated in any way in recent
17 times, and I mean recent times, to
18 adequately deal with the excessive amount
19 of alcohol advertising in the windows.
20 Not to mention that there are a
21 hodgepodge of laws and a hodgepodge of
22 agencies of which have some level of
23 compliance or responsibilities that are
24 not being met. Even this picture that
25 I'm creating a hold on, we know that

1 Legislative Oversight - 3/13/06
2 these banners that are on the fences are
3 not supposed to be there. Now, who has
4 control over some of that? Is that the
5 Liquor Control Board? Is that license
6 and inspections? Who has responsibility?
7 Should they get permission to do so, how
8 do you do that? And most of these as you
9 can see are primarily the alcohol
10 industry and the tobacco industry. It is
11 also apparent that both the alcohol
12 industry and the tobacco industry have
13 determined that since Philadelphia
14 doesn't enforce the law, they might as
15 well create advertising that breaks the
16 law. That includes posters such as the
17 little one right here that they sometimes
18 put up even on telephone poles, which, of
19 course, not supposed to be there as well.
20 So there are a whole host of those
21 things.

22 I think the key testimony that
23 I bring on this issue today is that the
24 enforcement of alcohol advertising laws
25 on both the state and local level have

1 Legislative Oversight - 3/13/06
2 not been addressed and I would strongly
3 suggest that we, in fact, rewrite the law
4 so they could, in fact, be addressed and
5 rewrite the laws so that the community
6 could have input or raise their concerns
7 with due process.

8 When the Liquor Control Board
9 has addressed, I would like the
10 opportunity if you will ask me back.
11 There are a number of other issues beyond
12 just the advertising issues that I would
13 like to suggest to you that we may want
14 to codify in law and that would even
15 include the elimination of the transfer
16 licenses all together and create a new
17 situation where every application has to
18 be re-investigated, complete background
19 checks need to be done and that in, in
20 fact, it's put up for public scrutiny
21 every time that process so that you will
22 never have to deal with the transfer of
23 licenses again.

24 COUNCILMAN KENNEY: Ms.
25 Crawford? And I'd like to ask the

1 Legislative Oversight - 3/13/06
2 community people to keep in mind at some
3 point we're going to need the people who
4 hopefully have some answers and updates
5 as to what's going on to the table.

6 Please identify yourself.

7 MS. CRAWFORD: I will be very
8 brief with my comments. The light's on
9 but I'm not sure. I'll be very brief.
10 The thing that happens is that we were
11 here before and obviously we met with
12 you, Councilman Kenney, and it was
13 through your movement that we're even --
14 we've even gotten this far. And I'm
15 grateful that the Pennsylvania Liquor
16 Control Board is here because, of course,
17 they never showed up. We would sit here
18 and talk to each other about what the
19 problems were. It's interesting that we
20 would come on after two communities have
21 had the opportunity to testify and they
22 talk about how wonderful things are now
23 in their communities. The thing that I
24 want you to understand is I don't know
25 who the hearing officers were. I

1 Legislative Oversight - 3/13/06
2 certainly went to the hearings on a
3 number of occasions with Ms. Cummings and
4 also with Ms. Gordon. And there were
5 instances where places should have been
6 closed, but they were granted to remain
7 open. They were allowed to remain open
8 with conditions. And, also, one of the
9 hearing officers testified today and we
10 had a very hard time convincing her when
11 it was in North Philadelphia that
12 something needed to be done. It's just
13 interesting that in another area of the
14 city she can be so vociferous.

15 I would also ask that you look
16 at attacking this problem from a new way
17 and that is simply that when you hear
18 these people talking about boots on the
19 streets and increasing their budgets, it
20 would seem to me there is a way we can
21 get some workers out there to do what we
22 need to do who might be otherwise engaged
23 in doing services on behalf of the state.
24 The blame game in some of these
25 communities that some people didn't show

1 Legislative Oversight - 3/13/06
2 up to protest it I thought was
3 interesting because you're actually
4 blaming people who probably have less
5 resources in terms of knowing what's
6 going on. We all know that in certain
7 communities there are problems, but
8 getting the word out and getting those
9 people and marshaling the forces to get
10 them down here -- we are all three
11 working people who have to take off to do
12 this and we do it because we are
13 concerned about the community, but there
14 is no agency in Southwest or Strawberry
15 Mansion that employs someone that could
16 sit there and dot the Is and cross the
17 Ts. And that's a problem. And I don't
18 think it behoves us to say our community
19 is more organized than that community.
20 The problems exist. It spills over to
21 other communities. And also we have to
22 look at the fact that malt liquor being
23 sold in these establishments is a drug.
24 It really is because it's much stronger
25 than beer and these folks smoke their

1 Legislative Oversight - 3/13/06

2 blunts and they want something cold to
3 drink and drink malt liquor. The two
4 things go hand in hand.

5 Ms. Cummings actually asked
6 what do we do if we can't get any
7 resolution here and I told her I would
8 speak to that because what is our
9 redress? And certainly if the
10 Pennsylvania Liquor Control Board is not
11 following through and policing this and
12 doing something about this problem in our
13 communities, it would seem to me that we
14 have to then look beyond that and talk
15 about a governmental entity that would be
16 able to do that. So either they
17 straighten up and straighten this problem
18 out and police these establishments or
19 leave us in the position where we start
20 marshaling. And I believe if we start to
21 marshal the community to walk down to 6th
22 and Market to do something, it would get
23 done. This is not a threat. I
24 appreciate so much you, Councilman
25 Kenney, coming in and saying we're going

1 Legislative Oversight - 3/13/06
2 to do something about it, but I want the
3 Pennsylvania Liquor Control Board -- I'll
4 spell my name. I think it's written
5 because I don't back down. It would be
6 real easy for me to get some attorneys to
7 volunteer and get people down to 6th and
8 Market if they can't straighten up their
9 shit.

10 COUNCILMAN KENNEY: Thank you
11 very much.

12 MS. CUMMINGS: I just wanted to
13 add I focused on the presentation, but I
14 would like to have it placed into its
15 entirety into the record. But I also
16 wanted to briefly give some statistics
17 that I found very interesting as it
18 relates to malt liquor also. I feel that
19 the urban community is in a state of
20 emergency and malt liquor is a drug.
21 Therefore, if nonAfrican-Americans with
22 13 percent of the population but comprise
23 35 percent of drug arrests, 55 percent of
24 drug convictions, and 74 percent of drug
25 prisoners, government officials would

1 Legislative Oversight - 3/13/06
2 declare a state of emergency. Today
3 there are approximately 1.3 million
4 African-American males in jail. In 1980
5 the budget for the people system was \$7
6 billion and just two decades later the
7 budget for the penal system is
8 \$150 billion industry with malt liquor
9 sales being a major contributing factor.

10 There are some things that
11 again as this testimony will be placed
12 into its entirety in the record that we
13 are asking for. And education is one of
14 those aspects because right now there is
15 no educational component in our
16 neighborhood although they're
17 proliferated with these establishments
18 that educate our black males on what --
19 that malt liquor, first of all, is very
20 addictive and that it contains petroleum,
21 isobutanol, natural gas, sugar, alcohol,
22 wood, and starch alcohol. And these
23 poisons deteriorate the brain, sex
24 organs, liver, pancreas, and lungs. And
25 if black males were educated about this

1 Legislative Oversight - 3/13/06
2 information, they may choose not to kill
3 their sex organs themselves or others.
4 Also, shockingly to me through the
5 investigations on the state Act 39
6 hearings is that parents or unsuspecting
7 parents of Temple University freshmen are
8 unaware that when they leave their
9 children in the County of Philadelphia
10 they can get alcohol in excess of 192
11 fluid ounces at USA Deli, Inc., 2234-38
12 North Broad Street, which is a violation
13 of Title 47 401(a)407 442(a). And this
14 business in particular is a chronic
15 violation of the state laws.

16 And, lastly, the Pennsylvania
17 Liquor Control Board is considering at
18 this present time a third alcohol
19 location at 2836 Ridge Avenue,
20 Philadelphia, which in good conscience is
21 too close to two presently operating
22 alcohol establishments at the same
23 intersection. Granting this person to
24 person transfer would hurt the residents
25 of this neighborhood, thereby adversely

1 Legislative Oversight - 3/13/06
2 affecting the health, welfare, and safety
3 of the residents of that community and
4 giving that community three alcohol
5 establishments less than 50 to 100 feet
6 apart. This is in violation of the
7 Pennsylvania Liquor Control Board's own
8 good measure regulation of the footage
9 alcohol establishments should be in
10 proximity to one another. This building
11 has not had any alcohol use for many,
12 many years now.

13 And we look forward to working
14 or continuing to work with you,
15 Councilman Kenney, the Pennsylvania
16 Liquor Control Board, Governor Rendell,
17 state and local officials regarding
18 nuisance establishments to improve and
19 resolve within the next 30 days the
20 health, welfare, and safety for residents
21 of Philadelphia.

22 We've included in this
23 testimony also that we could get right
24 down to better conditions if we would
25 incorporate the department of licenses

1 Legislative Oversight - 3/13/06
2 and inspections verification of
3 compliance of existing laws form.
4 There's already a process that they use
5 that would check these businesses for
6 more things than just their fire alarm.
7 So we do thank you.

8 COUNCILMAN KENNEY: Thank you
9 very much for your testimony.

10 Could we just get the last
11 three? I think there's three more
12 community residents that would testify.

13 Greg, could you please come?

14 And I think there's two more.
15 And we've heard testimony from the
16 community. I'd like you to try to keep
17 it without repeating what's been said,
18 give us new information because I want
19 to --

20 MS. RODRIGUS: I have a video.
21 I don't have to talk.

22 MS. FIELDS: While she's
23 sitting up her video, I'm Arlene Fields,
24 executive director of Sunrise CDC and
25 chair of the partnership zoning

1 Legislative Oversight - 3/13/06
2 committee. We're located in Hunting
3 Park. What you see here in front of you,
4 Councilman Kenney, this is one of the
5 establishments which is literally across
6 the street from an elementary school,
7 Bethune Elementary School. And I have
8 pictures for the Liquor Control Board if
9 they want pictures. What you see here is
10 this deli. And this is only a couple
11 days after they agreed not to do what's
12 being done. As you can see, in these
13 photos right here in front of you is the
14 name, Young Seafood Deli, but also you
15 see the persons loitering on the outside.
16 Now, they say they have seating for 30
17 people and that they have bathrooms for
18 the public, but what you will see here is
19 you see the sign liquor in the store
20 window, that's where you can see the
21 seating and the seating is -- 30 people
22 will not be able to sit in there. And
23 they're all pushed up against the door
24 where the bathrooms are for the public.
25 Also in the picture you see all the

1 Legislative Oversight - 3/13/06
2 advertising that's on the door and also
3 inside underneath the counter on the
4 counter and above, also one of the
5 pictures with the gentleman with the blue
6 hoodie on, they're standing out front
7 drinking their beer right in front of the
8 place. And then there's another picture
9 you can see a better picture of the
10 chairs or booths pushed all the way up.
11 They said we have a certification saying
12 we have seating for 30 people, but no one
13 can get in and their bathrooms are not
14 available. Also, what you'll see is
15 another gentleman at the same time --
16 now, there is a sign in the window that
17 says no loitering and the sign is
18 15 inches by 2 and a half inches that
19 says no loitering as the gentleman men
20 stand in front loitering and drinking
21 there.

22 And not only that, the day
23 these were taken in November -- I mean
24 October, what happened was the school
25 across the street from there had a police

1 Legislative Oversight - 3/13/06
2 call and a young girl was propositioned
3 by someone coming out of the deli.
4 That's the only area, coming out of the
5 deli. She was coming out of school. She
6 was so frightened she ran back into the
7 school. The vice principal wasn't able
8 to attend because he was with the police
9 talking to the young girl who was
10 traumatized by someone coming out there.
11 That's a constant thing someone's coming
12 out of there and it's very nasty and
13 dirty. The owners said, well, we clean
14 up the park. That's only because they
15 was coming before the committee to get
16 their license.

17 That's what's happening.
18 Children are going in there. We know
19 they're not supposed to be in there alone
20 if they're under 18 years old. And when
21 asked what do you sell in there and he
22 says hugs, potato chips, the things
23 children come in for. And if you look at
24 one of the pictures there, you will see
25 from the inside you can see where I took

1 Legislative Oversight - 3/13/06
2 the pictures and there's only one window
3 and the glass goes all the way to the top
4 so the children when they come in from
5 Bethune Elementary School, which is
6 literally across the street, less than a
7 hundred feet across the street, they come
8 in and stand there with the drunks on the
9 outside and inside because there's
10 nowhere for them to sit though they say
11 there's 30 seats. And if you look, yes,
12 there's seating for 30 people if you're a
13 flat cartoon character that can slide in.
14 It's the only way you're going to sit
15 there. And I'm just very concerned that
16 this is allowed to happen. And when they
17 agree to provisions as far as them to
18 continue operating, because we were
19 notified very late about the hearings on
20 Act 39, they cleaned up their act and
21 brought a letter from the school, said
22 see here's a letter from the school. So
23 what? Everybody else donated a turkey so
24 they donated a turkey and felt that was
25 fine enough to prove they were concerned

1 Legislative Oversight - 3/13/06
2 about the community. When asked how much
3 of their percentage of the business, was
4 80 percent alcohol and, yes, it is and
5 they're selling hugs and potato chips and
6 everything is next to the blunts with
7 different flavors now. And these
8 children are involved in that. Then
9 you're talking about elementary school
10 children going in there because they know
11 where they can go right across the street
12 to get what they need.

13 So I would really wish and hope
14 that you would, Liquor Control Board and
15 the license and inspection, please pay
16 attention to this because our children
17 are being affected by this every single
18 day when they come out of school or when
19 they go out of school because they're not
20 open until 11:30 in the afternoon, so
21 they get the children who run out for
22 lunch and want to come in after school
23 and they're not escorted by an adult 18
24 or over. They're in there piling to get
25 their food that they're selling to

1 Legislative Oversight - 3/13/06

2 attract the children in.

3 MS. RODRIGUS: Hi. Anna
4 Rodrigus from East Civic Association and
5 resident of this bar. I'd like to say
6 that this bar has been a nuisance for
7 many years. I have videotapes,
8 audiotapes.

9 COUNCILMAN KENNEY: Is this a
10 bar or takeout deli?

11 MS. RODRIGUS: It's a bar.
12 Actually, it's a club because they have
13 bands that come in and they charge to get
14 in. They charge \$25 cover charge to get
15 in. But this is my day yesterday. This
16 did not stop until 2:30.

17 COUNCILMAN KENNEY: What's the
18 location?

19 MS. RODRIGUS: 3651 North No.
20 5. We called the police seven times.
21 You can't hear the loud music that
22 pertains to it. I had tried to intervene
23 in the person to person transfer and was
24 told that I could not intervene unless I
25 had personal knowledge of the person who

1 Legislative Oversight - 3/13/06
2 the license was being transferred to
3 although this was already a nuisance. I
4 called the police three times last night,
5 illegally parked cars, loitering, people
6 urinating, fits, auto accidents as a
7 result of them coming off the pavement
8 into the street. And they have no
9 respect for the police neither. The
10 police come out there, tell them to lower
11 it, they don't lower it. And I think the
12 police are frustrated because their hands
13 are tied in what to do. Neighbors
14 stopped calling the police because
15 they're not getting a response. So this
16 bar continues and it gets worse and
17 worse. As citizens, we have a right to
18 live in peace in our homes. We're not
19 having that right. And we're not
20 afforded an out neither.

21 COUNCILMAN KELLY: Excuse me.
22 Where do you live from this --

23 MS. RODRIGUS: Right across the
24 street. And Erie Avenue is a four-lane
25 highway or street.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KELLY: How many
3 other residences are there across the
4 street, your neighbors?

5 MS. RODRIGUS: About nine
6 houses across the street and most of them
7 are senior citizens.

8 COUNCILMAN KENNEY: Thank you.
9 Thank you very much. Mr. Spearman, will
10 you identify yourself for the record?

11 MR. SPEARMAN: Greg Spearman.

12 COUNCILMAN KENNEY: Please
13 proceed.

14 MR. SPEARMAN: I just would
15 like to give the LCB and all those
16 associated with them an F on their
17 efforts in trying to contain the problems
18 we have in our community because I know
19 of no liquor establishments they closed,
20 what you call these here takeouts because
21 under the LCB rules the only takeouts you
22 have are liquor wholesale places and beer
23 distributors. Takeout is a variance that
24 is afforded to these here businesses so
25 that patrons can take out a certain

1 Legislative Oversight - 3/13/06

2 amount of liquor out of their
3 establishments, but the intent of these
4 establishments is clear.

5 One of the meetings that we had
6 with Councilman Rick Mariano and
7 Councilwoman Blackwell, we took a bus
8 tour, offered it out to the
9 representatives to come down from the
10 state. Not near one of them accompanied
11 us on the tour that we took up in West
12 Philadelphia. We went down Lancaster
13 Avenue to show the different variety of
14 these type of establishments that they
15 are operating in our community. They
16 came up with a new one which I spoke
17 about before where they stuck the deli on
18 the front of a bar and got a bar in the
19 back with the Plexiglas up to the bar
20 where they feed the liquor through an
21 opening just like they do in the deli.
22 So the bartender and the patrons don't
23 have any contact. They slide it through.
24 They just reopened the place on the 5200
25 of Market Street. They actually built a

1 Legislative Oversight - 3/13/06
2 little room inside of the place where
3 they put the 30 chairs. They have
4 Plexiglas around that as well as a door
5 which they keep locked, never see nobody
6 inside of this place. And they showed
7 you good examples of the other creative
8 ways that they go about getting around
9 the law.

10 The intent on these here
11 irresponsible businesses are clear and
12 the lack of enforcement from the LCB is
13 clear. And I ask you, Councilman Kenney,
14 to team up with the other individuals,
15 the other Council people that feel the
16 way that you do and send them up in
17 Harrisburg a clear statement that we're
18 mad as hell and we're not taking it no
19 more. I ask you to do it. As you looked
20 on there, you seen things that were
21 violated by city ordinances. I ask you
22 to enforce that as I would over Act 39.
23 You got plenty of things they don't
24 enforce. So now we have another act
25 they're not going to enforce. And we got

1 Legislative Oversight - 3/13/06
2 to be realistic about it. When we went
3 into these here establishments, it was
4 clear violations. You have plenty of
5 them that were outright dirty. You had
6 other ones that had food on the floor.
7 They were in containers, but there was
8 food on the floor. And anybody that
9 knows anything about L&I knows that
10 you're not supposed to have food on the
11 floor. The rest rooms are not accessible
12 to the public.

13 What was real good about the
14 tour that we took, it showed at least
15 four different type of establishments.
16 Now, as we all know that I was on 55th
17 and Larchwood for a few years and we did
18 not include that in the tour. It was not
19 necessary because we wanted to condense
20 neighborhoods so you could see the
21 different varieties of these type of
22 establishments and how creative these
23 here people get to try to get around the
24 law.

25 So I'm personally asking you

1 Legislative Oversight - 3/13/06
2 and the other Council people to do
3 something from the city level. LCB
4 requires the occupancy of liquor
5 establishments, eat-in, drink-in liquor
6 establishments to have 30 people for
7 occupancy, seating for 30. City
8 ordinance says over 25 seats you supposed
9 to have a male and female. That doesn't
10 have nothing to do with them. They're
11 not going to do nothing. I'm already
12 settled with that. Whatever they got to
13 say means very little until they do
14 something. We should be able to enforce
15 that. It took me over a year and a half
16 to get the health department and L&I to
17 come out to do a visual on the men's room
18 in this establishment, an establishment
19 at 55th and Larchwood, a year and a half.

20 Let me give you a brief update
21 too on 55th and Larchwood. They are
22 presently closed. We had the hearing
23 October 31, the first day of the SEPTA
24 strike. We had already rented a bus. We
25 took a busload down to the hearing. And

1 Legislative Oversight - 3/13/06
2 approximately about three weeks after the
3 hearing the judgment came out and they
4 closed their doors. They haven't been
5 back. We're still not satisfied that
6 they won't come back so we're still
7 posting, waiting, and patrolling. So at
8 least that's done.

9 I'm asking you, Councilman
10 Kenney, to get down to the business of
11 the city and represent us as we have been
12 diligent and respectful in all the things
13 that we have done and show them up in
14 Harrisburg that they just can't neglect
15 us and push us around. We watch how they
16 jumped on all the authorities in
17 Philadelphia, the School District. I
18 mean, anything they want to do they can
19 do, but it's obvious that they have no
20 real intent or desire from their previous
21 actions that they want to solve this
22 problem in our community.

23 COUNCILMAN KENNEY: Thank you
24 very much for your testimony.

25 I would ask Sergeant Davis,

1 Legislative Oversight - 3/13/06
2 Lieutenant Comerer, Lieutenant Healy,
3 Jerry Waters, and Mr. Masters. And
4 wherever there's not space, you can fill
5 in some of the Council chairs so we have
6 a microphone for you. Who would like to
7 start off?

8 Deputy commissioner, are you
9 the ranking officer here?

10 MR. VERDI: That's the way it
11 looks, Councilman.

12 COUNCILMAN KENNEY: Please
13 identify yourself for the record.

14 MR. VERDI: Good afternoon.
15 I'm Dominic Verdi deputy commissioner
16 license and inspections. I have a short
17 testimony to read into the record. Good
18 afternoon, Councilman Kenney, and members
19 of the committee. I'm Dominic J. Verdi,
20 Deputy Commissioner for the Department of
21 Licenses and Inspections. Also
22 accompanying me here today is Kevin Daly,
23 Director of Licenses and Inspections'
24 Nuisance Task Force. I'm here to provide
25 testimony on Resolution 051029, which

1 Legislative Oversight - 3/13/06
2 authorizes Council's Legislative
3 Oversight Committee to hold hearings with
4 regard to code violations associated with
5 businesses operating as take-out
6 delicatessens with beer or malt liquor
7 sales.

8 Since 1992, we've been a member
9 of the citywide public nuisance task
10 force under the coordination of the
11 District Attorney's office and now most
12 recently through the coordination of the
13 managing director's office. The mission
14 of the group is to assist residents and
15 community groups in combating drug and
16 alcohol related nuisances that plague
17 many of our neighborhoods in this city.
18 As part of this effort, the department of
19 and license and inspections has abated or
20 closed certain nuisance bars and
21 convenience stores that have either
22 presented an immediate threat to public
23 safety or have been violators of The
24 Philadelphia Code. The department
25 performs zoning, building, and electrical

1 Legislative Oversight - 3/13/06
2 code inspections and where appropriate
3 serves cease operations orders that
4 closes the business until the violations
5 are corrected. We work together with the
6 city solicitor's office to immediately
7 bring these cases before a judge who can
8 impose further sanctions against the
9 operators.

10 In the area of enforcement
11 related to the sale of malt liquor beer,
12 as Council is aware, the City is
13 preempted from enforcement violations
14 related to such sales by state law. We
15 have, however, worked closely with the
16 health department, police department, law
17 department, District Attorney's office,
18 and the state's Liquor Control
19 Enforcement unit to enforce local laws.
20 This enforcement is documented and sent
21 to the Liquor Control Board during the
22 state's time for renewal of licenses that
23 may be considered as part of the liquor
24 license renewals. As an example of this
25 effort, since 2004, we have closed 45

1 Legislative Oversight - 3/13/06
2 locations. Of this number, approximately
3 10 percent have been permanently closed.
4 The remaining locations have been allowed
5 to reopen under strict controls imposed
6 on the business operator, subsequent
7 appearances in court, and at the
8 direction of the law department.

9 In closing, and notwithstanding
10 continuing concerns of Council and the
11 community with regard to nuisance
12 establishments that threaten the fabric
13 of vitality of our neighborhoods, we are
14 committed to continuing our efforts to
15 aggressively enforce the laws under our
16 authority and we will work with the
17 governmental bodies wherever possible to
18 achieve that compliance.

19 Thank you for the opportunity
20 to provide the department's testimony on
21 resolution 051029. I'll be happy to
22 answer any questions.

23 COUNCILMAN KENNEY: We'll let
24 everybody give their testimony first, but
25 of the 44 establishments that were

1 Legislative Oversight - 3/13/06
2 closed, how many were takeout beer delis?

3 MR. VERDI: If I'm not
4 mistaken, Councilman, I think it was
5 zero.

6 COUNCILMAN KENNEY: Is there a
7 reason for that? Was it easier to close
8 a bar or problem restaurant than it is a
9 takeout beer deli?

10 MR. VERDI: In most cases, it
11 is because there's more nuisance problems
12 when you have 150 to 300 people
13 congregating in one location than you do
14 when you have an establishment where it's
15 more or less an in and out operation.

16 COUNCILMAN KENNEY: Did you go
17 after any of them.

18 MR. VERDI: Yes.

19 COUNCILMAN KENNEY: The
20 stop-and-go's?

21 MR. VERDI: Yes.

22 COUNCILMAN KENNEY: And what
23 was the reason why you couldn't establish
24 for either the court or for the board a
25 level of problem or what was the reason

1 Legislative Oversight - 3/13/06

2 why they were --

3 MR. VERDI: Most of the
4 problems that occur in the stop-and-go
5 locations are more of a state law or
6 state liquor law problem. They don't
7 fall under the jurisdiction of license
8 and inspections. We can handle the
9 issues with some signage. We can look at
10 the zoning of the building. But the
11 enforcement of seating, the enforcement
12 of how the beer or the malt liquor is
13 sold and the issue with minors at the
14 location fall under the license itself.

15 The problem that we have as we
16 mentioned before with Council is to look
17 into changes -- and Mike Erdos mentioned
18 before. One of the bigger changes we'd
19 like to see happen is the fact that local
20 laws are taken into effect when these
21 places go back for renewals and/or
22 original licensing. At this point the
23 only thing that is required from the city
24 at this point is a food license. If the
25 location is not zoned properly or the

1 Legislative Oversight - 3/13/06
2 fire code -- if there's fire code
3 violations, things of that nature that do
4 not comply, the city codes have no effect
5 on whether that location's going to get
6 its license or not.

7 COUNCILMAN KENNEY: Okay. Let
8 me go to Lieutenant Healy and we'll work
9 our way down and come back for some
10 questions.

11 MR. HEALY: Good afternoon,
12 Councilman Kenney and other members of
13 the Legislative Oversight Committee. As
14 you know, my name is Francis Healy and
15 I'm special adviser to Commissioner
16 Johnson and the nuisance bar liaison for
17 the Philadelphia Police Department.
18 First, on behalf of the Commissioner, I
19 thank you for giving the police
20 department the opportunity to testify at
21 this hearing and chronicle all the work
22 and cooperation that currently exists
23 between the state and city agencies to
24 address nuisance bars. More importantly,
25 I thank you for exploring possible

1 Legislative Oversight - 3/13/06
2 legislative actions that could make our
3 work more effective. As you know, for
4 approximately the last five years the
5 police department, L and I, law
6 department, District Attorney's office,
7 State Police Liquor Control Enforcement,
8 and LCB have been working cooperatively
9 during the liquor license renewal process
10 in Philadelphia to target nuisance bars.
11 We've met regularly to identify problem
12 locations, combined and analyzed our
13 data, and prioritized targets.
14 Additionally, when new problems arise,
15 each member of this task force is in
16 constant communication with the other to
17 coordinate our law enforcement resources.

18 I must admit I believe this
19 task force is probably the most effective
20 I have ever been on. There are no hidden
21 agendas or personality conflicts which
22 detract from our mission. The task force
23 is very effective, but regrettably the
24 effectiveness is often clouded by
25 misperceptions of the general public.

1 Legislative Oversight - 3/13/06
2 better utilized is known as a 611 action.
3 We've heard about them earlier today.
4 This term refers to a provision in the
5 liquor code that provides for immediate
6 injunctive relief to abate a nuisance.
7 It also provides for the ability to close
8 an establishment up to a year.
9 Historically, only the Attorney General
10 or local DA or persons who lived or had a
11 business within 500 feet of the alleged
12 nuisance had actual standing to go to
13 court. Thankfully, legislative changes
14 were made several years ago that now
15 authorize both the state police liquor
16 control enforcement as well as local
17 municipalities to also initiate such
18 actions.

19 Although the law has been
20 changed for several years, regrettably
21 here in Philadelphia the DA's office has
22 remained the only entity actually
23 initiating these actions. While Lynn
24 Abraham has been extremely aggressive and
25 passionate in this regard, her resources

1 Legislative Oversight - 3/13/06
2 like all agencies are limited. Our task
3 force recently met with the LCB as we
4 always do to discuss the upcoming renewal
5 process. It was widely acknowledged we
6 must all begin to share the burden of
7 bringing more 611 actions. It's not
8 solely the District Attorney's
9 responsibility anymore. Accordingly,
10 each member of the task force will in the
11 very near future begin to initiate its
12 own 611 actions. We all have able-bodied
13 attorneys who are willing to step up and
14 help. The District Attorney's office is
15 clearly the expert here and has
16 graciously offered to counsel other task
17 force members the proper procedures and
18 protocol necessary. This is really great
19 news. However, ironically the public
20 isn't even aware. While I can't
21 guarantee we will be filing hundreds of
22 611 actions, we will increase it
23 percentagewise. If each member of the
24 task force outside of the DA's office
25 even picks up just a handful of cases,

1 Legislative Oversight - 3/13/06
2 the changes can be dramatic. This is our
3 intention and the course we intend to
4 follow.

5 So in conclusion, please let me
6 reiterate the state and local agencies
7 necessary to abate nuisance bars have
8 already formed a well-coordinated team
9 constantly addressing these bars. We
10 acknowledge more needs to be done. We
11 need to work together to immediately
12 abate these nuisances, not just collect
13 complaints to be filed in some distant
14 hearing. Thus, we intend to shift our
15 tactics toward the 611 action. The LCB
16 renewal process through no fault of its
17 own or the LCB is truly an ineffective
18 tool alone to fight the nuisances bars.
19 With an aggressive 611 campaign, the
20 renewal process working in tandem can
21 become much more effective. In this
22 fashion, the public will see immediate
23 action and the LCB will be able to ensure
24 long-term success in our abatement
25 efforts. Equally important if not more,

1 Legislative Oversight - 3/13/06
2 other nuisance bar owners will see swift
3 action by both the city and state and be
4 forewarned. This concludes my testimony.
5 It's been an honor. I welcome any
6 questions.

7 COUNCILMAN KENNEY: Thank you
8 very much. We'll come back to questions.

9 Who's going to offer testimony
10 from the state police?

11 LT. COMERER: We have no
12 prepared statement, but we will be more
13 than willing to answer any questions.

14 COUNCILMAN KENNEY: Thank you
15 very much.

16 Sir, could you please identify
17 yourself.

18 MR. WATERS: Yes, sir. My name
19 is Jerry Waters, W-A-T-E-R-S. And I'm
20 the director of the Bureau of Licensing.
21 To the Honorable James Kenney and members
22 of the Philadelphia City Council
23 oversight committee, good afternoon. My
24 name is Jerry Waters and I'm the director
25 of the licensing for the Pennsylvania

1 Legislative Oversight - 3/13/06
2 Liquor Control Board. I thank you for
3 this opportunity to address Philadelphia
4 City Council Legislative Oversight
5 Committee on the issues of problems
6 associated with the liquor establishments
7 licensed by the board and the existing
8 liquor license renewal process. As you
9 may know, while the board issues all
10 liquor licenses in Pennsylvania, the day
11 to day enforcement of the liquor code is
12 the province of the Pennsylvania State
13 Police Bureau of Liquor Control
14 Enforcement and not the board. Further,
15 while Section 611 of the liquor code
16 authorizes a Court of Common Pleas to
17 padlock a licensed premises as a public
18 nuisance for up to one year, only the
19 Attorney General, the District Attorney,
20 the city solicitor, the Pennsylvania
21 State police Bureau of Liquor Control
22 enforcement, and neighbors within
23 500 feet of a premises may avail
24 themselves of the provision of this
25 liquor code. Retail licenses such as

1 Legislative Oversight - 3/13/06
2 hotels, restaurants, and clubs are
3 renewed every two years. Distributors
4 and importing distributor licenses are
5 renewed every four years. Section 470 of
6 the liquor code authorizes this agency to
7 consider the manner in which a licensed
8 premises is operated when determining
9 whether to renew the license in question.

10 In 1990 the board bureau of
11 licensing established a nuisance bar unit
12 to ascertain whether any establishment
13 licensed by the board is operating in an
14 inappropriate manner. Specifically, the
15 director of the bureau of licensing may
16 object to and the three-member board may
17 refuse a renewal application because of a
18 licensee's or its officers, employers, or
19 agent's criminal conduct, citation
20 history, or operational history at this
21 or another licensed premises. Again,
22 however, the board can only take action
23 when there is an applicant before it.
24 And in the case of a renewal of a retail
25 license, such applications are submitted

1 Legislative Oversight - 3/13/06
2 once every two years. Therefore, the day
3 to day management of problems associated
4 with licensed establishments is best
5 addressed by such entities as the Bureau
6 of Liquor Control Enforcement, the
7 Philadelphia Police, and the Philadelphia
8 District Attorney's office.

9 On the issue of renewal, a
10 licensee is strictly liable for
11 violations of the liquor code. Strict
12 liability means that licensees are held
13 responsible for the activity in question
14 even if they took reasonable steps to
15 prevent it and even if they had no
16 personal knowledge or involvement in the
17 activity. Examples of the liquor code
18 violations which the board considers when
19 determining whether to renew a liquor
20 license include such violations as sales
21 to minors or visibly intoxicated patrons,
22 allowing amplified music to be heard off
23 the licensed premises, and after hours
24 operations. A license may also be held
25 accountable for criminal activity that

1 Legislative Oversight - 3/13/06
2 occurs on the licensed premises if there
3 is a pattern of such activity that the
4 licensee knew or should have known about
5 it, if the licensee failed to take
6 substantial steps to prevent such
7 activity. Examples of type of activity
8 which the board considers include drug
9 activity, disorderly conduct by patrons,
10 fights, assaults, and other crime that
11 affects the health, welfare, and peace of
12 the surrounding neighborhood.

13 If objected to, the licensee
14 has the right to request a hearing before
15 a hearing examiner appointed by the
16 board. After the hearing, the hearing
17 examiner makes a recommendation to the
18 board. The board in turn then renders a
19 decision either renewing or refusing the
20 license in question. If the board
21 refuses the renewal application, the
22 licensee has the right to a de novo
23 hearing before a judge in the Court of
24 Common Pleas of Philadelphia. The liquor
25 code specifically provides that the

1 Legislative Oversight - 3/13/06
2 board's decision to refuse a license is
3 stayed once an appeal is filed in the
4 Court of Common Pleas. At times the
5 board agrees to renew the license under
6 certain conditions. The licensee may
7 offer to enter into an agreement with the
8 board imposing additional conditions on
9 the license and the premises in an
10 attempt to address any issue that may
11 have arisen as a result of the hearing.
12 On other occasions, a licensee may be
13 willing to get out of business altogether
14 and sell its license in the arm's length
15 transaction to a disinterested third
16 party.

17 Under the existing system,
18 there are compelling reasons for both the
19 licensee and the board to resolve the
20 matter by entering into a conditional
21 licensing agreement that imposes
22 conditions on a license or an offer in
23 compromise that allows the licensee to
24 sell the license. For a licensee, a
25 conditional licensing agreement may allow

1 Legislative Oversight - 3/13/06
2 it to address a problem at an
3 establishment before it becomes even more
4 egregious while at the same time allowing
5 the licensee to continue to operate. An
6 example may be a licensee who agrees to
7 give up live entertainment because the
8 noise and music associated with the live
9 entertainment is adversely affecting the
10 neighborhood.

11 For a licensee with a more
12 egregious operating history, an offer in
13 compromise will allow it to recapture the
14 value of the liquor license even as it
15 agrees to no longer operate the premises.
16 For the board, a conditional licensing
17 agreement may allow it to immediately
18 address an establishment whose operating
19 history although worrisome does not merit
20 nonrenewal of the license. An offer in
21 compromise will typically close down a
22 nuisance establishment much faster than
23 protracted litigation.

24 It is important to note that
25 the Court of Common Pleas is not in any

1 Legislative Oversight - 3/13/06
2 way bound by the board's determination on
3 whether to renew the license in question
4 and there are quite a few Common Pleas
5 judges as well as appellate court judges
6 who are quite reluctant to take away a
7 licensee's livelihood and the livelihood
8 of its employees absent overwhelming
9 evidence of egregious conduct and
10 licensee's culpability for that conduct.

11 To paraphrase the Commonwealth
12 Court in Rosing versus the Pennsylvania
13 Liquor Control Board, the board cannot
14 require a licensee to act as a police
15 officer even if the licensed premises is
16 in a crime area. Further, the liquor
17 code grants a licensee the authority to
18 operate regardless of the board's
19 decision until after the Court of Common
20 Pleas makes its decision. This means
21 that a nuisance establishment can operate
22 for months or years unless a licensee
23 voluntarily closes down.

24 In Philadelphia, for the
25 license renewal cycle that began on

1 Legislative Oversight - 3/13/06
2 November 1, 2004, the renewal process
3 includes meeting with representatives
4 from the Philadelphia Police Department,
5 the District Attorney's office, the
6 Philadelphia office of license and
7 inspections, and the Pennsylvania State
8 Police Bureau of Liquor Control
9 Enforcement, collectively referred to as
10 the Philadelphia nuisance bar task force
11 or task force. The Philadelphia nuisance
12 bar task force identified over three
13 dozen licensed establishments as
14 potential candidates for nonrenewal. In
15 addition, letters requesting information
16 on potential nuisance bars were sent to
17 all representatives and senators whose
18 district include any part of
19 Philadelphia, to City Council President
20 Verna, and to the director of the
21 Pennsylvania Weed and Seed Program. As a
22 result, the board's nuisance bar unit
23 further investigated approximately 74
24 licensees because of complaints received
25 from the task force, elected officials,

1 Legislative Oversight - 3/13/06
2 neighborhood groups, citizens, and other
3 sources. The Philadelphia Police
4 Department provided this agency with
5 hundreds of police reports, forfeiture
6 petitions, and citation records. In the
7 end, the board's bureau of licensing
8 objected to 42 licensed establishments in
9 Philadelphia. Some of those cases remain
10 pending. Some resulted in renewal with a
11 warning while others were resolved
12 through a conditional licensing agreement
13 or an offer in compromise or an outright
14 refusal of the license or ancillary
15 permit. When a matter is resolved
16 through the conditional licensing
17 agreement or an offer in compromise, the
18 nuisance bar task force unit will
19 typically contact the District Attorney's
20 office, the police department, or other
21 law enforcement official to ascertain
22 their views on the proposed resolution.

23 The board will be happy to
24 provide whatever assistance it can both
25 prior to and after this hearing to

1 Legislative Oversight - 3/13/06
2 facilitate this committee's understanding
3 of the license renewal process. Please
4 note that all retail licenses in
5 Philadelphia will expire on October 31,
6 2006. If there are any particular
7 establishments which you believe have
8 demonstrated a pattern of abuse of their
9 licensing privilege, please feel freely
10 to bring them to our attention. Thank
11 you for giving me this opportunity to
12 explain the license renewal process. I
13 will be happy to answer any questions you
14 may have at this time.

15 COUNCILMAN KENNEY: Thank you
16 very much. Are you -- same testimony? I
17 was surprised to learn in the testimony
18 that there is an investigative division
19 of the licensing division. You have
20 investigators that work for the
21 licensing -- for the liquor board?

22 MR. WATERS: Yes, we have a
23 division of investigation.

24 COUNCILMAN KENNEY: Is anyone
25 from that organization part of the task

1 Legislative Oversight - 3/13/06

2 force?

3 MR. WATERS: Not at this time,
4 sir.

5 COUNCILMAN KENNEY: Is there
6 any reason why we wouldn't -- see, part
7 of this -- as this unfolds, part of this
8 is education, part of it is culture in
9 that in many ways I think the LCB is a
10 licensing entity that deals with the
11 economics of operating a bar, employing
12 people, you know, the economic benefit to
13 that, the purchase of liquor from the
14 state liquor system, taxes that they pay.
15 It would seem from an education
16 standpoint that somebody from their
17 investigative division within the liquor
18 board should be part of this so that they
19 can become personally knowledgeable as to
20 what's going on or not going on. I mean,
21 do you disagree?

22 MR. HEALY: Councilman, I deal
23 with a lot of different investigators
24 when I do some of my work. They will
25 reach out to me and we coordinate.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KENNEY: But I mean
3 a formalized relationship to me seems --
4 what happened years ago because I was
5 around when this happened is in an effort
6 to stop what was perceived corruption in
7 the liquor board, they separated
8 everybody and that separation perhaps
9 dealt with the ethics issues better, but
10 I don't think it was effective in
11 coordination and the kind of cooperation
12 between LCE, LCB, and all you guys who
13 have to do with this stuff here. I would
14 recommend a formal request from the task
15 force to have one of their people in that
16 division as part of a permanent member of
17 that board of the task force so we could
18 have some direct experience and
19 knowledge. I mean, I can understand
20 reaching out and having some contact, but
21 it's not the same as regular meetings.

22 MR. WATERS: Representative
23 Kenney, I'd be happy to discuss that with
24 Chairman Newmann and our chief counsel.
25 I have here with me assistant deputy

1 Legislative Oversight - 3/13/06
2 counsel Ron Diaz to assure there's no
3 issues with crossover. And if that's the
4 case, we'd be happy to put my eastern
5 regional manager on that task force.

6 COUNCILMAN KENNEY: Thank you.
7 Again, I appreciate you being here. I
8 appreciate you all waiting and listening
9 to what people had to say. You've seen
10 some of the photos and videotape and
11 other things. I mean, obviously there's
12 a real serious concern that any rational
13 person would have as to the operations,
14 the advertising, the lack of lighting,
15 seating, I mean, chained-up chairs, all
16 those things that people live with every
17 day. I mean, I can imagine without
18 holding you for the record that when you
19 view stuff like that there should be some
20 concern as to how these people get
21 relicensed again.

22 Please identify yourself for
23 the record.

24 MR. DIAZ: My name is Rod Diaz.
25 I'm as Jerry said, deputy chief counsel.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KENNEY: Is there
3 something you want to add?

4 MR. DIAZ: No.

5 COUNCILMAN KENNEY: Do you have
6 a response just to the general view of
7 how these people operate?

8 MR. WATERS: Councilman Kenney,
9 to review the slide show that the
10 Reverend presented and some of the other
11 issues, again, when we license a
12 location, they are in compliance. Once
13 we leave the oversight of them, remaining
14 in compliance is with the Pennsylvania
15 State Police Bureau of Liquor Control
16 Enforcement.

17 COUNCILMAN KENNEY: I
18 understand that, but there's some areas
19 of compliance they can't possibly be in
20 compliance with. And some of places
21 we've seen, for example, this very small
22 hallway, I believe the license requires
23 minimum 300 square feet --

24 MR. WATERS: 300 for an E, 400
25 square feet for an R.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KENNEY: What are
3 the takeout beer delis?

4 MR. WATERS: A deli is required
5 to have an E license, 300 square feet.
6 And the majority of delis are normally E
7 licenses. However, there are licenses
8 that operate as a deli which hold an R
9 license and just don't use the privilege
10 of selling liquor. Those locations when
11 licensed, sir, are in compliance. They
12 meet the requirements. What normally
13 happens, it's been my experience -- you
14 know, I lived in Philadelphia for many
15 years, worked here for 12 years, and have
16 family that remains in Philadelphia so
17 I'm aware of some of the locations. And
18 I have mother-in-law who's on me quite
19 often about a location in her area. She
20 lives in West Philadelphia. So I'm
21 familiar with some of the locations and
22 I'm sensitive. I became the director a
23 year ago and I'm sensitive to those
24 locations and have begun to work under my
25 directorship to look at our nuisance

1 Legislative Oversight - 3/13/06

2 bars.

3 But to answer your question,
4 those locations are in compliance when we
5 offer or when we give the license, we
6 certify the license. What normally
7 happens is when we leave, they change the
8 configuration. And when they change the
9 configuration, there's no oversight that
10 the board has. If that happens, the
11 community needs to contact the
12 Pennsylvania State Police Liquor Control
13 Enforcement. And I will leave to the
14 sergeant and lieutenant what their
15 process is.

16 COUNCILMAN KENNEY: What you're
17 telling me is when they investigate or
18 they together investigate and that
19 information is brought to the board,
20 you're saying by law you can't do
21 anything about it until the renewal
22 period?

23 MR. WATERS: When who
24 investigates?

25 COUNCILMAN KENNEY: When they

1 Legislative Oversight - 3/13/06
2 do an investigation or bring information
3 to them and they report to the board that
4 this place was licensed a year ago is no
5 longer in compliance because they've
6 walled off the area, chained up the
7 chairs, locked the bathroom --

8 MR. WATERS: The normal process
9 is that if the BLC is notified, they do
10 an investigation. If it's founded, they
11 issue a citation. When that --

12 COUNCILMAN KENNEY: They issue
13 the citation?

14 MR. WATERS: Yes, they issue
15 the citation. When that citation
16 finishes, goes through the adjudication
17 process, we then get the information and
18 we move and our division of investigation
19 then handles an investigation, goes out
20 and does the investigation. Normally,
21 what's been the practice, what I've seen
22 in practicality is that when enforcement
23 cites them, they will bring that location
24 back into compliance.

25 COUNCILMAN KENNEY: But this is

1 Legislative Oversight - 3/13/06
2 not a criticism of you or your office.
3 My question is, is there something in the
4 law that prohibits you from doing
5 something to that license prior to the
6 two-year period?

7 MR. DIAZ: Yes.

8 COUNCILMAN KENNEY: That's what
9 we need to know.

10 MR. DIAZ: We can only act when
11 there's an application before us. Once
12 the application is approved, renewal is
13 approved. If a concerned citizen were to
14 send us this videotape, the only thing we
15 could do at that point is refer it to the
16 Pennsylvania State Police. And they have
17 authority under Section 471 of the code
18 to issue the citation.

19 COUNCILMAN KENNEY: So you're
20 not able -- this is important because
21 it's one of the recommendations that need
22 to be made to change this. You can't do
23 anything to that license until the
24 renewal process starts two years later?

25 MR. WATERS: That is correct.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KENNEY: So that
3 takes -- it's frustrating, but at least
4 it's understandable as to why there seems
5 to be the inability to respond quickly
6 because even though neighbors complain,
7 state police investigates, they issue
8 citations, you can't reject or approve
9 that license until two years after it's
10 first instituted; correct?

11 MR. WATERS: That's correct.

12 COUNCILMAN KENNEY: Steve, you
13 have something to add?

14 MR. MASTERS: Steven David
15 Masters, attorney for City Council. I'm
16 hearing a couple things that I have
17 questions about. One is that Mr. Waters
18 says that all the establishments are in
19 compliance when they're renewed, but we
20 know that LCB and LCE never physically
21 examine virtually none of the
22 establishments, so it's simply impossible
23 to certify that every one is in
24 compliance when these renewals are
25 basically a rubber stamp and there's no

1 Legislative Oversight - 3/13/06
2 accountability. The second thing is that
3 there is a power for the LCB to place
4 licenses in safekeeping and they can
5 place the license in safekeeping at any
6 time during the two-year existence of the
7 license. Now, there's certain
8 limitations as to when they can do that,
9 but they don't have a completely
10 hands-off posture up until the renewal
11 process.

12 MR. DIAZ: If I can answer, we
13 look at the -- when there's an
14 application again before us --

15 COUNCILMAN KENNEY: I'm sorry.
16 Go ahead, please.

17 MR. DIAZ: -- we will look to
18 make sure that the applicant qualifies.
19 So when that application was received
20 from us, we will verify that they meet
21 requirements. In addition, at renewal
22 time, Mr. Masters is correct, at renewal
23 time we don't send investigators to 2,000
24 locations to ascertain they still meet
25 the requirements, but what we do do is if

1 Legislative Oversight - 3/13/06
2 there is a citation history, which
3 includes something like not having enough
4 tables and chairs, we'll look into it and
5 see that they are in compliance. If
6 they're not, then that's one of the
7 objections we make.

8 The other thing -- and I'm now
9 a little confused -- there is a provision
10 under the liquor code which allows a
11 license to be placed in safekeeping. It
12 doesn't authorize us to put a license in
13 safekeeping. It requires the licensee to
14 do so if they ceased operating within 15
15 days.

16 COUNCILMAN KELLY: Excuse me.
17 You said something about in compliance.
18 What happens if they're not in
19 compliance?

20 MR. DIAZ: When we have the
21 application before us for renewal, we'll
22 object to that license on the basis they
23 no longer meet the qualifications of be
24 it a restaurant or hotel.

25 COUNCILMAN KELLY: When you say

1 Legislative Oversight - 3/13/06

2 you object, would that necessarily mean
3 the application would be denied?

4 MR. DIAZ: No. It means that
5 they have the right under due process to
6 have a hearing. Now, if they don't meet
7 the physical requirements, we typically
8 will not give them operating authority
9 until they do meet the physical
10 requirements. So if there is evidence,
11 for example, that there are no tables and
12 chairs and we send an investigator out
13 there as part of the investigation, the
14 application process, and they still don't
15 have any tables and chairs, we won't give
16 them operating authority. We'll object
17 and not give them operating authority.
18 But as a practical matter, they then call
19 us a couple days later, put the tables
20 and chairs in, and they're in compliance.

21 COUNCILMAN NUTTER: But the
22 other issue is how are you ever going to
23 know whether someone's in compliance or
24 not if you're not conducting an
25 inspection? I understand there are

1 Legislative Oversight - 3/13/06
2 2,100, 2,200 some odd locations, but
3 you're saying on the one hand if they're
4 not in compliance you'll raise an
5 objection, but how would you ever know
6 whether they were in compliance or not?

7 MR. DIAZ: Because if they're
8 not in compliance, the entity that's in
9 charge of enforcing the liquor code, the
10 Pennsylvania State Police Bureau of
11 Liquor Control Enforcement, will have
12 issued -- hopefully have issued a
13 citation.

14 COUNCILMAN NUTTER: How would
15 they know? Do they inspect all 2,200
16 locations in the city?

17 COUNCILMAN KENNEY: Hold on a
18 second. The purpose of this whole thing
19 is to try to figure out -- because I
20 think the law is what's at fault. I
21 don't think there's a lot of human fault
22 here. I think there's a lot of legal
23 fault here that needs to be fixed. So
24 what I like about this conversation is
25 that I'm learning things that seem kind

1 Legislative Oversight - 3/13/06
2 of crazy, but it's crazy because the
3 law's crazy. I want to make sure we're
4 all on the same page. We're all trying
5 to work toward the same goal. Even
6 though there's been years of frustration
7 and anger, I want to keep this on a
8 conversational basis so we can get
9 somewhere. I'm sorry.

10 Please identify yourself.

11 LT. COMERER: Lieutenant John
12 Comerer, C-O-M-E-R-E-R, the Philadelphia
13 office of the State Police Bureau of
14 Liquor Control Enforcement averages
15 approximately 80 inspections a month and
16 has done so for the past three years.
17 And during those inspections, if there
18 are violations that are found during the
19 inspection, then that establishment is
20 cited. And they do continue on with the
21 adjudication process.

22 COUNCILMAN NUTTER: One, I
23 would I'm glad to hear that. Two, I
24 think the quick math tells me that's the
25 960.

1 Legislative Oversight - 3/13/06

2 LT. COMERER: I'm sorry, sir?

3 COUNCILMAN NUTTER: I said the
4 quick math tells me that's 960
5 establishments you might be able to
6 inspect a year.

7 LT. COMERER: That is correct.

8 COUNCILMAN NUTTER: We have
9 2,200; right?

10 LT. COMERER: Approximately
11 2,400, sir.

12 COUNCILMAN NUTTER: 2,400,
13 okay. So we acknowledge up front they're
14 all not being inspected.

15 LT. COMERER: Every --

16 COUNCILMAN KENNEY: Excuse me.
17 The councilman wants to know if the 2,400
18 include E and R license?

19 LT. COMERER: They're both.

20 COUNCILMAN KELLY: Thank you.

21 LT. COMERER: That's all
22 licenses, club licenses, distributors,
23 the whole gamut. And they all have been
24 inspected with rare exception in the past
25 three years, they all have been

1 Legislative Oversight - 3/13/06

2 inspected, all 2,400, sir.

3 COUNCILMAN NUTTER: Okay. So
4 you do an inspection. Any establishment
5 has got to figure just playing the odds
6 they might get inspected somewhere in the
7 course of a three-year period.

8 LT. COMERER: I can tell you
9 this, sir? If you're a stop-and-go,
10 you've probably been inspected three
11 times in the past year alone. Obviously,
12 we tend to inspect the licensees that
13 have been in violation and have not been
14 in compliance over the past several
15 years. We're aware of for the most part,
16 not always but we are aware of those that
17 refuse to become compliant so they are
18 inspected more so than others.

19 COUNCILMAN NUTTER: Well, not
20 that I've been to every stop-and-go in
21 the city, but most of them I mean just
22 not to stereotype, but I think most
23 certainly don't meet the 30 chairs out in
24 the public area; right?

25 LT. COMERER: I wouldn't say

1 Legislative Oversight - 3/13/06

2 most but there are quite a few.

3 COUNCILMAN NUTTER: Do they all
4 get violations?

5 LT. COMERER: Yes, sir.

6 COUNCILMAN NUTTER: And then
7 what happens?

8 LT. COMERER: They go through
9 the adjudication process, before a
10 hearing examiner, and then the process
11 continues, appeals, whatever they want to
12 do.

13 COUNCILMAN NUTTER: Let me ask
14 this question: In the past year, to your
15 recollection, how many stop-and-go's have
16 been closed, license revoked?

17 LT. COMERER: We don't close
18 nor do we revoke. We go out and we cite.

19 COUNCILMAN NUTTER: Isn't that
20 the end of the process, though?

21 LT. COMERER: Closure?

22 COUNCILMAN NUTTER: Yeah. If
23 you're just in total violation, if you've
24 got all kinds of things going on, what's
25 the end of the process?

1 Legislative Oversight - 3/13/06

2 LT. COMERER: The Pennsylvania
3 State Police does not have the authority
4 to close a stop-and-go.

5 COUNCILMAN NUTTER: No. You
6 make the violation. It goes to court;
7 correct?

8 LT. COMERER: Correct, sir.

9 COUNCILMAN NUTTER: Then what
10 happens?

11 LT. COMERER: It goes through
12 the process. They go before a hearing
13 examiner. If they file an appeal, it
14 goes to the Common Pleas Court. It
15 continues on and --

16 COUNCILMAN NUTTER: Does the
17 court take the license or does the LCB
18 take the license?

19 LT. COMERER: During the
20 renewal period, that is looked at by the
21 LCB.

22 COUNCILMAN NUTTER: I'm not
23 talking about a renewal.

24 COUNCILMAN KENNEY: The license
25 revocation doesn't take place, renewal or

1 Legislative Oversight - 3/13/06

2 revocation, until the two-year cycle.

3 COUNCILMAN NUTTER: Right, but

4 there's a lot of life that goes on.

5 There's a lot of disruption. There's a
6 lot of madness during a two-year period.

7 COUNCILMAN KENNEY: There's no
8 process in the law if I understand it to
9 take a license prior to the renewal.

10 MR. DIAZ: If I can just
11 interject for a second, and the state
12 police can correct me, if a licensee is
13 cited for not meeting the physical
14 requirements under the liquor code,
15 typically the penalty will consist of
16 either a fine or suspension and the loss
17 of operating authority until that
18 licensee can establish that they are in
19 compliance. So, again, if the licensee
20 puts those tables and chairs in and
21 they're now back in compliance, whatever
22 suspension may have been in effect at
23 that time goes away.

24 COUNCILMAN NUTTER: Which they
25 could then remove the next day and go

1 Legislative Oversight - 3/13/06

2 back through the same nonsense.

3 MR. DIAZ: They could,
4 absolutely.

5 COUNCILMAN NUTTER: So, I mean,
6 you're telling us -- and I mean this is
7 quite revealing. One of the premier
8 agencies in the entire government of the
9 Commonwealth of Pennsylvania, absolute
10 money maker, we appreciate it generating
11 revenues for the Commonwealth, providing
12 a legal service, you can issue a license
13 over which you have no ability to revoke
14 other than to deny renewal? Is that what
15 this is?

16 MR. DIAZ: Yes.

17 COUNCILMAN NUTTER: You cannot
18 take a license away from someone, they
19 can do whatever they want to do in a
20 two-year window and when they come back,
21 you cannot renew it?

22 MR. DIAZ: That is correct for
23 this agency. There are other -- again,
24 enforcement bureau can issue citations
25 and then it becomes whether the

1 Legislative Oversight - 3/13/06
2 tribunal -- the administrative law judge
3 is authorized to revoke the license. The
4 Common Pleas judge is authorized to
5 revoke a license, but that is a penalty
6 that --

7 COUNCILMAN NUTTER: Common
8 Pleas or on up the chain?

9 MR. DIAZ: Typically it's
10 either going to be the administrative law
11 judge or Court of Common Pleas which has
12 the authority to revoke a license for any
13 violation. I mean, the authority is
14 there under Section 471.

15 COUNCILMAN NUTTER: All right.
16 then let me ask you this question: How
17 many licenses have been revoked in
18 Philadelphia during the course of 2005?

19 MR. DIAZ: That would not be a
20 number I would be familiar with.

21 COUNCILMAN KELLY: Is anybody
22 else?

23 MR. DIAZ: If I may explain,
24 we're not involved in the revocation
25 process.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN NUTTER: I
3 understand that, but you've been
4 tremendously informative so I think we're
5 going to generally be nice but I mean is
6 there any -- I mean, do you have a quest
7 for knowledge? I mean, wouldn't you want
8 to know since you're the issuing agency,
9 wouldn't you want to know on the back end
10 how many of your issued licenses were
11 taken away from people?

12 MR. DIAZ: We can get that
13 number for you. It's just not a number I
14 happen to know off the top of my head.

15 COUNCILMAN NUTTER: I
16 understand.

17 COUNCILMAN KENNEY: Councilman
18 Kelly.

19 COUNCILMAN KELLY: Thank you.
20 I just want to go over the testimony.
21 You're saying that you or your board
22 issues all the liquor licenses in
23 Pennsylvania. That includes all the
24 stop-and-go's?

25 MR. WATERS: Everything.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KELLY: Do you know
3 how many stop-and-go licenses there are
4 in Philadelphia?

5 MR. WATERS: I do not know how
6 many licenses stop-and-goes are in the
7 city, but I do know that there are 1,944
8 retail licenses and 130 --

9 COUNCILMAN KENNEY: But that
10 includes restaurants and taverns and --

11 COUNCILMAN KELLY: I'm just
12 looking at the stop-and-go's and there
13 seems to be some neighborhoods that are
14 inundated with them, that have many more
15 than what I think any average person
16 using common sense would allow. And I
17 don't know how in God's name you could
18 allow all of these licenses to go in a
19 certain community. And let me tell you
20 something, for the life of me I don't
21 know what these stop-and-go's do. I
22 really don't. I think in my opinion I
23 think we should close them all because I
24 don't think they add anything to the
25 community at all. I think if people want

1 Legislative Oversight - 3/13/06
2 to go into and get a beverage, a takeout
3 beverage, there's ample good restaurants,
4 beer distributors, taverns to go to to
5 take this out. I don't know what they
6 provide other than grief for the
7 community activists.

8 And I just wanted to know is
9 there a cap, is there something that you
10 look at before you issue a license of
11 this type? I imagine it's a different
12 type than a restaurant or tavern; is that
13 true? No difference?

14 MR. DIAZ: There are two types
15 of retail licenses. What people keep
16 referring to as stop-and-go's here,
17 there's no stop-and-go license. There is
18 a restaurant license which is authorized
19 to sell beer and liquor for both
20 on-premise consumption and beer for
21 off-premise consumption up to 192 fluid
22 ounces. To qualify for that license, you
23 have to have a certain amount of square
24 footage. You have to have tables and
25 chairs and enough food to feed 30 people

1 Legislative Oversight - 3/13/06
2 at one time. E licenses or retail
3 dispenser licenses are similar except the
4 square footage is a little bit smaller
5 and they only sell beer. So, you know,
6 it's a term that people banter about,
7 stop-and-go's. We don't have that
8 designation. So when someone applies to
9 us, they merely need to establish that
10 they meet the minimum requirements. And
11 what our Supreme Court has told us
12 repeatedly is, liquor board, you can't
13 refuse an application unless you can
14 point to something specific in the code
15 that this person is violating at the time
16 of application. And that's --

17 COUNCILMAN KELLY: Isn't there
18 a cap, though? There is in the city of
19 Philadelphia I believe that if you want
20 to open up --

21 COUNCILMAN NUTTER: Isn't it 1
22 to 3,000 people?

23 MR. WATERS: Councilman Kelly,
24 when you talk about a cap, you talk about
25 one license per 3,000, you have to

1 Legislative Oversight - 3/13/06
2 understand that that law has changed
3 numerous times. And every time the law
4 changed, okay, any licenses that were at
5 the quota, okay, were grandfathered in.
6 So Philadelphia is over quota. There's
7 no doubt about that. There was
8 legislation that was pending --

9 COUNCILMAN KELLY: Is there
10 anything we can do to reduce the numbers
11 other than not renewing their license?
12 And that just brings up another thing.
13 How much input does City Council have in
14 that process, if any?

15 MR. WATERS: In the process of?

16 COUNCILMAN KELLY: Of renewing
17 a license. In other words, if we sent a
18 letter to you indicating that there are
19 problems with someone who has a license
20 and wants it renewed.

21 MR. WATERS: We will take the
22 evidence when you send the information as
23 we do during every renewal period. We
24 will take the information and if there's
25 substantial information to look at

1 Legislative Oversight - 3/13/06
2 objecting to that license, then I will so
3 recommend that to the board.

4 MR. MASTERS: If I could
5 comment on that, in Mr. Waters'
6 testimony, he related to you that the
7 last renewal cycle, all of our
8 enforcement agencies got together and
9 came up with a list of the worst
10 offenders of all the licensed
11 establishments and the LCB only granted
12 hearings on half of those. So our
13 enforcement community said there were 72
14 that should not be renewed and they
15 didn't even get hearings on half of them.
16 Now, that's not the City Council writing
17 a letter to the LCB. That's all the
18 enforcement communities coming together
19 and saying these are the problem places,
20 and they haven't cooperated even to the
21 extent of giving hearings for all of
22 them. I'm hoping we're going to get more
23 cooperation down the road.

24 COUNCILMAN KELLY: What was
25 that number again, Steve?

1 Legislative Oversight - 3/13/06

2 COUNCILMAN NUTTER: 74 and 42.

3 MR. WATERS: Councilman, can I
4 respond to that?

5 COUNCILMAN KENNEY: Who makes
6 the decision on granting a hearing? Is
7 it the board itself or staff or --

8 MR. DIAZ: Under the statute,
9 it's the director of licensing. And
10 there's a criteria that we use.
11 Generally speaking, and this is
12 consistent with how Section 470 is
13 written, if an applicant or employee or
14 someone who has an interest in the
15 license has criminal convictions,
16 felonies obviously carry more weight than
17 a misdemeanor, that is something we would
18 look at. If they have a citation history
19 of three or more citations typically
20 which affect the public such as sales to
21 minors during the last two-year cycle, or
22 if there is a pattern of criminal conduct
23 that has been occurring at the licensed
24 premises which the licensee knew, should
25 have known about, and failed to take

1 Legislative Oversight - 3/13/06
2 substantial steps to prevent that
3 activity, then we take a look at that as
4 well.

5 What we do in Philadelphia and
6 everywhere else is once we have places
7 identified, we reach out. We testified
8 about getting reports from Fran Healy of
9 the Philadelphia Police Department. We
10 will identify locations and they will
11 identify locations and then they will --
12 in Philadelphia it's a little bit more
13 elaborate because you do have more
14 licenses.

15 They're cad reports, Fran? Am
16 I saying that right?

17 MR. HEALY: Correct.

18 MR. DIAZ: We review those and
19 ask for additional police reports.
20 Mr. Healy provided those police reports
21 to us. And then we did an evaluation of
22 each of those locations trying to see
23 whether there's a pattern of criminal
24 activity that the licensee knew or should
25 have known about and wasn't taking any

Legislative Oversight - 3/13/06

steps. And that's how you got from 72 to 42 because sometimes someone will say this is a problem, but there are no incident reports associated with it for whatever reason. Sometimes there's a couple incident reports but there isn't really a pattern there. And we know what the law requires because the Rosing case is a great example which Mr. Waters testified to. No one disputed there was drug activity in the licensed premises. It's a bar in Pittsburgh. The police were making buys there. We refused a license. Common Pleas said no. The police can't stop this, how can you expect a licensee to? We took an appeal to Commonwealth Court which said exactly the same thing. They're not experts. They don't know what drug activity looks like. They didn't know you had police officers there buying drugs.

23 So, you know, we know what the
24 statute says. We also know what's going
25 to fly and what's not going to fly. So

1 Legislative Oversight - 3/13/06
2 that in a nutshell is the process. And,
3 again, if there are places you want us to
4 look at, we'll be happy to look at them.
5 It's just we only look once every two
6 years. It's much more effective to maybe
7 deal with some of the people who are also
8 up here with the day to day questions.

9 COUNCILMAN KENNEY: Let me ask
10 you a question. You had something you
11 wanted to add?

12 MR. WATERS: One other thing,
13 as deputy chief counsel said, we will be
14 happy to look at any locations that are
15 problematic, but if they do not have
16 substantial enforcement information, it
17 makes my job very difficult in objecting
18 to those licenses. Okay?

19 COUNCILMAN KENNEY: Lieutenant
20 Healy?

21 MR. HEALY: If I can, I'm not
22 going to sit here and bash the LCB at
23 this point. We worked as a team to
24 coordinate this list. The first year we
25 did it the District Attorney had its

1 Legislative Oversight - 3/13/06
2 list, I had mine, L&I had its, and it was
3 over 200 bars. The problem was the LCB
4 couldn't logistically handle that number
5 and asked us to prioritize. That meant I
6 had to prioritize one neighborhood over
7 another. That was problematic. Some
8 neighborhoods are clearly noise, public
9 disturbances, and other neighborhoods are
10 violence, drugs, shootings. You start to
11 see all those nasty bars up in the top of
12 the list but nonetheless those that have
13 community problems no less hectic at the
14 bottom.

15 COUNCILMAN KENNEY: Let me just
16 ask as a question far as enforcement is
17 concerned. Is it that clear in the
18 liquor code that Philadelphia Police are
19 not, specifically not permitted to write
20 liquor code violations?

21 MR. HEALY: No. And this issue
22 came up. Actually personally I was
23 involved in it with Senator Fumo right
24 after the first Mardi Gras incident in
25 Philadelphia.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN KENNEY: You have 22
3 state police officers for four counties.
4 They could use some help. So what keeps
5 us from actually instituting it
6 ourselves?

7 MR. HEALY: Historically in the
8 police department in the '80s there was
9 corruption around bars. The police
10 commissioner withdrew all police activity
11 and left it to the state. As a result,
12 when Police Commissioner Timoney came to
13 town, he said that makes no sense. We
14 need to get back involved in policing
15 inside bars. Some of the serious
16 violations under the liquor code, there's
17 a handful of them, are unclassified M
18 misdemeanors, which makes them an M3.
19 There's nothing in state law which
20 prevents the Philadelphia Police
21 Department from enforcing those
22 misdemeanors --

23 COUNCILMAN KENNEY: They're
24 serving a visibly intoxicated person.

25 MR. HEALY: -- and we've taken

1 Legislative Oversight - 3/13/06

2 steps to do that.

3 COUNCILMAN KENNEY: Serving
4 minors?

5 MR. HEALY: You can address
6 minors two ways, one under the liquor
7 code, one under the crimes code.

8 COUNCILMAN KENNEY: What I'm
9 saying is in an effort to build a
10 citation case, even if it's a two-year
11 window we have, in order to build that
12 case, why aren't our uniformed officers
13 writing liquor violations now along with
14 them --

15 MR. HEALY: We're mistaking two
16 things. Liquor violations I have no
17 authority to write.

18 COUNCILMAN NUTTER: That was
19 the question.

20 COUNCILMAN KENNEY: What
21 specifically does not give you the right
22 or prohibits you from having a uniformed
23 officer go into a takeout beer
24 delicatessen and cite them for not having
25 the chairs, cite them for allowing a

1 Legislative Oversight - 3/13/06

2 minor on the premises, cite them for
3 service of alcohol, cite them for
4 overadvertising, which is against the
5 liquor code?

6 MR. HEALY: The problem is we
7 don't do administrative regulations. A
8 lot of those you just mentioned are
9 administrative regulations.

10 COUNCILMAN KENNEY: But what
11 prohibits us from doing it?

12 MR. HEALY: We don't have
13 authority under the charter.

14 COUNCILMAN NUTTER: Under what
15 charter?

16 MR. HEALY: Philadelphia
17 charter or state law. We enforce state
18 law.

19 COUNCILMAN KENNEY: They're
20 certified state police officials. Do our
21 police officers have any different
22 standing than they do? They're both
23 state authorized law enforcement.

24 MR. HEALY: His office is
25 authorized to enforce liquor code

1 Legislative Oversight - 3/13/06

2 administrative violations.

3 COUNCILMAN KENNEY: And ours is
4 specifically prohibited?

5 MR. HEALY: We're not
6 prohibited but we're not authorized.

7 COUNCILMAN KENNEY: Why
8 wouldn't we want to do it?

9 MR. HEALY: We're not trained
10 in their code.

11 COUNCILMAN KENNEY: We could
12 have a training class. I mean, here's my
13 point is that this hot potato keeps
14 getting passed around.

15 MR. HEALY: See, that's where
16 you're very much mistaken. We've come
17 together to address these things.

18 COUNCILMAN KENNEY: I
19 appreciate the efforts of the task force.
20 What I'm saying is practically on the
21 street day to day there's not enough of
22 them, there's plenty of us.

23 MR. HEALY: Our units meet
24 together and they go out together. Our
25 police will make arrests. They work as a

1 Legislative Oversight - 3/13/06
2 team. They go out together on every
3 other Friday night I believe it is and
4 hit certain things. Because we can't do
5 the administrative stuff, we tag up with
6 the state police so they can.

7 COUNCILMAN KELLY: Lieutenant,
8 are you speaking about taverns, bars, or
9 the stop-and-go?

10 MR. HEALY: Everything. Well,
11 we don't separate a stop-and-go. It's a
12 nuisance establishment, bar
13 establishment, period.

14 MR. MASTERS: We have had
15 conversations as part of the City Council
16 task force on coming up with strategies
17 on how the city police and state police
18 can dovetail and I think there is a
19 willingness. There definitely was a
20 willingness expressed from the state
21 police to take incident reports from the
22 city police and turn them into citations.
23 So if the city police issued some kind of
24 a citation in whatever they want to call
25 it and transmit it to the state police,

1 Legislative Oversight - 3/13/06
2 they can change it to be an official
3 liquor code citation and commence it.

4 COUNCILMAN KENNEY: Is that
5 happening now?

6 MR. HEALY: Yes.

7 COUNCILMAN KENNEY: In other
8 words, this would be a recommendation by
9 the Philadelphia Police for the state
10 police to write a citation?

11 LT. COMERER: It's not a
12 recommendation. They put down on their
13 report the evidence of the violation.
14 They forward it to us. We then based on
15 information received we may further go
16 out and investigate or based on what they
17 gave us that may be enough to just do a
18 citation at that point. And then we
19 would cite administratively, which then
20 later on they would have to come and
21 testify if need be, the officers from the
22 Philadelphia Police Department. But
23 we've been doing that for quite some
24 time. It's well beyond the City Council
25 hearings. We've been doing that for

1 Legislative Oversight - 3/13/06

2 numerous years.

3 COUNCILMAN KELLY: Including
4 stop-and-go's; right?

5 LT. COMERER: That is correct.
6 If they see violations, they would
7 forward it to us. Each district has
8 representatives that do that.

9 COUNCILMAN KENNEY: How much
10 such correspondence or requests have you
11 guys had from our people?

12 LT. COMERER: A lot, a lot.

13 MR. MASTERS: That's one of the
14 major initiatives happening with the task
15 force and before that is that kind of
16 communication. We also have discussions
17 around the different policies and
18 procedures for making citations or
19 arrests for underage drinking. And
20 apparently the state police can simply
21 issue a citation like a ticket on the
22 scene whereas our department it's more of
23 a formal arrest procedure where they have
24 to take the individuals back to the
25 station and book them and it takes

1 Legislative Oversight - 3/13/06
2 several hours. And we were exploring
3 whether our police department could
4 change their policies and make it more
5 like the state police of just issuing a
6 ticket for underage drinking as opposed
7 to a three hour ordeal they don't want to
8 do and so we don't have a lot of underage
9 drinking arrests.

10 COUNCILMAN KENNEY: Could you
11 talk a little bit about the issue of
12 minors on the premises? It is clear in
13 takeout beer delis -- and I understand
14 the -- what was the restaurant -- Pizza
15 Hut stuff, kids are going in and out of
16 these beer delis on a regular basis
17 buying candy and potato chips and other
18 things through the same window and box
19 where there's alcohol. Isn't there some
20 really clear violation that kids
21 shouldn't be on that premises at all
22 without being accompanied by an adult?
23 Because even in the Pizza Hut thing you
24 need an adult, don't you?

25 MR. DIAZ: There are basically

1 Legislative Oversight - 3/13/06
2 five ways a minor can be on a licensed
3 premises. I'll see if I get them all
4 right here. With a parent or legal
5 guardian, under proper supervision is a
6 different way -- proper supervision
7 simply means someone who's over the age
8 of 25 who's responsible for you. That
9 may include a licensee's employee if
10 they're not doing anything else if
11 they're having an underage night and
12 that's statutory. The Pizza Hut rule,
13 which is referred to --

14 COUNCILMAN KENNEY: Again, I'm
15 trying not to be sarcastic, an employee
16 behind the bulletproof glass is a
17 responsible adult as it relates to a
18 minor in a --

19 MR. DIAZ: No, no, because he's
20 doing something else. He's selling
21 alcohol. This would be --

22 COUNCILMAN NUTTER: Hold on.
23 So give an example of who this person
24 would be.

25 MR. DIAZ: An example would be

1 Legislative Oversight - 3/13/06

2 perhaps an establishment that's having
3 like a prom night or something where
4 there are certain employees who are not
5 doing anything but watching the kids or
6 teachers --

7 COUNCILMAN KENNEY: But you
8 would agree that none of those --

9 COUNCILMAN NUTTER: Most of our
10 takeout beer delis don't have proms.

11 COUNCILMAN KENNEY: I can't see
12 one of the areas you've talked about that
13 would relate to a takeout beer deli or an
14 R licensee acting as --

15 COUNCILMAN NUTTER: He's only
16 gone through two.

17 MR. WATERS: I think deputy
18 counsel is speaking in general to the
19 rules relative to all licensed
20 establishments and could be missing the
21 point if I'm correct on -- if I'm not,
22 please let me know -- what the three of
23 you are at this time trying to drill down
24 to and that's the stop-and-go's.
25 Unfortunately, in the liquor code, a

1 Legislative Oversight - 3/13/06
2 stop-and-go is not identified. I know
3 what a stop-and-go is and I would agree
4 with you that there's an issue there.
5 There is an issue there, Councilman
6 Kenney. The issue is that in all
7 likelihood these locations are out of
8 compliance.

9 COUNCILMAN NUTTER: You're
10 saying they can't meet the test.

11 MR. WATERS: I'm saying they
12 cannot meet the test as to the way they
13 are configured, no. The way they were
14 configured when they were licensed and
15 received the liquor license when an
16 application was forwarded to us, they
17 were in compliance, and over time,
18 whatever that time period was, they've
19 changed their configuration. And in all
20 likelihood -- I don't know for a fact
21 because I haven't investigated one of
22 them -- they probably are not in
23 compliance.

24 COUNCILMAN KENNEY: Now, if you
25 had the ability through the state liquor

1 Legislative Oversight - 3/13/06

2 code to make a decision or to take away a
3 license prior to the two-year period, you
4 would avail yourself of that opportunity?

5 MR. WATERS: If the liquor code
6 gave us that opportunity, surely we would
7 avail ourselves to it as well as, you
8 know, since Ms. Abrams or D.A. Abraham
9 mentioned her resources, I think I would
10 be lying to say that all our resources
11 are at some degree whittled.

12 COUNCILMAN KENNEY: But you'd
13 you need a change in state law?

14 MR. WATERS: Well, sure.

15 COUNCILMAN NUTTER: Lieutenant
16 from the state police -- and I didn't
17 catch your last name.

18 LT. COMERER: Comerer,
19 C-O-M-E-R-E-R.

20 COUNCILMAN NUTTER: Okay. I
21 want to address you properly. In the
22 testimony earlier and this has I think
23 been consistent over some time, there are
24 22 state troopers covering the five
25 counties?

1 Legislative Oversight - 3/13/06

2 LT. COMERER: That is
3 incorrect. The State Police Bureau of
4 Liquor Control Enforcement, the officers
5 who work in the bureau with the exception
6 of the district office commander and
7 section commanders and the command staff
8 are liquor enforcement officers. They
9 are not troopers. They are LEOs.
10 Sergeant Davis is the district office
11 commander here in Philadelphia and I'm
12 based out of Philadelphia as eastern
13 section commander. Our complement is not
14 22. As in previous hearings, it was
15 testified to that our complement for the
16 Philadelphia office is 31. And that's
17 not including support, clerical, and what
18 not, which brings the number up over 40.
19 In addition to that --

20 COUNCILMAN NUTTER: But in
21 terms of the liquor enforcement officers,
22 individuals who can write a liquor code
23 violation --

24 LT. COMERER: 31, sir.

25 COUNCILMAN NUTTER: In

1 Legislative Oversight - 3/13/06

2 Philadelphia?

3 LT. COMERER: 31 stationed in
4 Philadelphia but --

5 COUNCILMAN NUTTER: What area
6 do they cover?

7 LT. COMERER: They cover
8 Philadelphia, Chester County, and
9 Delaware County. That's the district.

10 COUNCILMAN NUTTER: So Philly,
11 Delaware, Chester Counties; right?

12 LT. COMERER: Correct.

13 COUNCILMAN NUTTER: And how
14 many liquor licenses are there in those
15 three counties?

16 LT. COMERER: I believe we're
17 at approximately 3,500 total. I might be
18 off by a few. I will tell you this, the
19 majority, well above the majority of work
20 is Philadelphia. Just don't tell the
21 people in Delaware County and Chester
22 County that.

23 COUNCILMAN NUTTER: I
24 understand. You love all your children
25 equally. I understand. So at least from

1 Legislative Oversight - 3/13/06

2 a numerical standpoint each liquor
3 enforcement officer theoretically is
4 responsible for a little over a hundred
5 establishments; right?

6 LT. COMERER: We don't break it
7 down that way, but if you do the math,
8 that would be correct. I mean, bear in
9 mind a lot of those establishments, the
10 2,400 or so in Philadelphia, the vast
11 majority of those establishments we can
12 inspect them, work them for numerous
13 complaints and they're always in
14 compliance. Let's face it. Just like on
15 the street when you're working as a
16 police officer, it's the same crowd that
17 always seems to get the most attention.

18 COUNCILMAN NUTTER: Now, I may
19 have missed it. I know I went over to
20 the side for a second. This whole issue
21 about what Philadelphia police officers
22 can and cannot enforce under the liquor
23 code, did that get resolved while I was
24 away from the table?

25 LT. COMERER: We're looking at

1 Legislative Oversight - 3/13/06
2 administrative charges that are -- the
3 administrative process is conducted by
4 the liquor enforcement officers, but the
5 information that's furnished -- if the
6 Philadelphia Police come upon a situation
7 and they forward that information to us,
8 which we do have that pathway going at
9 this time, we can then take those reports
10 and we can apply them to the
11 administrative citation.

12 COUNCILMAN NUTTER: But are you
13 also of the opinion that Philadelphia
14 police officers cannot write an
15 administrative violation to the liquor
16 code?

17 LT. COMERER: That is correct.

18 COUNCILMAN NUTTER: Why is
19 that?

20 LT. COMERER: That's just the
21 way the law's written, sir.

22 COUNCILMAN NUTTER: Tell me the
23 section.

24 LT. COMERER: Off the top of my
25 head, I don't have that information.

1 Legislative Oversight - 3/13/06

2 MR. DIAZ: It's Section 471 of
3 the liquor code authorizes the
4 enforcement bureau and enforcement bureau
5 only to issue civil citations giving a
6 licensee a hearing before an
7 administrative law judge. It's 471.

8 COUNCILMAN NUTTER: Now, would
9 any amendment to that specifically
10 authorizing police officers in the city
11 of the first class to write such a
12 violation, is that helpful to you?

13 LT. COMERER: I don't see how
14 it would be helpful to me only because if
15 they forward us the information, we are
16 writing them up. So I don't see the
17 process being helped by that change.

18 COUNCILMAN NUTTER: So you can
19 write up a violation for something that
20 someone else wrote?

21 LT. COMERER: On information
22 received, that is correct, if, in fact,
23 there's evidence supporting it. I mean,
24 obviously, we need the evidence.

25 COUNCILMAN KELLY: I just have

1 Legislative Oversight - 3/13/06
2 a followup question to that, Councilman,
3 if I may. You said before that you take
4 the information from the Philadelphia
5 Police and you will write up a citation
6 and then you will go out in some cases
7 and investigate the complaint?

8 LT. COMERER: That is correct.

9 COUNCILMAN KELLY: What happens
10 if the Philadelphia Police are authorized
11 to write these citations? Would you
12 still go out and investigate that
13 citation?

14 LT. COMERER: That is correct,
15 sir. A lot of cases where the
16 Philadelphia Police will go and
17 investigate crimes that happened at an
18 establishment, then we will open up an
19 administrative investigation based on the
20 information they forward to us so that
21 not only -- when we go before the renewal
22 process every two years, not only will we
23 have the Philadelphia Police paperwork
24 but we also have administrative paperwork
25 and hopefully administrative citations

1 Legislative Oversight - 3/13/06
2 that come out of it. And then the
3 totality of everything, when we present
4 that, we have an overwhelming evidence
5 that perhaps maybe there will be no
6 renewal. I mean, that's what we try to
7 do with the problem places.

8 COUNCILMAN NUTTER: Let me go
9 back to Mr. Waters. I'm going to assume
10 that you were here when the video was on.

11 MR. WATERS: Yes, sir.

12 COUNCILMAN NUTTER: So I know
13 we couldn't get the full effect from the
14 sound, but the video was shot last night.
15 If we take at full value the noise
16 issues, in your testimony you mention on
17 Page 3 example of liquor code violations
18 which the board considers when
19 determining whether to renew a liquor
20 license includes such violations as sales
21 to minors or visibly intoxicated patrons,
22 allowing amplified music to be heard off
23 of the licensed premises, and after hours
24 operation.

25 MR. WATERS: That is correct.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN NUTTER: Now, you
3 saw the video. You have individuals who
4 shot it. I'm sure you can talk to them.
5 Maybe it's a moot issue now as a result
6 of our earlier discussion, but what
7 you're basically saying is
8 notwithstanding having seen that, there's
9 nothing you can do about that at the
10 moment?

11 MR. WATERS: That's correct.
12 There is nothing I can do with that at
13 the moment. If they want to present that
14 evidence to be used, they would have to
15 present that to the Pennsylvania State
16 Police Bureau of Liquor Control
17 Enforcement.

18 COUNCILMAN NUTTER: That's over
19 on your side. Now, what do you guys do
20 with that evidence?

21 LT. COMERER: We'll take that
22 evidence, which we've already spoken to
23 her. When we got a copy of that, which
24 she's promised to get us copies of that,
25 based on that we might have to do some

1 Legislative Oversight - 3/13/06

2 further investigation, but for the most
3 part based on that without question I
4 think there would be a citation going out
5 to that licensee.

6 COUNCILMAN NUTTER: Now let me
7 go back for a second. Mr. Waters, do you
8 get monthly reports of code violations?

9 MR. WATERS: No, I do not.
10 Code violations from the -- I do not.

11 COUNCILMAN NUTTER: So you get
12 just a big report at license renewal time
13 and that's the first you know of what's
14 going on with the licensee?

15 MR. WATERS: That is correct.
16 What we do get, we have access to
17 getting -- if there are cases that Bureau
18 of Liquor Control Enforcement believes
19 should come before us, they contact my
20 nuisance bar unit, division, and they
21 give us that information and we put that
22 into a candidate pool. So at renewal
23 time, we have the information.

24 Let me at this time take an
25 opportunity to say that I have been

1 Legislative Oversight - 3/13/06
2 working very closely with the other
3 agencies here, enforcement agencies here
4 and it has been an ongoing behind the
5 scenes work team that started actually
6 six years ago in trying to come together
7 to come to the table to bring the
8 stakeholders and enforcement together to
9 try and work through this process to
10 identify those locations. Have we failed
11 in some areas? Probably so, but I think
12 we've been productive in trying to use
13 the liquor code and use the tools that we
14 have before us, one, to get the
15 enforcement agencies to understand what
16 the director of bureau of licensing needs
17 to be able to object, for the director to
18 object to that. You know, Councilman,
19 I've worked the investigative unit down
20 here, was the division chief, so when I
21 talk about six years ago, actually we go
22 back to about 1996 when we came together
23 and through the process and give and take
24 we've tried to do the best we could.

25 COUNCILMAN NUTTER: Just a

1 Legislative Oversight - 3/13/06
2 couple last questions, Mr. Chairman.
3 This issue regarding the number of the
4 licensees apparently in response to their
5 Act 39, it was testified to a number of
6 them decided to close and have been
7 closed for some time. Can you give us on
8 the record what is the statute with
9 regard to if you're out of business for
10 any amount of time what happens?

11 MR. WATERS: There's nothing
12 that happens to the licensee or to the
13 license when they go out of business.
14 They put their license into safekeeping
15 or escrow and the board holds it for the
16 statute says three years. And if they do
17 not activate that, the license, or
18 transfer it to another party within three
19 years, effective February 7, 2007, that
20 license would go out of existence. While
21 it's held in escrow, that license as long
22 as it's renewed or validated, that
23 license is a good license. It can be
24 brought out of safekeeping at any time as
25 long as the location it's going to meets

1 Legislative Oversight - 3/13/06

2 the statute.

3 COUNCILMAN NUTTER: Are they
4 required to put it in safekeeping?

5 MR. WATERS: If a license is
6 not operable 15 days, by law they must
7 place that license in escrow.

8 COUNCILMAN NUTTER: And do we
9 know if any of these licensees did that?

10 MR. WATERS: To my knowledge, I
11 don't have that information in front of
12 me. I can check on that.

13 MR. MASTERS: Another addendum
14 on that is while we've been focusing on
15 the physical requirements for a location,
16 there's also a requirement in the code
17 that a location to be licensed has to be
18 a location of good reputation, not just
19 the people who run it but the place
20 itself has to be a good reputation. And
21 any location that has been denied a
22 permit to takeout beer and then was
23 selling it illegally while the appeals
24 were going on and finally decided to
25 close I would submit doesn't have a good

1 Legislative Oversight - 3/13/06
2 reputation. It certainly doesn't have a
3 good reputation in the community. And it
4 would be helpful to hear from the LCB
5 whether they ever take that code
6 provision into account and simply refuse
7 to return a license in safekeeping if a
8 establishment is not in good reputation
9 or don't take that into account.

10 MR. DIAZ: We do consider a
11 licensee's reputation when we have,
12 again, an application before us. There
13 may be times when a license is coming out
14 of safekeeping we're going to have an
15 application because depending on how long
16 it's in safekeeping, they may need to
17 submit additional information. Our
18 ability to do so wasn't made clear until
19 the Pennsylvania Supreme Court decided a
20 case called Street Road Bar and Grill
21 about two years ago where we had objected
22 to the transfer of license to individuals
23 who we thought were not reputable based
24 on their operating history at other
25 locations. The Commonwealth Court had

1 Legislative Oversight - 3/13/06
2 said that we could not consider citation
3 history and criminal history, that really
4 the board had very little authority to
5 look at people's past operating history
6 when making a determination as to whether
7 or not they're reputable, but the
8 Pennsylvania Supreme Court said yes, we
9 can. We've incorporated that authority
10 under regulation. So if we have
11 something we can base it on, we will
12 consider reputation.

13 COUNCILMAN NUTTER: Last
14 question. Is it a statutory requirement
15 that all liquor licenses -- licensees,
16 rather, have a valid health license
17 issued by the local municipality?

18 MR. WATERS: It's a regulatory
19 requirement, title 40.

20 COUNCILMAN NUTTER: Title 40?

21 MR. WATERS: Yes, which is
22 regulatory. It is a requirement.

23 COUNCILMAN NUTTER: Putting
24 aside the two-year renewal period,
25 suppose a current licensee's health

1 Legislative Oversight - 3/13/06
2 license was revoked by the City of
3 Philadelphia tomorrow. What would
4 happen?

5 MR. WATERS: And we were
6 notified?

7 COUNCILMAN NUTTER: Yes.

8 MR. DIAZ: There's very little
9 we can do because there's not an
10 application before us, but we would refer
11 it to state police.

12 COUNCILMAN NUTTER: You guys
13 are killing me. You're just killing me.
14 At what point do I just start banging my
15 head on the table?

16 MR. DIAZ: If we can be
17 perfectly candid, there have been times
18 in the past where we had an application
19 before us and there seemed to be
20 equitable reasons for us to refuse the
21 license and the courts have categorically
22 reversed those decisions. That's why
23 that's a case called Chinese Gourmet, a
24 series of cases where the court kind of
25 tells us you can't consider that.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN NUTTER: But if in
3 the regs or the statute you must --

4 MR. WATERS: It's in the regs.

5 COUNCILMAN NUTTER: These are
6 liquor control?

7 MR. WATERS: Title 40 of our
8 regulations.

9 COUNCILMAN NUTTER: An
10 establishment has to have a valid health
11 license.

12 MR. WATERS: That's correct,
13 but we cannot act unless an application
14 is in front of us. And the only time an
15 application is in front of us is during
16 the renewal period. That's by statute.

17 COUNCILMAN NUTTER: Gotcha.
18 Renewals come up in October of this year.

19 MR. WATERS: That is correct.

20 COUNCILMAN NUTTER: What
21 happens if there's an application in
22 front of you and the applicant has no
23 valid health license and you know it?

24 MR. WATERS: We do not issue
25 the license.

1 Legislative Oversight - 3/13/06

2 COUNCILMAN NUTTER: Thank you.

3 MR. DIAZ: We will object and
4 not give them operating authority.

5 COUNCILMAN NUTTER: Okay.
6 Thank you.

7 COUNCILMAN KENNEY: Thank you.
8 Councilman Kelly has a few questions. I
9 just want to let everyone know we're
10 going to at some point in the next few
11 minutes recess this hearing until April 6
12 at 1:00 p.m. That doesn't necessarily
13 mean we're going to be back here, but I
14 have to keep it alive without having to
15 advertise it. We'll contact everybody,
16 but it's been a long day and I want to
17 bring some conclusion today and keep it
18 open for further discussion.

19 COUNCILMAN KELLY: As relates
20 to the city, one of the complaints the
21 community has made very clear and it's
22 mostly in the takeout beer delis is the
23 advertising and the illegal signage and
24 the advertising of alcohol products on
25 fences, on walls. Why can't we mitigate

1 Legislative Oversight - 3/13/06

2 that and just take that stuff down? Is
3 there --

4 MR. VERDI: In some cases, we
5 do take it down. I don't have it with
6 me. I'll be happy to get it over to you.
7 There was some issue with the courts
8 approximately six months ago in reference
9 to accessory signage. Unfortunately, and
10 we don't agree with this issue, when you
11 put up signs for Miller beer, Coors
12 Light, Anheuser-Busch, they're
13 accessories to your business.

14 COUNCILMAN KENNEY: Colt 45.

15 MR. VERDI: Based on the size
16 and minimum requirements of these signs,
17 they are in some cases not illegal. Some
18 of the signs we saw there I'd like to get
19 the addresses of those locations because
20 the fence that was there is technically
21 not a fence attached to that property.
22 So, in other words, the fencing that's
23 away from that property line is basically
24 on the sidewalk, which I could have my
25 people go out there and just remove every

1 Legislative Oversight - 3/13/06
2 signing along that fence. When it's
3 attached to the building or within a
4 window space of that building, it becomes
5 a little more technical in nature as to
6 whether that is allowable accessory
7 signage or not.

8 The only other thing I'd like
9 to clear up --

10 COUNCILMAN KENNEY: Why do we
11 err on the side of total caution and just
12 not take the sign down?

13 MR. VERDI: We do in some
14 cases. Other cases that we don't -- we
15 do we normally get sued for.

16 COUNCILMAN KENNEY: We get sued
17 all the time.

18 MR. VERDI: But we're working
19 closely with the law department in amount
20 of accessory signage. The other issue
21 want to definitely clear up before we
22 leave today is community testimony about
23 locations being closed at 11:00 p.m.
24 That law City Council passed is not in
25 reference to liquor license

1 Legislative Oversight - 3/13/06
2 establishments. It's in reference to any
3 business, not just restaurants, any
4 business other than any beer or liquor
5 license establishments that are open
6 after 11:000 p.m. in areas more than
7 80 percent populated by residential
8 occupancy. It doesn't mean areas such as
9 Germantown area, Ridge Avenue. Any
10 commercial corridor is not under that
11 ordinance. And bars and stop-and-go's,
12 whatever you want to call them, are not
13 under that jurisdiction of that
14 ordinance.

15 COUNCILMAN KENNEY: But don't
16 they have a mercantile license giving
17 us -- us giving them permission to
18 operate and sell retail?

19 MR. VERDI: Yes. We look into
20 different issues with the nuisance
21 activity and again working closely with
22 the state police and state LCE. But
23 unfortunately that ordinance doesn't
24 cover liquor license.

25 COUNCILMAN KELLY: They're

1 Legislative Oversight - 3/13/06

2 exempted then?

3 MR. VERDI: From my
4 understanding, it is. And the opinion
5 that we have and I'll get the opinion to
6 you is the fact that they are governed --
7 their license allows them 2:00 p.m. --
8 2:00 a.m. We can't -- our jurisdiction
9 doesn't supersede the state's
10 jurisdiction of 2:00 a.m.

11 COUNCILMAN KELLY: In other
12 words, they have the same license so,
13 therefore, they're permitted the same
14 hours as anyone else.

15 MR. VERDI: As the LCB said,
16 there is no such thing as a stop-and-go
17 license. It's either a restaurant or
18 takeout location.

19 COUNCILMAN KELLY: I
20 understand. That was one of the
21 questions I did want to ask that the
22 Chairman already asked. An impression I
23 received from all the testimony today is
24 that there seems to be a better track
25 record in regulating and controlling

1 Legislative Oversight - 3/13/06
2 taverns and restaurants than there are in
3 the stop-and-go's. I'm just looking at
4 the results and it's pretty frustrating
5 because I'm looking at Mr. Masters, your
6 testimony, you mentioned in it that you
7 had 147 protests on these stop-and-go's
8 and the bottom line is that it comes down
9 to about only five of these businesses
10 went out of business. And that's pretty
11 frustrating for a community. And I think
12 what I know the Chairman and Councilman
13 Nutter and everyone else I'm sure is
14 willing to do is to come together, all of
15 us here, and come up with some new
16 regulations or laws or something that's
17 going to protect the communities in
18 oversaturation of these stop-and-go's,
19 making them tow the line as far as
20 aesthetically and everything else. To
21 me, I just shake my head and say my God,
22 we're really getting frustrated in not
23 being able to control this type of
24 activity that's going on in our
25 neighborhoods. And that's all I have to

1 Legislative Oversight - 3/13/06

2 say. Thank you, Mr. Chairman.

3 COUNCILMAN KENNEY: Thank you.

4 Mr. Waters, is there any
5 consideration given to the proximity of
6 other licensed establishments around
7 either a new licensee, for example, or
8 transfer?

9 MR. WATERS: There is when we
10 have an application before us. However,
11 we take into consideration if there's --
12 let me say it like this: The other
13 licensed establishments within 200 feet
14 have a right to protest. And if they
15 protest, we normally have a hearing on
16 why they're protesting. The courts have
17 not really been favorable to our
18 decisions when we have denied a license,
19 an application, the board has denied an
20 application because they look at it as a
21 free enterprise right. And deputy
22 counsel may want to speak to the
23 legalities of that.

24 MR. DIAZ: As Jerry pointed
25 out, a licensee within 200 feet is what

1 Legislative Oversight - 3/13/06
2 the statute says can form the basis for
3 the board to refuse the application. The
4 other thing is if it's a new application,
5 if there is an adverse effect on the
6 neighborhood within 500 feet, that is
7 also the basis to refuse a license. And
8 there have been situations where
9 neighbors say, look, we're oversaturated,
10 these are the problems. It's a very high
11 standard in terms of what the courts want
12 to see before they refuse this
13 application. And the reason is it's
14 perspective. You know, we don't know
15 that this person's going to be a problem.
16 We don't know because we haven't seen
17 this person operate.

18 What some neighborhoods in
19 Philadelphia have done, and you had some
20 of them testify, is they've become very
21 proactive. They have filed petitions to
22 intervene or protest when it goes to a
23 new location. They've met with the
24 licensee and they've entered into or have
25 gotten them to agree to conditional

1 Legislative Oversight - 3/13/06
2 licensing agreements which they then send
3 to us, and that puts additional
4 conditions on the license. So it
5 depends. Some groups we deal with all
6 the time. Other groups we don't hear
7 from at all.

8 COUNCILMAN KENNEY: Councilman
9 Nutter?

10 COUNCILMAN NUTTER: Thank you,
11 Mr. Chairman. Just two quick things.

12 Mr. Verdi, one, do you know
13 what the schedule is for renewal on a
14 health license? Is that on a --

15 MR. VERDI: Yearly.

16 COUNCILMAN NUTTER: So it's a
17 calendar year?

18 MR. VERDI: Calendar year.

19 COUNCILMAN NUTTER: Would you
20 give some thought or consideration based
21 on the conversation we've had -- this
22 won't apply to all the food and beverage
23 or at least food establishments all
24 across the city, but we might want to
25 give some consideration to changing the

1 Legislative Oversight - 3/13/06
2 cycle on the health license for those
3 establishments that have liquor licenses.
4 And one of the reasons I would recommend
5 that is if they're getting their license
6 on a calendar year, which I assume is a
7 December 31 --

8 MR. VERDI: Councilman, if I'm
9 not mistaken, it's March 1.

10 COUNCILMAN NUTTER: So March 1
11 to February 28?

12 MR. VERDI: Yes.

13 COUNCILMAN NUTTER: I think
14 based on that kind of schedule,
15 establishments will always have a health
16 license when they go for renewal in
17 October if they have one.

18 MR. VERDI: Not all the time.
19 What we've been doing is together and
20 with the LCE, when we revoke a food
21 license for whatever reason, health
22 department will contact our department in
23 reference to revocation of a license. We
24 automatically send a copy over to liquor
25 control enforcement. Also, the

1 Legislative Oversight - 3/13/06
2 investigators that are dealing with LCB
3 will contact us during times of renewal
4 and request information on liquor
5 licenses -- I mean on health licenses or
6 food licenses. Our food licenses are not
7 restricted to -- we don't have -- there's
8 no way for me to pull out all good
9 licenses and say which ones are tied into
10 a liquor establishment or not.

11 COUNCILMAN NUTTER: I
12 understand that, but the applicant -- I
13 mean, I think there are at least a couple
14 ways to get the information. One, you
15 could require the applicant to tell you;
16 right? I mean, they have to renew. Do
17 you have a liquor license? Second, you
18 can get a file from our good friends over
19 at the LCB. They'll tell you.

20 MR. DALY: Excuse me. Wouldn't
21 that be selective enforcement?

22 COUNCILMAN NUTTER: I'm sorry?
23 We have different licenses for different
24 kinds of business. I mean, everyone has
25 the same food license whether you have a

1 Legislative Oversight - 3/13/06

2 restaurant or you got a cart out on the
3 street.

4 MR. DALY: Exactly.

5 COUNCILMAN NUTTER: Generally,
6 the guy or lady or whatever with the cart
7 on the street probably doesn't have a
8 liquor license. It's a different kind of
9 establishment. It's a different kind of
10 license. I mean, we can have this debate
11 another time, but it seems to me that if
12 the health license of those
13 establishments, about 2,400 of them, are
14 being reviewed at the same time that the
15 gentlemen over there on a two-year basis
16 are reviewing their liquor license, then
17 sometimes you would end up with an
18 applicant in front of the LCB on renewal
19 that might not have a health license.

20 MR. VERDI: That's a question
21 you have to ask the health department.
22 My understanding, Councilman, there is no
23 inspection for renewal of the health
24 license. That's a renewal yearly.

25 COUNCILMAN NUTTER: So you just

1 Legislative Oversight - 3/13/06

2 get it? I go to a lot of restaurants.

3 That's a really comfortable thought.

4 COUNCILMAN KENNEY: Why do we
5 want to do that?

6 MR. VERDI: Those licenses are
7 renewable based upon application. I
8 mean, the health department unfortunately
9 is not here.

10 COUNCILMAN NUTTER: Unless
11 there's a report somebody died?

12 MR. VERDI: How they inspect on
13 these locations is not --

14 COUNCILMAN NUTTER: Right.

15 Mr. Waters, one last thing.
16 You said you know what a stop-and-go is.
17 Based on your experience with the LCB, do
18 you have any knowledge of this similar
19 type of establishment proliferating all
20 over the Commonwealth of Pennsylvania?
21 Are there many other jurisdictions that
22 have these types of entities?

23 MR. WATERS: The answer to you,
24 Councilman, would be no. However, in all
25 areas of the Commonwealth there are what

1 Legislative Oversight - 3/13/06
2 we could classify as stop-and-go's, but I
3 guess I should use the word the
4 proliferation of those establishments is
5 unique to the city of the first class
6 Philadelphia, sir.

7 COUNCILMAN NUTTER: We are
8 quite unique place.

9 MR. WATERS: You are.

10 COUNCILMAN NUTTER: Thank you.

11 COUNCILMAN KENNEY: Thank you
12 very much for your testimony and for your
13 time. This committee will recess --

14 MR. MASTERS: Can I make a
15 request? I wasn't able to present my
16 testimony. Can I just request it be put
17 into the record?

18 COUNCILMAN KENNEY: Absolutely.
19 The testimony has submitted for the
20 record. We will adjourn until April 6 at
21 1:00 p.m. Thank you.

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence, and objections are
contained fully and accurately in the
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13, 2006, and that this is a true and
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Kimberly A. Otherwise
Certified Realtime Reporter
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